EARLY MODERN NATURAL LAW 2

Samuel Pufendorf Disciple of Hobbes

For a Re-Interpretation of Modern Natural Law

By
Fiammetta Palladini
Translated by **David Saunders**
Introduction by **Ian Hunter**

BRILL

Samuel Pufendorf Disciple of Hobbes

Early Modern Natural Law

STUDIES & SOURCES

VOLUME 2

The titles published in this series are listed at *brill.com/emnl*

Samuel Pufendorf
Disciple of Hobbes

For a Re-Interpretation of Modern Natural Law

By

Fiammetta Palladini

Translated by

David Saunders

Introduction by

Ian Hunter

BRILL

LEIDEN | BOSTON

This title was originally published in Italian: Fiammetta Palladini, *Samuel Pufendorf discepolo di Hobbes. Per una reinterpretazione del giusnaturalismo moderno*. Bologna: Il Mulino, 1990.

Cover illustration: Crest of arms that sits above Pufendorf's tombstone, Stadtmuseum Berlin.

Library of Congress Cataloging-in-Publication Data

Names: Palladini, Fiammetta, author. | Saunders, David, 1940- translator.
Title: Samuel Pufendorf disciple of Hobbes : for a re-interpretation of
modern natural law / by Fiammetta Palladini ; translated by David Saunders ;
introduction by Ian Hunter.
Other titles: Samuel Pufendorf discepolo di Hobbes. English
Description: Leiden, The Netherlands ; Boston : Brill, 2020 | Series: Early
modern natural law: studies & sources, 2589-5982 ; vol.2 | Includes index. |
Text in English translated from Italian.
Identifiers: LCCN 2019037979 (print) | LCCN 2019037980 (ebook) |
ISBN 9789004388604 (hardback) | ISBN 9789004388611 (ebook)
Subjects: LCSH: Natural law. | Pufendorf, Samuel, Freiherr von, 1632-1694.
Classification: LCC K457.P82 P3513 2019 (print) | LCC K457.P82 (ebook) |
DDC 340/.112–dc23
LC record available at https://lccn.loc.gov/2019037979
LC ebook record available at https://lccn.loc.gov/2019037980

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISSN 2589-5982
ISBN 978-90-04-38860-4 (hardback)
ISBN 978-90-04-38861-1 (e-book)

This book is printed on acid-free paper and produced in a sustainable manner.

To Giorgio and Sara Borioni, my ever lovable and much loved children thirty years later.

Contents

Introduction IX
Ian Hunter
A Note from the Translator XXX
David Saunders
Preface XXXII
List of Abbreviations and References XXXV

Introduction 1

PART 1
Pufendorf the Hobbesian

I **The Theory of Obligation** 19
1 The Hobbesian Matrix of the Theory 20
2 Re-Thinking the Hobbesian Principles 24
§ 1 *Interpretation of the* ius in omnia 24
§ 2 *The Doctrine of 'Moral Entities'* 29
§ 3 *The Notion of 'Obligation'* 31
§ 4 *The Notion of 'Superior'* 32
§ 5 *The Sanction of the Law of Nature* 48
§ 6 *Of What Type is the Obligation of the Law of Nature?* 49

II **Nature of Man and State of Nature: The Doctrine of Sociality** 72
1 Human Nature 72
2 The State of Nature 78
§ 1 *The Definitions of State of Nature* 79
§ 2 *The Effective Use of the Notion* 82
3 The Hobbesian Inheritance in the Doctrines of *Socialitas* and of the State of Nature 108
4 Consequences for the Force of Pufendorf's Anti-Hobbesian Arguments Relating to the State of Nature 112

PART 2
Why Did Pufendorf Pass for an Anti-Hobbesian?

I Pufendorf's Place in the History of Ethics According to Pufendorf 149

II The Role of Cumberland 162
1 The Utilisation of Cumberland 162
§ 1 *As a Mine for Anti-Hobbesian Arguments* 162
§ 2 *As* auctoritas *for the Defence* 168
2 Differences between the First and Second Editions of the *De iure* 171
§ 1 *Regarding the Notion of 'Natural Good'* 172
§ 2 *Regarding the Notion of 'Natural Consequences' of Actions* 179
§ 3 *Regarding the Notion of the 'Nature of Things'* 180
3 Cumberlandian Paternity of These Notions 185
4 Incompatibility of Cumberland's System with That of Pufendorf 193
5 Other Variants between the First and the Second Editions of the *De iure* 197

III Anti-Hobbesian Aspects of the *Elementa* 213
1 The Social Nature of Man in *observatio* Three of the *Elementa* 213
2 How This *observatio* is Utilised and Transformed in the *De iure* 220
3 The Origin of Civil Society in the *Elementa* and the *De iure* 224
4 Drawbacks of the Utilisation of the *Elementa* in the *De iure* 227
5 What Relation is There, According to Pufendorf, between Law of Nature and Utility? 230
6 The Evolution of Pufendorf's Thought 232

IV The Barbeyrac Factor 235

Conclusion 243

Leave-Taking 245
Table of Passages Cited 247
Index of Names 252

Introduction

Ian Hunter

The reader has before them one of the most important works of Pufendorf scholarship to appear in the latter part of the twentieth century. The fact that Fiammetta Palladini's *Samuel Pufendorf discepolo di Hobbes* was first published in Italian in 1990 takes away none of its freshness or intellectual excitement.[1] That is because it is a work produced by a scholar and intellectual whose achievement it was to cut through the existing field of Pufendorf studies with a razor intelligence, laying bare its inherited templates and tacit assumptions. Palladini was thus able to peel back the 'Grotian' commentary in which the great thinker had been shrouded, revealing a Pufendorf well-known in the 1680s—a formidable and dangerous natural jurist and political theorist—but doubly obscured in the 1980s, by a philosophical history that flew too high to see him, and by a commentary literature that too often did not like what it saw.

David Saunders' remarkable translation carries Palladini's argument into English with maximum fidelity, delivering its analytical precision, revisionist force, and scholarly depth to a new audience. Saunders has thus made a work steeped in the Italian tradition of erudite intellectual history available for a second and wider reception in the world of anglophone scholarship, beyond the initial italophone reception that has already established the book's scholarly reputation among historians of political thought.[2] Through Saunders' English, an anglophone readership gains access to a distinctively pufendorfian style of political thought—beset by enemies, stretched by inner complexity, and tinged with danger—that was first revealed by Palladini.[3]

I

The figure who embodies this intellectual danger, and whom Palladini's research reveals looming in the wings of Pufendorf's magnificent intellectual theatre, is the English political scientist Thomas Hobbes. A good deal of prior commentary had sought to inoculate Pufendorf from hobbesian contamination by casting the former as defending a natural law grounded in natural sociability against the latter's derivation of this law from the war of all against all and the sovereign who ended it. It is this opposition between the sociable Pufendorf and the anti-social Hobbes that Palladini set out to dismantle and

then completely reconfigure, transforming Pufendorf from the English thinker's opponent into his disciple.

Deploying an argument whose intellectual élan is supported by a meticulous textual scholarship, Palladini provides an unprecedented account of Pufendorf's hobbesian discipleship. As she makes clear, this was not just a matter of what the Saxon natural jurist borrowed from the English civil scientist, although the evidence that Palladini assembles of Pufendorf's borrowings from Hobbes's *De Cive* and *Leviathan* puts this beyond doubt.[4] It was more interestingly that Pufendorf's own most original steps in the reconfiguration of natural law thought tracked those of Hobbes. As each thinker took up the task of supplying a new post-scholastic architecture for ethics and politics, they arrived at remarkably similar solutions to key problems.[5] This meant that when Pufendorf lifted his thought to a new intellectual plateau he found that he shared this space with Hobbes, leading him to respect the Englishman's acuteness even while departing from certain of his doctrines. In Palladini's account, what makes Pufendorf into Hobbes's disciple is the fact that he solved the central problems of post-scholastic natural law in an original manner, but only through 'intense conversation' with Hobbes (6). Palladini's Pufendorf thus thinks with a 'hobbesian mind' or 'hobbesian heart' (243), and yet the originality of his engagement with the English thinker means that her book is about Pufendorf's natural law thought rather than Hobbes's.

At the center of Palladini's study, and forming the crucial nexus between Pufendorf and Hobbes, is the litmus question of whether human nature should be regarded as the source of ethical and political norms.[6] An affirmative answer to this question had been foundational for scholastic and Christian-Stoic forms of natural law. Ascribing an inherent rationality and sociability to human nature, these traditions had envisaged man as capable of channeling the norms by which the divine mind ordered the cosmos and the polis, or else as able to attune his thought and conduct to a normative order that was given in nature. By treating moral judgments as nothing more than reflections of desires and aversions rooted in man's material passions, Hobbes had taken a wrecking-ball to these traditions. He had then rebuilt the architecture of natural law around a norm of conduct—sociality—that, rather than being preordained in nature or commanded by reason, was instead a comportment to be attained by disciplinary arrangements embodied in the sovereign and the state.

The arc of Palladini's account of Pufendorf's hobbesian discipleship is formed by her careful tracking of different phases in Pufendorf's complex and multifaceted engagement with Hobbes's reconstructed norm of sociality, now understood as a required comportment rather than as an endowment of nature or God. This is an itinerary that begins with Pufendorf's early work, the

Elementa jurisprudentiae universalis (*Elements of Universal Jurisprudence*) of 1660, where Palladini sees him engaging deeply with Hobbes, yet rejecting many of the latter's key arguments, and continuing to endorse a notion of natural good as the fundamental norm of ethics and politics.[7] In the work of his 'maturity', however, his *De jure naturae et gentium* of 1672, Pufendorf had embraced the hobbesian reconstruction of natural law around sociality as a conduct to which humans could only be obligated by a 'superior'.[8] The warmth of this embrace, however, did not preclude a certain wariness on Pufendorf's part about how closely he could cleave to certain hobbesian doctrines, pertaining to natural war and natural right, the effectivity of natural law in the state of nature, and the dependence of justice on the commands of the civil sovereign. Finally, in the emendations and additions that appeared in the second edition of the *De jure* in 1684, and which she was the first to study, Palladini detects a significant retreat from the hobbesian mainline of the first edition. This airbrushing of the hobbesian presence was signaled by the appearance of notions of 'natural good' and the 'nature of things' that Pufendorf borrowed from Richard Cumberland's *De legibus naturae* of 1672, an anti-hobbesian work by an English theologian steeped in Christian Stoicism.[9] Whether Pufendorf's late anti-hobbesian swerve was a feint to deflect the storm of scholastic criticism that had broken over the *De jure*, or whether under this pressure Pufendorf had begun to delude himself about the hobbesian character of the first edition, are possibilities that Palladini leaves open for discussion and further research.

There is, however, nothing indecisive or shrinking about this book. Lobbed into the trenches of late twentieth-century natural law scholarship, it was a revisionist grenade whose central argument regarding Pufendorf's hobbesian discipleship landed with explosive force.[10] This argument was aimed in particular against a pair of twinned traditions of post-war Pufendorf scholarship: one that presented him as an anti-hobbesian follower of Grotius, committed to a doctrine of man's natural sociability; and another that viewed him as an eclectic mediator between Grotius and Hobbes—someone who used Grotius's Aristotelian conception of natural sociability to moderate the hobbesian harshness of the war of all against all and the unfettered power of the sovereign.[11] By arguing that Grotius's ambient presence had little impact on Pufendorf's central doctrines, and that Hobbes's pervasive influence had been clear from the outset—acknowledged by both Pufendorf and his enemies—Palladini's revisionist argument was deeply unsettling for the 'Grotian' reading of Pufendorf that remained current in the 1970s and 80s. But it remains no less challenging for more recent attempts to keep Pufendorf within the orbit of natural sociability, for example, those seeking to align him with an 'eclectic' Grotian conception of rational sociability,[12] scholastic doctrines of sociability achieved

through man's faculty of reason,[13] or Stoic doctrines of the rational governance of the passions.[14]

II

Palladini divides her account of Pufendorf's shifting relationship with his intellectual mentor into two parts. In part one of the book she provides a detailed reconstruction of Pufendorf's intense engagement with Hobbes in the work of his intellectual maturity, the *De jure naturae et gentium* of 1672. Part two then flanks this account with an equally detailed exegesis of the Cumberlandian additions by which Pufendorf began to tone down his hobbesianism in the 1684 second edition of the *De jure*, and with an account of the still partially pre-hobbesian natural law of his early *Elementa*, seeking to shed light on the puzzle of how Pufendorf came to pass as an anti-hobbesian. In order to elucidate the character and degree of Pufendorf's discipleship in the period of his maturity, Palladini isolates two key topics in the conversation that Pufendorf conducted with his constant intellectual interlocutor: the theory of obligation, and the theme of human nature and the state of nature, through which 'sociality' was constructed. These provide Palladini with twin 'test-benches' for assessing the mode of Pufendorf's intellectual engagement with Hobbes.

Citing the many passages from Hobbes's *De cive* found in Pufendorf's *De jure*, Palladini builds up an account of the shared intellectual platform on which Pufendorf constructed his theory of obligation in dialogue with Hobbes (20–24). The first plank of this platform is the 'voluntarist' rejection of the notion of objective or ontological moral values in favor of the doctrine that moral judgments and the moral sense itself are dependent on the willed imposition of a law declaring what is prescribed or prohibited. To this is added the doctrine that while free—in the sense of capable of choosing between different courses of action on the basis of what seems good to him—man is incapable of governing or obligating himself, for example, by willing and acting in accordance with rational knowledge of moral norms or laws. On this basis, Palladini argues, in his *De jure* Pufendorf follows the fundamental contours of Hobbes's theory of obligation: that man is only under an obligation—for example, to conduct himself sociably—when he is subject to the laws or command of a 'superior' as someone to whom he has submitted his own will. In treating obligation as the moral necessity of acting in accordance with the law or command of a superior, Palladini argues, Pufendorf shows himself to be a hobbesian, simultaneously placing himself at maximum distance from scholastic and Stoic

doctrines of obligation understood in terms of the governance of the will in accordance with rationally known objective norms or natural goods.

Given this common platform, it is striking that the bulk of Palladini's discussion of the obligation 'test-bench' is devoted to a detailed discussion of where Pufendorf departs from Hobbes (24–29). This discussion is focused on a series of interlocking questions, concerning whether justice exists in the state of nature, whether in this state there is a hobbesian *jus in omnia* (a right of everyone to everything), whether the natural law itself is obligatory, whether God's superiority comes from his supreme power, and whether the civil sovereign's commands determine what is just and unjust. As Palladini's incisive commentary makes clear, whether (as Pufendorf argues) justice exists in the state of nature, thereby precluding Hobbes's *jus in omnia* and his confinement of justice to sovereign command, depends fundamentally on whether God can be construed as a 'superior' in the pufendorfian sense, allowing the natural law to be treated as a divine command, and thereby placing man under its obligation in the state of nature. At the risk of oversimplifying her subtle analysis of this question, Palladini's argument is that Pufendorf fails to establish that God is a superior in the required sense, and hence fails to show that the natural law is obligatory for man in the state of nature, or that in the final analysis obligation and justice are not dependent on the commands of a hobbesian civil sovereign.

Focused on the complex figure and role of the superior, Palladini's argument as to why Pufendorf fails to construct an independent non-hobbesian doctrine of obligation is clear enough at one level. Pufendorf's construction of the superior consists of two elements: first, the power to coerce those who would disobey his laws or commands, and second, the 'just reasons' (*justa causae*) for issuing such commands, where these reasons are understood in terms of the respect or reverence that subjects should feel for the benefaction and protection bestowed on them by the superior (*DJN* 1.6.9–12, pp. 95–103). According to Pufendorf, it is because Hobbes grounds his conception of the superior in power alone that he fails to grasp that man is already obligated by the natural law in the state of nature, where there is no sovereign power; for even in that condition man comprehends that the natural law is the command of a divine superior whose laws are obligatory because of the reverence he feels as creature for the benefactions of the creator. There is little room to doubt Palladini's forensic argument that, conceived as the command of a divine superior, Pufendorf's attempt to show that natural law is obligatory in the state of nature is undermined by crippling uncertainties (49). Palladini homes in on the problem that of the two elements required for the pufendorfian superior to impose obligation—coercive power and subjection owing to benefaction—Pufendorf fails to explicate the coercive punishments that would make a divinely

imposed natural law obligatory. Once Pufendorf has himself confessed that it remains 'involved in obscurity' whether the divine superior's natural law has sanctions comparable with the punishments imposed by a civil superior (*DJN* II.3.21, p. 224), Palladini is surely right to argue that ultimately Pufendorf is forced to give up on the idea that natural law is obligatory in the full juridical sense, allowing it to fade into the domain of 'imperfect' or unenforced duties of humanity and conscience (49).

Underlying Palladini's acute analysis, however, is a deeper intellectual architecture whose character and implications are not so immediately apparent. This concerns the different grounds for Hobbes's and Pufendorf's conception of natural law as 'imposed' rather than embedded in human nature. For, while Hobbes grounds his conception in the non-moral (or morally indifferent) materialist psychology of man's natural passions and desires, Pufendorf grounds his in the doctrine that man's nature is a 'moral entity' that must itself be regarded as imposed or instituted by God. In her lucid exposition of Pufendorf's innovative *entia moralia* doctrine, Palladini focuses on the fact that in treating man's moral personhood as imposed for the purposes of his moral governance, Pufendorf was intent on divorcing it from the domain of *entia physica*, including man's own (physical) nature, thereby destroying the ontological grounding of natural law in a normative human nature, and treating it instead as a norm imposed by a superior (30–31). Palladini, however, then proceeds to interpret Pufendorf's distinction between physical and moral entities as equivalent to the distinctions between nature and law, fact and norm, the is and the ought, and then uses this set of distinctions as a grid to interpret the relation between the two parts of Pufendorf's construction of the superior: the relation between coercive force and subjection based on respect for benefaction (38). Hoisting Pufendorf on his own petard, Palladini argues that in separating power and respect for the law—or coercion and the 'just causes' for its exercise—along the axis that separates fact and norm, Pufendorf cannot recombine them in the figure of the superior imposing obligation. This is why he cannot provide a proper explication of the divine or natural punishments needed to make natural law obligatory in the state of nature (41–46).

It is significant that at this point in her argument, Palladini cites Leibniz's critique of the 'circularity' of Pufendorf's construction of obligation: Pufendorf wants to ground obligation or justice in the commands of a superior, but then appeals to the justice (*justa causae*) of the superior's commands in order to ground them (47). Her reason for doing so, however, is not that she shares Leibniz's doctrine that force and obligation or fact and norm belong to two irreconcilable ontological domains, the material and spiritual, with only the latter capable of generating norms. Her argument rather, is that in attempting to go

beyond Hobbes, by showing that obligation could not be grounded in power alone, Pufendorf's *entia moralia* doctrine created a gulf between the natural and the moral, that he could not bridge, while, in deriving obligation from a superior whose right was grounded in power and pacts, Hobbes did not have this problem. Pufendorf's *entia moralia* doctrine thus plays a key role in Palladini's argument that Pufendorf failed to escape the gravitational force of Hobbes's theory of obligation, as can be seen in her comment on Pufendorf's assertion that a right grounded in power alone cannot produce an obligation in others:

> This is partly because in bringing that assertion back to the domain of the moral entities doctrine we have linked it to one of the aspects of Pufendorf's thought traditionally (and correctly) considered the one where his originality was at its maximum. But it is also and more importantly because, in the anguished and constantly renewed attempt to ground the difference between natural faculties, capacities and powers and moral faculties, capacities and powers, what we have called the pufendorfian attempt to go beyond Hobbes finds its most explicit expression. (31)

In failing to go beyond the hobbesian theory of obligation—that is, in failing to show how the natural law might be obligatory independent of the coercive laws of a civil superior—Palladini argues that the moral entities doctrine ultimately led Pufendorf back onto a fully hobbesian terrain:

> Pufendorf had been so acute in grasping that civil obligation, far from not requiring some higher obligation, fails on its own to ground itself. He had also been so effective in showing that to succeed in grounding sovereignty Hobbes himself had finally to admit an obligation prior to the obligation imposed by the sovereign. And yet in setting out from Hobbes in order to surpass him, Pufendorf failed to demonstrate the indispensable obligatoriness of the law of nature. Once this is realised, we will no longer feel shocked to see that Pufendorf ends by irresistibly returning to Hobbes and making the law of nature a truly paltry bulwark against human malice. (58)

Palladini's analysis of the second benchmark for testing Pufendorf's 'mature' dependence on Hobbes in the *De jure*—the theme of human nature, the natural condition, and the norm of sociality—follows the same broad itinerary as her discussion of the theory of obligation. It begins with the establishment of a hobbesian intellectual platform shared by the two thinkers, then tracks several ways in which Pufendorf departed from this, but whose contradictions and

weaknesses ultimately saw him return to it. Central to Palladini's argument here is whether Pufendorf's derivation of sociality from human nature and the natural condition can escape the enormous gravitational pull of Hobbes's account of entrance into the civil state—for example, by allowing the natural law to issue in non-state modes of governing sociable relations—or whether the 'paltry' character of the natural law bulwark dooms this possibility.

The itinerary of Palladini's discussion of these issues contains many more paths and branch-lines than her analysis of the theory of obligation. She draws her materials from three of the most difficult chapters of the *De jure*—chapters 1, 2 and 3 of Book II—whose account of human nature and the state of nature she then compares with that given in the student digest of the *De jure*, the *De officio hominis et civis* of 1673,[15] and in his dissertation on man's natural state, *De statu hominum naturali* of 1674.[16] The role of these latter two texts, though, is to clarify and buttress Palladini's argument regarding the three key chapters of Book II of the *De jure*. The broad arc of this argument is that while the account of human nature provided in *De jure* II.1 provides the basis for a derivation of sociality that is congruent with Hobbes's, the multiplex discussion of man's natural condition in II.2 introduces complexities that make it internally contradictory and impossible to reconcile with Hobbes's account, and this in turn introduced ambiguities into the derivation of sociality in II.3. The complexities and contradictions flowing from Pufendorf's treatment of man's natural condition in II.2 concern above all their departures from Hobbes's construction of the state of nature as a condition of entrance into the civil state.

In her discussion of II.1 Palladini provides an account of the shared pufendorfian-hobbesian platform that will permit the natural law of sociality to be deduced from an account of human nature (72). Man has a nature that requires his governance by law for four reasons: his nature is one whose dignity requires the civilizing arts, but that simultaneously disposes him to mutual envy and violence, is also divided by irreconcilable interests and desires, and is characterized by a natural feebleness (*imbecillitas*), which means that man must co-operate to survive (*DJN* II.1.5–8, pp.148–53). From these four features of his nature it is possible to deduce that man should cultivate a sociable attitude and relations in order to make his life possible and dignified.

It is a central feature of Pufendorf's account and of Palladini's discussion of it, that man's nature is not viewed ontologically but as imposed by God, hence as a moral entity or status (*status naturalis*). This means that the norm of sociality derived from reflection on it is not already present in this nature—in the form of a natural sociability or rationality—but is rather a comportment to be attained, or a norm to be used in the governance of conduct, as the means of imbuing human life with duration, order and dignity. Like Hobbes's

imperative of 'seek peace', Pufendorf's rendition of the natural law as 'cultivate sociality' thus does not flow from a normative human nature but is a means of imposing a norm on it. Palladini formulates her revisionist insight into the non-normative character of Pufendorf's construction of human nature, and of sociality as comportment to be cultivated, in this striking passage:

> As can be seen … we arrive at *socialitas*, it is true, though not as a characteristic of human nature, but rather as the comportment that man must hold to if he is 'to live and enjoy the good things that in this world attend his condition'. This comportment consists in acting in relation to others in such a way as not to give them the pretext to do harm, but instead reasons to be good. In this passage, then, man's *sociabilis* being is not a given in his nature but a moral imperative. Pufendorf does not say 'Man is naturally sociable', but rather 'Man has to be sociable'. It thus seems quite evident that in this passage being sociable is the ideal to which men must aspire and not a natural gift with which they start. (77)

Given this, Palladini asks, why did so many commentators assume that Pufendorf viewed sociality as a feature of human nature from which the natural law could be derived, rather than as a comportment to be cultivated by acting in accordance with the law? Part of the answer to this question, Palladini argues, lies in the ambiguities and contradictions that Pufendorf introduced into his deduction in his discussion of man's natural condition in II.2 of the *De jure*. The complexity of Pufendorf's account of man's natural condition or *status naturalis* arises from the fact that he specifies it in three ways, in order to contrast it with three other conditions, and, on this basis, to structure his architecture for natural law. Ordering them differently in different texts, Pufendorf declares that man's natural condition may be considered, first, as that in which he was placed by God to elevate his way of life and being above that of animals; second, as the life he would have led if he had lived in mutual isolation and without all of the arts and inventions developed to cultivate and improve his life and mind; and third, as the life he would have lived with his fellows prior to all human acts and pacts responsible for establishing mutual obligations, hence prior to his subjection to a superior (*DJN* II.1–2, pp. 154–58); *DO* II.1.2–5, pp. 115–16). Palladini can thus declare that:

> And so, to stay with the cited passages, there is no reason to doubt that Pufendorf introduced into his system a triple consideration of the natural state: now intending it as the human condition imposed by God on men in contrast to the animal condition; now as the culture-less condition in

> which man finds himself at birth as opposed to a life improved by human help and intervention; and now as the condition of exemption from any form of subjection in contrast to the civil state. (82)

Drawing out the contrast between the *status naturalis* and the *status adventitius*, she further observes that:

> … it is quite clear that all three of these states are termed natural in contrast to what is owed to some human intervention: in the first case, insofar as the condition is considered to be imposed on man by the divinity, not by human will; in the second case, insofar as it is a matter of the condition implied by abstracting from all human inventions and institutions; in the third case, finally, insofar as the condition in question is that of exemption from any form of subjection characteristic of human relations prior to some human deed or pact. (82)

The burden of Palladini's argument, however, is that Pufendorf cannot manage to order these three specifications of the natural condition into a coherent matrix for deriving the norm of sociality and the natural law. Rather, she sees them interpenetrating and losing definition, giving rise to incoherencies and contradictions that, finally, undo the tripartite structure altogether, and return Pufendorf's state of nature to a more hobbesian condition. Without attempting to capture the intricacy of Palladini's analysis, it is useful to focus on the two key incoherencies that she sees arising from Pufendorf's failure to manage his matrix. First, she argues that Pufendorf fails to keep separate the state of nature understood as man's isolated and miserable condition prior to all arts and inventions, but then understood as life outside the civil state (87–88). Second, she argues that in specifying the state of nature as the condition of natural liberty, Pufendorf sometimes opposes this to the civil state alone (leaving families in the state of nature), while at other times opposes it to all forms of subordination (thereby removing families from the state of nature) (92). On this basis, Palladini identifies what she calls a 'double inconsistency' in Pufendorf's construction of the state of nature:

> On the one hand, [this logical gap] consists in his having set out from a hypothesis – that of man abandoned to himself – which underlines the lack of human relations rather than the absence of relations of subordination, and in having concluded by foregrounding the wretchedness of a condition characterised essentially by the absence of relations of subordination, such as is that of the *vita extra civitates* (life outside civil states).

> On the other hand, it consists in his having started by counterposing the state of nature to all the states that imply a relation of subordination (hence also to the family) and in having ended by counterposing it to just one of these: the civil state. (87–88)

In Palladini's analysis, these central inconsistences are in turn linked to an even more fundamental ambiguity in the architecture of Pufendorf's natural law: namely, the question of whether his construction of the state of nature is fundamentally designed to derive the natural law norm of sociality, or whether its prime role is to provide the intellectual motivation for entrance into the civil state. Palladini observes that in the *De jure*, the tripartite construction of the state of nature is the prelude to the deduction of the norm of sociality, while in the *De officio* it provides the motivating conditions for entrance into the civil state (95). The inconsistencies in the former construction, however, mean that it is progressively eclipsed by the latter objective, finally transforming Pufendorf's triplex account of the state of nature into a simplex component of a theory of the state, into which his derivation of sociality is folded: 'That he had from the outset conceived his theory of the state of nature as a component of the theory of the state is what he himself tells us, namely in what may be regarded as the most successful of the many discussions he provides of the state of nature, and the one getting closest to capturing the spirit of his doctrine' (97). And at this point, Palladini can return to the results of her analysis of the theory of obligation. After all, she asks, what did we learn from that discussion if not that, conceived within the terms of natural law alone, the cultivation of sociality is the flimsiest of defences against human malice, against which only the coercive laws of the state and its human legislator could be effective? (108).

With the collapse of the space between the derivation of sociality and the theory of the state, Palladini argues, Pufendorf's thought can be returned to its proper hobbesian orbit. This permits her to identify Hobbes's principle of self-preservation as the foundation of Pufendorf's norm of sociality; to recognize mutual fear as the true motivation for states in both thinkers; to capture their joint acceptance of discipline or education as the means by which men become citizens; and to allow Pufendorf's construction of the state of nature as a mix of sociable and warlike elements to converge with Hobbes's account of this state as one of general war (109). Turning her reconstruction of a hobbesian Pufendorf even against some of the latter's self-declarations, Palladini thus concludes part one of her book with a ringing declaration:

> Thus it is on these crucial points that the importance of the deepening to which Pufendorf subjects Hobbes's thought is to be measured. This

> means that whoever aspires to locate Pufendorf in the correct place in the history of natural law and who is not content with producing simplifications good only for the textbooks, but sterile and bereft of any glimmer of authentic understanding, cannot stop at the definitional and simplificatory aspects of his author, to repeat with him that 'the natural state of men, even when considered apart from commonwealths, is not one of war, but of peace' (*ING* II,2,9), but must reconstruct in full Pufendorf's agonized reflection on the state of nature and the law that governs it. If he makes this far from easy effort, the reader will see that, below formulations apparently antithetical to the hobbesian formulations, is hidden a way of thinking consonant with that of Hobbes in a fundamental accord, a way of thinking that, while free of any crude submissiveness, sweeps through its whole arc on the trail of the hobbesian problems. (123–24)

Given the fundamentally hobbesian character of Pufendorf's natural law, the problem posed for Palladini's account is how it came about that for so long he was regarded as an opponent of Hobbes, at least in certain quarters. And this is the problem to which Palladini dedicates the second part of this book.

III

In discussing this issue, Palladini attends to both the unreconciled aspects of Pufendorf's thought already analyzed, and to the impact of the vehement attacks to which he was subject following the publication of the *De jure* in 1672. Prior writing the present book, Palladini had already established herself as the preeminent authority on the pufendorfian controversies, having provided the definitive annotated bibliography, paraphrase, and commentary for all of the major attacks on Pufendorf published in the last quarter of the seventeenth century.[17] More recently she has produced the critical edition of Pufendorf's collected responses to his critics—the *Eris Scandica* (Scandinavian Polemics) of 1686—prefacing it with an introduction that captures the vivid counter-attacks launched by the embattled political philosopher against his circling and biting critics, who came overwhelmingly from the ranks of Protestant scholasticism.[18] The pressure exerted by his critics—who tagged his doctrine of sociality in particular with the associated errors of hobbism, epicureanism and atheism—coupled with the unreconciled structure of Pufendorf's own thought, plays a key role in Palladini's account of the airbrushing, second-guessing, self-deception and tendentious commentary that helps to explain how the deeply hobbesian thinker began to pass as an anti-hobbesian. Palladini

thus argues that from the pressure of defending himself against the charges of hobbism and atheism:

> … flowed a sort of retrospective self-delusion, by virtue of which … he ended up by convincing himself that his philosophy and that of Hobbes had totally opposing foundations. Having a need of powerful allies in his battle, he not only set his doctrine under the august banner of stoicism, counterposing this to Hobbes's epicureanism, but he also convinced himself that Cumberland's system and his own were perfectly equivalent, to the point where passages from the one could be calmly adopted as illustrations to be incorporated in passages of the other. The consequence was that he became the initiator of the topos of a Pufendorf who – turning himself into an imitator and follower of Grotius – can vaunt, against Hobbes's anthropological pessimism, the sociable nature of man, thereby laying down principles wholly opposed to those of Hobbes as the foundation of natural law. (150)

Palladini's discussion of this process traverses four main topics, dealing with Pufendorf's attempt to provide himself with a respectable place in the history of ethics, his toning-down of the hobbesianism of the *De jure* through the borrowings from Cumberland's natural law added to the second edition, the effect of the anti-hobbesian complexion of his early *Elementa*, and finally the retrospective effects of the anti-hobbesian reception supplied by Pufendorf's preeminent early modern translator and commentator, Jean Barbeyrac.

According to Palladini, Pufendorf's attempt to prepare a sanitized place for himself in the history of ethics began as early as the essays in which he sought to defend himself against the charges of hobbism and epicureanism leveled by his Protestant scholastic attackers. It is noteworthy that Palladini regards Pufendorf's criticisms of Hobbes's principle of self-preservation in his *Epistola ad Scherzerum* of 1674 as an instance of this airbrushing (153). According to Palladini, in declaring that he had not sought to derive sociality from the hobbesian principle of self-preservation, but rather from 'observations regarding the nature of things and man', Pufendorf was stepping back from the principle that she had detected underlying this derivation, covering his tracks with a more historical approach.[19] Palladini sees this same repudiation of the self-preservation principle, on account of its Epicurean taint, repeated in Pufendorf's *Specimen controversiarum* of 1678 (154–55).[20] Here, in Pufendorf's advocacy of an observational approach against Hobbes's 'mathematical' deduction of sociality from self-preservation, Palladini identifies a fateful move towards Cumberland's Stoic conception of sociability as an ontological feature

of human nature, opening a portal through which would flow a series of concepts fundamentally at odds with the main hobbesian lines of Pufendorf's architecture.

In her meticulous analysis of the Cumberlandian borrowings added to the second edition of the *De jure*—which she was the first to document and study—Palladini identifies three conceptual intruders from Cumberland's stoic world: the notions of natural good, the natural moral consequences of actions, and the 'nature of things' (171–72). As a result of these borrowings, scattered throughout the *De jure* at critical junctures of the argument, Palladini argues that the crucial gap that Pufendorf had opened between nature and law, fact and norm, the physical and moral worlds—the gap that had allowed sociality to be presented as a comportment to be attained rather than a natural endowment—was eroded and blurred.

Rather than being completely obscured, however, it is as if alongside Pufendorf's original hobbesian architecture—in which ethics and politics were reconstructed in terms of imposed personae and laws, with obligation dependent on the commands of a superior epitomized in the civil sovereign—there arises a 'dissonant' Cumberlandian Stoic structure. According to this, moral good is embedded in the nature of the world, and imprinted in man through his own rational and sociable nature, with natural law assuming the form of a natural benevolence that contributes to the common social good, and to which natural rewards and punishments are attached:

> The appearance of the notion of *natural good* and of the associated notions of *natural consequences* and *nature of things* therefore introduces into Pufendorf's doctrine a note that is highly dissonant with the main line of his thought. This has the deleterious effect of obscuring and confusing what has seemed to us to be the principal acquisition of the pufendorfian meditation on Hobbes: the theorisation of the ineradicable difference that stands between *nature* and *law*. (184)

Palladini is in no doubt about the cumulative theoretical consequence of Pufendorf's Cumberland borrowings, declaring that:

> … such an influence has the disastrous effect of over-shadowing the most important feature of Pufendorf's thought, the feature which makes him a hobbesian who goes beyond Hobbes: namely, his theorisation of a sharp distinction between *physical entities* and *moral entities* with all its consequences, among them and most particularly the unenforceability of the passage from the facts to the norm. (172)

In her discussion of how it might have come about that Pufendorf imagined that doctrines radically incompatible with his own could be harmoniously incorporated in the revised *De jure*, Palladini initially entertains two possibilities. Either, Pufendorf was well aware of this incompatibility but cited Cumberland in order to throw his critics off the hobbesian track; or, deceiving himself into believing that he was indeed an anti-hobbesian, Pufendorf borrowed from Cumberland doctrines that he thought were compatible with his own anti-hobbesian doctrines (193–94). In the event, Palladini rejects both possible explanations, developing instead an account in which his Cumberland borrowings indicate Pufendorf's succumbing to a temptation to abandon the sharp separation between nature and law, fact and norm that he had introduced with his *entia moralia* doctrine. If, setting aside the enormous pressures imposed by his anti-hobbesian enemies, it should be asked why Palladini thinks that Pufendorf might have succumbed to this temptation, then perhaps the answer lies in a problem that she has located far more deeply within his thought. It is to be found, perhaps, in Palladini's argument that, so sharp was the break that this doctrine enacted between nature and law, force and reason, that Pufendorf could not make the natural law effectually obligatory within his own system, forcing him to fall back on Cumberland's stoic notions of natural good and natural consequences.

Palladini's discussion of the anti-hobbesian aspects of his early *Elementa* presents no particular challenges, and can be left for the reader to discover, save for the general comment that here her focus is on the Stoic harmony that Pufendorf posits between self-love and sociability in the early work, versus his subordination of sociality to hobbesian self-love and self-preservation in the *De jure* (214–17). Instead, this account of the intellectual itinerary of the book can conclude with Palladini's account of Jean Barbeyrac's contribution to the historical appearance of an anti-hobbesian Pufendorf. Through his extraordinary work of translation and commentary, Barbeyrac enacted a specific anti-hobbesian reception of Pufendorf, making him an important figure for Palladini, and one to whom she has returned in her subsequent scholarship.[21]

Palladini's discussion of Barbeyrac's role in the historical grooming of a stoicised anti-hobbesian Pufendorf thus brings the question of reception sharply into focus. As a member of the persecuted diasporic Huguenot community—within which he was a dissident—Barbeyrac had a 'suspicion of power', leading him to reject the mainline of hobbesian-pufendorfian thought in which the cultivation of sociality found its ultimate expression and anchorage in the civil state and the commands of its sovereign. Palladini shows that Barbeyrac employed several strategies to prise Pufendorf away from this mainline. One such strategy was to simply deny that the civil state was in fact preferable to

the state of nature, since the abuses of power were much greater in the former than the latter (235–36). A more interesting strategy, however, was Barbeyrac's treatment of the hobbesian strands in Pufendorf's thought as deviations from its mainline. Barbeyrac portrayed the latter in terms of Pufendorf's adherence to a Grotian and Stoic conception of man's natural sociability and its associated rights and freedoms, rejecting the derivation of sociality from the single 'utilitarian' principle of self-preservation, and affirming the superiority of the natural harmonization of self-love and sociability found in Pufendorf's early *Elementa*. Moreover, Barbeyrac even qualified the principle of sociability itself, arguing that natural law had to include principles that were irreducible to the good of human society. This of course is almost the direct inverse of Palladini's own approach to Pufendorf, and she summarizes the difference between her reception of Pufendorf and Barbeyrac's in this way:

> Now, it is easy to see that refusing to acknowledge the requirement of deriving the law of nature from a single principle amounts to denying the aspiration to provide a scientific demonstration of the foundation of morality that Pufendorf shared with Hobbes. So too, insisting that *socialitas* is an inadequate principle for founding all the duties of man amounts to denying the restriction of morality to the sphere of social relations, which is so characteristic of the secularisation of natural law undertaken by Pufendorf and thus linked to Hobbes's teaching. Finally, to accuse Pufendorf of having over-valued utility here amounts to denying the very foundation of the pufendorfian system, in which (as we have shown at length above) the hobbesian spirit is most visible. (237)

Perhaps it is fitting to conclude this account of the book's central arguments with this acute insight into the role of a particular reception context in forming the historical image of the anti-hobbesian Pufendorf. For here in the pull of ethical, religious and political forces that led Barbeyrac towards a conception of sociability grounded in human nature, and thence in no need of the commands of a superior to become obligatory, we recognize similar forces to those that Palladini analyses as pulling Pufendorf in the opposite direction, into the hobbesian orbit, and thence into the conflict zone of his Protestant scholastic reception. It would be unwise to imagine that current readings of Pufendorf, which continue to divide along intellectual and ideological fault-lines, are not similarly inflected, as particular acts of reception, by the ethical, religious, political and also scholarly affiliations of their authors.[22]

If Palladini's own reception of Pufendorf were to be characterized as an acute theoretical argument embedded in an erudite mastery of the historical

sources and the secondary commentary literature, then that would not be too wide of the mark. In this regard, she stands in a tradition of theoretically informed historical erudition, whose hallmark is to track philosophical arguments through the patient mastery of source texts and contexts, whose modern masters include Arnaldo Momigliano—a frequent visitor to Palladini's chapter notes—and J.G.A Pocock, and in whose company Palladini so clearly belongs. In this regard, the present introduction is perhaps unavoidably unbalanced, as in focusing on Palladini's argument it has largely neglected the extensive erudite chapter notes in which this argument is embedded, and through which it engages the entire history of Pufendorf scholarship, as it stood when the book was written and, by easy extrapolation, as it stands today.

In order to compensate for this deficit, I would recommend that the reader attend to such examples as note 2 of the Introduction (7–8). Here, defending her claim that Pufendorf himself openly acknowledged his indebtedness to the 'acute' Hobbes, Palladini anchors her argument in a dense citation of sources—private letters, published prefaces, defensive essays, the *De jure* itself—and in a comprehensive listing of the Englishman's books contained in Pufendorf's library, on which Palladini is the acknowledged authority.[23] For an instance of the manner in which Palladini's argument often overflows the chapter limits and expands into dazzling displays of erudition, then the reader need look no further than the long note 42 to chapter 2 of Part 2 (209–11). Here, in her discussion of Pufendorf's citing of Polybius as a key source for the contested doctrine that justice and injustice only exist inside states, Palladini notes that Pufendorf identified Machiavelli as the careless transmitter of the Polybian teaching into the modern period—by copying it into his *Discourses on Livy*—with Pufendorf being one of the earliest scholars to discover Machiavelli's borrowing. But Palladini also comments that Pufendorf was using Machiavelli for his own ends here, since the Florentine himself displayed little interest in Polybius's restriction of justice to the sphere of *civitates*. In this regard, Palladini's use of humanist scholarship to exemplify her argument is in effect echoing the function of Pufendorf's own erudition.

Finally, for an example of the manner in which Palladini uses such erudition to engage modern commentary literature, the reader might turn to note 11 of chapter 1, Book 1 (62). Here, in discussing Pufendorf's engagement with Hobbes's *ius in omnia* doctrine (the right of everyone to everything in the state of nature), Palladini observes that in his translator's notes to Pufendorf's text, Barbeyrac had presented his own version of the anti-hobbesian Pufendorf by distinguishing two opposed forms of reason—a 'right reason' that transmitted objective norms, and an instrumental reason in the service of individual self-interest—erroneously ascribing the former conception to Pufendorf.[24] In

justifying her argument that Barbeyrac's anti-hobbesian reception of Pufendorf then set the scene for many 'lesser interpreters' to follow suit, Palladini adds note 11, which begins:

> I refer to the interpretation of I. Fetscher, 'Der gesellschaftlichen "Naturzustand" und das Menschenbild bei Hobbes, Pufendorf, Cumberland und Rousseau', in Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft 80 (1960): 641–85, who … affirms, in the company of Barbeyrac, that 'The misunderstanding to which Pufendorf here (intentionally?) succumbs consists in his identification of "right reason" with a completely enlightened (in fact "illuminated") reason, while Hobbes is concerned only with the thoroughly narrow and limited, unenlightened and errant subjective reason of individuals' (p. 656),

After commenting that Fetscher seeks to ascribe to Pufendorf the stoic conception of reason as the faculty through which man governs himself in accordance with the rational order of nature—while identifying Hobbes with a conception of reason as the instrument through which individuals seek to realize their desires—Palladini continues:

> This interpretation of Fetscher's is fundamentally undermined by the fact of being almost exclusively based on a passage that, as we will show below (p. 181 with note 38), is added in the second edition of the *De iure* and alters the main line of P.'s thought. The interpretation – taken up and shared by other authors, for example Denzer, op. cit., pp. 108–09 and Bazzoli, op. cit., p. 310 – stands (as should be clear from the line of argument we develop in this text) at the antipodes of our own. I have sought to demonstrate instead that, on the one hand, for Pufendorf too reason is a calculation of the means appropriate to achieving an end, while, on the other hand, for Hobbes, at least in one of his lines of thought, the calculation that counts is the one that is *well-founded*.

Palladini thus argues that Fetscher's portrayal of a stoic Pufendorf stands in the shadow of Barbeyrac's unjustified opposition of a pufendorfian normative rationality to a hobbesian instrumental reason, an opposition through which Barbeyrac had invoked a capacity for rational self-governance that would dispense with the need for a superior. It is not just Fetscher's reliance on the Barbeyracian Pufendorf that undermines his position, however. It is also that the passage in which he anchors his interpretation is one of those that Palladini has shown was added by Pufendorf to the second

edition of the *De jure* precisely to disguise the book's hobbesian character. Here Palladini's careful philological reconstruction of the text thus not only anchors her argument regarding how Pufendorf came to be received as an anti-hobbesian, but it also shows how this reception was transmitted into the modern period in the work of such important scholars as Fetscher, Denzer and Bazzoli.

Notes

1 Fiammetta Palladini, *Samuel Pufendorf discepolo di Hobbes. Per una reinterpretazione del giusnaturalismo moderno* (Bologna: Il Mulino, 1990).

2 For some early reviews, see Thomas Mautner, 'Review: Samuel Pufendorf discepolo di Hobbes', *Philosophical Books* 37 (1991): 171–4. Maurizio Bazzoli, 'Review: Samuel Pufendorf discepolo di Hobbes', *Rivista di storia della filosofia* 47 (1992): 592–6. Thomas Behme, 'Pufendorf—Schüler von Hobbes?', in *Denkhorizonte und Handlungsspielräume: Historische Studien für Rudolf Vierhaus zum 70. Geburtstag* (Göttingen: Wallstein, 1992), 33–52. Tim Hochstrasser, 'Review: Samuel Pufendorf discepolo di Hobbes', *German History* 11 (1993): 99–100. Alfred Dufour, 'Palladini, Samuel Pufendorf, discepolo di Hobbes—per una reinterpretazione del jusnaturalismo moderno', *Quaderni fiorentini per la storia dei pensiero giuridico moderno* 21 (1992): 553–60.

3 The only prior exposure of some of the book's arguments in English is Fiammetta Palladini, 'Pufendorf Disciple of Hobbes: The Nature of Man and the State of Nature: The Doctrine of *socialitas*', *History of European Ideas* 34 (2008): 26–60.

4 See, for examples, notes 8–14 of the Introduction, (14–15).

5 There are illuminating accounts of the biographical paths travelled by the two thinkers to reach this shared destination. In the case of Pufendorf, Detlef Döring's biographical studies are an indispensable source. See, in particular, Detlef Döring, *Pufendorf-Studien. Beiträge zur Biographie Samuel von Pufendorfs und zu seiner Entwicklung als Historiker und theologischer Schriftsteller* (Berlin: Duncker & Humblot, 1992); Detlef Döring, *Samuel Pufendorf in der Welt des 17. Jahrhunderts. Untersuchungen zur Biographie Pufendorfs und zu seinem Wirken als Politiker und Theologe* (Frankfurt aM: Vittorio Klostermann, 2012). For Hobbes's different but intersecting life path, see Noel Malcolm, *Editorial Introduction*, volume 1 of *Thomas Hobbes Leviathan*, 3 vols., ed. Noel Malcolm (Clarendon Press, Oxford, 2012).

6 For an appreciation of Palladini's account of this nexus by a leading Hobbes scholar, see Noel Malcolm, *Aspects of Hobbes* (Oxford: Clarendon Press, 2002), 522–24.

7 The standard modern Latin edition is Samuel Pufendorf, *Elementa jurisprudentiae universalis*, ed. Thomas Behme (Berlin: Akademie Verlag, 1999). For an English

translation, see Samuel Pufendorf, *Two Books of the Elements of Universal Jurisprudence*, ed. Thomas Behme (Indianapolis, IN: Liberty Fund, 2009).

8 The modern Latin edition, which is the first to record the textual differences between the first and second editions of the work, is Samuel Pufendorf, *De jure naturae et gentium*, 2 vols., ed. Frank Böhling (Berlin: Akademie Verlag, 1998). Based on the 1688 version of the Latin second edition of 1684, the most commonly used English translation is Samuel Pufendorf, *The Law of Nature and of Nations in Eight Books*, trans. C. H. Oldfather and W. A. Oldfather, vol. 2 (Oxford: Clarendon Press, 1934).

9 Richard Cumberland, *De legibus naturae disquisitio philosophica* (London, 1672). In English, Richard Cumberland, *A Treatise of the Laws of Nature*, ed. Jon Parkin, trans. John Maxwell (1727) (Indianapolis, IN: Liberty Fund, 2005).

10 See note 2.

11 Among the important scholarly studies that sought to keep Pufendorf within a Grotian force-field, formed by the twin poles of Aristotelian natural sociability and Stoic rational self-governance, Palladini mentions such works as Horst Rabe, *Naturrecht und Kirche bei Samuel Pufendorf: Eine Untersuchung der naturrechtlichen Einflüsse auf den Kirchenbegriff Pufendorfs als Studie zur Entstehung des modernen Denkens* (Tübingen: Fabian, 1958); Guido Fassò, *Storia della filosofia del diritto, vol. 2* (Bologna: Laterza, 1968); Wolfgang Röd, *Geometrischer Geist und Naturrecht: Methodengeschichtliche Untersuchungen zur Staatsphilosophie im 17. und 18. Jahrhundert* (Munich: Bayerischen Akademie der Wissenschaften, 1970); Alfred Dufour, *Le mariage dans l'école allemande du droit naturel moderne au XVIIIe siècle: Les sources philosophiques de la Scolastique aux Lumières—La doctrine* (Paris: Pichon & Durand-Auzias, 1972), 103–37; Horst Denzer, *Moralphilosophie und Naturrecht bei Samuel Pufendorf. Eine geistes - und wissenschaftliche Untersuchung zur Geburt des Naturrechts aus der Praktischen Philosophie* (Munich: C. H. Beck, 1972); Richard Tuck, 'The "Modern" Theory of Natural Law', in *The Languages of Political Theory in Early – Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), 99–122; and Istvan Hont, 'The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the "Four Stages Theory"', in *The Languages of Political Theory in Early – Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), 253–76. For more detail, see footnotes 5–7 to the Introduction, (10–14).

12 T. J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2000), 40–71.

13 For recent attempts to paint Pufendorf as a neo-scholastic moral philosopher, against his own explicit warnings to the contrary, see Thomas Pink, 'Natural Law and the Theory of Moral Obligation', in *Psychology and Philosophy: Inquiries into the Soul from Late Scholasticism to Contemporary Thought*, ed. Sara Heinämaa and Martina Reuter (Dordrecht: Springer, 2009), 97–114; Hannah Dawson, 'Natural

Religion: Pufendorf and Locke on the Edge of Freedom and Reason', in *Freedom and the Construction of Europe. Volume 1: Religious Freedom and Civil Liberty*, ed. Quentin Skinner and Martin Van Gelderen (Cambridge: Cambridge University Press, 2013), 115–33; and Ben Holland, *The Moral Person of the State: Pufendorf, Sovereignty and Composite Polities* (Cambridge: Cambridge University Press, 2017), 65–103.

14 Heikki Haara, *Pufendorf's Theory of Sociability: Passions, Habits and Social Order* (Dordrecht: Springer, 2018), 8–9, 59–98.

15 The modern Latin edition is Samuel Pufendorf, *De officio*, ed. Gerald Hartung (Berlin: Akademie Verlag, 1997). For English translations, see Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, ed. James Tully, trans. Michael Silverthorne (Cambridge: Cambridge University Press, 1991); and Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature*, ed. Ian Hunter and David Saunders (Indianapolis IND: Liberty Fund, 2003).

16 Samuel Pufendorf, *Dissertatio de statu hominum naturali* (1674) in *Dissertationes academicae selectiores* (Lund, 1675). And English translation: *Samuel Pufendorf's 'On the Natural State of Men'. The 1678 Latin Edition and English Translation*, ed. & trans. M. Seidler (Lewiston, ME: Mellen, 1990).

17 Fiammetta Palladini, *Discussioni seicentesche su Samuel Pufendorf. Scritti Latini: 1663–1700* (Bologna: Il Mulino, 1978). The comprehensive annotated bibliography and summaries of the works attacking Pufendorf's natural law works is at pp. 163–393.

18 Samuel Pufendorf, *Eris Scandica, und andere polemische Schriften über das Naturrecht*, ed. Fiammetta Palladini (Berlin: Akademie Verlag, 2002), vii–xvii.

19 See, Pufendorf, *Eris Scandica*, 64.

20 Ibid., 126–27.

21 Fiammetta Palladini, *Die Berliner Hugenotten und der Fall Barbeyrac: Orthodoxe und 'Sozinianer' im Refuge* (*1685–1720*) (Leiden: Brill, 2011).

22 See notes 12–14 above.

23 See, Fiammetta Palladini, *La Biblioteca di Samuel Pufendorf* (Wiesbaden: Harrassowitz, 1999).

24 For Barbeyrac's note, see Samuel Pufendorf, *The Law of Nature and Nations: Or, A General System of Morality, Jurisprudence, and Politics in Eight Books*, trans. Basil Kennet, 5th 1749 ed. (London: 1717), II.2.3, note 2, p. 106.

A Note from the Translator

David Saunders

Translation is an art of adjustment to new and different circumstances of reception. In the present case, the adjustment entails a change of register to bring Fiammetta Palladini's *Samuel Pufendorf discepolo di Hobbes* to a new and different reception context: an English-language readership.

Writing in a demanding Italian register, that of learned intellectual history, Palladini moves seamlessly, imperceptibly even, between her Italian and Pufendorf's Latin. Latin keywords operate sometimes without translation, sometimes accompanied by their Italian equivalent, or sometimes supported by Palladini's knowing paraphrase. For all its intellectual beauty and historical erudition, though, this scholarly register entails a specific italophone reception context. Yet, despite this linguistic limitation, in the broader community of historians of political thought her 1990 book has built a rare repute.

The 297 pages of *Samuel Pufendorf discepolo di Hobbes* include 220 pages of text, of which Latin citations constitute some 42 pages. Accompanying the text are 56 pages of chapter notes, some of essay length. The notes cite Italian, German, French, English and Spanish secondary sources. There are also 11 pages of indexes. The volume of the Latin citations and the multi-lingual density of the chapter notes pose an evident challenge when it is a question of translation for an anglophone readership.

It is not only Pufendorf that Palladini cites in Latin. She quotes Thomas Hobbes's *De cive* and *Leviathan*, and Richard Cumberland's *De iure naturae*, in the Latin editions. Given published English versions of Pufendorf's major works, there is no problem in providing for anglophone readers. Where more than one English version is available, there is even luxury of choice. For the *De officio hominis*, the present book cites either Andrew Tooke's 1716 version or Michael Silverthorne's 1991 translation as best fits the context.

On the other hand, there are no English versions of most of Pufendorf's polemical Latin works cited by Palladini – the *Apologia,* the *Specimen controversiarum* and the *Epistola ad Scherzerum* – or of the jurist's letters to Baron Boineburg. Of particular pertinence, though, is the lack of an English version of the 1672 first edition of Pufendorf's major work, the *De iure naturae et gentium*, the two English translations – Kennett (1703 and later) and the Oldfathers (1934) – being of the 1684/88 second edition. Conventional thinking would take this second edition to be the 'standard' version, but is this quite the case? Palladini offers 'a personal reflection': 'our own conviction that Pufendorf was

far more hobbesian than is traditionally maintained – and than he himself admitted – was certainly not formed from the first edition of the *De iure*, but precisely from the second. It is only because in the latter we encountered particular assertions that seemed to us out of tune with the prevailing inspiration that we became concerned with verifying how things stood in the first edition, leading us to find a Pufendorf who, so to speak, was more hobbesian'.

A pleasing consequence of the present translation is that it gives English readers access to Palladini's forensic comparison between the first and second Latin editions of the *De iure*. I want to acknowledge the contribution here of Mads Langballe Jensen, for rendering into English most of the quotations from Pufendorf's Latin works that have not previously received published translations.

As readers will see, Palladini cites extensively from Jean Barbeyrac's French translation of and commentary on Pufendorf's major work. Some citations are of paragraph length; others are shorter, wrapped inside her Italian sentences, in a sharply targeted manner. To recapture this effect, I make my own English translations of her Barbeyrac citations, rather than drawing on the 1729 Kennett *De iure* translation.

As indicated above, Palladini's corpus of chapter notes presents a multilingual wealth of citations from secondary literatures. Some of these citations are in their original languages, framed by her own commentary – at times trenchant – and paraphrases in Italian. In the chapter notes, I have translated Palladini's own words into English, but left in their original languages the multilingual sources that she quotes.

Translating Palladini's Italian into English has involved a work of adjustment that is syntactic more than semantic. I have subdivided many of her paragraphs and some of her sentences so as to aid the argument in English while remaining semantically faithful to the Italian original. The result is as direct and straightforward in character as I can make it. In his Introduction to this translation, Ian Hunter writes that there is 'nothing indecisive or shrinking' about Palladini's book. In aiming to render into English an Italian prose that is as percussive as it is melodic, I have sought to deliver her argument in all its force. To the extent I have succeeded in this, I owe it to the unflagging assistance of Ian Hunter and Knud Haakonssen.

Preface

To the Benevolent Reader

This work calls for a benevolent reader, not by way of rhetorical flourish but as a genuine need. Indeed, a deep indulgence is sought by whoever asks their reader, in the very first instance, to be indulgent towards what will seem a presumptuous assumption: that of keeping synoptically present two authors as 'weighty' in many senses as Pufendorf and Hobbes. It was not through presumption or with an unconscious underestimation of the difficulties that I set out on this undertaking. The 'thing itself' required it: the idea I had formed of Pufendorf over many years (now more than fifteen) of reading and reflecting – that he was a decidedly hobbesian thinker – could be shown only by an in-depth examination and a close comparison of the writings of these two authors.

This painstaking comparison offers another place in which I must ask my readers to exercise their benevolence and patience. Only by reading with particular attention the detailed analyses of the texts, only by working through to the very end of the lengthy quotations, only by waiting to see 'how is it going to finish' and by not leaping to hurried conclusions, only then will the reader be able to understand and assess my arguments. For my part I have tried to be as helpful as possible. I have always hated excessive complexity and false subtlety, inflated verbiage and the technicisms used in the trade, and in this disposition of mine I have taken comfort in the long years of frequenting Pufendorf. In this regard, an interpreter could commit no greater affront than to use with him the language and the mentality against which he fought so passionately. From this point of view, I imagine myself to be an interpreter that Pufendorf would have wanted (even if I am anything but sure he would have looked kindly on a *femme savante*!). I have therefore tried to be simple and clear. If I have not always succeeded in this aim, I hope that the reader will excuse me, sparing a thought for the difficulty of the material, the intertwining of the threads I was seeking to disentangle and the novelty of the undertaking.

But there is a third aspect in which I must seek my readers' benevolence and, indeed, generosity. Do not search in this book for that which you want to find there: whether for that which matches your own competences and interests, or that which solicits your pride and confirms your self-esteem. In other words, if you are a philosopher of law and of politics, for instance, do not be annoyed when in this book you find nothing on the social contract or on the forms of government. If you are a specialist in one of the authors or themes considered in this book, do not turn immediately to the index of cited names

to check whether you are cited; and if you just cannot resist that temptation (I too almost never resist it!), do not swear an endless vendetta against me if you don't find your name there.

Regarding the first point, bear in mind that my aim was not to treat every theme, the fundamental ones included, that Pufendorf and Hobbes have in common. My aim rather was to put their relation to the test at two key points: the theory of obligation and the conception of man. All the rest, no matter how important, fundamental, heavy with history and consequences, was not my concern in this context. What interested me far more, on the other hand, was to understand why a certain image of Pufendorf had gained credit: what influences, what suggestions, what truths or what distortions had contributed to the common view of him. It's here, or more precisely in the second part of the book, that you will find the novel contributions. If in the first part it is indeed a question of my interpretation of material known to all and repeatedly analysed, in the second part I offer you new material: firstly, the comparison never before undertaken of the first and second editions of the *De iure naturae et gentium*; secondly, a start on comparing the *Elementa iurisprudentiae universalis* and the *De iure*; thirdly and fundamentally, a specific and extended critical comparison with Cumberland.

As to citing the secondary literature, I ask the reader to consider that if you are not quoted, this is due neither to prejudice, nor to haughtiness, nor to scorn for your work. Bear in mind that I have not mentioned a single title which I had not read and weighed from first to last line and which did not strictly serve the argument I was developing. This not only means that I have not cited all that I knew from the bibliography alone, but also that I have excluded many of the texts read in the last fifteen years whose specific arguments either were no longer present in my mind or were deemed of no use to the aim of my discourse. Please know, moreover, that I have never cited anyone with a thought, as does happen, about the 'professors of the subject' who might prove useful in the next university *concorso*, or with the idea of taking account of the academic or ideological 'parish' to which to belong. If in this arena I have any weakness, it is a weakness I have had in the eyes of the friends and scholars who, all through these years, have kept me in touch with their researches. To them I offer the deepest homage of which I am capable: reading them and taking them seriously.

Finally, I would like my benevolent reader to know when and how this book was written. Preceded by the long years of study as mentioned and by other tasks, the text was composed in a single sweep in the 1985–86 academic year. I wrote it without taking account of the most recent literature, which I had either not read or which I had forgotten. Obviously, certain impressions left

by my previous reading and the classic works of pufendorfian historiography must have settled in me. Yet, in the moment of writing my book, Pufendorf and I were alone, with Hobbes, of course, Barbeyrac, Cumberland and the crowd of his contemporary critics who were the subject of my first book. At the end of 1986 the book was ready, typed, but without notes. These had to wait (due to a dramatic personal crisis) until the start of 1988 to begin to take shape. They were written, in parallel with the requisite readings between 1988 and the first months of 1989. And thus the convergences that you and I detect, dear reader, between my theses and those of other authors are all or almost all *a posteriori*.

This said, dear reader, in the end I do not want to profit from your benevolence: too many pages await you for me to impose on you in addition a long preface. I simply add that on your indulgence, patience and generosity, that is on your benevolence, will depend whether I succeed in avoiding the sad fate reserved, according to E. Wolf, to Pufendorf, one that his interpreter risks sharing: the fate of being 'too much the jurist for the philosophers, too much the politician for the jurists, too much the historian for the politicians and, finally, too much the philosopher for the historians'.

F.P. (Rome, 18 March 1989).

Abbreviations and References

Samuel Pufendorf

GW	*Gesammelte Werke*, ed. Wilhelm Schmidt-Biggemann (Berlin: Akademie Verlag, 1996 -).
Elementa	GW vol. 3 (1999) *Elementa jurisprudentiae universalis*, ed. Thomas Behme. English translation: *Two Books of the Elements of Universal Jurisprudence*, ed. Thomas Behme (Indianapolis IND: Liberty Fund, 2009).
De iure or *ING*	GW vol. 4 (1998) *De jure naturae et gentium*, ed. Frank Böhling. English translation: *The Law of Nature and Nations*, trans. C. H. Oldfather and W. A. Oldfather, in *De jure naturae et gentium libri octo*, vol. 2: The translation of the edition of 1688. (Oxford: The Clarendon Press; London: Humphrey Milford, 1934). French translation: *Droit de la nature et des gens ou système général des principes les plus importans de la morale, de la jurisprudence, et de la politique*, trans Jean Barbeyrac (Amsterdam, G. Kuyper, 1706).
De officio	GW vol. 2 (1997) *De officio hominis et civis iuxta legem naturalem*, ed. Gerald Hartung. English translation: *On the Duty of Man and Citizen According to Natural Law*, ed. James Tully, trans. Michael Silverthorne (Cambridge University Press, 1991). Or *The Whole Duty of Man, According to the Law of Nature*, trans. Andrew Tooke, ed. Ian Hunter and David Saunders (Indianapolis, IN: 2003). When the latter translation is used, the reference is marked [Tooke]. French translation: *Les devoirs de l'homme et du citoyen*, trans. J. Barbeyrac (Trevoux, 1747).
De statu	*Dissertatio de statu hominum naturali* (1674) in *Dissertationes academicae selectiores* (Lund, 1675). English translation: *Samuel Pufendorf's 'On the Natural State of Men'. The 1678 Latin Edition and English Translation*, ed. & trans. M. Seidler (Lewiston, ME, Mellen, 1990).
Apologia	*Apologia pro se et suo libro*, in *Eris Scandica*, 9–56.
Epistola ad amicos	*Epistola ad amicos suos per Germaniam, super libello famoso, quem Nicolaus Beckmannus …*, in *Eris Scandica*, 83–102.
Epistola ad Scherzerum	*Epistola ad Plur. Rev. atque celeberra Virum Dn. D. Joh. Ad. Schertzerum*, in *Eris Scandica*, 57–68.

Specimen controversiarum	*Specimen controversiarum circa ius naturale ipsi nuper motarum*, in *Eris Scandica*, 114–97.
Eris Scandica	GW 5 (2002): *Eris Scandica und andere polemische Schriften über das Naturrecht*, ed. Fiammetta Palladini.

Thomas Hobbes

*Element*s	*The Elements of Law Natural and Politic*, ed. F. Tönnies (London, 1889).
De *cive*	
[The English version]	*The Philosophicall Rudiments concerning Government and Society*, ed. Howard Warrender (Oxford: Clarendon Press, 1983)
[The Latin version]	*Elementorum philosophiæ sectio tertia de cive*, ed. Howard Warrender (Oxford: Clarendon Press, 1983).
De homine	*De homine, sive Elementorum Philosophiae sectio secunda*, in *Opera Philosophica*, vol. II. Trans. of chapters 10–15 in Hobbes, *Man and Citizen*, ed. Bernard Gert, trans. Charles T. Wood, T. S. K. Scott-Craig & Bernard Gert … (Garden City, NY: Anchor Books, 1972).
Leviathan	*Leviathan*, ed. Noel Malcolm, 3 vols. (Oxford: Clarendon Press, 2012), vols. 2–3 [containing the continuously paginated English and Latin texts].

Richard Cumberland

De legibus naturae	*De legibus naturae disquisitio philosophica, in qua earum forma, summa capita, ordo, promulgatio et obligatio e rerum natura investigantur; quin etiam Elementa philosophiae Hobbesianae cum moralis tum civilis, considerantur et refutantur* (London, 1672). English translation: *A Treatise of the Laws of Nature*, trans. John Maxwell; ed. Jon Parkin (Indianapolis, IN: Liberty Fund, 2005).

Hugo Grotius

De iure belli	*De iure belli ac pacis, Libri tres, in quibus ius naturae et gentium, item iuris publici praecipua explicantur*. English translation: *The Rights of War and Peace*, trans. anon; ed. Richard Tuck (Indianapolis, IN: Liberty Fund, 2005).

Christian Thomasius

Institutes of Divine Jurisprudence	*Institutionum jurisprudentiae divinae*. English translation: *Institutes of Divine Jurisprudence*.With Selections from *Foundations of the Law of Nature and Nations*, trans. Thomas Ahnert (Indianapolis, IN: Liberty Fund, 2011).

Introduction

Pufendorf's intellectual debt to Hobbes was clearly recognised from the start,[1] and never subsequently did he fail to attribute the highest praise to the *acumen* of the English writer, claiming against those accusing him of being Hobbes's disciple the right and the merit of having carefully read the other man's writings.[2]

Since Pufendorf made these assertions from the very start of his works, since the weight of citations of Hobbes in the *De iure naturae et gentium* is massive, since the reputation he had among his contemporaries of being a hobbesian has echoed down to us, since in the end some of his most celebrated doctrines display their hobbesian stamp even to a superficial reader, for all these reasons, then, the notion of the English writer's importance for pufendorfian natural law can be considered established in nineteenth- and twentieth-century historiography.[3] The problem is that, except for rare exceptions,[4] the notion of the importance of the author of the *De cive* for Pufendorf's work was translated into the *topos* that made the latter a mediator between Hobbes and Grotius,[5] or even into the assertion that pufendorfian principles stood in total opposition to those of Hobbes.[6] It is not immediately clear how this came about. Perhaps it was a result of the actual manner in which from the start Pufendorf presented his own doctrines, or perhaps because of those respects in which he would later re-think and re-interpret the relationship between his own conception and that of his predecessor. Neither could one rule out the impact on the reception of his work by the interpretation of his great commentator, Jean Barbeyrac, nor finally the sheer space he accorded in his work to Grotius, quantitatively speaking no less than that accorded to Hobbes.

On the other hand, doesn't everyone know that whereas Hobbes opens the *De cive* by affirming that man does not by nature love other men, that he is therefore not by nature a 'political animal', Pufendorf, following Grotius, makes sociality the foundation of natural law? Doesn't everyone know that if for Hobbes the state of nature is a state of war, for Pufendorf it is instead a state of peace? This means that whoever commits herself to showing that the influence of Hobbes on the German writer's system needs to be treated much more fully than has hitherto been the case – in other words commits herself to showing that (to put this in terms that call for clarification) Pufendorf was a disciple of Hobbes (perhaps the only great disciple the latter has ever had)[7] – will run the risk of appearing to be a lover of paradoxes, one of those authors who, lacking better weapons, seeks to catch the public's attention with their counter-current interpretations.

 | DOI:10.1163/9789004388611_002

The present writer is fully aware of such a risk, but she believes it is worth running if it results in restoring the most authentic image possible of an author whose importance in the history of thought is as important as she judges Pufendorf's to have been. True, the task we are setting ourselves would be greatly facilitated if we could take as proven our thesis showing that Pufendorf's major work is nothing other than a perpetual commentary on Hobbes (on the *De cive* in particular). Were this so, anyone who wished to see every aspect of that celebrated work illuminated, discussed and weighed, would need do no more than read in their entirety the eight heavy tomes of the *De iure naturae et gentium*. Indeed, to show this one would only need to run through the *De iure* again with a bit of attention, for then one would see that there is no question – major or minor – addressed by Pufendorf on which he does not set his own position against that of his great predecessor.

Staying within the limits of the *De iure* alone, this is the case for the issue of the demonstrability of ethics (*ING* I,2,4) that Pufendorf, like Hobbes, defends with passion against Aristotle. It is the case too for the 'preliminary' notions of his system: for instance the notion of 'freedom of the will' (I,4,2), or the notions of 'law' (I,6,1 and I,6,4), 'superior' (I,6,10), 'justice and injustice' (I,7,13 and 15).[8] Coming to Book Two, the same goes for the description of the wretchedness of the state of nature, whose incoveniences are summed up with Hobbes's own words (II,2,2); for that of the rights obtaining in such a state, concerning which the hobbesian thesis of the right of everyone to everything (*ius in omnia*) is examined; and for the problem of whether the state of nature really existed (II,2,4, and 7), and whether it is a state of war or of peace (II,2,5–12). And further, concerning the foundation of natural law, a substantial section (II,3,16–18) is devoted to comparing the principle of sociality and the hobbesian care for one's own safety (*cura propriae salutis*). Concerning the relation that binds natural laws to God, there is discussion of the hobbesian thesis according to which natural laws have coercive force only insofar as they are promulgated by God in the Holy Scriptures (II,3,20). As regards the *ius gentium*, as in Hobbes, a positive law of nations distinct from the natural law is denied existence.[9]

In Book Three, then, our author conducts a closely matched confrontation with Hobbes concerning the notion of natural equality among men (III,2,2); the role of a drawing of lots in the attribution of a right among equals (III,2,5); and the type of sin to which atheism is to be ascribed (III,4,4). And there is more: concerning the transfer of rights there is discussion of the hobbesian thesis according to which this consists in non-resistance alone (thereby returning to speaking of the *ius in omnia*: III,5,2–3); as well as the thesis according to which speech concerning the future does not configure a transfer of

rights (III,5,8). Further, regarding the conditions of validity of pacts, there is discussion of the hobbesian doctrine according to which, in the state of nature, pacts of mutual trust are invalid should a just cause of fear arise (III,6,9); there is discussion too of the doctrine that pacts extorted by violence have a force of obligation (III,6,13). Arriving at the question of the 'material' of obligation, Pufendorf discusses the hobbesian thesis according to which pacts oblige not to performance itself but unstinting effort (III,7,4), and the thesis according to which we cannot oblige ourselves not to resist whoever wants to wound or kill us (III,7,5).[10]

If we pass to Book Six, we see how, regarding the paternal power, Pufendorf shares the hobbesian refusal of generation as the foundation of paternal power [*patria potestà*] and also the arguments where the English author attributes this power to the mother rather than to the father in the state of nature (VI,2,2–3). Concerning the power of master over servants, there is an examination of the way in which Hobbes grounds such a power in the case of the prisoner of war (VI,3,6), as well as of the thesis according to which the master cannot commit an injustice with regard to the servant (VI,3,8); and finally, the hobbesian distinction between liberty and servitude, between citizen and servant is adopted (VI,3,10).[11]

In Book Seven, then, we see that the first chapter in its entirety is a full-throated reprise of the hobbesian theme of mutual fear as the constitutive cause of civil societies and of the related theme of the nature of man. In the second chapter, we find Pufendorf's acceptance of the hobbesian thesis according to which, unlike the case of animals, for men, in the absence of a coercive power, the agreement of many is insufficient to constitute the state (§§3–4). And with a long analysis devoted to the hobbesian doctrine of the uniqueness of the social pact (§§9–12), we reach a definition of *civitas* exemplified in that of Hobbes. Here the latter's celebrated parallel between the state and the human body (§13) is praised and retained, while the distinction between people and multitude is approved.[12] At the same time, Hobbes's paradoxes according to which 'in every state the people rule' and 'the monarch is the people' (§14) are criticised as empty witticisms.

Also in Book Seven, with extensive citation from Hobbes, included among the sovereign's powers is the power to examine the doctrines professed by the subjects (VII,4,8). As regards the form of the state, the hobbesian discussion of democracy is criticised (VII,5,6), while the hobbesian arguments against the possibility of a limited sovereignty are criticised with regard to the distinction between absolute and limited sovereignty (VII,6.13). In speaking of 'temporary monarchy', the chance to examine the hobbesian doctrines on this topic is not missed (VII,6.14 and 17; VII,7,9). And as for the right of resistance, the

hobbesian thesis according to which the state cannot commit injustice against the citizen is denied (VII,8,2).[13]

Book Eight, finally, opens with an in-depth discussion of some nodal points in Hobbes's political philosophy. Pufendorf thus discusses the thesis that the civil law cannot be in contradiction with the natural law (VIII,1,2–3); that the precepts of the decalogue are civil not natural laws (VIII,1,4); and that cognizance of good and evil is not a matter for the individual (VIII,1,5). The book proceeds with the examination of some more particular hobbesian questions: whether one sins in executing the commands of the sovereign (VIII,1,6); whether one is obliged to submit oneself to punishment (VIII,3,4); what precisely is to be understood by punishment (VIII,3,7) and its purpose (VIII,3,8); and whether sons can be legitimately punished for the sins of their fathers (VIII,3,33). Lastly, regarding the foundation of 'honour', there is examination of the hobbesian thesis that honour consists in 'power' alone (VIII,4,13).[14]

However, it is not enough to show that Pufendorf's major work retraces in its plot the whole of Hobbes's political philosophy. In fact, even after observing that the specific places in the *De iure* just listed not only contain brief pointers to hobbesian doctrines but also discuss almost every line of the *De cive*,[15] and in such breadth and depth, and with such philological and philosophical finesse! – even then, if we simply contented ourselves with extracting from the *De iure* all the passages concerning Hobbes and making them footnotes to the corresponding passages in Hobbes's work, we would obtain the most imposing and important commentary the *De cive* has ever had.

Nor would it be enough if we took a step back and noted that in such cases the paraphrase of the hobbesian text is so detailed and faithful, that the refutation argument by argument, objection by objection is so meticulous and thorough that the pufendorfian chapters represent veritable essays in hobbesian criticism. Such is the case, for instance, with the examination of the doctrine according to which naked force, when irresistible, suffices to constitute the 'superior' (I,6,10), as well as the examination of the theory of justice and its corollary that Hobbes outlines: injustice can be committed only towards him with whom a pact has been sealed (I,7,13 and 15). (This theme – whether a natural justice exists – returns and is pursued in the first five paragraphs of Book Eight). This is also the case with the second chapter of Book Two which sets up the intense debate on the hobbesian doctrine of the state of nature, the debate being continued in the following chapter with regard to the natural law and then the nature of man (II,3,16–18). And the same is also true of the first chapter of Book Seven – the most hobbesian in the *De iure*, as numerous readers have noted[16] – where the hobbesian thesis of the insufficiency of natural law to guarantee peace among men is embraced. Finally, the same applies to

the considered refutation of the hobbesian thesis that the state arises from a single pact (VII,2,9–12).

Nor will we be content with noting how numerous are the issues on which Pufendorf shows himself to be a strictly observant hobbesian. On this matter, other than the instances recorded above, we shall limit ourselves to citing the following. The whole discussion devoted to defining 'law', its distinction from 'advice', 'pact' and 'right' (I,6,1–4) and the identification of its component parts (I,6,14), as well as the types of law (I,6,18), is nothing but a reprise and an elaboration of the *De cive* (XIV,1–4). The criticism of the agreement of peoples (*consensus gentium*) as the foundation of natural law repeats the hobbesian arguments against it (*De cive* II,1).[17] Likewise, the thesis of the non-existence of a positive law of nations distinct from the natural law is borrowed from *De cive* (XIV,4). Pufendorf too, like Hobbes, holds that pacts must be kept (*pacta sunt servanda*) independently of the vices of the one who agreed to the pact (ING III,6,9 and *De cive* III,2). Like Hobbes, he holds that there exists no obligation of non-resistance against the one who wants to wound or kill us (III,7,5), no obligation of self-accusation (IV,1,20), or of auto-submission to punishment (VIII,3,4) (cf. *De cive* II,18–19). The entire doctrine of oath-taking presented in the second chapter of Book Four – including the thesis according to which the obligation created by the pact is a perfect obligation self-sufficient even before the oath is sworn – is a re-making and amplification of the hobbesian doctrine in *De cive* (II,20–23). The doctrine of paternal power has already been considered, as has the hobbesian answer to the search for the motive cause for the constitution of the state (*causa impulsiva costituendae civitatis*).

We note, though, that the hobbesian thesis according to which for there to be peaceful coexistence among men agreement is insufficient – the necessity being the coercive power of the sovereign – is substantiated by reiterating verbatim the English author's examination of the reasons for which certain so-called social animals are able, unlike man, to do without a sovereign (VII,2,4 = *De cive* V,5). Again, the definition of *civitas* given in VII,2,13 retraces that in *De cive* V,9. Furthermore, as in the *De cive* V,6 so in *ING* VII,4,2 the unified will of the *civitas* is born from the submission of the will of the individuals to the will of a single man or a single assembly. The doctrine of *de partibus summi imperii* laid out by Pufendorf in VII,4,2-8 is nothing other than the doctrine of the rights of the sovereign laid out by Hobbes in *De cive* VI,4–11, while this same hobbesian discussion provides the inspiration for the insistence on the indivisibility of the elements of sovereignty (VII,4,11–12). Similarly, the generous place accorded to criticism of the mixed state (VII,4,13 and VII,5,13) is an elaboration of a hobbesian cue (*De cive* VII,4). There is more: in the chapter on the duties of the sovereign (VII,9) Pufendorf does nothing except re-arrange

and, as is his custom, amplify, illuminate with examples and substantiate with authorities the material of *De cive* XIII. Finally, the doctrine of punishment, with the characteristic theses according to which punishment is solely that which is inflicted by a superior and which must be useful (VIII,3,7-9), is wholly of hobbesian inspiration (*De cive* III,11 and *Leviathan* XXVIII).

To have observed all this, though, will not be enough for us. It is of course important to redirect the attention of scholars to the imposing presence of Hobbes's doctrines in Pufendorf's work – too often neglected or treated in generic terms, that is, without precise reference to specific pufendorfian and hobbesian texts. What we are proposing to show, however, is not only that the *De cive* is one of the principal sources of the *De iure*, or that Pufendorf maintains many hobbesian theses. Beyond this, we want to show that Pufendorf thinks the very heart of his own doctrine with a hobbesian mind. In other words, Pufendorf is a disciple of Hobbes, not in the most reductive and banal sense of repeating unchanged multiple doctrines – although he was this too – but in a far more radical sense, namely that his thought enacts, sharpens and develops in a continuous and intense conversation with Hobbes's thought, such that, as the case arises, the nodes of the one mirror, respond to, and rethink the nodes of the other.

By way of demonstrating all this, we will examine the central theses of Pufendorf's thought: the doctrine of the foundation of obligation and the doctrine of sociability.

Notes

1 Already in the *praefatio* to the youthful work that won him notoriety, the *Elementorum iurisprudentiae universalis libri duo*, he had in fact warned: 'No small debt likewise do we owe to Thomas Hobbes, whose basic assumption in his book *De cive*, although it savours somewhat of the profane, is nevertheless for the most part extremely acute and sound' (10–11). It is known how this public acknowledgement in his youthful work of his debt to Hobbes cost our author the following malevolent insinuation by Leibniz: 'I have been told that when Pufendorf first published his Elements of Jurisprudence in The Hague in 1660 he secured the favour of the Elector Palatine Charles Ludwig by having recommended Hobbes in the preface. From that he reckoned that he would receive something, for it was certainly evident that the Elector was full of admiration for Hobbes. And he dedicated that very work to him, so that he for that reason would merit that the professorship in Heidelberg would be entrusted to him.'. (L. Dutens, *Leibnitii Opera omnia*, Geneva, 1768, VI,1, p. 311). On the unrealistic character of this leibnizian pettiness, see the

reasonable observations of N. Bobbio, *Leibniz e Pufendorf* (1947), now in *Da Hobbes a Marx*, Napoli, 1965, p. 140.

2 He did this in private and in public. In the first of the two letters to Baron Boineburg, he expressed himself as follows: 'The intellect of Hobbes should not be denied due praise, even though he hardly went beyond [first] principles, and his hypothesis seems to many to savour a little of the profane', Heidelburg 13/23-1-1663, *Briefwechsel*, Brief 16, p. 25. And in the preface to the first edition of the *De iure*: 'In this way also Thomas Hobbes in his works concerning political science has much of great value. And no one who understands this matter would deny how profoundly he investigated the connection of human and civil society, so that few of the former compare with him in this matter. And where he departs from the truth, this gives occasion to think about such matters, which perhaps no one else would have thought of. But that he devised religious teachings horrible and peculiar to himself, this incited aversion towards him and not without reason. Yet it is not rare to see him condemned with the greatest superciliousness by those who had the least read or understood him.'(p. XXVII). Though in a context in which he was forced to defend himself against the charge of hobbism, Pufendorf thus confirms his Hobbesian debt: 'I will nevertheless not deny that I undertook to explain some places from Hobbes by proper interpretation, and retained much that agrees with right reason. Why I should not be allowed to do so is not yet clear, unless perchance it really is relevant what Alastor [i.e. N. Beckmann] insistently forces upon him [that he is of the] religion of the Calvinists (whom he almost calls atheists) and the nation of the English.' (*Epistola ad amicos*, p. 103). Moreover, in the elaborated judgment on Hobbes appearing in the brief history of natural law that constitutes the first chapter of the work *Specimen controversiarum*, Pufendorf among other things says of the English author, characterised as 'a man of the most acute mind': 'anyone who understands anything would not deny that, among much bad is found also much exquisitely good and of great value; and those very things, which are falsely propounded by him, offered a handle by which they lead moral and civil science to the greatest height. So that without Hobbes, few if anyone at all would have thought of those not few matters that contributed to its perfection.' (1,6, p. 168). Finally, as late as 1688, in response to charges of Hobbism raised once again on the authority of V. Alberti, Pufendorf offered a further confirmation: 'Truly what I think of Hobbes, has been abundantly set forth by me, so that I believe that nothing more judicious can be desired from me. I don't deny that I have diligently read him, for truly the Apostle [Paul] said: test all things and hold on to what is good [1 Thessalonians 5:21]. And indeed, the false things taught by him have been brought to light by me in order to draw out or strengthen a great many truths, and those same false things no one in Germany destroyed more solidly than me.' (*Commentatio super invenusto Veneris Lipsicae Pullo, Valentini Alberti* ...

calumnis et ineptiis opposita (1688), in *Eris Scandica*, cit. p. 340). These statements of Pufendorf find objective confirmation, firstly, as we shall see, in the number of citations from Hobbes that figure in the *De iure*, and secondly in the works by the English author present in Pufendorf's library. As evidenced in fact by the catalogue of the auction sale of the pufendorfian library, the books by Hobbes owned by Pufendorf were: *Human Nature*, London, 1651 (listed among the books in 12° at n. 56 = n. 16 of H. Macdonald – M. Hargreaves, *Thomas Hobbes, a Bibliography*, London, 1952); *Le Corps Politique*, Leiden, 1653 (12°: 454 = n. 21 *Hobbes– Bibliography*); *De cive*, Amsterdam, 1669 (12°: 91 = n. 29 *Hobbes-Bibliography*); *Leviathan*, trad. Dutch, Amsterdam 1667 (8°: 143 = n. 47 *Hobbes-Bibiography*). See *La biblioteca di Samuel Pufendorf. Catalogo dell'asta di Berlin del settembre 1697*, ed. & introd. Fiammetta Palladini (Wiesbaden: Harrassowitz Verlag, 1999).

3 Thus O. Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien* (Breslau: H. & M. Marcus, 1902), judges that the most important development of the hobbesian theory of the *persona civitatis* is owed to Pufendorf (p. 192). F. Tönnies, *Th. Hobbes Leben u. Lehre*, Stuttgart, 1925 (1896) argues that the *De iure naturae et gentium* 'ganz und gar in den Spuren sich bewegt, die der grosse englische Philosoph gefahren hatte' (p. 274). E. Landsberg, in his continuation of R. Stintzing, *Geschichte der Deutschen Rechtswissenschaft*, Dritte Abth. Erster Halbb., München – Leipzig, 1898, affirms that the pufendorfian system 'sich [...] an Hobbes' Tractat *De cive* anlehnt' (p. 12). J. Sauter, *Die philosophischen Grundlagen des Naturrechts*, Vienna, 1932, notes that P. in his theory of the ideas, entirely in line with the nominalist tradition, presents himself as 'der gelehrige Schüler' of Hobbes (p. 142, note 1). E. Wolf, 'Samuel Pufendorf' in *Grosse Rechtsdenker der deutschen Geistesgeschichte*, Tübingen, 1951, pp. 306–66, argues, concerning the theory of sovereignty, that 'er war als Staatsdenker ein Schüler von Bodin und mehr noch von Hobbes' (p. 328). M. Villey, 'Les fondements de l'école du droit naturel moderne au XVIIe siècle', *Archives de philosophie du droit* 6 (1961), pp. 73–105, notes how a good part of Pufendorf's work 'est remplie par un long dialogue avec la doctrine de Hobbes' (p. 85) and that almost all his solutions rest, as do those of Hobbes, on conventions, that is, on human institution (p. 88). F. Wieacker, *Privatrechtsgeschichte der Neuzeit*, Göttingen, 1967, trad. Italian Milano 1980, p. 474, observes how P. utilises Hobbes 'besonders seine Vertragslehre'. W. Röd, *Geometrischer Geist und Naturrecht*, München, 1970, having identified in P. the juxtaposition of two methods that in his opinion are incompatible: the geometric method (or, better, the method of analysis and resolution) and the empirical method of observing human nature, points to Hobbes as the inspirer of such a distinction (pp. 97–98). H. Denzer, *Moralphilosophie und Naturrecht bei S. Pufendorf*, München, 1972, not only underlines the massive influence of Hobbes on the pufendorfian doctrine of sovereignty (pp. 180, 188, 195), but, noting that Books One to Three and Book Seven

of Pufendorf's major work are shot through by a continuous counterposing with Hobbes, then concludes from this that for the German natural lawyer Hobbes had been the only adversary thought to be worth taking seriously (p. 257), to the point of being able to say that 'In Auseinandersetzung mit Hobbes P. die Grundlagen seines Naturrechts gelegt hat' (p. 262). More recently, M. Nutkiewicz, 'S. Pufendorf: Obligation as the Basis of the State', in *Journal of the History of Philosophy* 21 (1983), pp. 15–29, though counterposing Pufendorf's political philosophy as *non-mechanistic* to that of Hobbes and Spinoza, recognises that P. agrees with Hobbes concerning the 'inclinations of human nature' and the theory that it is 'discipline and not nature that leads to the formation of civil societies' (pp. 16–17). M. Mori, 'Giusnaturalismo e crisi dell'ordine naturale', *Rivista di filosofia* 77 (1986), pp. 7–40, underlines P's closeness to Hobbes concerning the description of the state of nature, the manner in which civil association is born, the concept of human nature, in the account of which he also identifies the two authors' affinity of language (pp. 18–20). O. Mancini, 'Diritto naturale e potere civile in S. Pufendorf', *Il contratto sociale nella filosofia politica moderna*, ed. G. Duso (Bologna: Il Mulino, 1987) 109–48, notes how P's relationship to Hobbes is to be uncovered and not limited to a mere re-stating of conclusions or even a 'considered reception' (p.110).

4 The most notable of these exceptions (but be aware that I did not succeed in sighting the essay by R. Labrousse, 'La influencia de Hobbes sobre la dottrina politica de Pufendorf', in *Revista de Historia de las Ideas* (Tucuman), I, 1950, pp. 27–61) is that represented by G. Sortais, *La philosophie moderne depuis Bacon jusqu'à Leibniz. Etudes historiques*, t. II, (Paris: P. Lethielleux, 1922), pp. 480–89), who not only places Pufendorf in the section of his history of modern philosophy entitled 'hobbesian sympathies in Germany', but also signals (most intelligently, in our view) the most important hobbesian feature of Pufendorf's system in identifying the effective cause of the law in the decree of a superior (rather than in the nature of things). And if a certain historiographical ingenuity leads him to characterise this thesis as 'strange' (p. 481), or if the methodological error of not using the *De iure* leads him to believe that P. 'whether he attacks him, reproduces him or adapts him, he does not name his predecessor [i.e. Hobbes] and never refers to his works' (p. 488); he clearly saw that 'En lisant les Traités de Pufendorf on sent qu'il s'était profondément imprégné des écrits de Hobbes. Partout l'on devine l'influence plus ou moins atténuée du philosophe de Malmsbury; souvent les expressions sont les mêmes; parfois des passages entiers sont transcrits textuellement' (p. 489). Consequently Sortais was perhaps the one from whom one might have expected adherence (and not, as happens, a charge of exaggeration) to the observation of the author [J.F.W., Neumann] of the *Bibliotheca Iuris Imperantium*, Nürnberg, 1727, p. 79, according to whom, without Hobbes, 'we would never have seen Pufendorf in such a peak of fame and honour and the law of nature in such a high degree of

perfection as it now is'. Another author who has identified with great precision some hobbesian residues in Pufendorf is R. Derathé, *J.J. Rousseau et la science politique de son temps*, (Paris: J. Vrin, 1970): thus he notes (pp. 283–84) how the whole enumeration of the powers of the sovereign laid out by P. in *ING* VII, 4 reproduces *De cive* VI and *Leviathan* XVIII, that P. draws from Hobbes the enumeration of the 'parts' of sovereignty, that he reproduces in *ING* VII,4,12 the hobbesian arguments aimed at demonstrating the indivisibility of sovereign rights, a matter in which the German author shows himself to be a true *disciple* of Hobbes (p. 292). What is more, Derathé devotes an appendix of his book, the third appendix, to showing the hobbesian filiation of the pufendorfian theory of the 'moral persona' (pp. 397–410). H. Medick, *Naturzustand und Naturgeschichte der bürgerlichen Gesellschaft. Die Ursprünge der bürgerlichen Sozialtheorie also Geschichtsphilosophie und Sozialwissenschaft bei S. Pufendorf, J. Locke und A. Smith*, Göttingen, 1973, notes the underestimation in the pufendorfian literature of Hobbes's infuence on Pufendorf (p. 42, n. 11 and p. 44, n. 17), and correctly senses that the latter's negative evaluation of his predecessor often has a rhetorical character while, in substance, he adopts hobbesian positions. Medick tends, though, to reduce P.'s hobbism to the assumption of the nominalist method of genetic and causal definition and to believe (mistakenly, in our view) that the German author rejects the hobbesian anthropology and denies the absolute primacy of self-preservation. V. Goldschmidt, *Anthropologie et politique, les principes du système de Rousseau*, (Paris: J. Vrin, 1974), concludes his analysis of the various meanings of state of nature in P. by asserting that 'les éléments qu'il met en oeuvre sont intégralement empruntés au *De cive*' and that, if on the problem of war and peace he provides a solution opposed to the hobbesian one, it is then the problem (fundamental for Hobbes) of the motives that have led man to establish civil societies 'that ends this whole inquiry into the state of nature and retains the solution established by Hobbes' (p. 180). Moreover, he correctly notes that not only is the motive of fear a hobbesian motive, but also that P., by way of justification, makes use of an argument borrowed from Hobbes and, what is more, feels himself duty-bound to respond to an objection that had been raised against the English author (p. 181: the reference is to *ING* VII,1,7).

5 The *topos* of the eclectic and middle-man Pufendorf is so widely disseminated that it can be found more or less elegantly presented in almost all those who have had occasion to study P., or even just to name him. According to Gierke, 'Samuel Pufendorf' in *Ruperto Carola*, ed. K. Bartsch (Heidelberg, Petters,1886), 91–96, our author identifies the cause of the abandoning of natural liberty in a social instinct to which fear is added: 'während Grotius einseitig nur die Socialität, Hobbes einseitig nur die Furcht betont habe' (p. 94). C. Phillipson, *S. Pufendorf* in *Great Jurists of the World*, London, 1913, pp. 305–44, while affirming that P.'s debt to Grotius 'was incalculably great' (p. 313) and that the work of the German author 'constitutes almost

an appendix to it', so much so that it is not perhaps too much to say that, if the *De iure belli ac pacis* had never been produced, the *De iure naturae et gentium* would never have seen the light (p. 315), nonetheless he too believes that the adoption of the first principles on which Pufendorf grounds his system 'is to be largely attributed to his study of, and attempt at reconciling, the doctrines of Hobbes and Grotius' (p. 343). For Bobbio, *Il diritto naturale nel sec. XVIII*, Torino, 1948, p. 34, P. is 'filosofo tipicamente sincretista', who 'non rinuncia né all'ipotesi della socialità naturale [...], né all'ipotesi, che Hobbes aveva presentata come antitetica a quella groziana, dell'utilità come motivo originario della condotta dell'uomo'. Despite Wolf, *op. cit.*, p. 312, having already observed how the thesis that P. had united Grotius and Hobbes had been outmoded, it continues to be repeated: for H. Rabe, *Naturrecht und Kirche bei Pufendorf*, Tübingen, 1958, the reconciliation of the doctrines of Hobbes and Grotius is really 'lo scopo scientifico' of P. (p. 14); for Villey, *op. cit.*, p. 85, 'universitaire germanique que tourmente une fidélité double à des écoles opposées [the classical and grotian school and the school of the modern philosophers, notably Hobbes], P. cherche la synthèse'. Also according to J. Brufau-Prats, *La actitud metodica de S. Pufendorf y la configuracion de la 'disciplina iuris naturalis'*, Madrid, 1968, P.'s intention is to reconcile Hobbes's empiricist naturalism with grotian rationalism, such that *socialitas* re-echoes Grotius's *adpetitus societatis*, *imbecillitas* Hobbes's conception of man, even if, in the conjunction of the two authors the balance falls on the side of grotian rationalism (pp. 56–57). The whole chapter devoted to P. by G. Fassò, *Storia della filosofia del diritto*, t. II, Bologna, 1968, pp. 173–85, resounds with the charge of incoherent eclecticism: P's doctrine is 'essenzialmente eclettica', one in which he 'riunì insieme motivi groziani, come quello della razionalità e socialità della natura umana, e hobbesiani, come quello del movente utilitario di tutte le azioni' (p. 173); in the conception of the state of nature too 'egli sembra ecletticamente accogliere entrambe queste due antitetiche posizioni [the grotian and aristotelian idea of man's natural sociability and the hobbesian idea of the asociality of individuals prior to the pact], tentando di conciliarle tra di loro' (p. 182). Even Derathé, whose intuition of P.'s hobbism we have seen, affirms, on the issue of the right of resistance, that our author, in striving to find a just mean between Hobbes's political realism and the idealism of natural law, is content to juxtapose two irreconcilable theses such that his doctrine 'sur ce point comme sur tant d'autres, aboutit à un éclectisme voisin de l'incohérence' (*op. cit.*, p. 324). Röd also, in his fine book already cited, refers to P.'s system as a 'Synthese Grotianischer und Hobbesscher Gedanken' (p. 6) and judges that 'Pufendorf's synthetische Geisteshaltung' exposes him to extensive compromises (p. 57). A. Dufour, *Le mariage dans l'école allemande du droit naturel moderne au XVIIIe siècle. Les sources philosophiques de la Scolastique aux Lumières. La doctrine*, (Paris: Librairie générale du droit et de la jurisprudence, 1972) (on P. pp. 103–37) – who,

though, is particularly aware of the originality of P.'s thought – continues to present the latter as 'l'héritier des positions contradictoires de Hobbes et de Grotius' (p. 128) and to think of P.'s personality as 'essentiellement médiatrice' (p. 135), even if, unlike the majority of the other critics, he presents this not as a defect but as an asset, one that allows P.'s work to be 'une harmonieuse synthèse des courants les plus marquants de la pensée [...] de son temps' (p. 134). Like Dufour, M. Bazzoli, *Il pensiero politico dell'assolutismo illuminato*, Firenze, 1986, p. 294, considers 'la tendenza del giusnaturalista tedesco ad approdare nel suo sistema a soluzioni di compromesso' as productive of a 'sintesi originale', hence as positive. Moreover, the entire large section of his book that Bazzoli devotes to P. (pp. 292–330) underlines the importance and the originality of pufendorfian speculation, the distinctive features of which (in other words, the centrality of 'culture' as a human and worldly fact [27], the importance of the utilitarian element, the attention granted economic relations) make P., for the author, if not an accomplished theorist of enlightened absolutism, one of the thinkers who did most to open the way to its explicit formulation. Conversely, and still recently, Mori, *op. cit.*, repeats for the umpteenth time that P. is 'spirito scarsamente filosofico, ma estremamente sensibile alle mediazioni e agli eclettismi' (p. 15) and that his system is a 'commistione di volontarismo e di razionalismo' (pp. 29–30). An echo of the mediator *topos* is also found in the essay by F. Todescan, 'Dalla "persona ficta" alla "persona moralis". Individualismo e matematismo nelle teorie della persona giuridica nel sec. XVII', in *Quaderni fiorentini,* 11/12 (1982–83), pp. 59–93, where it is observed that the pufendorfian method derives from the not always harmonious fusion of residual grotian organicism and the genetico-causal vision of hobbesian science, and P.'s anthropology from the synthesis of the moderately optimistic anthopology of the Dutch jurist with the markedly pessimistic anthropology of the English philosopher (p. 85). It also resonates in the essay by I. Hont, 'The Language of Sociability and Commerce: S. Pufendorf and the Theoretical Foundations of the 'Four-Stages Theory', in A. Pagden (ed.), *The Languages of Political Theory in Early Modern Europe*, Cambridge, 1987, pp. 253–76, where reference is made to 'Pufendorf's attempt to reconstruct Grotius's jurisprudence by applying the intellectual method of Thomas Hobbes' (p. 253), even if the concreteness of the analysis proposed by this author then finishes by identifying the hobbesian features of the pufendorfian doctrine, rather than the grotian ones. The intersection of grotian and hobbesian motives in P. appears also in H. Hofmann, 'Zur Lehre vom Naturzustand in der Rechtsphilosophie der Aufklärung' in R. Brandt (Hrsg.), *Rechtsphilosophie der Aufklärung. Symposium Wolfenbüttel 1981*, Berlin – New York, 1982, p. 21. Yet what differentiates his position from those recorded thus far is the fact that he sees this meeting as realised precisely in the concept which, traditionally, is considered the most hobbesian feature of P. – namely, that of *imbecillitas* – and above all the fact that he reconnects the

importance assigned by Hobbes to the principle of self-preservation not, as is traditional, to epicurean teaching but rather to stoic teaching. Indeed, he expresses himself as follows: 'In diesem Begriff [*imbecillitas*] kreuzt sich der die aristotelische tradition auf die societas der christlichen Völker hin überschreitende grotianische Gedanke der Sozialität der Menschen mit der hobbesianischen Zuspritzung des stoischen Selbsterhaltungsprinzips'. A pity that this author does not go on to explain his thinking and elaborate these interesting interpretive insights.

6 P.'s opposition to Hobbes on particular doctrines has been repeatedly noted. Simply by way of some instances, Gierke, 'Samuel Pufendorf', in *Ruperta Carola*, 94, underlines how for P., unlike for Hobbes, a limited sovereignty is possible, and Rabe, *op. cit.*, is one of the many who repeat that P., unlike Hobbes, considers the state of nature as a state of peace, not of war (p. 33) and has a less pessimistic view of the man of nature (p. 36). C. Link, *Herrschaftsordnung und bürgerliche Freiheit. Grenzen der Staatsgewalt in der älteren deutschen Staatslehre*, Vienna, 1979, underlines P.'s oppostion to Hobbes concerning the possibility of a limited sovereignty, developing the indication found in Gierke (pp. 39–40). More radical oppositions between the two authors are believed to be discerned by, for instance, Villey, *op. cit.*, who writes of a role that 'the Christian faith in a God who commands' would play in P., but not in Hobbes; Röd, *op. cit.*, who believes that P. had embraced the aristotelian conception of a natural sociability and thereby precludes himself from the possibility of conceiving the state in hobbesian style as an artificial body (p. 75), as well as thinking that Hobbes's and P.'s conceptions of the state of nature were in opposition; J. Tully, *A Discourse on Property, J. Locke and his Adversaries* (Cambridge University Press, 1980), who holds that P. persisted in the traditional belief that political society is natural to man and thus not radically discontinuous with the pre-political state, thereby setting himself against Hobbes (p. 73); P. Laurent, *Pufendorf et la loi naturelle* (Paris: J. Vrin, 1982), according to whom P.'s thought on the issue of authority 's'éloigne de celle de Hobbes, elle se place même aux antipodes' (p. 36); Nutkiewicz, *op. cit.*, who opposes P.'s political philosophy to those of Hobbes and Spinoza as a non-mechanistic philosophy to mechanistic philosophies (p. 17); J.F. Spitz, 'Le concept d'état de nature chez Locke et chez Pufendorf. Remarques sur le rapport entre épistémologie et philosophie morale au XVIIe siècle', in *Archives de Philosophie* 49 (1986), 437–52. who, in polemic with Goldschmidt, denies the hobbesian inspiration of the concept of human nature and state of nature in authors such as Locke and Pufendorf and affirms that the latter have aimed to construct the concept of natural law on grounds that differ from those of Hobbes (pp. 448–49).

7 Bobbio speaks of P. as 'primo e più grande araldo dell'opera hobbesiana' in the introduction to the Italian translation of the *De cive* that he edited (Torino, 1948, p. 39). The text speaks of 'unico grande discepolo' because spinozan philosophy is

too rich, complex and original for its author – despite the known hobbesian influences on him – to be reduced to a disciple of Hobbes.

8 The passages of Hobbes to which we refer in the text (not, therefore, please take note, all those cited by P. in his major work!) in Book One of the *De iure* are the following:
I,2,4 = *De homine* X,5
I,4,2 = *De homine* XI, 2
I,6,1 and 4 = *De cive* XIV,1–3 and III,33
I,6,10 = *De cive* XV,5
I,7,13 and 15 = *De cive* III,4 and 6; *Leviathan* XV

9 In Book Two, the hobbesian passages are:
II,2,2 = *De cive* X,1; *Leviathan* XIII
II,2,3 = *De cive* I,10–11
II,2,4–12 = *De cive* I,12
II,3,20 = *De cive* III,33
II,3,23 = *De cive* XIV,4

10 In Book Three, the hobbesian passages are:
III,2,2 = *De cive* I,3 and III,13
III,2,5 = *De cive* III,15–18
III,4,4 = *De cive* XIV,19 and XV,2
III,5,2-3 = *De cive* II,4
III,5,8 = *De cive* II,6–8
III,6,9 = *De cive* II,11
III,6,13 = *De cive* II,16
III,7,4 = *De cive* II, 14
III,7,5 = *De cive* II,18

11 In Book Six, the hobbesian passages are:
VI,2,2-3 = *De cive* IX,1–4
VI,3,6 = *De cive* VIII,1–5
VI,3,8 = *De cive* VIII,7
VI,3,10 = *De cive* IX,9

12 That the pufendorfian distinction between 'people' and 'multitude' was borrowed from Hobbes does not escape Todescan, 'Dalla "persona ficta" alla "persona moralis"', *cit.*, p.90.

13 The first chapter of Book Seven takes up the themes of *De cive* I,2. The other hobbesian passages in Book Seven are:
VII,2,3-4 = *De cive* V,4–5
VII,2,9–12 = *De cive* V,7, VI,13 and 20
the definition of *civitas* in VII,2,13 is that of *De cive* V,9 and the comparison is that of the foreword to *Leviathan*

VII,2,14 = *De cive* XII,8
VII,4,8 = *De cive* VI,11 and XIII,9
VII,5,6 = *De cive* VII,5–7
VII,6,13 = *De cive* VII,4, note 9
VII,6,14 and 17 = *De cive* VII,16
VII,7,9 = *De cive* VII,16
VII,8,2 = *De cive* VII,14

14 In Book Eight, the hobbesian passages are:
VIII,1,2-3 = *De cive* XIV,10, VI,16, XIV,9
VIII,1,4 = *De cive* XIV,9
VIII,1,5 = *De cive* XII,1
VIII,1,6 = *De cive* XII,2
VIII,3,4 = *De cive* XIV,7
VIII,3,7 = *Leviathan* XXVIII
VIII,3,8 = *De cive* III,11
VIII,3,33 = *Leviathan* XXVIII
VIII,4,13 = *Leviathan* X

15 The sections on religion constitute an exception, P. abstaining knowingly from these. In fact, in the preface to the first edition of the *De iure*, noting of Grotius's *nobilissima* work that 'those places in which he indiscriminately departs from the received opinions of the true church stain it not a little', P. had in a certain way theorised that men of wisdom should abstain from speaking of matters pertaining to religion: 'It always seemed to me a most unhappy undertaking of great men to innovate concerning divine things, when there are such an abundance of other subjects, in which one may safely put the crows' eyes out. Even if truly and usefully said, authority is lost by this means, and the harshest censure provoked in the most people, who were not worthy to say anything else against such men.' (p. XXVIII). Moreover, in *Apologia*, §30 (p. 37) P. stated explicitly that it was not his undertaking to discuss Hobbes's theology, forcefully contesting the charge levelled against him by the authors of the *Index* that he rarely distanced himself from the hobbesian theses: 'Do I very rarely depart from Hobbes? Show then someone who more completely destroyed Hobbes' errors in politics (for the theology, which he fashioned for himself, is others' to destroy), than I have done in my book'; as well as in *Specimen controversiarum*, I,6 (p. 168), where, on the issue of the flaws in the hobbesian doctrine, P. signals the theses 'in those matters concerning the Christian religion in which he departed from the true meaning of Scripture; it is for others to lay out a work to destroy those'. And so, when in the *Epistola ad amicos* (p. 103), repulsing his adversaries' attempt to 'transfer on to him the hatred that attaches to the name of Hobbes', P. asserts that 'those things which he invented in religion have been expressly condemned by me', such an assertion cannot

be understood in the sense that he would have refuted *ex professo* the specific hobbesian theses on religion, but refers most probably to generic expressions of condemnation, such as that contained in the preface to the first edition of the *De iure*, following the praise of Hobbes recorded above: 'But that also here [like Grotius] he fashioned teachings horrid and peculiar to himself, that itself provoked an aversion to him in many and not without reason' (p. XXVII).

16 L. Krieger, *The Politics of Discretion. Pufendorf and the Acceptance of Natural Law*, (Chicago-London: University of Chicago Press, 1965), while systematically underestimating the influence of Hobbes on P., pp. 118–19, notes the hobbesian type of emphasis on human badness in *ING*,VII,1, and underlines its contradiction with the description of human relations as amicable that is given in Book Two; however, given his failure to understand P.'s hobbism, the reason that induces P. to choose to make mutual fear the driving cause of the constitution of the state remains to him, as he says, *unclear*. Denzer, *op. cit.*, p. 161, clearly recognises how the series of arguments adopted in VII,1,2 to demonstrate that man is not drawn naturally to civil society is taken from *De cive*, I. Spitz, *op. cit.*, pp.442–44, notes the contrast between the hobbism of the description of human nature in VII,1 and the presentation that is given of this same nature in II,2 and believes the contradiction can be explained by attributing to II,2 the intention to think man's destiny, to VII,1 that of describing an actuality, that is, the real condition of man.

17 This derivation completely eludes V. Fiorillo, *Da Grozio a Pufendorf.* 'Rivoluzione scientifica e fondamenti teoretici del diritto', in *Clio* 23 (1987), pp. 597–621, who makes the pufendorfian critique of *consensus gentium* one of P.'s principal novelties with regard to Grotius (pp. 621–22). Conversely, in a fine analysis, S. Landucci, *I filosofi e i selvaggi* (*1580–1780*), Bari, 1972, pp. 27–28, recognises this derivation.

PART 1

Pufendorf the Hobbesian

∴

CHAPTER I

The Theory of Obligation

Let us begin with the problem of the origin of morality. It is known that Pufendorf maintains that 'good repute, or moral necessity, and turpitude, are affections of human actions arising from their conformity or non-conformity to some norm or law, and law is the bidding of a superior'. And that 'all the movements and actions of man, if every law both divine and human be removed, are indifferent; while some of them are termed naturally reputable or base, because the condition of nature, which the Creator freely bestowed upon man, most rigorously requires either their execution or avoidance; it does not follow, however, that any morality can exist of itself, without any law, in its own motion and the application of physical power. [...] Hence every day we see beasts committing without sin deeds the performance of which by man would have involved him in the grossest misconduct; not, indeed, because the physical motions of man and of a beast differ, but because there has been imposed by law on certain actions of man a morality which is wanting in the acts of a beast'. So, that reason 'should be able to discover any morality in the actions of a man without reference to a law, is as impossible as for a man born blind to judge between colours.' (*ING* 1,2,6).

Since, as we see, the notion of morality returns us to the notion of law, it is on this, as the norm for moral actions, that Pufendorf's attention settles. Law is not to be confused either with advice or with pacts or with right; it is 'a decree by which a superior obligates a subject to adapt his actions to the former's command' (1,6,4). This definition requires us to clarify what obligation is and who the superior is (1,6,5).

In Book One, obligation had already been catalogued among the *moral entities*, in the class of operative moral qualities (1,1,19), and defined as that quality 'whereby one is required under moral necessity to do, or admit, or suffer something' (1,1,21). Close examination of where obligation comes into being leads – *via* the thesis that no one can be obligated to himself (1,6,7) and the thesis that only an agent whose will is intrinsically free and who is not exempt from the power of a superior can be subject to an obligation (1,6,8) – to the conclusion that 'An obligation is properly laid on the mind of man by a superior, that is, by one who has both the strength to threaten some evil against those who resist him, and just reasons why he can demand that the liberty of our will be limited at his pleasure' (1,6,9). This doctrine, according to which one can speak of the morality of human actions only in reference to a law, and a law that is the

 | DOI:10.1163/9789004388611_003

decree of a superior, has as its consequence, regarding natural laws, that 'the observance of the dictates of reason is enjoined with the force of laws'. And this means that 'the obligation of natural law is of God, the creator and final governor of mankind, who by His authority has bound men, His creatures, to observe it. And this assertion can be proved by the light of reason' (II,3,20).

1 The Hobbesian Matrix of the Theory

Reduced to its bare schematic, this is the pufendorfian doctrine of the nature of moral good. Now, in each of Pufendorf's constitutive theses, it is easy to recognise just as many hobbesian theses. That in purely physical motion, independently of any reference to a law, there is no inherent morality, is pure hobbesian doctrine. Indeed, right from the *Praefatio ad lectores* of the *De cive*, Hobbes warns that 'the affections of the minde which arise onely from the lower parts of the soule are not wicked themselves' (para. 12); his is the doctrine that 'every action in its own nature is indifferent' (*De cive* XII,1, and that thus 'there is no sin which is not against some Law' (*De cive* XIV,19, p. 179). His also the doctrines that there does not exist 'any common Rule of Good and Evill, to be taken from the nature of the objects themselves' (*Leviathan* VI, p. 81–2),[1] and that the term 'voluptates sensuales', 'before those pleasures are condemned by the law, signifies nothing culpable' (*ib*, p. 84); and that the 'Passions of man, are in themselves no Sin. No more are the Actions, that proceed from those Passions, till they know a Law that forbids them' (*Leviathan* XIII, p. 194); and, finally, the doctrine that 'Justice, and Injustice are none of the Faculties neither of the Body, nor Mind ' (*ib*, p. 196).

Likewise, it is easy to hear Hobbes's own words resonating in Pufendorf's response to the objection, drawn from Aristotle, according to which there exist names of passions and actions that in themselves designate a vice. Pufendorf's response sounds like this: 'these very terms do not signify simple physical motions or acts, but only such as are contrary to laws', such that 'adultery is the pollution of another man's wife, whom the laws have assigned to her husband alone. Theft is the taking of the property of another without the permission of its owner, whom the laws recognize as its sole disposer. Murder is the killing of an innocent man, and against the laws'. Indeed, beyond the reference to the law 'it is a matter of complete indifference, whether you have intercourse with a woman who is very closely connected with you by ties of blood, or have intercourse with the same person as does another who has no special right to her; whether you take the life of a member of your own species; whether you take something which another had set aside for his own use, but which no law had

given him the right of removing from the use of others' (I,2,6). Now was it not Hobbes who had said that 'not every taking away of the thing which another possesseth, but onely *another mans goods* is *theft* ... In like manner, not every killing of a man is *Murther*, but onely that which the civill Law forbids; neither is all encounter with women Adultery, but onely that which the *civill Law* prohibits' (*De cive* VI,16, p. 101)?

The sequence: unfair (or morally vile, or sin) is that which is contrary to a law, law is the decree of a superior, is thus a hobbesian sequence. As well as those passages cited above, we can find the sequence as the basis of many other hobbesian passages. But if we want to see it schematised as it is here, we need only recall the passage in *De corpore* VI,7 in which it is said that we can resolve 'injustice into an act against the laws and the notion of law into the mandate of him who can coerce'.

We have already spoken of the almost *verbatim* resemblance between the doctrine of law as distinct from advice, pact and right in Pufendorf (I,6,1–3) and in Hobbes (*De cive* XIV,1-3). It remains to add that the doctrine according to which one cannot be obligated to oneself and which Pufendorf motivated by recording that 'whoever obtains a right by an obligation is at liberty to relinquish it, provided no injury is thereby done to a third party', but that in the case of one who has promised himself something that concerns himself alone 'the person obligating and the person obligated, that is, the one obtaining a right and the one giving it, are the same, and so, no matter how much a man may strive to obligate himself, it will all be in vain, since he can free himself at his own pleasure, without having carried out any obligation whatever; and the one that can do this is actually free' (I,6,7). This doctrine, I suggest, is none other than the one presented by Hobbes in *De cive* VI,14, p. 99–100: 'Neither can any man give somewhat to himselfe ... nor can he be oblig'd to himselfe, for the same Party being both *the obliged*, and *the Obliger*, and the Obliger having power to release the obliged, it were meerly in vain for a man to be obliged to himselfe, because he can release himself at his own pleasure; and he that can doe this, is already actually free.'

Above all, it remains to observe that the pufendorfian thesis according to which the laws of nature are laws properly speaking only insofar as they are commands of God is identical to the hobbesian doctrine in the *Elements of Law Natural and Politic*: 'And forasmuch as law, to speak properly, is a command, and these dictates, as they proceed from nature, are not commands, they are not therefore called laws in respect of nature, but in respect of the author of nature, God Almighty' (*Elements* I,XVII,12, p. 93). See also *De cive* (III,33, p. 76): 'But those which we call the *Lawes of nature* (since they are nothing else but certain conclusions understood by Reason, of things to be done,

and omitted; but a Law to speak properly and accurately, is the speech of him who by Right commands somewhat to others to be done, or omitted) are not (in propriety of speech) Lawes, as they proceed from nature; yet as they are delivered by God in holy Scriptures, (as we shall see in the Chapter following) they are most properly called by the name of Lawes'.[2]

The hobbesian matrix of the pufendorfian doctrines on the origin of morality and the indifference of physical motion in human acts did not, however, elude Pufendorf's earliest critics who, probably, in the definition of moral entities as *attributa superimposita* (I,1,2), *modi superadditi* (I,1,3) as products of an *impositio ex arbitrio* (I,1,4), saw a risky analogue of the hobbesian thesis[3] according to which '*Good* and *Evill* are names given to things' (*De cive*, III,31, p. 74). These critics would certainly have made their accusations of hobbism[4] even more strident if they had noticed that Pufendorf's doctrine *de natura boni*: 'as good only in so far as it has a respect to others, and it is understood to be good for some person, or on his behalf' (I,4,4), is nothing other than Hobbes's thesis according to which 'whatsoever is good, is good for someone or other' (*De homine* XI,4, p. 47). And their accusations would have been further reinforced if they had noted the close resemblance regarding the relation of will and good that exists between these passages, the first from Pufendorf in the *De jure*, the other three from Hobbes in *De homine*:[5]

> From what has been said it is clear that it belongs to the nature of the will always to seek what is inherently good, and to avoid what is inherently evil. For it implies a clear contradiction that you should not incline to what you see is agreeable to you, and should incline to what you feel is not agreeable. And so this general inclination of the will can admit no indifference, as though the will might seek good and evil by an appetite of simple approbation. But the will of individuals exerts the force of its indifference on particular goods and evils, as men incline to different things at particular times. And this is so because scarcely any things good or evil appear to a man uncontaminated and distinct, but intermixed, evil with good and good with evil. This is accompanied by the personal inclination of individuals towards special things, nor is it given to all men to distinguish the substantial and enduring from the simulated and transitory; hence comes the almost infinite variety in the wishes and desires of men, all seeking their own advantage, indeed, but each by a different road. (*ING* I,4,4)[6]

> When desiring, one can … be free *to act*; one cannot, however, be free to *desire*.
>
> *De homine* XI,2, p. 46

> The common name for all things that are desired, insofar as they are desired, is *good*; and for all things we shun, *evil*. … But, since different men desire and shun different things, there must needs be many things that are *good* to some and *evil* to others.
>
> *De homine* XI,4, p. 47

> Moreover, good (like evil) is divided into *real* and *apparent*. Not because any apparent good may not truly be good in itself, without considering the other things that follow from it; but in many things, whereof part is good and part evil, there is sometimes such a necessary connexion between the parts that they cannot be separated. Therefore, though in each of them there be so much good, or so much evil; nevertheless the chain as a whole is partly good and partly evil. And whenever the major part be good, the series is said to be good, and is desired; on the contrary, if the major part be evil, and, moreover, if it be known to be so, the whole is rejected. Whence it happens that inexperienced men that do not look closely enough at the long-term consequences of things, accept what appears to be good, not seeing the evil annexed to it; afterwards they experience damage. And this is what is meant by those who distinguish good and evil as *real* and *apparent*.
>
> *De homine* XI,5, p. 48[7]

Thus far we have deliberately neglected the very relevant differences between Pufendorf and Hobbes regarding this same theme of the nature of moral values. At the cost of being accused of having maliciously edited the texts – hiding passages in which Pufendorf directs lengthy and insistent criticisms at the hobbesian conception of the just and the unjust – it appeared indispensable to us to show, in the first place, that the categorial ambit in which Pufendorf moves is the hobbesian ambit, and then to understand these criticisms in their authentic significance and the motive that truly inspires them.

Pufendorf's overriding preoccupation in re-thinking these same hobbesian doctrines – which, as we have seen, he set down as foundational for his system of natural law – can be stated directly. He intended fully to safeguard that absolute quality of moral values, or (as is better said speaking in the language of Hobbes and Pufendorf) that eternity and immutability of the laws of nature so ambiguously defended by Hobbes in his work.[8] To this end, Pufendorf's objective was to show that despite the premises he shared with Hobbes concerning the *ex impositione* origin of good and evil, and the necessary recourse to the existence of a law understood as command of a superior, implicit in the notions of just and unjust, it was not necessary to draw the consequences that Hobbes

himself drew from them: that is, that prior to the constitution of the state, just and unjust do not exist, that injustice is nothing other than violation of pacts, and that the civil law cannot be contrary to the natural law.

While not convincing in every aspect, the way Pufendorf pursues this attempt is particularly interesting in its better moments. On the one hand, it consists in setting Hobbes against Hobbes, and in choosing between the English author's dual stances the one compatible with the thesis that Pufendorf was most committed to proving: namely, that even prior to the constitution of civil society, there exists a common measure for good and evil, a natural right in violating which one commits a wrong against one's neighbour. On the other hand, it consists in submitting the hobbesian principles to a deep and passionate reflection that flows into an attempt – tormented and, in the final analysis, as will be seen, unsatisfactory and yet no less important and deserving of attention – to go beyond them.

2 Re-Thinking the Hobbesian Principles

§1 *Interpretation of the* ius in omnia

With a measure of patience, given the need for lengthy quotations, let us then see the pufendorfian passages most apt for illustrating what has been affirmed so far, starting with the one in which the *Hobbesii sententia de iustitia et iniuria* (*ING* I,7,13) is examined on the basis of *De cive* III,6 and *Leviathan* XV. Regarding this *sententia*, Pufendorf begins by noting that the thesis that there exists only a single type of justice – the one consisting of the *servatio fidei* and the *pactorum impletio* – is an epicurean thesis. He then argues that the hobbesian doctrine holding that injury, or unjust action or omission, is nothing but the violation of a pact, together with its corollary – injury cannot be done except to him with whom one has sealed a pact – derive 'from his well-known theory, that a right to all things has been given by nature; but he has stretched this right beyond its proper limits, in maintaining that without an agreement, whereby a man takes from his own right and transfers some of it to another, a man has the right to do whatever he pleases to another, and does him no injury, provided he observes only his own right'.

At the foundation of the hobbesian conception of injury, then, is the doctrine of the *ius in omnia*, since here it is argued that he who exercises his own right causes no injury, but, as long as he has not renounced his own right by a pact, he has a right to everything and therefore cannot cause injury to anyone. Consequently, it is on this key hobbesian thesis of the *ius in omnia* that Pufendorf's attention comes to rest. As he explicitly warns, he will analyse this

doctrine in depth in another place. For now, he offers a brief summary of that analysis, affirming that:

> This 'right to all things' can be extended only to mean, that nature allows a man to use all means, which sound judgement decides will tend to his firm and lasting preservation; and this use of reason Hobbes himself, chap. i, §7, posits in his definition of right. Now sound reason will never dictate that, out of pure wantonness, one should so affront another, that the latter cannot help being incited to have recourse to war, and to desire to return the injury. Furthermore, it certainly implies a contradiction to say that among a number of men with equal rights each has a right over everything and to everybody, since the right of one man over everything cannot avoid absorbing the rights of the rest, if it is to have any effect; and it is no less absurd to imagine a right which in turn has no effect against others. For in questions of morals, 'not to be', and 'to have no effect', are much the same thing. But what kind of a right is that which another has an equal right to resist? Who would say that I have a right to command a man, if he can, with an equal right, disregard my commands? or that I have a right to lay stripes upon another, if they can be returned upon me by an equal right, and that with interest? It is certain, therefore, that there is by no means any right for a man to do such things to another, and that he who does so, since he does it without right, does an injury. And, on the other hand, the second party has a right that such things shall not be done him by another; and when they have been, he has been injured. And so that right, the violation of which constitutes an injury, has not been acquired by a mere agreement with others, but has been bestowed by nature herself, without any interference of man. The statement is, therefore, untrue, that an injury can be done no one unless some agreement has been made with him, or something has been given him by way of a gift. (I,7,13)

As we see, in this passage the critical interpretation of the hobbesian *ius in omnia* deploys two arguments, linked verbally by the 'Furthermore' (*Deinde*). Let us begin with the first of these. It presents an interpretation of the ' "right over all things" must be carefully interpreted' (as Pufendorf himself said on another occasion[9]). Rapidly summarised here, this interpretation is argued at greater length in II,2,3 where it is a question of the rights that man enjoys in the state of nature. In this second passage, such rights are derived by Pufendorf as follows: from the inclination, common to all animate beings, to preserve their own body and their own life, and to repel by any means whatsoever threatens

to destroy these, it follows that those who live in the state of nature 'may use and enjoy everything that is open to them, and may secure and do everything that will lead to their preservation'; from those who live in the state of nature not being subject to the *imperium* of any other man, it follows that 'they use their own strength, to secure their own defence and preservation'. It is in this sense, continues Pufendorf, that the hobbesian assertions in *De cive* I,7 on the *ius in omnia* are to be interpreted:

> However paradoxical all this may seem at first glance, one can by no means conclude that a man has any licence to do whatever he pleases to any one he pleases, if one bears in mind that the man described by Hobbes in such a state is still subject to the rule of natural laws and right reason. But since such a licence is a vain thing, and could not be considered by any sane man a sufficient means for his continued preservation, it must be concluded that nature never has granted it. And if any man should presume to use it, he would find it fraught with great peril to himself. Consequently, the real meaning of what Hobbes has said is this: Nature put within the reach of all men the things which make for his preservation, before men divided them among themselves by agreements; and he who has no superior can of his own will, and at the dictate of sound reason, do whatever will work for his continued preservation. (II,2,3)[10]

As we see, whether in I,7,13 or in II,2,3 the interpretation of the *ius in omnia* as the right that men in the state of nature have to use all the means that reason judges useful for their self-preservation is grounded in the consideration that Hobbes himself 'posits [this use of reason] in his definition of right', or, as is said in the second passage, that 'the man described by Hobbes in such a state is still subject to the rule of natural laws and right reason'.

The meaning of Pufendorf's consideration was totally misunderstood by the great Barbeyrac. In creating the drama of Pufendorf as the supporter of *recta ratio* as an infallible and universal faculty, versus Hobbes as the supporter of *recta ratio* as the individual act of reasoning linking the means to the end[11] – in which he was followed by many lesser interpreters – Barbeyrac was the first to claim that:

> As he himself puts it in a note on §1 of Chapter 2, unlike others, Hobbes understands by right reason not an infallible faculty but an act of reasoning, that is, the true and proper reasoning that everyone applies to his own actions, which may entail the utility or the detriment of others. If we ask him what this true reasoning is, he replies that it rests upon the

> principles he has established in the previous chapter, §2,3,4,5,6 and 7, in other words on the state of war in which he supposes all men stand in natural relation to others [...]. Thus we see that, according to Hobbes, everything reduces to the individual judgment, well or ill founded. This appears clearly when he argues without reservation that, no matter how a man acts towards a person with whom he has made no agreement according to some convention, he does him no *wrong*.
>
> Note 1, *Droit de la nature et des gens*, II,2,3

With this observation Barbeyrac misunderstood Pufendorf's intentions in a dual sense. In the first place, Barbeyrac failed to grasp that far from counterposing an infallible *recta ratio* (right reason) to the calculation of the means appropriate to self-preservation, Pufendorf was aiming to show that, by remaining fully committed to such a calculation, no *homo sanus* would consider the *licence to do whatever he pleases to any one he pleases* 'a sufficient means for his continued preservation', and that he who, despite this, would want to exercise that *licentia* 'would find it fraught with great peril to himself'. In fact, that Pufendorf understood the *recta ratio* as a valid calculation of the appropriate means of attaining the aim of self-preservation is confirmed in the passage at I,7,13, which is the main object of our analysis, in the point in which it is said that 'sound reason will never dictate that, out of pure wantonness, one should so affront another, that the latter cannot help being incited to have recourse to war, and to desire to return the injury'.

In the second place, Barbeyrac misunderstood Pufendorf because he believed the latter had not realised that the hobbesian thesis according to which in the state of nature one cannot cause injury save to him with whom one has sealed a pact derived directly from an interpretation of the *recta ratio* as the judgment of each, whether or not well founded. In fact, it was precisely because he had perfectly recognised this that, in the process of refuting this hobbesian doctrine, Pufendorf appealed to the other interpretation of *recta ratio* that he also found in Hobbes. This was the interpretation that led the English author to distinguish true from false reasoning in determining what was necessary to one's self-preservation (*De cive* II,1, note), thence leading him to affirm that there are certain forms of conduct that cannot in any circumstance be invoked in the name of the necessity of self-preservation (*De cive* III,27 note). And this is why, in order to refute the hobbesian doctrine of *iniuria*, Pufendorf had to refute its foundation (or the interpretation of the *recta ratio* as the calculation of one's own interests, whether or not well founded). Choosing one Hobbes over another, he thus adopted the interpretation of the *recta ratio* as the *precise* calculation of the means appropriate to attaining the

end of one's self-preservation that was present (as much and perhaps more than the alternative interpretation) in the hobbesian system.[12]

The first of the two arguments in which criticism of the *ius in omnia* is articulated in the passage of *ING* I,7,13 thus makes concrete in the most evident way what we have previously termed the method of privileging one aspect of Hobbes's doctrine over another. The second of the two arguments deployed in the passage in question (the one introduced by 'Furthermore') reveals instead in its unfolding – and this is illuminated in other more explicit passages – what we have called the attempt to go beyond Hobbes.

In this second argument Pufendorf reasons as follows: given more men having equal right, it is contradictory to affirm that to all is due a right over all and to everything, because the right of one to everything, if it were to have any effect, 'cannot avoid absorbing the rights of the rest'. If, on the other hand, there is no consequent effect on the others, it is absurd to speak of a right, given that 'in questions of morals, "not to be", and "to have no effect", are much the same thing'. Thus, if I have a right against which others can resist with an equivalent right, what I have is not a right. Now, if this argument is taken in the bare form summarised here, it is tempting to see in it nothing but the dramatising of an observation already made by Hobbes himself: the observation in *De cive* I,11 according to which the *ius in omnia* common to all men in the state of nature is of no utility to them insofar as 'the effects of this *Right* are the same, almost, as if there had been no *Right* at all'.[13] But if we look at this argument in a different formulation, we discover it carries other, and deeper, implications.

Let us therefore take the passage in *ING* III,5,3 which returns to the *ius in omnia* so as to refute the hobbesian thesis that the transfer of right consists solely of non-resistance. In this passage, Pufendorf asserts that, for man in a state of nature, he does not recognise a *ius in omnia* which has 'an effect in turn on other men' and justifies this claim as follows:

> That this may be understood more thoroughly, it must be recognized that not every natural faculty to do something is properly a right, but only that which concerns some moral effect, in the case of those who have the same nature as I. Thus, as in the fables, the horse had a natural faculty to graze in the meadow, and so had the stag as well, yet neither of them had a right to this, because their respective faculties did not concern the other. In the same way, when a man takes inanimate objects or animals for his use, he exercises only a purely natural faculty, if it is considered simply with regard to the objects and animals which he uses, without respect to other men. But this faculty takes on the nature of a real right, at the moment when this moral effect is produced in the rest of mankind, that other men

> may not hinder him, or compete with him, against his will, in using such objects or animals. Of course it is absurd to try to designate as a right that faculty which all other men have an equal right to prevent one from exercising. Now we admit that man has by nature a faculty to take for his use all inanimate objects and animals. But that faculty, thus exactly defined, cannot properly be called a right, both because such things are under no obligation to present themselves for man's use, and because, by virtue of the natural equality of all men, one man cannot rightfully exclude the rest from such things, unless their consent, expressed or presumed, has let him have them as his very own. Only when this has been done, can he say that he has a proper right to the thing. To state it more concisely: A right to all things, previous to every human deed, must be understood not exclusively, but only indefinitely, that is, not that one man may claim everything for himself to the exclusion of the rest of mankind, but that nature does not define what particular things belong to one man, and what to another, before they agree among themselves on their division and allocation.

We cite this long passage in its entirety because it provides clarity on what appears less evident in the second argument deployed against the *ius in omnia* in 1,7,13. It clarifies that the thesis advanced there – according to which it makes no sense to award the status of right to that faculty whose exercise can be impeded by all those bearing an equal right – is tightly bound to a distinction of great weight in Pufendorf's thought. This is the distinction between a mere *natural faculty to do something* and the *nature of a real right* whereby *a moral effect is produced in the rest of mankind*, an effect consisting of the duty of other men not to impede the one who has the right to exercise that right.[14]

§2 *The Doctrine of 'Moral Entities'*

That this same distinction is one of the keystones of Pufendorf's system becomes immediately clear to anyone who considers that it is nothing other than one of the modes in which the doctrine of moral entities finds expression. This is so, less in the sense (nonetheless true but banal) that for Pufendorf *ius* is a moral entity (1,1,19–20) – in particular one of those belonging to the class of operative moral qualities (or affective modes) – than in the sense that the doctrine of moral entities is nothing less than a grandiose variation on the theme of ineradicable difference of ontological status that runs between the world of 'natural (or physical) things' (that is to say attributes, qualities, capacities, conditions, actions) and the world of those attributes that are *superimpositii* to these and to which our author gives the name of *moral entities*. In order

to demonstrate that this is the ultimate sense and the central nucleus of the doctrine of moral entities, it suffices that we recall the presentation Pufendorf gives of this doctrine at the start of his major work.

The *De iure naturae et gentium* therefore opens with the assertion that the duty of the *philosophia prima* has been to 'give the most comprehensive definitions of things and to divide them appropriately into distinct classes, giving in addition the general nature and condition of every kind of thing'; but, our author continues, while the practitioners of this discipline have adequately fulfilled this programme as far as the class of natural things is concerned, the class of moral entities has not received equivalent care (I,1,1). In fact, just as all the things that compose the universe consist of the principles that the Creator assigned to them to constitute its very essence, so too each thing has its own affections that express themselves in certain actions that we call natural, to the extent that they are modes and acts deriving from forces innate to things. If, however, we consider men, we see that two capacities were granted to them: the capacity to understand things, to compare each with each, to sift the known from the unknown, to assess their reciprocal convenience; and the capacity not to be constrained to exercise one's own acts always in the same manner, but to be able to activate, suspend or moderate these as seems opportune. As well as these two faculties, men have also been given the means with which to sustain and direct them. Now here, Pufendorf continues, what matters is not to preoccupy oneself with those means that sustain and direct the first faculty, rather what matters is 'how, chiefly for the direction of the acts of the will, a specific kind of attribute has been given to things and their natural motions, from which there has arisen a certain propriety in the actions of man, and that outstanding seemliness and order which adorn the life of men' (I,1,2).

These are the attributes to be deemed *entia moralia* by Pufendorf, the formal definition of which is thus the following: 'certain modes [qualities], added to physical things or motions, by intelligent beings,[15] primarily to direct and temper the freedom of the voluntary acts of man, and thereby to secure a certain orderliness and decorum in civilized life' (I,1,3). As we see, moral entities are something other than physical entities, and their difference is reaffirmed by the final characterisations that Pufendorf provides to distinguish them from physical entities. For instance, while the latter are created, the former are produced by an *impositio*; indeed, they do not originate from principles intrinsic to the substance of things, but are 'superadded, at the will of intelligent entities, to things already existent and physically complete, and to their natural effects, and, indeed, come into existence only by the determination of their authors' (I,1,4). What is more, their mode of operation does not consist in producing, by their intrinsic efficiency, some physical motion or change in things,

but rather in demonstrating to men the way in which they must constrain their freedom of action so as to make them apt for receiving some advantage or disadvantage, or else for performing, with regard to others, certain actions that produce a particular effect.

In its principal lines, this is the pufendorfian doctrine of moral entities. This rapid recapitulation ought to suffice to convince the reader that the distinction between the natural faculty to act in a certain manner and the properly termed right to act in that manner, which is the foundation of the passage transcribed above from III,5,3, is none other than one of the many exemplifications furnished by Pufendorf of the more general gap between the world of nature and the moral world, a gap that constitutes the motivating inspiration of this doctrine.

Once this is said, it is easy to recognise that our first impression in reading the second passage in I,7,13 – namely our sense that Pufendorf's assertion that a right that does does not produce an effect on others is not a right could be traced to a very similar hobbesian observation – was partial, almost to the point of inadequacy. This is partly because in bringing that assertion back to the domain of the moral entities doctrine we have linked it to one of the aspects of Pufendorf's thought traditionally (and correctly) considered the one where his originality was at its maximum.[16] But it is also and more importantly because, in the anguished and constantly renewed attempt to ground the difference between *natural* faculties, capacities and powers and *moral* faculties, capacities and powers, what we have called the pufendorfian attempt to go beyond Hobbes finds its most explicit expression.

§3 *The Notion of 'Obligation'*

On this foundational effort it is therefore appropriate to pause, seizing it in what is one of its privileged sites of action: that is, the elaboration of the notion of *obligatio*. As Pufendorf observes, in discussing the moral norm he was in some way forced into this elaboration by virtue of the very definition of law that he accepted. Having indeed defined law *as the decree of the superior imposing obligation on the subject* (a definition which, let it not be forgotten, we have already shown to be of a hobbesian stamp), he found himself confronted by the necessity to clarify 'the nature and source of an obligation' (I,6,5).

In Chapter 1 of Book One, *obligatio*, together with *ius*, had already been placed in the doctrinal field of moral entities, situated among the operative moral qualities and defined as that quality 'whereby one is required under moral necessity to do, or admit, or suffer something' (I,1,21). In Chapter 6, in the context of discussing law, some important points relating to the nature of obligation are clarified. In the first place, it is observed that the brake that

obligation applies to our freedom of action is a moral brake, or such as not to stop our will being able to conduct itself differently from how obligation demands, *saltem de facto et suo pericolo*. In the second place, we observe that obligation is differentiated from the other reasons that bend our will in one direction rather than another, because, while these latter 'bear down the will as by some natural weight, and on their removal it returns of itself to its former indifference, while an obligation affects the will morally, and fills its very being with such a particular sense, that it is forced of itself to weigh its own actions, and to judge itself worthy of some censure, unless it conforms to a prescribed rule' (I,6,5). This moral affection that obligation brings to will, filling it with the sense of meriting an evil if it does not conform to the prescribed norm, is, as our author immediately makes clear, precisely that in which

> obligation differs in a special way from coercion, in that, while both ultimately point out some object of terror, the latter only shakes the will with an external force, and impels it to choose some undesired object only by the sense of an impending evil; while an obligation in addition forces a man to acknowledge of himself that the evil which has been pointed out to the person who deviates from an announced rule, falls upon him justly, since he might of himself have avoided it, had he followed that rule. (I,6,5)

Obligation, then, is differentiated from coercion because the evil that the latter threatens only touches the will extrinsically, while we recognise ourselves worthy of the evil threatened by the former. As our author will say on another occasion, the principal difference between obligation and coercion is that, in coercion, 'the mind is forced to something by mere external violence contrary to its intrinsic inclination, while whatever we do from an obligation is understood to come from an intrinsic impulse of the mind, and with the full approbation of its own judgement' (III,4,6).

§4 *The Notion of 'Superior'*

Thus far the pufendorfian response to the issue: 'quid sit obligatio'. As for the question: 'unde obligatio oriatur', this returns us, since 'obligation is properly laid on the mind of man by a superior' (I,6,9), to the problem of who is the *superior*, that is, to the problem of 'how one can, by virtue of one's power, charge something upon another' (I,6,5). In Pufendorf, this, the notion of the superior, is one of those conceptual nodes in which so much of the fate of his system of natural law and of his relation with Hobbes is at stake. In fact let us not forget that Pufendorf's ambition was to establish the specificity of ethics and

the universal validity of its precepts while keeping to hobbesian premises. His problem was thus that of succeeding in justifying the compulsory force of the law of nature but without, on the one hand, reducing it to civil law and, on the other hand, without declining to explain its compulsory force in terms of the command of a superior. To this end it was a matter of elaborating a doctrine of the *superior* that was capable of encompassing within itself both the notion of a human superior and that of a divine superior. So let us see if he achieved his intention.

Superior, says Pufendorf, is he,

> who has both the strength to threaten some evil against those who resist him, and just reasons why he can demand that the liberty of our will be limited at his pleasure. For when a person has such power, after he has once signified what reward awaits those who obey his will, and what evil consequences those who resist it, there must necessarily arise in the faculty of reason a fear mingled with reverence, a fear occasioned by such a person's power, and a reverence arising from a consideration of the causes, which should be sufficient, even without the fear to lead one to receive the command on grounds of good judgement alone. We are of the opinion, consequently, that the right to lay an obligation upon another, or, in other words, to command another and to prescribe laws, arises not merely from strength alone [...]. Strength alone, of course, can so move me contrary to my inclination, that I should prefer to obey another's will for a while; rather than experience his power. But when that fear is once gone, nothing prevents me from following my own desire rather than his. And when a man can show no other reason but force, why I should order my ways according to his desire, I am in no way prevented, if it seems to me to suit my ends, from trying in every way to shake off his power and assert my liberty. (1,6,9)

Now, if for the moment we set aside the *pars construens* of this passage (the part in which the requisites necessary to create a superior are delineated) and focus on the *pars destruens*, we see how Pufendorf comes to deny that the right to impose an obligation can come from force alone by appealing once again to the fundamental difference between obligation and coercion. As he says, acts of force alone lead to my preferring, against my wishes, to choose to obey the will of another rather than experience the effect of his force on me, but they do not stop me – insofar as I regard it as fitting my interests – from trying every way to recover my freedom. Pufendorf's disproof of the theory that the right to prescribe laws rests on naked force is thus just one of the many logical

consequences of the doctrine of moral entities. Given the ineradicable difference between the world of values and the world of facts, it is never possible to derive moral faculties directly from physical faculties. Furthermore, what also follows from this doctrine is Pufendorf's denial that 'the right to lay an obligation on a person, who has in himself the ability to direct his actions, can spring from mere superiority of nature' (1,6,11). Indeed, against any such possible grounding of the right to command others Pufendorf argues that the scale of the grades of perfection and the relative subordination of the natural substances is one thing, while the subordination established between superior and inferior, between he who obligates and he who is obligated, is quite another.

But if the logic of the theory of moral entities led Pufendorf to exclude naked force as an adequate foundation of the right to govern others, he was also led to this conclusion by a reason more directly connected to his relations with Hobbes: the necessity – vital to his own system – of refuting the hobbesian affirmation that 'God in his *naturall Kingdome* hath a Right to rule, and to punish those who break his Lawes, from his sole *irresistable power*' (*De cive* XV,5, p. 185). That such a necessity was vital to the pufendorfian system is immediately grasped as soon as we recall that in this system the law of nature carries a force of obligation only insofar as it is commanded by that superior that is God. But if God's right of superiority over men rests on his irresistible power, then his law is none other than the law of the strongest. This equates to admitting, at the very root of the system proposed to refute it, the doctrine – traditionally exemplified by the speech of the Athenian legate to the Melii (Thucydides V,105) and by that of Callicles (Plato, *Gorgia* 483 a-b)[17] – that the law of nature is nothing but the law of the strongest. Thus to refute the hobbesian doctrine whereby 'men were under obligation to render obedience to God because of their weakness' (1,6,10), Pufendorf reconstructs the hobbesian reasoning in such a way as to bring out how, once again, its key is the doctrine of the *ius in omnia*. Indeed, according to Pufendorf, such reasoning is articulated as follows: by nature, each individual has a *ius in omnia* that includes a 'right to govern over all'. This right was abolished by the reciprocal fear resulting from the equality of strengths that would have led to a war deadly for humankind. But if someone had by his power so overwhelmed the others as to make it impossible to resist him even by combining their strengths, the latter would have had no reason to renounce the right granted them by nature, but would have conserved it 'because of excess of power'. It follows that for those whose power is irresistible, and thus for omnipotent God, the *ius dominandi* derives from power itself.

With the hobbesian reasoning reconstructed in this way, it was a matter of taking a stance on the thesis of the *ius in omnia*. To this end, Pufendorf adopts

the procedure that is now familiar to us: the 'careful interpretation' of Hobbes's text, drawn to restore its *sensus sanus*. Pufendorf thus engages in the detection of certain principles, of certain distinctions that Hobbes himself, whether aware of them or not, puts to work in his reasoning; principles and distinctions that our author to his credit has illuminated by bringing a conceptual depth to bear. Indeed, Pufendorf observes:

> And further, the statement that 'Nature has given to all a right over all things', must be carefully interpreted. By right is meant the liberty for one to use his natural faculties according to sound reason. Therefore, the real meaning of his principle will amount to this: By nature, that is, in a state where there is no law, each man may use his natural strength against whomsoever his reason says it should be used, and especially for self-preservation. But it does not follow that a man can, by his natural strength alone, properly lay an obligation, in the strict sense of the word, upon another. To force a person, and to obligate him, are very different things; the former can be done by natural strength alone, but not the latter. For even Hobbes feels that, in a natural state, just as one has the right to force others, so others have the right to resist. And obligation cannot square with the right to resist, for an obligation presupposes such causes, as intrinsically affect the conscience of a man, that he does not judge by the use of his own reason that he can rightly, and therefore justly, resist. And although it is unreasonable to strive in vain against the power of a superior, and so run the risk of meeting with a greater evil [...], one still has the right to try every recourse, in the hope that another's force may be shaken off even by force, or avoided by subterfuge. But this cannot be reconciled with an obligation, in the proper sense of the term, and as Grotius has used it in his work, as opposed to 'extrinsic' obligation. And so bare force does not remove the right to resist, but only the exercise of that right. This can be made clear by an example from the animal world, with which we men live in a state without law. Whatever animals we can overcome by our strength, we break and use in our service. But if any have in some way been able to resist our strength, no man complains that he has been wronged by one of them. And one cannot reply that animals are incapable of receiving an obligation, and so can be restrained only by force, for Hobbes himself acknowledges, De Cive, chap. viii, § 2, that a prisoner of war, although undoubtedly capable of an obligation, is under no bonds of obligation, so long as he is restrained by natural bonds alone, before an agreement and pledge have been given, and so such person can take to flight, or even use force against his captor, whenever he finds

> a convenient opportunity [...]. And so for these reasons, and because it does not seem consonant with God's goodness, we hold that the right to command, that is, the power of God, in so far as it denotes the power of imprinting an obligation in the minds of men, should in no way be derived only from His bare omnipotence. (I,6,10)

Regarding this passage, we will not stop with the observation that, yet again, the reason for which the *ius in omnia* cannot engender obligation but only coercion is that it is a natural faculty: that of using one's natural strengths for one's own preservation. Nor will we content ourselves with noting the point that 'obligation presupposes such causes as intrinsically affect the conscience of a man', and that it cannot rest on bare force because 'bare force does not remove the right to resist, but only the exercise of that right'. On all this, in fact, we have already dwelt at length. More interesting is to stay with that instance of the pufendorfian method, consisting of 'recalling Hobbes to his own principles', that involves the case of the prisoner held only by natural bonds. Indeed, Pufendorf observes that this is a case in which even Hobbes is constrained to recognise that force alone is not enough to create an obligation as, by his own admission, if promises and pacts are not involved, that prisoner has no obligation not to escape or not to kill his keeper. Concerning this pufendorfian method, it is in fact worth the trouble of recalling another passage, materially at a considerable distance (we are in VIII,4,13) and yet conceptually quite close to the one we are examining.

In the paragraph in question, Pufendorf proposes to refute the hobbesian thesis, defended in *Leviathan* X, according to which force is the sole foundation of the honour bestowed on someone. This would be demonstrated by the example of the ancient pagans, who, in attributing to the gods grandiose deeds and daunting actions, believed they were bestowing the highest honour on them, no matter how unjust or even vile these actions were. Pufendorf objects to such a thesis:

> That power alone, without any union with goodness, is a true foundation of actual honour, is opposed both to Hobbes himself and to sane reason. For the same writer in his *De Cive*, chap. xv, § 9, defines honour as nothing else but an opinion of another's power joined with goodness, and therefore 'three passions do necessarily follow *honour*, *love*, which refers to *goodness*; *hope* and *fear*, which regard *power*.' In other words, that is true honour which is attended by those three joint emotions. Fear alone, as aroused by a power determined upon evil, can in no way be held a proof of honour, since it always carries hatred with it, and whoever

> fears another would encompass his ruin. [...] Thus we Christians are convinced of the great power of the devil, yet that is such a power as is wanting in goodness, and is bent only upon evil, while no man in his senses would consider that personage worthy of honour on this score. (VIII,4,13)

As we have said, this passage is conceptually cognate with the one at I,6,10 with which we are dealing, whether because it signals the return of that method consisting of setting Hobbes against Hobbes that we observed in the latter, or else and above all because the problem of whether the honour bestowed on someone depends on force alone or not is closely connected to the problem we are analyzing of the foundation of God's superiority over men. On the other hand, that Pufendorf in addressing the problem of the foundation of honour was thinking precisely of the relation between God and men is demonstrated by the examples on which he draws to illustrate his thesis (the pagan gods, the devil), and is evident, furthermore, if one simply thinks honour is owing to God, as superior. In the terms of the last passage cited, man must honour God for his power and his goodness, requirements that thus appear here to be those that constitute the superior, at least the superior that is God.

But this returns us to the problem of what, for Pufendorf, is the foundation of the *ius alteri imperandi* (right to command another) and, therefore, of what are the requirements that must be met if superiority is to be granted. Indeed, it is not enough to have shown, against Hobbes, that this right cannot be grounded in force alone, because it would otherwise be impossible to distinguish between obligation and coercion (a distinction, moreover, that Hobbes himself sometimes draws). Having shown this, it still remains to investigate what justifies the *ius alteri imperandi*, other than force (or, if you prefer, power). So the moment has come to examine the *pars construens* of the passage in I,6,9 cited above. Here, the *superior*, the true *superior* (the one who holds the *ius imperandi*) is he who not only has the power to threaten injury to whomsoever opposes his will, but who has *just causes* to ask the subordinate to circumscribe his own freedom by his own will. When both of these conditions are met – and he in whom this happens manifests his will and shows the one who obeys what good awaits him and the one who disobeys what ill is in store – then *in facultate rationis compote* (in the faculty of reason) there is necessarily born a fear tempered by reverence (the sentiment of obligation): where the fear is born from consideration of the power of the superior and the reverence from consideration of the causes which, independently of the fear, by way of advice, had to be sufficient to induce the subordinate to embrace the will of the superior.

Thus far the passage in I,6,9 does not yet tell us what might be the causes that would justify the request that others conform their will to ours. The

following passage, however, tells us this: 'One must surely agree that mere strength is not enough to lay an obligation on me at the desire of another, but that he should in addition have done me some special service, or that I should of my own accord consent to his direction' (1,6,12). As we see, for us to feel obliged to bend our own will to that of another, in addition to the consideration of the other's power, it is necessary either that clear benefits have been received from him, or that we have spontaneously subordinated ourselves to his guidance. It is these two reasons, then, that shape the *just causes* invoked by Pufendorf, in addition to power, as the indispensible requirement for creating the *superior*. According to Pufendorf, *superior* will therefore be only he who – given the requirement his power to make his will respected remains in place – either has already received the spontaneous submission of the subject, or who has already conferred *insignia bona* (some special service).

These, then, are the two sources of the *ius imperii*. No great insight is called for to recognise in them, respectively, the foundation of the human *imperium* and the foundation of the divine *imperium*. That the human *imperium* in any of its forms (that of the father over the sons, of the master over the servants, of the sovereign over the subjects) is born only in virtue of consent is a too well known pufendorfian doctrine for any doubt to arise concerning it. That the *insignia boni* are the foundation of God's *imperium* over men is what Pufendorf himself tells us in the passage that follows the one just cited:

> For no man can well avoid having respect for the one from whom he has received many favours, and so if it appears that the same person wishes me well, and can take better care for my future than can I, and he also claims at the same time a right to direct my acts, there is no apparent reason why I should wish to question his power. And this is all the more true if I am indebted to him for my very being [...]. And why should not He, who gave man the power of free action, be able from His own right to limit some part of man's liberty? (1,6,12)

Indeed, it is evident that he who wishes me well, who can provide for me better than I can for myself, to whom I owe my existence as well as the possibility of acting freely, such a one is God and can be none other than God. From this it follows that the *just causes*, the foundations of the *imperium Dei in homines*, are those specified above.

Did Pufendorf succeed, in this way, in truly establishing God's superiority over men? If we reconsider the causes adopted by Pufendorf as justification of God's claim to govern men, we see they reduce, (a) to God's capacity to provide

for men better than they can do for themselves, and (b) to God's having so benefitted men that they owe him even the supreme benefit of being free agents. However, as to the first cause, we already know from the passage at I,6,11 that 'since the man upon whom an obligation is to be laid, has in himself the ability to direct his action, which he can feel is enough for himself, there is no apparent reason why he should be held to be convicted without further ado by the dictate of his own conscience, if he orders his life at his own pleasure, rather than that of some other person whose natural endowment is greater'. This is a concept we find repeated in the discussion of the theory of the 'servants by nature'. In fact here is said:

> It is, of course, clear that some men abound in such mental equipment that they not only can look out for themselves; but can also undertake the direction of others, while others through stupidity are incapable of directing even themselves [...]. Yet it would be most absurd to believe that nature herself has, in fact, given to the more prudent rule over the more dull, or even any such a right, whereby the former can force the latter to serve them against their will [...]. For if sovereignty is established in fact, some human agency must precede, and a natural aptitude for ruling does not of itself give a man the rule over him who is constituted by nature only for servitude. Nor can I, without more ado, use force in imposing upon another what is good for him. (III,2,8)

And later: 'For there is scarcely a man so dull as not to think that his manner of life is more correct and advantageous when directed by his own wish, than when directed by the command of another'. From all these passages we gather clearly that the capacity to be able to provide better for others, or even to be more useful to them than they can be for themselves, does not of itself create *statim imperium in alios* (at once command over others).

True, to this objection Pufendorf could respond that, in denying that the capacity to provide better for others is sufficient ground for the *ius imperii*, he had in mind only the static natural quality of nature's superiority, not the solicited providence and active benevolence of God towards men (as shown, on the other hand, by the observation he makes concerning the epicurean gods).[18] But we could then raise a counter-objection that, on the one hand, Pufendorf's response is not adequate because, as shown in the passage at III,2,8, he did not have in mind only an abstract superiority of nature, but the actual capacity to be good and useful for others. And, on the other hand, we could say that, even taking his response as valid, the two reasons presumed to justify God's superiority over men (capacity to provide better and give

benefits) now reduce to just one: the benefits, precisely, that men have received from God or that they can expect from him. But are benefits capable of grounding the *ius imperii*?

If we consider the pufendorfian doctrine *de beneficientia* (III,3,15) we see that the benefactor, defined as he who,

> of his own good will and bent, from his own generosity, or from pity for another man's condition, does something for him without return, at considerable cost or labour to himself, whereby the other is aided in his difficulties, or else some considerable advantage is rendered him … .

This means that the benefactor can expect at most a *gratus animus* from the beneficiary, in other words a manifestation by the latter that the benefit had been well received, certainly not the submission and obedience owed to the superior. At most, we said, gratitude for a good reason: or because, for Pufendorf, although the obligation that rests with the beneficiary to show gratitude is much narrower than the obligation incumbent on the benefactor to grant benefits,[19] yet it is nonetheless not a 'perfect' obligation, insofar as 'an ungrateful mind does not of itself constitute an injury, since no right, in the proper sense of the term, is violated' (III,3,17). Thus, far from visualising the relation between benefactor and beneficiary as a relation between superior and subordinate, for the latter it does not reproduce even the most basic characteristic: that is, the fact of the right of the superior over the subordinate being a perfect right (the *ius imperii*) to which on the subordinate's part there corresponds a perfect obligation (the obligation to obey the commands of the superior). Indeed, neither does the benefactor have a perfect right to require gratitude from the beneficiary, nor in consequence does the latter have a perfect obligation to show himself to be grateful.

But (here we could be challenged with an objection), in the case of the benefits granted to men by God, it is not a question of normal acts of benevolence but of the supreme benefit: that of existence. And this is so true (the objection will continue) that in the passage at I,6,12 cited above not only is there explicit reference to our being debtors towards God for the very gift of existence, but in the same crucial passage at II,3,20 where the obligatoriness of the law of nature is grounded in its being commanded by God, there is an insistence on God being the *creator* and men being his *creatures*:

> It must, therefore, under all circumstances be maintained that the obligation of natural law is of God, the creator and final governor of mankind, who by His authority has bound men, His creatures, to observe it.

But once again (we will reply), for Pufendorf, can having created or generated someone be sufficient to make them a proper subordinate? And again we will have to respond in the negative: respond, that is, in the terms of the pufendorfian system – in which, among other things, the generation of children by their parents is likened, expressly, to the creation of men by God 'in that they bring into being one who before was not' (VI,2,1) – that generation is insufficient to found the *imperium* of the father over the sons: 'in our opinion generation alone is not sufficient for a claim to sovereignty over human issue' (VI,2,4). The conclusion of this analysis is that none of the reasons advanced by Pufendorf is sufficient to ground God's right of superiority over men.[20] The further conclusion we are thus forced to draw is that even the initial link in the deductive chain of his system of natural law is without support.[21]

Of course we know that Pufendorf (or his defender) could still object to us, as a final *ratio*, that the close examination to which we have at length subjected the legitimacy of the *ius imperii Dei in homines* is marred by a basic misunderstanding: that is, to have believed the relation between God and men could be thought with the same tools with which we think men's relations among themselves. Such an error on our part would be doubly unforgivable. First, this is because Pufendorf has taken so many pains to warn us that the relation God-to-man cannot be compared to the relation man-to-man. This applies both to justice, since divine justice does not follow the ways and norms of human justice, and also to promises, since God has no obligation towards man, not even that of keeping promises.[22] Second, it is because we have not noticed that the claim to treat God's benefits in the same terms we treat human benefits has allowed us to fall into the absurdity of ascribing to God an action *constans impensa aut opera laboriosa*.[23] This parallels our failure to notice that the reason why Pufendorf does not grant generation the dignity of founding parental authority – this being that the father creates a being equal to himself where rights are concerned[24] – cannot be applied to the creation of man by God.

And yet Pufendorf's hypothetical defender's fair considerations simply put the finger on the *punctum dolens* of the fundamental contradiction of Pufendorf's 'rationalism'. Either Pufendorf relegates God – as he has done many times – to the domain of faith and thus the ineffable, the domain of that which cannot be thought according to human parameters (which is like saying it cannot be thought of at all) but then God cannot be deployed as the fundamental ground of his system of values.[25] Or he uses God as the first link of the deductive chain by means of which there is an attempt to demonstrate the obligatoriness of the law of nature, but then the notion of

God, if it is to be a fundamental ground, is being treated in rational, that is, human terms.[26]

And in a certain way Pufendorf took this second route when he struggled to bring God's superiority over men back into the more general notion of the superior and to signal what the *just causes* legitimising that superiority are. Having been forced to deny, however, that, in the manner of human rule, agreement and pacts could be the just causes – for this would collapse the difference between human and divine sovereignty and also that between natural laws and positive laws – Pufendorf's second route was impassable, and his foundation of God's superiority over men is shown to be a tautology: God has *imperium* over men (that is, God is man's superior) because God is God and man is man (that is, because God is superior to man).

The fact that at bottom Pufendorf sometimes ended up thinking in these terms can be seen in the following example. Hobbes had held that atheism is a sin of ignorance (or more exactly an error rather than a sin), arguing that, in refusing to recognise the existence of God, the atheist can never have conferred sovereignty on God, and thus, not being under his reign, is not subject to his laws (*De cive* XIV,19 and XV,2). Note Pufendorf's response:

> But the statement that all government is based upon the consent of those who are governed is utterly false. For that is true only of human government, where our faculty to resist another, who is by nature our equal, is not taken away, except by our consent and agreement. But who would say that God has no right to command a creature of His, unless that creature had of his own will consented to His sovereignty? And even Hobbes, chap. XV, § 5, derives the right of God to rule and punish in the natural kingdom, from His irresistible power. Yet no one would believe that atheists can resist the power of God. (III,4,4)

In this passage what interests us is not so much how, once again, Pufendorf deploys his method of refuting Hobbes with Hobbes, but rather to note how the foundation of the divine rule is reduced to a rhetorical exclamation ('who would say that God has no right to command a creature of His?') in which the tautology that God rules men because God is God and man is man shows up again.

But this passage, with its insistence that divine rule cannot be based on agreement, gives us the chance to reflect a little more deeply on the problem of why Pufendorf refused to give a unitary foundation to the right of superiority, that is, to trace the origin of the divine rule, like that of the human rule, to the pact. The first reason that springs to mind is very simple, even if, given

Pufendorf's intentions, inescapable. From the moment that 'agreements [...] between God and men come from revealed religion, and not from natural religion' (III,4,4), that is, from the moment that the existence of such pacts is known only from revelation, to found God's rule over men on them is equivalent to renouncing the fundamental claim of his system: that is, the claim to separate natural law's obligation from revelation, and to treat natural law as adapted to the understanding of all peoples. This reason, however, touches only the surface of the question. In fact insofar as Pufendorf had renounced the desideratum of liberating natural law from revelation, and thereby sacrificing the underlying motive inspiring his whole work, he would not have gained much by such a sacrifice, since the problem would only have been displaced, not resolved. In fact, by admitting that every type of *imperium* is born from a pact, he would have avoided the thorny problem of finding a convincing foundation for the rule of God, but would not have resolved the even thornier problem of explaining what it is that gives the pact its obligatory force, that is, why *pacta sunt servanda*.

Concerning this, Pufendorf sometimes appears to lean towards the temptation to consider the necessity of complying with what we have ourselves established, as a sort of logical necessity not to contradict oneself,[27] rather than as a moral duty. Yet, in the main line of his thinking, it is beyond doubt that he considers that our decision, of itself, does not have the power to oblige us to comply with it.[28] This means, however, that the pact has obligatory force not insofar as it is a pact, but insofar as there exists a law that commands us to respect pacts, a law that (a painful vicious circle) cannot in its turn be founded on a pact. From this derives the necessity to recognise, alongside positive laws – a manifestation of the will of a superior who is made such by a pact – a law of nature that is the expression of the will of a superior who is not made such by virtue of a pact.

Pufendorf's insistent refusal to admit that the natural law is reducible to positive law does not, then, find its foundation solely (as we suggested earlier) in the wish to save the universality and eternal validity of moral values. Rather, and more radically, it arises from the awareness of the impossibility of being content with positive laws alone, be they divine or human, without, in this precise act, dismantling the foundation of their very validity. In his better moments Pufendorf understood all this. He understood that the problem was not that of renouncing the law of nature and being satisfied with positive laws, because in reality, in renouncing the former we strip from the latter the foundation of their obligatoriness, and in leaving the former for the latter, we end by losing both.

The occasion for Pufendorf to reflect on all this was, once again, the thought of Hobbes. Criticising the latter's thesis according to which just and unjust do

not exist prior to their determination in the civil laws (*De cive*, XII, 1), Pufendorf observes:

> But to say that before there were civil sovereignties, justice or injustice, defined by natural law and binding upon the consciences of men, did not exist, is really false.[29] … And, in fact, the very thing itself sufficiently disproves the position of Hobbes. He would have it that while those fathers of a family, by whose coming together states first arose, lived still separated, they acted like brute animals, observed none of the pacts entered into with others, and robbed others of their own right of life and property whenever they so pleased, while whatever they did was held indifferent […]. Nay, but on the contrary, we would reply, states could never have been formed, and when once formed could not have been preserved, had not some idea of justice or injustice existed before that time. For it is certain that pacts intervened in the establishment of states. But how could men have been able to persuade themselves that pacts were of any use at that time, had they not known beforehand that it was just to observe pacts and unjust to break them? And if it is not just to observe pacts before civil laws are defined, what is there to prevent subjects from throwing off obedience and destroying a state at their pleasure, and by that act doing away with the distinction between justice and injustice? For it would be idle for one to hope that so great a multitude of men could hold together forever by the force of mere violence and fear (VIII,1,5).

As we can see, with deep penetration and anticipating by centuries some famous interpretations of Hobbes's thought,[30] Pufendorf observes that, on close examination, for Hobbes too the obligation to comply with pacts, far from being founded on the civil laws, is itself what founds civil society and the laws deriving from it. In fact, by Hobbes's own admission, for states to be built there first had to be pacts; but how would men in the state of nature have been able to grasp the utility of forming pacts if, as Hobbes says, they were permitted not to respect them? Conversely, civil societies could be formed only because men already knew, before their construction, the power of pacts: that is, they knew it was right to respect pacts, wrong to disrespect them. What is more, Pufendorf concludes, whoever holds that a right and a wrong do not exist before their determination by the civil laws in fact does these laws the worst service. By taking away all foundation from the obligation to respect them, he makes the obedience due to them depend solely on the power of the sovereign and the fear inculcated by the latter, motives which, of themselves, do not succeed in keeping the brakes on a great multitude in perpetuity.

That Pufendorf's problem was how to locate the grounds of the obligation to comply with pacts – an obligation that cannot be grounded in human rule which, conversely, derives from it – is abundantly shown by the reasoning whereby he reaches the conclusion that 'under all circumstances it is to be maintained that the obligation of natural law is of God, the creator and final governor of mankind' (II,3,20). The argument runs as follows:

> But if these dictates of reason are to have the force of law, there is need of a higher principle; for although their advantage is most manifest, still it alone could never lay so firm a restraint upon the spirits of men that they could not forsake such dictates if they should find satisfaction in disregarding this advantage, or believe that they could better consult their own advantage in some other way. Nor can a man's will be so thoroughly restrained by his mere intentions that he cannot go opposite to it whenever he so pleases. And even if many men endowed with natural liberty should agree to keep those dictates, these will, none the less, abide only so long as the agreement of those men continues in force. Nor would the obligation cease only when all who had agreed to it should decide to give it up, whenever pacts are renounced by mutual disagreement but even while the compact stands there would be no power to enforce it since, as the case supposes, the aforesaid dictate of reason which maintains agreements has not yet taken on the force of law; and so each person concerned will be able to withdraw from such an agreement whenever he wishes, no matter though the other members disagree with him. Finally, the mere authority of men does not seem able to endow these dictates with the power of obligation. For since such authority can arise only by means of pacts, and pacts secure their force through law, it does not appear how any human authority could arise endowed with power to assert the force of obligation, unless the dictates of reason had beforehand the strength of law. Even if you should imagine that human government depends on the mere consent of men, and by this consent the observance of the dictates of reason is enjoined with the force of laws, they still would have no greater force than do positive laws, which in origin and duration depend upon the will of the legislator (II,3,20).

Regarding this passage, we will do more than underline how Pufendorf confirms yet again that the given fact, the *physical* fact so to speak, of the utility obtained from observing the rational dictate to be sociable, does not of itself imply a *moral* obligation matching that dictate. Rather, we will focus on what in it echoes the anti-hobbesian passage at VIII,1,5 already analysed. And we see

that here too Pufendorf says clearly that agreement, on its own, is not enough to give obligatory force to those dictates of reason, as long as the law compelling compliance with our agreements and pacts is not already in force. As he says, even human rule is unequal to this task, since this rule is in turn grounded in pacts, the obligatory force of which cannot therefore derive from that to which they give rise. Like the passage in Book Eight, this passage is therefore particularly lucid in recognising how the problem is not only, or so much, that of resisting the reduction of the laws of nature to civil laws, but rather and more radically that of grounding the very possibility of civil laws. Yet, in admitting albeit only as an improbable hypothesis something categorically excluded in VIII,1,5 – namely, that human rule can stand on a durable agreement obtained either through a near miraculous unanimity of minds or through fear – this gives the false impression that the problem is solely that of not reducing natural law to positive law.

For all the reasons laid out thus far, it was thus of vital importance for Pufendorf to locate the foundation of natural law's obligation or, better, having placed it in God, to locate the foundation of the obligation men have to obey God or the right God has over men. We have already seen how Pufendorf did not succeed at all in this task. Given its fundamental importance for his system and his mode of argument, however, it is necessary to stress how little this problematic node is thematised in his work, relative to the fundamental importance it has for his system and relative to our author's argumentational habits. Reconsidering the passages in which it makes an appearance, we cannot escape the impression that it really tried to surface in Pufendorf's awareness, only to then immediately sink into conceptual obscurity, without him truly succeeding in fixing it in its determinate exactness.

To have tolerated this zone of darkness in his thought had consequences for Pufendorf, particularly with regard to the point dearest to him: the demonstration of the law of nature's essential obligatoriness. Pufendorf had not succeeded in convincingly demonstrating the legitimacy of the claim of God's superiority over men. In feeling that the just causes men have to oblige obedience were too weak, Pufendorf was irresistibly drawn to promote the element of force in the right to rule, even though he had demonstrated against Hobbes its inadequacy as a foundation of law. Let us read the passage immediately following the one on which we have dwelt at length, a passage where it is explained which are the two sources – remarkable benefits and consensus – from which every *vis obligandi* is born:

> But because the natural liberty of the human will is not destroyed by any moral bond, and because also among the vast majority of mortals the

> inconstancy or wickedness is so great that they prevail over these reasons for command, something else is needed to control the wild passions of men, with a greater force than a feeling of shame and an appreciation of what is right. And this is all the more necessary because the wickedness of most men tends to injure others, for a man could be left to his devices more readily if his sin hurt no one but himself. Now we feel that nothing could have such an effect, but the fear of some evil to come, upon the breach of an obligation, from the hand of a stronger person, to whose interest it was that there should be no departure from that obligation. And so, in the final analysis, obligations get their stability from force, and from the consideration that the one who desires to procure their observance has so much power, either inherent in him or given him by others, that he can bring some grave evil upon the disobedient (1,6,12).

Taking this passage, we will see that the moral bond (that is, the obligation) created by the grounds of rule considered above seems to exist before the addition of the fear of some evil to come upon the breach of an obligation (1,6,12). With malevolent insight, Leibniz had located one of the weak points of Pufendorf's system precisely in the doctrine of the superior and in the ambiguous role played by 'power' and 'reason' in this system. In this regard, Barbeyrac was no doubt justified in responding that, after all, what Pufendorf could be rebuked for is at most 'that he ought to have better distinguished what properly gives the Superior the right to rule from what allows him to *rule effectively*'.[31] However, it remains true that, since in this passage the sense of moral obligation is toned down to the sense of shame and decorum, and since moral obligation does not appear to be acting at its full strength prior to and independently of fear, obtaining its stability finally from force, then ultimately Leibniz was not entirely wrong to observe that:

> if neither coercion without reasons, nor the latter without force is sufficient, why – I ask – when force ceases and reason alone remains, shall I not return to that liberty which it is said I had when, before the application of force, reason alone was present? … if reasons restrain even by themselves, why did they not already restrain by themselves, before fear arose? And what force, I pray you, can fear give to reasons, except itself – which it would not itself provide even without reasons?[32]

To have been led irresistibly to reintroducing the element of fear, so that obligation can be deployed to its full extent,[33] has disastrous consequences for the law of nature. If we want the law of nature to have the binding force of

law, we are forced to seek its sanction (that which provokes fear), and failing to find such a sanction, we end by shrinking the force of obligation down to a mere semblance. This, of course, is an unwanted consequence of Pufendorf's thinking, which, on the contrary, in its explicit moves does not fail to place its whole emphasis on the obligatory force of natural law.[34] But let us look at the implicit moves, starting, precisely, from the problem of natural law's sanction.

§5 *The Sanction of the Law of Nature*

The problem of the sanction of the law of nature emerged as a direct consequence of the re-evaluation of the element of force in the superior, as, according to Pufendorf,

> just as he who is going to direct by laws the actions of another, must meet two requirements: first, that he himself know what should be prescribed for another, and second, that he have the power to inflict some punishment, if that man does not conform to his command (assuming that the object of the law has the power and desire to disobey the orders); so every law has two parts. The first defines what must be done, or what must be avoided; the second states what punishment is proposed for him who fails to observe the positive command, or does what is forbidden. The latter part is usually called the sanction (I,6,14).

Thus, since the natural law, if it too wants to be law in the full sense, must carry a sanction, it was a matter of determining what, in the law of nature, the sanction ever was. In Part 2 of this essay we shall see how and why in the second edition of the *De jure* Pufendorf drew close to Cumberland's thesis on this question, underwriting the high valuation placed by the English author on the so-called *premi e pene naturali*, that is, on the consequences, good or bad, that generally *per naturalem consecutionem promanant*, respectively, from the actions commanded and the actions forbidden by the law (II,3,21). It remains the case, however, even in the second edition, that, despite all that can be granted to the importance of the good or bad consequences of respecting or violating the law of nature, the only punishments in the true sense are those arising,

> from sins upon the special determination and disposal of a legislator, not from a line of natural effects; and in this case the quality, degree, place, and time of the evil depend upon the will of the legislator. (II,3,21)

Thus it is solely a matter of these authentic punishments when reference is made to the sanction contained in the law. It follows from this that 'There

remains, therefore, the question whether in addition to these natural effects of evil actions, and those which spring from the sanction of civil laws, there are still others framed by the will of God, to be exercised, as it were, by his sovereign hand; or whether natural laws are sanctioned by God with a further arbitrary penalty'. Despite the appeal to the sayings of the Holy Scriptures and to 'the very ancient belief, found among most peoples, of the divine Nemesis and the punishments of the lower world', Pufendorf's answer to this question in the second edition remains the same as in the first, namely somewhat confused but substantially negative, while failing to determine, in the light of reason alone, what the sanction of natural law is:

> But since such a priori reasoning does not seem to carry full proof, but only a high probability, and since such an arbitrary penalty presupposes a positive determination of the divine will, which can scarcely be apprehended without a definite revelation of God, and since an induction or proof from experience is as yet imperfect, we cannot avoid having to confess, that for those who follow the mere light of reason this question is still involved in obscurity. (II,3,21)

From this 'imperfection' of the law of nature flows Pufendorf's substantial ambiguity in maintaining the perfect obligatoriness of its precepts that he nonetheless proclaims so many times.

§6 *Of What Type is the Obligation of the Law of Nature?*

If we want to try to understand what the force is that Pufendorf reserves for natural obligation, we must examine III,4,6 where, having defined the *obligatio naturalis* as that which 'binds only by the force of natural law', he proposes to locate its effectiveness. This is to be considered, according to Pufendorf, either in the one in whom the obligation inheres as in the subject of the obligation, or in the other to whom it refers. The effectiveness that natural obligation exerts on the subject 'consists principally in the fact that it binds the conscience of a man', or, as we might clarify it, insofar as he feels himself obliged to observe the divine law. On the one hand, the effectiveness that natural obligation produces in him to whom something is validly owed, is that he receives and rightly takes possession of what is given him as his due. On the other hand, if 'the other party ignores or refuses to comply spontaneously with the obligation' in that case the one who is owed can require in two ways what has been denied him:

> For such things as natural law commands one man to show another, before any agreement has passed between them, such as the duties of

> charity and humanity, can be required only by peaceful means, as by persuasion, admonition, request, or entreaty. But it will not be allowable to use force against a person who persists in his refusal, unless it happen that extreme necessity impels us. [...] But if what is owed by an agreement is not forthcoming, force may be used to extort it. In the same way we may defend any of our possessions by force, when another man inflicts injury upon them. (III,4,6)

If we recall how Pufendorf had distinguished in I,7,7 between what is owed to us *ex iure perfecto* and what is owed to us *ex imperfecto*, then this is the same as saying that the effect of the natural obligation on its receiver is to create in him an *imperfect right* to what the natural law commands be granted him independently of a pact (the *officia caritatis et humanitatis* for example), but a *perfect* right to what is owed to him by virtue of a pact, as well as the right to defend what belongs to him.

But if we continue to pursue the relation which, according to Pufendorf, binds right and obligation and, to this end, we return to all he had said on the notion of right in I,1,20, we see that there, in putting right either among the active moral qualities (as *by virtue of it something can be demanded of another*), or among the passive moral qualities (insofar as it *enables a man lawfully to receive something*),[35] our author had distinguished three kinds of passive moral qualities:

> The first is that whereby we properly receive something, in such a way, however, that we have no power to demand it, nor is there any obligation on another to render it. Such is the ability to receive a gift that is purely gratuitous [...]. The second is that whereby we are capacitated to receive something from another, not in such a way that it can be extorted from him against his will, unless a chance necessity requires it, but only in so far as he is obliged by some moral virtue to give it [...]. The third is that whereby we are able to force a man, even against his will, to the performance of something, and he himself is fully obligated to such performance by a specific law that prescribes a definite penalty. (I,1,20)

Now, if we use this passage to look further into the significance of natural obligation in light of the passage in III,4,6 quoted above, we see that the first kind of passive moral quality cannot be of any use in illuminating III,4,6 because here it is a question of the effects of natural obligation, whereas to the first type of passive moral quality, on either side, there corresponds no obligation.

There remain the second and third types, in which it is easy to recognise, respectively, the imperfect right and the perfect right of the passage in III,4,6, illustrated (as we did above) with that of I,7,7. The natural obligation enjoined by natural law *citra antegressum pactum* ('before any agreement has passed') corresponds to the imperfect right of III,4,6, while – in parallel – the other party's being held to give us something 'by some moral virtue' corresponds to the imperfect right of I,1,20. Likewise, the natural obligation backed by the pact corresponds to the perfect right of III,4,6, while the full obligation that flows from a law corresponds to the perfect right of I,1,20. From this, the force of natural obligation is deduced to be only the obligation to give something *ex virtute aliqua morali* (by some moral virtue) if no pact has intervened. However, it acquires the force of full obligation – that is, the obligation born 'by a specific law that prescribes a definite penalty' – only *pacto interveniente*. From this we further deduce that – contrary to what he most desired to show – Pufendorf ends up granting full obligatory force only to that which is owed by virtue of a pact, and not even to that to which we are obliged 'by nature herself, without any interference of man' (I,7,13).

Moreover, in Pufendorf's text there are certain 'indicators' of the fact that things tend irresistibly to shape themselves in this way. See, for instance, the passage that follows the distinction drawn between what is owed to us by virtue of a perfect right and what is owed to us by virtue of an imperfect right:

> The reason why some things are due us perfectly and others imperfectly, is because among those who live in a state of mutual natural law there is a diversity in the rules of this law, some of which conduce to the mere existence of society, others to an improved existence. And since it is less necessary that the latter be observed towards another than the former, it is, therefore reasonable that the former can be exacted more rigorously than the latter, for it is foolish to prescribe a medicine far more troublesome and dangerous than the disease. There is, furthermore, in the case of the former usually an agreement, but not in the latter, and so, since the latter are left to a man's sense of decency and conscience, it would be inconsistent to extort them from another by force, unless a grave necessity happens to arise. (I,7,7)

As can be seen, in the first part of the passage Pufendorf says that whether something is owed to us perfectly or imperfectly depends on the diversity of natural law precepts, some of which are strictly necessary, because they guarantee the very existence of society, whereas others are less necessary, because they aim to procure the wellbeing of the said society. In the second part,

however, he cannot avoid adding that around the former precepts (those indispensable to society's very existence), *fere pactum intercedat* ('there is … usually an agreement'), while the latter *pudori ac conscientiae relinquantur* ('are left to a man's sense of decency and conscience'). Here Pufendorf's uncertainty is clearly demonstrated by this *fere*, which stands there to signify how, in the final analysis, the author has not resolved to admit that, where a pact has not yet intervened, nothing can be claimed by virtue of a perfect right, but is relegated to the much less binding field of decency and conscience, even if, in the underlying movement of his thought, this is exactly how things are arranged. Indeed, see the following passage:

> When, therefore, actions or things are extended to another, which are due him only by an imperfect right, or when actions are performed for another which have no relation to business, it is usually said that universal justice is observed; as when one comes to the aid of a man with counsel, goods, or personal assistance, and performs a service of piety, respect, gratitude, kindness, or generosity, for those to whom he was obligated to perform the same […]. But when acts which concern business relations are performed for another, or acts by which something is transferred to another to which he had a perfect right, that is called particular justice. Now this perfect right arises either for individuals from an agreement, tacit or expressed, made with some society to the end that they may become members of it; or for a society from the same agreement with individuals, that it will join them to it as members; or it arises from any kind of an agreement with any number of individuals about things and actions which concern business enterprises. (1,7,8–9)

In this extract it is indeed evident how, once universal justice is defined as pertaining to the ambit of imperfect right and individual justice as pertaining to that of perfect right, concerning the latter it is clearly said that it can derive only from a pact; which is equivalent to saying that one can require from others by virtue of a perfect right only that concerning which a pact has been sealed.

Nor did the dangerous slippage thus taking shape in Pufendorf's thought escape Barbeyrac, his great commentator, who felt obliged to correct it as follows:

> This division [of the different cases in which a perfect right arises] is incomplete, since it contains only what we owe to another by virtue of some engagement into which we have entered, whether general or specific. Now, there are things that our neighbour may require of us, strictly speaking, independently of any promise or convention; such as not to do

> them any harm, to compensate a damage done to them, or to see them as a being naturally equal with ourselves. (note 4, I,7,9).

Where, for sure, Barbeyrac held faithfully to Pufendorf's explicit intention and to what had so many times been proclaimed and confirmed, he did not notice, however, that the latter was forced to look away from the facts given the weakness of the foundation of God's right of superiority over men. Indeed, as we have attempted to show, that weakness made Pufendorf inclined to recognise a role for force, in the constitution of this right, a role he had previously denied, and, in consequence, to consider as true law only that which 'prescribes a definite penalty', *poenam definitam dicitans* (I,1,20). Since, though, on the other hand, he did not succeed in finding in natural law this *poena definita*, he could do no less – despite the explicit protests – than exclude natural law from the group of true laws and relegate it to the field of conscience, decency and moral virtue.

That the logical *status* of the law of nature is thus affected by a fundamental ambiguity; that despite his claims Pufendorf does not succeed in giving natural law the full force of the obligation ordered by the superior, can also be seen in the following passage:

> Between obligations enjoined by a superior and such as come from a mutual agreement, there is this difference, that the latter cease to bind a man when the other party to them has broken his agreement, while the former still bind one to some undertaking, even if the other party has ceased to fulfil his duty; and this is true because that, wherein the other party fell short of justice, can be made up by the author of the obligation. But the obligation to exercise the duties of natural law toward others, although enjoined by the supreme will of God, agrees with an obligation arising from any convention in this respect: That when a man departs from it, he cannot demand any longer those duties from the other, and the other person has the further right to use force in making him render satisfaction. (III,2,2)

Here, as we see, the obligation prescribed by the superior that is God does not have the same force as that prescribed by the human superior. The latter continues to obligate, whether others respect it or not, because 'that wherein the other party fell short of justice, can be made up by the author of the obligation'. Divinely sanctioned natural law does not have the same force, because it ceases to obligate the moment others do not respect it. Nor will we succeed in understanding why Pufendorf ever endorsed this thesis – given that no one, he

in particular, doubts that God can *pensare e longe nobiliori bono* ('repay with some far greater reward', as he had occasion to say in another place: II,6,2) that which man loses here below – if we did not remember that the existence of otherworldly rewards and punishments remains a question cloaked in obscurity and uncertainty, and that it is precisely this uncertainty, as Pufendorf himself will say in an eloquent passage at VII,1,11, which makes the law of nature of scant effectiveness *in securing the peace of mankind*.

The foundational weakness on which we dwelt at length casts its shadow over every aspect of the pufendorfian conception of the law of nature, which finishes by failing ever to be that which it was meant to be. It had, for instance, been conceived as pertaining *ad forum duntaxat humanum* ('only to the human court') and thus concerning solely man's external actions;[36] it therefore had to cover the ambit of *iustitia stricte dicta*, not that wider ambit of the *aequum* and the *bonum*.[37] Conversely, it tends to be configured as a law prescribing or proscribing actions pertaining to the ambit of decency and sin, not that of *iustitia* and *iniuria*. Paradoxically, from the viewpoint of the human forum (which, though, in Pufendorf's intentions, was the only forum of concern to the discipline of natural law), actions performed contrary to the law of nature become licit, even if *imperfectly* licit:

> in the usage of common speech, not only are those things said to be lawful which are forbidden by no human or divine law, and which can, therefore, be undertaken without any sin or criticism, but those things as well, forbidden by natural laws, which are permitted by civil law, in so far as it imposes no penalty for them in a court of law, committing them merely to each man's sense of right. [...] We can call the former actions perfectly lawful, the latter imperfectly lawful. (I,7,2)

In short, the natural law becomes, in many cases, a weak law, generating an imperfect obligation, that only the civil laws succeed in transforming into perfect obligation. This is so, for instance, for the obligation to aid with our own resources someone who finds himself in a state of grave necessity (II,5,6). In conclusion, the law of nature tends inexorably to transform itself into a simple *lex caritatis aut humanitatis*, a law that prescribes duties, like those of humanity, that 'are owed by some virtue that gives only an imperfect obligation' (III,3,8) and which, as such, need to be rendered more stringent by the civil laws and by pacts.

But (it will be said), this is true only for certain precepts of natural law, not for them all. It will be said we have completely missed the distinction, which Pufendorf nonetheless draws very clearly between precepts of natural law

engendering only an imperfect obligation and those engendering a perfect obligation; that we have not noticed that Pufendorf introduces the said distinction precisely in the discussion of the hobbesian thesis according to which we cannot cause injury except to someone with whom we have sealed a pact, a pact that has been breached. Indeed, at this point he observes: since *iniuria* is a breach of another's perfect right, it is well to clarify that:

> an injury may be done to a man in three ways: first, by denying to him what by right he should have [...]; second, by taking from him that which he already possesses; and third, by doing him some evil, which one had no right to do. Regarding the first kind of injury it should be observed that something is owed a man, either by the mere law of nature, such as deeds of humanity, beneficence, and gratitude, to which, however, he has no perfect right; or: by a covenant, which is, in turn; either particular, or such as is expressed in our obligation to civil laws, which binds us to do for others what the laws require. When things of the latter kind are denied a man, it is properly called an injury, but not so in the other case, although they constitute an offence against the law of nature. Nor can the law of nature compel a man to observe its obligations, especially when no supreme power lies in it, unless a strict necessity happens to arise, since, indeed, the character of nature's offices requires that they be rendered without compulsion or fear of punishment. And to this extent, therefore, the statement of Hobbes is true, that: 'An injury can be done only to the person with whom there is a covenant.' But when some evil is wrought upon a man who has given neither consent nor cause, by taking from him something which he already had, or by inflicting some positive injury, it is certainly always an injury, whether there be a covenant or not. (1,7,15)

From this passage (it will be said), it emerges clearly that only in the case of the *officia humanitatis, beneficentiae, grati animi* does Pufendorf reduce action contrary to natural law to sin, and exclude sin against natural law from being against strict justice, that is, from being commission of a wrong. Whereas for the precepts of natural law that command us not to inflict on others an ill that the latter have not merited and not to rip from them goods that they held, he affirms that in violating these precepts of natural law we violate strict justice, we commit *iniuria*.[38] And so, our hypothetical critic will continue, it is not by chance that Barbeyrac, in the passage cited by you above (note 4, at 1,7,9), lists as actions that the other person can require of us *à la rigueur indépendamment de toute Promesse et toute Convention* the following: that one not do him harm, that one repair what might have been done to him, that one consider

him an equal to ourselves. It is not by chance, because these are precisely the precepts of the law of nature that Pufendorf considers obligatory in the strict sense, unlike those prescribing the so-called *officia humanitatis* (cfr. Book III, chapters 1–3). And (the objector will continue) Pufendorf furnishes yet another reason for such a difference between precept and precept in natural law: this being, as he had already said in Book One, that the ones are indispensable to the *esse* of society, the others necessary to its *bene esse* (I,7,7); that is, as he explains in Book Three, the precept of not harming others (and the two that are its corollaries and its specifications) is of the greatest necessity:

> since without it the social life of men could in no way exist. For if a man does me no good turn and does not join with me even in the ordinary duties, I can still live in all tranquillity with him, provided he hurts me in no way. Nay, we desire nothing more than this from most of mankind, mutual assistance being rendered only within a limited circle. But how can I live at peace with him who does me injury, since nature has bred into each man so tender a love for himself and his own possessions that he cannot help using all possible means to ward off the man who is about to do him harm? (III,1,1)

We will reply to these objections, in the first place, that concerning the perfect obligatoriness of these duties in the case where they are not backed by a pact, Pufendorf maintains a significant uncertainty: we have already seen it in analyzing the passages in I,7,7-9, and it can be seen also from the following example.

In the first three chapters of Book Three, Pufendorf discusses the *praecepta iuris naturalis absoluta*: that is, those which 'obligate all men, in whatever state they be, and without regard for any institution formed or introduced by men' (II,3,24). These, as our critic reminded us, do not impose only the *promiscua officia humanitatis* considered in chapter three, but also the perfectly stringent duties not to harm others, to repair damage done and to consider others as our full equals that are considered in chapters 1–2. After thus discussing the absolute precepts, Pufendorf, in passing on to treat the *praecepta hypothetica* – in other words those that 'presuppose some state or institution formed or accepted by men' (II,3,24) – finishes by attributing to these alone, insofar as they depend on promises and pacts, the capacity to obligate perfectly, and by referring to the *praecepta absoluta* as if these embraced only the *officia humanitatis*, imperfectly obligating, and not the perfectly obligating negative precept *neminem laedere*, and its corollaries. Indeed, we see how Pufendorf introduces the discussion of the duties deriving from pacts:

> The duties thus far set forth derive their force from that common relationship which nature established among all men even before any act was exchanged between them. But it is not enough to confine within such a circuit the duties which men owe each other. For not all men are so constituted that they are willing to do everything, with which they can help others, out of mere humanity and love, and without assuring themselves of some hope of receiving their equivalent. [...] Therefore, it had to be determined beforehand what one should do for another, and what he should in his turn expect from another, and demand on his own right. This is, indeed, accomplished by promises and agreements. From what has been said, it is understood how works of humanity or of love differ from those which are required from a right properly understood, and are, therefore, directed by actual justice. The former are not owed by reason of agreements, express or implicit, but are laid upon all men by nature herself on the mere grounds of obligation. But whatever things I owed a man from agreement or covenants, I owe because he has secured a new right against me by my own consent. [...] And so the law of humanity or charity, and the agreements of men among themselves, mutually supplement each other by way of their duties and guarantees, in that what is not or cannot be secured by charity, is secured by agreements, while in cases where agreements are not possible, charity offers its services. (III,4,1)

Here it is quite clear that the duties which obligate by virtue of human nature alone are in this passage always and only identified with the *officia humanitatis et caritatis* (that is with duties that cannot be purported *ex iure proprie dicto*), whereas it is only the duties born from explicit or implicit pacts that pertain to the ambit of of *iustitia stricte dicta*. Never more than in this passage, then, is it made clearer that the obligation *per ipsam naturam* is an imperfect obligation.

But if this is the initial response to our critic's objections, there is a second one, in our view decisive. Even if Pufendorf had in fact always maintained (as he does not do) the distinction between precepts of natural law that impose a perfect obligation and precepts of natural law that obligate only imperfectly, it is the very possibility of this distinction in his system (that is, in light of its premises) that we want to bring into discussion. Given that, as Pufendorf wishes, the obligatory force of the precepts of natural law was to derive entirely from their being commanded by God, some of these precepts could be less strictly obligatory only in the case that God demanded a less indispensable enactment of them.

Now, how can it be sustained that a legislator who imposes punishments on those who breach his law does not consider this law strictly binding? Yet this is

precisely what we would be forced to admit if we wished to insist on the thesis of the lesser obligatoriness (with respect to God) of the *officia humanitatis*. If in fact we take the case of a typical duty of this type, that of gratitude, we find it affirmed that God will inflict punishments on the ingrates after their death (III,3,17). What better demonstration of the fact that God demands the duty of gratitude with the same stringent obligatoriness that he demands, for example, respect for pacts? And, in effect, when Pufendorf finds himself having to indicate summarily what the dictates of natural law are, he places on the same plane precepts implying an imperfect obligation (to be grateful) and precepts implying a perfect obligation (to not breach pacts, to not cause harm to others' reputation, etc.) and he significantly admits that both precepts derive from the *sociabilis* nature of man:

> Thus the reason why, among men, a favour obligates one to gratitude, and why a violation of agreements, savagery, pride, and contumely can never be lawful, is because God has appointed for man a sociable nature, and so long as this is untainted, what is agreeable to it is reputable, and what does not agree with it is unlawful and base. (II,3,6)

So, Pufendorf does not succeed in distinguishing between those precepts of natural law that are indispensable because required by the *esse societatis* and those that are dispensable because required by its *bene esse*. On the one hand, he must consider both kinds as equally stringently obligatory insofar as they are commanded indispensably by God. On the other hand, in parallel, *e converso* – because of that weakness of the foundation of their obligatoriness on which we have dwelt so long – he is constrained to recognise in both kinds nothing more than the weak obligatory force of a law that binds only *in foro interno*, unable to do what is due by virtue of its being claimed *ex iure perfecto*.

Pufendorf had been so acute in grasping that civil obligation, far from not requiring some higher obligation, fails on its own to ground itself. He had also been so effective in showing that to succeed in grounding sovereignty Hobbes himself had finally to admit an obligation prior to the obligation imposed by the sovereign. And yet in setting out from Hobbes in order to surpass him, Pufendorf failed to demonstrate the indispensable obligatoriness of the law of nature. Once this is realised, we will no longer feel shocked to see that Pufendorf ends by irresistibly returning to Hobbes and making the law of nature a truly paltry bulwark against human malice.[39]

But with this last consideration we leave the discussion of moral obligation in order to enter into a discussion of the state of nature and of *socialitas*, in

other words into what is, in our view, the second great test-bench for the influence of Hobbes on Pufendorf.

Notes

1 Even if, as we have seen in the Introduction, note 2, the only edition of *Leviathan* present in P's library is the Dutch translation of Abraham van Berkel (on which see the fine book of C.W. Schoneveld, *Intertraffic of the Mind. Studies in Seventeenth-Century Anglo-Dutch Translation, with a Checklist of Books Translated from English into Dutch, 1600–1700*, Leiden, 1983, especially chapter II), we have decided to cite this work in the Latin edition, because it seems to us possible to show that this is the edition used by P. A check of the Latin citations of the *Leviathan* contained in the *De iure* has in fact yielded the following result: in I,5,14 the citation from *Leviathan* XXV, added in the second edition, is drawn from the Latin edition; in I,7,13, the citation from *Leviathan* XV corresponds neither to the Latin nor to the Dutch edition; the same applies to the citation from *Leviathan* XIII contained in II,2,5; in II,2,7 the citation from *Leviathan* XIII is drawn from the Latin edition; likewise that in the same chapter added in the second edition at III,2,2; that from *Leviathan* XI added in the second edition at VII,9,10; that from *Leviathan* XXVIII at VIII,3,7; that from *Leviathan* XXVII at VIII,4,8. From this we deduce, therefore, that P., whether in the first or the seond edition of his work, cites from the Latin edition, except in two instances, in which he seems to have preferred to translate from the Dutch edition. (This, at least, is the opinion of my correspondent and friend, Dr. E.A. Overgaauw, University of Leiden, whom I deeply thank for his help.) What is more, that the *Leviathan* was originally written in English and then translated by Hobbes himself into Latin, as the publication dates suggest (1651 English edition, 1668 Latin edition) remains an issue under discussion among scholars: some have indeed maintained, with very substantial arguments, the existence of a Latin *proto-Leviathan*. This thesis is upheld, for example, by F. Tricaud, 'Quelques questions soulevées par la comparaison du *Leviathan* latin avec le *Leviathan* anglais', in R. Koselleck and R. Schur (ed.), *Hobbes-Forschungen*, Berlin, 1969, pp. 237–44, where other authors holding the same thesis are indicated.

2 A doctrine to which P. holds with conviction, even if, as we shall see below (199–200), in ING II,3,20 he criticised this second formulation of the hobbesian thesis.

3 In fact the authors of the *Index* reprimand P. with error XIV for having denied that something can be good and bad independently of any command, and explicitly note that this is a matter of an *error of Hobbes*. In the same *Index*, in error XIX, there is a critical reference to the fact that for P. the moral entities are *'super-added'*. (For precise bibliographical details, see Chapter 2, note 1.).

4 Please note that throughout the book we have used 'hobbism' in the generic and neutral sense of 'follower of Hobbes', 'supporter of hobbesian theses' and that our use of the term has nothing in common with the sense in which it is used by S.P. Lamprecht, 'Hobbes and Hobbism', in *American Political Science Review* 34 (1940), pp. 31–53 (and then in I. Krammick (ed.), *Essays in the History of Political Thought*, Prentice Hall, 1969), for whom 'hobbism' serves to indicate the vulgarisation (which is also the banalisation and exaggeration) of Hobbes's authentic thought.

The fact that if P.'s adversaries had recognised how often he repeats Hobbes's exact words they would have been able to double their attacks was already noted by C.A. Heumann, *De libris Anonymis ac Pseudonymis Schediasma*, Jenae, 1711, p. 124, citing for instance the *ad verbum* identity of Monzambano VIII,6 (repeated in *ING* II,2,6) and *De cive* I,5, concerning the thesis that men consider offensive even the mere disagreement of others, and the virtually total coincidence of the theses on natural religion contained in *De officio* I,4 with *De cive* XV.

5 The same concept had been expressed in the *Elements* I,VII,3, p. 29, as follows: 'Nor is there any such thing as *agathon aplos*, that is to say, simply good. For even the goodness which we attribute to God Almighty, is his goodness to us'. We must remember that P. owned this work (which, as is known, in the seventeenth century appeared as two separate works, and was republished as such by Molesworth in *English Works*, vol. IV, and then rediscovered as a unitary work and published as such by F. Tönnies in 1889) for the first part (*Human Nature*), in the English original, for the second part (*De corpore politico*), in French translation (see Introduction, note 2).

6 We have cited the passage according to the first edition. On the differences with the second edition, we comment at length below [174–75]. Note also the following passage of the *De officio* I,1,11, in which there is an explicit return of the distinction between *bonum verum* and *apparens* that is present in the hobbesian passage in *De homine*, XI,5: 'Although the will always seeks good in general and avoids evil in general, yet one finds in individuals a great variety of appetites and actions. This comes from the fact that all goods and evils do not appear to a man in what one may call a pure state, but mingled together, good with evil, evil with good. And different objects particularly affect what one might call different parts of a man. For example, some affect the value which he puts on himself, some his external senses, some the self-love by which he seeks his own preservation. It is for this reason that a man perceives the first class as fitting [*decora*], the second as pleasant [*jucunda*], the third as useful [*utilia*]. Each of these draws a man towards itself, in accordance with the strength of the motion which it impresses on him. Moreover, most people have a particular inclination towards certain things and an aversion from others. And so it comes about, in regard to almost any action at all, that appearances of good and evil, of the true and the plausible, offer themselves at one and the same

time, and people vary in their shrewdness and ability to tell them apart. It is no wonder then that one man is attracted to what another turns away from in horror.'

7 See the entire context of *De homine* XI,4, p. 47: 'The common name for all things that are desired, insofar as they are desired, is *good*; and for all things we shun, *evil*. Therefore Aristotle has well defined good as that which all men desire. But, since different men desire and shun different things, there must needs be many things that are *good* to some and *evil* to others; so that which is *good* to us is *evil* to our enemies. Therefore *good* and *evil* are correlated with desiring and shunning. … At times one can also talk of a good for everyone, like health; but this way of speaking is relative; therefore one cannot speak of something as being simply *good*, since whatever is good, is good for someone or other. … Therefore good is said to be relative to person, place, and time. What pleaseth one man now, will displease another later; and the same holds true for everyone else. For the nature of good and evil follows from the nature of circumstances (συντυχιαν).' Also the following passages of the *De cive* III,31, p. 74): 'We must know therefore, that *Good* and *Evill* are names given to things to signifie the inclination, or aversion of them by whom they were given. But the inclinations of men are diverse, according to their diverse Constitutions, Customes, Opinions; as we may see in those things we apprehend by sense … . Nay, very often the same man at diverse times, *praises*, and *dispraises* the same thing. Whilst thus they doe, necessary it is there should be discord, and strife'; and *De cive* XIV,17, pp. 177–78: 'Such is the nature of man, that every one calls that *good* which he desires, and *evill* which he eschewes; and therefore through the diversity of our affections, it happens that one counts that *good*, which another counts *evill;* and the same man what now he esteem'd for *good*, he immediately looks on as *evill;* and the same thing which he calls *good* in himselfe, he tearmes *evill* in another; For we all measure *good* and *evill* by the pleasure or paine we either feele at present, or expect hereafter.'

8 As is known, the immutability and eternity of the law of nature is forcefully affirmed by Hobbes in *De cive* III,29. But since on the other hand he also affirms that in the state of nature the laws are silent – at least as regards the *foro externo* (see *De cive* V,2 and III,27) – and in the civil state it is the sovereign that gives the rules (the civil law) on the basis of which is established what is good and what is bad (*De cive* VI,9 VI,16) – such that the civil law can never be contrary to the natural law (*De cive* XIV,10) – we can understand how ambiguous Hobbes's affirmation of the immutability and eternity of the law of nature is. On the other hand, the question of the status of the laws of nature in Hobbes's system is one of the most debated topics in hobbesian literature. To the thesis that the hobbesian laws of nature are mere assertions relating to the ends-means connexion, upheld by most of the older historians, is opposed the well-known A.E. Taylor-H. Warrender-F.C. Hood interpretive line, according to which for Hobbes the laws of nature have real normative character

and force of obligation. For one of the most sensitive discussions of the duplicity of the hobbesian position on this issue of which I know, see Röd, *op. cit.*, pp. 47–56.

9 In *ING* 1,6,10.

10 In this, as in other cases that we signal from time to time, we cite from the first edition of the *De iure* (1672), because in the second edition were sometimes introduced modifications that give a much more anti-hobbesian intonation to the text. We will focus on the scope and significance of these modifications in the second part of this essay.

11 I refer to the interpretation of I. Fetscher, 'Der gesellschaftlichen "Naturzustand" und das Menschenbild bei Hobbes, Pufendorf, Cumberland und Rousseau', in *Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft* 80 (1960): 641–85, who not only affirms, in the company of Barbeyrac, that 'Das Mißverständnis, dem Pufendorf hier (absichtlich?) unterliegt, besteht darin, daß er die "droite raison" mit der vollständig aufgeklärten (ja "erleuchteten") Vernunft identifiziert, während Hobbes nur an die durchaus beschränkte und begrenzte, unaufgeklärte und irrende subjektive Vernunft jedes Einzelnen dachte.' (p. 656), but he subsequently clarifies what would be, according to him, the difference between P.'s concept of reason and Hobbes's in these terms: 'während für Pufendorf die recta ratio die normative und unfehlbare Einsicht in die feststehende Ordnung des Seins ist, versteht Hobbes darunter lediglich den Interessenkalkül des Individuums' (662–3), further specifying in a note (p. 662, note 22), that P.'s position can be related back to the stoic position (according to which there is an objectively rational order to which the man gifted with reason orients himself, and according to which the rational vision carries the force of obligation), whilst for Hobbes to the contrary the *ratio* is no longer 'jene unfehlbare, auf eine objektiv-vernünftige Ordnung bezogene Einsicht, sondern lediglich die Fähigkeit der Individuen, die geeigneten Mittel für die Erreichung ihrer von Leidenschaften diktierten Ziele aufzusuchen'. This interpretation of Fetscher's is fundamentally undermined by the fact of being almost exclusively based on a passage that, as we will show below (p. 181 with note 38), is added in the second edition of the *De iure* and alters the main line of P.'s thought. The interpretation – taken up and shared by other authors, for example Denzer, *op. cit.*, pp. 108–09 and Bazzoli, *op. cit.*, p. 310 – stands (as should be clear from the line of argument we develop in this text) at the antipodes of our own. I have sought instead to demonstrate that, on the one hand, for P. too reason is a calculation of the means appropriate to achieving an end, while, on the other hand, for Hobbes, at least in one of his lines of thought, the calculation that counts is the one that is *well-founded*.

12 Besides the other two passages cited in the text, and that is the note in *De cive* 11,1, pp. 52–3, in which, having defined the *recta ratio* as 'the act of reasoning, that is, the peculiar and true ratiocination of every man concerning those actions of his

which may either redound to the dammage, or benefit of his neighbours', Hobbes clarifies the *propria* in the sense that in the state of nature right reason cannot be distinguished from false except by one's own reason, and the *vera* as follows: 'that is, concluding from true principles rightly fram'd, because that the whole breach of the Lawes of Nature consists in the false reasoning, or rather folly of those men who see not those duties they are necessarily to performe toward others in order to their owne conservation'; as well as the note in *De cive* III,27, p. 73, in which he says: 'But there are certain naturall Lawes, whose exercise ceaseth not even in the time of War it self; for I cannot understand what drunkennesse, or cruelty (that is, Revenge which respects not our future good) can advance towards peace, or the preservation of any man'. In addition to these two passages, I say, note that Hobbes posits with maximum energy that the *ratio* does not change in the following important passage of *De cive* III,29. p. 74: 'Yet actions may be so diversified by circumstances, and the Civill Law, that what's done with equity at one time, is guilty of iniquity at another. Yet Reason is still the same, and changeth not her end, which is *Peace*, and *Defence*; nor the means to attaine them, to wit, those vertues of the minde which we have declar'd above, and which cannot be abrogated by any Custome, or Law whatsoever.'

13 This appears, for instance, to be the interpretation of T. Magri, *Saggio su Hobbes*, Milano, 1982, p. 130, note 13, since he cites it as a note to the hobbesian passage by way of illustration.

14 This passage makes very clear, on the one hand, that the critique of the *ius in omnia* rests on Hobbes's failed distinction between *facultas naturalis* and *ius*; on the other hand, that for P. law is only that which implies a moral effect in another, and therefore that it is possible to speak of right only *respectum ad alios homines*. This second aspect is the only one grasped in this passage by R. Tuck, *Natural Rights Theories. Their Origin and Development*, Cambridge, 1979, when he notes that it is a question of nothing less than the ' "correlativity thesis" which has been so much discussed by modern philosophers' (p. 159) and that 'this is the claim which Bentham and the Utilitarians were to make a hundred years later and which has remained one of the central issues of the philosophy of rights' (p. 160). Tuck's thesis has now been strongly contested by T. Mautner, 'Pufendorf and the Correlativity Theory of Rights', in *'In so many words': Philosophical Essays dedicated to Sven Danielsson on the Occasion of His Fiftieth Birthday*, ed. S. Lindstrom and W. Rabinowicz (*Philosophical Studies*, No. 42, Uppsala, Philosophical Society & Dept. of Philosophy, U. of Uppsala, 1989), pp. 37–59. The shortcoming of Mautner's polemic lies, in our view, in his having taken too seriously what was meant, in Tuck's interpretation, to be just a throw-away line (that is, the reference to *correlativity theory*) and thus in making use, in order to interpret P., of categories, such as those of language analysis, which were entirely extraneous to him and which in no way help our

understanding of the difficult passages in *ING* I,1,19–20, though it is to Mautner's credit that he submitted these to analysis. (On the other hand, as to the motives that led Tuck not to grasp the first and most important distinction theorised in this passage, see below, note 33). Both of the important theses outlined in this passage are instead obscured in the formulation – in some respects similar to this – that P. adopts in the critique of the *ius in omnia* in the *dissertatio de statu*, §10. If in fact in this passage too there return theses present in the passage in *ING* III,5,3, namely that other men have equal right to act as us, and that that right to act to which one can oppose an equal right is futile and non-existent, nevertheless, the distinction between *facultas naturalis* and *ius* does not appear here at all, while it is at the very centre of the passage in the *De iure*, and, on the contrary, *facultas agendi* and *ius* are used as synonyms. What is more, the insistence on the point that it is the existence of other men that impedes the possibility of a *ius in omnia* here does not imply, as in the *De iure*, the thesis that where there are no other men there is no law, but rather, to the contrary, the thesis that 'if only a single human being existed in the world, it could truly be said of him that nature gave him a right to all things'.

15 In explaining what he intends with the assertion that the moral entities are super-added 'ab entibus intelligentibus', P. clarifies in a manner that leaves no doubt that by intelligent entities he does not mean humans alone but also, and primarily, God. See the following passages: 'You may justly call the Great and Good God their maker, who surely did not will that men should spend their lives like beasts without civilization and moral law, but that their life and actions should be tempered by a fixed mode of conduct, which was impossible without moral entities. Nevertheless, the majority of them have been superadded later at the pleasure of men themselves, according as they felt that the introduction of them would help to develop the life of man and to reduce it to order' (*ING* I,1,3). 'Also the efficacy of moral entities instituted by God flows from the fact, that, as man's creator, He has the right to set certain limits to the liberty of will which He has deigned to vouchsafe man, and to turn that will, when reluctant, by the threat of some evil to whatever course He wishes. Nay, even men themselves have been able to give a force to their own inventions, by threatening some evil that lay within their power, on him who refused to conform to their dictates' (*ING* I,1,4). As a typical example of a moral entity owed to the *impositio* of God, not of men, the state of nature can be cited: 'it arises from the imposition of the Divine Will, not from the determination of men, and accompanies man from the very moment of his birth' (*ING* I,1,7). Those authors who, like Tully, *op. cit.*, p. 32, believe that for P. 'God imposes order by creation, man by "imposition"', thus completely misunderstand the doctrine of moral entities. Bazzoli, *op. cit.*, pp. 296–97, appears to fall into the same misapprehension when he summarises P.'s doctrine by asserting that 'le "realtà morali" istituiscono una dimensione dell'agire esclusivamente umana', or that

the moral entities are 'costruzioni regulative, prodotto dell'uomo nel suo essere necessariamente in relazione con gli altri uomini'; Fiorillo *op. cit.*, surely falls into this misapprehension in asserting that 'è l'uomo che [...] giudica di volta in volta *proficuum* o meno introdurre nella vita gli *entia moralia*'. Instead, by underlining how the moral entities 'si formano per una *impositio* della volontà divina o umana', Todescan, *op. cit.*, p. 88, understands correctly. Mancini, *op. cit.*, p. 113, expresses himself ambiguously and risks misunderstanding when he speaks of 'una sfera di enti non già creati da Dio, ma dagli uomini, non meno che da lui, istituiti'. That the pufendorfian doctrine of moral entities can be easily misunderstood is also shown by a final and recent example. F. Lachmayer, 'Zum aktuellen Stellenwert der Lehre von den "entia moralia"', in *Samuel von Pufendorf 1632–1982. Ett rättshistoriskt symposium i Lund 15–16 januari 1982* (Stockholm: Nordiska bokhandeln, 1986),142–48, in proposing a logical formalisation of the doctrine of moral entities (in which *i* stands for *impositio*, the lower case letters for 'enti fisici' and the upper case letters for 'enti morali'), asserts that, according to P., the condition of man as person in a legal sense can be represented as follows: *i* (m:>M). Now, Lachmayer's misunderstanding lies in not having understood that for P. 'being a slave' is a moral entity and that the difference between the citizen and the slave therefore does not lie in the fact that, in the first case, to the man as physical person is added a moral entity while in the second case it is not added, but rather in the fact that 'citizen' and 'slave' are two different 'moral persons'.

16 Gierke, *Althusius*, *cit.*, p. 192, had already defined P. as 'a thinker of genius' precisely in relation to the doctrine of moral entities. This had not prevented Sauter, *op. cit.*, p. 133, displaying total incomprehension on the matter, as he did for all the other aspects of P.'s thought, in reducing the theory of moral entities to a 'Lehre von der sozialen Rangsordnung'. But C.F. Friedrich, *Die Philosophie des Rechts in Historischer Perspektive*, Berlin-Göttingen-Heidelberg, 1955, pp. 66–68, had originally seen in the pufendorfian union of *imbecillitas* and *socialitas* not a synthesis of Grotius and Hobbes, but a consequence of the distinction between physical entities (*imbecillitas* roots man in the natural world) and moral entities (*socialitas* presupposes the perception of value), and had aligned, albeit with great caution and in recognition of the differences, the pufendorfian doctrine of moral entities and Kant's doctrine of right and virtue. Yet it was H. Welzel, *Die Naturrechtslehre Samuel Pufendorfs. Ein Beitrag zur Ideengeschichte des 17. und 18. Jahrhunderts*, Berlin, 1958, who gave maximum relief to the doctrine of moral entities, making P. the first *Kulturphilosoph*, and presenting most clearly the difference between physical entities and moral entities (see, for example, *Naturrecht und materiale Gerechtigkeit* (Göttingen: Vandenhoeck & Ruprecht, 1962), 132–34). For his part, Röd, *op. cit.*, p. 81, devalues the distinction between physical entities and moral entities, as not being original (because already theorised by P.'s master, E. Weigel) and as

not being in his view amenable to the modern distinction between facts and values (but he does not explain why! *contra* M. Lipp, *Die Bedeutung des Naturrechts für die Ausbildung der Allgemeinen Lehren des deutschen Privatrechts*, Berlin, 1980, p. 147); Dufour, *op. cit.*, pp. 103–37, sets the theory of moral entities at the centre of his brief but effective reconstruction of P.'s thought, in his view the most original and most fertile part of the work of the Saxon jurisconsult (p. 111), pleasingly illuminating the latter's central role in the construction of a new philosophy of law with a sharply anti-realist inspiration (p. 120). The interesting essay by Nutkiewicz, *op. cit.*, is wholly based on the importance accorded to the notion of the world of moral entities, in which he sees an ethical metastructure, and whose similarity with Kant's world of moral experience he underlines. Finally, Lachmayer, *op. cit,*, underlines P.'s influence on the *Reine Rechtslehre* of H. Kelsen, whose distinction between *Sein* and *Sinn* reproduces the pufendorfian distinction between physical entities and moral entities.

17 Discourses that, after all, P. does not fail to cite when, in concluding the confutation of the hobbesian thesis according to which 'men were under obligation to render obedience to God because of their weakness', he observes: 'Such a doctrine as that of Hobbes must be attacked the more steadfastly, since bold men are able to abuse it to our great peril' (there follows the citation of the passages in question, together with others from Plutarch and Livy) (*ING* 1,6,10).

18 The passage at 1,6,11, cited in the text, in fact continues as follows: 'And so for all of the impiety of the doctrine of the Epicureans, that the gods enjoy their happiness in the greatest peace, and have removed themselves far from all concern with the affairs of men, being neither pleased at the good deeds of men, nor angered at their evil acts, still their conclusion from such presuppositions was quite correct, namely, that all service to the gods and fear of them was foolish. For why should a person worship another who cannot and will not help or hinder him? For contemplation of an essence so noble can, indeed, excite admiration, but it cannot create obligation.'

19 'But although there is not lacking some obligation to do a kindness, yet a far greater freedom attaches to the doing of a kindness than to the need of showing gratitude' (*ING* III,3,16).

20 Barbeyrac had underlined this well in a note on the passage in the *De officio* 1,2,5 in which P. had summarised the *iustae causae* justifying the right of superiority as follows: 'The reasons which justify a person's claim to another's obedience are: if he has conferred exceptional benefits on him; if it is evident that he wishes the other well and can look out for him better than he can for himself; if at the same time he actually claims direction of him; and, finally, if the other party has voluntarily submitted to him and accepted his direction'. On this issue, indeed, Barbeyrac rightly observes (note 3) how in this formulation we do not understand if the

reasons listed are sufficient to constitute the foundation of the right to impose an obligation, conjointly or severally: what can be said is only that in *ING* I,6,12 the first three reasons adopted constitute a single motive, while the fourth outlines a different motive. 'This variation and this confusion prejudice the validity of his ideas in advance: but if all the reasons he proposes as the ground of the right in question are examined, it is plain to see that none has sufficient strength of itself'. Not the benefit, which calls only for gratitude, nor the capacity to provide for another better than he can himself, which, as P. himself says in *ING* III,2,8, does not create the *ius imperandi*, not agreement, which of itself is not obligatory, as the same author asserts in *ING* I,6,6, I,7,13, VIII,1,5. From this it follows that 'The ground of the right to impose this moral necessity must be sought elsewhere. All the others, in my opinion, reduce to this. It is the natural dependence of all men on the empire of the Divinity, from which they draw *being, life and movement*.' The great commentator thus sets himself definitely on the path to which, as we will say below, P. sometimes seems inclined, responding also to the objection raised by us in the text and drawn from the inadequacy of *generatio* to ground the *imperium* of parents over children. In fact, according to Barbeyrac, in men's case generation is not enough, because parents are 'blind instruments and causes that are, so to speak, occasional', while instead God is author of the material and the form of the parts of which our being is composed; he has created our body and our soul and it is he who has donated all the faculties with which we are furnished; 'he can therefore prescribe such limits as he wishes to all these faculties and require men to use them only in such or such a manner'. The conclusion that Barbeyrac draws from this is that, if it is true that every legitimate authority among men is founded upon consensus, such consensus 'draws its entire force from the fact that God wants us to hold to that to which we have committed ourselves. […] This is the first and the greatest ground of all Duty and of all Obligation'. Later in the text we will demonstrate why in our view the path chosen by Barbeyrac reduces to a tautology that is incompatible with the logic of pufendorfian 'rationalism'.

21 With great insight, Leibniz had already understood this when, in the famous *Monita quaedam ad Samuelis Pufendorfii Principia* (1706) (in L. Dutens, Leibnitii *Opera omnia*, Genève, 1768, IV,3 pp. 275–83, he had directed against P. a radical objection, that can be summed up as follows: if the existence of a superior is the condition whereby we distinguish between just and unjust, then, asking for *just* causes so that we can claim for ourself the quality of superior, we create the vicious circle where justice refers back to a superior, but the superior refers back to justice. (For the English translation of this passage of the *Monita*, see *The Political Writings of Leibniz*, trans. & ed. Patrick Riley (Cambridge University Press, 1972), 73–74; for the history of their composition and fortune, see Bobbio, *Leibniz e Pufendorf*, *cit.*; for a critical examination of one of Leibniz's objections in this writing, see F. Palladini,

'Di una critica di Leibniz a Pufendorf', in AA.VV., *Percorsi della ricerca filosofica*, Roma, 1990, pp. 19–27). Concerning this leibnizian argument, it is clear that, while our criticisms of the 'foundation' devised by P. remain internal to the system and focus on specific difficulties, linked to particular points of pufendorfian doctrine, the great philosopher's critique refers to a more general difficulty which can be expressed in modern terms as follows: how can a juridical system be grounded in a notion, that of superior, which, already being a juridical notion, presupposes the very system it claims to ground?

22 On this issue, see these two passages: 'Likewise, when justice is attributed to God, it must not be understood as inferring any obligation or right residing in another, as the nature of human justice implies. But since He has shown both in His creation and in the revelation of Himself, that such a manner of acting is proper to His most perfect nature, we mortals apply that word to Him, which we use to describe such things as are lawfully performed by us towards others.' (*ING* II,1,3) 'Among men we usually call that one holy who avoids the more grave offences and is alive to his duty. But who would conceive the holiness of God by such a criterion? Among men he is considered just whose intent is to harm no one, and to give each man his due. But God has the right to destroy what He created, even though it entail suffering. Neither can it be said that God owes something to any man, so that, if it is denied, He can be said to have done him an injury. If God has promised mortals anything, He keeps His pledge, yet not because they have secured any right against Him from His promise, but because it would be unworthy of the divine greatness and goodness for man to trust His pledge in vain.' (*ING* II,3,5).

23 In the definition of *beneficium* given by P. in *ING* III,3,15 in fact it says: 'But a humanity, the lack of which shows a wicked malignity and baseness of mind, is surely of a very crude type. It is found in a much more lofty and splendid degree when a man of his own good will and bent, from his own generosity, or from pity for another man's condition, does something for him without return, at considerable cost or labour to himself, whereby the other is aided in his difficulties, or else some considerable advantage is rendered him. And such things are put in a class by themselves and called benefits.'

24 Thus P. in *ING* VI,2,4: 'in our opinion generation alone is not sufficient for a claim to sovereignty over human issue. For although our offspring may be of our substance, yet because it passes into a person that is like us, and is our equal, so far as the rights naturally belonging to men are concerned, there is need of some other claim to render it unequal to us, that is, subject to our sovereignty.'

25 For a broader and fully argued demonstration of the accentuated rationalism of the voluntaristic foundation accorded by P. to his natural law, see Palladini, 'Volontarismo e "laicità" del diritto naturale: la critica di Pufendorf a Grozio', in *Reason in law. Proceedings of the Conference held in Bologna 12–15 December 1984*, vol.

III, Milano, 1988, pp. 397–420. On the other hand, what is said in the text should be enough to establish how our interpretation – which sees in the theologico-voluntaristic foundation given by P. to his system a logically necessary and absolutely inescapable consequence of his entire philosophical program – stands at the antipodes of an interpretation by those who, like for example N. Hammerstein, 'S. Pufendorf', in *Staatsdenker im 17. und 18. Jahrhundert. Reichspublizistik. Politik. Naturrecht*, ed. M. Stolleis (Frankfurt am Main, Matzner Verlag, 1977), pp. 147–97, consider it instead an effect of P.'s being 'überzeugter Lutheraner' if not 'gelehrter Ekklektiker', and thus see here nothing other than 'dieser bei einem ekklektisch denkenden Mann üblichen Inkonsequenzen' (p. 178).

26 This is the reason why, in our view, against the leibnizian charge of contradiction and vicious circle, the line of defence adopted by Barbeyrac does not hold (*Jugement d'un Anonyme sur l'original de cet abrégé, avec des réflexions du Traducteur* in Pufendorf, *Les devoirs de l'homme et du citoyen*, trans. J. Barbeyrac, à Trevoux, 1747, vol. II, pp. 272–74, but see also pp. 246–47), consisting as it does of underlining how the justice which one speaks of in relation to God is not the same justice one speaks of in relation to men. The same defence is more or less adopted by Röd, *op. cit.*, p. 93, who argues that P. 'vom Vorwurf des Zirkelbeweises nicht getroffen wird, weil er die der Konstituierung des Staates und der Obrigkeit übergeordnete Gerechtigkeit auf Gott als transzendenten Grund bezieht'.

27 'But when a man of his own accord consents to the rule of another, he acknowledges by his own act that he must follow what he himself has decided.' (*ING* I,6,12).

28 'Indeed, when he has once decided upon something, or when he has resolved within himself on some choice, still in his decision, in so far as it is held to have proceeded, from his will, there is by no means so great a power but that he can rightfully modify it at his pleasure, or change it entirely; *unless there come some additional influence from without,* which prevents the will, once it is determined and declared, from changing'. (*ING* I,6,6; emphasis added).

29 So reads the first edition. In the second edition is added a comparison with the immutability of true and false, on whose distorting consequences for P.'s original thought see the second part of this essay.

30 Naturally, this concerns the interpretation of the Taylor-Warrender-Hood line according to which Hobbes possesses a concept of natural obligation that obtains in the state of nature independently of the sovereign. That P. anticipates some recent discussions on Hobbes is noted, regarding the passage in *ING* II,3,20 cited below in the text, also by Nutkiewicz, *op. cit.*, p. 25, note 32, who recalls, as well as Warrender, D.D. Raphael and B. Barry.

31 Barbeyrac, *Jugement*, *cit.*, p. 275.

32 Leibniz, *Monita*, *cit.*, §19, in *Political Writings*, *cit.*, p. 74.

33 In the youthful *Elementa*, the factor of force, constraint, has a greater importance than in the *De iure* as a decisive element in the birth of obligation. See, for instance, *El.* II, *axioma* II,I. It is indeed true that in this work *potestas* resolves into force: 'Now, as a matter of fact, the authority from which obligations are fit to be generated resolves its efficacy ultimately into nothing but the force or faculty of inflicting punishment' (*El.* II, *ax.* II,2). Thus Tuck (*op. cit.*, pp.157–59) is right to note the change that the theory of obligation undergoes in the *De iure*, as he is also right to note, on the line of Leibniz's criticisms, the difficulties this entails. He is wrong, though, in thinking that Leibniz's identification of the hobbesian stamp of the theory is applicable more to the first than to the second of these works, and he is wrong above all in believing that the change from the *Elementa* to the *De iure* consists in 'a loosening of his theory of obligation'. To the contrary, if our analyses prove persuasive, it should be clear that the difference between the *Elementa* and the *De iure* lies in the fact that, in the former work, P. simply does not propose a theory of obligation (as he reduces obligation to constraint) while in the latter work he seeks to think through the *moral* nature of obligation, distinguishing it from constraint considered as a *natural* element. Thus the passage from the theory of obligation in the *Elementa* to that in the *De iure* is not, as Tuck thinks, the passage from a hobbesian phase to an anti-hobbesian phase, but rather the passage from a simply acritical assumption of hobbesian theses to their conceptual elaboration. Tuck did not recognise the importance of P.'s attempt, given that he did not understand the importance of the theory of moral entities, of which, as we have seen, the distinction between constraint and obligation is one of the applications. Tuck's 'blindness' to this theory also leads him to miss completely in the passage in *ING* III,5,3 – of which, though, as we have seen above (note 14), he well notes the *correlativity thesis* – the distinction on which this thesis rests, that is, between *natural faculty* and *law*, that is precisely a further application of the doctrine of moral entities.

34 'Now the laws of nature would have had full power to obligate men, even if God had never proclaimed them again in his revealed word' (*ING* II,3,20). Mancini *op. cit.*, p. 117, rightly insists on the force of obligation of natural law in P. and on the fact that such oblgation derives from God, but he does not raise any problem in this connection.

35 T. Mautner, 'Pufendorf and 18th-Century Scottish Philosophy' in *S. Pufendorf 1632–1982*, *cit.*, pp. 120–131, asserts – following in this the interpretation of K. Olivecrona, 'Die zwei Schichten im naturrechtlichen Denken', in *Archiv für Rechts-und Sozialphilosophie* 63 (1977), pp. 79–103 – that P. 'employs a concept of rights which are independent of any law for their existence and for their cognition' (p. 122) and that law understood as an active moral quality 'can be said to lack a correlative duty' (p. 127). Despite my not being convinced that things in P. are configured in this

way, the theme, ever complex like others, would call for a total reconsideration, but this would take us too far and is not strictly indispensible for the discourse we are developing.

36 See in particular §§8–9 of the famous *praefatio* to the *De officio*, so important for the question of the 'laicismo' of pufendorfian natural law.

37 The two ambits are clearly distinguished in the following passage of *ING* 1,2,8: 'In the first place, because the force which laws have to bind men does not always exist to the same degree, but is more loose in ordering or forbidding certain actions, more strict in others. Hence it follows that one thing is said to be due according to the letter of the law, another in equity; that is, according to justice in the strict use of the word, or according to what is fair and right. Justice and equity differ in this respect, that a sterner necessity is laid upon us to do the former, while we are more gently bound to do the latter; yet the latter has a wider scope than the former, for without doubt the duties of other virtues have a wider range than those of justice. It happens, further, that among men, and in their courts, the law takes a slight account of petty misdeeds.'

38 What according to P. are the *iura per ipsam naturam data* and whose violation constitutes *iniustitia* is stated in the clearest way in the *Dissertatio de statu hominum naturali* §10, 122, where he affirms: 'For since injustice occurs through an act by which the right of others is violated, and since every person has in fact a natural and not merely conventional right to preserve his own life, limbs, and liberty against an illegitimate attack of others, it is clearly unjust to threaten an evil against another's life, members and liberty for which that person has provided no demontrable cause.'

39 The law of nature obliges only if others also respect it (*ING* II,5,1). In the state of nature, against whoever does not respect the law, I can go well beyond a mere reprimand, and on the contrary he gives me, so far as he is able, an unlimited freedom of action against him, and that extends into taking precautions for the future (II,5,3). In truth, the law of nature is a very paltry defence against human malice: 'Nor is it possible for a man to believe that mere respect for natural law, which forbids every manner of injury, could have been able to make it possible for all mankind to live secure in natural liberty. There are, indeed, men to whom order, honesty, innocence, and honour are of first concern, and who would not violate them even when assured of immunity. […] But opposed to these is a great mass who hold every sacred thing vile, whenever a hope of gain entices them, and have confidence in their own strength or wit whereby they promise themselves that they will repel or evade those whom they have injured. Not to distrust such is for one voluntarily to offer himself to their knavery and insolence.' (VII,1,8).

CHAPTER II

Nature of Man and State of Nature: The Doctrine of Sociality

1 Human Nature

None of Pufendorf's docrines is better known than that of *socialitas*. Generations of interpreters, be they his defenders or his accusers, have measured themselves against it,[1] if only because Pufendorf himself announced, right from the preface of his major work, that he had made of *socialitas fundamentum universi iuris naturalis*. Nor could in-depth discussion of *socialitas* be avoided by those who found they did not share (or, conversely, those who wanted to defend) the particular physiognomy that the discipline of natural law derived from such a foundation.

Such would be a discipline that occupies itself solely with that law 'which must be followed in any society, whether it be universal or particular', in other words a discipline that concerns above all the duties we have to others, taking into consideration the duties to God (that is, religion), only 'in so far as this last furnishes the most effective bond for the associations of men', and the duties to ourself only insofar as we have a certain 'relation to other men'.[2] Furthermore, and making this theme particularly attractive, there was the connection with the theme of the state of nature: an argument never less exciting than others thanks to the theological and philosophical implications it entailed.

It would therefore appear superfluous to return for the umpteenth time to recounting that Pufendorf discovered the foundation of natural law in human nature insofar as this has been made *socialis* by God, or that his state of nature is a state that is wretched but pacific, and so on. These notions are the sedimented patrimony not only of the reader of Pufendorf's works but even of the readers of manuals on the history of natural law. But since the very popularity of a theme tends to obscure its original meaning, we consider it would not be superfluous to recall for the reader the following problems: what does Pufendorf intend with the assertion that 'the nature of man has ever been determined by God for social life in general', or 'the nature of man, in so far as it was made by the Creator a social one'?[3] What does it mean to make this nature the 'norm and foundation' of natural law? What function, in the deduction of such a law, is played by consideration of the natural state?

 | DOI:10.1163/9789004388611_004

To respond to these questions, let us begin by seeing how and why the theme of human nature is introduced in the *De iure naturae et gentium*. In this work, it makes its first appearance in the first chapter of Book Two, with the aim of explaining why God did not grant man 'a liberty to do everything entirely as he pleased, or according to his changing mood, without any restraint of right, rule, or necessity' (II,1,1), that is, why did he not grant him that *licentia exlex* that he granted to animals. The explanation, Pufendorf says, lies in multiple reasons drawn 'from the natural or acquired condition of human nature' (II,1,5).[4]

What this human condition might be – considered here in opposition to the animal condition – is illustrated in paragraphs 5 to 8 of this same chapter. In the first place, that the actions of man were subject to a norm – 'without which there can be no recognition of order, seemliness, or beauty' – was demanded by the 'dignity of man's nature, and that excellence of his in which he surpasses other creatures' (II,1,5); a *dignitas* and *praestantia* identified with the possession of an immortal soul, gifted with 'the light of intellect and the faculty of judgement and choice, and most highly endowed for many an art'.

In the second place, subjection to a norm was called for by man's 'proneness to evil' being greater than that of animals. Animals are moved by sexual desire and by hunger with the aim of reproduction and survival, whereas in both these fields 'the appetite of man longs to be whetted'. So too animals have no need of clothes, whereas man makes them an occasion for ostentation. Man, moreover, is prey to a quantity of passions that are unknown to animals: a 'craving for luxuries, ambition, honours, and the desire to surpass others, envy, jealousy, rivalries of wit' (II,1,6). Given 'affections of such ferocity and variety', what would human life have been without law?

> You would see a pack of wolves, lions, or dogs fighting among one another to the death. Every man, indeed, would have been a lion, a wolf, or a dog to his neighbour, and something even worse than these, for there is no animal that can and does more injure man than man himself. And since men cause so many injuries to each other even now, when law and punishment hang over them, what would the future hold, if there were no control over anything, if no direction from within curbed the desires of man? (II,1,6)

It is added, thirdly, that 'Man has, furthermore, a nature far more diverse and varied than any of the animals' (II,1,7). Whereas the brutes in fact have broadly similar inclinations and desires, among men 'there are as many minds as there are heads, and to each one his own way seems best', so 'the greatest confusion

would have prevailed among men, were not their dissimilarity of customs and appetites reduced to a seemly order through laws' (II,1,7).

In fourth and final place, 'the weakness of man made it necessary that he should not live without law' (II,1,8). Unlike animals that become adult in a short time and quickly learn to get their food without need for 'the aid of other animals', how many years and how much education does it take for man to become capable of getting the means of subsistence on his own? To appreciate the enormous weakness of man abandoned to his own devices,

> Imagine, if you will, a man who has been reared by another so that he is without the power of making his wants known, and can merely move himself where he pleases, without any information and training of the mind, whose knowledge is limited to what has come from his own natural endowment. Imagine such a man left in the open, away from any assistance or company of his fellows. What a miserable animal you will behold! [...][5] And so man owes it to his intercourse and relations with other men that he does not pass an existence more miserable than that of any other living being. [...] But a society of men cannot be constituted nor maintained in a peaceful and firm state without law. And so if man was to be prevented from being the most degraded and miserable of all creatures, it was not fitting that he should live without law. (II,1,8)

This, then, is the first delineation of human nature that we find introduced in the *De iure* to show that the natural freedom which pertains to man is always conceptualised as having a certain bond, that is, the bond of sound reason and natural law. As can be seen, among man's characteristics we do not find a natural sociability listed here in any way. We find that compared to the other animals man is endowed with far superior intellectual and moral capacities, that he is much more wicked than them and has a far wider range of passions and desires compared to the animals' uniform instincts, and that he is much weaker than them. But that he is endowed with a natural sociability is something we do not find.

It is true, however, that all these characteristics of human nature refer back to the necessity of a law, and that this is conceived, in all four cases, as the indispensable instrument for creating an ordered and peaceful society among men. This becomes immediately clear in the case of the final characteristic of human nature: *imbecillitas* or weakness. Indeed, given his great weakness, that man is not the most wretched of all the animals is solely by virtue of the *coniunctio* and 'company with his fellows'; but since the *societas* among men cannot be formed or conserved without a law, man is subject to a law. It is all the more true, however, in the cases of the second and third characteristics of

human nature too. Man's *pravitas* entails that to restrain human passions a norm is required, otherwise the relations of men between themselves would be similar to those of wild beasts that fight each other, if not worse. So too the *varietas ingeniorum* requires a law if men's conflicting desires are to be kept in harmony. Finally, even though at first glance it appears eccentric relative to the others, when inspected closely, the first characteristic – the greater dignity of human nature compared to animal nature – is amenable to the same reasoning that we have seen operative for the other characteristics. Indeed, the splendid gifts granted to man by God, which require a law if they are to be cultivated and not wasted in disorder and neglect, have a social relevance. They are gifts, in other words, that concern in particular *vitam socialem ac civilem*, but would have, conversely, little or no use 'in vita exlege, brutali ac insociabili'.[6]

If we therefore do not find a natural sociability among the characteristics of human nature, the characteristics listed (*dignitas, pravitas*, *varietas ingeniorum*, *imbecillitas*) all relate back in some way to the *societas hominum*. We will better understand what type of relay this is when we plunge into the second group of paragraphs where Pufendorf returns to a comprehensive discussion of human nature.

We find ourselves in chapter 3 of this same Book Two, a chapter which – after the digression[7] on the state of nature in chapter 2 – latches on to the conclusion of chapter 1: the incapacity of man, given his condition, to live *exlex*, without law. So it is now a matter of establishing just what is this 'common standard of human action, according to which every man, as a rational animal, should order his conduct' (II,3,1). In other words, it is a matter of determining that which is called, in an expression (Pufendorf says) that has now become common usage, 'the law of nature'. After a sequence of paragraphs in which is shown what the law of nature is not – what that law does *not concern* and that from which *it is not deducible* (II,3,2–13) – there follows a series in which we reach the definition of the law of nature, starting from the analysis of 'the nature, condition, and desires of man himself' (II,3,14–15). In this chapter, then, the analysis of human nature is introduced as the way – and none more fitting and direct is known – 'to learn the law of nature'. Indeed, since the law of nature was imposed on man, the best way to determine 'whether this law was laid upon man in order to increase his happiness or to restrain his evil disposition, which may be his own destruction' lies in considering 'when man needs assistance and when he needs restraint' (II,3,14), that is, what human nature might be. And this, according to Pufendorf, is characterised by the following features:

> In the first place man has this in common with all beings which are conscious of their own existence, that he has the greatest love for himself,

> tries to protect himself by every possible means, and tries to secure what he thinks will benefit him, and to avoid what may in his opinion injure him. [...] In addition to this self-love and desire to preserve himself by any and all means there is observable in the character of man the greatest weakness and native helplessess, so that if one could conceive of man as deprived of every assistance that comes to him in this world from other men he would think that life had been given him as a punishment. It is also evident that no greater help and comfort, after that granted man by God, comes to him than that from his fellow-creatures. [...] Yet men can, and often do, inflict just as much injury and harm on one another, either because of their base desires, or because they are forced to defend themselves against the injuries of others. (II,3,14)

As we see, the characteristics of human nature, in this passage, are *amor sui*, *imbecillitas* and the fact that men can be either of great assistance or of great harm to their own like. In these it is easy to recognise at least two of the four characteristics listed in II,1: *imbecillitas*, which there had the consequence of man being needful of the assistance of other men, here appears as *imbecillitas* and as men's capacity for mutual benefit; what in II,1 was *pravitas* is presented here as men's disposition to mutual harm. Anyway, in this passage too, none of the characteristics of human nature is constituted by a natural sociability.

But let us see how Pufendorf derives the law of nature from this human condition:

> After the preceding remarks it is easy to find the basis of natural law. It is quite clear that 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, and easily irritated, as well as quick and powerful to do injury, For such an animal to live and enjoy the good things that in this world attend his condition, 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 that there is reason to preserve and increase his good fortune. [...] And so it will be a fundamental law of nature, that 'Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude. [...]'. A corollary of this is that, since whoever obligates a man to an end obligates him as well to the means without which the end cannot be obtained, 'all things which necessarily

> work to that sociable attitude are understood to be commanded by natural law, and all that disturb or destroy it to be forbidden'. (II,3,15)

As can be seen, in this passage, we arrive at *socialitas*, it is true, though not as a characteristic of human nature, but rather as the comportment that man must hold to if he is 'to live and enjoy the good things that in this world attend his condition'.[8] This comportment consists in acting in relation to others in such a way as not to give them the pretext to do harm, but instead reasons to be good. In this passage, then, man's *sociabilis* being is not a given in his nature but a moral imperative.[9] Pufendorf does not say 'Man is naturally sociable', but rather 'Man *has* to be sociable'. It thus seems quite evident that in this passage being sociable is the ideal to which men must aspire and not a natural gift with which they start.[10] Given this, it would be difficult to understand how there could ever have come into being the common image of a Pufendorf – as assigning sociability to human nature and then making this the foundation of natural law – unless we did not keep in mind that, in reality, the German author's use of the notion of *socialitas* is less unequivocal than we have represented it thus far.[11]

In fact, when Pufendorf defines the law of nature as 'that which is so agreeable with the rational and sociable Nature of Man' (*De officio* I,2,16), and when he says that *socialitas* is the 'method of deducing the natural law [that] is not only genuine and clear, but also sufficient and adequate' (*ING* II,3,19), under the traditional (but for this no less ambiguous) image of a social nature in man, he includes a synthesis of two concepts that are different though interconnected. On the one hand, indeed, when he teaches us that God assigned man a social nature, what Pufendorf means to say is something he explains better (for instance in the passage on benefits already cited) when he asserts that 'God has appointed for man a sociable (*sociabilem*) nature' (II,3,6), and better still when he makes clear that 'He so formed the nature of the world and man that the latter cannot exist without leading a social life' (II,3,20). That is, he intends to say that human nature is so made that man cannot do without the help of others: he is sociable in the sense of 'needful of *societas*'.[12] On the other hand, when he makes *socialitas* the foundation of natural law, what he has in mind is the *law of socialitas*, the law that holds that 'every man ought, as much as in him lies, to preserve and promote Society' (*De officio* I,3,9). Here, what he intends to affirm is that there is 'no precept of the natural law [...] the basis of which is not ultimately to be sought therein' (*ING*, II,3,19), or indeed that *socialitas* is the foundation of all the precepts of natural law in the sense that it epitomises them in itself, that is, precisely in the same sense that in the Gospel 'dilectio summa legis dicitur'.[13]

In the pufendorfian doctrine of *socialitas*, therefore, there is no need to see reflected the venerable conception of man as the animal that loves the company of his fellows and is naturally drawn into society.[14] Rather, we find a conception of man as a weak and potentially harmful animal, driven by *amor sui* to defend his own life and by the higher gifts with which he is endowed to make his life *culta*, an animal that cannot attain these ends except with the help of his own kind, and thus entering into society with them and comporting himself so as to sustain such a society.

All this was represented by Pufendorf in the notion of *socialitas*. As the *law of socialitas*, this returns us to the imperative 'Be sociable', or 'Conduct yourself so as not to alienate your neighbour from you, but so as to reconcile him to you'. And as *natura sociabilis* of man, it returns us to the notion of a man who, given his weakness and his viciousness and the greater requirements he has in comparison with the other animals, cannot do without the *socialitas* of his like in order to live and be happy.

2 The State of Nature

If this is the conception of human nature and of *socialitas* as we believe we have been able to reconstruct it, how does the notion of the state of nature come into all this and what function does it have in the pufendorfian construction of the discipline of natural law? The question is not as redundant as might be thought at first sight, under the impression of the marked emphasis that Pufendorf places on the consideration of man in the state of nature in the very framing of his 'system'. Indeed, since the first book of the *De iure* (by the author's explicit declaration[15]) acts as a general introduction to the problems of moral science, the second chapter of Book Two – entirely devoted to the discussion *de statu hominum naturali* – marks precisely the start of the true and proper discussion of the discipline of natural law.

And yet, though Pufendorf's representation of the state of nature remains impressive, if we pay attention to the nexus into which it is inserted, we notice, not without a surprise, that it is presented in the *De iure* as a parenthesis in an argument that seems to proceed without it. Indeed, in beginning the derivation of the law of nature as examined above, Pufendorf does not link back to what he has just finished saying about the state of nature, but rather to the preceding chapter: the chapter in which he had demonstrated that man's condition does not allow for an *exlex* freedom. And since the condition of man had been delineated in that chapter independently of any consideration of the state of nature (as we have seen), it would appear that

the latter is not logically necessary to the deduction of the fundamental law of nature.

Pufendorf, himself, moreover, seems to sense things in these terms, to judge from the way in which he organised the material of his system of natural law for schematic presentation in the *De officio*. In this minor work, in fact, the doctrine of the state of nature is not the premise for the deduction of the law of nature, as in the *De iure*, but is placed after it, in the long discussion of the duties of man implicit in that law, and serves rather as introduction to the discussion of the duties of the citizen.[16] The organisation of the material of the *De officio* thus seems to confirm the impression that we formed from studying the logical nexus into which the doctrine of the state of nature is inserted in the *De iure*; in other words, it is not essential to the foundation of natural law. And yet, looking closely, things are much more complicated than it appears from these initial considerations, and so it is appropriate to review from the start all the material *de statu hominis naturali*, retracing it through Pufendorf's various formulations.

§1 *The Definitions of State of Nature*

To this theme Pufendorf in fact returned many times, tirelessly proposing distinctions and sub-distinctions of the various meanings of 'state of nature'. In fact it was futile to search for clarity in the definitions, since as we shall see the lack of clarity was due to the complexity of the role that this concept played in his system. To quote here only the systematic discussions of the state of nature – thus leaving aside the numerous important passages in which our author returns to this or that aspect of his doctrine to respond to objections or to clarify its most disputed points – we shall recall the following two discussions contained in the *De iure*: the celebrated one in the second chapter of Book Two has already been recalled and the one located in the doctrine of moral entities (I,1,7). Additionally, there is the discussion, cited above, in the *De officio* (II,1); the 1674 dissertation entitled precisely *De statu hominum naturali*; and finally the chapter entirely devoted to the state of nature in the polemical work *Specimen controversiarum* (Chapter 3).

Remaining with the definitional aspect of these discussions, it seems easy to say what the state of nature was for Pufendorf. It cannot be doubted, for instance, that the state of nature was a moral entity, as long as we keep in mind what he says in Book One of the *De iure* by way of illustration to a thesis already advanced in the *Elementa*:[17] just as physical substances presuppose a space in which to enact their physical motions, so too moral persons conceive themselves as being in a state in which they can perform their actions and their effects.[18] This state, which therefore designates the *ubi morale* of the agent, can be either *natural* or *adventitious*: the former is one that 'arises from the

imposition of the Divine Will, not from the determination of men, and accompanies man from the very moment of his birth'; the latter is the state that 'comes to men at birth, or some time thereafter, by virtue of some human deed' (I,1,7). Pufendorf himself tells us that, as a moral entity, the natural state is not called natural 'because without any imposition it derives from the physical principles of the essence of man, but because it arises from the imposition of the Divine Will, not from the determination of men, and accompanies man from the very moment of his birth' (I,1,7). That the state of nature is to be called natural in a triple sense is something he reiterates on more than one occasion. Thus, in the first chapter of the *De iure*, he says:

> We are accustomed, moreover, to consider the natural state of man either absolutely, or in relation to other men. Considered in the former manner, the natural state of man, so long as we can find no more convenient word, we shall designate 'humanity', or that condition in which man is understood to have been constituted when the Creator willed that He should be distinguished above other animate creatures [...]. To this state the life and condition of animals is opposed. [...] Considered in its relation to other men, the natural state of man is when men order their lives on nothing but a simple universal kinship resulting from the similarity of their physical nature, before any human act or covenant has arisen which has rendered one man beholden to another. In this sense those who have no common master, who are not subject to another, and who are unknown to each other by way of either benefit or injury, are said to live in a mutual state of nature. And to this may be added a third way of regarding a natural state, namely, as one which lacks all the inventions and institutions, discovered by man or divinely revealed to him, that have given him dignity and comfort. (I,1,7)

More schematically, in the *De officio*, he asserts:

> Natural state may be considered, in the light of reason alone, in three ways: in relation to God the Creator; or in the relation of each individual man to himself; or in relation to other men.
>
> 3 Considered from the first point of view, the natural state of man is the condition in which he was placed by his Creator with the intention that he be an animal excelling other animals. ... Hence this state is in complete contrast with the life and condition of the animals.
>
> 4 From the second point of view, we may consider the natural state of man, by an imaginative effort, as the condition man would have been in

> if he had been left to himself alone, without any support from other men, given the condition of human nature as we now perceive it. .... In this sense the natural state is opposed to life improved by human industry.
>
> 5 From the third point of view, we consider the natural state of man in terms of the relationship which men are understood to have with each other on the basis of the simple common kinship which results from similarity of nature and is antecedent to any agreement or human action by which particular obligations of one to another have arisen. In this sense men are said to live in a natural state with each other when they have no common master, when no one is subject to another and when they have no experience either of benefit or of injury from each other. In this sense the natural state is opposed to the civil state. (*De officio*, II,1,2-5)

In the *Specimen controversiarum*, finally, after having observed that 'vocabula *naturae* et *naturalis* quam maxime esse ambigua' (III,3) and that the natural state of man is one thing for the *Physicus*, another for the *Medicus*, something else for the *Interpres Iuris Romani* and something else again for the *Theologus*, Pufendorf continues: 'In the discipline of natural law the natural state of man was considered by me in three ways. In one way according to which it is opposed to the state and condition of animals, by which man is regarded as distinguished from other animals and furnished with extraordinary gifts by God, by which he would be fitted to know and admire the Creator through his works and to live a life distinguished by moral and decorous order'. To this condition, which in Book One of the *De iure* he had designated as the human condition, he gives the name 'natural', because 'men did not choose and institute for themselves a form of life by their own will, but the obligation to lead such a life was prescribed by the creator from the moment of birth and to know this the light of reason that man still has today is quite enough'. The second way in which man's natural state is considered is 'as opposed to that of culture, which came to human life through the assistance, industry and inventions of other humans through their own thinking and work or by divine instruction'. To this state too it is not out of place to attribute the qualification of 'natural' 'because it corresponds perfectly to the established usage of marking off what is natural, that is, what is present from birth, from what happens subsequently because of one's own or others' action. Finally, in the third way, the natural state was considered 'as opposed to the civil state, by which many are subjected to the same sovereign civil power. According to this consideration it is clear that those in turn live in a natural state, who have no common government on earth and of whom one does not command or obey the other, and who in turn are connected by no other bond, than that which flows from common human nature, or

that another is equally human as we'. And this state was called natural not only by following the example of 'some recent political writers, but also because it is very common for natural to be distinguished from that which derives from a human deed or pact'.

And so, to stay with the cited passages, there is no reason to doubt that Pufendorf introduced into his system a triple consideration of the natural state: now intending it as the human condition imposed by God on men in contrast to the animal condition; now as the culture-less condition in which man finds himself at birth as opposed to a life improved by human help and intervention; and now as the condition of exemption from any form of subjection in contrast to the civil state. Staying with these passages, then, it is quite clear that all three of these states are termed natural in contrast to what is owed to some human intervention: in the first case, insofar as the condition is considered to be imposed on man by the divinity, not by human will; in the second case, insofar as it is a matter of the condition implied by abstracting from all human inventions and institutions; in the third case, finally, insofar as the condition in question is that of exemption from any form of subjection characteristic of human relations prior to some human deed or pact.

Yet, if we go on to verify whether, in the concrete shaping of the doctrine, the consequent conception of the state of nature is truly represented in a way that is adequate to the schema laid out here, then we begin to entertain doubts as to the adequacy of Pufendorf's presentation of his own thought.

§2 *The Effective Use of the Notion*

In the first place, how could we not be struck by the fact that, where the doctrine of the state of nature is made to function concretely, the first way of considering the state of nature is set aside? This is made explicit, when the passages in the *De iure* and the 1674 *dissertatio* – where it is said that the natural state being discussed is not the most perfect and most fitting condition of man *quam natura ultimo intendit* – are taken in this sense.[19] And this is certainly the case, as we shall see, because whether in the *De iure*, in the *De officio* or in the *dissertatio*, the natural state of man – understood as the condition of *animal eximium prae caeteris animantibus* ('animal distinguished above other animate creatures') – does not play a prominent role,[20] thereby leaving the function performed by the other two senses of state of nature to come to the fore instead.

But to show what we are asserting, it is appropriate to move into Pufendorf's fullest discussions of the state of nature. In considering these, it will become clear that the two senses of the notion that we have affirmed to be the sole ones operative in the pufendorfian doctrine also do not remain fixed in

the static physiognomy granted them by Pufendorf in his definitions. Rather, they interact with each other, inter-penetrating and then separating out again, with the third sense prevailing decisively over the second, the deep reasons for which we can now begin investigating.

The analysis can set out from the presentation of the state of nature that Pufendorf himself gives at the opening of the famous second chapter of Book Two of the *De iure*. We will quote the entire first paragraph of this chapter because in it are anticipated in summary fashion all the themes that Pufendorf undertakes to address in the discussion that follows:

> By the natural state of man we do not understand that condition which nature intended should be most perfect and for his greatest good, but that condition for which man is understood to be constituted, by the mere fact of his birth, all inventions and institutions, either of man or suggested to him from above, being disregarded, since they give a very different aspect to the life of man. By them we understand not only the different forms and general culture of the life of man, but especially civil societies, at the formation of which a suitable order was introduced into mankind's existence. To get a more distinct idea of this state we will consider it in itself, especially as to what advantages and rights accompany it; that is, what would have been the condition of individual men had mankind discovered no civilization and introduced no arts or commonwealths; and secondly, in relation to other men, whether it bears a resemblance to peace or to war; that is, whether men who live in a state of mutual natural liberty, wherein no man is subject to another, and they have no common master, should be considered foes or friends. This last state is either full, that is absolute, in that it concerns all men absolutely alike, or limited and restricted, concerning only a certain part of mankind. The human race, indeed, can be considered in one of two ways, either as all men and individual men enjoy a natural liberty, or as they are understood to have gathered together with some persons into a civil society, but bound to other men by nothing but the bond of a common humanity. (II,2,1)

As can be seen, even in this passage Pufendorf does not escape the temptation to give us another of the definitional schemas, filled with distinctions and subdistinctions, in which he was the master. The first problem this poses, then, is to ask ourselves how the modes of considering the state of nature distinguished here relate to those listed in the passage in Book One cited above.

Now, it is necessary immediately to clear the field of a possible equivocation, one that is encouraged by the unhappy use made in the passages of Books One

and Two of expressions that are equivalent (*absolute* and *in se*) or simply identical (*in ordine ad alios homines*). According to this equivocation, the partition in Book Two between a state of nature considered *in se* and one considered *in ordine ad alios homines* coincides with the partition in Book One between a state of nature considered *absolute* and one considered *in ordine ad alios homines*. The two partitions, though, in no way coincide. Indeed, the state of nature considered *absolute* in Book One, being the condition, magnanimous compared to that of the animals, that God has assigned to man, either does not appear at all in the passage in Book Two, or appears there only to be excluded from the author's present concern. The latter would be the preferable interpretation, provided one embraces the suggestion we hesitatingly presented above. For this would mean that it is the 'condition which nature intended should be most perfect and for his greatest good', which is excluded as an object of the author's consideration in II,2,1. In other words, it is identical with the condition which, in I,1,7 is said to be that 'in which man is understood to have been constituted when the Creator willed that He should be distinguished above other animate creatures', and which in the same passage was designated as the state of nature considered *absolute*.

In truth, it is not only the evident equivalence between the *Creator* of the passage in Book One and the *natura* of the passage in Book Two that is in favour of this identification.[21] There is also the prospect that man's God-endowed preeminent condition relative to that of the other animals – and by virtue of which man must recognise his author, honour him, admire his work and conduct himself in a manner entirely different from that of beasts – can be plausibly interpreted as the most perfect and most fitting that nature (that is, God) assigns to man as his end. But even should the suggested identification be denied, the fact remains that in the passage in Book Two that we are analysing, the only state of nature that Pufendorf decides to deal with is the condition in which man is conceptualised as constituted at the moment of birth, abstraction being made of human inventions and institutions. This is a condition that has nothing to do with the state of nature considered *absolute* in Book One, of which it can be said with a clear conscience that it finds itself excluded from the discussion in Book Two. Identification of the state of nature considered *absolute* in Book One with that considered *in se* in Book Two therefore cannot be entertained.[22]

What would instead appear more plausible is a further possible equivalence recognisable between the distinctions drawn in Book One and those in Book Two. For its part, the state of nature considered *in ordine ad alios* in Book One is none other than its homonym in Book Two. Meanwhile, it is the state of nature considered *in se* in Book Two – rather than the state of nature considered

absolute in Book One – that must be aligned with what is there termed *tertia status naturalis consideratio*. Indeed, someone discerning this correspondence could support their thesis by pointing to the fact that the natural state *in ordine ad alios* of Book One, or its homonym in Book Two, refer to the situation of men who have no common superior and are not subjects in either case. On the other hand, the *tertia status naturalis consideratio* of Book One and the natural state considered *in se* of Book Two both refer to the condition of men conceived as abstracted from *omnia inventa* (*artes e cultum*) and *instituta humana* (*e.g. civitates*).

Whoever argued this way, however, would let themselves be seduced by the fascination of symmetries rather than being guided by the logic of the texts. On the one hand the definition of the *tertia status naturalis consideratio* given in I,1,7 – which to that lover of symmetries had seemed wholly similar to the one offered by the state of nature considered *in se* in II,2,1 – in reality reproduces *ad verbum* the general definition of the state of nature which opens this second passage, that is, prior to the introduction of the distinction between state of nature considered *in se* and state of nature considered *in ordine ad alios*.[23] On the other hand, the state of nature *in ordine ad alios homines* as spoken of in Book One has a completely different function from that spoken of in Book Two. Indeed, in the former case, the question is raised of what is meant by natural state *in ordine ad alios*, or, in other terms, the question of what is meant by living with each other in a state of nature; and the answer is that what is meant is not having a common superior and not being subjects one to another. In the second case, conversely, we ask if those who live together in a state of nature – which means they are not subordinate one to another and that they do not recognise a common sovereign – are, towards themselves, friends or enemies.

However, with regard to being fascinated by symmetries, it has to be admitted that it is not only those who cannot resist the impression – perpetually resurfacing despite the considerations just sounded – that after all there must exist some correspondence between the state of nature *in ordine ad alios* of Book One and its homonym in Book Two, between the *tertia status naturalis consideratio* in the former and the natural state considered *in se* in the latter. The first to succumb to this fascination was Pufendorf himself, when, in the second edition of his major work, in the passage at I,1,7, he added a *tertia status naturalis consideratio* that did not figure in the first edition. Such an addition responded to an understandable requirement: to render the discussions of the state of nature in Books One and Two more congruent. Indeed, Pufendorf noticed that – as it was configured for the first edition – the discussion in Book One was missing that conception of the state of nature as the condition of men imagined as deprived of all human arts and inventions, a conception, however,

that played a non-trivial role in the presentation of the state of nature provided in Book Two. In the second edition, he therefore proposed to insert it in Book One also, but, by analogy with the other discussions of the state of nature (all of which, as we have seen, specify *three* modes to consider it), and influenced by the identical terminology deployed in Books One and Two (natural state *in ordine ad alios* in both cases), he made the conception figure as *tertia status naturalis consideratio*. He thereby irresistibly suggested the idea that it aligned with the second conception (the state of nature considered *in ordine ad alios homines*) in the same way that the state of nature considered *in se* aligned with its homonym in Book Two.

The equivalence that was thus created *a posteriori* between the partitions proposed in Book One and those introduced in Book Two ended by obscuring the fundamental datum of the discussion of the state of nature presented in Book Two; that is, that there is only one state of nature that is in question in the discipline of natural law. This is the state of nature obtained by abstracting from all human inventions and institutions. Being the only one that Pufendorf intends to concern himself with, this state is none other than that which in Book One he had called the state of nature *in ordine ad alios homines*, taking into consideration only its most salient feature, namely the absence of any relation of subordination.

Once we grasp that this is the only state of nature which Pufendorf undertakes to deal with in Book Two, we are ready to understand also that the consideration *in se* and *in ordine ad alios* of a state such as the one discussed in this book does not function to differentiate two diverse meanings of state of nature. Its function rather is to throw into sharper relief the one state of nature that concerns the discipline that is to be grounded, with the stress falling now on the condition of men taken as individuals, now on the condition of men viewed in their mutual relations.

(a) In the *De iure*

The only state of nature to play a role in Pufendorf's system is the human condition taken prior to or without human intervention, with the latter understood in its double valence: as help and experience capable of making life *culta*, and as deeds or pacts that create relations of subordination. And of this double valence it is the second that has the predominant (and more ambiguously notable) part in Pufendorf's system. That at least is what we now need to uncover in the various discussions of the state of nature: in the first place, in the same second chapter of Book Two of the *De iure* from which we set out. It is common knowledge that in this famous and notorious place Pufendorf presents as *miserrima* the condition in which man is visualised with all

human inventions and institutions set aside. It is equally well known that to depict such a condition he uses the *fictio*[24] of a man 'dropped from somewhere into this world and left entirely to his own resources, with no help from his fellows'.

We will not dwell, though, on these obvious features. Nor will we pause to underline the strong scent of Lucretius that emanates from these pages, among the most celebrated in all Pufendorf's work.[25] In fact in order to grasp the function of the state of nature (understood in the sense that we have been explaining) in the pufendorfian system, it is more useful to take note of certain logical gaps that emerge in the description of such a state in the pages in question.

The first and most significant of these gaps can easily elude the reader who abandons herself to the fascination of the fiction of the man thrown from who knows where into this world; however, despite this, it is none the less clear. In fact if we pay attention to the logical nexus that links this fiction to the conclusion we draw from it, we will observe how Pufendorf begins by identifying the man in the state of nature with a man 'left entirely to his own resources, with no help from his fellows after birth'. He starts then by identifying him with a man who has no parents, who has no companions, who has no *socii* of any sort and who for precisely this reason leads a life that is 'miserable and animal-like'). And he ends, conversely, by asserting that 'his condition would have been wretched and base, if no states had been formed, if every one had governed his household at his own pleasure, and had allowed his sons at manhood to go forth into a state of natural liberty' (II,2,2). He ends, that is, by identifying the *misera et foeda* ('wretched and base') condition of the state of nature with the life of families *extra civitates* (outside civil states).

In fact this conclusion is not only totally incompatible with the hypothesis of the man of nature as man *sibi soli plane relictus*, but also contradicts the very definition of state of nature that Pufendorf had given in the introductory paragraph of the chapter we discussed earlier. Indeed, there the state of nature had been defined as the state in which man is imagined as he is at birth, insofar as abstraction is made of all human inventions and institutions (and thus of family too), or else as that state in which none is subject to another (and thus not even to the father). It follows from this that the gap of Pufendorf's argument is two-fold. On the one hand, it consists in his having set out from a hypothesis – that of man abandoned to himself – which underlines the lack of human relations rather than the absence of relations of subordination, and in having concluded by foregrounding the wretchedness of a condition characterised essentially by the absence of relations of subordination, such as is that of the *vita extra civitates* (life outside civil states). On the other hand, it consists in his having started by counterposing the state of nature to all the states that imply

a relation of subordination (hence also to the family) and in having ended by counterposing it to just one of these: the civil state.

This double inconsistency is particularly significant for us because, unlike the formal definition of state of nature, it lets us see in action two constants in the use that Pufendorf actually makes of this notion. The first constant is that by virtue of which of the two traits characterising the state of nature in the definition – as a state of deprivation of the inventions of human intelligence, and as a state of exemption from all subordination – it is the second rather than the first that Pufendorf focuses on. Keeping our sight fixed on this latter trait characterising the state of nature, then we can say that the second constant is that by virtue of which of the several relations of subordination that Pufendorf admits into his doctrine – the relation of son to father, of wife to husband, of servant to master, of subject to sovereign – it is only this last one that, when all is said and done, he senses is *truly* opposed to the state of nature, in spite of the multiple and explicit declarations to the contrary.[26] These declarations are consistent with the notion of state of nature as the state in which men are not subordinate one to another and do not have a common superior, but conflict with the use actually made of this notion.

By way of example we will cite just one, the most explicit, drawn from the *Apologia* and directed against the authors of the *Index*. They had mischievously observed that, since for Pufendorf the state of nature was one in which no one is superior to anyone else, it has to be deduced that for him, in the state of nature, father does not command son and husband does not command wife,[27] leading our author to protest vehemently as follows:

> Who could assert that words like these have been uttered by a human being? Have you forgotten, blockhead, what you were told just before on page 6 [I,1,7] where the natural state towards others was described, according to which humans were understood to be mutually constituted by that mere and universal relationship [cognatio], which follows from the similarity of nature, prior to any act or pact of humans making one personally beholden to another. Or if these matters seemed unclear to you, have you not read on p. 146. §. 5. [II,2,5] that I said that those live in a natural state who have neither a common government [dominium], nor does one [person] obey or command another? Do you not yet grasp, that between husband and wife, between parent and child stand a pact and act of humans, by reason of which one became personally beholden to the other and showed [that they were] connected by a stricter bond than that common relationship resulting from a similarity of nature? Do you not yet understand, I say, that a man and a wife, a father and children

> don't live mutually in a state of nature, because a husband [is someone who] commands a wife and a father the children? (§35).

As we see, in this passage Pufendorf is categorical in asserting that by virtue of its very definition the state of nature is opposed, not only to civil society but also to familial society. On the other hand, it is only by shifting the line of demarcation between natural state and adventitious states – the latter including the relations of husband to wife, parent to child, master to servant, all contained in the concept of familial society – and thereby including familial society in the state of nature that Pufendorf can, in the final passage of *ING* II,2,2, establish the equation state of nature = state *extra civitatem* and cite the famous hobbesian counterposing of the condition of man *in civitate* to that of man *extra civitatem* (*De cive* X,1) as illustration of the *incommoda* (disadvantages) of the state of nature proper. This produces some wavering in the determination of the limits of the state of nature.[28] If we stay with the definition, then the state of nature ought to be opposed to all adventitious states but, instead, is actually counterposed only to that particular adventitious state, the civil state. This is not a contingent episode in Pufendorf's reflection, but re-surfaces inexorably in all the discussions he offers of the natural state of man.

It returns, for instance, in the passage in the *De officio* (II,1) mentioned above, where, of the third sense of state of nature, defined as the state in which live those who neither have a superior nor are subordinated one to another, it is said that 'a *Natural State* is opposed to the *Civil State*' (II,1,5). In keeping with the definition, however, it should have been said that it is opposed to all the states that imply a relation of subordination.[29] It is present in the dissertation *De statu hominum naturali*, where the second method of considering the natural state is 'to contrast it to the civil state, and to think of everyone being his own master and subject to no human authority' (§7). Finally, it is repeated, with absolute clarity, in the chapter on the natural state in the *Specimen controversiarum*, in the passage on the third mode of considering the natural state that we have already cited above.

But while it runs through Pufendorf's entire work, this contradiction – between having defined the state of nature as that state in which men live in natural liberty (that is, not subject to the authority of any other man) and then treating such a state as one opposed only to the civil state – is not the only contradiction in which the feature that *par excellence* qualifies the state of nature is caught: which is to say its being a state exempt from every relation of subordination. Indeed, if we consider the natural state *in ordine ad alios homines* – which we have seen is precisely the state of exemption from every subordination – then the distinction that Pufendorf introduces here between a natural

state *merus aut absolutus* and one that is *limitatus et restrictus*, leads us into no small difficulties. In *ING* II,2,1 this distinction was presented as that between the state in which all men in general and each man in particular live together in natural liberty (the natural state *merus aut absolutus* – pure or absolute) and the state in which men have entered with some of their like into a civil society, while with others they retain only the bond of their common humanity (the natural state *limitatus et restrictus*). Following a description of the wretchedness of the state of nature and the rights that go with it, this distinction was justified in the following manner:

> But we maintain that the race of man never did live at one and the same time in a simple state of nature, and never could have, since we believe on the authority of Holy Writ, that the origin of all men came from the marriage of a single pair. Now Eve was subject to Adam by the right of the husband, Genesis, iii. 16, and their offspring were, immediately after birth, under the father's power and the control of the family. But the entire human race might have been in that state, if what has been said by certain heathen writers were believed [...]. Therefore, a state of nature never actually existed, except in some altered form, or only in part, as when, indeed, some men gathered together with others into a civil state, or some such body, but retained a natural liberty against the rest of mankind; although the more groups there were in this division of the human race, and the smaller their membership, the nearer it must have approached a pure state of nature. So when at the first mankind separated into different family groups, and now have divided into states, such groups live in a mutual state of nature, in so far as no one group obeys another, and all the members have no common master. In this way, in early times, when brothers left their father's house and set up each for himself an independent family, they began mutually to live in liberty and a state of nature. And so it was not the first men but their descendants who began in fact to live in a state of nature. (II,2,4).

As can be seen from this passage, the distinction between a natural state that was *merus* and one that was *temperatus* was introduced by Pufendorf in response to the question on the actual existence – in present or past historical reality – of the state of nature understood as the condition of natural liberty. To this question, as Pufendorf warns, whoever believes in the Scriptures can reply only that, since all men descend from a single couple tied to the bond of conjugal subordination, those living together in the state of nature were not the first men, but their posterity. Only after the children of the first couple left

the paternal familiy and founded independent families did a situation of reciprocal independence begin to emerge.

Pufendorf's discourse, in this case, is thus located at the level of a historical consideration resting on the authority of the Holy Scriptures. And this means that it is located outside the science of natural law which, according to Pufendorf's own dictate, is what it is solely insofar as it sets revelation aside. From this it follows that we could calmly dismiss such a paragraph, dictated, as it is, by evident preoccupations of a religious character.[30] In order to prevent dangerous charges of impiety, Pufendorf was making it entirely clear how, despite the representation just offered of the state of nature presupposing men *undecunque in hunce mundum proiecti* ('as dropped from somewhere into this world'), its author does not share the pagan fables of men born 'from the earth like frogs, or sprung, like the brothers, in the tale of Cadmus, from scattered seed', but is a good Christian who believes in the Bible. This would let us set this paragraph aside, were it not for the fact that Pufendorf's characterisation of the condition in which the brothers lived after leaving the paternal family, and the condition in which independent states now exist, turns out to be extremely suggestive of the contradictions that swirl in the depths of the notion of state of nature. Suppose that men born from the earth like mushrooms are not more radically independent of each other than were the two brothers who, having left the original family, founded autonomous families (since both the former and the latter live together in a reciprocal independence as great as it could be). If we think along these lines, however, then we cannot grasp how the distinction between a natural state that is *merus* and one that is *temperatus* can arise and be justified.[31] In fact, if the mutual relations between men are fixed – whether we take men as individuals or take them as families or states – these relations will be configured either as relations of natural liberty or as relations of reciprocal subordination, or of common subordination to a third party. As such, men among themselves will be either in the natural state or outside it, thereby ruling out a third possibility: that is, the possibility in which men are together in a state of nature that is not exactly radical, but tempered and partial.

However, if from the formal definition of state of nature as the condition that obtains between those who are not subject one to another and who do not have a common superior, we then pass to the image that Pufendorf had constructed of such a state – a state that was *miserus et feodus*, dominated by insecurity and beastliness – we fully grasp what Pufendorf felt did not correspond to this image: namely, the situation in which it was not isolated individuals who lived in a state of reciprocal natural liberty but rather individuals who were members of different families or states, or simply these families and

these states. Since, in this situation, the *incommoda* (disadvantages) typical of the state of nature are much alleviated or even non-existent,[32] Pufendorf was drawn to refer to it as to a condition of tempered natural state; tempered, because it lacked the most characteristic connotation of the state of nature as Pufendorf had described it: wretchedness and insecurity. This, then, was the reason why our author could speak with a certain plausibility, psychological if not logical, of a tempered natural state.

To this principal reason for the ambiguity of the notion of state of nature in the pufendorfian system can be added an accessory but no less significant one. Indeed, let us consider that Pufendorf qualified the situation of those who live with some in the state of nature and with others outside it not only as a tempered natural state, but also as a natural state that was *partial*. He could do this with a measure of plausibility because, if we consider the condition of the lone individual and see that he is with some in a state of natural liberty and with others in a relation of subordination, we can say that this individual lives in a partial state of nature. This means that he lives partially in the state of nature (or with some but not with others), just as, by analogy, if we shift the focus from single individuals to all of humankind, that condition can be termed one of partial natural state, because of the totality of men, not all but only some live in natural liberty. Reasoning in this way, however, Pufendorf ends up inexorably finding in his hands a notion of state of nature entirely different from the one with which he set out. From a notion that was extremely technical, suitable for qualifying the nexus that links individuals or groups of individuals, the state of nature undergoes an uncontrolled transformation into a generic notion of human condition (individual and collective) as distant as can be from the technical precision that it needs to maintain in the system of natural law.[33]

The difficulties in which the famous discussion of the state of nature in the second chapter of Book Two of Pufendorf's major work becomes entangled thus bring into the clear some recurrent features of pufendorfian reflection relating to that state. The first is the feature by virtue of which he considers exemption from every subordination the most important characteristic of the state of nature, but still continues to assign a fundamental role also to state of nature conceived as state of solitude and abandonment, of lack of the company and help of other men. The second feature is the one in which, by defining the state of nature as the condition of natural liberty, he sets it always in opposition to the civil state alone, and yet he cannot neglect to hold firmly, by virtue of the definition, to a conception of the state of nature as opposed not only to the *civitas*, but also to the relations of subordination in families. As to what are the requirements of his system to which these contradictory assertions

respond, this is what we will seek to understand by analysing the presentation of the doctrine of the state of nature in two works of synthesis, namely the *De officio* and the 1674 *dissertatio*.

(b) In the *De officio*

We have already noted that, in the *De officio*, the discussion of the state of nature is located at the start of Book Two. By this point in his minor work Pufendorf has left behind him the deduction of the formal law of nature. He has also discussed the duties towards God and oneself and partially discussed those towards one's neighbor. Of these latter, in fact, he has already dealt with all the absolute duties and a large part of the hypothetical duties – that is, those that presuppose the human institutions of language and of property – thus leaving only those that presuppose the third and final human institution, government, to be dealt with.[34] Book Two ought to open with the discussion of this final type of duty towards one's neighbor; instead, it opens with the doctrine of the state of nature, which our author presents as a propedeutic to the discussion of those duties incumbent upon man in the different states in which he finds himself located in common life with others. Since, though, the only duties with which he has not yet dealt are those connected to the adventitious states that presuppose human rule – that is, matrimony, the parent-child relation, the master-servant relation, and the civil state – the doctrine of the natural state ought to serve as introduction to the duties relative to all four of these states. This does not happen, save in the very generic sense whereby someone who terms certain states adventitious has to explain that these states are called adventitious to distinguish them from a state that is called and then described as natural. In the more specific and important sense, however, whereby the description provided of the state of nature would in some way be necessary to ground the duties relating to adventitious states, this grounding turns out to apply only to the last of these states: the civil state.

So let us observe how the discussion of the state of nature is structured in the short work we are examining. After having introduced the distinction between the three modes of viewing such a state, the modes we have dealt with above, and having said (contradictorily, as we have already noted) that the state of nature considered in the third mode – or as the life situation of those who do not have a common superior and who are not subject one to another – is contrasted to the civil state, concerning this state of nature Pufendorf continues: 'Moreover, the Property of this *Natural State* may be consider'd, either as it is represented to us *notionally* and by way of *Fiction,* or as it is *really* and *indeed*' (II,1,6 [Tooke]). With this attack, Pufendorf says clearly that the natural state whose character he is preparing to illustrate is this one alone, that is to

say the final one of the three delineated immediately before;[35] the one that is understood as a state in which a man is not subject to any other man. Indeed, consistently with this initial statement, Pufendorf deduces the fundamental right obtaining in the state of nature – the right to act exclusively on the basis of one's own judgment and will – from the condition of exemption from every subordination that characterises the state of nature in its third acceptance. After having thus delineated the state of nature as a condition of equality and liberty, our author continues as follows:

> The state of nature may seem extraordinarily attractive in promising liberty and freedom from all subjection. But in fact before men submit to living in states, it is attended with a multitude of disadvantages, whether we imagine individuals existing in that state or consider the condition of separate heads of households. (II,1,9)

The *incommoda* of the situation of those who all and only live in the condition of natural liberty are made evident by Pufendorf by means of the *fictio* of the man 'in hoc mundo destitutus', a *fictio* that helps us grasp how feral life in such conditions would be. But even when it is the *familiae segreges* and not just individuals who live in the condition of natural liberty, the life of their members, though being 'somewhat more comfortable' (*paullo cultior*) than that depicted in the *fictio*, cannot in any way be compared to the life that is led in civil societies: 'not so much for the Need they might have of Things' says Pufendorf, 'as because in that State they could have little Certainty of any continu'd Security' (II,1,9 [Tooke]); so the contrast between life in the state of nature and life in civil society can be instituted with the same, famous words of Hobbes (*De cive*, X,1). Indeed, our author continues, the condition of equality in the state of nature entails that, in cases of controversy, there is no one possessing the authority to settle the affair. From this it follows that – given the illicitness of immediate recourse to arms and the duty to first try the path of an appeal to arbiters – there is no need to hide from the fact that

> kinship usually has a rather weak force among those who live in natural liberty with each other. Consequently, we have to regard any man who is not our fellow-citizen, or with whom we live in a state of nature, not indeed as our enemy, but as a friend we cannot wholly rely on. (II,1,11)

The condition of those who live together in the state of nature is therefore a situation of unstable friendship. This is due, says Pufendorf, to the nature of men, who have a high capacity for mutual harm, a capacity that turns into a will to

do so for various reasons that can all be summed up in the desire of some to do ill and the corresponding desire of others to defend themselves against the former, by issuing warnings. The conclusive image of the condition of natural liberty – or of immunity from all subordination – that we deduce from all this is, according to Pufendorf, the following:

> Hence in the natural state there is a lively and all but perpetual play of suspicion, distrust, eagerness to subvert the strength of others, and desire to get ahead of them or to augment one's own strength by their ruin. Therefore as a good man should be content with his own and not trouble others or covet their goods, so a cautious man who loves his own security will believe all men his friends but liable at any time to become enemies; he will keep peace with all, knowing that it may soon be exchanged for war. (II,1,11)

This is the discussion that Pufendorf offers us in the *De officio*.

As we see, its principal characteristic lies, on the one hand, in the assertion that the only state of nature to concern him is the state of those who recognise no superior, and on the other hand, in the emphasis placed on the drawbacks of such a condition, identified with that of those who live outside states. We can thus understand how restricting the state of nature to the single condition of exemption from any subordination allows Pufendorf to present the doctrine of the state of nature as generically preparatory to the examination of the human conditions that imply the presence of a superior, be it the husband, the father, the master or the sovereign. Nonetheless, for our part, we can also see that we were justified in asserting that Pufendorf's restriction only works with respect to the civil state. Indeed, if the whole interest of the discussion is focused on the drawbacks of the condition of those who live outside the state, it is to show the state's necessity. In short, it is the foundation of the duties of sovereign and subjects which is to be investigated, and it is for the civil state alone that the doctrine of the state of nature is expounded as the preparatory study, in effect if not in intention.

So it would appear possible to conclude that the single function of the state of nature doctrine in the *De officio* is to show the necessity and the foundation of civil society, and that – with Pufendorf concentrating to this end on the third sense of the state of nature – the other two tend to disappear from view: not only the first, then, as in the *De iure*, but also the second, that is, the condition of man abandoned without the help of other men, which in the *De iure* still played a leading role, as we have seen.

But in fact things are not precisely so. Indeed, if we look closely, the condition of man 'if he had been left to himself alone, without any support from other men' (II,1,4), which, to stay with our author's explicit indication, was to

remain outside the description of a state of nature understood as the condition of exemption from any subordination, is integrally restored in this description. Indeed, it is easy to see that the *fictio* of the man who was *destitutus*, which Pufendorf uses to show the *incommoda* of the condition of those who live in the condition of natural liberty *uti singuli*, does no more than replicate *ad verbum* the definition of the second of the three modes of understanding the state of nature that were differentiated at the start.[36] But let us note that Pufendorf does not make use of this *fictio* solely to represent the state of nature, but also to show, beyond the discussion *de statu hominum naturali*, what human *imbecillitas* is. In the *De officio*, for instance, the *fictio* appears for the first time precisely to illustrate the characteristic of human nature that is his weakness or *imbecillitas* whereby '*man now seems to be in a worse condition than the beasts*' (I,3,3). In a parallel sense, in the *De iure*, we find it almost at the very start, in the chapter where, to demonstrate how living 'without law' (*licentia exlex*) is not suited to man, the human condition is analysed so as to signal in *imbecillitas* one of its basic features (II,1,8). In any case, though, whether it is presented as an image of the state of nature, or whether it is used as a hypothesis appropriate to showing human weakness, the *fictio* of man abandoned in this world without the help of other men has the identical function: to show how much men have need of their like. But this, as we saw above, is one of the indispensable premises of deducing *socialitas*; it is precisely because man needs other men that he has everything to gain from a sociable conduct.

The consequence of this line of reasoning is that – whether in the *De iure* or in the *De officio* – the doctrine of the state of nature is not bound only to the theory of the state, but, *via* the thread of the *fictio* of the man who is *destitutus* – that is, by working through the second mode of considering the state of nature (the one for which it is a state of deprivation of any human commerce) – it is also linked to the deducing of natural law. Indeed, if we look closely, that doctrine is not linked to this deduction only by the thread of the fiction of the wretched man. In fact, the description of the state of nature is also presented as the most effective illustration of the other characteristic of human nature that is indispensable for deducing the law of *socialitas*: that of *pravitas*. Indeed, as Pufendorf himself confirms, it is evident that the climate of insecurity, instability and reciprocal suspicion that reigns in the state of nature flows precisely from that *pravitas humani ingenii*, from that proclivity of men to harm one another. This is the proclivity that Pufendorf repeatedly made one of the foundations of his demonstration of the necessity for man to be subject to a law and for this law to command a sociable comportment.

The different placements that the doctrine of the state of nature occupies in the *De iure* (prior to the deduction of *socialitas*) and in the *De officio* (prior

to the deduction of the duties connected to the conditions that presuppose human rule) are thus due to the dual function it performs in Pufendorf's system: the function of being preparatory to the theory of *socialitas*, on the one hand, and to the theory of civil society on the other. It is nonetheless true that of these two functions it is without doubt the second that prevails over the first. That Pufendorf continually returns to repeating a conception of the state of nature as opposed to the civil state is a fact that we have underlined more than once. That he had from the outset conceived the theory of the state of nature as a component of the theory of the state is what he himself tells us, namely in what may be regarded as the most successful of the many discussions he provides of the state of nature, and the one getting closest to capturing the spirit of his doctrine.

(c) In the 1674 'dissertatio'

We refer to the dissertation *De statu hominum naturali*, presented at Lund in 1674 and included in 1675 with the academic dissertations that their author judged worthy of distribution to a larger public.[37] At the start of this dissertation, Pufendorf advances the following claim for the importance of considering the state of nature in the field of political science:

> Those who busily investigate the make-up of natural bodies do not consider it sufficient to inspect only the external appearances that immediately meet the eye at a first glance; rather, they also make extraordinary efforts to probe those bodies more deeply and to analyze them into their component parts. [...] The same path has been taken by those concerned to examine carefully the character of the most prominent moral body, namely the state. Deeming it insufficient to discover only the state's external administration [...], they also study the internal organization resulting from the authority and right of its rulers and the obligation of its citizens, and make precise distinctions among that immense body's component parts. In fact, they think it notably conducive to their discipline's perfection to transcend all societies, as it were, and to conceive men's situation and state as it can be understood outside of society and without all human arts and customs. For from this alone can one clearly discern the necessity of and reason for the formation of civil societies, what authority and obligation flow from their nature, and finally what advantage and special bearing among men arise from them. Therefore, that doctrine rightly claims for itself the chief place in the architectonic of politics.
>
> De statu §1

The doctrine of the state of nature, according to Pufendorf, thus lays a justifiable claim to first place in the *politica architectonica*.[38] For anyone proposing to investigate the most noble of the moral bodies, the *civitas* or state, it is not enough to be expert concerning its external dress, it is also necessary to know the intimate arrangement of its component parts. To this end, it is always useful to look beyond all societies and to imagine what would have been the condition of man outside societies and deprived of all human inventions and institutions. In doing this, we succeed in grasping the motive that induced men to establish civil societies, what powers and obligations are linked to the nature of these societies, and finally what advantages man draws from them.

As we see, Pufendorf had never been more explicit in affirming that the state of nature is conceptualised as a function of the theory of the *civitas*. Indeed, for him, the doctrine of the state of nature would be the instrument by means of which, in the case of the *civitas*, a compound is resolved into its parts, as in the manner of a scientific investigation.[39] Pufendorf tells us that it is only by transcending all societies and imagining the state of man outside of these (that is, precisely, by hypothesising a state of nature) that we succeed in grasping the elements of which the civil society is composed. What this means – that is, in what sense it can be argued that the hypothesis of the state of nature allows us to grasp the constitutive elements of the *civitas* – is revealed to us initially by the very structure of the 1674 dissertation. Indeed, we note how, after the opening paragraphs (1–8) devoted to clarifying the notion of the state of nature and its various meanings, the whole interest and emphasis of the discussion falls on the notion of state of nature as state of exemption from any subordination and on the rights that flow from such a condition. Since, however, in the present historical reality, the subjects of the condition of natural liberty are *par excellence* the states themselves, it follows that the rights obtaining in the state of nature are the same as those enjoyed by states and their rulers. This means that, in specifying the rights obtaining in the state of nature, Pufendorf has also discovered the prerogatives of states or, more precisely, those constitutive elements whose essence he was searching for.

In fact, it is easy to see how in this dissertation the rights obtaining in the state of nature are treated as a function of the prerogatives of sovereign power. As to the liberty of the man of nature, for instance, this is spoken of above all by contrasting it with the liberty enjoyed by states (§§8 and 14). As to man's exclusive right in the state of nature to follow his own judgment, this is spoken of above all so as to put the relation between sovereign and advisors in its proper light (§9). As to each man's right in the state of nature to provide firstly for his own self-preservation by using all the means he deems

appropriate to this end (thus including pacts of mutual aid: §§10–11), this is spoken of above all so as to affirm the right and duty of state rulers to give prime consideration to the preservation of their state, all the alliances into which they may have entered remaining subordinate to this end (§19). Nor can we miss how the substantial considerations of the 'rather unstable and undependable' nature of the peace obtaining in the state of nature (§§15–18) serve to ground the various rights of the sovereign. This applies particularly to those rights connected with the necessity of surveilling those who are nearby (the right to keep a 'permanent or resident ambassador' in others' states: §20), or with the necessity of preventing other states overly increasing their power (the right to ally oneself with the weakest against the strongest: §21), or else with the necessity to rely above all on one's own strength (the right to maintain an efficient army and to procure the financial means needed for this purpose: §22).

The first sense, then, in which it can properly be said that through the doctrine of the state of nature the composite *civitas* is successfully broken down into its parts, is the one where, in specifying the rights obtaining in the state of nature, the prerogatives of sovereign power are identified, thus uncovering the very essence of the state. But there is another sense, no less important, in which the doctrine of the state of nature serves to break the state down into its component parts. It is one which Pufendorf himself signals, when he asserts that through this doctrine, 'can one clearly discern the necessity of and reason for the formation of civil societies' (§1). Indeed, this so to speak 'genetic' consideration, by pointing out to us the motive for which men have constituted the states, helps us understand what the function is that these latter must perform in human life. In doing so, it tells us what are the prerogatives indispensable for correctly fulfilling that function: that is, it tells us what are the constitutive elements whose essence we are searching for.

Now, the simplest way to show the necessity of constituting civil societies is to present the condition of life without them (the state of nature) as a negative condition from which it is necessary to exit. To this end, Pufendorf has to build an image of the state of nature that is wholly negative. We therefore understand why he reprises, in this dissertation too, the notion of state of nature understood as a condition of deprivation of all human inventions and institutions (the sense that has been identified here as the first mode of considering the state of nature), and further why he also gives a place here to that description of a *miserrimum* state well known to us from the *De iure* and the *De officio*.

It is not just the notion of the state of nature as a condition of exemption from every subordination that is functional for the theory of the state; so too is the notion of a state of nature understood as the condition in which man is

imagined *left entirely alone*. What is more, Pufendorf had presented the latter as such right from the start, warning that in order to reach into the intimate nature of the *civitas* it is more than ever useful to imagine what would have been the condition of man not only *outside society* but also *deprived of all human arts and institutions*. This does not mean, however, that the theme of the importance of this final mode of considering the state of nature for the theory of *socialitas* no longer resounds in this dissertation. To the contrary, on closer inspection, Pufendorf had never been more explicit in signalling the link existing between the hypothesis of the *destitute* man and the theory of *socialitas*. Indeed, after having described the *miserable* condition of man *left completely alone*, he justifies his interest in this way of considering the state of nature as follows:

> Even though the human race as a whole has never at one and the same time been in such a state, certainly not at an extreme degree thereof, it is hardly irrelevant for us to delineate it so. For not only may we come to understand how many good things humans owe one another, becoming disposed thereby to philanthropy and sociality, but also, in a special instance someone or other may in fact fall into such a state either deeply or to some degree. (§5)

Here no one can fail to see how, of the two reasons[40] adopted by Pufendorf to justify that mode of considering the state of nature, the first says in clear letters that the hypothesis of the man who is *destitutus* serves to make men understand how much they owe to their fellows and to bring them round to a sociable comportment.

But since we have paused to note how in this dissertation Pufendorf uses this theorisation of the state of nature for purposes of self-clarification, it is appropriate to note another such instance, to our mind particularly significant. It concerns the way in which Pufendorf clarifies, in this setting, an observation he had already made in the *De iure*. In §2 of the dissertation, then, he warns:

> by 'natural state' we do not mean here a perfect condition of man: neither in the sense of a state ultimately intended by nature wherein it surely wishes man to remain, nor one that functions as a norm to which civil 'states' must be conformed so far as the corruption of humankind allows. For the civil state is surely much more perfect than our natural state, above all when the latter is regarded in single individuals, and it was not contrary to nature for men to enter it once the latter had, as it were, been proscribed. (§2)

As can be seen, to the exact words of the *De iure* (II,2,1) Pufendorf now adds a crucial clarification. Far from the state of nature being the *norma* of civil society, the latter is to the contrary configured in a way far more perfect than the state of nature, which it is not therefore against nature to *proscribe* (as he puts it), in order to enter into the civil state. This observation is particularly important. Firstly, it makes clear to us that the pufendorfian state of nature cannot be interpreted as the ideal model to which the human legislator must conform,[41] and that Pufendorf consequently had very little to do with this common conception of natural law. Secondly, it helps us better understand why Pufendorf tied the doctrine of the state of nature to a 'genetic' consideration of civil societies. If, indeed, civil society is more perfect by far than the state of nature, and if the latter is the state to be rejected in order to enter into the former, the problem of what motive drove men to form civil societies cannot fail to loom large: a problem that, in fact, has great importance in this dissertation.

Pufendorf presents an initial stance on this question as early as §3. Here, defending himself against the charge – we know this to have been one of the first charges he faced[42] – of having placed at the foundation of his state of nature a man who was *pravitate infectus*, instead of the man who was *integer* of whom the Scriptures tell us, Pufendorf justifies his own manner of proceeding as follows:

> Nor, to be honest, is it clear just how useful it might be in the science of the state to imagine men situated in that primeval integrity, and to erect their situation as a model to which civil laws and customs must be conformed and adapted. For whether we suppose that states were formed for dispelling want or for securing men against the evils threatened by their fellows, neither claim requires us to presuppose humankind living initially in supreme abundance, undisturbed by any perverse desire to harm one another. For that happy situation is inconsistent with the ends for which our current states have been established. And if anyone probed more deeply those civil customs that presuppose men's wickedness, he would easily recognize how little in common with them those larger societies beyond the conjugal and the paternal would have had, which he could sketch for himself among an uncorrupted humankind. (§3)

In asserting that he has considered men as they now are, that is, corrupt – because he cannot imagine how it would benefit civil science to consider men in their primitive innocence – Pufendorf advances two hypotheses on the *causa impulsiva constituendae civitatis* ('the motive leading to the establishment of a state', as he was to put it on another occasion[43]): that civil societies were

constituted in order to overcome poverty; or that they were constituted in order to ensure a defence against the ills that befall man because of the actions of men.

He does not take a position between these two hypotheses, but seems rather to maintain both of these ends as being those in view of which civil societies were established. This explains the importance that the image of the state of nature as a wretched state continues to hold in the 'genetic' consideration of the *civitas*. It is, though, a position that Pufendorf had taken, as is known to every reader of Book Seven of the *De iure*, and as is confirmed in this dissertation. Here, indeed, after having described the misery of the state of nature now understood as the first way of considering such a state, Pufendorf observes:

> Furthermore, men's desire to get as far away as possible from the misery of the natural state did much to promote fellowship among them once they had begun sharing life's amenities. Through sharing, discoveries and products are bestowed on everyone, made public as it were, and any one person's diligence benefits all of them together; while otherwise, without others' help, a single man's ingenuity can discover and his diligence produce very little. It is therefore an established practice among humankind to transmit to others the discoveries made with the assistance of one's predecessors, to undertake joint projects, to engage in commerce, to dwell together, and to meet frequently with one another. But the establishment of civil societies seems not to have been necessary besides for the achievement of this end, since we may learn things from others, partake of their achievements, and trade with them, even though they acknowledge no common authority with us. Subsequently, however, men's standard of living is significantly furthered by states because, in them, citizens can securely devote themselves to their work without hindrance and be more assured about reaping the fruit of their own industry. (§6)

The sense of this passage is that, even if it is true that the desire to escape as far as possible from the state of great misery just described is the effective driving cause of the *societas inter homines*, nevertheless civil society is something other than that conjoining of reciprocal actions, those forms of commerce, that gathering of domiciles and those meetings that allow escape from the misery. All this could just as well have been obtained by exchanging works and swapping objects and information with individuals with whom one has not entered into a civil society. But if the prime aim of constituting civil societies is not that of promoting the *cultus vitae* (even if it remains true that this flows from them *ex consequenti*), only the other of the possible ends signalled in this

dissertation remains standing: namely, that civil societies were constituted *ad pariendum securitatem adversus mala quae homini ad homine imminent* ('for securing men against the evils threatened by their fellows' §3).

The consequence of this choice between the two possible *causae impulsivae constituendae civitatis* is that, while the misery of the state of nature continues to play its part, the characteristic of that state we want to focus on will predominantly be something else: that is to say, its insecurity and precariousness. Indeed, the theme of the individual's insecurity in the state of nature resonates to the maximum in this dissertation. We see, for instance, the question of the power of pacts of mutual aid in the state of nature. According to Pufendorf, from the right that someone in the condition of natural liberty has to provide for his own self-preservation, it follows that each, in the state of nature, can count, for his own defence, only on his own strength and on that of those with whom he has sealed a pact *de mutuo ferendo*. But Pufendorf observes that in the state of nature all such pacts contain a tacit limitation: 'insofar as I can contribute to your security and further your interests without destroying my own' (§11). And from this it follows that in the state of nature the only aid on which one can count with certainty is the aid which each can give himself.

What is more, this raises the question of whether men, in the state of nature, are friends or enemies of one another. Here, leaving aside for the moment (so as to return to it later) the interesting argumentation by means of which Pufendorf reaches his conclusion on this matter, this conclusion itself is already of particular significance:

> In view of these things, some kind of middle course must obviously be maintained here. Because of the bond among men resulting from the similarity of their nature, their mutual need, and the natural law's dictate urging peace, the natural state cannot properly be considered a state of war. But because of men's wickedness, their desires, and the passions which struggle vehemently against right reason, it is also characterized by a rather unstable and undependable peace. Therefore, we ought to suppose anyone our friend and be ready to perform the duties of peace and humanity toward him if he is willing to receive them. Just the same, we should also be anxiously concerned about securing our own safety at all times, as if the friendship of others were little to be relied on, and never allow ourselves to slide into passive neglect by trusting in others' moral integrity or innocence. (§18)

Here no one can fail to see how, despite our author's claiming to follow a middle path between those who assert that men's security is sufficiently protected

by reverence for the natural law, by pacts and by pledges of faith, and those who assert that the natural state is a state of war of all against all (§17), in the final analysis the natural state that he describes is far closer to the second than to the first. This is because he describes a state which, while it cannot be said to be one of actual war, is certainly one of a condition of insecure and treacherous peace, a state in which, because of human malice and the force of desires and passions, one cannot rely on the presumed amity of others. What is more, this impression is confirmed by the paragraphs that follow, in which, extending to the relations between states the considerations voiced in respect of individuals in the state of nature, advice is provided to sovereigns along such lines as: hope for aid only from others who 'nobiscum utilis iungit et quorum interest nos salvos esse' ('are bound to us by common interest and to whom it matters that we be safe'); remember that pacts between states last only as long as they are reciprocally useful (§19); be like Argus of the hundred eyes so as to observe, by means of *residentes* and *legati*, what is going on in the neighboring states, so as to prevent possible threats to one's own state (§20); do not allow another state to be 'excessively and unnecessarily increasing its strength' (§21); act in such a way that your own forces are always as prepared as possible, taking particular care for all that pertains to the *res militaris* (§21).

If this, then, is the condition of the individual in the state of nature, if these are the advantages born of natural liberty, we understand how Pufendorf can draw the following conclusion from them:

> For the same natural liberty that whole states consider a most splendid and noble right is so little to be sought after when imagined in single individuals abandoned to their own devices in a setting where human numbers are increasing, that the sooner they exchange it for civil submission the better. (§14)

He thus concludes that, in comparison with states, natural liberty is of far less benefit to the individual, such that he has every interest in exchanging a condition of autonomy that is harbinger of so many ills, for the advantages of civil subjection.

Here there begins to emerge a further sense in which the doctrine of the state of nature justifies the genesis of the *civitas*. Indeed, the doctrine accomplishes this function not only in the sense that the *fictio* of the state of nature allows the identification of the motives that induced men to leave the state of nature and enter into the civil state. But it also accomplishes this function in the quite different manner of showing the advantages obtained from civil subjection, thereby, so to speak 'inviting' entry into it. Moreover, Pufendorf

himself declares that the wholly negative image of the state of nature also plays this essential role of an 'invitation' to civil society, in a paragraph that we will translate in its entirety as final confirmation of the effort at self-awareness that he makes in this dissertation:

> Furthermore, a consideration of the natural state of individuals and its misery is very useful for making citizens love and devote themselves completely to the civil state's preservation, and also for making them endure gladly the burdens necessary for the maintenance of states. For these burdens are but a very small portion of the evils that would have attended a life without civil bonds, immersion in which would have been far more miserable than what seems to be the harshest existence in a state. One who has never thought about the misery of that natural state bears the burdens which rulers impose on citizens with ill will, as if they were superfluous and contrived either to annoy the people or merely to nourish the rulers' ambition and extravagance. In contrast, someone who has correctly estimated the matter admits that it is no more suitable to complain about such burdens than about the price of clothes or shoes by which the body is protected against severe weather and injuries. Indeed, one who has reflected thoroughly upon this natural state will bear more patiently the unreasonable inconveniences that he sometimes experiences at the hands of rulers. For these are in fact rarities in the civil state, and counterbalanced by the occurrence of better things. But in the natural state one could expect equivalent or worse evils not only on a daily basis, but also without end and measure. Moreover, a judicious citizen will by no means attribute those inconveniences to the character of the civil state as such and be therefore more discontented with it; rather, he will acknowledge the general imperfection of human affairs. For although states were specially devised against the evils that threaten one person from another – an end necessarily requiring other people's involvement – it was not possible to take precautions so precise as to prevent the emanation of an occasional evil from those very persons to whom we subjected ourselves in order to avert human evils. Also, one who has thoroughly weighed these things puts up willingly with any inconviences of his status and is not inclined to revolt against the government. This is especially so because such changes are almost always followed by other men rather than by other practices, and because most changes in a commonwealth occur through civil wars, which are deservedly held to be among the gravest civil evils. (§23)

Now this passage, with which the dissertation virtually ends,[44] authorises us to conclude that, for Pufendorf, the theory of the state of nature is also a moral fable appropriate for forming the *cordatus civis* ('judicious citizen'). Such is the subject who not only patiently tolerates the burdens imposed by the sovereigns for the defence of the state, but also those 'unreasonable' burdens that might have been imposed on him; the citizen who, recognising the common imperfection of human things, and knowing how for the most part men change but their ways do not, holds back from mutations to the public order. However, it does not authorise us to conclude that this use of the doctrine of the state of nature is the only or even the most important one in the pufendorfian system. In fact, whoever interpreted it in this way would not do justice to the complexity of that doctrine, because they would reduce to a single one the multiform faces that, as we are at last in a position to see, it assumes in that system.

The state of nature is in fact for Pufendorf the means whereby he continues to succeed in grasping the essence of man's nature, stripping it of all human interventions so as to grasp it in its original nakedness, beyond the tinsel cover of civilisation and the softenings of the *societas hominum*. It is the hypothesis founding the constitutive prerogative of sovereign power: independence from all subjection. It is the condition that explains the motives for the constitution of civil societies and thus their function. It is the *exemplum ad deterrendum*, the pedagogical fable appropriate to forming the good citizen. Examination of the 1674 dissertation has, however, shown us that all these diverse functions of the notion of state of nature can be summed up in its *being for civil society*. Indeed, as we have seen, even the first of the modes of using that notion that we have just listed – though retaining a vital importance for purposes of deducing the law of *socialitas* – is then re-used in its entirety to construct that total image of a state of nature entirely contained under the sign of negativity, which is the indispensable condition for explaining the genesis, at once both logical and psychological, of civil society.

We can therefore conclude our examination of the pufendorfian doctrine of the state of nature by asserting, with some confidence, that it is substantially and principally a preparatory doctrine for the theory of the state. In what complex and fundamentally ambiguous[45] sense it was such, we have reconstructed through the lengthy and often laborious analysis conducted thus far. Thanks to this reconstruction, we are now in a position to understand the reason for the oscillations that the notion of state of nature displays in Pufendorf's thought. It is thus possible to grasp why the state of nature was now a strictly technical notion (the condition of exemption from all subordination); why it was now a generic image of the condition of man outside civil society; why the man of nature seemed now to be the man alone and abandoned, deprived of every

link with the other human beings, now the man who has social and family relations, but has not entered into a civil society; and finally why the condition of one who lives in a family is thought of now as state of nature, now as its opposite.

Indeed, it is evident that, to the extent that Pufendorf uses the state of nature as a methodological apparatus appropriate for founding sovereign power, he holds firm to a strictly technical conception of the state of nature, as condition of exemption from all subordination, no matter what the subject who lives in that condition: single individual, head of a family group (*paterfamilias*), or representative of a *civitas* (sovereign). On the other hand, to the extent that he uses the state of nature to explain the motives for establishing civil society, here the independence that is spoken of can no longer be, indifferently, that of the single individual, of the *paterfamilias* or of the sovereign. Instead, it must necessarily be that of the single individual or that of the *paterfamilias*, and the state of nature will become the condition of the man outside civil society, a condition all of whose disadvantages must be shown so as to accredit it as the *state from which one must exit*.

What is more, it is clear that, if in order to present what Pufendorf once called the *symptomata* of the state of nature (*De statu* §7) in their most extreme form, the accent has to fall upon the *fictio* of the man abandoned in this world without any human aid, then the man of nature can only be the man alone. For its part the family, in which the individual finds all the aid and comforts he needs, will tend to be configured as completely opposed to the state of nature and sufficient to avoid its *incommoda*. Things are different, though, to the extent that we notice that the wretchedness and lack of comforts in the state of nature are not sufficient to explain the renunciation of natural liberty and the acceptance of civil subordination (because those disadvantages can be corrected by other types of *societas hominum*), and thus the insecurity obtaining in the state of nature is made the real *causa impulsiva costituendi civitatis*. For now it is the family – which succeeds in making human life *cultior*, but not in protecting men from the harms they suffer at the hands of other men – that will be sent back into the whirlpool of negativity of the state of nature, of which it will no longer in any way represent the counterpoint. But since, on the other hand, Pufendorf cannot not hold to the point that the state of nature is the state in which one does not bear relations of subordination, while in the family one has a relation of subordination, it is clear that the family is configured, contradictorily, both as a state of nature and as its contrary. The family is a natural state because it does not meet the essential function of the civil society (to guarantee security), which is thus the only state always to be represented again as the true opposite of the state of nature. But the family is

also the contrary of the state of nature, because in the family one has a relation of subordination and because the *cultior* life that the family ensures is very far from the *inculta* life of the man who is *destitutus*, who, as we have seen, created the totally negative image of the state of nature, as the state from which one must exit.

One final thing remains to be explained, before concluding our discussion of the doctrine of the state of nature in Pufendorf: why does the relevance of this notion for grounding the law of nature (of which we have, though, found so many traces) tend to pass decisively into the background, while its importance for the theory of the *civitas* rings out as the dominant theme of this doctrine? To explain this fact will not, however, prove too difficult for anyone who recalls to mind the conclusions reached in the first part of this essay. There we saw in detail that the law of nature – summarised as the imperative that man must be sociable if he wishes to enjoy those necessary advantages of the *societas hominum* – does not have sufficient force as a moral duty to ensure the result for which it is established, that result being able to be guaranteed only by the coercive force of human law.

But awareness of the weakness of the law of nature and the consequent accentuation of the necessity of the human legislator propel Pufendorf to make the problem of the nature of civil society the real key theme of his system of natural law. This displacement of the centre of interest from the problem of the law of nature to that of civil society has the consequence that the doctrine of the state of nature, originally also conceived in the light of the law of nature, comes to be used substantially and predominantly in the light of the theory of the *civitas*. In conclusion, it is the discovery of the necessity of the human legislator that makes the doctrine of the state of nature a doctrine *for civil society*.

3 The Hobbesian Inheritance in the Doctrines of *Socialitas* and of the State of Nature

If this is the true face of the pufendorfian doctrines of *socialitas* and of the state of nature as we believe we have been able to reconstruct it, it can be understood how those doctrines are closer to certain hobbesian theses than is generally thought. Beginning with the most well-known aspects of hobbesian philosophy, consider the *conservatio vitae* set down by Hobbes as the foundation of the laws of nature, just as the *ut salvus sit* is for Pufendorf the foundation of the law of *socialitas*. Alternatively, consider the emphasis placed by Hobbes – as Pufendorf too will have to do in spite of himself – on the incapacity of the laws of nature to meet the objective of human self-preservation.

Consider again the *mutuus metus* (mutual fear) set by Hobbes at the origin of the *civitas* and recognised by Pufendorf also as the true *causa impulsiva constituendae civitatis*.

Passing on to some particular (but no less important or significant) points, it is easy to see that Pufendorf's doctrine that to know a composite whole (the *civitas*) one must break it down into its component parts, is nothing other than an application of the methodological maxim enunciated by Hobbes in the *praefatio* to the *De cive* ('for every thing is best understood by its constitutive causes'), by virtue of which he could say that, as to the methodology of his research, 'I took my begining from the very matter of civill goverment, and thence proceeded to its generation, and form, and the first beginning of justice' (27). So too it is clear that the close inspiration of the famous pufendorfian *fictio* of the *homo in hunce mundum proiectus* lies in the very famous hobbesian invitation to consider men 'as if but even now sprung out of the earth, and suddainly (*like* Mushromes) come to full maturity' (*De cive* VIII,1, p. 117). Or again, it is evident that the pufendorfian thesis according to which there has never existed a state of nature *merus* or *absolutus* – a state in which each one is in the condition of natural independence in regard to each other – descends by way of direct filiation from the hobbesian admission that 'though there had never been any time, wherein particular men were in a condition of warre one against another; yet in all times, Kings, and Persons of Soveraigne authority ... are in continuall ... posture of War' (*Leviathan* XII, p. 196). If Pufendorf pays such attention to distinguishing between *societas* and *civilis societas*, between desire for the company of other men and need to enter into a civil society with them, and if he asserts that, far from being born a good citizen, man can be made such only by education and, in some cases, not even by that, it is because he has learned Hobbes's lesson so well. As the English author taught:

> I deny not that men (even nature compelling) desire to come together. But civill Societies are not meer Meetings, but Bonds, to the making whereof, Faith and Compacts are necessary: The Vertue whereof to Children, and Fooles, and the Profit wereof to those who have not yet tasted the miseries which accompany its defects, is altogether unknown; whence it happens, that those, because they know not what Society is, cannot enter into it; these, because ignorant of the benefit it brings, care not for it. Manifest therefore it is, that all men, because they are born in Infancy, are born unapt for Society. Many also (perhaps most men) either through defect of minde, or want of education remain unfit during the whole course of their lives; yet have Infants, as well as those of riper years,

> an humane nature; wherefore Man is made fit for Society not by Nature, but by Education.
>
> Note, *De cive* I,2, p. 44

But these concordances are relatively easy to identify. What is at first view less evident is how similar, on careful inspection, are Hobbes's fundamental law of nature and that of Pufendorf. In the first place, indeed, both exclusively concern inter-human relations and leave aside any problem of perfecting or self-perfecting for the individual as such. In the second place, in both cases it is from a single fundamental law that all the diverse precepts of natural law are deduced, and these precepts are, what is more, broadly coincident – think of the imperatives 'comply with pacts', 'consider others as our equals', 'be grateful', 'assist the well-being of others', down and down to the norms relating to the conduct of the judge or of the mediator.[46] In the third and most important place, what is, at base, Pufendorf's fundamental law ('Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude, which is peaceful': *ING* II,3,15) if not a variant formulation of Hobbes's fundamental law: 'That Peace is to be sought after where it may be found; and where not, there to provide our selves for helps of War' (*De cive* II,2, p. 53)? And indeed, that the invitation to 'cultivate and conserve, *by all that is in you*, a *pacific* sociability towards others' is none other than a different way of saying that it is necessary, hobbesianly speaking, 'to seek peace, if it can be had, and if it cannot be had, to seek one's own defence', as voiced in the title of the second paragraph in chapter 2 of the *De cive*, it was Pufendorf and Hobbes themselves who said it. This was said by Pufendorf when, in maintaining the right of violent self-defence, he had explicitly asserted that the laws of nature are those that aim to establish and keep the peace (as if it is the same to say *leges naturae* and to say *leges paci*) and, above all, significantly, that to be *insociabilis* is equivalent to 'acting *contra leges pacis*' (*ING* II,5,1). And it was said by Hobbes in the first version of his political system, the *Elements*, when he had asserted: 'The sum of virtue is to be sociable with them that will be sociable and formidable to them that will not. And the same is the sum of the law of nature' (I,XVII,15, p. 95).[47] In other words, using the very term (*sociable*) made famous, some thirty years later, by Pufendorf, Hobbes argued that the sum of the laws of nature is to be *sociable* with him who is sociable, redoubtable with him who is not: which is as if to say – precisely as Pufendorf will do – that the fundamental law of nature prescribes being sociable *quantum in se*.[48]

Pufendorf's natural law is therefore broadly hobbesian. It is so in its range of application: restricted by both authors to *this* life, to external actions and to those actions that involve inter-human relations. It is so in its deductive

foundation: uncovered by both authors in human nature and in particular in the instinct-right of self-preservation. It is so in the fundamental obligation to obey it: placed by both authors in its being commanded by the superior *par excellence* that is God. Finally, it is so in its very formulation, as the pufendorfian invitation to be sociable as long as this comportment does not expose us to becoming the prey of others does no more than repeat in different words the hobbesian invitation to seek for peace where it is possible and, where peace not possible, to make other provisions for one's own self-preservation.

But the two authors' doctrine of the state of nature also presents striking analogies. We have already spoken of their common representation of the state of nature as a state of *mutuus metus*, that is, as a state in which the laws of nature do not succeed in guaranteeing man's security and hence survival. But what is more significant is that the use both authors make of the notion of state of nature is wholly similar. For both, the state of nature is the device for catching the features that constitute human nature; for both, it is the state from which one needs to exit so as to enter into civil society; for both, the rights obtaining in the state of nature are the basis of the rights of the sovereign. No need to say, then, just how hobbesian is Pufendorf's use of the state of nature as *exemplum ad deterrendum*, as a means of invitation into civil society.

Finally, it is striking to register how in both authors identical functions of the notion of state of nature correspond to identical problems with this notion. For instance, with the aim of accentuating the negativity of that state, like Pufendorf, Hobbes too outlines an image of a state of nature not only insecure, but also wretched.[49] In this way, however, he runs into the result of maintaining, alongside the principal cause for men to enter into civil society (the *metus*), an accessory cause – namely the desire for the things necessary for living well, for making life more amenable[50] – to which, by his own admission, no role could be accorded in the decision to submit oneself to the civil bond.[51] Unlike Pufendorf, who had distinguished various senses of state of nature, Hobbes seems to admit only one, where it designates the *conditio hominum extra societatem civilem.*[52] This leads him to make continual use of the opposition between the state of nature and the civil state,[53] taking it strictly as an alternative between the condition of one who lives outside of a state community and the condition of one who lives inside. But insofar as he views the state of nature fundamentally as a condition of liberty, natural equality and of exemption from obligations deriving from pacts[54] – just as Pufendorf will do later – Hobbes too is forced to counterpose the state of nature not simply with civil society, but also with the relation father-son.[55] It is true that the English author can do this with greater ease than Pufendorf, because, while the latter denies that the family is a *civitas*[56] and struggles to distinguish between

family and state,[57] the former insisted throughout his whole work on the merely quantitative difference between the one and the other.[58] This permitted him to affirm, with great ease and naturalness, that paternal dominion is a *genus civitatis*[59] and that a political body can be formed by just two persons.[60]

However, in Hobbes too, the disjunction remains between the tendency to use the notion of state of nature in its more generic valence of 'opposed to the civil condition' and the technical definition of state of nature as the condition that precedes any pact. The disjunction allows Hobbes to hypothesise situations – such as that of pacts sealed in the state of nature[61] – which, in strict logic, are a nonsense. Indeed, if the state of nature is defined as the condition preceding any pact, then either we have the state of nature and no pacts, or we have pacts and no state of nature. So Hobbes can speak of pacts sealed in the state of nature only insofar as he forgets that the notion of state of nature is a technical notion, designating the condition preceding any pact, and then takes it in its more generic valence of human condition outside of civil society, exactly as we saw happening with Pufendorf.

4 Consequences for the Force of Pufendorf's Anti-Hobbesian Arguments Relating to the State of Nature

Pufendorf's thought is thus linked to that of Hobbes in its very foundations and not only in some, albeit important doctrines. But if this is how things are, then we also grasp why some of Pufendorf's criticisms of Hobbes sound so extrinsic and superficial. The cause is not to be sought – as claimed by so many of the interpreters who have gone no further than the easy registration of that superficiality[62] – in the weakness of Pufendorf's speculative mind.[63] Rather, given the hobbesian principles from which he set out, the cause is to be sought in the very impossibility of Pufendorf differentiating himself from Hobbes in fundamentals, and thence in the necessity that compelled him to seek this difference in extrinsic things.

We will be allowed, then, not to pause for long on these 'easy' criticisms (being 'easy' they are weak and frankly wrong) of Hobbes by Pufendorf, but rather to cite just one instance, the most significant, of them. This is Pufendorf's confutation of the hobbesian thesis according to which the state of nature is a state of war (*ING* II,2,5–10). The weakness of this confutation lies not so much (as one might be tempted to believe) in the fact that the first argument adopted by Pufendorf *pro contraria sententia* is a scriptural argument: namely that of the common descendence of humankind from a single couple, such that humankind is associated with the sentiments that bind the consanguineous

(II,2,7) (from the very moment Pufendorf is perfectly aware of the fact that, in adopting the authority of the Scriptures, he has not adopted an argument *di ragione*).[64] Rather, the weakness lies in the 'levity', so to speak, of the arguments of reason themselves. These are presented by their author in the following manner:

> Any men who are separated by some space cannot directly harm one another, for if a person at some distance harms me, he does it through some one near at hand, [...] Therefore, since those who are widely separated cannot do mutual harm, so long as they do not come in contact with one another, there seems to be no good reason why such persons should not be reckoned as friends rather than enemies. [...] Furthermore, that equality of strength, which Hobbes proposes, is more likely to restrain the will to do harm than to urge it on. Surely no man in his senses wants to fight with a person as strong as he is [...]. But the reasons adduced by Hobbes for the desire of men to do harm to one another are only particular ones, such as arouse individuals against individuals, and are by no means important enough to make a universal war of all men against all others unavoidable. Nor is it always true that inoffensive men live in the midst of aggressive and wicked ones, or that the latter are always eager to harass the former. A clash of minds, furthermore, is rarely seen among any others than some few superior men. [...] Nor, in conclusion, has the Creator been so niggardly in his provision for the necessities of mortals that many must always struggle in order to secure the same thing. Indeed the general perversity of men is sufficient to explain why a man should be guarded in his trust of another, and in baring his flank to him, as it were; especially if he is not well acquainted with him, as Plautus says in his Asinaria [495]: 'Man is no man, but a wolf, to a stranger.' But no reasoning man will admit that this suspicion and mistrust will cause a person to attack and oppress another, unless the latter has shown an intention to harm him. (*ING* II,2,8)

Since in Pufendorf there is always something worth noting, even when it is less felicitous, here the attentive reader will not have missed the elegance of the correction applied to the hobbesian phrase *homo homini lupus*[65] – elegant because it identifies and restores Hobbes's plautine source, that Pufendorf is thus among the first to locate.[66]

But to that reader the weakness of our author's argument will be apparent too, its core lying entirely in the assertion that, since the causes given by Hobbes for the origin of the *bellum omnium contra omnes* are not always

universally operative, it follows from this that a war of all against all is not in fact always under way. In the first place, this argument does not constitute a rebuttal of Hobbes's thesis, since it is well known that by 'war' Hobbes does not mean a war actually being waged, but any situation that is open to conflict. In the second place, the rebuttal is inconsistent with the same intelligent restatement that Pufendorf himself had proposed of his adversary's thesis, a restatement in the course of which it was the particular sense of Hobbes's use of the term 'war' that was first highlighted by our author.[67]

This singular gap between the deep understanding with which Hobbes's thought is re-articulated and the incomprehension shown in the criticisms is not limited just to the case of the notion of *bellum*. Indeed, the argument according to which equality of forces can only discourage war, not favour it (as Hobbes believed), is valid only if by equality of forces we understand an actual parity of strength between two contenders, who, looking at one another and discovering themselves to be *grosso modo* of equal strength of body (or having armies of equal size), draw back from measuring themselves against each other in a fight whose outcome, for this very reason, is uncertain. It does not apply, however, if by equality of strength is understood – as Hobbes had taken it and as Pufendorf had not failed to note in an effective synthesis of the adversary's position[68] – the equal capacity that, in the final analysis, every man has to inflict on any other, no matter how strong, the ultimate of natural harms: death. The reason for this gap lies, we repeat, precisely in Pufendorf's having taken up and shared so deeply the true sense of the hobbesian doctrine of the state of nature as state of *bellum omnium contra omnes* (that is, the condition of nature being a condition of necessary insecurity that does not guarantee man's self-preservation).[69] It was his search for something with which to oppose this doctrine that led Pufendorf to take it in its literal and extrinsic sense, which he himself well knew was not its main sense.

If anyone still doubted Pufendorf's unconditional adherence to the substance of hobbesian teaching relating to the state of nature, it would be good for them to re-read attentively two places that we have extensively utilised: the first chapter of Book Seven in the *De iure* and the dissertation *De statu hominum naturali*. If we turn back to *ING* VII,1, we see, firstly, that the arguments used by Hobbes in the opening chaper of the *De cive* against the theory of man as political animal are accurately and sympathetically presented. Secondly, it can be observed that the reach of Pufendorf's own counter-arguments on this point (those adopted in II,3,17–18) is limited by underlining, in the very words[70] of the note in *De cive* I,2, the difference between sociable relations and civil society (VII,1,3). Thirdly and most importantly, we see that here Pufendorf accepts *in toto* not only the hobbesian thesis according to which the good

citizen is a product of education while 'most men [...] remain their life long poor citizens and nonpolitical creatures' (VII,1,4),[71] but also and above all the hobbesian thesis that the true cause of the constitution of civil societies has been mutual fear.

Such unconditional adherence passes, on the one hand, through the clarification – introduced with Hobbes's own words[72] – that by 'fear' is meant not so much being terrified as taking precautions against possible harms (VII,1,7); on the other hand, through the following assertion: 'We have fully shown before (Bk. II, chap. ii, §§ 6 and 12) that men have plenty of reasons why they should fear and beware of one another' (VII,1,7). This passage is important because here Pufendorf supports the thesis that men have many good reasons to fear one another by referring to two places in his work. In the second of these places, Pufendorf argues his *own* thesis (as we have seen, it is broadly hobbesian) that the peace of nature is a treacherous peace (presented precisely in II,2,12). In the first, Pufendorf sets out the arguments adopted by Hobbes in demonstration of *his* thesis that the state of nature is a state of war, arguments that after having been presented again in the passage in II,2,6, are then, in that setting, refuted by the weak counter-arguments which we have just reported above. This means that here, in Book Seven, Pufendorf recalls with approval the hobbesian theses which, in Book Two, he had refuted.

What is more, that the reference back to the passage in II,2,6 is not the result of a momentary distraction or, worse, of a printing error, is shown by the fact that Pufendorf, in the passage immediately following this reference back, makes himself the true defender of those causes of reciprocal fear among men that had been criticised by him in the anti-hobbesian passage in II,2,8, which we quoted at length above. Indeed, to the thesis of J.F. Horn,[73] according to which ambition cannot be made the origin of the formation of the *civitates*, given that this is born only after their constitution, Pufendorf retorts thus:

> As though that frightful murder among the first brothers was not caused by ambition, when Cain was angered because his brother was held more worthy in the eyes of God! Furthermore, ambition is not the sole cause of mutual fear, but the stubborness of men and their scramble for the same object play a part, of which the former in those simplest of ages caused the violence of the giants, while the latter occasioned strife even among those who were most closely related. See Genesis, xiii. 7; xxvi. 15, 20-1. And granted that ambition stirs more mightily the breasts of kings and rages with greater ruin to mankind, yet the minds of shepherds and tillers of the field are not entirely free from its evil influence. (VII,1,7)

Here, even if we set aside the use of the example of Cain – which still irresistibly recalls to mind Chapter XIII of the *Leviathan* where Cain is likewise used as an example,[74] – no one can fail to see how Pufendorf re-adopts with complete and unconditional adherence at least two of the causes of reciprocal fear between men mentioned by Hobbes. First, there is the one that Pufendorf here calls *ambitio*, and which is referred to in the *De cive* as the need to *magnifice sentire de se ipso* (I,5, p. 163/95) and in the *Leviathan* as *gloria* (XIII). And the other is that which Pufendorf calls the 'scramble for the same object' (*concursus circa eandem rem*), and which Hobbes designates in like fashion in the first chapter of the *De cive* and the thirteenth chapter of the *Leviathan*.[75]

But at this point let us close the analysis of the *De iure* VII,1 and proceed to the dissertation *De statu hominum naturali* so as to pick up again the arguments (which we had temporarily set aside in our examination of this minor work) adopted there by Pufendorf in response to the question of whether the state of nature is a state of peace or a state of war. In examining the paragraphs of the 1674 dissertation that address this argument (§§15–17), it becomes clear that, unlike in the *De iure*, in the dissertation the dissonance between Pufendorf's explicit criticism of the hobbesian thesis on the state of nature as a state of war and his substantial adhesion to it tends to disappear.

Indeed, in this minor work not only are the hobbesian theses on the nature of inter-human relations accepted *in toto*, as in Book Seven of the *De iure*, but also the anti-hobbesian arguments of Book Two of the major work, when they recur, undergo attenuation and restriction such as to strip them of their capacity – a capacity they retain in the *De iure* – to serve as pole for a contrary interpretation of the state of nature. An instance of this attenuation is provided by the way in which, in §15 of the dissertation, the theme of the *coniunctio hominum* is treated: namely, the similarity of men's nature. Here, indeed, the common origin of humankind from the one couple is cited solely to exclude it from present consideration: 'a natural similarity in all of humankind is acknowledged even by those who do not know all mortal traits to be derived from one conjugal pair'.

Instead, our author's whole discourse aims not so much to underline, as in the *De iure*, the factual similarity of nature among men (with the bonds and friendships that flow from it), as to demonstrate how man finds himself having to behave in such a way as to reconcile himself with other men. Indeed, on the one hand, from the fact that 'nothing is more miserable for a human being than constant solitude' follows the necessity that 'human beings must join themselves to at least some other men and conduct themselves as friends toward them'; on the other hand, from the fact that 'very many goods and no fewer ills can redound to a person from others' follows the necessity, for he who loves his own well-being, to 'not arouse others against himself by injuring

them, and he must be friendly toward those at least whose resources he cannot do without in providing for his own needs and conveniences' (§15).

Thus the natural *coniunctio hominum* signalled by Pufendorf is not related back to the fact that men are naturally allies and friends, but rather to the recognition that they are constrained to conduct themselves amicably at least with those with whom they want to have some relation or of whom they have need. If we then move to §16, devoted to the close examination of the *inclinationes hominum*, we encounter a good example of unconditional adherence to the hobbesian analysis of human nature. Pufendorf in fact opens by affirming: 'It is well known, on the other hand, that people usually prefer love of their own possessions and consider their own advantage and glory to be most important'. As to the first of man's two basic inclinations thus specified – amour propre and the pursuit of one's own utility that follows from it – it is known that one's own utility is often pursued not only by taking no account of the utility of others, but by positively harming one's neighbour. This means that the perversity of some has 'the bad result that, through it, even those more modest characters who would otherwise be gladly content with their own possessions and not covet those of others, and whose preoccupation with their own peaceful condition would cause others no trouble' are 'forced to break the peace and to fortify themselves against it by whatever means [...]. Thus can one man's trouble keep even many temperate men embroiled in constant disputes'. Here, as we see, our author fully accepts the hobbesian thesis according to which it needs only the badness of a few to throw the majority into *perpetual conflicts*. As to the second of man's basic inclinations, the *Gloria* – and we note how here, unlike in the *De iure* where he spoke of *ambitio*, Pufendorf uses precisely the term used in the *Leviathan*[76] – our author notes that men consider as an offence even a mere disagreement:

> Besides, most mortals have a temperamental stubbornness that not only makes them consider their own variously acquired opinions as true, and eager for others' acknowledgment thereof, but that also makes them hate those who see things differently.

In this observation no one will have any difficulty in recognising Hobbes's well known thesis.[77] Also strictly hobbesian, on the other hand, is the observation relating to the perverse effects of the clash of desires when more than one person wants the same thing:

> Finally, it also happens often that the interests of many people appear to collide, and that many individuals set their hearts on a common object

> which they neither can nor want to possess together. None of them, moreover, deigns to concede it willingly to another – a state of affairs customarily represented by the noxious fruit of Strife.

The conclusion that Pufendorf draws from these considerations is entirely in keeping with the hobbesian thesis on the state of nature as a state of perpetual war:

> For all these reasons, nearly constant suspicions and mutual distrust thrive among those living together in a natural state, especially if their situation provides them with opportunities for harming one another.

It is a conclusion that distinguishes itself from Hobbes's thesis only by a shade of meaning whereby for Pufendorf it is the *suspiciones ac mutua diffidentia* that are perpetual, rather than war.

This last passage also provides another instance of the reprise, in an attenuated form, of the anti-hobbesian arguments we signaled above in Book Two of the *De iure*. Nor will it have escaped the attentive reader that the argument concerning the spatial distance between men who live in the state of nature – that in *ING* II,2,8 had served to deny that there could be conflict between those who do not even come into contact with one another – re-appears here, in a changed figure, namely, in the claim that the *perpetuae suspiciones* are all the more justified the more the *opportunitas situs* augments the *facultas nocendi*. What is more, the argument of spatial distance – used with the same critical valence as was the case in *ING* II,2,8 – returns, together with other anti-hobbesian arguments that had been adopted in that passage of the *De iure*, in §17. Here, though, is explicitly stated what, there, we had laboriously opined; that is, that the criticisms Pufendorf makes of the hobbesian conception of the state of nature as state of war of all against all are valid only if the hobbesian thesis is taken in its most explicit literalness. Indeed, in §17 of the *dissertatio*, having provided in the two previous paragraphs the replies we have just seen to the questions of what the *coniunctio* is and what the *inclinationes* are, Pufendorf states:

> Hence, one who has thoroughly pondered all these things will no doubt admit that it is extreme and overly simplistic to claim that no animal is gentler than man and, therefore, that respect for the natural law alone (according to which it is wrong for one person to harm another) or even agreements and promises rendered are sufficient to ensure men's safety and security. For it is quite certain that by far the greatest portion of the

> evils and troubles burdening men in this mortal state stem from other men. Considerably more harmful, on the other hand, is the insistence of those who pronounce the natural state to be one of war, indeed a war of all against all or of anyone against anyone living together in that state. For war surely involves a professed intention to harm another in some way and, at the same time, adequate preparation for undertaking hostilities. But many people have never had, nor now have, the intention of harming others. This includes those, for example, who are separated by very long, intervening distances, and those who do not threaten others' affairs because of modesty or because they do not think it conducive to their own. Still others attest their peaceful intention toward us by means of words and promises, dismantle the armaments by which they can harm us, and commit themselves to peace in good faith. By what pretext will we number them among our enemies? Rather, since no one can do without the assistance of others – as one who shows himself an enemy toward them will have anticipated in vain – concern for their own self-preservation makes everyone unable and unwilling to treat all other persons as enemies. Though there is in humans an innate wickedness that enjoys harming others as much as possible, and that can never be entirely extirpated or corrected, it nonetheless does not disclose itself on just any occasion. Often, too, a person lacks the ability to implement his wicked desires. Hence, it is not clear why someone can straightway be considered an enemy on account of that wickedness alone, before it erupts into hostile acts against others. Moreover, since the causes that can set men at odds with one another are either not universal or tend not to break out into hostile acts on a constant basis, they should certainly not be deemed a sufficient warrant for simplistically declaring the natural state a state of war. (§17)

From the observation that the causes liable to provoke conflicts either are not universal or do not always turn into hostile acts Pufendorf draws a consequence that is extremely weak (and quite in line with our interpretation), namely, that those causes are therefore not sufficient to allow the state of nature to be qualified *ita simpliciter* as a state of war. This clearly shows that he is fully aware of criticising the thesis of the state of nature as a hostile state, understood in a literal sense.

The conclusion of our analysis of the pufendorfian criticism of the thesis of the state of nature as state of war of all against all is that, between the hobbesian and the pufendorfian visions of the state of nature, there is a fundamental convergence which can be grasped beyond the facile and extrinsic counterposition between a Hobbes who maintains that the state of nature is a state

of war and a Pufendorf who maintains, to the contrary, that the state of nature is a state of peace.[78] This means that what is important and significant in Pufendorf's criticisms of Hobbes regarding the state of nature cannot lie in the arguments that this extrinsic counterposing entails, but must be sought elsewhere, for instance, in Pufendorf's sharpening of the hobbesian concept of men's natural equality.

Concerning the hobbesian way of conceiving this equality, Pufendorf acutely notes that even if it is admitted that men are substantially equal in strength and in other mental faculties, it is not permissible to counterpose, as Hobbes does, this presumed equality of strength to the inequality introduced among men by the civil law. Such counterposing can in fact be installed only at the cost of a serious confusion, one that he pointedly indicates as follows:

> But when Hobbes adds that 'the inequality, which now prevails, has been introduced by civil law', in my judgement he has been caught napping. For previously he had spoken about the natural equality of men's physical powers, to which it is erroneous to contrast that inequality which has been brought about by civil law, forasmuch as this latter affects not the physical powers of men but their status and condition. For indeed the civil law does not cause one man to be stronger than another, but only to take precedence over another in dignity. (*ING* III,2,2)[79]

Thus, according to Pufendorf, just as Hobbes is mistaken in counterposing what is a *moral* inequality to what is a *physical* equality, so too the equality that natural law requires to be conserved among men is not that of strength or other mental faculties, but rather is of another sort:

> Indeed, just as in well ordered states, one citizen is above another in position or wealth, but all share equally in liberty, so however much one man may excel others in mental and bodily gifts, he is none the less bound to exercise toward them the duties of natural right [...]. And this equality we can call an equality of right, which has its origin in the fact that an obligation to cultivate a social life is equally binding upon all men, since it is an integral part of human nature as such. (*ING* III,2,2)

Men, then, according to Pufendorf, are naturally equal not because they have equal strength, not because on close inspection they have equivalent intellectual gifts, but because they all have an equal right to be considered by others as their peers, no matter how poor their bodily or intellectual gifts may be. This thesis of Pufendorf, to tell the truth, is what Hobbes himself had foreshadowed

when, in the *De cive*, he had displaced the emphasis from picking out an effective equality among men to affirming the necessity they have to recognise themselves as equals:

> Whether therefore men be equall by nature, the equality is to be acknowledged, or whether unequall, because they are like to contest for dominion, its necessary *for the obtaining of Peace, that they be esteemed as equall.*
>
> *De cive* III,13, p. 68

And this passage in the *De cive* must have been well and truly present to Pufendorf, if he so treasured it as to repeat and deepen (*ING* III,2,8) the criticism that appears there of the aristotelian doctrine of slaves by nature, and if, in reproaching his great predecessor with performing the switch between physical and moral equality, he attributes the error to a momentary distraction, and presents us with a Hobbes who has dozed off, like the great Homer.

But the importance of Pufendorf's criticisms of Hobbes concerning the state of nature must be sought above all in the attempt, repeatedly renewed by our author, to show that, once the hobbesian *ius in omnia* has been reinterpreted in a way suited to at least one of the aspects of the English author's thought, it is no longer necessary to maintain Hobbes's thesis that there is no injustice in the state of nature. The critical reinterpretation of the *ius in omnia* – which reveals itself in this case too to be one of the nodal points of Pufendorf's reflection – is in fact constructed by exploiting elements that are present and active in Hobbes's thought, that is, as we said at the start of this essay, putting into action the choice of one Hobbes against the other.

Let us see, then, what Pufendorf observes in turning again to the *ius in omnia* in the first chapter of Book Seven of the *De iure*:

> That right against all men and to all things, which according to Hobbes accompanies the state of nature, is to be extended no farther than sane reason admits, which is in a sense something like this: Man, when living in natural liberty, has a right to use all the means, which sane reason judges necessary for his preservation, against all by whom the same sane reason suggests that he is threatened. Therefore, if a man extends his precaution beyond the bounds set by sane reason, he will, without question, be sinning against the law of nature. And so if a man has anticipated his enemy in killing him, because of an uncertain fear which he could easily have escaped from, it must by no means be held that his deed is permitted by nature. So also they are unquestionably perverted who feel that on

> the same principle rapine and robbery against a potential enemy can be defended. For rapine and robbery are in themselves such a medium as sane reason can in no way designate as necessary to man's preservation, but as something undertaken rather from excessive avarice and cruelty. Surely no highway-man despoils travellers only because they threatened him with peril. (VII,1,7)

Having defined the *ius in omnia* as the right of each in the state of nature to use all the means that *recta* or *sana ratio* suggest necessary for his own self-preservation, Pufendorf criticises the hobbesian thesis according to which in the state of nature the *incertus metus* is enough to justify the aggression of a potential enemy, as well as that according to which in such a state *latrocinia* are permissible. The criticism rests on the consideration that, in the first case, one's caution 'is to be extended no farther than sane reason admits', and in the second, it cannot be held that *sana ratio* finds robbery to be a necessary means of one's own self-preservation, deeming it rather to be an action that is undertaken 'from excessive avarice and cruelty'. Now, in these pufendorfian observations, it is easy to hear the sound of an implicit reproach to Hobbes: that of his not being attentive to his own principles, of having forgotten, in advancing the theses that are criticised here, that he had said that

> if any man pretend somewhat to tend necessarily to his preservation, which yet he himself doth not confidently believe so, he may offend against the Lawes of Nature;
>
> note to *De cive* I,10, p. 48

or even that the *recta ratio* is

> the act of reasoning, that is, the peculiar and true ratiocination of every man concerning those actions of his which may either redound to the dammage, or benefit of his neighbours,

that is, an act of reasoning on the effect of one's own actions that is not only *proper* and personal but *true*, which is to say 'ex veris principiis recte compositis concludentem', allowing the conclusion that

> the whole breach of the Lawes of Nature consists in the false reasoning, or rather folly of those men who see not those duties they are necessarily to performe toward others in order to their owne conservation.
>
> note 1 to *De cive* II,1, pp. 52–53

But it is above all in Pufendorf's closing observation – that is, the observation that one certainly does not turn to robbery and theft in order to guarantee one's own self-preservation, but rather through avarice and cruelty – that we hear the echo of a famous and crucial observation of Hobbes, whereby the latter, to tell the truth, destroyed from its very foundations his own thesis according to which *in statu naturae silere leges naturales* (*De cive*, V,2); that is, the observation that

> But there are certain naturall Lawes, whose exercise ceaseth not even in the time of War it self; for I cannot understand what drunkennesse, or cruelty … can advance toward peace, or the preservation of any man.
>
> Note to *De cive* III,27, p. 73

Indeed, it is surely because he has this hobbesian passage in mind that Pufendorf chooses cruelty in order to illustrate conduct for which one cannot claim self-preservation to be a justification.

In this intelligent capacity to grasp the tensions internal to hobbesian thinking and to deploy them to his own ends, Pufendorf attains, in our judgment, the most convincing results and achieves the maximum conceptual depth. Less persuasive, conversely, as we have seen above, is his attempt to show that there exists a 'natural and not merely conventional right' ('ius per ipsam naturam datum et non ex pacto demum quaerendum') (*De statu* §10) to which there corresponds an obligation to respect it, one that is perfectly binding by virtue of the law of nature alone. But we have argued that the disappointing results on this point take nothing from the importance of the re-thinking applied by Pufendorf to the notion of *superior* in light of the doctrine of moral entities, which is to say the distinction between physical power and moral power.

Thus it is on these crucial points that the importance of the deepening to which Pufendorf subjects Hobbes's thought is to be measured. This means that whoever aspires to locate Pufendorf in the correct place in the history of natural law and who is not content with producing simplifications good only for the textbooks, but sterile and bereft of any glimmer of authentic understanding, cannot stop at the definitional and simplificatory aspects of his author, to repeat with him that 'the natural state of men, even when considered apart from commonwealths, is not one of war, but of peace' (*ING* II,2,9). Rather, they must reconstruct in full Pufendorf's agonised reflection on the state of nature and the law that governs it. If he makes this far from easy effort, the reader will see that, below formulations apparently antithetical to the hobbesian formulations, is hidden a way of thinking consonant with that

of Hobbes in a fundamental accord, a way of thinking that, while free of any crude submissiveness, sweeps through its whole arc on the trail of the hobbesian problems.

Since this is what we believe we have shown thus far, we could consider our task done, given that this task, as we warned in the Introduction, was not that of confronting all of the particular themes on which Pufendorf measures himself against Hobbes. We could therefore consider our task completed, were it not incumbent on the interpreter to explain how the image of an anti-hobbesian Pufendorf came to be affirmed and shored up across the centuries. Now, this does not have to do only with interpreters' tendency to stop at the surface of Pufendorf's doctrine. Rather, and more intrinsically, it concerns the evolution of his thinking (or, better, with the way in which he re-thought and re-presented his own thinking), with the use he made to this end of the anti-hobbesian Cumberland, and with the image of Pufendorf that the great Barbeyrac transmitted to his many readers. It will be on these themes that we will dwell in the second part of this essay.

Notes

1 For the reactions of contemporaries to this and other aspects of P.'s thought, and for precise bibliographical indications and extracts from the writings of P.'s critics to whom we refer in the text, see Palladini, *Discussioni seicentesche su S. Pufendorf. Scritti latini 1663–1700*, (Bologna: Il Mulino, 1978).

2 The passage in the *Praefatio* to the first edition of the *De iure* to which I refer in the text is particularly effective: 'There are, of course, also duties or "virtues directed towards God, as well as those of every man towards himself". But since, in so far as religion touches the study of natural law, it is limited within the sphere of this life, it can upon that score be referred to social life, in so far as this last furnishes the most effective bond for the associations of men. And such things as a man should observe in relation to himself, make him all the better adapted to society. But the nature of that "uprightness and innocence of manners which should be observed everywhere and even outside the bounds of society", that is, without consideration of its relation to other men, I have been unable to comprehend' (GW vol. 4, p. 9). The often virulent criticisms with which he had been faced for not having included in the first edition of his work a discussion of the duties to God and duties to oneself induced P. to insert in the *De officio* two chapters (the fourth and the fifth of Book One), 'De officiis hominis erga Deo seu de religione naturali' and 'De officiis hominis erga seipsum'; as well as adding, in the second edition of the *De iure*, the opening fifteen paragraphs of II,4.

3 The passage in question in the *Praefatio* to the *De iure* reads as follows: 'For the nature of man has ever been determined by God for social life in general, but it was left to the choice of men to establish and enter particular societies under the guidance of reason, which fact does in no way make the law of nature arbitrary. What, furthermore, is more obvious than this? That the nature of man, in so far as it was made by the Creator a social one, is the norm and foundation of that law which must be followed in any society, whether it be universal or particular'. (p. ix).

4 Barbeyrac understands this distinction as follows: 'Here by original condition we understand the condition in which man finds himself at the moment of leaving his Creator's hands, and considered purely and simply as a man, prior to having made any use of his faculties. Conversely, the accessory condition (*post superveniens*) is the condition in which he finds himself, left to himself, after making use of his faculties. The former condition is treated in this paragraph; the latter in the three following paragraphs' (note 1, *Le droit de la nature*, II,1,5). [DS. trans.] In our view, here P. wants rather to allude to the fact that, in delineating the characteristics of human life, he intends to leave aside the question of whether such characteristics are man's original ones (*natura integra*) or those subsequent characteristics that came with original sin (*natura corrupta*), and instead considers human nature as it now is, in its indivisible unity of good and bad inclinations.

5 Here there follows a description of man's wretchedness that is nothing but a paraphrase of Lucretius. On the use that P. makes of this author, see Palladini, 'Lucrezio in Pufendorf', in *La Cultura* 19 (1981): 136–75. That Lucretius is an author who enters early into P.'s intellectual baggage is now shown by one of the many lectures (probably more than the 48 that have been preserved) that he presented as a member of the *Collegium Anthologicum* of Leipzig between 1655 and 1658. I refer to the lecture of 4 August 1655 on the birth of state power, recovered (together with the others) and published by D. Döring in appendix to an essay: 'Samuel Pufendorf (1632–1694) und die Leipziger Gelehrtengesellschaften in der Mitte des 17. Jahrhunderts', in *Lias* 15 (1988): 13–48, which opens precious pathways into P.'s formation and the cultural climate of Leipzig in those years. In this lecture, P., examining the different theories on the formation of the state, refers clearly, as Döring notes (p. 29 and p. 48, notes 99 and 100), to lines of the *De rerum natura*. I am not though in agreement with the general interpretation Döring gives of this short lecture (two printed pages) as proof 'dass Pufendorf wesentliche Elemente seiner späteren Naturrechstlehre bereits in Leipzig entwickelte, dass er also die ihn entscheidend bestimmenden Anregungen nicht allein seiner Bekantscaft mit Weigel und seinem Aufenthalt in Jena zu verdanken hat. Inbesondere die dem Einfluss von Thomas Hobbes zugeschriebene Modification der von Grotius vertretenen Theorie über die Enstehung des Staates lässt sich in Pufendorfs Leipziger Vortag ansatzweise verfolgen' (p. 30). To the contrary, in our view, assertions like the following: 'It is clear to any rational person

that through God some subordination is implanted in nature, by which some are suited to govern and the rest to obey. From this source arose the first government of parents over children, of husband over wife, of masters over slaves, and likewise that reverence with which we honour elders or those superior for whatever reasons' (p. 40), demonstrate how P., in 1665, was still bound to the aristotelian doctrine that there exist those who by nature are apt to command and those who are apt to obey, as well as to the thesis that the *imperium* of fathers over sons, husbands over wives, etc., is *natural*; which are, as we well know, precisely the doctrines against which, following Hobbes, he will fight the most in his mature years. What is more, even the thesis that P. designates as that of those who 'fight for the inclination of nature and the spontaneous subjection of human beings' (p. 39) and which, according to Döring, refers to Grotius's *appetitus societatis*, according to us refers simply to the aristotelian doctrine of man as political animal. Also the rational motivation for the formation of the state, which appears next to the natural instinct, and which Döring correctly underlines (p. 30), is formulated in such a way ('Several families were however induced to join together by the indigence that afflicts the life of humans unless it is alleviated by mutual assistance; then by the benefit and enjoyment, which redounds from that society; and again because with the increase of mortals, and with that of malice too, injuries were done more frequently, an ill for the prevention of which no more suitable means can be seen, than that several unite together to repel by common force the force of others: however the quarrels that would arise between those members of society were left to be settled by someone, or by several, to whom sovereign power over all had been submitted', p. 40) that they refer rather to Lucretius and to Bodin (here cited and discussed more than once), than to Hobbes, who, frankly, staying with this lecture, seems to us not yet to have crossed P.'s cultural horizon.

6 'For the power of the human soul is chiefly concerned with such things as relate to the service of God, and to social and civil life.' (11,1,5).

7 But we will then see if, and in what sense, it is a matter of a 'digression'.

8 That this line of reasoning makes self-preservation the ground of the deduction of natural right was already noted by R. Sharrock in the third edition (1682) of his anti-hobbesian work, *De finibus et officiis secundum naturae ius* (in Palladini, *Discussioni*, *cit.*, p. 306). Some years later, G.G. Titius, in one of the *observationes* added by him to the 1703 edition of the *De officio* (and precisely *observatio* 78 to *De officio* I,3,7), criticising the pufendorfian deduction of *socialitas* argued, in unexceptionable fashion, as follows: 'the meaning of the asserted demonstration is either: that the affections mentioned make man's nature social, or that they urge man to exercise sociality towards others. In the first sense the argument seems false, in the latter the final foundation of natural right is private utility'. On the other hand, in *observatione* 4 on §4 of the *praefatio* Titius had shown how even the *fictio contrarii*

of man made wretched because deprived of the help of other men failed to show that human nature is created social, as the wretchedness resulting from solitude proves *socialitas* can signify only that man's nature is not created social absolutely, but made such solely insofar as his own utility requires it: with which one returns to posing the private utility of each individual as the foundation of natural law. That self-preservation was the foundation of pufendorfian *socialitas* was also believed by F. Hutcheson, who in *De naturali hominum socialitate oratio inauguralis*, Glasgow, 1730, pp. 10–11, sets P. together with the epicureans and Hobbes, among those who do not recognise in man altruistic tendencies irreducible to motives of interest (F. Hutcheson, *Logic, Metaphysics, and the Natural Sociability of Mankind*, ed. James Moore & Michael Silverthorne, trans. Michael Silverthorne (Indianapolis, IN: Liberty Fund, 2006) 198–99). Among more recent authors, Bobbio, *Il diritto naturale*, *cit.*, p. 34, clearly recognises the utilitarist foundation of pufendorfian *socialitas*. Also Hont, *op. cit.*, p. 267, notes that the concept of *socialitas* 'was built firmly on the notion of self-preservation' and refers to the *dissertatio de socialitate* (1694) of J.H. Hertius (in Palladini, *Discussioni*, *cit.*, p. 367). R. Tuck, 'The "modern" Theory of Natural Law', in Pagden, *cit.*, pp. 99–119), summarises this passage as follows: 'What was *right* (*honestum*) was so because it was fundamentally *profitable* (*utile*) to an individual in need of protection from his fellow men' (p. 105).

9 In this context there is no need to warn (because we have dwelt at length on this fundamental aspect of pufendorfian thought in the first chapter) that the imperative 'be sociable' has strength of law only insofar as it is ordered by God.

10 This point is well grasped by Welzel, *op. cit.*, p. 42, who insists on the normative character of *socialitas*. Also Dufour, *op. cit.*, p. 126, note 302, recognises that *socialitas* is a principle of comportment, not a natural disposition. Whilst Denzer, *op. cit.*, p. 93, not distinguishing between the doctrine of *socialitas* advanced in the *Elementa* and that in the *De iure* (which, on the contrary, as we will see below, are to be carefully distinguished) presents *socialitas* as a characteristic of human nature, even if at some points (pp. 95–96) he seems to realise that the pufendorfian concept of *socialitas* aims to distance itself from the purely instinctual and naturalistic conception of Grotius's *appetitus societatis*. Finally, the difference of *socialitas* as a normative objective and Grotius's *appetitus societatis* as a given fact of human nature, is foregrounded also by Mori, *op. cit.*, p. 22 and by Bazzoli, *op. cit.*, pp. 298–99.

11 Perhaps this explains why P.'s most intelligent and famous follower, Christian Thomasius, in his first work of natural law, gives a definition of *socialitas* as 'a common inclination, infused into humanity by God, by the force of which he desires a happy and peaceful life with other humans.' (*Institutes of Divine Jurisprudence*, I,4,55), which, in our view, does not correspond at all to P.'s intentions; as, on the other hand, Thomasius himself must have suspected, if in the note to this passage

he felt himself drawn to add: 'This definition of sociality agrees, I hope, with the meaning of Dn. Pufendorf, even though I don't remember that I have read any definition of *socialitas* in his works'.

12 Bobbio, 'Il giusnaturalismo', in L. Firpo (ed.), *Storia delle idee politiche economiche e sociali*, 4 (Torino, UTET, 1980) 491–558, saw this aspect of P.'s thought very well, also identifying its hobbesian stamp, and contesting the old classification of P. and his followers among the *Socialisten* as propounded by authors like G. Hufeland and F.J. Stahl, observes: 'Se per "socialisti" si intendono coloro che hanno continuato a tramandare la concezione aristotelica dell'uomo animale naturalmente sociale [...], nessuno degli scrittori che hanno contribuito a formare e a sviluppare il modello giusnaturalistico può essere contraddistinto con questo appellativo. Neppure Pufendorf. La necessità che l'uomo ha di vivere insieme con gli altri non deriva nel Pufendorf, a differenza di Grozio [who, indeed, according to Bobbio continues the aristotelian tradition and is therefore outside the natural law 'model'], da una tendenza naturale verso la società, ma come si è visto, da due condizioni obiettive, l'amore di sè e la debolezza, che fanno apparire all'uomo desiderabile la vita in società. Così spiegata, la vita in società appare più come il prodotto di un calcolo razionale, di un interesse, che di un istinto o di un *appetitus*, ragione per cui Pufendof deve essere ritenuto ancora una volta seguace più di Hobbes che di Grozio' (p. 524). On the other hand, it is only to the first of the two senses of *socialitas* we have distinguished in the text, that the characterisation by Lipp, *op. cit.*, p. 145, as 'positiv gewendete Aspekt der imbecillitas' in our view fits. This author – who moreover does not miss the second aspect of *socialitas*, namely the normative one – holds that P. 'erleidet an dieser Stelle das methodische Dilemma der *metábasis eis állo génos*', transforming, in the construction of his juridical system, what were anthropological givens, physical entities (*imbecillitas* and *socialitas*), into normative entities, into moral entities (p. 148). Now, in our opinion, while not denying that P.'s thought on this point suffers undoubted uncertainties and temptations to fall back into the confusion of is and ought to be, it is not however to be forgotten that in the main line of his thought it is solely by virtue of the divine command that *socialitas* becomes a law. The fact that men need other men does not have in itself, as such, any normative valence. On this problem, see also below, p. 196, with note 50.

13 *Epistola ad Scherzerum*, p. 64: 'By foundation I understand the first proposition in the discipline of natural right, constructed from observations obtained from the nature of things and men's desires, under which other propositions can easily be subsumed and resolved into the same. In the same sense in which in Scripture love is said to be the sum of the law'.

14 Thus Sauter, *op. cit.*, pp. 123–24 and 139, who believes that *socialitas* is a natural disposition to form society and who therefore reflects an aristotelian-scholastic

conception opposed to that of Hobbes. Thus also Wolf, *op. cit.*, pp. 345–46, who aligns P. with Aristotle precisely for the docrine of *socialitas*, seen as the antithesis of Hobbes's egoism. Also Röd, *op. cit.*, who holds that with the doctrine of *socialitas* P. accepts an aristotelian conception (pp. 75 and 81) that is opposed to the hobbesian self-preservation instinct (p. 91). On the other hand, Mancini, *op. cit.*, p. 120, rightly denies that *socialitas* is 'ricollegabile alla concezione aristotelica dell'uomo come animale politico'.

15 Indeed P. presents the discussion with which the *De iure* (*ING* I,1,1) opens as follows: 'This consideration [or the fact that the moral entities have been so little studied by those who cultivate the *philosophia prima*] impels us to give by way of preface, in so far as shall seem necessary for our undertaking, a discussion of this field of knowledge which has been neglected so far by most writers; so that the definitions of moral things, which we shall give, may not by their obscurity or novelty delay the reader, who has doubtless met but rarely such terms in·the common treatises. [...] However, if it so be that a man cannot by any means abide these inelegancies, he may pass them over and move at once to smoother fields'.

16 Spitz, *op. cit.*, p. 442, also underlines the change of place of the discussion of the state of nature in the *De officio* with respect to the *De iure*.

17 Indeed, definition III of *Elementa* I reads as follows: 'Status est ens suppositivum morale, in quo obiecta moralia positiva et potissimum personae dicuntur esse'.

18 *ING*, I,1,6: 'Indeed, in the same way that physical substances sub-pose, as it were, space, in which they fix the natural existence which they possess, and exercise their physical motions, so persons, especially moral persons, on the same analogy, are held and understood to be in some state, which is, as it were, likewise subposed or sub-set for them, so that in it they perform their actions and produce their effects'.

19 In *ING* II,2,1 P. asserts: 'By the natural state of man we do not understand that condition which nature intended should be most perfect and for his greatest good'. This concept is clarified in the *Dissertatio de statu hominum naturali*, §2 as follows: 'by "state of nature" we do not mean here a perfect condition of man: neither in the sense of a state ultimately intended by nature wherein it surely wishes man to remain, nor one that functions as a norm to which civil "states" must be conformed so far as the corruption of humankind allows'. On the problem of whether 'the most perfect condition to which nature destines man and in which it wishes him to remain' is 'the condition of humanity that God assigned to man by making him the most excellent of all animals', Mori, *op. cit.*, p. 16, note 27, seems to have no doubts, citing as illustration of the first of the three senses of state of nature precisely the passage in *ING* II,2,1 in which it is explained what is not meant by natural state. But this identification of the first two senses cannot be taken as self-evident, but rather is something to be debated, as we attempt to do below in the text.

20 In agreement on this are Denzer, *op. cit.*, p. 102, for whom precisely the *status naturalis in ordine ad Deum* 'spielt bei Pufendorf keine Rolle' and Medick, *op. cit.*, p. 49, who notes that this sense of state of nature 'hat für die Pufendorfsche Naturrechtskonzeption keine ausschlaggebende Bedeutung, er erscheint durchaus als eine Konzession an der Zeitgeist und als Relikt des traditionellen "status integritatis" des klassisch- christlichen Naturrechts-Tradition. Dies ergibt sich schon daraus, dass er in dem Naturzustand gewidmeten besonderen Schrift überhaupt nicht erscheint, in den übrigen Werken lediglich peripher'. For Goldschmidt (*op. cit.*, p. 179), on the contrary, the first sense of state of nature also plays a role, perhaps subordinate, but still important: 'La supériorité de l'homme par rapport aux autres vivants, atteste, conformément à la tradition antique, son caractère raisonnable, le rend capable de recevoir "la loi naturelle", interdit d'emblée toute comparaison avec la vie et (Hobbes avait insisté là-dessus) les sociétés animales et, enfin, permet de valider la loi naturelle par la volonté du Créateur et même (comme Hobbes l'avait fait) par l'autorité des Ecritures'. Here, in our view, Goldschmidt confuses the fact, undeniable, that the pufendorfian system cannot do without God, with the role played in the doctrine of the state of nature by the *status humanitatis*, which is certainly presupposed, given as evident and essential, but which for this very reason is immediately set aside, in order to pass on to senses of state of nature more vital for the system that P. is working to construct.

21 Indeed Fetscher, *op. cit.*, p. 650, in citing the passage in *ING* II,2,1 as clarification of the *natura*, adds in parenthesis: *natura creatrice*.

22 Dufour, *op. cit.*, p. 116, note 223, falls into the error of identifying the *status naturalis absolute consideratus* of *ING* I,1,7 with that *in se* of *ING* II,2,1.

23 Compare *ING* I,1,7: 'And to this may be added a third way of regarding a natural state, namely, as one which lacks all the inventions and institutions, discovered by man or divinely revealed to him, that have given him dignity and comfort.' with *ING* II,2,1: "By the natural state of man we do not understand that condition [...] but that condition for which man is understood to be constituted, by the mere fact of his birth, all inventions and institutions, either of man or suggested to him from above, being disregarded, since they give a very different aspect to the life of man."

24 In truth the *fictio* ('we must imagine man as dropped from somewhere into this world') is mentioned only in the second edition. The passage in *ING* II,2,2, in the first edition, ran instead as follows: 'If we then imagine man thrown into this world without any care or aid coming from another human being, and accordingly that many parts of nature were in no way cultivated and arranged for the use of man, it is manifest, that his state for long was most miserable; even if we now consider [him] in a greater degree gifted with proper stature and power, than when he first began to exist. Hence allowing that Scripture were silent concerning the origins of the first human beings, nevertheless that primeval indigence and weakness of

mortals furnish us with an indubitable faith, that the first race of man could not have been preserved without the special care of God, teaching the new and as yet terrified inhabitant of earth to employ the necessary means of life. And if anyone could even further believe, what no one would prudently do, that man could have been produced from the hitherto untouched elements, by the force of the sun, and by the soft midwifing sky; he would likewise have perished miserably from the same scarcity, unless he was just as intimately instructed by God in what way he attended to the needs of the body. And truly it would defy all belief, that the children and grandchildren of the first parents already had such sustaining provision for living, unless, as has been established, they learned the greatest part by a special divine revelation. See Genes. III. 21. IV 2. 17. 22 [...]'. Since this formulation had given the authors of the *Index* occasion to charge him with socinianism for having taught that the state of Adam prior to the creation of Eve was *miserrimus* (*art.* 6 in Palladini, *Discussioni*, *cit.*, p. 165), in the *Apologia*, §11, P. insists on the fact that, in the passage in question, it was a matter of a *homo fictus* and not of Adam in the Earthly Paradise, and, in the second edition of his work, he consequently modified the incriminating passage. On the other hand, to have emphasised the *fictio* character of the hypothesis of man in the state of nature left P. open to other strident criticisms, above all from V. Alberti (for which see Palladini, *Discussioni*, *cit.*, pp. 200–2, 208–14, 251–58, 264–71).

25 The present writer has made a specific investigation of this aspect, see Note 5 above.

26 Of these declarations, in which P. repeatedly clarifies the point that 'coniuges et parentes cum liberis invicem non vivunt in Statu naturali' (*Eris Scandica*, p. 302), we will record – other than that of *Apologia* §35 cited below in the text – those contained in *Spicilegium controversiarum* (1680), III,2 and above all those in *Dissertatio Epistolica* published under the pseudonym of Julius Rondinus (1684), §2, provoked by the criticisms of S. Strimesius, who, directing his line of fire at the contradictions in pufendorfian state of nature doctrine (see in Palladini, *Discussioni*, *cit.*, pp. 205–08, 222–27, 239–47), forced his interlocutor to clarify his own thought to the maximum.

27 See article XXX of the *Index* (in Palladini, *Discussioni*, *cit.*, p. 169).

28 Krieger (*op. cit.*, all of section 2 of chapter 4 and in particular pp. 112–14) has devoted particular attention to the problem of the location of the family inside or outside the state of nature and its distinction from the civil state. Denzer, *op. cit.*, p. 105, too notes the difficulty, even if – unlike what we will try to show – he holds that the problem of distinguishing the family from the state is posed far more for Hobbes than for P. (pp. 99–100 and 159).

29 The inconsequence, rendered more obvious by the greater schematicity of the *De officio* compared to the *De iure*, does not elude the more alert commentators, like

Barbeyrac, who, in a note to the passage in which it is said that the third sense of state of nature is opposed to the civil state (*OHC* II,1,5), observed: 'Or rather, as appears in what the author himself goes on to say, in every state where some have the right to command in some way while, respectively, the others are required to obey. In consequence, a father and his underage children, a master and his servants, etc., are, as such, no less outside the state of nature in this sense than a prince and his subjects. For the rest, as we see, it is solely a question of the state of nature envisaged in this way [that is, in this third sense]'.

30 Not therefore, as Fassò (*op. cit.*, p. 181) believes, 'per motivi d'ordine religioso, di cui P., osservatissimo della Sacra Scrittura, tiene gran conto', but to escape from the charge of impiety P. repeatedly clarifies that a pure state of nature has never existed among men. On the other hand, that the doctrine of the state of nature was, from a theological viewpoint, a mined terrain is demonstrated (as well as by the charges of the first critics already recalled by us above) by another example, from which it becomes evident how P., together with the internal requirements of his system, had to keep continuously in mind the external requirements of religious orthodoxy too. It is in fact significant that, in the *Dissertatio de statu hominum naturali*, in representing the thesis that was dear to him of the emergence of the state of nature that *revera existit* from an original situation in which the first men were not among themselves in a state of nature, but were bound by a marital and paternal bond, P. concerned himself with averting an objection which, truth to tell, if left unrefuted, would have corroded at its root every possibility – for anyone who said they believed in the origins of mankind as told in the Bible – of upholding the actual existence of the state of nature. This objection, not made explicit but always potential, ran broadly something like this: P. admitted that 'between the first human couple there was the tight bond of matrimony, in which God commanded the wife to be subject to the husband. The offspring of this union were subjects to the paternal power. And since humankind has always propagated itself by generation [...] these particular bonds cannot ever be removed from humankind in its totality' (*Dissertatio*, §7); but if men have been and always will be bound by the chain of descent by generation from Adam and Eve, it is impossible that a state of nature emerged or could in future emerge between them. To this objection, P. responded by reaffirming that, in his doctrine, consanguineous bonds alone are not enough to annul the state of nature, such that it can be calmly asserted, for instance, that two citizens of different states are in relation to each other in the state of nature, even if it is believed they are bound by the consanguineous bond of their common descendance from Adam and Eve. Regarding this pufendorfian response, we must be careful not to deduce from it that here P. is preparing to put in doubt the response he had always given to the question of whether family society is a natural society or, instead, is opposed to the state of nature in the same way as civil

society; the assertion that consanguineous bonds do not annul the state of nature, indeed, is not to be interpreted in the sense that family bonds belong to the state of nature. In theory, our author never nurtured doubts of sorts on the point that family ties were binding outside the state of nature; even if then, as we saw, in the concrete shaping of his thought, these tend to be folded back into this by the overpowering opposition state of nature-civil society. For P., in fact, the institutional link between parents and children in the family is not configured as a simple bond of consanguinity, but rather as a *peculiare vinculum imperii quid producens*, which as such, like *civitas*, wipes away the state of nature. Thus when P. asserts that consanguineous bonds alone do not annul the state of nature, he does no more than confirm his well-known thesis that generation, of itself, is insufficient to create the paternal *imperium*, but needs precisely, as is expressed here, a *peculiare insuper vinculum*.

31 Not by chance this is one of the points most misunderstood by interpreters. To begin with Sauter, *op. cit.*, p. 138, note 6, who asserts that P. 'unterscheidet 1. den "status mere naturalis" 2. den "status naturalis temperatus" (durch göttliche u. natürliche Gesetze beherrscht) und 3. den "status socialis"', thereby wrongly suggesting that in the pure natural state natural and divine laws do not obtain and that the first two states of nature are not 'social' states (or did he mean *status civilis*?!); to continue with Krieger, *op. cit.*, pp. 93–93, who believes that the pure state of nature is the condition of man in isolation, the tempered state the condition of man in relation to other men; and with Röd who, in line with Krieger's interpretation, understands the pure state of nature as characterised by the 'Abwesenheit aller rechtlichen und sozialen Beziehungen', the tempered state of nature as that in which man, though without developed social, cultural and technical institutions, 'jedoch nicht in völligen Isolation bzw. in einem Zustand des Kriegs aller gegen alle existiert' (*op. cit.*, p. 96). Regarding such interpretations it is easy to observe that, in the strong and technical acceptation of state of nature as absence of relations of subordination, P. never understood the pure state of nature as that of the isolated individual, that is, one deprived of social relations, but on the contrary repeatedly affirmed (see, for instance, *Dissertatio Epistolica*, §2) that state of nature and social state are not opposites, even if state of nature is opposed to *societas* (see *Spicilegium controversiarum* III,2 and *Dissertatio Epistolica*, §2 (*Eris Scandica*, p.246), where it reads: 'But Strimesius ought to have known that the state of those, who live mutually in natural liberty – although they are joined in common sociality – is not a proper society and cannot be called so'. … If by pure state of nature is understood the *fictio* of solitary man, deprived of any human help, that is, the conception elaborated with great clarity in *Apologia* §11, the discourse is naturally different. The point is that, as we are seeking to show in the text, even if the confusion was favoured by P. himself, it is not right in our view to interpret *sic*

et simpliciter the pure state of nature as that of the isolated individual. The state of nature is also misunderstood by anyone who, like Mancini *op. cit.*, p. 124, interprets it in the light of the category of consanguinity. For P., it is not the bonds of blood that create the relation of family subordination, but rather the pact!

32 Note what P. says in *ING* II,2,4: 'Now this state, limited in the way just specified, lacks those inconveniences which are attendant upon a pure state of nature, this applying especially to such as have formed themselves into states; furthermore, it is felt that the height of mortal achievement has been attained, when security rests upon the strength of the entire state, and where one recognizes no man on earth to be his superior. And so commonwealths and their officials may properly claim for themselves the distinction of being in a state of natural liberty, when they are girded with the powers which allow them its secure enjoyment, while it is a thing of little joy or use for those who enjoy individually a pure state of nature to have no superior, since the weakness of their own resources makes their safety hang by a thread.'

33 The difficulties inherent in the distinction between *pure or absolute natural state* and *temperate or partial natural state* are partly avoided in the *De officio*, where P. does not introduce this distinction, but only raises the question of the existence or not of a situation in which men among themselves are *sine ulla unius ab altero dependentia* and warns that such a condition can be represented only by *fictionem*, whilst *re vera*, the natural state which actually exists, remains a situation in which each man is joined with a number of other men in a particular association, though having nothing in common with all the rest except the quality of being human. However, even in the *De officio* the logical slippage remains whereby P. calls this latter situation in its totality *status naturalis qui revera existit*, while it – embracing as it does the totality of relations that link all men together, and not only the relations of those men who live in the state of nature – is not actually descriptive, as P. believes, of the truly existing state of nature, but, far more generically, of the present condition of men who in respect of some are within the state of nature, though in respect of others outside it. However, Barbeyrac's translation avoids this difficulty too. Compare *De officio* II,1,6: 'Sed status naturalis qui revera existit id habet, ut qui cum aliquibus hominibus peculiari societate iungatur, cum reliquis autem omnibus nihil praeter speciem humanam obtineat commune, nec alio nomine quicquam ipsis debeat.' with Barbeyrac,*Devoir de l'homme et du citoyen* II,1,6: 'Mais l'Etat de nature qui existe réellement a lieu entre ceux qui, quoiqu'unis avec quelques autres par une Société particulière, n'ont rien de commun ensemble que la qualité de Créatures Humaines et ne se doivent rien l'uns aux autres que ce qu'on peut exiger précisément entant qu'Homme'.

34 The absolute duties are those which 'proceed from that *common Obligation* which it hath pleas'd the Creator to lay upon all Men in general' (*De officio* I,6,1 [Tooke]);

the hypothetical duties are those which 'presuppose some Human Institution, [...] or else some peculiar State or Condition. And of this Sort of Institutions, there are three chiefly to be insisted on, to wit, *Speech* or *Discourse, Property* and the *Value* of Things, and the *Government* of Mankind' (*De officio* 1,9,22 [Tooke]).

35 In fact Barbeyrac translates: 'To form an accurate idea of the state of nature considered in last respect one has to conceive it either through a fiction or as it truly exists' (*Devoir*, 11,1,6) and in a note to the immediately preceding passage (11,1,5) he had observed that it is only the state of nature *thus envisaged* that is in question here. [This note was already cited by us in note 30 above].

36 Compare *De officio* 11,1,4 [Tooke]: 'In the *second* Way we may contemplate the Natural *State* of Man, by seriously forming in our Minds an Idea of what his Condition would be, if every one were left *alone* to himself without any Help from other Men. And in this Sense, the *Natural State* is opposed to *a Life cultivated by the Industry of Men*'. With *De officio* 11,1,9 [Tooke]: 'For if you form in your Mind the Idea of a Man, even at his full Growth of Strength and Understanding, but without all those Assistances and Advantages by which the Wit of Man has rendred Human Life much more orderly and more easie than at the Beginning'.

37 I deduce the date of 1674 for this dissertation from J.H. Liden, *Catalogus disputationum in Academiis et Gymnasiis Sueciae*, Upsaliae, 1778–79, who lists it precisely among the *Disputationes Lundenses* in 1674.

38 Pufendorf also uses this expression in the 27 March 1670 letter to the chancellor of the University of Lund, G.O. Stenbock, in which, speaking of the work he is about to publish, namely the *De iure*, he expresses himself as follows: 'in gedachten wercke auch fast die gantze politica architectonica mit einlauft, von welcher wißenschaft daß die jugendt gute principia faße nicht wenig gelegen ist' (Pufendorf, *Briefwechsel*, Brief 46, p. 62). The expression, though, also recurs in the title of seventeenth-century works, such for instance as J.F. Horn, *Politicorum pars architectonica de civitate*, Utrecht, 1664 (in P.'s library, see *La Biblioteca di Samuel Pufendorf*, p. 199). It is, naturally, the title used by Aristotle in the famous passage of the *Nicomachean Ethics* I,2 1094 a26–28; however, at least in this passage of the *dissertatio*, the reminiscence appears solely terminological, given that for P. the *politica architectonica* is not, as for Aristotle, the science that subordinates to itself the ends of the other sciences, but rather the science that studies the 'architecture', that is the constituent elements, of the state.

39 Despite the admission of Röd, *op. cit.*, p. 57 that P. 'steht auch in bezug auf sein Methodenbewusstein [...] hoch über den meisten seiner Zeitgenossen' and also, precisely with reference to the passage in question from the *Dissertatio*, that 'im Verlauf seiner Denkentwicklung die "euklidische" Auffassung [of the geometric method], wie sie den *Elementa* zugrunde lag, sukzessive durch den Einfluss der Hobbesschen Staatsphilosophie zurückgedrangt worden sei' (p. 89), he is then

convinced that 'Im Grunde neigte P. zur realistischen interpretation der kontraktualistischen Theorie der Staatsentstehung, was wohl mit seiner ausgeprägt historische Denkweise zusammenhing. Ein prinzipieller Unterschied zwischen philosophischen und historische-realistischem Staatsbegriff bestand für ihn nicht, d.h. seine Staastlehre ist ebenso wenig konstruktiv in Hobbesschen Sinne, wie seine "geometrische" Methode die resolutiv-kompositive ist' (p. 82). That in our view things stand in the opposite way should be clear from what we say in the text. Although it is not the case here to examine in detail Röd's interpretation of Pufendorf, may it at least be permitted to observe that this depends, in part, on the fact of its being predominantly based on the *Elementa*, in part on the fact that – in this nonetheless fine book – P. seems to be precisely the author least understood and least studied in depth. This is shown for instance, whether by the unjustified liquidation that the author applies to the doctrine of moral entities (as we have already noted above), or by the fact that, regarding Christian Thomasius, he does not seem to notice that the features which strike him in the thought of the Halle jurist are none other than pufendorfian doctrines. This is so, for example at p. 170, for the thesis that the instinct of self-preservation as such establishes no obligation, and for the thesis that natural equality is unable to ground rights and duties; it is so, at pp. 180–81, for the listing of Thomasius's debts to Hobbes, and which are, one by one, the debts that P. has with regard to the English author.

40 Keep in mind, though, that even if in the text we underline only the first of the two reasons, it is on the second that P. lays the emphasis. The motive for this emphasis is, in our view, once again P.'s interest in contrasting his own state of nature with the history of humankind narrated in the Bible. In fact, two of the three examples of situations in which a condition similar to the hypothetical one exists (that is, the child abandoned in a deserted place by the parents, the shipwreck on a deserted island, Adam and Eve after the expulsion from the Earthly Paradise), it is with this last one that our author engages at length, tracing a singular religious history of human inventions, the aim of which seems to be that of showing how, only by continuously integrating divine intervention, the biblical account is not contradictory and incredible. This biblical history of human inventions contained in the *Dissertatio* §5 is nothing but the illustration of the passage in *ING* II,2,2 – included in the first edition but eliminated in the second – in which was said 'Et sane omnem fidem excederet …' (see the continuation in note 24). Note that the discourse on the logical consequences it is necessary to draw from the biblical story, that is, on the necessity to interpret it in a certain way so that the events described in it can be credible, also recurs in the opening of the *Einleitung zu der Historie der vornehmsten Reiche und Staaten, so itziger Zeit in Europa sich befinden* (1682), where, from the biblical 'truth' of the universal flood, the consequence is drawn that, before the flood, states could not exist, as where there are states, there

cannot exist that degradation of customs and that subversion of all law, so radical their removal required the condemnation to death of all of humankind. So true is it that, once states were established, humankind in its entirety never again fell into so great a corruption of customs and life, although the first root of evil instilled in us (meaning, the corruption of original sin) continues to do its work even after the flood. (Note here, in parenthesis, the enormous faith – truly secular and enlightened – that P. has in the function of the state, which, even though it is rapidly observed that it cannot wipe out original sin, assumes regarding humankind a salvific function which can scarcely be imagined any greater. This idea is incisively expressed by Bobbio, *Il giusnaturalismo*, *cit.*, p. 544, when he observes that according to the natural lawyers 'per l'uomo in quanto essere naturale e razionale, non vi è salvezza "extra rempublicam"'. Precisely for this reason it is in our view wholly misleading to speak for P. as does Wolf *op. cit.*, p. 320, of an assumption on his part of the 'spezifisch lutherische Abwertung des Rechts zu einer Notordnung'.)

41 It is for this, in our view, that the thesis of Spitz, *op. cit.*, pp. 440–44, does not hold, when to explain the evident contrast between the peaceful and sociable man of nature of *ING* II,2 and the strongly hobbesian man of nature of *ING* VII,1, he argues that P. makes two different uses of the notion of state of nature: this would be used, first, to think what man has to be, that is, his destiny, and then at another time to describe an actuality. Although we too (as we say in the text below) believe in a multiplicity of functions for the notion of state of nature in P.'s system, the alternative identified by Spitz seems to us ill-founded. What seems to us more persuasive is the logical duplicity of the notion of state of nature as identified by Röd (*op. cit.*, pp. 96–97): and that is the oscillation between a hypothetical state of nature as outcome of the analysis of juridico-statist order, and a realistic sense; and the very similar conception, identified by Medick, *op. cit.*, pp. 43–44, of the precarity of the logical *status* of the state of nature between empiria and abstraction.

42 Starting already from the years 1676–1677 in the works of Alberti and Strimesius, for which see Palladini, *Discussioni*, *cit.*

43 As we see in the title of the first chapter of Book Seven of the *De iure*.

44 In fact there follows just a final paragraph, in which it is recommended to governors that they proscribe from their state all those manifestations that belong to the state of nature insofar as they are opposed to the civil state: like, for instance, that citizens possess their own arms, that they take justice into their own hands, etc.

45 The ambiguity of the notion and the multiple functions which it is made to perform do not alter the fact that the first and principal function of the state of nature in the system is that of furnishing the logico-analytical model of state formation. Therefore, with all the cautions and reservations that the preceding analysis suggests, the thesis of Wolf, *op. cit.*, p. 344, according to which the pufendorfian state of nature furnishes an *Erkenntnisgrund* rather than a *psycho-physisches Realgrund* of

the process of state formation, is, in the final analysis, more persuasive than that of those who, like Röd, underline the *realistische Deutung* that this notion would have in the pufendorfian system (*op. cit.*, p. 97); or who, like Krieger, hold that it is characteristic of P. to discuss the passage from the state of nature to civil society *als spezifisch historische Tatsache* (L. Krieger, 'S. Pufendorf' in *Deutsche Historiker*, vol. IX, ed. H.U. Wehler (Göttingen: Vandenhoeck & Ruprecht, 1982) p. 17. As illustration of his thesis, Krieger cites the example of the first part of the introductory chapter of the *Einleitung zu der Historie*, dedicated, according to him, 'den Hausvätern, die in den Zeiten des Naturzustandes isoliert gelebt und dann demokratische Republiken als ihre ersten Staaten gebildet hätten' (p. 17). On this matter, note however that in this passage the notion of state of nature does not occur, neither terminologically nor conceptually. Now, given that what interests P. in clarifying the opening of his *Storia* is that states as they now exist did not exist at the start of humanity's history and that great kingdoms formed only in a long period of time from very small states formed in their turn by isolated fathers of families; given, in short, that P.'s interest in this text is to provide a historical reconstruction (even if a presumed one, naturally) of the beginnings of humanity, it comes as no surprise that a notion like that of state of nature is lacking, whose principal purpose is to provide the logico-analytical model of state formation. It is true that the state of the fathers of families is described with the characteristics that in other works were used by P. to construct the model of the temperate and partial state of nature (the pater-familias who has supreme sovereignty over the wife, the children and the family, without himself being subordinated to the power of any superior); the fact remains, however, (and this is what counts) that the notion of state of nature does not make an appearance here. This fact (in other words that where the discourse becomes a discourse on historical facts, the notion of state of nature tends to disappear) ought, in our view, give those who tend to accentuate the historical-descriptive and sociological dimension of the pufendorfian state of nature cause to reflect. Much more articulated than the position of the authors just cited is that of Medick, who, like us, even though arguing in a very different way, tends to underline the multiplicity of functions of the notion of state of nature, which he subjects to the most stimulating analysis we know, even if it is not always shared by us.

46 Compare Book Three of the *De iure* with *De cive*, III.

47 That Hobbes considers the expressions 'being sociable' and 'make peace' perfectly equivalent and that there is thus no evolution of his thought from a phase (that of the *Elements*) in which it is asserted that the summation of the law of nature is to be sociable, to a phase (in the *De cive* and the *Leviathan*) in which it is said it is 'make peace', is shown by the fact that, in the *Elements* themselves what is said in the passage cited in the text and 'The sum [of the law of nature] consisteth in making peace' (I,XV,2, p. 75) are used as equivalents.

48 That Hobbes's fundamental law of nature could easily be interpreted as identical to the pufendorfian law of *socialitas* was recognised by Christian Thomasius too, who in a note to the *Fundamenta iuris naturae et gentium*, fourth edition, Halae et Lipsiae, 1718, I,6,18, asserts that the law is 'Peace is to be sought after where it may be found; and where not, there to provide our selves for War' seems to inculcate the same as 'care of socialitas'.

49 Already in the *Praefatio* to the *De cive*, for instance, there is an insistence on the feature of wretchedness in the state of nature: 'Next, that all men as soone as they arrive to understanding of this *hatefull* [*misero*] condition, doe desire (even nature it selfe compelling them) to be freed from this *misery* [*miseriam*]' (p. 34, emphasis added). We do not therefore agree with the observation by Landucci, *op. cit.*, p. 127, according to whom the element of wretchedness is explicitly introduced into the state of nature only in *Leviathan* XIII, being present instead in the *Elements* and the *De cive* 'solo in occasione dell'esibizione dei selvaggi americani ed europei preistorici quali esempio dello stato di guerra' (note 82: the reference is to *Elements* I,XIV,12 and to *De cive* I,13).

50 Indeed, see *Leviathan* XIII, p. 196: 'And thus much for the ill condition, which man by meer Nature is actually placed in; though with a possibility to come out of it, consisting partly in the Passions, partly in his Reason. The Passions that encline men to Peace, are Feare of Death; Desire of such things as are necessary to commodious living; and a Hope by their Industry to obtain them.' And *Leviathan* XVII, p. 254: 'The finall Cause, End, or Designe of men, (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves, (in which wee see them live in Common-wealths,) is the foresight of their own preservation, and of a more contented life thereby.'

51 In effect, see what is said in *De cive* I,2, p. 44: 'But though the benefits of this life may be much farthered by mutuall help, since yet those may be better attain'd to by Dominion, then by the society of others: I hope no body will doubt but that men would much more greedily be carryed by Nature, if all fear were removed, to obtain Dominion, then to gaine Society. We must therefore resolve, that the Originall of all great, and lasting Societies, consisted not in the mutuall good will men had towards each other, but in the mutuall fear they had of each other.'

52 Thus, indeed, in the *Praefatio* to the *De cive*, p. 34: 'The foundation therefore which I have laid standing firme, I demonstrate in the first place, that the state of men without civill society (which state we may properly call the state of nature) is nothing else but a meere warre of all against all …'.

53 See, for instance, the counter-positions in *De cive* II,18, pp. 58–59.

54 In the *Elements* it is often repeated that the state of nature is a condition of freedom: in I,XIV,12, p. 73, where it is defined as 'estate of liberty and right of all to all'; in I,XV,10, p. 78: 'estate and liberty of nature'; in I,XV,13, p. 79: where it is said that

nature has given man the liberty 'of governing himself by his own will and power'; in II,III,2, p. 127, where the state of nature is defined as 'without covenants or subjection one to another'. Moreover, in *De cive* I,10, p. 47, it is explained that 'the bare state of nature' is equivalent to 'before such time as men had engag'd themselves by any Covenants, or Bonds'; in *De cive* VIII,1, p. 117, it is said that the natural state is that in which men are 'without all kind of engagement to each other'.

55 In the note to *De cive* I,10, pp. 48–49, to the objection of those who had reproached him with deriving from his premises the absurd consequence that, if in the natural state a son kills a father, he does not insult the father, Hobbes responds that '*a Sonne cannot be understood to be at any time in the State of Nature, as being under the power and command of them to whom he ownes his protection as soon as ever he is born*'.

56 Thus in *ING* VI,2,10: 'What prevents us from calling them states, with Hobbes, is the fact that the end of families and states is different, and therefore many parts of royal sovereignty do not fall upon families'.

57 As well as in the passage cited in the previous note, he attempted to do this, for example, in *ING* VII,3,6: 'Of course the paternal sovereignty primarily concerns the rearing of children, and that of the master the securing of property, nor are they changed by any increase in the number of children or of slaves.' Yet it remains that *imperium* is that of the father and *imperium* is that of the sovereign and that, from this point of view, P. does not succeed in overcoming Hobbes's merely quantitative vision of the difference between family and state.

58 In the *Elements* II,IV,10, p. 135: 'And the whole, consisting of the father or mother or both, and of the children and of the servants, is called a *family*, wherein the father or master of the family is sovereign of the same, and the rest (both children and servants equally) subjects. The same family, if it grow by multiplication of children, either by generation or adoption, or of servants, either by generation, conquest, or voluntary submission, to be so great and numerous, as in probability it may protect itself, then is that family called a *patrimonial kingdom*, or monarchy by acquisition'. In *De cive* VIII,1, p. 117: 'Now followes, what may be said, concerning a *naturall Government*, which may also be call'd, *Acquired*, because it is that which is gotten by power, and naturall force. But we must know in the first place by what means the Right of Dominion may be gotten over the *Persons* of men. Where such a Right is gotten, there is a kind of a *little Kingdome;* for to be a *King*, is nothing else but to have *Dominion* over many *Persons;* and thus a *Great Family* is a *Kingdom*, & a *Little Kingdome* a *Family*'. In *De cive* IX,10, p. 126: 'A *Father*, with his *sonnes* and *servants* growne into a civill Person by vertue of his paternall jurisdiction, is called a *FAMILY*. This *family*, if through multiplying of *children*, and acquisition of *servants*, it becomes numerous, insomuch as without casting the uncertain dye of warre, it cannot be subdued, will be termed an *Hereditary Kingdome;* which

though it differ from an *institutive Monarchy*, being acquired by force in the original, & manner of its constitution; yet being constituted, it hath all the same properties, and the Right of authority is every where the same, insomuch as it is not needfull to speak any thing of them apart'. In *Leviathan* XVII, p. 256: 'And as small Familyes did then; so now do Cities and Kingdomes which are but greater Families (for their own security) enlarge their Dominions, upon all pretences of danger, and fear of Invasion, or assistance that may be given to Invaders'. We thus do not agree with Landucci, *op. cit.*, p. 122, note 73, who, taking as his start a passage from *Leviathan* XX, p. 314, in which Hobbes, though reaffirming that 'By this it appears, that a great Family if it be not part of some Common-wealth, is of it self, as to the Rights of Sovreignty, a little Monarchy', introduces the self-critical observation: 'But yet a Family is not properly a Common-wealth', believes he can assert that Hobbes 'si apre la possibilità di una caratterizzazione anche formale della differenza famiglia-stato quale quella a cui perviene appunto nel *Leviathan* attraverso l'opposizione del cap. XVII *consent or concord* / *real unity*'. The fact is that the passage to which Landucci refers (*Leviathan*, XVII, p. 260), in which it is said that 'this [the commonwealth] is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant', also fits perfectly with that *commonwealth* in miniature that is the family, which in fact, as we have just seen, is a true union in *unam personam civilem*, by virtue of the paternal *imperium*.

59 In *De cive* V,12, pp. 90, it is thus said: 'Hence it is, that there are two kinds of *Cities*, the one *naturall*, such as is the *paternall*, and *despoticall;* the other *institutive*, which may be also called *politicall*'.

60 In *Elements* II,III,3, p. 128, it is said that, where the dominion of one over another is established, 'By which there is presently constituted a little body politic, which consisteth of two persons, the one sovereign, which is called the *master*, or lord; the other subject, which is called the *servant*.

61 Thus, for instance, in *De cive* II,11, p. 56: 'But the Covenants, which are made in contract of mutuall trust, neither party performing out of hand, if there arise a just suspicion in either of them, are in the state of nature invalid'.

62 Thus Magri, *op. cit.*, p. 115, believes he can eliminate what he terms the 'eclecticism' of P.'s criticism of Hobbes with the observation that it is 'un indice abbastanza chiaro dell'inadequatezza delle premesse filosofiche di Pufendorf rispetto ai problemi posti da Hobbes'. To the contrary, and correctly, Mancini, *op. cit.*, p. 137, holds that P.'s objections to Hobbes 'si rivelano all'altezza dei problemi posti da Hobbes'.

63 So as not to cite for the umpteenth time Leibniz's famous judgment and to stay within the ambit of nineteenth- and twentieth-century literature, it will be seen that (if we leave aside the highly positive evaluation by scholars who have taken P. as their topic author, like Welzel and Wolf for example), to the rare positive or really enthusiastic judgments, such as those of J.C. Bluntschli, *Geschichte der Wissenschaften*

in Deutschland. Neuere Zeit, I,1, München, 1864, p. 110: 'ein ungewöhnlicher und sogar ein genialer Kopf', of Gierke, *Althusius*, italian trad., *cit.*, p. 192: 'un pensatore geniale', of Wieacker, italian trad., *cit.*, p. 466: 'pensatore forse non limpidissmo ma al tempo stesso di tempra molto solida' and p. 475: 'uno dei pensatori originali dell'età del razionalismo', of Hammerstein, *op. cit.*, p. 176: 'P. gehort zu den jenigen, die die europäische Rechtsordnung [...] verweltlichten und rationalisierten' (and, more diffusely, the positive evaluation of P.'s legacy at pp. 195–96), and lastly of H. Thieme, 'Pufendorf und unsere Zeit', in *S. von Pufendorf, 1632–1982*, *cit.*, p. 3: 'P. verfürgte über das, was man heute eine "kreative Phantasie" nennt'; against these judgments is opposed a chorus of charges of superficiality, mediocrity and incoherence. For an anthology of these 'liquidations' in the French and Anglosaxon literature, now see Dufour, 'Pufendorfs Ausstrahlung im französischen und im anglo-amerikanischen Kulturraum', in *Samuel von Pufendorf 1632–1982*, *cit.*, pp. 96–119. For the rest, P. has a sworn enemy in the German arena too: this is Sauter, who never misses a chance to criticise him, depicting him as 'sehr hochfahrender und diktatorischer Geist (*op. cit.*, p. 115, note 2), afflicted by 'erschreckende Unkenntnis in der Philosophie' (p. 117), capable only of masking his lack of depth with a 'grenzenloses Selbstbewusstsein' (p. 142). Given these precedents, it was hard to feel any need for A.H. Chroust, 'Some Critical Remarks about Samuel Pufendorf and his Contributions to Jurisprudence', in *The American Journal of Jurisprudence* 24 (1979), pp. 72–85, to exhume – without providing any proof and taking no account of literature later than the work of Schmauss (1754)! – all the most rancid and malign judgments formulated on our author by his enemies. That P. did not know ancient and medieval philosophy J.H. Böcler (not Bökler as Chroust repeatedly calls him, pp. 78–79) had already registered in 1663. That in his polemical writings he distinguished himself by a 'spirit of intolerance and self-aggrandisment' (p. 75) was already lamented by the targets of his darts. For his part, Chroust adds finesses such as P's historical works 'are characterised chiefly by their servility and subservient nature' and that their author was always 'a worshipper and flatterer of princes and dynasties' with the aim of gaining material advantages (p. 75) (without regard for those, from G. Droysen to F. Meinecke, from Krieger to L. Niléhn, 'On the Use of Natural Law. S. von Pufendorf as Royal Swedish State Historian' in *S. von Pufendorf, 1632–1982*, *cit.*, pp. 54–70, and D. Tamm, 'Pufendorf und Dänemark', in *S. von Pufendorf, 1632–1982*, *cit.*, pp. 81–89, who have wasted their time studying the historical works of such a parasite!). The antipathy to P. displayed by Chroust verges on the pathetic. Pufendorf's obscure professorial adversaries become 'competent contemporary scholars' (p. 79), or worse 'well known scholars' and authors of 'well known works' (p. 80). His success is due to 'some process of academic tradition difficult to understand' (p. 84). The *De iure naturae et gentium* was written because its author had been 'somewhat disappointed by this lukewarm reaction

[to the *Elementa*]' (p. 74) and so on. Poor Pufendorf! So is it still, three centuries later, a truly unpardonable act to have spoken ill of the pope (in this, yes, as a good lutheran), to have considered scholastic philosophy rancid and obscurantist and … to have had ideas on the role of Grotius in the history of natural law ideas opposed to those of Chroust?!

64 And indeed, after having adopted the scriptural argument on the common origin of humankind, P. continues as follows: 'But neither are we at a loss for answer to Hobbes' *arguments*' (*ING* II,2,8, emphasis added).

65 With an addition in the second edition, in which is inserted the passage from 'especially' to 'stranger'.

66 A study of the sources of Hobbes's formula has been made by Tricaud, ' "Homo homini Deus", "Homo homini lupus": recherche des sources des deux formules de Hobbes' in R. Koselleck and R. Schnur (ed.), *Hobbes-Forschungen*, *cit.*, pp. 61–70, which, though, does not tell us who was the first to identify the plautine source of the 'homo homini lupus' and does not mention this passage of Pufendorf.

67 See *ING* II,2,5 where, among other things, is reproduced the passage of *Leviathan* XVIII in which *bellum* and *tempestas* are confronted, so as to clarify that *bellum* is not only the battle actually under way. What is more, this passage must have been considered closely by P. if, as seems the case, it is one of the two passages from *Leviathan* that he translated from the Dutch edition.

68 See the opening of *ING* II,2,6.

69 See how P. concludes his 'refutation' of the hobbesian doctrine of the state of nature as a state of war: 'But it must be confessed that this natural peace is but a weak and untrustworthy thing, and therefore that it is, without other safeguards, but a poor custodian of man's safety. […] The reason for that is the evil genius of men, their unbridled lust to increase their power, and their cupidity which menaces what belongs to others'. (*ING* II,2,12).

70 It is true, as acutely noted by Landucci, *op. cit.*, p. 145, note 119, that P. 'in tutto l'ampio brano che riporta da questa nota [*De cive* I,2, note 1] interviene sostituendo sempre l'espressione *civilis societatis* là dove Hobbes aveva scritto semplicemente *societas*', but let us not forget that the passage of Hobbes reproduced here by P. (see it above at p. 109–10) opened precisely with the contrast between *societates civiles* and *congressus*, so P. held himself, entirely legitimately, to be simply clarifying Hobbes's thought with this addition. Thus he does not elaborate, at this point of the *De iure*, as Landucci claims, 'una duplice alternativa ad Aristotele e a Hobbes nello stesso tempo' (p. 144), but rather uses Hobbes to refute Aristotle (or rather a certain Aristotle); as he himself explicitly affirms, moreover, when he introduces the citation of Hobbes's note with the following words: 'And Hobbes, in the passage cited, approves what we have said' [the citation follows]' (*ING* VII,1,3). If, then, as Landucci claims, it is 'al *De iure naturae et gentium* che va fatta risalire

la dissociazione moderna società-stato' (p. 144) this happens thanks to Hobbes's teaching, not as an alternative to it.

71 Compare note 1 to *De cive* I,2, p. 44: 'Manifest therefore it is, that all men, because they are born in Infancy, are born unapt for Society. Many also (perhaps most men) either through defect of minde, or want of education remain unfit during the whole course of their lives; yet have Infants, as well as those of riper years, an humane nature; wherefore Man is made fit for Society not by Nature, but by Education.'

72 Indeed, compare note 2 to *De cive* I,2, p. 45: 'It is objected: It is so improbable that men should grow into civill Societies out of fear, that if they had been afraid, they would not have endur'd each others looks: They presume, I believe, that to fear is nothing else then to be affrighted: I comprehend in this word Fear, a certain foresight of future evill; neither doe I conceive flight the sole property of fear, but to distrust, suspect, take heed, provide so that they may not fear, is also incident to the fearfull.'

73 The work of Horn referred to here is *Politicorum pars architectonica de civitate*, *cit.* Against Horn's anti-contractualist thesis, according to which *civitas* is *opus naturae*, P. polemicises shortly above in *ING* VII,1,5.

74 *Leviathan* XIII, p. 194 (note 38): 'But (someone will say) there never was a war of all against all. What? Did not Cain kill his own brother Abel out of envy – a misdeed so great that he would not have dared to commit it if there had then existed a common power capable of avenging it?'.

75 *De cive* I,6, p. 46: 'But the most frequent reason why men desire to hurt each other, ariseth hence, that many men at the same time have an Appetite to the same thing; which yet very often they can neither enjoy in common, nor yet divide it.' *Leviathan* XIII, p. 190: 'And therefor if any two men desire the same thing, which neverthelesse they cannot both enjoy, they become enemies.'

76 *Leviathan* XIII, p. 192: 'So that in the nature of man, we find three principall causes of quarrell. First, Competition; Secondly, Defence; Thirdly, Glory. The first looks for dominium; the second for security; and the third, for Reputation'.

77 *De cive* I,5, p. 46: 'Furthermore, since the combate of Wits is the fiercest, the greatest discords which are, must necessarily arise from this Contention; for in this case it is not only odious to contend against, but also not to consent; for not to approve of what a man saith is no lesse then tacitely to accuse him of an Errour in that thing which he speaketh.' As we recorded above (chapter 1, note 4) already in 1711 Heumann had noted the consonance of this hobbesian passage with pufendorfian passages, and had cited Monzambano VIII,6, repeated in *ING* II,2,6.

78 That the problem, for P. as for the other modern natural lawyers, is not the problem of whether the state of nature is pacific or bellicose, but rather that it is in any case a condition from which there must be an exit so as to establish the civil

state, was observed with his customary penetration by Bobbio, *Il giusnaturalismo*, *cit.*, pp. 520–21, who notes, regarding P., that 'Con una confutazione diretta, ma a dire il vero forzata, di alcuni argomenti di Hobbes, P. sostiene che, siccome l'uomo nello stato di natura può ascoltare non solo la passione ma anche la ragione [...], questo stato è uno stato di pace (II,2,9). Un'affermazione di questo genere peraltro non ha alcun effetto sul seguito del ragionamento, che induce P., come Hobbes e come Spinoza, a far uscire gli uomini dallo stato di isolamento e a cercare di vivere in società'.

79 The passage reads like this in the first and second editions. In the Mascovius edition, however, it becomes attenuated in form and generally less effective: 'Hobbes adds that "the inequality, which now prevails, has been introduced by civil law". But that inequality affects not the physical powers of men but their status and condition'. (*ING* III,2,2).

PART 2

Why Did Pufendorf Pass for an Anti-Hobbesian?

∴

CHAPTER I

Pufendorf's Place in the History of Ethics According to Pufendorf

It is an old dispute, whether under the spur of the ferocious criticisms directed against him, Pufendorf had modified his doctrine, by toning it down. Indeed, his contemporaries and immediate posterity were already split between those who maintained that he had muted his theories to shelter them from the mounting accusations, and those who curtly denied any such softening in the pufendorfian positions.[1] Both sides made the error of addressing the problem almost exclusively in relation to the *De officio*, blinded by the macroscopic difference that is introduced between this work and the *De iure* by the discussion of duties towards God and duties towards oneself; a discussion that appears in the minor work, while being absent from the major one.

Indeed, if instead of stopping at the 1673 minor work, the defenders of the continuity of Pufendorf's thinking and the defenders of its evolution had busied themselves with comparing the second edition of the *De iure* (1684) with the first edition (1672), the defenders of continuity would have found much to challenge their faith in the monolithic identity of Pufendorf's thought. For their part, here the defenders of an evolution would have found more support for their position than in the rather extrinsic arguments of the *De officio*, where the radical nature of the *De iure* theses are reinforced, about which the defenders of continuity were right.

On the other hand, anyone who compares in certain key places the two editions of the *De iure* will notice, as we are about to show, that if it is true that Pufendorf – proclaiming the orthodoxy of his thinking that had been cast in doubt by his critics – eliminated almost nothing from the first edition, he nonetheless added much. In these additions, often softening the thought expressed, or interpreting it in a reductive way, he was chiefly striving to mark the difference of his thought from that of Hobbes as much as possible. This he did either by citing other criticisms of the English author, or by attacking 'hobbesian' thinkers such as Spinoza and Becmann,[2] but above all by placing himself under the protective aegis of the authority of Cumberland, an author beyond any suspicion of 'hobbism', being a professed anti-hobbesian and, what is more, a man of the church.

 | DOI:10.1163/9789004388611_005

Anyone who keeps in mind the virulence of the attacks to which Pufendorf's doctrine was subjected, attacks in which the charge of hobbism merged into that of atheism, would understand that his central preoccupation – constant across the long years during which he had to reply to his attackers – was that of defending himself against the charge of being a follower of Hobbes, while at the same time remaining as faithful as possible to the latter's ideas. From this flowed a sort of retrospective self-delusion, by virtue of which – having to convince his adversaries that his principles could not be equated with those of the Carneades, the Machiavellis and the Hobbes in a summary condemnation – he ended up by convincing himself that his philosophy and that of Hobbes had totally opposing foundations. Having a need of powerful allies in his battle, he not only set his doctrine under the august banner of stoicism, counterposing this to Hobbes's epicureanism, but he also convinced himself that Cumberland's system and his own were perfectly equivalent, to the point where passages from the one could be calmly adopted as illustrations to be incorporated in passages of the other. The consequence was that he became the initiator of the *topos* of a Pufendorf who – turning himself into an imitator and follower of Grotius – can vaunt, against Hobbes's anthropological pessimism, the sociable nature of man, thereby laying down principles wholly opposed to those of Hobbes as the foundation of natural law.

By running through the positions he came to assume on this issue in the span of years from the juvenile *Elementa* (1660) to the mature *Specimen controversiarum* (1678), we can show how our author passed from having a more or less clear consciousness of the close affinity between his *socialitas* and the hobbesian principles, to theorising the absolute heterogeneity of the two systems, ascribing a stoic inspiration to his own, and an epicurean origin to Hobbes's. Let us start, therefore, with the observation relating to the founding hypothesis of the hobbesian system, as Pufendorf puts it in the *praefatio* to the *Elementa*:

> No small debt likewise do we owe to Thomas Hobbes, whose basic assumption in his book *De cive*, although it savours somewhat of the profane, is nevertheless for the most part extremely acute and sound.

This same observation is reiterated, three years later, in the first letter to the baron of Boineburg[3]:

> The intellect of Hobbes should not be denied due praise, even though he hardly went beyond [first] principles, and his hypothesis seems to many to savour a little of the profane (rr. 114–116).

As can be seen, the change introduced in the letter that seems at first glance minimal in fact makes a large difference. In the *Elementa*, it is said that 'Hobbes's hypothesis has a hint of irreligion', but in the letter that 'Hobbes's hypothesis seems to several people to have some hint of irreligion', which is, quite obviously, the difference that exists between stating a judgment as one's own and referring with a sceptical tone (*nescio quid*) to some current judgment made by others. Now one can certainly argue that the difference between the two formulations is nothing more than the difference that obtains between a public stance (that of the *Elementa*) and a private judgment (that of the letter), a difference from which it is not permissible to deduce a change of attitude on the part of Pufendorf regarding Hobbes. But we will see below that, if not between the *Elementa* and the first letter to Boineburg, then between the *Elementa* and the first edition of the *De iure*, there was on Pufendorf's part a move towards Hobbes, a move that in the major work saw the dropping of some anti-hobbesian criticisms of a wholly conventional character which still appear in the juvenile work. Moreover, it remains significant that, less than a month after having implicitly indicated with that phrase to his patron at Mainz his own reluctance to join the chorus of Hobbes's detractors, returning to discussion of the hobbesian hypothesis in the second letter to the same baron, Pufendorf expressed himself as follows:

> The first principle then and [the one] in which all the precepts [*scita*] of this discipline are to be resolved, I judge to be none other than that the nature of man should be sociable. It is clear that this is assigned by the Creator himself. By considering the inclinations of the human mind and the needs of human life it is therefore not difficult to conclude what should be observed in order that life is lived in accordance with this divine purpose. When Hobbes states the opposite of this proposition as the foundation, I would not believe that he wants it to be taken as a serious assertion. Nay it is rather a pure hypothesis, from which the laws of nature could also be demonstrated just as from the absurd or impossible.

Indeed, it is clear that here for Pufendorf the hobbesian foundation – his hypothesis of a man who, far from being guided by love of his fellows, is moved only by the exigencies of his own self-preservation and benefit – not only does not have anything irreligious about it, but is presented as a hypothesis that consists in showing the truth of a thesis by demonstrating that the opposing thesis is false and, in consequence, absurd.[4] In this way, the hypothesis serves to demonstrate the laws of nature, that is, it serves to demonstrate the laws

of peaceful coexistence among men by making evident the disastrous consequences of their absence.

That even in the subjectivity of his own self-knowledge Pufendorf thus felt what we – in studying the objective structuring of his thought – have attempted to show (namely that there was no substantial difference between his own principles and those of Hobbes) is clear. It is further confirmed by a most significant admission that he had occasion to make, again in 1674, in the *Apologia*, when defending himself against the charges of heterodoxy levelled at him by the authors of the *Index*. One of these charges rested on the prominence with which the author of the *De iure* – taking no account of the biblical story – proposed as the foundation of the natural law, not man's nature as issued 'pure' from the hand of the Creator, but rather his social nature and thus *ipsam socialitatem cum duce suo Hobbesio Haeretico*.[5] It is significant, then, that Pufendorf replied to this criticism as follows:

> Here I will first ask, in what council, or in what Symbolic book it is determined that all right believers, in deducing the discipline of natural right – [and] also accommodated to the Pagans – should submit as a foundation: [that] the nature of man was from the beginning created as perfect? On the contrary, I don't see, why Hobbes, if no other error is maintained, should be called a heretic simply because he posits sociality as the foundation of natural law.
>
> *Apologia*, §28, p. 37

Here, as can be seen, Pufendorf does not cast the slightest doubt on his adversaries' thesis that Hobbes made *socialitas* the foundation of the law of nature and thus accepts *in toto* the idea that he and Hobbes are closely aligned on this, restricting himself to denying that this foundation is in some way incompatible with Lutheran orthodoxy.

This is how things originally stood in Pufendorf's mind. And we have already lingered long in the attempt to show that he (and his adversaries) were perfectly right to see them like this. But it then came about that our author felt on his own skin just how sharp were the darts that bound the charge of hobbism with that of atheism. He thus recognised that it was futile, if not counter-productive, to insist on the soundness of Hobbes's philosophy and on the point that 'of those who thus wholy condemned him (Hobbes), most had not followed his reasoning, others did not even read him whom they condemned' (*Apologia*, §30, p. 39): futile and counter-productive because his adversaries' intent was that of 'transfering on to me the hatred that the name of Hobbes rouses among many' ('*odium quod Hobbesii nomen apud multos laborat in me transfundere*')

(*Epistola ad amicos*, p. 103).[6] As a consequence Pufendorf was forced to theorise a suggestion that he had already made in 1674, when responding to criticisms made by a member of the ecclesiastical order[7] against *socialitas*:

> By the foundation [of natural law] I myself understand the first proposition in the discipline of natural right [...], under which the other propositions can easily be subsumed [...]. Likewise that proposition is highly familiar in Plato, Aristotle, and first and foremost the Stoics and particularly opposed to Hobbes's foundation in the conservation of oneself, which also Cumberland himself attacks along with me.
>
> *Epistola ad Scherzerum*, p. 64

He thus suggested that his own grounding of natural law, being substantially stoic in origin, was as such opposed to the hobbesian grounding of the law in self-preservation, this latter being refuted by Pufendorf no less than by Cumberland. It is significant that, just as this first allusion to his doctrine's stoic ancestry is found in the reply to a pastor's charges, so too its elaboration – which will flow into a veritable theorisation of his own place in the history of ethics – emerges in the context of replying to the reiterated charges of atheism levelled against him by N. Beckmann. Indeed, in the *Epistola ad amicos*, after having said that the charge of atheism fills from cover to cover the little books written against him by Beckmann, and that this author insists on the presumption of atheism to this extent because he wants to incite the clerical order against him, Pufendorf examines the arguments his adversary cites as proof of a presumed atheism. He begins by noting that principles imputed to him are '*pestilential, new and unprecedented*, principles drawn from consideration of things and people, of undoubtedly divine works, indeed very close to the sound teachings of the Stoics, yet agreeing exactly with the religion of Christians' (p. 91). He then proceeds with the observation that by linking their two names his adversaries are seeking to cause the detestation attaching to Hobbes's name to fall on his head too, when instead

> not only are those things, which he invented [innovated] in religion, expressly disapproved of by me,[8] but furthermore the foundation from which I myself derive the precepts of natural law is directly contrary to the hobbesian hypothesis. For I myself come near to the sound teachings of the Stoics; Hobbes however recasts the hypothesis of the Epicureans. And if anybody would closely compare the work of Richard Cumberland, published in England in the same year as my work was in Sweden, with mine, he would see that almost all the things which he criticised in

> Hobbes, were also noted by me: while he did so with the declared purpose that he would destroy Hobbes' hypothesis, I found occasion to note errors of his along the way. But I will not deny that I undertook to explain some places from Hobbes to mollify them by proper interpretation, and retained much that agrees with right reason. Why I should not be allowed to do so is not yet clear, unless perchance it is really relevant what Alastor insistently forces upon him, that he is of the religion of the Calvinists (whom he almost calls atheists) and the nation of the English. As if numberless Christians did not so widely echo the sentiments of Aristotle, who was in religion a pagan and by nation a Greek. (p. 91).

Beyond the lofty assertion of his own entitlement to *explicare*, *emollire* and *retinere* all that had seemed opportune to him in the hobbesian theses, and beyond the lively anti-aristotelian or, better, anti-scholastic point, here what is interesting for us to note is how a start is made on outlining with some precision the attempt to annex to his own genealogy the lauded sect of the Stoics, leaving Hobbes to the ill-famed camp of the followers of Epicurus. We also encounter the attempt to make his own position with regard to Hobbes the equivalent of Cumberland's, there being, in this domain, just one difference between them: namely, that while the latter proposes to refute the hobbesian hypothesis, Pufendorf makes criticism of the hobbesian errors an accessory point only.

We have said that this way of showing the relation of his own thought to that of Hobbes will lead into a veritable theorisation of their respective positions in the history of natural law. I refer of course to the famous opening chapter of the *Specimen Controversiarum*, devoted to outlining the history of the origin and progress of the discipline of natural law. This is a chapter that is too well known,[9] perhaps, to need citing in its entirety, but from which we choose to reproduce certain passages from the paragraph concerning Hobbes and Cumberland. Reading them in the wake of those just cited, we can take account of how far the pufendorfian thesis of Hobbes's epicureanism and his own and Cumberland's stoicism had travelled, in the direction of greater precision and depth:

> After Grotius, Thomas Hobbes, a man of exceptional sharpness of mind, also set out a work about natural right. As he was brought up with mathematical studies, he worked to apply the established precision of demonstration from mathematics also to the doctrine of morality, although not adorned quite in every scholastic fashion. To this end he also supported his teaching with a hypothesis, in which his demonstrations were

> ultimately resolved. Moreover, the old hypothesis of the Epicureans was most pleasing to him; he took it up either from its appeal to him, or from the practice of states to refer almost everything to their conservation and utility; or as I have also sometimes suspected, from the example and emulation of that very close friend Pierre Gassendi, who undertook to renew the teachings of the Epicureans in Physics, just as Hobbes undertook to give a new air to Gassendi's moral teachings, dress them in a new fashion and present them on the stage of the learned world. Unless you prefer to say that he wanted to show off the force of his wit by undertaking the defence of hypotheses so universally detested and paradoxical. [...] I am convinced that among the English Richard Cumberland most thoroughly destroyed his hypothesis in the learned and clever *On the laws of Nature*, and at the same time most firmly constructed the contrary hypothesis, which comes close to the theses of the Stoics, both of which had also been put forward by me. And I confess I was greatly delighted, when I saw a work published in a different part of the world in the same year, adorned with a different form, but which nevertheless asserted the same hypothesis as mine, and destroyed many of the things marked by me in Hobbes.
>
> Specimen Controversiarum, 1,6, pp. 126-7

Here too, then, as in the second letter to Boineburg, Pufendorf links the hypothesis of self-preservation that Hobbes sets as foundational to his doctrine to its author's demonstrative intention, in the manner of a mathematical demonstration. But while in the letter this is presented as a hypothesis that consists in showing the truth of a thesis by demonstrating that the opposite thesis is false and consequently absurd, rather than a hypothesis that is itself fully shared, here, conversely, it becomes the old hypothesis of the epicureans that Hobbes made his own. This might have been due, Pufendorf observes, to the convergence of Hobbes's thought to that of Epicurus, or because it is above all this hypothesis that is seen at work in the practice of states – which refer everything to their self-preservation and utility. Or perhaps, to emulate Gassendi's revival of the epicurean theses, in physics especially, Hobbes decided to present his great friend's teachings in the field of morals, decked out in a new look for the scholarly public.

This being the way in which Pufendorf sets out the problem of Hobbes's sources, it would be beautiful to be able stop and inspect it more closely. Since this is not the place to do so, however, we will confine ourselves to noting that, if the thesis of Hobbes's epicureanism was already in Pufendorf's times a *topos* of anti-hobbesian literature,[10] the same cannot be said of the fleeting (but

none the less clear for this) allusion that Pufendorf makes to the debt that Hobbes had contracted to Gassendi's *tradita in moralibus*. By interpreting the notable similarities running between Gassendi's ethical theses and those of Hobbes,[11] in a sign of the latter's dependence on the former, this is an allusion that would merit being explored more deeply than we find, saving error, in the literature on Hobbes and Gassendi.[12] But what it is appropriate to underline, in the passage just cited, is the evident equating of Pufendorf's own intellectual intentions in the *De iure* with those of Cumberland in the *De legibus naturae*. In their respective works, both were proposing to refute the epicurean hypothesis embraced by Hobbes and to displace this, thus providing a firm foundation, with the opposing stoic hypothesis. With this, Pufendorf signalled his departure from Hobbes and his advance towards Cumberland, a transition pursued through the attempt to withdraw from the compromising epicurean ascendancy[13] by firmly inscribing oneself into the great and comforting stoic family. The logic of this pufendorfian attempt will not remain obscure for long to anyone having some idea of the history (already in place by our author's time) of the interpretation of stoic philosophy as the most Christian of the pagan philosophies.[14] Nor, on the other hand, had Pufendorf needed wild imagination to present the principle of *socialitas* as a stoic principle, ever since the moment when in the margin of Grotius's *De iure belli* he had found written:

> Now amongst the Things peculiar to Man, is his Desire of Society, that is, a certain Inclination to live with those of his own Kind, not in any Manner whatever, but peaceably, and in Community regulated according to the best of his Understanding; which Disposition the Stoicks termed Οικειωσιν. Therefore the Saying, that every Creature is led by Nature to seek its own private Advantage, expressed thus universally, must not be granted. (Prol. 6).

In this passage[15] Pufendorf found ready and waiting the identification of a stoic elevation of the *appetitus societatis*,[16] together with its counter-posing to the principle of the pursuit of one's own utility.

The present writer's strengths and competence are not able to address seriously the problem of whether Grotius – in making the *appetitus societatis* an 'Inclination to live with those of his own kind' a principle entirely opposed to that of the pursuit of one's own utility – had or had not accomplished an operation like that which, some decades later, Pufendorf would accomplish. The issue is whether Grotius had interpreted his *appetitus societatis* in a misleading way. That is, whether he interpreted it as some instinctive inclination to seek the company of one's like, rather than as an indicator of the necessity

for men to live together in community with other men, and thus as a necessity to be recognised and cultivated (a principle very like Pufendorf's *socialitas*, as we have claimed to be able to interpret it).[17] Nor, even less, do we have the competence to ask ourselves the final question, which anyone who wanted to pursue this issue seriously ought to ask themselves, of whether Grotius was right to equate his *appetitus societatis* with the stoic οικειωσις and to consider this latter the contrary of the principle of pursuit of one's own utility. Strengths and competence do not sustain us in this, because to answer the first question implies nothing less than proposing the real solution to the controversial issue of interpreting Grotius's thought,[18] while to answer the second question entails facing the daunting issue of the meaning of the stoic οικειωσις with all that this implies: which is to say, the problem of the relations that this notion entertains with aristotelian thought and that of the possible transformation it underwent from Zeno to Cicero.[19] These are themes (whether the Grotian or the stoic) that, competences aside, would each require a book specifically devoted to them. They are mentioned here only so as to underline with the greatest possible forcefulness the following thesis: given that the history of the fortune of stoicism, of which Grotius's work too can be considered a chapter, was weighing on Pufendorf's shoulders, it was natural and in a certain way necessary that our author, to defend himself against the charge of hobbism (which implied the charge of epicureanism), laid claim to his own descent from the stoic family. He too sought to have the good name of that 'sect' rebound in his favour, just as on the other side his adversaries attempted to bring down on him the discredit that came with the names of Hobbes and Epicurus.

But this is sufficient with regard to the interpretation that Pufendorf provided of his own relations to Hobbes and to the tradition of thought that had preceded him.

Notes

1 See the authors cited in Palladini, *Discussioni,* cit., p. 48.

2 The discussions of Spinoza, *TractatusTheologico-Politicus* (owned by P. in the Hamburg edition, n.d., 8°: n. 410) are only two in number but each is of importance. Above all the first, in II,2,3, which is a minute refutation of the spinozan reinterpretation of the hobbesian *ius in omnia*. The second, in II,4,4 considers the hobbesian-spinozan thesis that atheism is not a punishable sin. For J.C. Becmann, one of the most important German hobbesians, and his criticisms of P., see Palladini, *Discussioni*, *cit.*, pp. 282–85, 291–94. In the second edition of the *De iure* P. does not cite him by name, but refers to Becmann with expressions like *non*

nemo, *quis*, discussing his positions in relation to the question of whether the state of nature is a state of war in II,2,5, II,2,7 and II,2,8. In P.'s library there is more than one text by this author: see, among the in-4° the numbers 61, 153, 233, 284, 344.

3 *Briefwechsel*, p. 25.

4 It can be interesting to observe that what P. says here about the hobbesian hypothesis, he will say many years later, concerning his own hypothesis: namely, that the *fictio* of man *dropped from somewhere into this world* serves as a demonstration 'through the fiction of the contrary and deduction ad absurdum' (*Commentatio super invenusto Veneris Lipsicae pullo*) (1668) in *Eris Scandica*, *cit,*, p. 357.

5 It concerns error XXIII imputed to P. in the *Index*, in Palladini, *Discussioni*, *cit.*, p. 168.

6 It concerns the response to the defamatory libel published by N. Becmann under the pseudonym of Veridicus Constans, in Palladini, *Discussioni*, *cit.*, pp. 184–88.

7 F. Gesen under the pseudonym of Christianus Vigil, in Palladini, *Discussioni*, *cit.*, pp. 174–79.

8 For the sense in which this assertion must be understood, see above, note 15 to the Introduction.

9 Bobbio too translated it in 1943, making it the first chapter of his pufendorfian anthology, *Principi di diritto naturale*, Torino, 1943, which remains to this day the only Italian contemporary translation of some passages of P. Attention was drawn to this chapter in the history of ethics by Tuck, *Natural Rights Theories*, *cit.*, pp. 174–77, with some fine observations, the unshared part of which (that is, the presumed anti-renaissance character of Grotius and P.'s foreigness to the new school of natural law) he has happily corrected with the essay 'The "modern" theory of natural law', *cit.*, in which the theme of this 'new' history of ethics is deepened and amplified.

10 At Leipzig, in 1668, for instance, the student of theology and philosophy, Ch. Michelmann, discussed, under the presidency of Otto Mencken, a dissertation entitled *Thomas Hobbesii Epicureismum* in which the aim was to show the consonance between the doctrine of the *De cive* and that of Epicurus. For a deeper treatment of this theme, see A. Pacchi, 'Hobbes e l'epicureismo', in *Rivista critica di storia della filosofia* 33 (1978): pp. 55–72, in which is also cited the literature relating to seventeenth- and eighteenth-century criticisms of Hobbes where the charge of epicureanism returns insistently.

11 The author of the anti-hobbesian dissertation cited in the preceding note already observed how chapter V of Book II of Gassendi's *Ethica* [=*Syntagma philosophiae Epicuri* II. pp. 783a–808b; present in the pufendorfian library in the Hagae Comitum edition 1659 in-4°: n. 87] relays the *amicitia cum Hobbesio* (§6), thus interpreting, if we are not mistaken, the Gassendi-Hobbes relation in a reverse sense from that suggested by P. The dependency of this gassendian chapter on Hobbes is also

upheld by O.R. Bloch, *La philosophie de Gassendi*, The Hague, 1971, pp. XXII–XXIII, who bases this on chronological considerations.

12 Bloch, *op. cit.*, p. 489, also talks of the lack of critical attention to Gassendi-Hobbes relations in the ethico-juridical field. However, G. Gori, 'Tradizione epicurea e convenzionalismo giuridico in Gassendi', in *Rivista critica di storia della filosofia*, 33 (1978): p. 147, note 33, warns against mistaking for hobbesian what in Gassendi is epicurean, as, in his view, Sortais, *op. cit.*, II, pp. 506–7 had done.

13 What P.'s main preoccupation was in distancing himself from everything that could be classified as epicurean, and what, vice-versa, his true feelings were regarding this philosophy is made clear by the following passage from his letter to Christian Thomasius, Berlin, 17.7. 1688, in *Briefwechsel*, Brief 138, p. 197: 'Sonsten ist ohne zweifel des Epicuri ethica beßer, als des Aristotelis seine. Aber der nahme Epicurus ist bey den idioten so verhaßet, daß man sich fürchten muss, Bileams pferd werde auf alle Cantzelen steigen, und predigen, wenn man was gutes vom Epicuro sagte'.

14 The best known advocate of this thesis, among the sixteenth- and seventeenth-century authors on which P. nourished himself, is naturally Justus Lipsius, of whom, though, he owned only the *Politica* and the *De Constantia* (in-12°: nn. 250 and 329), the *Epistolae* (in-8°: n. 283), an edition of Tacitus (in-12°: n. 245) and one of Velleius Paterculus (in-8°: n. 458), but not the *Manuductio ad Stoicam philosophiam* (1604). Among the authors of histories of philosophy who advanced a similar thesis regarding the Stoics, P. G. Horn, *Historiae philosophicae libri VII*, Lugd. Bat., 1655 (in-4°: n. 353). For this author, and the judgment he gave on Seneca and Epictetus as quasi-christian thinkers, see L. Malusa in G. Santinello (ed.), *Storia delle storie generali della filosofia*, vol. I, Brescia, 1981, pp. 252–79. Moreover, behind the convergence of stoicism and christianity there was by P.'s time a centuries-old history. St Jerome already spoke of the 'Stoici qui nostro dogmati in plerisque concordant' *In Isaiam* IV,11 (*PL*. XXIV, p. 147 D) and the legend of Seneca's christianity was well known – he was called 'saint' by John of Salisbury, *Polycraticus*, VIII, 13, 763 b (cited by G. Verbeke, *The Presence of Stoicism in Medieval Thought*, Washington, 1983) – as founded on an apocryphal correspondance between him and St Paul. (For the birth of the legend, which appears of proto-humanist not medieval origin, see A. Momigliano, 'Note sulla leggenda del cristianesimo di Seneca' (1950) in *Contributo alla storia degli studi classici*, Roma, 1955, pp. 13–32).

15 Italian readers know how this passage of Grotius was at the centre of an interpretative duel between E. Di Carlo and G. Fassò, based on the significance to be accorded to the expression *pro sui intellectus modo* ['according to … his Understanding'], translated by S. Catalano (U. Grozio, *I prolegomeni al De iure belli ac pacis*, Palermo 1963, p. 54), defended by Di Carlo, as 'in conformità dei limiti della sua intelligenza', from Fassò (U. Grozio, *Prolegomeni al diritto della guerra e della*

pace, Bologna, (1949), p. 21) 'secondo la norma della propria ragione'. Insofar as it concerns us, we incline rather towards Fassò's interpretation, above all when it is joined with the observations of A. Droetto, *Studi Groziani*, Torino, 1968, pp. 265–91. Also leaning towards Fassò's interpretation is Todescan, *Le radici teologiche del giunaturalismo laico. I: Il problema della secolarizzazione nel pensiero giuridico di U. Grozio*, Milano, 1983, pp. 52–53, to whom we refer for the bibliographical indications on the Di Carlo-Fassò polemic.

16 It is interesting to observe how in the note on οικειωσις Grotius cites as *auctoritas* '[Johannes] Chrysostomus *ad Romanos Homilia XXXI*' [in reality *Hom.* V in *Patrologia Graeca* 60, pp. 422–23], that is, the passage he translates: 'Habemus natura homines cum hominibus societatem, quidni cum tale quid inter se et ferae habeant?' and which in *PG* is translated: 'Habemus enim naturalem quendam ad invicem affectum ut et ipsae ferae habent'. He adds, still in Johannes Chrysostomus, seeing also *capite primo ad Ephesios* [= *Hom.* I] 'ubi a natura nobis data docet ad virtutem semina'. The interest comes from the fact that this observation of Grotius's constitutes a precious suggestion for anyone proposing to write a sequel to the book by M. Spanneut, *Le stoicisme des pères de l'église, de Clément de Rome à Clément d'Alexandrie*, Paris, 1957, or to extend to Greek thought the recent work of M.L. Colish, *The stoic tradition from antiquity to the early middle ages*, Leiden, 1985, on Latin thought: indeed, we are invited by Grotius to seek in Chrysostomus possible traces of stoicism. For current discussion of the stoic concept of οικειωσις (on which see note 20 below) Barbeyrac's note to his translation of the *De iure belli ac pacis* (note 4 to *Prol.* 6) is most important. In it, the great scholar not only correctly observes how the *auctoritas* of Marcus Aurelius V,16 (cited by Grotius together with Chrysostomus in the note referred to above) does not relate to the case in point because 'the word in question is not there' (in fact the term οικειωσις does not appear, but rather κοινωνιαν), and not only cites a good part of the passages (of Porphyry, Plutarch, Epictetus) that are still today at the centre of scholarly consideration of that stoic concept, but he also acutely observes: 'All that seems to have come from Aristotle who says: "We may see even in our travels how near and dear [οικειον] every man is to every other", *Nicomachean Ethics*, VIII,1 [1155 a 21–22]; thereby clearly placing himself among those who propose a peripatetic origin for that stoic notion.

17 The most notable passages for the interpretation of Grotius's *appetitus societatis* are, along with the already cited *prol.* 6, the *prolegomena* 8, 16 and 18. Also, H.F.W. Hinrichs, *Geschichte der Rechts und Staatsprinzipen*, Leipzig, 1850, II, p. 97 and p. 100, noted in passing that in Grotius the sociable instinct is not as disinterested as it might seem. Recently, too, P. Haggenmacher, *Grotius et la doctrine de la guerre juste*, (Paris, Presses universitaires de France, 1983), pp. 531–32, reassesses the role of the instinct of self-preservation in the grotian system. And Tuck, 'The "Modern"

Theory', *cit.*, underlines the importance of self-preservation and utility in Grotius's theory, which would thus find precisely in this thesis common ground with P. (p. 105).

18 One of the problems that has most exercised criticism is that of whether Grotius is an 'innovator' or an heir of scholasticism. On this and the other controversial points in the interpretation of his thought, see the overview of twentieth-century grotian literature contained in F. De Michelis, *Le origini storiche e culturali del pensiero di U. Grozio*, Firenze, 1967, pp. 1–29.

19 As is known, scholars disagree either on the point of whether the doctrine of *oikeiosis* is a peripatetic doctrine (this is the line of J. von Arnim –- F. Dirlmeier) or is instead an original doctrine of the Stoa (the line of M. Pohlenz – C.O. Brink); or on the question of whether the extension of *oikeiosis* from oneself to others is an orthodox stoic doctrine and of when it was formulated. For a focus on the problems relating to this stoic concept, see S.G. Pembroke, *Oikeiosis* in A.A. Long, *Problems in Stoicism*, London, 1971, pp. 114–49.

CHAPTER II

The Role of Cumberland

1 The Utilisation of Cumberland

We now come to the differences that arise between the first and the second editions of the *De iure* and to the role that the utilisation of Cumberland plays in these. To begin with this last point, it can be noted above all that in the second edition of his major work, Pufendorf utilises Cumberland's *De legibus naturae* in a variety of guises.

§1 *As a Mine for Anti-Hobbesian Arguments*

The first and most obvious way in which Pufendorf used Cumberland was to draw whole anti-hobbesian arguments from the latter. To tell the truth, in his second edition our author does add some anti-hobbesian arguments of his own. For the most part, though, either it is not strictly a matter of new arguments, but rather of pointers to Hobbes's erroneous doctrines deriving from theses that are criticised elsewhere, or else the arguments that are added confuse, rather than enrich, the otherwise clear line of the first edition. The passages critical of the *De homine* added in I,2,4 and I,4,6 offer an example of the first case. In the first of these passages, Pufendorf observes that Hobbes errs in the *De homine* (c. 10) when he holds that ethics is demonstrative because its principles are created by men in laws and pacts, and, *as will be shown elsewhere*, when he asserts that the distinctions between good and evil, just and unjust, were not given by nature.[1] In the second passage, the polemical reference to the thesis of the *De homine* (c. 13 §9) according to which, in the state of nature, a common measure of vices and virtues did not exist, is limited to confirming apodeictically that this thesis is false, *as will be seen below*. And (let it be said in parenthesis) it is significant that in the places where the criticism of hobbesian doctrine is actually elaborated (I,7,13 and VIII,1,5), the arguments added in the second edition are (as we will see shortly) almost all drawn from Cumberland.

The second case, conversely, is adequately illustrated by the passages added in III,2,2 and VI,2,10. In the paragraph in Book Three – the one devoted to criticism of the hobbesian conception of the natural equality among men and discussed in detail above – Pufendorf adds, in the second edition, the criticism of the thesis advanced in chapter XIII of *Leviathan*, according to which there obtains among men not only an equality of strength, but an even greater equality of intellectual gifts (*animae facultates*). This criticism is substantiated

 | DOI:10.1163/9789004388611_006

by confronting Hobbes with experiential facts: such as the facts we continuously witness that some persons are more capable than others of seeing the consequences of certain principles and of applying them in like cases; and that it is not true that equal time and exercise of a certain activity lead to equal results, and nor is it true that no one is disposed to admit that another person is more masterly than himself, as shown by the case in which another has succeeded in avoiding a danger that has befallen us.

Now, if we submit this form of argument to analysis, it is easy to see that it severely weakens the anti-hobbesian argument presented in the first edition of the *De iure*, the strength of which lay, as we saw, in the denunciation of the confusion wrought by Hobbes between equality of matters of fact and matters of law. It does so because it returns the discourse to the level – which however continues to be declared irrelevant – of factual equality and inequality between men, indeed, without making any distinction from this point of view between the strength of the body and the gifts of the mind. In VI,2,10[2] too, something similar occurs. In the first edition, it is observed that, though the *separate families* have 'something in common with states', it is not possible to call families states, like Hobbes does, as 'the end of families and states [is] different, and therefore many parts of royal government are not suitable to families'. This observation at the very least clearly displays the *requirement* to draw that distinction between familiy and state, which we saw that Pufendorf (like Hobbes) was unable to ground in theory. To this observation, though, is added in the second edition a follow-up: 'Indeed, Hobbes himself in his Leviathan, chap. XX, acknowledges that a family is properly not a state, unless it be so powerful, either because of its number, or other opportunities, that it cannot be subdued without war'. It appears to us that this should be taken to mean that Pufendorf shares Hobbes's opinion according to which families powerful enough not to be able to be subjugated without war are in reality states. But if so then Pufendorf is bringing back the difference between family and state, which (at least verbally) he had claimed to be a qualitative difference, to a mere quantitative difference, thereby falling all the way back into the hobbesian confusion, something he had strained to overcome in the first edition.

In the final analysis, then, as for anti-hobbesian arguments added independently by Pufendorf to the second edition, there would only appear to be two that properly qualify as such. These are the two brief inserts in the paragraph where Pufendorf seeks to refute the hobbesian thesis according which God's sovereignty rests only on his irresistible power (I,6,10). First there is the passage in which is observed: 'I need not say that Hobbes' principle, "Nature has given a right over all things", is absurdity and nonsense when applied to God. For how was nature able to give anything to God, since nature is either

God Himself or His work?'. And then there is the passage in which it is objected against Hobbes, who had asserted that between two almighties neither of them could be obligated to the other: 'I shall not raise the point that the supposition of two omnipotent beings is self-contradictory'. In all frankness, these amount to very little in comparison with the number of anti-hobbesian arguments taken from Cumberland, to which we will now direct our attention.

We find a first example of an argument drawn entirely from Cumberland in that paragraph (1,7,13), of which we have already cited a lengthy passage, where the hobbesian reduction of justice to respect of pacts is criticised. Here, in fact, to what is said in the first edition – 'We shall show in another place that Hobbes is also mistaken in asserting, Leviathan, loc.cit., that justice, as well as ownership, owes its origin in the final analysis to commonwealths' – Pufendorf adds in the second edition:

> Indeed, the statement that all justice can be resolved into performance of agreements, is so far from true, that, on the contrary, before it can be known whether an agreement should be carried out, one ought·to make sure that the agreement was entered into at the command, or at least with the permission, of natural laws. Add Cumberland, De Legibus Naturae, chap. viii, § 6.

This addition is nothing but a literal citation of a passage from the aforementioned paragraph of Cumberland.[3]

We find a further example in 11,2,8, that is, in the paragraph devoted to refuting (with arguments whose weakness we earlier noted) the hobbesian thesis of the state of nature as a state of war. In this example, Pufendorf augments the argument of the first edition – according to which equality of strength is more likely to curb the will to harm than to foment it, as no one likes to challenge an adversary of equal strength – adding this in the second edition:

> For certainly, when a person enters a conflict with a man who is a match for him, where the lives of both are put in hazard, neither gains as much from victory as the one loses who is killed, and the advantage resulting from killing one's opponent is not as great as the risk run of losing one's own life; besides, the peril which my life runs is a greater disadvantage than any advantage I may gain from the fact that the life of my foe was in equal peril, while his security is not increased by reason of mine having been endangered, but each side is the loser, and yet the loss of one is not to the advantage of the other. Richard Cumberland, De Legibus Naturae, chap. ii, § 29.

By comparing this passage with the quoted text of Cumberland, we see that the first part conveys the meaning of Cumberland's words, while the second part – from 'the peril which my life runs' to the end – is a literal citation of the first section of the English author's paragraph.[4]

But we are given a telling instance of the depth of Pufendorf's debt to Cumberland by the paragraph in which he compares the principle that he proposes as the basis for deducing the laws of nature (*socialitas*) with that proposed by Hobbes (*propriae salutis cura*). In the first edition, concerning the hobbesian principle of self-preservation, is observed among other things:

> In the next place great care should also be taken to prevent any one from concluding that when he feels he has made his own safety perfectly sure he need take no thought of others, or that he may behave as he pleases to anybody that contributes nothing to [his] safety or does not have the strength to harm it. For we called man a sociable creature because men are so constituted as to render mutual help more than any other creature, just as no creature can suffer more injury from man than can man himself. Yes indeed, even if altogether neither good nor bad could come to me from another, and he would have nothing in him, which I would fear or desire, nature would nevertheless here have him regarded as kindred and equal. Therefore even reason alone, if the rest were wanting, suffices for the cultivation of a friendly society of the human race. (II,3,16)

This was a passage in which, as early as the first edition, Pufendorf tried to limit the hobbism of the principle of *socialitas*, a principle which (as we have seen) being structured as a *conditio sine qua non* of self-preservation was in fact subordinated to this latter. Indeed, he observed that, to someone who thought he had no need of the laws of *socialitas* – once, having nothing to fear from other men, he felt sure of his own self-preservation – it can be replied that in such a way he deprives himself of the possibility of seeing his own benefits promoted by the aid of other men. Further, insofar as he could expect nothing of either good or of ill from others, it would always remain the case that nature wants these others to be viewed as *cognati et aequales*, and this is reason enough to cultivate an amicable society among men.

We will not pause here to observe how the attempt to limit the hobbism of his position coincides with a return to a conventional mode of natural law thinking: that is, with an appeal to a nature that wants men to consider each other kindred and equals, an appeal that, as we have sought to show at some length above, is so far outside the main line and most authentic inspiration of

Pufendorf's thought. Nor will we stop here to demonstrate (because we will return to this later) how, in a strongly hobbesian context, this borrowing from his youthful *Elementa* creates an imbalance that otherwise did not persist in the far more traditional structure into which they were originally inserted. What we want to underline is rather the way in which this reference to man's being fitted more than any other animal to promoting mutual benefits is enhanced in the second edition. Here, after *promovere idonei sunt*, Pufendorf thus inserts the following passage:

> just as no creature can suffer more injury[5] from man than can man himself. Nay, man's eminence and perfection stand out all the more as they contribute to the advantage of others, and deeds of such a nature are considered most noble and indicative of the greatest wisdom, while on the other hand any worthless fellow and a fool can bother and injure others. Furthermore, if it be proper to consider a man's own advantage his one end of life, then when several persons decide that their greatest advantage is concerned with the same thing it will follow either that the ends of several people, involving a contradiction, are said to agree at the said time with right reason, which is absurd; or, since no one can claim that his end should be preferred to that of another, it will have to be admitted that man should not propose his own advantage as his end unless he also takes into consideration the advantage of others. Nay, should a man neglect all his fellow men, and endeavour to adjust all things to his own advantage, he will have his pains for nothing, since it is impossible for all things and persons to be disposed according to the desires of individual men who seek contrary ends, and so he will invite others to prey upon him. Furthermore, if only that is good for man which serves his own advantage alone, it follows that it is evil for others, since it cannot serve their advantage. Hence the same thing will be sought by one person and opposed by all others – a situation which can only give rise to conflicts among men. For a fuller discussion see Richard Cumberland, De Legibus Naturae, chap. v. Bacon wisely observes, Essays, chap. xxiii: 'It is a poor centre of a man's actions himself'.

Indeed, it is interesting to note that this passage – aside from the citation of Bacon – is nothing but a *collage* of arguments drawn from Cumberland. Thus, in the observation treating the capacity to be good to others as a sign of superiority and perfection – as being good to others requires the highest wisdom, whilst harming others is something even fools can do – it is easy to recognise an identical observation made by Cumberland.[6]

There is another argument that does no more than summarise a page of Cumberland.[7] This is the argument according to which it cannot be right to propose one's own benefit as one's sole aim, because, in the case where multiple individuals identified the same thing to be to their own benefit, it would be necessary either to admit that multiple aims are at the same time contradictory and yet in accord with right reason, which is absurd. Or it would have to be admitted that, from the moment no one can claim that his own aim must take preference over another's, man must not take as his own aim a benefit that takes no account of others. Even the warning that it is vain for someone to tie everything to his own benefit without concerning himself for others – either because it is impossible to arrange all things and persons according to the will of individuals who want contradictory things, or because this induces others to rebel against us – reproduces almost letter for letter a similar observation by Cumberland.[8] But if this is so, then it follows that the increased emphasis placed in the second edition on the criticism of *amor proprius* and of the pursuit of one's own benefit is borrowed from Cumberland.

That this is so is shown, on the other hand, by further cases in which the shrinking of the role assigned to *amor proprius* clearly shows a Cumberlandian inspiration. At the end of II,3,14, that is to say at the end of the paragraph in which Pufendorf determines which are man's particular instincts, he adds in the second edition the following warning:

> It should be observed, in this connexion, that in investigating the condition of man we have assigned the first place to self-love, not because one should under all circumstances prefer only himself before all others or measure everything by his own advantage, distinguishing this from the interests of others, and setting it forth as his highest goal, but because man is so framed that he thinks of his own advantage before the welfare of others for the reason that it is his nature to think of his own life before the life of others. Another reason is that it is no one's business so much as my own to look out for myself. For although we hold before ourselves as our goal the common good, still, since I am also a part of society for the preservation of which some care is due, surely there is no one on whom the clear and special care of myself can more fittingly fall than upon my own self.

The insistence that man feels love for himself before feeling any concern for others, and that it concerns no one more than me to worry about me myself, might well seem (errors excepted) to be particular and peculiar to Pufendorf. At the same time, the initial movement, with its concern to make clear that

in granting first place to love of self one has not been led by the conviction that this must be pursued regardless of others' well-being, recalls a similar observation by Cumberland.[9] Not to mention the fact that the thesis according to which the common good is formed by the good of individuals – so if I am obliged to pursue the common good, I am also obliged to seek my own well-being as a constitutive element of the common good – is pure Cumberland doctrine.[10]

But let us turn to paragraph II,3,16 of the *De iure* from where we set out, and observe its final passage. Here it is asserted that, since our safety and happiness depend in large measure on the benevolence and aid of others, the more one will love oneself, the more one will seek others' reconciliation. For it is not reasonable to presume that human beings will concern themselves with making happy those whom they know to be malevolent and ungrateful towards them, and one must rather presume they will do everything to destroy them. Now, since this passage too, an addition to the second edition, is largely drawn from Cumberland,[11] we can conclude that in fact the bulk of this paragraph lives under the sign of Hobbes's English critic.

§2 *As* auctoritas *for the Defence*

With these being instances of the first way in which Pufendorf uses Cumberland in the second edition of the *De iure*, we can proceed to his second mode of using the *De legibus naturae*. This is the mode whereby the name of Cumberland, being beyond suspicion, is adopted as support for Pufendorf's own particularly (and malevolently) controversial theses. Had Pufendorf's theologian critics censured his thesis according to which God's justice and holiness cannot be the prototype for natural law?[12] Immediately our author arranges to augment the passage in the first edition, in which it is precisely asserted that

> it will be difficult to show that the natural law so expresses the holiness and justice of God, that the way God acts towards his creatures, and especially towards man, is also the way men should act towards their fellow men, on the command of the natural law. (II.3,5)

with a cross-reference to the following passages from Cumberland: 'Add Richard Cumberland, De Legibus Naturae, Prolegomena,§ 6, and chap. V, § 13'. These are passages in which, in effect, his critics could find theses that, with a little good will, could appear sufficiently like Pufendorf's own. The passage in the proleg. 6 according to which it is first known what justice is, and then, that it is to be attributed to God, is cited in a similar vein, and so too the one in

v.13, where knowledge and love of self and of others have an intimate natural perfection that can be known independently of knowledge and love of God.[13]

But it was always from the ecclesiastical world that had come the harshest criticisms of Pufendorf's thesis that the natural law is not an innate idea, and of the way in which – in order to substantiate this thesis – he had interpreted the question posed in the word of the Holy Scriptures that the natural law is inscribed in human hearts.[14] At once, Pufendorf moves to insert into the controversial passage in the first edition, which sounded thus:

> we do not, for all that, feel obliged to maintain that the general principles of the law of nature come into and are imprinted upon the minds of men at their birth as distinct and clear rules which can be formulated by man without further investigation or thought [*meditationem*][15] as soon as he acquires the power of speech. For any one will readily recognize that this is a mere fancy if he undertakes to examine with some interest and care the different steps of children as they gradually advance from the ignorance of infancy. [...]The phrase in Romans, ii.15, so pressed by most writers, is a figure of speech, and means nothing other than that this knowledge is clear, is fixed deep in the heart, and each man is sure in his own conscience of the source from which it was impressed upon his heart. (II,3,13)

the following appeal to the authority of Cumberland:

> Nor should it be considered unimportant that the Sacred Scriptures regularly describe infancy as a state of ignorance of right and wrong, and manhood as one of knowledge of the same. See Jonah, iv. 11; Deuteronomy, i. 39; Isaiah, vii. 14-:i:6. Richard Cumberland, in his De Legibus Naturae, Prolegomena, §§ 5, 7-8, clearly shows that, even if such [innate] ideas are denied, the knowledge of the law of nature has in fact been stamped upon the minds of men by God as the first source of their being, whereby any one can also know that it is His wish and command for men to live in accordance with that law.

Here, as it is easy to understand, Cumberland has precisely the same function as the passages from the Bible also inserted into the second edition, namely that of silencing the critics with an appeal to an authority beyond suspicion. But this is enough about that passage, here not being the place to raise more than a small doubt concerning the way in which Pufendorf presents Cumberland's thought.[16]

A further instance of shielding his own more controversial doctrines behind the name of Cumberland is provided by the close equivalence introduced in the second edition between his own principle of *socialitas* and that of the *benevolentia* advocated by the English author. The fundamental pufendorfian law of nature had been, as we know, harshly criticised by those who had picked out its fundamental hobbesian inspiration.[17] In the second edition, therefore, Pufendorf sought to reformulate his law by making it as similar as possible to Cumberland's. This he did in the paragraph in the *De iure* where the law of *socialitas* is formulated, once implicitly, and once explicitly. Implicitly, when he augments the formulation of the fundamental law of nature – which in the first edition read as: 'Every man, so far as in him lies, should cultivate and preserve toward others a sociable attitude' – by adding 'which is peaceful and agreeable at all times to the nature and end of the human race', as well as the following clarification:

> For by a sociable attitude we do not understand here the particular meaning of a tendency to form special societies, which can be formed even for an evil purpose and in an evil manner, such as a banding together of highway robbers, as if it were enough for them to band together with any end whatsoever in view. But by a sociable attitude we mean an attitude of each man towards every other man, by which each is understood to be bound to the other by kindness, peace, and love, and therefore by a mutual obligation. And so it would be absolutely false to assert that the sociable attitude which we propose makes no distinction between a good and a bad society.[18] (II,3,15)

Of course this clarification was inserted in order to reply to the facile criticisms from those who had objected to Pufendorf's *socialitas* that it would have been satisfied by a society of thieves.[19] Nonetheless, we do not fail to note how the concept of peaceful sociability towards others is inflected in the direction of the concept – with its much more cumberlandian tone – of man's disposition to man, by virtue of which one understands oneself as joined to others by *benevolentia, pace et caritate*.

Pufendorf's equation of his own law with Cumberland's is, however, performed explicitly in the passage added at the end of the paragraph, in which he observes that 'The law of nature, as stated by Richard Cumberland, De Legibus Naturae, chap. i, § 4, regarding zeal for the common welfare and the greatest possible exhibition of good will towards others does not differ from our fundamental law. For in saying that man is a social animal we do not intimate that he should hold his own advantage, distinct from that of others, as his good, but

the advantage of others as well […], nor that a man should hope for happiness if he disregards and injures others'.[20] Here we can see that, in identifying the law of *socialitas* with that of the pursuit of the common good, that is, of the maximum benevolence towards all, Pufendorf reintroduces the criticism of the principle of self-interest, which as we have already repeatedly seen, in the second edition, was borrowed from the English author. And that is enough on the passages in which Pufendorf makes use of the Cumberland shield to screen his own more controversial doctrines from the adversaries' darts.

To this point, then, there can be little doubt that, together with the anti-hobbesian incorporations introduced independently by Pufendorf, the influence of Cumberland's work in the *De iure* contributes to accentuating the work's anti-hobbesian atmosphere, inducing an inflexion of our author's thought so as to give prominence to some aspect of it that had remained in the shadows in the first edition. Nevertheless, it does not alter in any significant way the substance of his thought. When we turn to the third type of borrowing by Pufendorf from Cumberland's work, however, the case is different. For this borrowing is one that, as we now undertake to show, has consequences which subtly twist the fundamental inspiration of pufendorfian moral doctrine. But before passing on to those passages in which the utilisation of Cumberland provokes far more than an accentuation of atmosphere or a bend in thought, it is appropriate to pause further on one point. It is certain that the idea of stressing Hobbes's epicureanism as a way of imputing an error to this author did not come to Pufendorf solely from Cumberland;[21] no less certain, though, is that it *also* came from Cumberland. Indeed, the importance placed on Hobbes's epicureanism and on the anti-epicurean polemic in Cumberland's work[22] is well known. It cannot then be without significance that only in the second edition of the *De iure*, on the topic of the hobbesian thesis according to which justice is nothing other than respect for pacts – and prior to advancing any argument against that thesis – does Pufendorf feel the need to observe that for Hobbes, justice 'is nothing else but the keeping of faith and carrying out of agreements, a view borrowed from Epicurus in Diogenes Laertius, Bk. X [50–1]' (1,7,13). This has the evident air of a preventive condemnation of the hobbesian doctrine.

2 Differences between the First and Second Editions of the *De iure*

But let us come to those passages in which the influence of Cumberland had effects of great moment on the fundamentals of Pufendorf's doctrine. Here we would like to show that, firstly, the passages in the *De iure* in which, alongside the *moral good*, the existence of a *natural good* is admitted, in

which the emphasis is placed on the *natural effects* of good actions, in which there is an insistence on the *nature of things*, are all additions in the second edition; secondly, that this incorporation is undertaken through the direct and explicit influence of Cumberland;[23] thirdly, that such an influence has the disastrous effect of over-shadowing the most important feature of Pufendorf's thought, the feature which makes him a hobbesian who goes beyond Hobbes: namely, his theorisation of a sharp distinction between *physical entities* and *moral entities* with all its consequences, among them and most particularly the unenforceability of the passage from the facts to the norm. And fourthly and finally, that Cumberland's influence, precisely because it overshadows this aspect of Pufendorf's thought, risks driving it in the direction of traditional natural law, where a role returns for that appeal to the *nature of things*, the appeal of which only a modest trace remained in the first edition.

§1 *Regarding the Notion of 'Natural Good'*

The passages we have in mind are numerous and complex, so it will be appropriate to examine them with a measure of patience. Consider the fundamental paragraph 1,2,6 where it is denied that something can be just or unjust in itself, independently of a superior's *impositio*. Here, following the passage in which he had asserted that *without reflecting on law*, reason can at most give man the capacity to act with greater ability and effectiveness than animals, but certainly not allow him to grasp the morality of human actions, and preceding the passage in which he responded that the objection to his thesis on the indifference of physical actions could come from the *Nicomachean Ethics*, Pufendorf inserts, in the second edition, together with a phrase from J.A. Osiander,[24] the following passage:

> Here it should be carefully noted that this indifference of physical motion in the actions of men is maintained by us only in respect to morality. For otherwise actions prescribed by the law of nature have, through the determination of the first cause, the native power to produce an effect good and useful to mankind, while actions similarly forbidden produce a contrary effect. But this natural goodness and evil does by no means constitute an action in the field of morals. For there are many things which contribute to the happiness and convenience of man and yet are not morally good, since they are not voluntary actions, nor are they enjoined by any law; while many acts which tend to the welfare of man have the same natural effect among beasts, although among the latter they possess no moral quality. So to refrain from mutual injury, to

> partake of food and drink in moderation, and to watch over one's offspring, work for the preservation both of men and of beasts; and yet beasts are not on that account said to perform acts which are morally good. Add Richard Cumberland, De Legibus Naturae, chap. v, § 9. So in the last analysis human actions which fall under the direction of the law of nature can be resolved into the natural power that they possess to aid or to injure men, considered either as individuals or in general. But the reverse, namely, that whatever has natural power to aid or injure any kind of animal is therefore the object of natural law does not always hold.

Pufendorf therefore introduces, for the first time, the concept of natural goodness and badness of actions. Such natural goodness and badness lie in the consequences they have for men: naturally good actions are those that contribute to human happiness and wellbeing, naturally bad actions are those that have the opposite effect. Natural goodness and badness, moreover, are always to be found, respectively, in actions ordained by or in those forbidden by the natural law. Admittedly, to the extent that Pufendorf insists on the point that this natural goodness and badness do not of themselves constitute action *in genere morum*[25] – since there are many actions, human and animal, that have those same good natural effects but which are not also moral actions – his doctrine is not fundamentally affected by the introduction of the notion of naturally good or naturally bad action. It would thus appear that here we are dealing only with a question of appropriate terminology, provided, that is, it is not misleading to extend the qualification 'good' from actions commanded by a superior to those that contribute to man's self-preservation.

However, after all the effort it took to show that 'all the movements and actions of man, if every law both divine and human be removed, are indifferent', it remains concerning to hear talk of a *natural* goodness. Likewise after all the trouble taken to warn that 'The reason why many men cannot understand such an indifference in actions, is because from childhood on we have been imbued with a hatred of such vices; and this hatred, impressed on a mind still simple, appears to have grown to have the strength of a moral judgement, the result being that few have thought of distinguishing between the material and the formal in such actions' (1,2,6). Above all, it remains the case that Pufendorf cannot say that 'human actions which fall under the direction of the law of nature can be resolved into the natural power that they possess to aid or to injure men'. For, as long as one holds firm to the insurmountable difference placed by Pufendorf between the matter (being useful or harmful) and the form (being commanded) of moral actions, it is precisely this *reduction* of

what is commanded or forbidden by the law into that which benefits or harms man that cannot be executed.

A further particularly significant instance of inserting a passage on the *natural good* into the second edition is found in I,4,4. We have already dwelt on the opening of this paragraph in the first edition, which proposes to clarify in what sense, in the preceding paragraph, it had been asserted that the principal affect of the will is its *indifferentia*, that is, its not being tied to a *certain fixed and invariable mode of acting*, as well as on the powerful hobbesian intonation of some of its passages.[26] Here, instead, what interests us is to examine the lengthy passage that is prefixed to it in the second edition and which reads as follows:

> But some preliminary remarks should be made concerning the nature of good, so that the indifference of the will may be correctly apprehended. Now good is considered in an absolute way by some philosophers, so that every entity, actually existing, may be considered good; but we pay no attention to such a meaning, and consider a thing as good only in so far as it has a respect to others, and it is understood to be good for some person, or on his behalf. Taken in this sense the nature of good seems to consist in an aptitude whereby one thing is fitted to help, preserve, or complete another. And since this aptitude depends on the very nature of things, whether this nature be native or adapted by some contrivance, that good which we can call natural, is firm and uniform, and in no way dependent on the erroneous or changeable opinions of men. But since good does not arouse a voluntary appetite on the part of man, unless it be perceived, at least in a general way; and since true sense or perception gives only a rough idea of the real being of things and what may come from it; since also errors often deceive the very mind itself, and impede the force of senses and passions, it results that certain persons incorrectly assign an idea of good to some thing, and so a good arises which is called imaginary. Moreover, individual men seek and love a certain thing according as they think it has something for their advantage, and will aid in their preservation and improvement; while the opposite things they regard as evil and avoid. But just as it is not required of a thing to be good and to have some power to attract the desire, that it be held a good only for him alone who seeks it, and to the degree that it is taken away from the advantage to another, especially since the social ties and intercourse of other men can give advantage to us, as well as to themselves; so among all men there is so wholehearted an agreement on the general nature of good, and of its main divisions and kinds, that there would appear to be

> no compelling reason why the general, and therefore unbroken and uniform, idea of good should be denied, because of a difference on some particulars, or why it should depend solely in a state of liberty on the opinion of one man, in a commonwealth on that of the highest in authority, and be weighed by that opinion alone. Add Richard Cumberland, De Legibus Naturae, chap. iii, where he refutes certain errors of Hobbes on the nature of good, and chap. i, § 20. Moral good, which is found in the actions of men, is treated below in its proper place. From what has been said it is clear that it belongs to the nature of the will …

As can be seen, some elements of this addition confirm positions of hobbesian ancestry supported by Pufendorf regarding the notion of the good. Pufendorf thus asserts that he always understands the good as 'good for someone', seeing no use in considering as good any existing entity; and here the polemical point is precisely against Cumberland, because it was he who held that 'Good is as extensive as Being' (*bonum aeque late patet ac ens*).[27] In a similar vein, he asserts that individual men cannot not desire what contributes to their wellbeing and their self-preservation, while fleeing what they regard as adverse to them. Things are different, however, with regard to the assertions that there exists a *bonum naturale* consisting in the aptitude (flowing from the nature of things) that one thing has to preserve another; that there is a good (*bonum*) that is 'strong and uniform and in no way contingent on the false or shifting opinions of men'; that there is an established consensus among men concerning not only the general nature of the good, but also its parts and particular kinds; and that there is an unshakeable and uniform notion of the good. All four of these assertions are of an entirely different inspiration and stand in sharp contrast to what is also, as with the first edition, still maintained: that from the variety of men's inclinations – varying from man to man and from moment to moment for each individual – there cannot but follow 'an almost infinite variety in the wills and desires of men: and all go in search of the good particular to them, but each in a different way'.

What is more, even in the passage devoted to deciding what the goodness or badness of actions consists in (1,7,3), in the second edition Pufendorf introduces the notion of natural goodness that did not appear in the first:

> *First edition*
> We call an action good which agrees with law; that action evil, which does not agree with it. The formal reason for the goodness and evil of actions lies in their bearing, or determinative relation, to a directing rule, which we call a law.

> *Second edition*
> We call an action good morally, or in moral estimation, which agrees with law; that action evil, which does not agree with it. (For natural and material goodness, by which a thing or an action is understood to tend to a man's convenience or improvement, is discussed in another place; although it is connected with the above-mentioned moral good, in those things which are enjoined by natural law, and usually by civil law as well, and gives it some reasonable basis among rational creatures.) …

Here it is evidently Pufendorf's concern to warn the reader that he too, after all, believes in a natural goodness of actions that transcends the goodness that consists in their conforming to a law.

A similar concern – again connected to Pufendorf's procedure of citing Cumberland in defence of his own controversial theses – returns in another passage added to the second edition. This occurs at the end of the paragraph where he had maintained his highly disputed anti-grotian thesis, that the natural law's concern is not with actions right or illicit in themselves or by their nature. In fact here, to the final argument adopted against the grotian thesis – namely that, if the definition of natural law is built on the foundation of the necessary probity or turpitude of certain actions, it ends being obscured and caught in a vicious circle – Pufendorf adds the following observation:

> And Richard Cumberland, De Legibus Naturae, chap. v, § 9, properly maintains that, in the definition of natural law, 'good' must be understood as natural good and not moral good, since, indeed, it would be absurd to define a thing in terms which presuppose that the thing defined is already known. (II,3,4)[28]

But if we are to appreciate the full reach of the variants introduced in the second edition into the doctrine of the good, then we must attend above all to paragraph II,3,21, added *ex novo* in order to elaborate on the problem of the law of nature's sanction. So let us note its opening:

> It is also worth while to treat more carefully the sanction of natural law. In this connexion, beside what has been set forth above on the sanction of law in general, we open our discussion by observing that the good and evil which fall to the lot of man can be divided into three classes. Now, among good things, some proceed from the free gift of the Creator, or from the voluntary benevolence of other men, or are acquired by the labour of man, which he has undertaken without compulsion and of

> his own free will. This class is plainly not due to the observance of laws. A second class of good things proceeds by a natural consequence from an action required by the laws, because the Creator has assigned to every act agreeable with His laws its regular and natural effect, which tends to the advantage of man. These good things Richard Cumberland calls 'natural rewards'. The third and last class of good things follows certain actions, because of the will of the legislator or the agreement of men; of these the former are reward [par excellence], or arbitrary rewards, the latter are wages. In the same way some evils follow from the particular nature and condition of man – no notice being taken of how this condition first came about – or they involve no guilt on the part of him on whom they fall. These you may call in a sound sense evils of fate, the word fate not being opposed to the disposal of God, but to the special guilt of him who suffers from that evil. Others follow upon sins by a natural consequence and connexion; and these are sometimes called natural punishments. The last class arises from sins upon the special determination and disposal of a legislator, not from a line of natural effects; and in this case the quality, degree, place, and time of the evil depend upon the will of the legislator. These last are what we call punishments, in the proper sense of the word, or, in a looser sense of the word, arbitrary punishments. (II,3,21)

Here, as we see, setting himself on the path of the distinction between moral good and natural good, Pufendorf feels the need to subdivide further. Alongside the goods and the ills flowing from our actions – whether as their natural consequences, or as consequences annexed to them by the legislator's will – he thus further identifies the category of the goods due to the Creator's free donation or to the benevolence and the industriousness of men, and of the so-called fatal ills, that is, those contingent on the human condition. This is a discourse going in a entirely different direction from the one followed in the first edition. There, after having barely hinted at a conception of the good as 'object of human will',[29] attention turned wholly to determining which *actions* are good and which are bad, with a metaphysical-ontological discussion of the types of good and ill remaining completely outside our author's interest and perspective.

As can be seen, then, the introduction of the notion of *natural good* in the second edition has serious consequences for the doctrine of the good held by Pufendorf. The fact is that he deceived himself that he could mask his doctrine of the indifference of human actions prior to their being referenced to a law, by means of what he took to be a simple terminological concession to his adversaries. He did not notice that, with the notion of natural good and with

the related notions of natural consequences and of nature of things, he was reintroducing into his doctrine a whole system of thought incompatible with it, one that threatened to corrode it from its very foundations.

That Pufendorf's principal concern in reintroducing the notion of natural good was that of avoiding the charge of 'moral indifference'[30] can be satisfactorily demonstrated by a passage in Book Seven. Here, using Hobbes's own words, Pufendorf discusses the hobbesian thesis according to which man in the first instance loves himself and his own benefit and, only secondarily, loves society (VII,1,2). In the second edition, our author feels the need to alter, slightly but significantly, the paraphrase he is providing of the English author's text. So where in the first edition, setting out the hobbesian argument drawn from the very definitions of *Voluntas*, *Bonum*, *Honos*, *Utilis*, the text read:

> Societies are entered into by men through an act of the will. But when the will acts it implies an object, namely, some good. Yet to what good is the love of individuals drawn save to what each of them has judged to be good for himself? For no matter how happy the king of Persia may be, his happiness has no value for me. All good is attended by some pleasure which touches either the mind alone, or the body as well.

Apart from the example of the king of the Persians, which belongs to Pufendorf alone, this is a substantially faithful paraphrase of the text of the *De cive* I,2.[31] In the second edition, after the statement that 'But when the will acts it implies an object, namely, some good', the text continues like this:

> Yet to what good is the love of individuals drawn save to what each of them has judged to be good for himself? For however good a thing may be of its own nature, yet unless it has some relation to us we take not the slightest interest in seeking and esteeming it. For no matter how happy the king of Persia may be …

Here, we should not be too amazed at the disarticulation that is introduced into the hobbesian text, of which, if the first edition is a paraphrase, the second is an alteration. Indeed, once it is recalled that Pufendorf is making the hobbesian thesis his own, there is no reason to be surprised that he transforms it to better fit his own convictions. After all, it remains Pufendorf who is speaking here, albeit with Hobbes's words. What should also be noted is how the statement that 'good is nothing, if it is not that which each has judged to be so for himself' is transformed into the statement according to which the appetite of individuals is drawn only 'to what each of them has judged to be good for

himself' since 'however good a thing may be of its own nature, yet unless it has some relation to us we take not the slightest interest in seeking and esteeming it'. By introducing yet again the notion of natural good, and displacing the discourse from the definition of good to the functioning of *adpetitus*, this transformation clearly shows Pufendorf's concern to avoid Hobbes's fate and to escape the charge, levelled against him so many times, of moral indifference.

§2 *Regarding the Notion of 'Natural Consequences' of Actions*

We have said that the notion of *natural good* is closely connected with that of *natural consequences* and that of *nature of things*. And in fact, in the second edition, there duly appears a marked accentuation of the theme of the natural consequences of actions commanded or prohibited by the law of nature, as well as that of the nature of things. As regards the first of these, it is significant that passages such as the one that follows appear only in the second edition:

> Actions in conformity with the law of nature have, indeed, this characteristic, that not only are they reputable, that is, they tend to maintain and increase a man's standing, reputation, and position, but they also are useful, that is, they procure some advantage and reward for a man, and contribute to his happiness. [...] But actions repugnant to the law of nature are, indeed, always base, although they may at times apparently return some advantage, and more often some pleasure, which latter, however, never endures for long, and is followed by a throng of much greater ills. (II,3,10)

It is similarly significant that in the second edition the first of the two reasons[32] adopted as demonstrating that to conduct a social life is commanded *pro imperio* by God – namely that 'the human race is of such a nature, that it cannot exist in safety if this belief be not firmly established' – is illustrated and incorporated in the following way: 'because, therefore, the will of the first cause has brought it about that, in natural consequence, the happiness of the human race is secured through acts commended by the natural law, and its misery is created by such as are forbidden' (II,3,20).

This accentuating of the theme of the natural consequences of actions commanded or forbidden by the law of nature opens the way to a temptation from which Pufendorf managed to save himself *in extremis*, but which it is significant to observe presented itself clearly in the second edition. We have already seen that the problem of the law of nature's lack of sanction was far more intrinsically tormenting and potentially destructive of the very foundations of the pufendorfian system than the mere status of open question – to which a

relatively slight importance is accorded – granted it by Pufendorf. In the second edition of his major work, however, he was tempted to resolve the issue in the manner of Cumberland, that is, by having the natural consequences of actions commanded or forbidden by the law of nature act as its sanction. This solution was in fact precluded for Pufendorf by the very definition he had given of sanction, as a penalty arbitrarily imposed by a superior. It is true that in the final analysis, he held to the position adopted in the first edition, by maintaining that the problem of whether the natural laws are sanctioned by God by means of an arbitrary penalty 'is still involved in obscurity' (II,3,21).

Yet it remains highly significant that when Pufendorf expands in the second edition the short passage devoted to this problem in the first edition – in the paragraph of Book One where it is explained what the two parts of which every law must necessarily be constituted are (I,6,14)[33] – he does so in two long digressions, both having Cumberland as their uncontested protagonist. The first of these – inserted in I,6,14 in place of the short passage in question – constitutes the sole instance in the *De iure* of an explicit refutation of a Cumberland thesis: the one according to which laws are sanctioned not only by the penalties but also and above all by the rewards.[34] But the second digression – that is, the long paragraph in II,3,21 on whose opening we have already paused – is in large part nothing but a paraphrase of Cumberland's thought and a knowing tissue of citations taken from his book.[35] While still maintaining the thesis that rewards and penalties *par excellence* are only those proceeding from the will of a superior, this digression concedes all that can be conceded to the English author's thesis according to which the sanction of the law of nature lies in the natural consequences of the actions that this law commands or prohibits.

§3 *Regarding the Notion of the 'Nature of Things'*

We could cite as examples other passages added in the second edition whose role is to show that it is the very consequences of actions accomplished in observance or in violation of the law of nature that tell us this is a matter of law.[36] But let this be enough on the theme of the natural consequences of actions and let us pass on to theme of the *nature of things*. In the first place, it is important to note how this concept is introduced, in the second edition, precisely in passages crucial to the interpretation of Pufendorf's thought, the main line of which is thereby dangerously compromised. See, for instance, the passage relating to the necessity of attributing use of reason also to man in the state of nature (II,2,9). In the first edition, it read like this:

> This further point should be carefully observed, namely, that we are not discussing the state of some animal, which is directed only by the forces

> and tendencies of the senses, but of one whose chief adornment and master of the other faculties is reason; and if any man would adequately define a state of nature, he should by no means exclude the proper use of that reason, but should have it accompany the operation of his other faculties.

From what followed, it is clear that the *ratio* that Pufendorf had in mind was none other than the capacity man has of not being stuck in the present, but of embracing in his thoughts things future and far away.[37] In the second edition, between the phrase in the quoted passage declaring man to be an animal whose principal part is the *ratio*, and the phrase affirming that, precisely for this reason, the use of reason should not be excluded from the delineation of the state of nature, Pufendorf adds the following qualification:

> whose chief adornment and master of the other faculties is reason. Now this reason in a state of nature has a common, and, furthermore, an abiding, and uniform standard of judgement, namely, the nature of things, which offers a free and distinct service in pointing out general rules for living, and the law of nature; and if any man would adequately define a state of nature, he should by no means exclude the proper use of that reason,

In a move that significantly does not appear at all in the first edition, this passage asserts not only that reason finds its rule common to all, fixed and uniform in the nature of things, but it is also asserted that this, the nature of things,[38] 'offers a free and distinct service in pointing out general rules for living, and the law of nature'.[39] In other words, it is said (or at least we are led to understand) that the law of nature depends on the nature of things; which is, as we saw above, a concept wholly incompatible with the doctrine of moral entities.

On the other hand, between the first and second editions, right reason undergoes a radical metamorphosis from a capacity to make correct deductions from true and legitimate first principles, to a capacity to conform to the nature of things. This appears, with a clarity we could not ask to be sharper, from the changes introduced in a passage of the paragraph that Pufendorf devotes to explaining in what sense the old maxim that the law of nature is the dictate of right reason holds true for him too (II,3,13). After having said that this venerable proposition signified for him only that the human intellect has the faculty of understanding clearly from contemplating the human condition that it is necessary to live according to the law of nature, as well as the faculty of

inquiring into the principle of demonstrating the precepts of this law, among other things Pufendorf then noted:

> From this it is clear how the fitness of the reason to work out the law of nature may be measured, and on what basis it can be decided whether some command proceeds from a sound or a depraved reason. Now the dictates of sound reason are those which are deduced by logical sequence from prime and true principles. On the other hand, it is a dictate of depraved reason when one either proposes false principles, or by ασυλλογιστια [improper reasoning] formulates false conclusions. If this is observed there need be no further fear that any one can palm off for the law of nature the vagaries of his diseased brain or the disordered craving of his mind; for his appeal to reason will be vain if he is unable to prove his assertions from principles which are legitimate. (II,3,13)

This passage is altered in the second edition as follows:

> Now the dictates of sound reason are true principles that are in accordance with the properly observed and examined nature of things, and are deduced by logical sequence from prime and true principles. On the other hand, it is a dictate of depraved reason when one either proposes false principles, or by ασυλλογιστια [improper reasoning] formulates false conclusions. For to say that the law of nature is imprinted upon us by the nature of things implies that it is true, since nature only puts forth what truly exists, and is the cause of that which contains nothing untrue, since, indeed, falsehood springs only from the error of men, who separate ideas which are related by nature, or else combine those which are separate by nature. Add Richard Cumberland, chap. v, § 1. If this is observed, there need be no further fear that any one can palm off for the law of nature the vagaries of his diseased brain or the disordered craving of his mind; for his appeal to reason will be vain if he is unable to prove his assertions from principles which are legitimate and agreeable with the nature of things, inasmuch as truth and accuracy consist in the agreement of concepts and terms with the things which they are supposed to set forth. (II,3,13)

As can be seen, in the first edition the dictates of right reason are simply 'those which are deduced by logical sequence from prime and true principles', so that it can be said that anyone's 'appeal to reason will be vain if he is unable to prove his assertions from principles which are legitimate'. In the second edition,

though, before being dictates that are strictly deduced from true principles, these dictates become true principles themselves, qualified as such by virtue of their fit with the nature of things. But there is more (and worse): in the second edition the saying is accepted that 'the natural law is imparted by nature', explaining this in the sense that 'the law of nature is true, since nature only puts forth what truly exists'. These concepts – that the law of nature is imparted by the nature of things and that it denotes nothing but that which exists – plant themselves like monstrous foreign bodies into the fabric of a doctrine constructed, as we have seen, without them and, on the contrary, against them.[40]

That the notion of nature of things and of propositions expressing the natural law drawn from them is a body abusively intruded into the pufendorfian doctrine is shown abundantly by the changes suffered by another crucial paragraph of the *De iure*: the one where it is shown that the obligation of the natural law can come only from God (II,3,20). In the first part of this book we have dealt at sufficient length with the inadequacies and substantial failing of this demonstration for it to be necessary to return to them now. Instead, what is interesting here is to note how the demonstration of the thesis that the obligation of the law of nature comes from God is transformed from the first to the second edition:

> **First edition**
> Inasmuch as it has long since been established by men of discernment, and no God-fearing man disputes it, we now assume that God is the maker and controller of this universe. Since He so formed the nature of man that the latter cannot exist without leading a social life, and for this reason gave him a mind capable of grasping the ideas that lead to this end, it is surely to be recognized that He also willed for man to regulate his actions by that native endowment which God Himself appears to have given him in a special way above the beasts.

> **Second edition**
> Inasmuch as it has long since been established by men of discernment, and no God-fearing man disputes it, we now assume that God is the maker and controller of this universe. Since He so formed the nature of the world and man that the latter cannot exist without leading a social life, and for this reason gave him a mind capable of grasping the ideas that lead to this end, and since He suggests these ideas to men's minds by the course of natural events as they come from Him as the first cause, and represent clearly their necessary relationship and truth, it is surely to be recognized that He also willed for man to regulate his actions by that

> native endowment which God Himself appears to have given him in a special way above the beasts. (II,3,20)

As can be seen, the notion of the nature of things was entirely absent from the first edition. It is inserted into the second edition and confirmed in the passage that incorporates, while altering its meaning, the statement that God, in addition to assigning to man a nature such that he could preserve himself only by leading a sociable life, also granted man a mind able to register the notions serving this end.

In fact, to say, as is done in the second edition, that these notions are insinuated into human minds *per motum rerum naturalium* is equivalent to making the laws of nature the mirror of a nature of things, with this latter becoming the only authentic source of natural law. Indeed, in this same paragraph, following the statement that the law of nature can be justifiably considered to be knowable by virtue of the light of reason alone, 'in that its necessary truth can be grasped by reasoning, that is, by the use of natural reason', in the second edition is added:

> And because the propositions which define natural law are suggested to the minds of men by a contemplation of the nature of things, they are referred back to the author of nature, even to God. Add Richard Cumberland, De Legibus Naturae, chap. i, § IO.

This is like saying that only the contemplation of the nature of things can tell us what the law of nature's dictates are.

The appearance of the notion of *natural good* and of the associated notions of *natural consequences* and *nature of things* therefore introduces into Pufendorf's doctrine a note that is highly dissonant with the main line of his thought. This has the deleterious effect of obscuring and confusing what has seemed to us to be the principal acquisition of the pufendorfian meditation on Hobbes: the theorisation of the ineradicable difference that stands between *nature* and *law*. A particularly significant instance of this obfuscation and confusion is provided by the variations brought in the second edition to the famous paragraph in chapter one of Book Eight (VIII,1,5). Here Pufendorf attempts to demonstrate, against Hobbes, that prior to the introduction of the civil laws there exists something that is just. We have already dwelt[41] on this passage, and on Pufendorf's effort, perhaps among the best of the many he made, to show that Hobbes too is forced to admit the existence of something just and something unjust prior to the constitution of the state. We recall it here only to note what happens in this paragraph in the second edition. Here, not only does

the passage that in the first edition read: 'But to say that before there were civil sovereignties, justice or injustice, defined by natural law and binding upon the consciences of men, did not exist, is false' see its ending changed as follows:

> But to say that before there were civil sovereignties, justice or injustice, defined by natural law and binding upon the consciences of men, did not exist, is as false as if I should assert that truth and rectitude depend upon the desire of men and not on the nature of things, or that the nature of things can be fashioned by supreme sovereigns at their pleasure, or that the truth about the same thing can be different from itself.

This is equivalent to equating the truth of the law of nature to the truth of the nature of things. Above all, though, in a passage introduced following the rhetorical question 'Yet why might not such laws [that is, laws prescribing the contrary of the law of nature] be made, if there is no justice or injustice before civil laws are defined?', Pufendorf finished by stating:

> But it is no more possible for civil sovereignty to create goodness and justice by precept, than it is for it to command that poison lose its power to waste the human body.[42]

Such a statement was without precedent in Pufendorf's mouth. To hold that the nexus linking injustice to certain actions is identical to the nexus linking the capacity to do harm to poison, is equivalent to making justice and injustice into the natural qualities of actions, that is, it is equivalent to contradicting *expressly* the doctrine of the indifference of physical movement in human action.

3 Cumberlandian Paternity of These Notions

Having reached this point, we feel justified in claiming that the first two points of our thesis have been adequately established: that is, that the notions of *natural good* and of *nature of things* are intrusive in the second edition, and that they contaminate the original physiognomy of Pufendorf's thought. It remains to demonstrate the third point: that is, that the *auctor* (unaware, of course) of this intrusion and of its undesirable effects was Cumberland. If it befell Pufendorf to make statements incompatible with those that constitute the main and original line of his thought, this happened because, in the frenzy to use as much Cumberland as possible in defence of his theses, he deluded himself that the English author's words, inserted into the context of his own thought,

would take their light and meaning from this context. He thereby underestimated the danger the coherence of his doctrine would have faced, when words responding to principles so different from his own – and indeed often their opposite, as were the principles inspiring the Cambridge theologian's work – were mixed into it.

To demonstrate this third and final point of our thesis is not an overly difficult undertaking. This is in part because it is Pufendorf himself who gives us notice by often (if not always) referring back to the passages from Cumberland that he had used,[43] but above all, because anyone who has even just a rough idea of the *De legibus naturae* knows that it is entirely built on the concepts of *natura rerum* and *bonum naturale*. Cumberland's attempt in this work, in fact, was on the one hand to show that the nature of things – which is the work of God – suggests to *recta ragione* the truth that the happiness of the individual is inseparable from that of his fellows, and in this he signals man's supreme end: the quest for the common good or universal benevolence. On the other and perhaps more important hand, his attempt was to show that the end signalled by the nature of things is a law, the law of nature, as it possesses the requisite fundamental of every law: that of being furnished with a sanction. This is constituted by the reward – the natural good, that is, the advantageous consequences – that falls to the man who observes it.

To show that things are effectively so, since a detailed analysis of Cumberland's work is precluded here, it is enough to quickly retrace the broad contours. It will then be seen that the entire first part of the *De legibus naturae* is devoted to an examination of the nature of things, first as an outline of the nature of things in general, and then an outline of the nature of man. This examination has the aim of demonstrating that from certain natural phenomena admitted by all can be deduced knowledge of the fundamental maxim of the law of nature: which is to say, that universal benevolence is the necessary condition for achieving happiness, and that the common good is the supreme law (chapters 1 and 2). Further, one will see, that, since the hub of this proposition lies in the statement that the consequences of actions dictated by benevolence are good (*naturally* good), a whole chapter – the third – is devoted to theorising the notion of *natural good* in its distinction from that of moral good. Finally, if we consider the heart of this discussion – namely, the very long fifth chapter *de lege naturae eiusque obligatione* that precedes the deduction of the particular laws of nature and the discussion of the consequences that must be drawn from these as far as particular institutions (property, state, etc.) are concerned – then it becomes clear that this is wholly devoted to the attempt to show that the good and bad consequences of respecting or breaching the

maxim prescribing the pursuit of the common good constitute its sanction and structure it, in this way, as a real and proper law.[44]

That the themes of *nature of things* and *natural good* are Cumberland's themes no one could reasonably put in doubt. But there is more. Many of the passages relating to these themes inserted by Pufendorf into the second edition of his work – in particular precisely those which had appeared there singularly dissonant with his doctrine – are nothing other than literal quotations or paraphrases of passages from Cumberland. Let us see, in the first place, the English author's definition of *bonum naturale et morale*:

> Good, is that which preserves, or enlarges and perfects, the Faculties of any one Thing, or of several. [...] So that is Good to Man, which preserves or enlarges the Powers of the Mind and Body, or of either, without Prejudice to the other. [...] Good of this kind, of which we form an Idea, without the Consideration of any Laws whatsoever, I call natural Good; both because it respects the Nature of a thing, a Brute, for instance, or a Tree, whose Powers are capable of Preservation and Increase; and, beside, such is the Effect of such kind of Beings, nay, of the Earth itself, that they may be subservient to the Preservation of their own Natures, or even of ours, or to our Improvement by farther Knowledge. It is distinguish'd, by its greater Extensiveness, from that Good, which is called Moral, which is ascrib'd only to such Actions and Habits of rational Agents, as are agreeable to Laws, whether Natural or Civil, and is ultimately resolv'd into the natural common Good, to the Preservation and Increase of which alone all the Laws of Nature, and all just civil Laws, do direct us. (III,1)

In this passage we recognise the definition of *bonum* as that which is likely to *conservare aut perficere* as given by Pufendorf in the second version of I,4,4. At the same time, on looking closely, we also find there the source of that passage added in I,2,6 – which had appeared to us incompatible with the pufendorfian principles – where it is stated that the actions at the disposal of the law of nature can in the final analysis *be reduced* to their natural capacity to cause harm or to grant benefit. Is it not Cumberland who says here that the *bonum morale* – which is what connotes the compliance of actions with the law, be this natural or civil – *ultimo resolvitur in naturale bonum*, which is to say, in that which benefits men? Further, we were astonished to hear Pufendorf state at the same time in I,4,4 that 'to the infinite variety in the wills and desires of men there corresponds the infinite variety of that which each holds to be good for himself' and that 'men agree on the general nature and the parts and the particular forms of the good', that there is an *inconcussa et uniformis boni notio*? In the

following passage in Cumberland we not only find the importance of having a *rata et immobilis boni notio*, but we find to the letter the fragment on men's agreeing on the general nature of the good and its parts and particular forms:

> It is of the last consequence, to establish a well-grounded and irrefragable Notion of Good; because, if this totters and wavers, we must, necessarily, be fluctuating and uncertain in our Opinions of Happiness, [...] and of the Laws of Nature [...] which are nothing else, but the means of obtaining that Good [...]. Altho, because of something peculiar in the different Constitutions of Men, it sometimes happens, 'That the same Nourishment or Medicine is prejudicial to one, which to most is harmless, or, perhaps, wholesome' [...] yet, this no more destroys the Consent of Men in the general Nature of Good, and its principal Parts or Kinds, than a light diversity of Countenances takes away the Agreement among Men, in the common Definition of Man.(III,3)

This is not to add that the idea that all men concur in their judgment of good and ill is typical of Cumberland, as is shown in the following passage too:

> In judging of the Goodness of these Things, to take care of which is the whole Business of the Laws of Nature, and of most Civil Laws, all Men every where agree, as much as Animals do in the Motion of the Heart, and Pulse of the Arteries, or all Men, in their Opinion of the Whiteness of Snow, and the Brightness of the Sun. (III,3)

And still more: we noted that in the second edition of I,7,3 Pufendorf introduced the notion of naturally good action, defined as one which results in *commodum et perfectionem alicuius*, accompanying it with the assertion that this natural goodness is conjoined with the moral goodness in actions commanded by the law of nature and for the most part also in those commanded by the civil law. In Cumberland, *Intro*. §16, we find it said

> That those human Actions, which, from their own natural Force or Efficacy, are apt to promote the common Good, are call'd naturally Good [...] the same Actions, afterward, when they are compar'd with the Law, whether natural or positive, which is the Rule of Morality, and they are found conformable to it; are call'd morally Good;

This is a passage in which we find all the elements with which Pufendorf constructed his own position: the distinction between naturally good and morally

good actions; the definition of the former as those that are likely to serve the common good (which is like saying they procure *commodum et perfectionem omnium*, instead of just *alicuius*, as in Pufendorf!); and the definition of the latter as those actions complying with a law, accompanied by the statement that these always also bear the natural aptitude to serve the common good of the former.

Pufendorf was surely led by his reading of Cumberland also to identify a third category of goods and ills: those that touch men independently of their action. This is added to the category of the good or bad effects flowing naturally from human actions and to the category of the effects attributed to human actions by the legislator's will. This tripartition, as we have seen, opens the paragraph added in the second edition on the sanction of the law of nature (II,3,21). It was in fact Cumberland who, alongside the goods and the ills *dependentia ab actibus nostris*, had identified

> the Effects of good and evil Actions, those good or evil Things, which can neither be procur'd, nor avoided, by human Industry, are not to be taken into the Account. Such are those which happen by natural Necessity, or by mere Chance, from external Causes. (*Intro*. §17)

Moving to the correction introduced by Pufendorf in VII,1,2 in paraphrasing the passage in the *De cive* and to the metamorphosis to which the discourse on the good goes counter, anyone who has read the paragraph (III,4) in which Cumberland refutes 'another Error of Hobbes, concerning Good, which is, that "The Object of the human Will is that, which every Man thinks good for himself"' (p. 470) will easily recognise that Pufendorf's elimination of the definition of *bonum* as 'what each of them has judged to be good for himself' from the second edition of the *De iure* is a tacit acceptance of Cumberland's criticism of Hobbes. Nonetheless, a criticism of Cumberland is recognisable – albeit a tacit criticism – in Pufendorf's comment that 'to the extent that a thing is naturally good, it does not provoke our appetite except when it has a particular relation to us'. The sense here is that for Cumberland too, if the natural good is to become a good for someone, it must always still be judged such by that person. In the final analysis, then, it remains the case that for each person *bene* is what is *tale sibi*!

As for the accentuation, in the second edition of the *De iure*, of the theme of the natural consequences of actions commanded or forbidden by the law of nature, if we had to cite passages from Cumberland's work – given the space the theme occupies and which we have rapidly scanned above – we would have to cite the entire *De legibus naturae*. Let it suffice, then, to recall here

that, as the English author informs us in Intro. §9, the aim of his work is to show the truth of the fundamental proposition to which all those propositions expressed in the laws of nature reduce, that is, the truth of the proposition asserting that:

> The Endeavour, to the utmost of our power, of promoting the common Good of the whole System of rational Agents, conduces, as far as in us lies, to the good of every Part, in which our own Happiness, as that of a Part, is contain'd. But contrary Actions produce contrary Effects, and consequently our own Misery, among that of others. (*Intro.* §9)

But if the aim is therefore that of showing that the pursuit and the love of the common good bring about our happiness, whilst acts contrary to that have as their effect our unhappiness, it will follow from this (as indeed it does) that the whole discussion will turn around the theme of the *effects* of the acts prescribed or forbidden by the law of nature.

Instead, it is simpler and more advantageous to cite specific passages of Cumberland that show how all those places in the second edition of the *De iure* in which the notion of *natura rerum* is introduced – making it the source from which the law of nature is drawn, the law that can be said, in this way, to be imprinted in us by the nature of things – have been literally taken from him, or else largely inspired by him. That for Cumberland the law of nature is imprinted in the mind *a natura rerum* is adequately shown, among the many other passages that could be cited, by the very definition he gives of the law of nature:

> The Law of Nature is a Proposition, proposed to the Observation of, or impress'd upon, the Mind, with sufficient Clearness, by the Nature of Things, from the Will of the first Cause, which points out that possible Action of a rational Agent, which will chiefly promote the common Good, and by which only the intire Happiness of particular Persons can be obtain'd. (V,1)

Here, as can be seen, the law of nature is defined as a proposition *oblata vel impressa menti a natura rerum*. Just how this 'impression' reaches the mind of men Cumberland explains at length in passages that clarify what in the definition is simply signaled, which is to say that such an impression is to be traced back to the *voluntas Primae Causae*. In these passages, where it is shown that the impressions on the senses and in the mind are the effect of natural motions, all of which derive from the prime mover, that is, from God, it is easy to recognise the source of Pufendorf's additions in II,3,20. Here too the laws of

nature are presented as notions insinuated into our minds *per rerum naturalium* emanating from God *tanquam primo motore*: as propositions that, insinuated into our minds *ex contemplatione naturae, eo ipso ad autorem naturae Deum referuntur*. Indeed, in *Intro*. §7 Cumberland had said:

> That all Effects of corporeal Motions, which are necessary, according to the common Course of Nature, and depend not upon the Will of Man, are produc'd by the Will of the first Cause: for this comes to no more than saying, That all Motions are begun by the Impression of a first Mover.

And in *Intro*. §8:

> Every Motion impress'd upon our Organs of Sense, (such Motions are by the Peripateticks call'd sensible Qualities) by which the Mind is led to apprehend Objects, and to form Judgments concerning them, is an Effect plainly natural, and therefore, whatever second Causes intervene, owes its Original to the first. And thence it follows, That God, by these Motions, as by a Pencil, delineates the Ideas or Images in our Minds of all sorts of things, especially of Causes and their Effects.

And in I,10:

> That a Truth so evident, is impress'd by God as its Author, is very readily shewn from that natural Philosophy, which shews, that all Impressions upon our Senses are made, according to the natural Laws (as they are call'd) of Motion; and that Motion was first impress'd upon this corporeal System by God, and is by him preserv'd unchang'd.

And in *Intro*. §13, in a move that Pufendorf repeats almost to the letter in the second of the passages added in II,3,20, Cumberland declares:

> But if it be more closely examin'd, we shall perceive, That upon this very account, that the nature of things impresses it upon our Minds, it necessarily points out its Author, the first Cause, as of all Things, so of all Truths arising from them; among the principal of which Truths is to be reputed this true Proposition, which we affirm to contain the fundamental Law of Nature. Nor can any one in reason desire, that it should be more evidently prov'd, "That God is the Author of this Proposition," than it is prov'd, "That he is the Author of the Nature of Things, whence the Truth of this Proposition arises".

But we had noted too that the accentuation of the notion of nature of things in the second edition of the *De iure* accompanied a transformation of the notion of *recta ratio*, which became capacity to conform to the nature of things. Here too, the inspirer of this metamorphosis is easily identified as Cumberland. Indeed, see the following passage:

> For, out of civil Society, any one may distinguish right Reason, without making a Comparison with his own. Because there is a common Standard, by which every Man's own Reason (or Opinion) and that of others, is to be try'd, namely, the Nature of Things, as it lies before us, carefully to be observ'd and examin'd by all our Faculties. That is the Rule with which all, both Premisses and Conclusions, are to be compared, whether form'd by me or by any other Man, or by the Common-wealth itself, after it is form'd. For it is most certain, That the Truth or Rectitude of Propositions concerning Things and Actions, present or future, consists in their Conformity with the Things themselves, concerning which they are form'd. (II,5)

Here it is easy to recognise the source of the passages added by Pufendorf in II,2,9 and II,3,13 where it is said that *ratio* has a *common, and, furthermore, an abiding, and uniform standard of judgement, namely, the nature of things* (II,2,9), that this is *properly observed and examined* (II,3,13), that 'truth and accuracy consist in the agreement of concepts and terms with the things which they are supposed to set forth' (II,3,13). In fact, looking closely, the entire passage added in II,3,13 is nothing but a marquetry of citations from Cumberland. And indeed this applies to the passage that had struck us unfavourably on account of its incompatibility with the doctrine of moral entities. This is the passage where Pufendorf was moved to say that 'by the very fact that the natural law is said to be imparted by the nature of things, it is implied it is true, since that law indicates nothing other than what exists and is the cause of that in which there is never anything false', and where he had proceeded with the theorisation of the false as the error of men who disconnect that which by nature is connected or vice-versa. It is clear that such a passage is nothing but a literal citation of the following passage in Cumberland:

> It is certain, That only true Propositions, whether speculative or practical, are imprinted on our Minds by the Nature of Things; because a natural Action points out that only which exists, and is never the Cause of any Falshood, which proceeds wholly from a voluntary Rashness, joining or separating Notions, which Nature has not join'd or separated. (V,1)

Finally and most importantly is that the equating of the truth of the law of nature with the truth of facts is entirely to be traced back to Cumberland. This is the move to present justice and injustice as natural qualities which we have seen undermine at its root the coherence of paragraph VIII,1,5 of the *De iure*, in the shape in which it appears, transformed, in the second edition. The following assertions are in fact Cumberland's:

> the constituting, preserving, and perfecting Causes of Things or Men, are those Things which we call good, and the contrary to these, evil. [...] Wherefore, supposing such Motions and Actions, of some Men in relation to others, as we now see tend to their Preservation, they produce this Effect with the same necessity, that the geometrical Theorems concerning such Motions are true; and therefore they are naturally Good, altho no Laws were yet suppos'd, by which they are commanded.[...] for there is the same measure of Good and Evil, that there is of Truth and Falshood, in those Propositions which relate to the Efficacy of those Motions, that tend to the Preservation or Corruption of other Things, namely, the Nature of Things; and whatsoever Proposition points out the true Cause of Preservation, does at the same time shew, what is true Good. (I,20)

And, to finish, the very statement according to which 'laws contrary to the law of nature can no more be rendered good by the order of the sovereign than the latter can draw from poison its capacity to do harm' – the statement that had appeared to us unprecedented in Pufendorf's mouth – is taken straight from Cumberland, who, in V.5 had said:

> Certainly, if any Prince should enact general Laws contrary to these, in order to establish his State, he would do it with the same Success, as if he should decree the use of Poison, or of Air and Garments infected with the Plague, for preserving the health of his Subjects.

4 Incompatibility of Cumberland's System with That of Pufendorf

We have shown that it befell Pufendorf to make statements incompatible with those constituting the main and original line of his thought. This came about because he adopted other concepts and moves that belonged to a system following principles different from and often antithetical to his own, as were those inspiring the Cambridge theologian's work. It is of course legitimate to

ask how could it happen that Pufendorf failed to comprehend the incompatibility, but cited these concepts and adopted them as if they were not only compatible with his doctrine but supplied it with excellent illustrations and commentary.[45] It is not easy to answer this question, because the possibilities that offer themselves to the interpreter's mind are two, such that she wavers between the one and the other, without being able to settle for either.

On the one hand, indeed, one can hypothesise that Pufendorf was perfectly aware of the profound difference running between his own system and Cumberland's. In this case, in citing as much of the latter as was possible – and exactly at the crucial and most controversial points of his own doctrine – he did not care at all about the discrepancies admitted to his system, precisely because his was an operation to conceal his true thought, an attempt to throw dust in the adversaries' eyes, to divert their attention away from everything in his doctrine that justified the charges of 'hobbism' and 'indifference', and to focus attention instead on Cumberland's 'naturally good' and changeless 'nature of things'.

The alternative hypothesis is that, through a process of self-deception similar to the one by virtue of which, as the years passed, he convinced himself that his thought was completely opposed to Hobbes's, our author saw in Cumberland only what was in some way compatible with his own doctrine, while hiding from himself all that specifically contradicted it. Indeed, if at first sight it seems difficult to be able maintain that Pufendorf was in good faith when he assimilated to his own positions those of an author who believed that there exist actions good in themselves,[46] or who held that there exist acts that are good even if independent of laws that prescribe them,[47] the difficulty becomes less when it is considered that Pufendorf also found in Cumberland passages like the following:

> They [the Virtues] are indeed, in their own Nature, Good, tho' there were no Law, because they conduce to the Good State of the Universe: But Moral Obligation, and the Nature of a Debt thence arising, is unintelligible without a respect to a Law, at least, of Nature. Nay, farther; the very Honour, from which Actions are distinguish'd by the Title of [Honestas] laudable Practice, or are called Honourable, seems wholly to come from this, That they are prais'd by the Law of the supreme Ruler [...]. And justly they are called naturally Lawful and Honourable, because the Law, which makes them such, does not depend upon the Pleasure of the Civil Power, but arises necessarily, in the Manner already explain'd, from the very Nature of Things, and is altogether unchangeable, whilst Nature remains unchang'd. (VIII,1).

In such passages we find theses that aligned perfectly with Pufendorf's own convictions, such as the thesis that moral obligation cannot be conceived except by reference to a law, and the thesis that acts good by nature are deemed such only by reference to the law revealed naturally to men by God.

Better still, someone who based themselves on this latter consideration and on other easily identified similarities between the thought of the two authors[48] could quickly conclude that we are seeking answers to a non-existent problem. Here it might be said that we should not be asking ourselves how it could come about that Pufendorf adopted principles incompatible with his own, because it is not a matter of incompatible principles, but of broadly convergent systems. This hypothetical objector could further strengthen his thesis by reminding us, for instance, that if Pufendorf in the first edition says little (he concedes this) about the 'nature of things', he says much in both the first and second editions about human nature. In fact he says so much about this that it is precisely from human nature, rational and social – in which (as in Cumberland) the will of God shines forth – that our author deduces the laws of nature. The much advertised difference from Cumberland – the hypothetical critic will then conclude – reduces to a slight difference of emphasis. The English author treats human nature as part of the nature of things, while the German author observes it in its relative autonomy from the rest of the universe, yet the substance remains the same: both deduce the law of nature from nature.

Having necessarily excluded what would have been the best response – in the form of a comprehensive interpretation of Cumberland – how should we respond to this hypothetical critic other than by redirecting him to the discussion that we have undertaken? On the one hand, to the analyses we have devoted to the theory of moral entities and the thesis of the indifference of physical motion in human action, and, on the other hand, to those places where we have made clear the unquestionable incompatibility of these theses with those, dear to Cumberland, of a 'natural good' and a law of nature imprinted in human souls by the 'nature of things'? How can we not respond by inviting our objector to compare the pufendorfian derivation of the law of nature from human nature (in the way we claimed to reconstruct it) with Cumberland's derivation of the law of universal benevolence from nature?

If only our hypothetical objector read the whole of the *De legibus naturae*, he could not fail to notice the profound difference running between this work and the *De iure* precisely in respect of the way that the nature/law relation is configured. The English author's whole commitment is invested in the attempt to show that the nature of things is formed in a given mode, that the universe is

ordered in a determinate sense, and that human nature has defined characteristics. In fact, having shown this, Cumberland considers he has done enough to show what are the guiding norms of human conduct. This leaves him nothing more to prove than that it is indeed a matter of *norms*: in other words, that we find ourselves facing propositions that carry sanctions. Once again, in order to prove this final point he needs only refer to the ordering of nature, which is so fashioned that certain actions have certain consequences.

In Pufendorf, things are the exact opposite. He has no interest in ascertaining what might be the order of nature. What matters to him is not to inspect facts in order to deduce the law from them, but rather to determine what the law is so that facts can be organised in such a way as to enact the law. True, Pufendorf remains a natural law theorist [*giusnaturalista*], but in the same way that Hobbes does. Both say that to establish what the law is, we need to set out from an inquiry into man's nature. If we look closely, however, the analysis of human nature that they propose on the basis of a scientific deduction of the law of nature can only be such in a very particular sense. This analysis, in fact, is nothing other than analysis of the mechanisms that regulate relations between humans, an inquiry aimed at verifying what requirements the moral order must address if it wants to attain certain ends (peace, security, etc.).

Indeed, it is not by chance, having declared that they placed human nature at the very foundation of moral science, that neither Pufendorf nor Hobbes concerned himself in any way with establishing what, ontologically speaking, man's essence might be: for instance, whether he is or is not granted an immortal soul or a mind separated from the body. Instead both pose themselves questions related exclusively to the relations between man and man: whether he is or not a social animal, whether he has peaceful or bellicose relations with others, whether he is guided by pursuit of self-interest or by love of his neighbour, and so on.[49]

That being said, however, it is necessary to confirm with some insistence that things are not then, in Pufendorf's system, as linear and as unambiguous as we have rapidly presented them here in order to underline, in summary fashion, the difference that runs between his system and Cumberland's. Thus far, we have sought at some length to show how ambiguous and shifting the notion of state of nature is. And this allows us to calmly recognise the lurking temptation to find in nature the model or normative ideal that human institutions must force themselves to respect and guarantee.[50] However, it is nothing more than a temptation, victoriously overlorded by the theory of moral entities: which is to say, by the impassioned conviction that the world of morality and law is irreducible to and not deducible from 'nature'.

5 Other Variants between the First and the Second Editions of the *De iure*

Having completed the analysis of the variations introduced into the second edition through Cumberland's influence, we also find we have almost completed the examination of the places where variants introduced into the second edition tone down Pufendorf's 'hobbism'. The passages remaining to be considered are, in fact, just two, in the second of which, moreover, it will be easy once again to see Cumberland's face in backlight. But let us start with the first, and that is the paragraph II,2,3 where Pufendorf poses the problem of which rights are in force in the state of nature. We have already dwelt at length on this paragraph, and on the interesting interpretation of the hobbesian *ius in omnia* that our author offers there, while warning that we were using the first edition.[51] In fact, the small, almost imperceptible variations introduced into the second edition make all the difference between what looked like an unconditional adherence to the hobbesian doctrine, and what is now presented as a favourable interpretation of the English author's thought. In both editions, therefore, the paragraph opens with the assertion that the rights obtaining in the state of nature can be deduced either from the desire for self-preservation (which man shares in common with other living creatures) or from the fact that the natural state is a state of exemption from all subordination. In the first edition, after this opening, the paragraph continues as below:

> it follows from the first consideration that men, constituted in a natural state, may use and enjoy everything that is open to them, and may secure and do everything that will lead to their preservation… And from the second, that they may use their own judgment and decision just as they use their own strength, to secure their own defence and preservation.

In the second edition, the consequence that is drawn from the instinct of self-preservation, or that 'men, constituted in a natural state, may use and enjoy everything that is open to them, and may secure and do everything that will lead to their preservation', is corrected with the following incorporation: 'in so far as no injury is done to the right of others'. At the same time, the consequence that is drawn from no one being subordinated to the authority of any other person – or that, to guarantee their own self-preservation, each 'may use their own judgement and decision' – is corrected with the following warning: 'provided, of course, that it is framed on this natural law'.

In the second edition, therefore, Hobbes's text, rendered faithfully in the first edition, is 'adjusted'. Even more, to underline his own distancing from

that text, Pufendorf no longer continues, as in the first edition, with the conclusion that 'in this sense are Hobbes's remarks De cive c. I, §7 seqq. to be understood', but rather with 'A remark of Hobbes, De Cive, chap. i, § 7, must be understood and corrected in the light of what has just been said'. In the terms of the second edition, then, Hobbes's thought is no longer understood in the correct sense – the sense that Pufendorf had given it in setting his position out faithfully – but is *interpreted* and *corrected*, as in effect he had done with those incorporations.

And there is more: later, in the same paragraph, a correction can be noted, one that is almost imperceptible but of great significance. The passage in which it is said that the hobbesian thesis of the *ius in omnia* is not as paradoxical as it might appear at first sight reads, in the first edition, like this:

> However paradoxical all this may seem at first glance, one can by no means conclude that a man has any licence to do whatever he pleases to any one he pleases, if one bears in mind that the man described by Hobbes in such a state is still subject to the rule of natural laws and right reason. (II,2,3)

In the second edition, the *can conclude* [*deduci posse*] becomes *must conclude* [*deduci debere*]. This is tantamount to saying that, while in the first edition it is maintained that from Hobbes's statements *it is not possible* to deduce that he meant to attribute a total licence to the man of nature – since Hobbes places this man under the laws of nature and the guidance of the *sana ratio* – in the second edition, it is asserted that this conclusion *must not* be drawn, thereby leaving it to be understood that this was precisely what Hobbes did, thus entering into contradiction with himself. The impression that this is what Pufendorf lets us understand by substituting the *posse* with the *debere* is reinforced by the addition of a passage in the second edition that is missing in the first. Here, the paragraph closes with the assertion that, despite the hobbesian doctrine of the *ius in omnia* seeming paradoxical at first sight, it nevertheless reduces to the thesis that

> Nature put within the reach of all men the things which make for his preservation, before men divided them among themselves by agreements; and he who has no superior can of his own will, and at the dictate of sound reason, do whatever will work for his continued preservation.

After this conclusion, in the second edition, there follows a sentence which makes Pufendorf's intention to separate his own fortunes from those of

Hobbes crystal clear, by distancing himself from the latter in an explicit and almost theatrical manner. So our author adds:

> If, however, the real position of Hobbes is as harsh as his words appear at first blush to be, and will not allow this favourable interpretation of ours, let him see to it himself how he can avoid a just criticism.

If, finally, one considers that the paragraph continues, in the second edition, with a long and brutal refutation of the version of the *ius in omnia* adopted by Spinoza in the *Tractatus Theologico-Politicus*,[52] one will understand how the whole paragraph on the rights obtaining in the state of nature takes on an anti-hobbesian colouring that it was far from having in the first edition.

In considering a final instance of differences between the first and second editions significant for Pufendorf's relation to Hobbes, let us view the small variant introduced in II,3,20 (on the others, far more substantial, we have already dwelt). In the first edition, in refuting the hobbesian thesis that the laws of nature are real laws only insofar as God revealed them in the Holy Scriptures, the paragraph concludes that, while it was true that he (Pufendorf) does not hold that it pertains to the essence of the law to be spoken – or that it is necessary for a law to be made known to the subjects 'by words formed into a speech', it being sufficient that the superior's will be made manifest to the subordinates in some manner, even by 'the inner dictate of the mind' – it nonetheless remains that 'leges naturae rationando [sic! ratiocinando] erutae non nisi per modum orationum possunt concipi, eoque respectu recte orationes vocantur'. In the second edition, this second part of the conclusion is changed as follows: 'the laws of nature discovered by rational processes can only be conceived in the form of propositions, and in this respect they are properly called propositions'. But this variation makes the discourse incomprehensible. For, while in the first edition its sense was to concede something to Hobbes – by delimiting the ambit in which one can rightfully say that the laws of nature are *superioris orationes* – we cannot understand where the conclusion of the second edition came in, that the laws of nature *recte propositiones vocantur* [i.e., rather than *recte orationes*], when this was not the thesis under discussion. But the incomprehensibility of the variant introduced into the second edition is transformed into crystalline clarity if we manage to grasp what the concern was that moved Pufendorf to correct his text in this way.

To this end, let us consider, as we have seen above, that Cumberland had defined the law of nature as a *propositio* and had moreover theorised this choice

of his – counter-posing it to that of Hobbes, who had instead included the law of nature in the *genus* of the *oratio* – in the following passage:

> Nor did I think it proper, to make use of the word Oration for the Genus, as Hobbes has done, lest any should in a Mistake imagine, that the use and knowledge of Words, or any arbitrary Signs whatsoever, were essential to a Law. The Knowledge (or Ideas form'd in the Mind) of Human Actions, of Consequences good or evil to human Nature, but, especially, of Rewards and Punishments naturally connected with such Actions, and those Ideas reduc'd into the Form of Practical Propositions, such as I have describ'd, are all that is essential to a Law. (V,1).

How can we not see, then, that in substituting *propositio* for *oratio*, Pufendorf was concerned solely to erase the suspicion of hobbism brought in by his admission that the law of nature is (even if in a very limited sense) *oratio* and to place himself, once again, under the protective aegis of Cumberland? Entirely committed to this end, he did not notice, or did not care, that the internal coherence and the very sense of his discourse were diminished.

With this final small but significant instance of the constant concern that guided – and in one way blinded – Pufendorf every time that he touched on the delicate question of his relations to Hobbes in the second edition of the *De iure*, we could conclude our reconstruction of the evolution of those relations. Yet it remains for us to keep faith with another promise: that of saying something about the posture that Pufendorf had adopted towards his great predecessor in his youthful *Elementa*.

Notes

1 *ING* I,2,4: 'Now that knowledge, which considers what is upright and what base in human actions, the principal portion of which we have undertaken to present, rests entirely upon grounds so secure, that from it can be deduced genuine demonstrations which are capable of producing a solid science. […] Although Hobbes, De Homine, chap. x, is mistaken when he claims that ethics and politics, i.e., the science of justice and injustice, of right and wrong, can be demonstrated a priori, because we ourselves have made the principles, i.e. the causes of justice, namely, laws and pacts, by which distinction is made between justice and equity, and injustice and injury; since before the institution of pacts and laws there was, of course, no justice or injustice, no public good or evil among men any more than among beasts. We shall demonstrate the falsity of this position in another place,

and also how a fallacy underlies the use of the word public'. Barbeyrac did not understand the final phrase (see the translation: 'There is something dangerous wrapped in the epithet "public"' and above all Note 11). Indeed, the deceit, the 'fraud' that P. speaks of, and which is hidden under the term 'public', does not lie, as the commentator thinks, in holding that 'the determination of what is morally good or bad depends on the will of the Sovereign', but rather in the equivocalness of the term 'public'. What P. means, in fact, is that Hobbes plays with the equivocalness of the term: if indeed by 'public' is meant 'established by public authority' it is true that prior to the foundation of the state a public good or bad does not exist; but if by 'public' is meant 'common to all', 'generally valid', then it is not true that prior to the establishment of the state a universally valid good and bad do not exist. P.'s phrase is certainly elliptical, but, in our view, clear all the same.

2 Note that in the first edition this paragraph is the VI,2,11. The VI,2,10 of the first edition corresponds to the VI,2,12 of the second.

3 R. Cumberland, *De legibus naturae* (VIII,6): 'It is so far from being true, that all *Justice* (which properly consists in the Observance of the Laws) may be resolv'd into *Fidelity in observing Compacts,* that, on the contrary, before it can be *known,* "Whether any Compact ought to be observed," it ought to be *certain,* That the Laws of Nature enjoin'd, or at least permitted, the making that Compact'. Where, as we see, P. omits only the parenthesis.

4 Cumberland, *De legibus naturae* (II,29): 'For it is manifest, because the *Forces* of the Powers are suppos'd *equal* on each side, that, so far, no Reason is assign'd, why the Scale should *incline* one way, rather than the other. On the *contrary,* because, if they fight, it is certain, that *both* the contending Parties *may be kill'd* or maim'd, and it is also certain, that *neither* of them can *gain as much* by the *Victory,* as he who is *kill'd* in fight *loses,* nor as much as he *hazards,* who commits his *Life* to the *Chance* of War; it is *both* their *Interest,* "Not to engage." The hazarding my Life deprives me of more Good, than can accrue to me from this, that my Enemies Life is in equal Danger; nor is *his Security* therefore the *greater,* because *my Life* is *insecure;* but hence *both lose* something which *neither gains.'*

5 Barbeyrac rightly observes (note 1 to II,3,16) that by leaving 'plus commodi' as P. writes, the argument does not run, and he proposed therefore to correct it to 'plus damni', and translated in this sense. But the translator did not notice that, if with this correction the discourse ran on from what precedes (in fact P. had only just said that among the animals man is the one most suited to providing shared well-being, and thus, as could be expected, he would add 'no animal can experience more harm from man than man himself'), it no longer accorded with what follows: the sense of which lies altogether in confirming the concept that, precisely because 'no animal can gain more advantages from man than can man himself', it can truly be said that 'the superiority and perfection of any man shine out all the

more the more benefits redound from him on others …'. However, by not correcting *commodi* to *damni* the incongruity remains of introducing with a *contra* a concept identical to the preceding one. It is true, that if one considers the dominant tone of the paragraph up to the point at which P. inserted his '*sicuti et contra* …', one understands what the blunder is which led him to present the observation he introduced as outlining a human characteristic opposed to the one he had been discussing up to that point. The whole emphasis of the discourse, indeed, lay on the problem of the possible let-up of mutual fear and the consequences that the conviction that others cannot insult or damage us has on human comportment. In this context, the emphasis on men's capacity to benefit one another was entirely parenthetical and stood at the margins of the fundamental intonation, which, conversely, fell wholly upon harm. One can understand, then, how P. in hastily introducing the passage drawn from Cumberland, felt the human characteristic outlined in it to be the opposite of that on which his (and Hobbes's) attention was centered.

6 Cumberland, *op. cit.*, (v,14): 'Further; greater *Knowledge,* and *Sagacity,* and *Industry,* are requir'd to *preserve* and *perfect* Human Nature, for *Example,* than to *destroy* and *corrupt* it; which may be easily effected by mere *Neglect* or *Ignorance,* and is often effected by the Strength of very weak Men, or perhaps of some other most despicable Animal. But the prosecution of the Publick Good (which contains every Good of every Man, and consequently is the greatest) requires the greatest *Wisdom;* and the least *Folly* may in some measure lessen, and disturb it.'

7 *Ibidem*, (v,16): '*Reason* will not suffer, that the greatest *Private* Good should be propos'd as the *ultimate End.* For, since that *Action* is certainly *Good,* which will lead directly, or the shortest way, to that *End,* which is truly *ultimate;* supposing *different ultimate Ends,* whose Causes are *opposite, Actions* truly *Good* will be in *mutual opposition* to one another, which is impossible. For *Example;* if right Reason instructs *Titius,* that his greatest Happiness, which he is to pursue as his ultimate End, consists in the enjoyment of a plenary Property in the Possessions, and an absolute Dominion over the Persons, of *Seius* and *Sempronius,* and of all others: Right Reason cannot dictate to *Seius* and *Sempronius,* that their Happiness, the object of their pursuits, consists in the enjoyment of plenary Property in the Possessions, and Dominion over the Person, of *Titius,* and of all others. For these contain a manifest Contradiction; and, therefore, one only of these Dictates can be suppos'd true. But, since there is no, Cause, why the Happiness of one of these should be his ultimate End, rather than the Happiness of another should likewise be his ultimate End; we may conclude, that Reason dictates to neither, that he should propose to himself his own Happiness only, as his greatest End, but to every one, rather his own in conjunction with the Happiness of others; and this is that *Common Good,* which we contend is to be sought after.'

8 *Ibidem*, (v,16): 'I add further; if *any one* would regard his own Good only, and endeavour to *force all* Rational Agents to carry on that only, as the chief end they ought to pursue, he would be able to *effect nothing,* but, perhaps, draw down his own *destruction* upon himself. For it is evidently *impossible,* "That *all,* both Things and Persons, should be order'd according to the Wills of *all* particular persons willing things contrary.'

9 *Ibidem*, (v,28): 'Altho' I have suppos'd, That *every one* necessarily seeks *his own* greatest Happiness, yet I am far from thinking that to be the intire and *adequate* End of *any one'.*

10 *Ibidem*, (viii,7): 'This *limited Self-love,* being enjoin'd in this Law of Nature, and that in order to the best End, cannot but be *Just* and *Laudable.* Nay, as I have *shewn,* "That some Rights ought necessarily to be given to *every One,* that it might be well with *All";* we may, by a *Parity of Reason, infer,* "The necessity of a Law commanding every one constantly to use his own Things in order to his own Happiness, where that is no way Inconsistent with, or Prejudicial to, the Happiness of the whole Community"; *for* "The Happiness of the Whole consists in the Happiness of all the Parts"; and *therefore* "The Care of the former being commanded, the Care of the latter also must of necessity be commanded therein"; nor can the Happiness of every One be procured by Others, if they neglect Themselves.'

11 Indeed compare *ING* ii,3,16: 'Nay, reason also plainly declares that he who regards his safety and life cannot renounce the care of others. For since our safety and happiness depend in large part on the goodwill and assistance of others, and the nature of men is such that they desire for their good deeds some like return, and when this is not forthcoming make an end of their benefactions, no sane person can propose to protect himself on the theory he renounce respect for all others. But, on the contrary, the more he loves himself the more he will endeavour by kindly deed to get others to love him. For no one can hope with any reason that men will want, of their own accord, to make any effort to increase the happiness of those whom they know to be malevolent, perfidious, ungrateful, and inhuman; surely one must rather believe that other men will watch their opportunity to repress and destroy such persons.' and Cumberland, *op. cit.*, (v,29):"... the little I have mention'd may warrant my supposing it at present as sufficiently *prov'd,* "That Men, of all Created Beings, are the principal Causes, upon which every one must acknowledge his present and future Happiness upon Earth necessarily depends." For the same reason there is no occasion to add here any thing farther, to *shew* "the Unreasonableness of expecting, that Men should willingly labour to make those happy, whom they know to be in themselves *Malevolent, Perfidious, Ingrateful, Inhuman";* or the Reasonableness of taking it *for evident,* "That others will concur to restrain or destroy such by condign Punishments"."

12 The first to make this criticism were the authors of the *Index*, who identified this as P.'s error XX (in Palladini, *Discussioni, cit*. p.167). The argument will be taken up again by other critics such as V. Veltheim and J.J. Zentgraf (*ibidem*, pp. 182, 192, 219).

13 Cumberland, *op. cit.*, *Intro.* §6, at end: 'For I look upon it as most *evident,* "That we must first know what Justice is, and from whence those Laws are deriv'd, in the observance whereof it wholly consists, before we can distinctly know, that Justice is to be attributed to God, and that we ought to propose his Justice as our Example." For we come not at the *Knowledge of God* by immediate *Intuition* of his Perfections, but from his Effects first known by Sense and Experience; nor can we *safely* ascribe to him *Attributes,* which from other Considerations we do *not* sufficiently *comprehend.*' And *ibidem*, (v,13): 'But the Knowledge and Love of ourselves and other Men *include a natural Perfection,* (in possession whereof some part of Human Happiness consists,) essential and proper to themselves, which we can come to the Knowledge of, *without deducing* it from *God's Honour.* Nay, we seem *first* to know and love *Man,* before the Mind raises itself to the knowledge and love of *God,* whose *Being,* and amiable Goodness are *discovered* from his *Works,* and chiefly from *Man.*'

14 As usual, it was the authors of the *Index* who began this (Error XIX, in Palladini, *Discussioni*, *cit*., p. 167); Zentgraf continued (*ibidem*, p. 220); the criticism was resumed also by a jurist like U. Huber (*ibidem*, pp. 315, 339, 345).

15 Note that the Mascow edition from which we are citing erroneously reads *mediationem*.

16 In effect, in *Intro*. §5, Cumberland says only that it is dangerous to ground natural religion and morality on a hypothesis, that of innate ideas, disputed by pagan and christian philosophers and which would not serve (as he proposes) to refute the epicureans. For his part, though, he neither contests it, because he holds it to be useful for favouring human customs, nor considers it entirely impossible. As for what concerns, then, the §§7–8, while it is true that Cumberland here recalls the effects of all the natural motions, through the lower causes to the prime cause, that is, God as prime mover, the consequence that follows from this for the law of nature is not explicitly defined by him, but is inferred by P., who, among other things, can endorse the thesis that 'the notion of natural law is imprinted in men's souls by God himself as prime mover', only in the broadest sense that, having created man as a rational animal, God has in so doing enabled the possibility of grasping by reason what his will is regarding the actions that the latter has to accomplish.

17 The forerunners of the criticism were as usual the authors of the *Index* (Error XXIII, in Palladini, *Discussioni*, *cit*., p. 168). But the charge was repeated by Gesen (*ibidem*, p. 176) and by Strimesius (*ibidem*, p. 207).

18 Note that the addition in the second edition does not end here, but continues with the justification of *quantum in se* that appears in the definition of the fundamental law of nature.

19 It is, on the other hand, an objection that had already been raised against Grotius by C. Ziegler, *In H. Grotii De iure belli ac pacis libros notae et animadversiones*, Frankfurt and Leipzig, 1666 (1686, p. 6).

20 The addition to the second edition does not finish here. Concerning what follows, we will note, as well as the equivalence proposed between *socialitas* and Bacon's principle (*De Augm*. VII,1) according to which 'man is not born for himself alone, but for humankind', above all the passage in which P. is concerned to underline his agreement with the baconian thesis according to which in all centuries there has never been found a religion or a philosophy of greater value than the christian faith in exalting the common good and curbing the private good.

21 On the frequency of these accusations among P.'s contemporaries, see above, note 11 to Chapter One of Part Two.

22 See, for example, in the *Dissertatio* chapter V, §§40–41 and 54. What is more, it was Cumberland himself who theorised that the anti-epicurean polemic constituted one of the primary points of his dissertation (*Intro*. §5).

23 The Pufendorf-Cumberland relation regarding the distinction between *bonum naturale* and *bonum morale* is thus configured in the sense of it being P. who inferred this distinction from Cumberland and not vice-versa. If therefore the ambiguous observation by Röd, *op. cit.*, p. 200, note 23, according to which 'in broad correspondance with Pufendorf's point of view Cumberland distinguishes between *bonum naturale* and *bonum morale*', is to be understood as meaning it was Cumberland who depended on P., that observation is mistaken.

24 The citation from the Tübingen theologian, known for the anti-hobbesian work *Typus legis naturae*, Tübingen, 1669 and for his *Observationes maximam partem theologicae in libros tres De iure belli ac pacis H. Grotii*, Tübingen, 1671 (from which latter work, p. 60, the citation is taken) also fits the pufendorfian strategy of citing orthodox anti-hobbesian theologians in order to demonstrate that his own doctrines are neither heterodox, nor hobbesian. Pufendorf had already cited this same passage from Osiander, in support of his own doctrine that no moral obligation exists prior to the command of the legislator, in *Specimen controversiarum* V,6 (in *Eris Scandica*, *cit.*, p. 222). This tendentious use of Osiander had provoked the protests of one of his critics, Strimesius, who had made it known how, in effect, the theologian had defended a thesis on moral good opposed to that sustained by P. (in Palladini, *Discussioni*, *cit.*, p. 245). That it was Strimesius who was right is shown too by the fact that Christian Thomasius, in the Introductory Dissertation §6 to his *Institutes of Divine Jurisprudence,* considers Osiander's grotian comment as one of the most authoritative expressions of the traditional scholastic doctrine on 'God's eternal law, its conformity to divine sanctity, the existence of a *standard of morality prior to the divine will*' (emphasis added).

25 This expression seems to have been introduced only in the second edition (see also the passage at *ING* I,7,3 cited below in the text). In the first edition only the expression *in genere entium moralium* appears. Thus, for instance, in I,7,5 is said: 'Since the goodness or evil of an action consists formally, as we have said, in its agreement or disagreement with a moral rule, the action depends for its effect upon him by whom that action, prescribed or forbidden by law, is performed. His determination, therefore, so constitutes it in the class of moral entities, that it can be imputed to him alone and to no other man'.

26 See above, (22–23).

27 Cumberland, *op. cit.*, V,13 but cfr. also V,9.

28 The passage in Cumberland to which P. refers reads as follows: 'The Reader is to *observe,* "That I have called these things *Naturally Good,* in that sense, in which these words, as being of a more extensive signification, (and, consequently, more general and first known in the order of Nature,) are distinguish'd from things *Morally Good";* for these are only *voluntary actions conformable to some Law,* especially, that of Nature. Therefore Good is not to be taken in this sense, when it is inserted in the Definition of the *Law of Nature,* because it is absurd, to Define any thing, by what supposes the thing Defin'd, already known.' (V,9).

29 I refer to the passage in I,4,4 in which it is said that 'it belongs to the nature of the will always to seek what is inherently good'.

30 For this charge, see Palladini, *Discussioni*, *cit.*, pp. 38–40, with the authors cited there.

31 Hobbes, *De cive* I,2, p. 43: 'For when we voluntarily contract Society, in all manner of Society we look after the object of the Will, *i.e.* that, which every one of those, who gather together, propounds to himselfe for good; now whatsoever seemes good, is pleasant, and relates either to the senses, or the mind.'

32 The second reason is 'because in no other creature than man is there to be found any religious sense or fear of God', *ING*, II,3,20.

33 The passage, in the first edition of *ING* I,6,14, follows the assertion that the two parts of which a law is constituted are that which defines what must be done or not done, and that which indicates the harm facing whoever does not do what is commanded or does what is forbidden, and reads as follows: 'What the natural laws by and by make a little more obscure; whilst reason indeed declares, that the omnipotent god – so well disposed towards mortals – will not allow that his will is spurned by his creation through impudence. Yet what and how many punishments should be inflicted for whatever wrong, [reason] does not prescribe. But the civil laws always add a punishment of [their] transgressors.'

34 The passages in which Cumberland argues that the laws are sanctioned not only by the penalties, but also by the rewards are *De legibus naturae, Intro.*, §14 and V,40.

35 Indeed compare:“ / *ING* II,3,21 ‘It should be carefully noted at this point, when the effect of good and evil actions is being discussed, that no consideration is being given to those advantages and evils which we referred above to the first class; and which cannot be either acquired or avoided by our foresight and endeavour. For such can and do fall equally on good as well as on wicked men. Thus a scoundrel may receive from nature a healthy and strong body, a good man one that is weak and subject to disease. In the same way death carries off the good as well as the evil. But the only things concerned here are those that can be foreseen by the human reason, and therefore depend to some extent upon our actions. / ‘Now although some of the advantages which it is our endeavour to gain from other men by observing the law of nature depend upon the good-will and honour of others, and are, therefore clearly not within our control, yet because it is probable that they also have the same end as we, there is good reason at least to expect the effects which depend upon others, although they cannot be determined beforehand with the same accuracy.’ / ‘Thus, even if, by an unforeseen concourse of external causes, many benefits from other men pour as though of their own accord upon a man who neglects the law of nature, yet because such effects in this case are only, as concerns him, contingent, and certainly come but rarely, it is clear that reason does not prescribe acts of such a kind, nor does law command any such thing. Reason, indeed, teaches quite clearly that it will lead with far greater probability to our happiness for us to act with an end in view, and through the best means at our disposal, than if we take no foresight and commit ourselves entirely to the uncertain play of chance.’ and *De legibus naturae, Intro*. §17 / ‘In comparing the Effects of good and evil Actions, those good or evil Things, which can neither be procur’d, nor avoided, by *human Industry,* are not to be taken into the Account. Such are those which happen by natural *Necessity,* or by mere *Chance,* from external Causes: for these both may, and do, happen alike both to good and bad. We shall therefore here consider those only, which can be taken care of by *human Reason,* as in some measure *depending upon our Actions.’ Ibidem, Intro.* §20 / ‘I acknowledge, however, “That all these Effects are not entirely in our Power, but that many of them depend upon the Benevolence of other rational Beings.” But *since* we *know* from their *Nature,* as being *analogous,* or like, to our own, “That the common Good is the best and greatest End, which they can propose to themselves; and that the Perfection of their Nature requires, both that they should act for an End, and for this, rather than for any other not so good”; and *since* moreover we *know* from *experience,* “That such Effects of universal Benevolence may generally be procur’d from others by our Actions”: It is but *reasonable,* “That they should be reckon’d and esteem’d among the Effects of our Actions, or such Consequences of them, as for the most part happen”.’ *Ibidem,* (V,3): / ‘For, *tho’* it may happen, thro’ an unforeseen concurrence of external causes, that affairs (in this Life) may succeed

very prosperously with those, who have neglected to use the best means in their power to promote their own happiness: *Yet,* because such Effects are, with respect to us, *purely contingent,* and do but *rarely happen,* it is evident, that our Reason, or Judgment, does not advise, much less does the Law of Nature command, any such Actions. This, however, Natural Reason *teaches* evidently enough, "That it will much more probably promote our Happiness, that we should act for a *foreseen End,* and by the *best Means* in our power adapted to that End, than that, laying aside Counsel, we should commit ourselves to *uncertain chance*".'

36 See, for instance, how the initial passage of VII,1,11 is transformed: / First edition / 'Finally, although natural law itself lays it clearly enough upon the consciences of men that those who wantonly injure others against her laws will not go unpunished, yet even with this made clear, it [natural law] is not strong enough to secure the peace of mankind.' / Second edition / 'Finally, although it is plain enough on the face of things not only how much the violators of the law of nature obstruct their own happiness, which requires the help of other men for its promotion, and what evils and perils they bring upon themselves, yet also that natural law itself lays it clearly enough upon the consciences of men that those who wantonly injure others against her laws will not go unpunished; [...] And although the advantage which follows upon the observance of natural law and the evil which attends its violation, as they concern the advancement or hindrance respectively of every man's happiness, show clearly enough the benefit accruing from men living as social creatures rather than otherwise; yet even with this made clear, natural law is not strong enough.'

37 Indeed, it says below: 'Now when he feels himself moved by a twofold principle, of which one side is wholly concerned with present considerations, while the other centers upon future and not present concerns, when by the craving of the former he sees himself driven into dangers, perplexities, and disgrace, but led by the latter to safety and respect, surely it is not difficult for him to conclude that his Creator's wish is for him to accept the guidance of the latter and not the former. [...] especially so, since, if he neglected reason and followed his passions, he will realize afterwards from the progress of events, that he followed the worse course, and will wish that what he has done contrary to reason could be undone' (*ING*, II,2,9). With this it becomes clear that the principle which concerns only the present is the *affectus*, that which embraces *etiam futura et absentia* is the *ratio*. On the interpretation of the *recta ratio* in P. we already dwelt above (pp. 26–28).

38 It is not by chance that all those interpreters who insist on counterposing P.'s reason to Hobbes's make much precisely of this passage. Thus, for instance, Fetscher, *op. cit.*, p. 662, whose interpretation of pufendorfian *recta ratio* as 'die normative und unfehlbare Einsicht in die feststehende Ordnung des Seins' is based entirely on the passage in question (see above, note 11 to chapter one of Part One).

39 Indeed, this is how we have to translate the passage, supported in this also by Barbeyrac's translation, which reads: 'this [ratio] even in the state of nature has a general rule, one that is sure and stable, namely the nature of things, which, to any attentive mind, uncovers easily and in an evident manner at least the general precepts of human life, and the fundamental maxims of natural law'. [DS. trans.].

40 It is precisely for this reason that interpretations like that of Mori, *op. cit.*, p. 27, do not hold up. He believes it possible to identify 'two faces' of the pufendorfian concept of nature, basing himself precisely on the passages added in the second edition at II,3,13 and II,2,9. For instance, he observes, correctly, in note 57, that the expression *natura rerum* recurs in II,3,13 at least three times: a pity that all three belong to the passages added in the second edition.

41 See pages 43–44.

42 It is worth the trouble lingering for a moment to observe how the passage continues in the second edition: 'And from this it is easy to gather how far Polybius, in his sixth book, wanders from the truth in appearing to seek in states the origin of justice and injustice, who is quoted without judgment by Machiavelli, Discorsi sopra la Prima Deca di Tito Livio, Bk. I, chap. ii.' This passage is in fact particularly interesting because it shows how the polybian source in Machiavelli, *Discorsi* I,2 had been identified almost a generation before the one who, in machiavellian literature, is considered its discoverer, namely J.A. Fabricius. Indeed, O. Tommasini, *La vita e gli scritti di N. Machiavelli nella loro relazione col Machiavellismo*, Roma, 1911, II, p. 165, note 2, in setting out the comparison between the passages from Polybius VI,7,1 and 9, VI,4,6–11 and VI,9,10–11 and *Discorsi* I,2, noted: 'Come per primo ricordò Μικρος sulla *Rassegna settimanale* 1879, pp. 444–46, pur errando la citazione nella *Bibliothaeca Greca* del Fabricius (t. IV, p. 325 ediz. Hamburg, 1795) si legge: "Hanc Polybii elegantissimam dissertationem expressisse videri potest Machiavellus lib. I dissert. In Decadem primam Livii c. 2"'. The same citation of Fabricius is repeated by G. Sasso, 'Machiavelli e la teoria dell' "ANACYCLOSIS"' (1958), now in *Machiavelli e gli antichi e altri saggi*, Milano-Napoli, 1986, I, p. 8, n.10, who also asserts explicitly that it was that erudite scholar 'che primo o fra i primi notò la derivazione'. Now, also observing that the edition of the *Bibliotheca Graeca* cited by Tommasini and by Sasso is a late edition and that the note concerning Machiavelli appears in effect already in the first edition of that work (*Bibliotheca Graeca*, vol. II, libro III, Hamburg, 1707, p. 757, note b), it remains that Pufendorf's observation dates from a moment between 1672 and 1684 (the dates of the first and the second editions of the *De iure*). The interesting problem, at this point, is to understand if P. independently noted the fact that Machiavelli *exscripsit*, as he expressed it, Polybius, or whether he gathered this observation from others. Now, our rapid research into the polybian and machiavellian literature that could have been accessible to P. has yielded no outcome. We have found

no relevant indication either in the work of the philologists who directed the editions and commentaries on Polybius, such as J. Lipsius, J. Casaubon, J. Gronovius, J.H. Bökler (for polybian studies between the sixteenth- and seventeenth centuries, see Momigliano, 'Polybius reappearance in Western Europe' (1973), now in *Sesto contributo alla storia degli studi classici*, Roma, 1980, I, pp. 103–23), or in the work of the 'politici' who concerned themselves in various ways with Machiavelli, such as G. Naudé, H. Conring, G. Scioppius (for Machiavelli's fortune between the sixteenth and seventeenth centuries, see G. Procacci, *Studi sulla fortuna del Machiavelli*, Roma, 1965). We believed we had been put on the right track by the term that P. used: that *exscripsit* which means to copy, and which therefore alludes to a real and true plagiarism, all the more so because the term also used by Fabricius, *expressisse*, contains the senses of to extract, to summarise, to imitate, to translate, that are then not too far from the brutal 'to copy' used by P. We believed, therefore, we had identified the source whether Pufendorf's or Fabricius's in that *dissertatio de plagio literario*, Jenae, 1679 (1673), discussed at Jena under the presidency of Jacob Thomasius, and which, having the characteristics of coming from an ambiance as familiar to P. as that at Jena and having been composed between the first and second editions of the *De iure*, held all the cards needed to be the candidate as source for the pufendorfian observation. Unfortunately, in this dissertation, Machiavelli does figure as plagiarist (pp. 223–24), but of Aristotle or Bartolus, not of Polybius. For the machiavellian 'plagiarism' of Book V of the aristotelian *Politica*, the author cites as *auctoritates* Conring and L. Settala, for the plagiarism of Bartolus he cites I. Gentillet. But the disappointment of not having found in the *dissertatio* of Thomasius père what we were seeking can be turned to a positive use and transformed into an element of proof. Proof, that is, of the fact that when P. observed that Machiavelli in *Discorsi* I,2 recklessly copied Polybius, who, in error, had traced the origin of the notions of just and unjust to the 'civitates', he was not repeating a banal and longstanding historiographical acquis. If, indeed, it was a widely disseminated notion, the author of the *dissertatio* would not have failed to mention it. Are we therefore authorised to deduce from this that Pufendorf was the first to identify the polybian source of *Discorsi* I,2? In truth, we do not feel able to draw such a conclusion. We are almost convinced, on the contrary, that P. must have drawn that observation from a source, and that our search was too limited or in the wrong direction. It can nonetheless be interesting to note two further things: in the first place, that P. owned the 1550 edition of Machiavelli's *Tutte le opere* (in–4°: n. 117), two unidentified Latin editions of the *Principe* (in–8°: nn. 262 and 480), the Aldina Venezia edition 1540, of the *Storie fiorentine* (in–8°: n. 366); while of Polybius he owned: the edition of the Greek text, edited by Casaubon, Frankfurt, 1609 (in–f°: n. 52) and the Latin translation by Casaubon, Hanau, 1610 (in–f°: n. 472). In the second place, that P. notes Machiavelli's

polybian imitation not in relation to the forms of government and the theory of anacyclosis, but rather in relation to the origin of the notion of just and unjust, a problem that, in effect, if it has just a modest place in the machiavellian chapter, plays a central role in Polybius VI,5,10 – 7,1 and is the argument that P. is discussing in *ING* VIII,1,5.

43 The cross-referencing to Cumberland is always generic, so much so that Denzer, *op. cit.*, p. 263, n. 127, not having verified the texts, can believe that P. gives 'Hinweise (keine Zitate!)' to Cumberland's work.

44 This reconstruction of the argumentative structure of Cumberland's work seems to us to correspond better with the text than the one which, following the self-presentation furnished by Cumberland himself in the introduction to his work, is rapidly outlined by Mori, in the cited article, pp. 14–15. However, among the brief considerations that this author devotes to Hobbes's English critic there is one that we simply cannot share: namely, that Cumberland 'non teneva in alcun conto l'esigenza affermata vigorosamente da Hobbes, di coniugare il razionalismo filosofico con un'analisi empirica della natura umana' (p. 15). Cumberland's *De legibus naturae*, in fact, is full of 'empirical analyses': the medico-physiological examples, for instance, are continuous. (This is noted, moreover, by Fetscher, *op. cit.*, p. 669, who interprets the use of these examples as a way of refuting Hobbes by using his own weapons.) What is striking, though, in Cumberland, is precisely the contrast between the massive use he makes of modern science and the insistence on the old notion of a moral order of the universe, that man has only to discover by his own reason. It is therefore not certain, as Mori hypothesises, that the cause of the 'poca fortuna del trattato di Cumberland rispetto alla grande diffusione del *De iure naturae et gentium*' is to be found 'nel diverso atteggiamento tenuto nei confronti di questa esigenza [that of combining rationalism and empirical analysis]' (p. 15), but rather in the novelty of P.'s attempt to separate natural order (and disorder) and moral order (and disorder). A novelty that is immediately obscured and confused by anyone who, like Mori, believes he can interpret P.'s thought using the categories of order and disorder, attributing the former to the moral world, the latter to the natural world. Moreover, an adequate interpretation of Cumberland's thought requires much more than the reading focused on Pufendorf's thought that we have been able to make.

45 Tuck, *Natural Rights Theories*, *cit.*, p. 167, also notes the implausability of P.'s reclamation of Cumberland as an ideological ally. From what has been said, though, it should be clear that in our view that reclaiming is not at all 'curious', as Tuck puts it. And this, not – as he hypothesises – on the basis of the principle that 'my enemy's enemy is my friend', but rather on the basis of the principle that 'if I succeed in making it believed that I think things like an enemy of Hobbes, no one will suspect the measure in which I am in reality his friend'.

46 Thus Cumberland in *De legibus naturae, Intro.* §16: 'By a like Reasoning it is *manifest,* "That Actions conducive to this End, as being the best and most beautiful, are in themselves amiable, and highly to be commended by all rational Beings, and therefore, upon account of that high *Honour,* to which their beneficent Nature intitles them, deservedly call'd *Honest* or *Honourable*".'

47 I refer to the passage in *De legibus naturae*, 1,20, p. 31, cited above at p. 193, in which Cumberland says that the actions having the characteristic of contributing to the preservation of others 'are *naturally Good,* altho no Laws were yet suppos'd, by which they are commanded'.

48 An examination of the similarities between P. and Cumberland is found in the old work by Hinrichs, *op. cit.*, pp. 96–102. In this there are interesting and intelligent observations which, even if we do not share them in every aspect, can help explain why P. could feel that Cumberland was in some measure an author congenial to him. What is more, Hinrichs also nicely notes some important differences between the two authors, of which the most significant is the different relation that links God to the foundation of the state (pp. 99 and 102).

49 When he says that 'bezieht P. den Naturbegriff nicht auf den Menschen als Seiender, sondern als Handelnder', Denzer, *op. cit.*, seems to approach our interpretation of the pufendorfian notion of human nature.

50 The author who has analysed with the greatest finesse, above all on Hobbes, what he calls 'die naturrechtliche Metabasis vom Sein zum állo génos des Sollens' is, as far as I know, Röd, *op. cit.*, pp. 28, 33, 65. According to this critic, P. too believed it possible to deduce norms by observing a comportment (p. 87). But that things in P. are not quite so simple, and that our author instead distinguishes himself precisely by the attempt (it is true, not entirely successful) to distinguish 'facts' and 'values' is what we have sought to show in this book.

51 See above pp. 25–26 with note 10.

52 See note 2 to chapter one of Part Two.

CHAPTER III

Anti-Hobbesian Aspects of the *Elementa*

It is perhaps good to begin by observing that a reliable evaluation of the place of the *Elementa iurisprudentiae universalis* in the history of Pufendorf's thought would call for a analysis at least as thorough and comprehensive as that to which I have sought to subject the works of his maturity: an analysis that cannot be undertaken here. It is, though, legitimate to raise some considerations which, if not claimed to be valid for the *Elementa* in its entirety,[1] are in our opinion valid in one of their aspects: the aspect concerning man's 'natural sociability' and its function in the foundation of the state. In our judgment on this theme – crucial to Pufendorf-Hobbes relations – the *Elementa* marks a phase in the development of our author's thought that is further from hobbesian positions than the one mirrored in the *De iure*.

This becomes clear if we compare *observatio* three of Book Two of the *Elementa* – entitled *Man has been destined by nature to live a social life with men* – with the paragraphs in the *De iure* in which it is massively used (II,3,14–18). Despite these paragraphs of the major work being built by stitching together long extracts from this *observatio*, the position in the *observatio* regarding the issue of the *zoon politikon* and the relation between a sociable nature of man and a constitution of civil society that is derivable from it is much more traditional and anti-hobbesian than the position we have reconstructed as being that of the mature works. Both works, the youthful and the mature, testify to the 'impression' that Hobbes's thought had made on our author. But while the former is still the expression of a superficial and so to speak vulgar comprehension of that thought, the second attests to such a deep comprehension of the hobbesian theses, such an attentively critical awareness of the problems at the root of these theses, as to make it a truly 'mature' work and to make Pufendorf himself a disciple of Hobbes in the best and fullest sense of intellectual discipleship.

1 The Social Nature of Man in *observatio* Three of the *Elementa*

By way of demonstrating this, let us see how the analysis of human nature and the criticism of Hobbes are presented in *observatio* three of Book Two of the *Elementa*. The first paragraph is devoted to showing how in common with the other animals man has the inclination to love himself more than any other being. This is so much so that even cases where it seems that one's own

 | DOI:10.1163/9789004388611_007

good is subordinated to the good of another – parents' sacrifices for the sake of children, giving one's life for the good of one's neighbor, etc. – are in reality traceable to love of self. Despite the addition of other examples and multiple citations from various authors (multiplied, as happens throughout the *De iure* in the second edition), in this paragraph we are dealing with a passage that is transcribed almost in its entirety in *ING* II,3,14, where the first characteristic of the *nature of man* is identified as *self-love* and the *desire to preserve himself by any and all means*. But while in the *De iure*, as we have seen in detail above, to this first characteristic of the human condition is added *imbecillitas* or *naturalis indigentia* – and it is from these two characteristics combined that the law of *socialitas* is deduced – the discourse of the *Elementa* is quite different. In fact, this continues, in §2, with the assertion that man would differ little from the other animals 'were it not that he had some other inclination also implanted in him by nature, namely, that he enjoys living in the society of his kind'.

Man, then, in the *Elementa* is gifted with two natural inclinations: self-love and the pleasure he feels in finding himself in the company of his like. Moreover, in this work, to show that this latter is really a natural inclination of man, Pufendorf deploys the arguments traditionally adopted as proof of the social nature of man: namely, that nothing is sadder for him than perpetual solitude; that he is the only animal that has the use of speech; that in no other kind of animal is found such a high capacity to be useful to his like; that his weakness is such that he can preserve himself only if the strength of other persons comes to his aid; that his vulnerability at birth is much greater than that of other animals; and so on. The conclusion Pufendorf draws from these arguments is that, not only would we have been the prey of wild beasts, but we would have raged against each other like beasts, 'were it not that nature had altogether bidden us to unite to form a peaceful society' (II,3,2). As is seen, then, in the *Elementa* the tendency to draw up a peaceful *societas* with one's like is not only a natural inclination, as natural as the instinct of self-preservation, but it is the inclination that characterises human nature, distinguishing it from the nature of the other animals. The *adpetitus societatis* is then, in the *Elementa*, a quality characterising human nature, and present in it precisely insofar as it is human nature.

It is not necessary to pause at this point to show how things are entirely to the contrary in the *De iure*, where *socialitas* is not a given in human nature, but a moral imperative.[2] We have already spent too long on this aspect of Pufendorf's thought in the first part of this essay for it to need any further elaboration. What is more interesting, is to observe the transformation that the theses of the *Elementa* undergo when they are re-utilised in the *De iure*. We have already spoken of the use of the passage on *amor sui* in *ING* II,3,14. Note now what happens in *ING* II,3,15: here, after having deduced the necessity

for man to achieve a sociable conduct, Pufendorf adds – presenting them as 'other reasons [...] less important, or arguments for man's social nature' – what were in the *Elementa* the first two proofs of man's natural sociability: that is, that nothing is sadder for him than perpetual solitude, and that he is the only animal to possess the use of speech. Thus what in the youthful work were the principal proofs of man's natural *inclinatio* towards *socialitas*, become, in the *De iure*, 'less important reasons' for man's sociable nature (understood as necessity of a sociable comportment) and seem to be invoked more in homage to a venerable tradition than with some authentic faith in their evidential force.

But let us also see how the *De iure* transforms the paragraphs of the *Elementa* in which, as their title says, 'Answer is made to the arguments of those who deny that by nature man is a social animal' (*El.* II,3,3-5). The first argument to counter those who deny *tam clara*, said Pufendorf in the youthful work, is that:

> These two inclinations, by which man loves himself and seeks after society, ought, by the intention of nature, so to be tempered that nothing be lost to the latter through the instrumentality of the former. That is to say, nature commended to man self-love, in such a way that he should, nevertheless, commit nothing because of it, which would conflict with his inclination to society, or injure the very nature of society. And when, through the exorbitance of his emotions, he neglects that, and seeks his own advantage together with some hurt to others, there arises whatever disturbance there be in which men conflict with one another. (*El.* II,3,3)

This passage is inserted, with significant incorporations and additions, in *ING* II,3,16 in a line of argument entirely different from that in the *Elementa*. In the *Elementa* the argument, implicit in part, is the following: given that man's fundamental inclinations are two in number, *amor sui* and *adpetitus societatis*, Hobbes is mistaken in recognising only the former. Instead, he should admit that nature did not want one of the two inclinations to outweigh the other, thereby grasping that when this occurs by force of the 'exorbitance of his emotions' ('*affectum exorbitanta*'), there ensue all the conflicts by which human coexistence is disturbed. In the *De iure*, this passage is used at the point where, after having made from *socialitas* the fundamental law of nature, in the manner and the sense that we know, Pufendorf asks himself: 'whether what Hobbes advances in his De Cive, chap. i, § 2, is opposed to what we have said'. In other words, he asks himself whether his theses are or are not in conformity with the hobbesian denial of man's sociable nature.

To answer this question, Pufendorf begins by noting that Hobbes's thesis is not to be interpreted 'in a very unfavourable light' as some of his critics do,

as if the author maintained that 'nature has ordained discord and not society between men' or that 'every kind of human society is contrary to the purpose of nature'. For whoever interpreted the words this way would be guilty of the same logical error as someone who argued that, since no man is born by nature with an actual capacity of speech, then every language we learn is contrary to nature. Thus after having said that Hobbes's thesis is *not* that *societas* is contrary to nature, Pufendorf proceeds by recognising that this thesis, nonetheless, can appear paradoxical, especially to someone who had paid insufficent attention to the ambiguity of the term *natura*. In order not to be drawn into error by such an ambiguity, it is necessary in the first place to observe that

> self-love and a sociable attitude should by no means be opposed to each other, but rather that their tendencies should be restrained in such a way that the latter be not checked or destroyed by the former. [...] When unrestrained licence has broken up that control, and, each man decides to seek his own advantage to the hurt of others, all manner of confusion arises, whereby the race of man is divided into warring groups. To avoid such a state of affairs the care of one's own safety commands that the laws of a sociable attitude be observed, since without the latter the former cannot be secure. (II,3,16)

This almost literal utilisation of the passage from the *Elementa* occurs in a complex context of defence of Hobbes, not criticism of him. What is more, by virtue of some adjustments – above all of the conclusion (which is absent, and could not fail to be absent, in the *Elementa*) – the words of the youthful work acquire, in the *De iure*, a completely different sense. Indeed, in the first work it was said that nature, instilling in man as well as the instinct of self-preservation a sociable instinct too, had balanced these in such a way that the former does not disturb the latter, and it was underlined that it is only the prevalence of the passions that breaks this natural equilibrium and gives rise to all the conflicts that trouble humankind.

In the *De iure*, conversely, it is said that to interpret Hobbes correctly, it is not necessary to oppose self-love to *socialitas*, but rather it is necessary to balance the two inclinations in such a way that the former does not block the latter. Indeed, anyone who privileges self-love at the expense of *socialitas* creates a situation of unending conflict incompatible with their own self-preservation, which, conversely, can be guaranteed only by respect for the law of *socialitas*. Thus, unlike in the *Elementa*, in the *De iure* Pufendorf does not put *amor sui* and *adpetitus societatis* on the same level, as two natural inclinations equally

present in man and naturally balanced in his mind until the point when the disorderliness of the passions breaks the equilibrium. Rather, in the later work he clearly subordinates *socialitas* – which is no longer *adpetitus societatis* but 'the laws of a sociable attitude' – to *amor sui*, making sociality the means necessary to reach the end that is the object of this love: which is to say, one's own self-preservation. From this it follows that the prime argument in the *Elementa* adopted against the hobbesian denial of man's natural sociability becomes, in the *De iure*, an integral part of the doctrine that respect for the fundamental law of nature – the law prescribing *socialitas* – is indispensable to man's self-preservation. In other words, it becomes part of a doctrine, that we have shown is indistinguishable in so many aspects from the hobbesian thesis according to which recognition of the first law of nature – the law prescribing the pursuit of peace – is essential to man's self-preservation.

But let us return to tracing the anti-hobbesian arguments of the *Elementa*. To that first argument against the hobbesian thesis that man is not by nature a sociable animal, a second is made to follow in §3:

> That definite individuals unite to form a definite kind of society comes about either in consequence of a special congruence of dispositions or of other qualities, or else because they imagine that they can obtain some special end better with these persons than with those. Now it is by no means necessary for all men to coalesce into one society in which all are equal to one another; but it is sufficient if the same persons get together in several and distinct groups, which are, nevertheless, by no means altogether mutually unsociable, but refrain from unjust injuries towards one another, and, as far as they are permitted by closer obligations, share with one another their advantages and blessings. (*El*, II,3,3)

In the *Elementa*, then, the objection to the hobbesian denial of man's social nature is, in the first place, that in addition to self-love man also has a desire for society. Secondly, Pufendorf accepts that certain individuals join together in society with some individuals rather than with others, either because they are more like the former than the latter, or because they think they will achieve a certain end with some rather than with others. At the same time, however, in order that the existence of a common propensity for men to form societies can be presumed, it is not necessary that all men join together in a single society in which they will all be equals. Rather, being divided into a number of different classes (*coetus*), it suffices if among themselves they do not adopt an unsociable disposition, but simply exchange goods and aid. *All this being posited* – Pufendorf continues in §4 – it is easy to refute the hobbesian doctrine

according to which the origin of civil society is not due to some natural propensity of man, but rather to mutual fear.

But for the moment let us leave aside this paragraph in the *Elementa* where Pufendorf sustains a thesis opposed to that which he will embrace in chapter one of Book Seven of the *De iure*, and continue to follow the thread of the argument in the youthful work. Having thus shown that the origin of civil society lies in man's natural sociability, Pufendorf proceeds, in §5, by responding to the hobbesian argument according to which, if man loved man as man, we could not account for the fact that he does not love the company of all men in the same way, but prefers to join with those from whom he expects greater honour and benefit. This response reads as follows:

> To meet this it should be known that all men, indeed, have been brought together by the similarity of their nature towards one another, so that in actual fact that general friendship resulting from a common nature ought also to be common to all, unless someone, perchance, has by his crimes made himself unworthy of it. Now, in truth, a number of circumstances are added to that common nature which are responsible for one loving this one more than that one; suppose, for example, that there was between them a greater congruence of dispositions in regard to special inclinations, or else that their birthplaces were not far apart. But then and only then could no reason be given, if all men had grown up out of the earth together like fungi, without any relationship to one another, or if they had among one another a similarity of dispositions at every point. But as such a state of men has never existed, so no conclusion can be drawn from supposing it, contrary to what the actual facts show. (*El.* II,3,5)

The first part of the counter-objection to Hobbes is thus that it cannot be doubted that the similarity of nature among men has united them in such a way that the friendship flowing from their common nature must be extended to all those men who have not made themselves unworthy of it by their wrongdoing. That said, there are, however, other causes which, adding to the common nature, make some men more loved than others: similarity of character, for instance, or kindred ties. We could not account for the greater inclination for some rather than for others – Pufendorf argues – if men were simply all born contemporaneously from the earth like mushrooms, without any reciprocal affinity, or if their characters were all equal: this being a human condition that has never existed and from whose hypothetical description it is therefore illegitimate to draw any conclusion that goes against what the facts testify.

Having argued against Hobbes in this manner in the first part of §5, Pufendorf continues by observing that it is true that man joins more willingly with those from whom come honour and benefit, yet this does not displease nature, provided that the love of one's own wellbeing does not disturb the harmony of society. Nor has nature commanded us to cultivate societies in order to neglect care of ourselves, because on the contrary their effect is to allow us to make better provision for ourselves. And even if someone, joining in society with others, is wont to think first of his own interest, and only then of that of others, this does not stop him having to think of his own interest in such a way as not to harm society's interest, or that he must sometimes even set his own interest aside for the good of society. Nor against man's natural sociability is it valid to locate the origin of the state in mutual fear rather than in mutual benevolence, since, although it is altogether in keeping with the human condition that by joining forces we deal better with facing dangers, nevertheless 'the sole end and use of states [is not] the avoidance of evil'. Neither, for a society to be said to be responding to nature, is it necessary for it to be formed solely for mutual benevolence. Yet the latter is not absent from the formation of states, since those who lay the foundations for the most part join together impelled by mutual benevolence, even if others were perhaps then forced by fear to add themselves to the former. This, then, is the line of §5 of *observatio* three of the *Elementa*, which concludes, in the next paragraph, by showing what men's condition would have been 'if they should be deprived by nature of every obligation to cultivate society among themselves, or if they were not social animals'. If men were not social animals – Pufendorf thus maintains – from the moment they were not bound by any reciprocal obligation, but everything was permitted to everyone,

> what else would men have been but wild beasts, rapacious against their own kind? But, in truth, since men have never existed in such a state, and by the intention of the Creator ought never to exist in it, it is utterly incongruous and almost self-contradictory to call this the state of nature. And so the inconveniences also directly resulting from such a state ought not to be substituted as the foundations of the law of nature (although, in actual fact, that no such state exists among men is due to the law of nature); but rather this, namely, that God has directly destined man to cultivate a social life. For had this not been the direct intention of God, it would not have been more necessary for men to enter into pacts with one another because of the disadvantages resulting from a non-social life, than for other animals to enter into a pact with bears, wolves, or lions to avoid the disadvantages of the non-social life which they lead. Nor is there ground

> for retorting that they do not have reason by which they may understand the force of pacts. For neither would God have given men reason, had He not wished to destine them to cultivate society. (*El.* II,3,6)

The conclusion of *observatio* three of the *Elementa* is therefore that, if men were not social animals, they would have lived in a feral state, a state which, having never existed and being contrary to the Creator's intention, it is incongruous and contradictory to call a natural state. It follows from this that the disadvantages which accompany such a state cannot be posed as the foundation of the law of nature, the foundation of which is, instead, that God predestined man to a sociable life.

2 How This *observatio* is Utilised and Transformed in the *De iure*

Let us now see what remains of this line of argument in the paragraphs of the *De iure* we are considering. To do this it is necessary to leave aside for the moment what in *ING* II,3,16 follows the passage, analysed above – where, by giving a different sense to the first of the anti-hobbesian arguments in *El.* II,3,3, Pufendorf makes respect for the law of *socialitas* the *conditio sine qua non* of man's self-preservation,[3] – and to pass on to the two succeeding paragraphs. These are nothing but a tissue of citations from *observatio* three. And if, in §17, the second argument adopted in *El.* II,3,3 against the thesis denying man a social nature is repeated – it is true, with variants that make the argument far more astute[4] without altering in depth the substance of what the youthful work presents – in *ING* II,3,18, *El.* II,3,5 is transcribed with omissions and additions that are highly significant for the change coming between the youthful work and that of maturity. Indeed, if the reply given in *El.* II,3,5 to the objection in the *De cive* I,2[5] is compared with the response given to the same objection in *ING* II,3,18, we see that the second differs from the first even where it uses some of the same phrases. In the *De iure*, this is in fact how Pufendorf responds to the hobbesian argument:

> In this statement general sociable attitude is confused with particular and more limited societies, and general love with that which arises from particular causes, for, as a matter of fact, no reason is required for this general love other than that a person is a man. Nature, indeed, for the reasons cited above; has in fact ordained a certain general friendship between all men, of which no one is to be deprived, unless some monstrous iniquities have made him unworthy. (*ING* II,3,18)

As can be seen, in the first place, in this passage a distinction is introduced that was completely absent from the *Elementa*: that between *socialitas* and *peculiares societates*. According to Pufendorf, it is of the former – here meaning 'general love' – not of these latter that it can be said that, 'as a matter of fact, no reason is required for this general love other than that a person is a man'. In the second place, even where the phrase relating to the *general friendship* among men – from which none is excluded save one who has made himself unworthy – is re-used, the adjustments introduced into the *De iure*, imperceptible at first glance, generate substantial variations. Indeed, in *El.* II,3,5 it is said that similarities in nature have conciliated men in such a way that from the 'general friendship' deriving from their common nature none is excluded save he who has made himself unworthy. But in *ING* II,3,18 it is said, much more vaguely, that 'Nature, indeed, *for the reasons cited above*, has in fact ordained a certain general friendship between all men, from which … etc'. It is a phrase that, in its generality, nonetheless makes reference to an earlier demonstration, and it is therefore in the light of this that it is to be interpreted.

Now, since what Pufendorf has only just finished showing in the *De iure* is that the human condition is such that men need to maintain amicable relations with one another, if they want to preserve themselves, the phrase in *ING* II,3,18 according to which nature establishes a sort of amity, does not mean – as instead transpired in the *Elementa* – that identity of nature among men has as its consequence natural love among them. On the contrary, it means that nature itself, by granting us a generic inclination towards friendship with our like, has signaled to us which form of conduct we need to adopt towards them.

But if we continue reading *ING* II,3,18 we notice other corrections introduced into the text of *El.* II,3,5, which is followed here step by step. We can leave aside the passage, added in the second edition, in which it is said that, although respecting the natural law is very useful to man, nevertheless when justifying the law of nature 'yet in giving a reason for this fact, one does not refer to the advantage accruing therefrom, but to the common nature of all men'. We leave this aside so as to return to it when we tackle the examination of the second part of *ING* II,3,16 and the discussion, contained there, of the problem of what relation there is between the law of nature and utility. And we can now focus on how Pufendorf proceeds, transcribing almost literally the sentence that in *El.* II,3,5 follows the one on friendship deriving from common nature, but introducing into it two important variations. The first is that by virtue of which, while in the *Elementa* it says: 'in truth, a number of circumstances are added to that common nature…', in the *De iure* it says 'ad communem istam *amicitiam* complura accedunt … ' ['beyond the general friendship']. That is, the

reference to common *nature* is made to disappear, coherently with what had been done in the preceding passage where, as we saw, there is no more talk of a common nature as a cause of general amity among men, but only of a nature that constitutes a kind of amity among men.

There is, however, a second and by far more important variation introduced into the *De iure*. In the *Elementa* the observation regarding why we love some persons more than others – similarity of character and inclinations and the lesser distance from a common origin – is followed by those strongly anti-hobbesian considerations relating to men born from the earth like mushrooms and to the illegitimacy of presuming a state of nature that has never existed. In the *De iure*, though, these considerations are completely eliminated, which continues with the full citation of the final passage of *El.* II,3,5. Yet even this undergoes significant corrections and incorporations, so let us compare, for instance, these two passages:

> *El.* **II,3,5**
> For nature has not bidden us to cultivate societies with the purpose of neglecting the care of ourselves; since, forsooth, societies bring about in the very highest degree the condition that, through the mutual sharing of aid and of blessings with a number, we can the more conveniently look out for our own blessings.

> *ING* **II,3,18**
> For nature has not commanded us to be sociable, to the extent that we neglect to take care of ourselves. Rather the sociable attitude is cultivated by men in order that by the mutual exchange among many of assistance and property …

The correction in the *De iure* displays, once again, the care invested in this work to avoid the confusion, which persisted in the *Elementa*, between sociality (*socialitas*) – or, better, sociability (*sociabilitas*) and society (*societas*) or societies (*societates*). What is more, we see how in the *Elementa* and in the *De iure* the assertion that *nihil ad rem facit origo magnarum et diuturnarum societatum* is justified in different ways:

> *El.* **II,3,5**
> For it was in the highest degree congruent with human nature that, since one by one, or a few at a time, they had been exposed to injuries, a number united with one another should fortify themselves against ills; nor is the sole end and use of states the avoidance of evil. Nor is it required, in

> order for some society to be called congruent with nature, that it have arisen out of mutual benevolence alone, although neither is that entirely absent in establishing states.

> *ING* **11,3,18**
> For, passing over the fact that we are now concerned not with the origin of civil society, but with the general sociable attitude, it is furthermore entirely in keeping with the state of man's nature that, while single men or small groups should lay themselves open to the injuries of those who look for their own advantage without the slightest regard for others, many should unite, and so defend themselves against the infliction of such injuries. For is it not required for a society to be said to be in harmony with nature that it have been formed upon the basis of mutual good-will alone.

As is seen in the *De iure*, an incorporation and an omission are carried out in respect of the text of the *Elementa*. With the incorporation comes an affirmation that there is no question of the origin of the state. This is not, as in the *Elementa*, because that origin was not compatible with human nature, or because it was not to be deduced from fear alone, but simply because it is not a question here of the origin of the state but rather of *socialitas*. With the omission, an observation is eliminated that would be out of place in the context of the *De iure*, where contrary to what one is led to understand in the omitted passage of the *Elementa*, the thesis presented is that *civitatum finis aut usus* is precisely and principally that of *malum declinare*. The last sentence of *El.* 11,3,5 declares that 'mutual benevolence [… is not] entirely absent in establishing states', from the moment that at least the first who laid the foundations came together driven by mutual benevolence, even if it may have been fear that led others to join with the first ones. While this is retained in *ING* 11,3,18, here the *prorus abest* is substituted by a *poenitus abest*. Above all, though, a passage is added that, referring back to the first chapter of Book Seven – that is, the place where it is argued that the *causa impulsiva constituendae civitatis* is the *mutuus metus* – appears like a tight limitation if not almost a contextual reversal of the thesis that, on the basis of the *Elementa*, is still being argued. Indeed, the paragraph in the *De iure* concludes by warning that,

> But on fear as the bond of states, as well as on the dispute, whether man is by nature a *zoon politikon* [political animal], we shall dwell more at length when we have to discuss the origin of states.

Through this warning, Pufendorf is quick to call attention back to the point that his observation on the reciprocal weight of *benevolence* and *fear* in the origin of states is to be read in light of what will later be said about this, and that his defence of *socialitas* is not to be interpreted as defence of the thesis of the *zoon politikon*. This is the exact opposite of what is concluded in the *Elementa*, where it is argued that the origin of civil society is to be sought in man's nature as *social animal*.

3 The Origin of Civil Society in the *Elementa* and the *De iure*

But with this we are brought back to that §4 of *observatio* three which earlier we momentarily set aside. In this paragraph, on the basis of premises set out previously, Pufendorf responds to what Hobbes had affirmed in the note to *De cive* 1,2: that is, that even if it is true that man by nature loves the company of other men, since however *civil societies are not mere gatherings, but they are treaties*, it is legitimate to hold that *by discipline, and not by nature, man becomes fit for society*. Following the full quotation of Hobbes's note, Pufendorf then sets out his refutation. The hobbesian reasoning is drastically rejected by way of arguing that Hobbes is playing on the ambiguity of the expression *natura aptus* or *aptus natus esse*, which is not to be taken as referring to an existing aptitude, but rather as indicating the capacity to adopt such an aptitude. And so the sense of the saying 'man is by nature a social animal' is simply that man is destined by nature to society with his like, or that he has a nature such as to allow him, through education, to acquire the aptitude (*aptitudo*) for rightly staying in society. Pufendorf concludes that this aptitude does not stop at matrimonial or kinship society, but extends to constitute states, of which it can therefore with good reason be said that it was nature itself that constituted them among men, relying on pacts only to determine which individuals join together in which society, or who must be leader of it. In the *Elementa* then, civil society is born from man's social nature just as are families, with both civil society and families descending from it by a natural progression, there being no qualitative difference between them whatsoever.

The position of the *Elementa* is completely reversed in the first chapter of Book Seven of the *De iure*. Since we already discussed the markedly hobbesian character of the stance taken by Pufendorf on the problem of the origin of civil society in this chapter of the *De iure*, let us be permitted here to note only what follows. In *ING* VII,1,2, Pufendorf observes that, to explain the motive for which men come together in civil societies,

> Most writers fall back upon the nature of man, which is so drawn to civil society that without it he neither wishes to nor can exist. For this purpose they advance those arguments which were adduced above (Bk. II, chap. iv [*sic* chap 3]) on behalf of man's social nature, and drawn chiefly from the miseries of a solitary life, the monotony of solitude, speech which etc.,

But this, against which in the *De iure* Pufendorf counterposes his own position, was precisely the thesis he had maintained in the *Elementa*, where, as we saw, having shown with these traditional arguments that man has a social nature, he deduced from this that 'societates natura omnino inter homines esse voluit'. Now, in the *De iure*, having followed up the previous warning with the exposition of Hobbes's thesis against that of the *plerique*, Pufendorf notes:

> Now although we have shown above that these arguments do not at all prove that man is not a social animal, or is not designed by nature to live in the society of his kind, yet although we presume in man a love of society, it does not at once follow that man is led by nature to a civil society, any more than we can say that because man naturally desires some occupation he is therefore led by nature to the higher studies. For that love can be satisfied by simple societies and by friendship with one's equals. [...] And Hobbes, in the passage cited, approves what we have said, that civil societies are not mere groups ...[there follows the quotation of the first note to *De cive* I,2]. (*ING* VII,1,3)

Once again, as we see, this is a total reversal of the thesis in *El.* II,3,4, given that here, in the *De iure*, Hobbes's note is adopted as support for the thesis according to which recognising the *adpetitus societatis in homine* does not signify that *hominem natura ferri ad societatem civilem*, from the moment that 'that love can be satisfied by less developed societies and intimate associations with others'. Conversely, in the passage now recalled from the *Elementa*, the thesis advanced by Hobbes in that note was the prime object of the criticism by an author who still believed, contrary to what he will argue in the *De iure*, that 'Nor is that aptitude confined to marriages or families [the *societates primae* of the *De iure*!], but it also extends itself to the states that are to be established'.

On the other hand, despite the material identity of some of the observations, the reversal of Pufendorf's position is also made evident by the entirely opposite way in which the discourse on Aristotle is introduced in the *Elementa* and in the *De iure*. In the *Elementa*, the authority of Aristotle is posed against the hobbesian assertion that it is not nature that makes men fit for society but education. And this, we are warned, is not interpreted, as Hobbes does by

quibbling over the sense of the Greek word, as if with πεφυκε (the *aptus natus est* of the Latin) he intended an *actualis aptitudo* for society and not, as he intended instead, a *potentia recipiendi actualem aptitudinem*, which is introduced only *per industriam e per culturam*.

In the *De iure*, conversely, Pufendorf makes his own the hobbesian thesis according to which 'discipline, not nature, fits a man for such a society'. And anticipating the objection of anyone who might have countered this with the authority of Aristotle – as he himself had done when young – he warns: 'Nor is this conclusion shaken by the authority of Aristotle who says that man is [by nature], or [is born], a [political animal]'. There follows an interpretation of the aristotelian thesis far more elaborate than that in the *Elementa* (which is nonetheless re-utilised), which we cannot go into here.[6] Its sense, though, is that one cannot oppose the aristotelian doctrine of the *zoon politikon* to Hobbes's thesis because with that doctrine Aristotle means different things, at least one of which – namely that man naturally desires the company of other men – is not in contradiction with the hobbesian thesis, from the moment where for the Greek philosopher too the desire 'can be satisfied by less developed societies and intimate associations with others, which can be conceived of without states'. The outcome of this reversal of positions is that in the *De iure* the hobbesian thesis according to which 'man did not enter states of his own free will, led, as it were, by nature, but that he did so to avoid graver evils' (*ING* VII,1,4) is just as comprehensively embraced as it is decisively rejected in the *Elementa*, for there the doctrine that 'It was altogether nature's will that such societies exist among men' (II,3,4) maintains its hold.

So we can conclude our analysis of *observatio* three in the *Elementa* by saying that the doctrine of man's social nature that is theorised there is *not* the doctrine of *socialitas* theorised in the *De iure*. The former remains the aristotelian doctrine of man the political animal interpreted in the most conventional way, while the latter is the hobbesian doctrine of the necessity that man live in peaceful coexistence with other men if he wishes to survive. From this radical difference follows the radically different conception of the origin of civil society in the two works: a natural effect of the natural desire for human company in the youthful work, but a *medicina* devised by men's diligence 'against those ills with which man in his baseness delights to threaten his own kind' (*ING* VII,1,7) in the mature work. For sure, it would be easy to pick out some moves in the doctrine of the *homo socialis* in the *Elementa* that are precursors of the doctrine of *socialitas* in the *De iure*, just as it would be equally easy to point out in this latter work more than a little residue of the traditional doctrine of man's natural sociability.

But the premonitions of the one and the residues of the other do not alter the fact that the fundamental inspiration of the two works – as regards the

doctrine of *socialitas* and the related doctrines of the foundation of the law of nature and the origin of the state – is completely different, if not antithetical. And so, in the *De iure*, we could never find a passage like the one with which, significantly, the demonstration that men are *animalia socialia* is concluded in the *Elementa*. This is the passage where Pufendorf asserts that if men were not social animals they would live in a feral state that 'it is utterly incongruous and almost self-contradictory to call this the state of nature. And so the inconveniences also directly resulting from such a state ought not to be substituted as the foundations of the law of nature' (*El.* II,3,6). We would never find a similar passage in the *De iure* where, as we have seen, nothing is done except to set precisely those *disadvantages*, on the one hand, as foundation of the law of nature, and on the other hand, given the latter's constitutive weakness, as foundation of civil rule. And it is enlightening to observe that Pufendorf's adversaries, in attacking the doctrine of the state of nature and of the foundation of the law of nature presented in the *De iure*, objected against him – almost in the identical words he had himself used when young against Hobbes – that it is not permissible to call a state that stands counter to the perfection of human nature and the Creator's plan a natural state, or to pose as foundation of the law of nature the *incommoda* of this nonexistent and anti-natural state.[7]

4 Drawbacks of the Utilisation of the *Elementa* in the *De iure*

From this divergence of the two works it also follows that the long passages from the *Elementa* that are transcribed into the *De iure* do not always succeed in gaining new light from the different context into which they are implanted, as occurs in large measure in the cases documented above. Instead, they sometimes introduce a discordant note, an argument that does not square with the others, a move which, more than being like the conclusion of an argument, has the ring of a counter-claim. See, for instance, what happens in the second part of *ING* II,3,16 that we earlier set aside. Here, after having said that 'the care of one's own safety commands that the laws of a sociable attitude be observed, since without the latter the former cannot be secure' – that is, after having in the clearest way made the law of nature the means for meeting the goal of one's own self-preservation – Pufendorf finds himself having to explain to the reader whether or not he is in agreement with the hobbesian derivation of the law of nature from the *sole care of one's own safety*. About this, he notes:

> As for the demonstration whereby Hobbes very adroitly deduces the laws of nature from the desire for self-preservation we should observe at the

> outset that such a method of proof shows, indeed, most clearly how conducive it is to the safety of men for them to lead their life in accordance with such dictates of reason, But the conclusion should not be drawn; Without more ado, that man has a right to use such dictates as means for his preservation, and that therefore he is also bound to observe them as by some law; if those dictates of reason are to have the effect of laws they must certainly be drawn from some other principle. In the next place great care should also be taken to prevent any one from concluding that when he feels he has made his own safety perfectly sure he need take no thought of others, or that he may do despite at his pleasure to anybody that contributes nothing to my safety, or has not the strength to work it harm. For we called man a sociable creature because men are so constituted as to render mutual help more than any other creature [...]. Finally, even though some man may be unable to work me any benefit or harm and has in himself nothing for me to fear or desire, yet it is nature's will that even such a one be considered my kinsman and equal, and this reason alone, were there no others, lays upon the race of men the cultivation of a friendly society. And if there were any nation addicted to internal peace and justice, and so powerful that it could be formidable to all others, for which reason they would not be restrained from injuring others by the fear that their deeds might return upon their own heads; yet, were this nation to prey at its will upon weaker peoples, harry, plunder, kill, and drag others into slavery, just as they felt it to be to their profit, we would say that they had plainly broken the law of nature. And yet this people, as we imagine them, might preserve themselves, even if they observed no right towards others. [...] And this point needs stressing all the more, the more evident it is that a very strong man is led to break the law of nature on the grounds that he is sufficient for himself, his own safety is abundantly provided for, and there is no reason why he should conduct himself in a peaceable and friendly manner towards others. (*ING* II,3,16)

In this passage,[8] only what is noted at the outset is coherent and relevant. Indeed, to the hypothetical reader who asked: so what do you think about the hobbesian derivation of the laws of nature from the notion of self-preservation?, Pufendorf responds by having it noted that the dictates of reason derived from one's self-preservation are not yet laws, but rather prudential maxims, until one has recourse to another principle (*sublimiori principio*, a higher principle, he will say in II,3,20) that gives them binding force. In other words, if by this one intends to point out how certain forms of conduct are useful or even indispensable to man's self-preservation, then it means that one can derive the laws

of nature solely from self-preservation. Yet of itself alone this does not give these forms of conduct the value of laws. This, moreover, is a discourse which signals no difference between the position of Pufendorf and that of Hobbes, since both of them held, as we well know, that the binding force of the law can come only from the will of a superior.

A further point is added, namely to avoid concluding that someone could make their own self-preservation the foundation of the laws of nature, or that, if their self-preservation was guaranteed, they had no further need to have regard for others. This might be because we might always have need of others, or because, even if we had nothing good or bad to expect from them, it nonetheless remains the case that nature wants us to consider other men our equals and so cultivate an amicable society with them. This whole piece, then, is of a disconcerting superficiality and lack of evidentiary power. See, for instance, what Pufendorf advances as an argument to demonstrate the assumption that, even if we had nothing to fear from others, we ought nonetheless observe the law of nature regarding them. This argument rests entirely on the fact that everyone would judge a people that trampled the rights of other peoples to be a violator of the law of nature, even if such a people had no need of others for its own self-preservation.

This observation is obviously not an argument, but rather a sort of appeal to the common way of feeling moral, an appeal that it is amazing to find in Pufendorf, since it is wholly alien to his tastes and attitudes.[9] But our amazement diminishes and the false note becomes explicable when we realise that the passage relating to that hypothetical people is transcribed literally (with a few minimal variations of no importance) from *El.* II,4,5. There it had a meaning that it loses in the *De iure*, given the different premises on which the discourses (though similar) deployed in the two works are based.

Indeed, the paragraph in the *Elementa*, like that in the *De iure*, also faces the problem of taking a position regarding the *witty* hobbesian derivation of the laws of nature from the ground of self-preservation. Unlike in the *De iure*, in the *Elementa* Pufendorf sets out his own thesis against the position of anyone who, like Hobbes, derives all the laws of nature from the law of his own self-preservation. Alongside this position Pufendorf places a second law, one that prescribes non-disturbance of the *societas* among men. He then derives the laws of nature from these two fundamental laws taken together. This results in the discourse in the *Elementa* taking a turn it cannot take in the *De iure*. What is argued in the youthful work, in fact, is that while everyone (Hobbes included) recognises that a people that comported itself in such a way would be a 'pack of wolves' (*coetus luporum*) and not a human society, which is to say it would trample on every natural right, Hobbes, then, who poses the necessity of

self-preservation as the sole foundation of the law of nature, is in no position to explain that judgment. Someone like Pufendorf, however, who alongside self-preservation admits that 'the law of nature is principally founded upon the principle that social life among men is to be preserved' (*El.* II,4,5), can explain this. In the work of maturity, conversely, the assimilation of his position to Hobbes's regarding the foundation of the law of nature has the consequence that Pufendorf does not and cannot say that his own doctrine, in recognising two premises instead of just one as the foundation of that law, unlike Hobbes's doctrine, succeeds in explaining that shared moral sentiment. So in the mature work this moral sentiment remains simply what it is, in other words, a need to be set against a logic that denies it.

5 What Relation is There, According to Pufendorf, between Law of Nature and Utility?

What has been said so far has exemplified the difficulty of using the *Elementa* in the *De iure*. But since we have touched on the problem of Pufendorf's position regarding the theme of one's own self-preservation and one's own utility, let us be allowed a brief digression that can serve as a further clarification and explanation. It would be a mistake to conclude from our demonstration of the weakness of Pufendorf's discourse in *ING* II,3,16 that the appeal to common moral sentiment is all he had to say on the problem of the relation between law of nature and self-preservation. To get a more adequate idea of the argument, you would have at least to weigh those paragraphs of the *De iure* devoted to the question *an utilitas fundamentum iuris*? In these, you would find a lively reassertion of the very tight nexus linking *iustitia* and *utilitas*, where by *utilitas* is not meant something *immediate* and *fleeting*, but that which will be useful *under all circumstances* and *for all time* (II,3,10). In identifying these two senses of the ambiguous term 'utility', Pufendorf situates himself with regard to the positions of Carneades and Epicurus. This makes it possible to refute Carneades, who made the mistake of understanding utility as that false and transient utility which is the opposite of justice. It also allows him to give his own assent to Epicurus, whose famous saying on natural law – which in Latin read: *ius naturale nihil aliud est quam tessera utilitatis* (natural law is nothing else than the stamp by which utility is recognized) – is interpreted, reversing Carneades's maxim, as meaning that 'not justice but injustice is supreme folly, which is of no general or lasting advantage [...] which is certain to overthrow the general security of man, which is maintained by fellowship' (II,3,10).

Suppose at this point someone asked whether from reading these paragraphs we are to deduce that, for Pufendorf, utility is the true foundation of the natural law, and, if he avoided stating it explicitly, this was for fear lest most people understood that the utility against which their own actions are to be measured is that false utility which leads to self-destruction instead of to self-preservation. Or was it because – as Pufendorf had once said in a passage added to the second edition at *ING* II,3,18 – in justifications of natural law 'one does not (*non solet*) refer to utility'? To someone who asked this question, then, we would reply that in the course of this essay we have already expressed our opinion on the subject more than once. Indeed, it is beyond doubt that for Pufendorf natural law is the means 'whereby the safety of the human race is maintained' (II,3,11). In other words it is beyond doubt that man must observe the law of nature *ut salvus sit*, and so it can rightfully be said that self-preservation (or utility if you prefer) is made by Pufendorf the foundation of the law of nature. This can be said, provided great care is taken to hold firmly to the point that the precepts which utility 'founds' are not yet law, but to become law have to be traced back to *sublimiori principio*.

Contrary to the traditional way of replying, as in the misleading passage added in II,3,18, Pufendorf, when asked why one must respect other men, replied by referring not to the utility of that comportment, but to common human nature. Indeed, in this traditional notion, in the venerable concepts of man as 'an animal related by nature', or of man as one whom 'it is nature's will that [he] be considered my … equal' (II,3,16), it is possible to signal the pufendorfian attempt to give the law of nature the normative dimension that its utility, no matter how emphasised and reaffirmed, could not provide.

This must not be understood, though, (and it should not be necessary to repeat this) in the sense that, for Pufendorf, human nature of itself, as nature, is normative. On the contrary, as we know, for Pufendorf nature of itself, not even human nature, is never normative. Rather, the sense is that the human condition is the opportunity that the supramundane legislator offers man to know the divine will. The reference to this *conditio* can thus serve to introduce the theme of the will of the legislator that is indispensable to making the law of nature a law in the true sense. And so, when interpreting the famous line of Horace,[10] Pufendorf observes:

> We acknowledge, indeed, the denial of Horace that nature can distinguish what is unjust, if restricted to that nature which man shares with animals, whereby animals by their senses know what things are good for their body and what harmful, without any knowledge of right or wrong. But we deny the application of his statement to rational nature. (*ING* II,3,11)

In other words, it is not the case that, being rational, man's nature is a norm distinguishing between the fair and the foul, but rather that human reason has the capacity to appreciate good and bad, that is, to manage to understand for itself what the law is.

6 The Evolution of Pufendorf's Thought

But, to return to the problem with which we began the second part of this book, the long and perhaps tiresome analyses undertaken there should by now have clarified the way in which, in our view, Pufendorf's attitude regarding Hobbes changed. Setting out with a superficial vision of the English author's thought, interpreted in light of the limited and, basically, misleading social nature/feral nature of man dilemma, in the youthful work Pufendorf remained closed within the terms of that classic dilemma and, choosing the horn of social nature, took the side of Hobbes's adversaries. We have seen, though, that deeper reflection on that author's philosophy, no longer interpreted through the *vulgata* but sympathetically reconstructed *iuxta propria principia*, led Pufendorf, as we have seen, to discover himself a hobbesian. In succession, the wild reactions of adversaries, the misleading influence of other authors, the perpetual opening up of different 'veins' of his thought – coexisting from the start with the hobbesian 'vein', if only because, in Hobbes too, not everything is hobbesian! – led him to tone down his hobbism and to re-think himself in terms of belonging to a tradition of thought declared to be the opposite of that into which Hobbes was interpolated.

At this point, a mischievous critic might observe ironically that, then, the great argumentative apparatus we have built to show that Pufendorf is Hobbes's 'disciple' has ended up with a modest conclusion that Pufendorf's hobbesian season lasted, so to speak, *l'espace d'un matin*, which, bounded closely by anti-hobbesian phases, reduces to the restricted arc of time that runs from 1663 to 1674, falling into crisis in that same year.[11] To this critic, we will not reply that, after all, that decade cannot be portrayed in Pufendorf's intellectual life as 'the space of a morning'. In fact, it embraces the elaboration of his major work, followed by its abridgment, and the dissertation on the natural state – in short, the core of the pufendorfian system of natural law. We will not reply in this way, because the critic's objection rests on a false reading of our thesis on the evolution of Pufendorf's thought. This evolution has been presented by us as a chronological succession of different phases with the purely didactic aim of making our thesis something simpler and more comprehensible by reducing it to a schema.

As the analyses composing the present book serve to show, however, in the texts themselves the various phases are, in a certain measure, co-existent throughout. This means that even if the prevalence of one tendency over another allows us precisely to speak of the phases of that thought, the assertion of one does not entail the complete extinction of another. It remains the case, though, even between the different tensions and stresses that make Pufendorf's thought so complex and elusive, its dominant note, its fundamental accord, always and at every moment remain hobbesian.

To add a personal reflection: our own conviction that Pufendorf was far more hobbesian than is traditionally maintained – and than he himself admitted – was certainly not formed from the first edition of the *De iure*, but precisely from the second. It is only because in the latter we encountered particular assertions that seemed to us out of tune with the prevailing inspiration that we became concerned with verifying how things stood in the first edition, leading us to find a Pufendorf who, so to speak, was more hobbesian.

The conclusion of this discourse is that Pufendorf was, through the whole arc of his production, a hobbesian. To be sure, this was not in the sense of being a slavish and unintelligent relay, but in the sense of a thinker who had so deeply absorbed the hobbesian problematic as to be 'tormented' by it throughout his life. It was the motives explored above, together with the tendency of interpreters to fix on the externals of Pufendorf's words, that gave rise to the conviction that Pufendorf was more distant from Hobbes than he truly was. This conviction, though, is also the fruit of yet another factor, which it is appropriate to discuss in a separate chapter.

Notes

1 Sortais, *op. cit.*, pp. 483–84, who like us is convinced that from the *Elementa* to the mature works (though he uses only the *De officio*) there is an evolution in the way P. is inspired by hobbesian ideas, which goes in the direction of growing closer to Hobbes, then also signals a contrary example: namely, the denial of limited sovereignty in *Elementa* II, *obs.* V, §20 and its acceptance in *De officio* II,9,5. For the interpretation of the other point in which P. seems closer to Hobbes in the *Elementa* than in the mature works (namely the greater importance that in the *Elementa* is given to force as the foundation of obligation), see note 33 to Chapter One of Part One.

2 Welzel, *Die Naturrechtslehre, cit.*, p. 41, grasps this point well, underlining how in the mature works the importance granted to the biological and psychological element diminishes.

3 This section of *ING* II,3,16 in fact utilises, as we will see below, another *observatio* of the *Elementa*: not the third, but rather the fourth.

4 If the two passages are compared, we see that the reasoning of the *Elementa* is far more elliptical than that of the *De iure*, even if both then affirm the same thing, namely, that it is true single societies are formed for particular purposes, but that, because men are sociable among themselves, it is not necessary for them all to belong to one society, it being enough that they abstain from insults and exchange services.

5 *De cive*, I,2, p. 42: 'For if by nature one Man should Love another (that is) as Man, there could no reason be return'd why every Man should not equally Love every Man, as being equally Man, or why he should rather frequent those whose Society affords him Honour or Profit. We doe not therefore by nature seek Society for its own sake, but that we may receive some Honour or Profit from it; these we desire Primarily, that Secondarily.'

6 The aristotelian interpretations of P. would merit a separate study.

7 See above all the controversy with Alberti in Palladini, *Discussioni*, *cit*.

8 We translate it from the first edition, because we have dwelt above at pp. 166–67 on the additions made in the second edition under Cumberland's influence, and these are irrelevant to the point of the discourse we are analysing here.

9 The contradictoriness of this passage with respect to the doctrine of *socialitas* set out in II,3,15 was already signalled by Sharrock in 1682 (in Palladini, *Discussioni*, *cit.*, pp. 305–7).

10 Orat., *Sat.* I,3,113.

11 I refer to the suggestion of stoic descent for the doctrine of *socialitas* and of its counterposing to hobbesian doctrine contained in the *Epistola ad Scherzerum* (see above, p. 153).

CHAPTER IV

The Barbeyrac Factor

Pufendorf's great translator and commentator would merit, both in these guises and in that of an independent thinker, a study expressly devoted to him.[1] In the present study, the brief observations that follow are not even an outline of this. However, let us nonetheless be allowed, before closing this essay, to say something of Jean Barbeyrac's attitude regarding Pufendorf-Hobbes relations.

As is evident to anyone who has read with some care the monumental and unmatched commentary on the *De iure* made by Barbeyrac,[2] he does not share its author's sympathy for Hobbes, but has, unlike Pufendorf, as it were, an anti-hobbesian mentality. This mentality shows through clearly, for instance, in the criticism he offers of the famous praise of civil society contained in the *De cive* X,1 and, as we know, made his own by Pufendorf whether in the *De iure* (II,2,2) or in the *De officio* (II,1,9). In notes 1–17 to the *Droit de la nature et des gens* II,2,2, the arguments that Barbeyrac deploys to conclude that 'Hobbes and our author largely exaggerate the advantages of the civil state over the state of nature' (note 17) reveal a suspicion concerning 'power' and its 'ministers'. This is a fear that the individual might be oppressed by the whole corporate body, a horror at 'these monsters of ambition, of greed, of lust, of injustice, of cruelty, of inhumanity who ordinarily rule in the princely bodies' (note 14), a suspicion and fear that sometimes colour those arguments with 'primitivist' tones. Thus in the state of nature, peace and tranquillity 'can never be troubled in a way that harms so great a number of persons at the same time', as happens instead in civil society because of the 'horrible persecutions that the subjects sometimes suffer' and the 'bloody wars that so often ravage the most flourishing states and empires'. Further, in the state of nature 'one does not know […] the fury of trials, and the trickery, to which the very laws themselves often give occasion' (note 15). It is thus untrue, that in this state, unlike in the civil state, passions reign unchecked:

> This is what needs to be proven. For why would the empire of passions always be greater? Are men less men, for living in a civil society? Are there fewer objects and occasions capable of stirring the passions? Or rather are there not more of these? Let us add that if the fear of penalties holds the people to its duty, it makes little impression on the great, and the persons of credit, who easily find the means of evading the laws. Or those in whom the passions reign with the greatest rage, and in the way most prejudicial for human society, are without contradiction these persons

 | DOI:10.1163/9789004388611_008

> so powerful of whom one would find few examples in the state of nature and who would never be in a position to cause so much harm. (note 8)

From all of which follows a conclusion entirely alien to the spirit of Hobbes and Pufendorf:

> Let us conclude by a more exact parallel of the state of nature and the civil state. Experience shows that, contrary to the natural destination of the Creator, and as an effect of human corruption, each of these states is often unsociable and unhappy. Civil government being the most proper means to repress human malice, the civil state can without contradiction be more sociable and happier than the state of nature. But it has to be supposed, for this, that civil society is well governed: otherwise if the sovereign abuses his power, or if he discharges care for business on to ministers who are either vicious or ignorant, as very often happens, the civil state is then much more unhappy than the state of nature; this is shown by so many wars, calamities, and vices that are born from these abuses, and from which the state of nature would be exempt. (note 17)

To this blatant and so to speak 'facile' instance of the profound difference that runs between Pufendorf and Hobbes on the one side, and Barbeyrac on the other,[3] many others could be added, and indeed *ought to be* added, if our job was to reconstruct Barbeyrac's thought. Since this is not the aim we propose, however, we will cite just one other case, in our opinion particularly indicative of that difference. I refer to the criticism Barbeyrac makes of the pufendorfian derivation of the law of nature from the principle of *socialitas*. In note 1 at 11,3,15, regarding this principle, Barbeyrac asserts:

> The true deficiency of his principle lies in his not furnishing the proper and direct foundation of all the duties of the natural law. Our author was mistaken, on the one hand, in having believed that all the natural laws were to be derived from a single principle, which is in no way necessary; and he himself first established (in his Elem. Jurispr. Univ …) two distinct principles, love of oneself and sociability: on the other hand, in having over-valued utility here;

and in note 5 to the same paragraph:

> Moreover, it must be admitted […] that the principle of sociability is not sufficient, and that it is necessary to join with it some other from which

> are directly derived certain duties, which, even though they have a great influence on the good of human society, can nonetheless and must be conceived independently of this utility, which, in consequence is not its proper and sole foundation.

Now, it is easy to see that refusing to acknowledge the requirement of deriving the law of nature from a single principle amounts to denying the aspiration to provide a scientific demonstration of the foundation of morality that Pufendorf shared with Hobbes. So too, insisting that *socialitas* is an inadequate principle for founding all the duties of man amounts to denying the restriction of morality to the sphere of social relations, which is so characteristic of the secularisation of natural law undertaken by Pufendorf and thus linked to Hobbes's teaching. Finally, to accuse Pufendorf of *having over-valued utility here* amounts to denying the very foundation of the pufendorfian system, in which (as we have shown at length above) the hobbesian spirit is most visible. And it is significant that Barbeyrac, in the first of the two notes cited, calls Pufendorf back to the thesis he advanced in the *Elementa*, that is, precisely to a doctrine that we earlier showed to be characterised, unlike that of the *De iure*, by anti-hobbesian features.

This anti-hobbesian mentality[4] – together with his natural tendency to defend 'our author' from charges considered ignominious – made Barbeyrac particularly careful in his attempt to distance Pufendorf from any suspicion of 'hobbism', using any means possible to separate the fate of the beloved German author from that of the unpopular Hobbes. To this end, the great interpreter adopts various strategies. One of these is to recall Pufendorf to 'his very own principles', these being identified, however, in the most extrinsic and, so to speak, 'on public display' declarations like the one, for instance, that the state of nature is a state of peace and not of war. In this way – in the notes devoted to criticising the hobbesian and pufendorfian praise of the advantages of civil society by comparison with the state of nature – to counter Hobbes's statement that outside the *civitas* there is only war, Barbeyrac observes:

> Wars are not a necessary consequence of the state of nature, and our author himself proves this a little later, §5, against Hobbes.
>
> note 10 to II,2,2

He observes, that is – limiting himself in fact to explicit declarations and in no way posing to himself the problem of the coexistence of the two theses in Pufendorf – that the latter, having argued against Hobbes that the state of

nature is a state of peace, cannot hold, with Hobbes, that in the state of nature war rules.

Another strategy is that of seeking to show that Pufendorf's indulgence towards Hobbes is owed to the fact that the former interprets the latter in his own way, attributing to the other man his own notions. Thus, in note 1 to II,2,3, Barbeyrac rebukes Pufendorf for not having recognised that the *sana ratio* of which Hobbes speaks is not the infallible faculty that he thinks,[5] but rather just a valid argument resting on principles that Hobbes had previously proposed,

> That is to say, on the state of war where he supposes that all men are naturally against the others, a false hypothesis that our author will later refute §5 et seq. And so we see clearly that, according to Hobbes, everything reduces to the judgment of each, well or ill founded, and that appears clearly because he holds without demur that, no matter how we act towards a person with whom we have contracted no engagement under some agreement, we can do him no wrong.

Analogously, Barbeyrac argues against Pufendorf's interpretation of the hobbesian thesis on the invalidity of pacts in the state of nature, whereby Pufendorf had argued that the hobbesian fear capable of invalidating pacts can only arise after the pact has been agreed, and further affirmed that Hobbes in the *De cive* seems to tone down a thesis that originally was more radical. Against this reading, Barbeyrac observes:

> Hobbes does not appear to have changed his view here, as our author conjectures. But the poison of the opinion of that famous Englishman consists in leaving to each the right to judge in the last resort, *whether it is true or not*, that the other party will not perform what he has committed to, when one has made one's respective engagements under the terms of the treaty: he regards as legitimate the slightest subject of fear one might have following some new indication; because he founds mistrust on exaggerated ideas of universal malice, and elevates into law the good or bad judgment of each.
>
> note 3 to III,6,9

According to Barbeyrac, then, Pufendorf is not capable of grasping *the poison of the opinion* of Hobbes, and, on more than one occasion, 'extends, explains, paraphrases and turns in his own manner Hobbes's arguments' (note 3 to VII,1,2), 'mixing [...] his ideas and arguments with Hobbes's, without

distinguishing them' (note 2 to VI,2,2), often ending by attributing to Hobbes theses contrary to those he in fact held.

This is not the place to examine case by case the instances provided by Barbeyrac. Let it suffice to say that, if in many particular cases he is right, he is not right in failing to acknowledge the deep affinity of inspiration between the two authors, the affinity we have been working to show here.

The third strategy deployed by Barbeyrac to separate the fate of his favourite from that of Hobbes consists in enthusiastically embracing the theorisation that Pufendorf had given of his own place in the history of ethics, codifying this in a historiographic *topos*. See either Barbeyrac's *Preface* to his translation of the major work, or the one to his translation of Grotius's *De iure belli ac pacis*.[6] In the former, to the limited space devoted to Hobbes there corresponds an emphasis on the Grotius-Pufendorf linkage that is made concrete in a comparison drawn between these two authors alone.[7] In the latter, there is a forceful assertion of the thesis according to which Pufendorf, along with Grotius, belongs to a line of thought totally opposed to that into which Hobbes is inserted, which is to say, to a line that links up with stoic morality.[8] In this case, it is not relevant to observe that in Barbeyrac too, as already in Pufendorf, the refusal to recognise the relationship with Hobbes is tied to matters of apologetics: namely, to an attempt to avoid Catholic authors, in equating Grotius and Pufendorf to Machiavelli and to Hobbes, projecting on to the former two the discredit and the hatred that accompanied the names of the latter two.[9] It is not relevant, because Barbeyrac sincerely believed, beyond any apologetics, that 'night and day are not more opposed than the systems of Machiavelli and Hobbes, on the one side, and those of Grotius and Pufendorf, on the other'.[10]

Notes

1 In fact the sole monograph on Barbeyrac that I know, that of P. Meylan, *Jean Barbeyrac et les débuts de l'enseignement du droit dans l'ancienne Académie de Lausanne. Contribution à l'histoire du droit naturel* (Lausanne: F. Rouge & Cie SA, 1937), has a primarily biographical setting and a concern with the history of universities, with little space devoted to the contents of this author's thought. The book by S.C. Othmer, *Berlin und die Verbreitung des Naturrechts in Europa. Kultur – und sozialgeschichtliche Studien zu J. Barbeyracs Pufendorf-Übersetzungen und eine Analyse seiner Leserschaft* (Berlin, 1970), is devoted above all to delineating the ambience of the huguenot refugees in Berlin in which Barbeyrac lived from 1693 to 1710, and to the study of the dissemination of his pufendorfian translations. More attention is given to Barbeyrac's thought in the book by Dufour, *Le mariage dans l'école romande du*

droit naturel au XVIIIe siècle (Geneva: Georg, 1976); however, it obviously cannot substitute for a monograph devoted expressly to P.'s French translator.

2 The first edition of Barbeyrac's translation of the *De iure* is dated Amsterdam 1706, the second, augmented, Amsterdam 1712. For the following editions, see Denzer, *op. cit.*, pp. 360–61. Barbeyrac's notes often constitute veritable tracts. They are, in our view, particularly important also for the history and interpretation of Roman law, and would benefit from being accurately studied by a 'romanist'. One *specimen* of the study I have in mind is provided by the essay of M. Reale, 'Rousseau tra i giureconsulti romani e i giusnaturalisti moderni. A proposito di un passo del "Secondo discorso"', *La Cultura* 15 (1977): 237–43, in relation to Barbeyrac's interpretation of the ulpian definition of natural law as *quod natura omnia animalia docuit*.

3 That on this subject Barbeyrac distances himself from the positive evaluation that P. accords to Hobbes is also noted by Fetscher, *op. cit.*, p. 653, who, while asserting that the French translator assumes in his notes on this matter 'eine Zwischenstellung zwischen Pufendorf und Rousseau', then ends by underlining the affinity of these notes with the thought of the latter rather than with that of the former.

4 From what we say in the text it can be easily deduced that we disagree with Bobbio, *Il giusnaturalismo*, *cit.*, p. 494, according to whose judgment Barbeyrac concludes his introduction, as well as with an 'elogio sperticato di Grozio' (and Bobbio is right thus far), also 'con un'abile difesa (attraverso il giudizio di Bayle) di Thomas Hobbes'. In fact if we read the whole page of the *préface* devoted to Hobbes, we will see that, certainly, by repeating the judgment of Bayle and of P., Barbeyrac concedes that Hobbes, 'great mathematician and one of the most penetrating minds of his century' had penetrated, like no one before him, 'the foundations of politics'; but he does not fail to affirm also that 'he let himself be seduced by his own indignation at the seditious minds that provoked the quarrels in his Fatherland'; that in his *De cive* 'among other dangerous errors he sought to establish, and precisely in a geometrical order, the doctrine of Epicurus, who laid down self-preservation and personal utility as the principles of society'; that he 'grants kings an unlimited authority, not only in matters of state but also regarding religion'; that in the *Leviathan*, 'he reveals himself even more clearly' insofar as there he sustains 'without any side-stepping, that the will of the sovereign establishes not only what is just or unjust, but religion also, and that divine revelation can oblige conscience only when the authority, or, better, the caprice of his Leviathan, that is to say the authority of the sovereign and arbitrary power, to which he attributes the government of every civil society, has given it the force of law'; that if in his works are found things 'that seem not to fit well together, this is apparently because he did not dare to say all that he was thinking'; that, finally, 'he passed for an atheist, and it was not entirly wrong to make this judgment of him: he believed that everything was corporeal'. (*Le droit de la nature*, *cit.*, p. CXVII).

5 On Barbeyrac's misunderstanding of P.'s thinking on this matter, we have already dwelt above, in the text, at p. 26–28.

6 The translation of Grotius's major work appeared in Amsterdam in 1724. With the translation of Cumberland's work, which saw the light in the very year of his death (1744), Barbeyrac will conclude his monumental work devoted to modern natural law. It is known that the *Préface du Traducteur* at the head of the translation of Pufendorf is designed as a veritable history of ethics, still indispensable for anyone wishing to gain an idea of the state of knowledge and criticism in this field at the start of the eighteenth century. The *préface* to the Grotius, on the other hand, referring back to that for P., is limited to the history of the *De iure belli ac pacis*, to the explanation of the criteria used in the translation, and to some reflections on the method and principles of the grotian work.

7 The discussion of Hobbes is what we have recorded in its near entirety in note 4. Pufendorf is presented as he who 'followed the spirit and the method of Grotius' (p. CXVIII). The parallel with Grotius is found in §30, pp. CXXI–CXXII, and is articulated in the following points: 1) the style: preference is given to Grotius with regard to the 'purity and precision of expression', but it is noted that 'his style is too concise', because of which 'his work is really just for the experts, whereas that of Mr Pufendorf is much more within the reach of everyone'; 2) the arrangement of the material: the general economy of the pufendorfian work is much better, even if in the material composing the particular chapters there is sometimes a disorder that is not found in Grotius; 3) the content: Grotius touches only occasionally on the principal matters of natural law, whereas P. establishes and develops in detail the fundamental maxims of the law of nature. On the other hand, Grotius introduces arguments such as those concerning theology to which he could have given less time. The conclusion of the comparison is that 'Given all this, I can, it seems to me, boldly infer [...] that his [P.s] work, when everything is taken into account, is much more useful than that of Grotius'.

8 Barbeyrac adopts this interpretative line in the *Préface* to Grotius, *Le droit de la guerre et de la paix*, Amsterdam, 1724, defending his two authors (Grotius and P.) against the criticisms and reservations expressed in the *Discours de la Poésie Epique et de l'excellence du Poëme de Telemaque* at the head of the 1717 edition of Fénelon's *Aventures de Telemaque*. The author of the *Discours*, whom Barbeyrac describes as the *ingénieux Scot*, is in reality A.M. Ramsay. The defence is found on pp. XXXI–XXXV of the *Préface*. In it, in his polemic against Ramsay, who had in some way put Pufendorf and Grotius and Machiavelli and Hobbes together, rebuking them for having based their politics 'on pagan maxims and which are the equal neither of those of Plato's *Republic*, nor of those of Cicero's *Offices*' (I cite from Barbeyrac p. XXXI), the translator asserts that 'night and day are not less opposed than the systems of Machiavelli and Hobbes, on the one side, and those of Grotius and Pufendorf on

the other. Pufendorf in particular has undertaken to refute with all his strength the fundamental principles of Hobbes's morality and politics, which, once they are overturned, leave no place for the consequences that Hobbes drew from them. And Grotius, as I showed above, declared himself opposed to these principles in a Letter [of 11-4-1643] [...] Nevertheless, there are my two authors set more or less on the same rank as Machiavelli and Hobbes [...]. (pp. XXXIII–XXXIV). Furthermore, refuting Ramsay's judgment according to which 'The Author of *Telemaque* is original in that he has combined the most perfect politics with ideas of the most consumate virtue. The great principle upon which everything turns is that the entire world is just one universal republic and each people like a great family' (I cite from Barbeyrac p. XXXI), the translator not only observes that 'Mr de Fenelon is so little original in this, in fact it concerns the great principle of the morality of the Stoics, a considerable and very well known Sect' [there follows the citation of Seneca, *De Otio Sapientis* chapter XXXI = De otio IV,I ed. Les Belles Lettres] [...]. But the principle it contains, stripped of its particularity, is it not the same as that on which Grotius and Pufendorf have built? The former posits it first in his Preliminary Discourse, and develops the argument everywhere else. The latter does this (*ING* II,3,15) in a way whose length, rather than brevity, one might recall' (p. XXXV).

9 As is known, Barbeyrac consolidates the historiographical *topos* of the Protestant party, which goes back to the history of natural law rapidly traced by P. at the outset of his *Specimen Controversiarum* (see above, p. 154), according to which Grotius was the first to liberate natural right from the useless subtleties and confusions of scholasticism and from the instrumentalisations by the Church of Rome. Following P., this interpretative current sees its fundamental stages in the histories of natural law of J.F. Ludovici, J.F. Budde and Christian Thomasius, all authors used by Barbeyrac. Hont, *op. cit.*, p. 258, also insists on the pufendorfian paternity of the thesis that begins the change in jurisprudence with Grotius.

10 See note 8.

Conclusion

The conclusion of our brief digression on Pufendorf's French translator and commentator is that Barbeyrac's great and deserved authority has contributed – together with other arguments, some of them complex, that we have sought to reconstruct in the second part of this essay – to creating the popularised image of a Pufendorf who belongs to the Cicero-Grotius line, not to the Epicurus-Hobbes line. However, since the borrowings from Hobbes were so apparent that they could in no way be ignored, when the concern with apologetics diminished, on to that popularised image of Pufendorf was superimposed and mixed another image. This was the image of the 'mediator' between Grotius and Hobbes, the 'eclectic' who, with minimal philosophical rigour, sought to reconcile two entirely opposed systems of thought: *night and day*, as Barbeyrac put it.

The detailed analysis to which in this book we have subjected Pufendorf's thought ought to have served to show that, in spite of the oscillations, the attenuations and the uncertainties of a rocky trail of thought and life, Pufendorf has a hobbesian heart or, if this is preferred, a hobbesian mind. Must one perhaps conclude from this that, being a disciple of Hobbes, Pufendorf is not, as he has for ever been claimed to be,[1] a follower of Grotius? Such a conclusion, however, presupposes that the opposition to Hobbes, denied for Pufendorf, is instead maintained and confirmed for Grotius, that is, it presupposes that the popularised image of Grotius is accepted. It would be truly paradoxical if, after having so laboured to give Pufendorf his true face back, she who is writing fell into the trap of taking as true, without any verification, the image of Grotius that tradition brings her. To the contrary, she holds that only a knowledge of the Dutch author that has gone through the long years of re-reading and reflection that have been devoted to Pufendorf (and in part to Hobbes) would authorise her to give a reliable response to the question of the place of Grotius in Pufendorf's system.[2] Readers should not therefore hold it against her if, having had the presumption synoptically to keep together two great, labyrinthine authors like Pufendorf and Hobbes – and having often despaired of emerging from the labyrinth – she who is writing has deemed her own strengths unequal to including a third great author in the circle of analysis. It follows that the response to that question, though called for by this book and this interpreter, necessarily becomes the business of another book and, we fear, another interpreter

 | DOI:10.1163/9789004388611_009

Notes

1 Remember, though, that this generalised opinion has also had its critics. As well as Bobbio's opinion, cited above in note 12 to Chapter 2 of Part One, do not forget the opinion of Wolf, *op. cit.*, p. 317, according to whom 'mit dessen [of Grotius] Wesenart und Weltanschaung er [P.] überhaupt nur wenig Verwandtschaft zeigt'.

2 Fiorillo, *op. cit.*, p. 611, recently insists on the difference between Grotius and Pufendorf and on the necessity of facing what is in her view the unresolved knot in pufendorfian criticism, namely 'the relation between the theoretical thought of Grotius and that of Pufendorf'. Unfortunately, the few pages she devotes to the problem are not such as to give hope for a deeper investigation. Indeed, the author, while rightly recognising how the fundamental difference between Grotius and P. lies in the question of the existence or not of actions just or unjust in themselves and by their nature, and therefore in the pufendorfian 'discovery' of the moral entities, does not then know how to pursue a minimally satisfactory analysis of the texts: she cites passages, illustrating them with the sole assertion 'non a caso Pufendorf sostiene che …' (see pp. 617–18), which leaves the reader entirely in the dark as to what is her interpretation of the cited extract; on moral entities, she offers assertions like the following: 'Anche se gli enti morali sono relativi ad una scelta "conveniente" dell'essere umano, tale circostanza non sottrae alcun valore alla "necessità" di essi, in quanto la loro oggettività si fonda sulla moralità umana' (p. 619), which are, either mistaken (we have seen above that moral entities are not solely the work of men), or totally incomprehensible. What, in fact, does 'l'oggettività degli enti morali si fonda sulla moralita umana' mean, when for P. moral entities *are* human morality? And if human morality does not reduce to the moral entities, how is P. to be distinguished from some sort of 'objectivity' in the Grotius style? The author, noting P.'s voluntarism, and not knowing how to reconcile it with his rationalism and with the criticism of Grotius, also takes refuge in the old formula, always good for any purpose, of a Pufendorf in whose work 'confluiscono ecletticamente elementi di razionalismo e di voluntarismo' (p. 620).

Leave-Taking

'Next to the altar in the ancient Nikolaikirche [...] in a dark niche there is a half-forgotten tomb. A faded latin inscription under a noble coat-of-arms painted in vivid colours advises that here lie the remains of Samuel Pufendorf: "his soul is received into heaven, his fame flies over the whole world"'. With this lament for the fleeting nature of human things, in 1875 Treitschke began his essay on Pufendorf.[1] The German historian lamented that 'over the course of the years the name [of Pufendorf] once so celebrated and so detested to death is gone and forgotten'; however, there still remained for him the Nikolaikirche, not only, as he said, to tell of 'amidst the noisy confusion of the German capital, the modest days of Berlin as a dignified city of Brandenburg province', but also to reawaken, in whoever like him had love and curiosity for the past, the dormant memory of more or less famous names.

How high should our lament be in witnessing that for us almost nothing has been conserved:[2] not the dark corner, not the coat-of-arms, not the tomb, destroyed like the fame of the man who once was buried there? But history does not tell only of destructive folly and oblivion, it also tells of restorative *pietas*. Thus, from the broken bramble-covered ruins of what was once the Nikolaikirche has now been carefully reconstructed a church that reproduces as closely as possible the one that was lost.[3] In this way, on different fronts, there is the effort to re-compose the fame that once flew over the whole earth.

This book wishes to be one stone brought to the building for reconstruction, which has not been undertaken with any less enthusiasm because it knows itself to be precarious and imperfect: precarious because open to the ever-renewed assaults of human folly and the endless forgetting; imperfect because it is given to no one to reproduce what is to be reconstructed exactly as it was, if only because this is a matter of 'reconstruction', and it is impossible to act as if what has been has not been.

Notes

1 Later reprinted in H. Treitschke, *Historische und Politische Aufsältze*, t. IV, Leipzig, 1897, pp. 202–303. A description closely following Treitschke's of the family tomb of Pufendorf, that by R. Borrmann, *Die Bau und Kunstdenkmäler von Berlin*, Berlin, 1893, p. 238, specifies thus the generic 'next to the altar' of the German historian: 'Chorkapelle rechts neben der Sakristei'. In effect, in the now reconstructed church, P.'s tombstone is located in the first chapel to the left of the choir (facing

the apse), that opens precisely to the right of the sacristy. As to the 'noble crest of arms painted in bright colours', nothing, unfortunately, has been preserved for us; however, in Borrmann's cited book, there is a black-and-white reproduction of it (p. 239) and it is described in J. Kurth, *Die Altertümer der St. Nikolai, St. Marien – und Klosterkirche zu Berlin*, Berlin, 1911, p. 28. From this detailed description we learn that the basic colours of the crest were, as well as white and black, blue and gold. The Latin inscription on the tombstone, translated in part by Treitschke, is cited in its entirety in the original Latin by Borrmann and is still legible today on the sandstone that escaped destruction in the war. It reads:

DNI-SAMUELIS-
LIB-BARON-DE-PUFENDORF
CONSIL-INTIMI-
SERENISS-ELECT-BRAND-
OSSA-HEIC-RECUMBANT-
FAMA-PER-TOTUM-ORBEM
VOLITAT-
NATUS-IS-VIII-IAN-
M-DCXXXII-
MORTUUS-XXVI-OCT-
M-DC-XCIV.

A photograph of the stone is reproduced in *S. von Pufendorf 1632–1982*, *cit.*, facing p. 17. [The crest of arms has since been found, in an attic, and now once again adorns Pufendorf's tomb.]

2 Prior to the present restoration of the church, in fact, only the perimeter walls of the Nikolaikirche had withstood the bombing in World War 2.

3 The reconstruction was brought to completion by the DDR for the Berlin millenium, in 1987.

Table of Passages Cited

These are limited to Pufendorf, Hobbes and Cumberland.

PUFENDORF
Presentation at the Collegium Anthologicum, Leipzig (4-8-1655) 125–26
Elementa (1660)
praefatio 6, 150
I, def. iii 129
II, ax. ii 70
II, obs. iii,1–2 213–14
II, obs. iii,3 215, 220
II, obs. iii,4 215, 217–18, 224–26
II, obs. iii,5 215, 218–19, 220–23
II, obs. iii,6 219–20, 227
II, obs. iv,5 230
II,obs. v,20 233
Letter to Boineburg (13/23 January, 1663) 7, 150
Letter to Boineburg (7/17 February, 1663) 150–51, 155
De statu Imperii Germanici (Monzambano) (1667)
VIII,6, 60, 144
Letter to G.O. Stenbock (27-3-1670) 135
De iure (1672)
praefatio 15–16, 124–25
I,1,1 30, 129
I,1,2 23, 30
I,1,3 22, 30, 64
I,1,4 22, 30–31, 64
I,1,6 129
I,1,7 64, 79–80, 84–85, 88, 130
I,1,19 19, 29, 63–64
I,1,20, 29, 50–51, 53, 62–64
I,1,21 19, 31
I,2,4 2, 14, 162, 200–01
I,2,6 19, 20–21, 172–74, 187
I,2,8 71
I,4,2 2, 14
I,4,4 22, 174, 187, 206
I,4,6 162
I,5,14 59
I,6, l 2, 5, 14, 21
I,6,2 5, 21
I,6,3 5, 21
I,6,4 2, 5, 14, 19, 48
I,6,5 19, 31, 32
I,6,6 67, 69
I,6,7 19, 21
I,6,8 19
I,6,9 19, 32, 37–38
I,6,10 2, 4, 14, 34, 35–36, 37, 62, 66, 163
I,6, 11 34, 39, 66
I,6,12 38, 40, 46–47, 67, 69
I,6,14 5, 48, 180, 206
I,6,18 5
I,7,2 54
I,7,3 175–76, 188, 206
I,7,5 206
I,7,7 50–51
I,7,8 52, 56
I,7,9 52–53, 56
I,7,13 2, 4, 14, 24–29, 31, 51, 59, 67, 162, 164, 171
I,7,15 2, 4, 14, 55
II,1 75–76
II,1,1 27, 73
II,1,3 68
II, 1,5 73, 125, 126
II,1,6 73
II, 1,7 73–74
II,1,8 74, 96
II,2 4, 16, 75, 78, 79, 86, 92, 137
II,2,1 83, 84–86, 90, 101, 129–30
II,2,2 2, 14, 87–89, 130, 135–6, 236, 237
II,2,3 2, 14, 25–26, 157, 197–99, 238
II,2,4 2, 14, 90, 134
II,2,5 2, 14, 59, 88, 112, 143, 158
II,2,6 2, 14, 60, 112, 115, 143, 144
II,2,7 2, 14, 59, 112, 158
II,2,8 2, 14, 112, 113, 115, 118, 143, 158, 164
II,2,9 2, 14, 112, 123, 145, 180–81, 192, 208
II,2,10 2, 14, 112
II,2,11 2, 14
II,2,12 2. 14, 115, 143
II,3,1 75
II,3,2 75
II,3,4 75, 176
II,3,5 68, 75, 168

II,3,6 58, 75, 77
II,3,7 5, 75
II,3,10 75, 179, 230
II,3,11 75, 169, 231–32
II,3,13 75, 181–82, 192, 209
II,3, 14 75–76, 167, 213–14
II,3,15 75–77, 110, 170, 215–15, 234, 236, 342
II,3,16 2, 4, 165, 168, 201, 203, 215, 216, 220, 221, 227–29, 230, 231, 234
II,3,17 2, 4, 114, 213, 220
II,3,18 2, 4, 114, 213, 220–23, 231
II,3,19 77
II,3,20 2, 14, 20, 40, 45–46, 59, 69, 70, 77, 179, 180, 183–84, 190–91, 199, 206, 228
II,3,21 48–49, 176–77, 180, 189, 207–08
II,3,23 2, 14
II,3,24 56
II,4,1–15 124
II,5,1 71, 110
II,5,3 71
II,5,6 54
II,6,2 54
III 138
III,1–3 56
III,1,1 56
III,2,2 2, 14, 53, 59, 120, 145, 162
III,2,5 2, 14
III,2,8 39–40, 67, 121
III,3,8 54
III,3,15 40, 68
III,3,16 66
III,3,17 40, 58
III,4, 1 57
III,4,4 2, 14, 42–43, 157
III,4,6 32, 49–51
III,5,2 2, 14
III,5,3 2, 14, 28–29, 31, 64, 70
III,5,8 2–3, 14
III,6,9 3, 5, 14, 238
III,6,13 3, 14
III,7,4 3, 14
III,7,5 3, 5, 14
IV,1,20 5
IV,2,20 5
VI,2,1 41
VI,2,2 3, 14, 238–39
VI,2,3 3, 14
VI,2,4 41, 68
VI,2,10 140, 162–63, 201
VI,2,11 201
VI,2,12 201
VI,3,6 3, 14
VI,3,8 3, 14
VI,3,10 3, 14
VII,1 3, 14, 16, 114, 116, 137
VII, 1,2 16, 114, 178–79, 189, 224–25, 238–39
VII,1,3 114, 143, 225
VII,1,4 115, 226
VII,1,5 144
VII,1,7 10, 115, 121–22, 226
VII,1,8 71
VII,l,11 54, 208
VII,2,3 3, 14
VII,2,4 3, 5, 14
VII,2,9 3, 4–5
VII,2,10 3, 4–5, 14
VII,2,11 3, 4–5, 14
VII,2,12 3, 4–5, 14
VII,2,13 3, 5, 14
VII,2, 14 3, 15
VII,3,6 140
VII,4 10
VII,4,2–7 5
VII,4,8 3, 5, 15
VII,4,11 5
VII,4,12 5, 10
VII,4,13 5
VII,5,6 3, 15
VII,5,13 3, 15
VII,6,13 3, 15
VII,6,14 3, 15
VII,6,17 3, 15
VII,7,9 3, 15
VII,8,2 4, 15
VII,9 5
VII,9,10 59
VIII,1,2 4, 15
VIII,1,3 4, 15
VIII,1,4 4, 15
VIII,1,5 4, 15, 44, 67, 162, 184–85, 193, 209–11
VIII,1,6 4, 15
VIII,3,4 4, 5, 15
VIII,3,7 4, 6, 15, 59
VIII,3,8 4, 6, 15
VIII,3,9 6
VIII,3,33 4, 15
VIII,4,8 59
VIII,4,13 4, 15, 36–37

De officio (1673)
praefatio 71, 126–27
I,1,11 60
I,2,5 66–67
I,2,16 77
I,3,3 96
I,3,7 126
I,3,9 77
I,4 60, 122, 124
I,5 124
I,6,1 134
I,9,22 135
II,1 79, 89, 93
II,1,2–5 81
II,1,4 95–96, 135
II,1,5 89, 135
II,1,6 134, 135
II,1,9 94, 135, 235
II,1,11 94–95
II,9,5 233
Apologia (1674)
§ 11 131, 133
§28 152
§30 15, 152
§35 88–89, 131
Epistola ad Scherzerum (1674) 128, 153, 234
De statu (1674)
§1 97–98, 99
§2 98, 100, 129
§3 98, 101, 103
§4 98
§5 98, 100, 136
§6 98, 102
§7 89, 98, 107, 132
§8 98
§9 98
§10 64, 71, 99, 123
§ 11 99, 103
§ 14 99, 104
§15 99, 116
§ 16 99, 116, 117
§17 99, 104, 116–17, 118–19
§18 99, 104
§19 99, 104
§20 99, 104
§21 99, 104
§22 99
§23 105
§24 137
Epistola ad amicos (1676) 7, 15–16, 152–54
Specimen controversiarum (1678)
I 242
I,6 7, 15, 154–55
III 79, 89
III,3 79, 81
V,6 205
Spicilegium controversiarum (1680)
III,2 131, 133
Einleitung zu der Historie (1682) 136–37, 138
Julii Rondini Dissertatio epistolica (1684) 131, 133
Commentatio super invenusto Veneris Lipsicae pullo (1688) 7–8, 158
Letter to Ch. Thomasius (17-7-1688) 159

HOBBES
Elements (1640)
I,vii,3 60
I,x,10 140
I,xiv,12 139, 140
I,xv,2 138
I,xv,13 139–40
I,xvii,12 21
I,xvii,15 110
II,iii,2 140
II,iii,3 141
II,iv,10 140
De cive (1642)
praefatio 20, 109, 139
I 16, 116
I,2 14, 26, 27, 109, 114, 139, 143, 144, 178, 206, 215, 220, 224, 225, 234
I,3 14, 27, 120–21
I,4 27
I,5 27, 60, 116, 144
I,6 27, 144
I,7 25, 26, 27, 198
I,10 14, 122, 140
I,11 14, 28
I,12 14
I,13 139
II,1 5, 26, 27, 62–63, 122
II,2 110
II,4 14
II,6 14
II,7 14
II,8 14

II,11 14, 141
II,14 14
II,16 14
II,18 5, 14, 139
II,19 5
II,20 5
II,21 5
II,22 5
II,23 5
III 138
III,2 5
III,4 14
III,6 14, 24
III,11 6, 15
III,13 14, 120–21
III,15 14
III,16 14
III,17 14
III,18 14
III,27 27, 61, 63, 123
III,29 61, 63
III,31 22, 61
III,33 14, 21
V,2 61, 123
V,4 14
V,5 5, 14
V,6 5
V,7 14
V,9 5, 14
V,12 141
VI 10
VI,4 5
VI,5 5
VI,6 5
VI,7 5
VI,8 5
VI,9 5, 61
VI,10 5
VI,11 5, 15
VI,13 14
VI,14 21
VI,16 14, 21, 61
VI,20 14
VII,4 5, 15
VII,5 15
VII,6 15
VII,7 15
VII,14 15
VII,16 15
VIII,1 14, 109, 140
VIII,2 14, 35
VIII,3 14
VIII,4 14
VIII,5 14
VIII,7 14
IX,1 14
IX,2 14
IX,3 14
IX,4 14
IX,9 14
IX,10 140
X,1 14, 89, 94, 235
XII,1 14, 20, 43–44
XII,2 15
XII,8 15
XIII 6
XIII,9 14
XIV,l 5, 14, 21
XIV,2 5, 14, 21
XIV,3 5, 14, 21
XIV,4 5, 14
XIV,7 15
XIV,9 15
XIV,10 15, 61
XIV,17 61
XIV,19 14, 20, 42
XV 60
XV,2 14, 42
XV,5 14, 34, 42
XV,9 36
Leviathan (1651)
proemio 14
VI 20
X 15, 36
XI 59
XII 109
XIII 14, 20, 59, 109, 116, 139, 144, 162
XV 14, 24, 59, 164
XVII 139, 141
XVIII 10, 143
XX 141, 163
XXV 59
XXVII 59
XXVIII 6, 15, 59
De corpore (1655) 21
De homine (1657)
X 162, 200
X,5 14

XI,2 14, 22
XI,4 22–23, 61
XI,5 23, 60
XIII,9 162

CUMBERLAND
De legibus naturae(1672)
Intro. 5 169, 204, 205
Intro. 6 168, 204, 235–36
Intro. 7 169, 191, 204
Intro. 8 169, 191, 204
Intro. 9 190
Intro. 13 191
Intro. 14 206
Intro. 16 188, 212
Intro. 17 189, 207
Intro. 20 207
I 186
I,4 170
I,10 184, 191
I,20 175, 193, 212
II 186
II,5 192
II,29 164, 201
III 175, 186
III,1 187
III,3 188
III,4 189
V 166, 186
V,1 182, 190, 192, 200
V,3 207
V,5 193
V,9 173, 175, 206
V,13 168–69, 204, 206
V,14 202
V,16 202, 203
V,28 203
V,29 203
V,40 205, 206
V,41 205
V,54 205
VIII,1 194
VIII,6 164, 201
VIII,7 203

Index of Names

Abel 141
Adam 131, 132, 136
Alberti, V. 7–8, 131, 133, 137, 234
Althusius, J. 8, 142
Aristotle 2, 11, 20, 61, 129, 135, 143, 153, 154, 160, 210, 225–26
Arnim von, J. 161

Bacon, F. 9, 166, 205
Barbeyrac, J. xxxiv, 1, 26–27, 47, 52–53, 55, 62, 66–67, 69, 125, 131–32, 134, 135, 160, 201–02, 209, 235–42
Barry, B. 69
Bartolo 210
Bayle, P. 240
Bazzoli, M. 12, 62, 64, 127
Beckmann, N. 7, 152, 158
Becmann, J.C. 149, 157
Bentham, J. 63
Berkel van, A. 59
Bloch, O.R. 159
Bluntschli, J.C. 141–42
Bobbio, N. 7, 11, 13–14, 67, 127, 128, 137, 145, 158, 240, 244
Bodin, J. 8, 126
Böcler, J.H. 142, 210
Boineburg, J.C. 7, 150, 151, 155
Borrmann, R. 245
Brandt, R. 12
Brink, C.O. 161
Brufau-Prats, J. 11
Budde, J.F. 242

Cain 115, 116, 144
Callicles 34
Carneades 150, 230
Charles Ludwig, Elektor Palatine 6
Casaubon, J. 210
Catalano, S. 159
Chroust, A.H. 142–43
Cicero 157, 241, 243
Colish, M.L. 160
Conring, H. 210
Chrysostomus 160
Cumberland, R. xxxiv, 48, 62, 124, 149, 150, 153–54, 156, 162–212, 241

De Michelis, F. 161
Denzer, H. 8, 16, 62, 127, 130, 131, 211, 212, 240
Derathé, R. 10, 11
Di Carlo, E. 159
Diogenes Laertius 171
Dirlmeier, F. 161
Döring, D. 125–26
Droetto, A. 160
Droysen, G. 142
Dufour, A. 11–12, 66, 127, 130, 142, 239–40
Duso, G. 9
Dutens, L. 6, 67

Epicurus 154, 155, 156, 158, 159, 171, 230, 240, 243
Epictetus 160
Eve 131, 132, 136

Fabricius, J.A. 209–10
Fassò, G. 11, 132, 160
Fenelon, F. 242
Fetscher, 1. 62, 130
Fiorillo, V. 16, 65, 244
Firpo, L. 128
Friedrich, C.F. 65

Gassendi, P. 159
Gentillet, 1. 210
Gesen, F. 158, 204
Gierke, 0. 8, 10, 13, 65, 142
Goldschmidt, V. 10, 13, 130
Gori, G. 159
Gronovius, J. 210
Grotius, U. 1, 10–11, 12, 15, 16, 35, 65, 125, 126, 127, 143, 150, 154, 156, 157, 158, 159–61, 239, 241, 244

Haggenmacher, P. 160
Hammerstein, N. 69, 142
Hargreaves, M. 7
Hertius, J. H. 127

Heumann, C.A. 60, 144
Hinrichs, H.F.W. 160, 212
Hofmann, H. 12
Homer 121
Hont, I. 12, 127, 242
Hood, F.C. 61, 69
Horace 231
Horn, P.G. 159
Horn, J.F. 115, 135, 144
Huber, U. 204
Hufeland, G. 128
Hutcheson, F. 127

John of Salisbury 159

Kant, I. 66
Kelsen, H. 66
Koselleck, R. 59, 143
Krammick, I. 60
Krieger, L. 16, 131, 133, 138, 142
Kurth, J. 246

Labrousse, R. 9
Lachmayer, F. 65, 66
Lamprecht, S.P. 60
Landsberg, E. 8
Landucci, S. 16, 139, 141, 143–44
Laurent, P. 13
Leibniz, G.W. 6–7, 9, 47, 67–68, 69, 70, 141
Liden, J.H. 135
Link, C. 13
Lipp, M. 66, 128
Lipsius, G. 159, 210
Livy 66, 209
Locke, J. 10, 13
Long, A.A. 161
Lucretius 87, 125–26
Ludovici, J.F. 242

Macdonald, H. 8
Machiavelli, N. 150, 209–11, 239, 241–42
Magri, T. 63, 141
Malusa, L. 159
Mancini, O. 9, 65, 70, 129, 134, 141
Marcus Aurelius 160
Marx, K. 7
Mascovius, G. 145, 204
Mathieu, V. 67
Mautner, T. 63–64, 70, 127
Medick, H. 10, 130, 137, 138
Meinecke, F. 142
Mencken, O. 158
Meylan, P. 239
Michelmann, Ch. 158
Molesworth, W. 60
Momigliano, A. 159, 210
Mori, M. 9, 12, 127, 129, 209, 211

Naudé, G. 210
Neumann, J.F.W. 9
Niléhn, L. 142
Nutkiewicz, M. 9, 13, 66, 69

Olivecrona, K. 70
Osiander, J.A. 172–73, 205
Othmer, S.C. 239
Ovcrgaauw, E.A. 59

Pacchi, A. 158
Pagden, A. 12, 127
Palladini, F. 8, 67–68, 68–69, 124, 125, 126, 131, 157, 158, 204, 205, 206, 234
Paterculus, Velleius, 159
Pembroke, S.G. 161
Phillipson, C. 10
Plato 33, 153, 241
Plautus 113
Plutarch 66, 160
Pohlenz, M. 161
Polybius 209–11
Porphyry 160
Procacci, G. 210

Rabe, H. 11
Ramsay, A.M. 242
Raphael, D.D. 69
Reale, M. 240
Röd, W. 8, 11, 13, 62, 65, 69, 129, 133, 135–36, 137, 138, 205, 212
Rousseau, J.J. 10, 2, 240

Saint Jerome 159
Saint Paul 159
Santinello, G. 159
Sasso, G. 209
Sauter, J. 8, 65, 128–29, 133, 142

Scherzer, J.A. 128, 153, 234
Schmauss, J. 142
Schnur, R. 59, 143
Schoneveld, C. W. 59
Scioppius, G. 210
Seneca 159
Settala, L. 210
Sharrock, R. 126, 234
Smith, A. 10
Sortais, G. 9, 159, 233
Spanneut, M. 160
Spinoza, B. 9, 13, 145, 149, 157, 199
Spitz, J.F. 13, 16, 129, 137
Stahl, F.J. 128
Stenbock, G.O. 135
Stintzing, R. 8
Stolleis, M. 69
Strimesius, S. 131, 133, 137, 204, 205

Tacitus 159
Tamm, D. 142
Taylor, A.E. 69
Telemaque 241
Thieme, H. 142
Thomasius, Ch. 127–28, 136, 139, 159, 242
Thomasius, J. 210
Titius, G.G. 121
Todescan, F. 12, 14, 65, 160
Tönnies, F. 8, 60
Tommasini, O. 209
Treitschke, H. 245, 246
Tricaud, F. 59, 143
Thucydides 33
Tuck, R. 63, 64, 70, 127, 158, 160–61, 211
Tully, J. 13, 64

Veltheim, V. 204
Verbeke, G. 159
Veridicus Constans, see Beckmann, N.
Vigil, Christianus, see Gesen, F.
Villey, M. 8, 11

Warrender, H. 61, 69
Wehler, H.U. 138
Weigel, E. 65
Welzel, H. 65, 127, 141
Wieacker, F. 8, 142
Wolf, E. xxxiv, 8, 11, 129, 137–38, 141, 244

Zeno (the Stoic) 157
Zentgraf, J.J. 204
Ziegler, C. 205