

Pufendorf disciple of Hobbes: The nature of man and the state of nature: The doctrine of *socialitas*[☆]

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Abstract

No doctrine of Pufendorf's is better known than that of *socialitas*. The reason is that Pufendorf himself declared that *socialitas* was the foundation of natural law. No interpreter of Pufendorf can therefore avoid dealing with it. Moreover, Pufendorf linked the issue of *socialitas* to the question of the state of nature, thus raising important issues with both theological and philosophical implications.

Given the prominence and importance of this theme in Pufendorf's work, a close analysis of what he meant by it is central to the interpretation of his work, even though this means to pose again a new number of questions already discussed in the scholarly literature. In particular, this article examines the relationship between Pufendorf and Hobbes with regard to this central theme. In fact, a traditional historiographic *topos* is that Pufendorf and Hobbes fundamentally

[☆]The publication of this text, in this form, may require some explanation. In what it now appears the very distant June 1989, the Max-Planck-Institut für Geschichte in Göttingen organised an International Workshop on 'Unsocial Sociability: Modern natural Law and the 18th-Century Discourse of Politics, History and Society'. The proceedings of that Workshop were never published, even though individual contributions have piecemeal appeared since then. My own contribution consisted in a short extract from a chapter from my book *Samuel Pufendorf discepolo di Hobbes. Per una reinterpretazione del giusnaturalismo moderno* (Bologna, 1990), which appeared in print the following year. For this reason, I considered the separate publication of that intervention as superfluous. Rather naively I underestimated the fact that the publication of my book in Italian restricted its circulation in the Anglo-American academic circles, and even if occasionally quoted, the book would not be much read. Recently, following the solicitations of many friends to present in English part of the theses developed in that book, I had decided to have my intervention at the Göttingen Workshop finally published. After all, this had amply circulated as a manuscript and been cited by many in that form. But while I was planning to revise that manuscript, I was presented with the draft translation of the second chapter of my book done by Dr. Melissa Calaresu of Cambridge University, when she was still a graduate student. It is probably better to leave aside the story of why Melissa did that translation, but I am extremely grateful to her for having allowed me to use it as the basis for this piece, which is therefore a revised version of the second chapter of my Italian book on Hobbes. I have decided to publish it in English with some hesitation, at least for two reasons. First, because with the publication in English of only part of my book I may risk to reinforce a rather simplified interpretation of my work, and consequently of Pufendorf's thought, that his main contribution lies in his doctrine of *socialitas* and of the state of nature. I am instead firmly convinced that the most important parts of my own work are those that are still untranslated, that is those on the nature of moral obligation and that of moral entities, beside the comparison I make in the second part of the book between the first and the second edition of *De iure*. Secondly, because during the intervening years I have distanced myself from a conception of the history of philosophy understood as an internal analysis of the texts, and have become more attentive to the context in which to place philosophical texts. I have therefore developed a slight impatience towards the rather nick-picking analysis of texts, which with a certain virtuosism I performed in the book. Nonetheless, since even after so many years I do not believe that the theses I developed in that book have lost their force, I am happy for this partial translation, with some essential bibliographic updating, to appear, in the hope that such theses will be finally discussed for what they are and not on the basis of second-hand reports. I am grateful to Dario Castiglione for his precious help with the final revision of the text, and to Richard Whatmore and Brian Young for their willingness to publish this translation in their Journal.

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disagree on the doctrine of *socialitas*, while the former is closer to Grotius and to the Aristotelian-classic tradition that see man as a social animal.

This article takes, instead, Pufendorf to be a follower of Hobbes, and tries to explain how the more traditional view of Pufendorf as a critic of Hobbes was in some way due to Pufendorf's own attempt to distance himself from the accusations of Hobbesism (and hence of atheism and moral indifference) that the critics made against him when his work first appeared. In order to do this, Pufendorf tried to rethink his own position within the history of ethics, and put himself on the side of the Stoics, of Grotius and of Cumberland, against Epicurus and Hobbes. This retrospective 'illusion' has greatly influenced later scholarship, giving us a distorted image of Pufendorf's own view of *socialitas*. A more precise account of the latter gives a better perspective from which to look at the relationship between Pufendorf and Hobbes.

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Human nature

No doctrine of Pufendorf's is better known than that of *socialitas*. Generations of interpreters, both critics and defenders, have confronted themselves on this doctrine,¹ if for no other reason than the one stated by Pufendorf himself in Praefatio of *De iure*, that he had made *socialitas* the *fundamentum universi iuris naturalis*. No interpreter of Pufendorf, whether in agreement with him or not, can avoid dealing with his doctrine of *socialitas*, for this is what gives its particular physiognomy to the discipline of natural law as understood by Pufendorf. According to him, such discipline is only concerned with that law which *in societate tam universali quam particulari sit sequendum*, that is, a discipline primarily concerned with the duties towards others, taking into consideration duties towards God (namely, religion), only *quatenus illa societatibus hominum efficacissimum vinculum praebet*, and the duties towards oneself only in so far as these duties have some *reflexio ad alios homines*.² Moreover, to make this theme particularly attractive, Pufendorf linked it to the question of the state of nature: an issue of the utmost importance due to its theological and philosophical implications.

It would seem then superfluous to recount for the nth time that Pufendorf finds the foundation of natural law in human nature because he has been made *socialis* by God, or that his state of nature is a miserable but peaceful state. One could continue like this with notions that have become an established tradition not only for the reader of his works, but even for the reader of textbooks on the history of natural law. However, since the popularity of a theme tends to obscure its original meaning, I believe that we are not wasting our time by again proposing the following problems to the reader: what does Pufendorf mean with his assertion that *natura hominis semper ad socialitatem in genere a Creatore determinata est*, or that *natura hominis a Creatore socialis facta est*?³ What does it mean to make human nature the *regula et fundamentum* of natural law? What function does the consideration of the natural state have in the deduction of this law?

¹For the reactions of contemporaries to this and other aspects of P.'s thought, see Palladini. *Discussioni seicentesche su S. Pufendorf. Scritti latini 1663–1700*. (Bologna, 1978) in which there is also precise bibliographical information and extracts of the writings of P.'s critics, which are referred to in this article.

²The passage from the Praefatio of the first edition of *De iure* to which I refer in the article is particularly effective: 'Dantur sane et officia seu virtutes tum adversus Deum tum adversus seipsum. Verum cum religio, quatenus ad disciplinam iuris naturalis pertinet, intra sphaeram huius vitae terminetur: eo quoque intuitu ad socialitatem referri potest, quatenus illa societatibus hominum efficacissimum vinculum praebet. Et quae adversus seipsum homini observanda sunt, eundem utique societati commodiorem reddunt. Quatenus autem sit illa *morum honestas et innocentia ubique et extra societatem servanda*, seu citra reflexionem ad alios homines, nondum dispicere potui.' Samuel Pufendorf, *Gesammelte Werke* Hrsg. Wilhelm Schmidt Biggemann, Band 4: *De iure naturae et gentium*, Hrsg. Frank Böhling, Erster Teil. (Berlin: Akademie Verlag, 1998) 9 (lines 32–38). From now on quoted as *ING* followed from book, chapter, paragraph, page and lines. The often virulent criticism for not having included in the first edition of his work an analysis of the duties towards God and of those towards oneself may have led Pufendorf to insert two chapters in *De officio* (the fourth and fifth chapters of the first book: *De officiis hominis erga Deum seu de religione naturali* and *De officiis hominis erga seipsum*) as well as to add the first 15 paragraphs of II,4 in the second edition of *De iure*.

³The passage in question from the Praefatio of the first edition of *De iure* is as follows: 'Nam natura hominis semper ad socialitatem in genere a Creatore determinata est, sed peculiare societates constituere atque inire ex ductu rationis in hominum arbitrio relictum: per quod nullo modo ius naturale redditur arbitrarium. Quid porro planius est, quam hoc: naturam hominis, quatenus a Creatore socialis facta est, esse regulam et fundamentum eius iuris, quod in societate tam universali, quam particulari sit sequendum.' *ING*, p. 9 (lines 40–44).

To answer these questions we can begin by looking at how and why the theme of human nature was introduced in *De iure naturae et gentium*. In this work, the theme appears for the first time in the first chapter of the second book, in order to explain why God had never conceded to man, ‘such a wild Liberty, as should empower them to act merely as they list, and as their wandering Inclinations lead them; without being under the Restraint of any Rule, Necessity or Law’ (II,1,1,93),⁴ that is, to explain why God had not conceded to man this *licentia exlex* which He had given to animals. Why this is so, says Pufendorf, comes from many reasons arising from ‘the Primitive and from the accessory State and Condition of human Nature’ (II,1,5,95).⁵ Exactly what this human condition is (considered here in opposition to the condition of animals) is illustrated in sections 5–8 of the same chapter. In the first place, ‘the Dignity of Man and his Excellency above all the other parts of the animal World’ (II,1,5,95) required that the actions of man were subject to a law, ‘without which no Order, no Decorum, no Beauty can be conceived’ (95). This dignity and excellency (*dignitas et praestantia*) were identified with the possession of an immortal soul which was ‘endued with the Light of Understanding, with the Faculties of judging and of choosing things, and with an admirable Capacity for Arts and Knowledge’ (95). Secondly, the greater wickedness of man compared to animals required a law. Animals are driven by sexual desire and by hunger solely for the purpose of reproduction and survival; man in both reproduction and survival *titulari vult*. Animals do not need clothing while man uses them as an opportunity to show off. In addition, man falls prey to a number of passions unknown to animal: ‘Covetousness, Ambition, Vain-glory, Envy, Emulation, Contentions of Wit’ (II,1,6,96). In ‘so violent a Fierceness, and in so wide a Diversity of Affections and of Desires’ (96), what would have been human life without law?

We should see nothing but a furious Multitude of Wolves, of Lions, of Dogs tearing and devouring each other. Every Man would indeed be a Lion, a Wolf, a Dog to his Neighbour, or rather a Monster, more pernicious, and more spiteful, than the fiercest of these Creatures; since Man, of all Living Things, is the most able to hurt Man, and, if left to his own furious Passions, the most willing. And since Men are continually bringing so many Evils and Mischiefs on one another, while they now live under the Force of Law, and under the Fear of Punishment, what would become of the World, if they were left to the wild Sway of their Corruptions, if they had no inward Bridle to curb their Inclinations and to check their Pursuits (II,1,6,96).

Thirdly, he adds that ‘a much greater Variety of Dispositions may be discovered in Men than in Beasts’ (II,1,7,97). While animals, in fact, have more or less similar inclinations and desires, among men ‘there are not more Heads than Wits’ (97) and, therefore, ‘human Life would be nothing else but Noise and Confusion, were not the jarring Dissonance composed and sweetened by Law, and turned into a musical Agreement’ (II,1,7,97). And, finally, ‘it was not expedient for man to live without Law upon account of his exceeding Weakness’ (II,1,8,97). While animals become adults in a short time and learn early on to get food without any need of *aliorum societate*, men require many years and much education before being able to procure their own means of sustenance without others’ help. In order to realise the great weakness of man when left to his own devices:

Let us suppose a Man bred up by another, just so far as to be able to walk, and without hearing a Word spoken, insomuch that he shall be destitute of all Instruction and Discipline, and enjoying no Knowledge, but such as sprouts naturally from the Soil of his Mind, without the Benefit of Cultivating; let us suppose the same Man to be left in a Wilderness or Desert and entirely depriv’d of the Company and of the Assistance of others: What a wretched Creature should we at last behold! [...] ⁶ That Mankind therefore do

⁴All citations from *De iure* include the page references to Basil Kennet’s translation: Samuel Pufendorf. *The Law of Nature and Nations*. 4th ed. (London, 1749).

⁵Barbeyrac understands this distinction as follows: ‘We must understand by the Primitive State, that in which Man was, when he came out of the Hands of his Creator, considered purely and simply as a Man, before he had made any Use of his Faculties, whereas, his accessory State (*post superveniens*) is that wherein he is left to himself, and, consequently, supposes the Use of his Faculties. The first is treated of in this paragraph, and the other in the three following.’ (95) (note 1 to *De iure* II,1,5). In our opinion, P. wants to allude here to the fact that, in delineating the characteristics of human nature, he intends to leave aside the question about whether these very characteristics were those original to man (*natura integra*) or those succeeding original sin (*natura corrupta*) and instead to consider human nature as it is now in its inseparable unity of good and wicked inclinations.

⁶The description of man’s misery that follows this passage is largely borrowed from Lucretius. For the use that P. makes of Lucretius, see Fiammetta Palladini. *Lucrezio in Pufendorf*, ‘La Cultura’. 19 (1981) 136–175.

not pass their Life in a more forlorn and a more deplorable Condition than any other living Thing, is owing to their Union and Conjunction, to their Intercourse with the other Partners and Companions of their Nature. [...] But now without Law, 'tis impossible that any Society should be either introduc'd or maintain'd in Strength and Quietness. And consequently, unless Man had been design'd for the basest and the most wretched Part of the Animal Creation, it was not by any means convenient that he should live loose from all Direction and Obligation of Law. (II,1,8,98).

This is then the first delineation of human nature which we find introduced in *De iure* to demonstrate that the natural liberty which is due to man will be conceived always with some constraint, that of sound reason and of natural law. It is clear that natural sociability is in no way listed here among the characteristics of man. In fact, we have seen that, compared with other animals, man is endowed with far superior intellectual and moral capacities, that he is much more wicked than animals and possesses a gamut of passions and desires much wider than the uniform instincts of animals, and that man is much weaker than animals but we have not seen that he is endowed with a natural sociability. Nevertheless, it is true that all these characteristics of human nature point to the necessity of a law, and that this law is conceived, in all four cases, as the indispensable instrument with which to create an ordered and tranquil society among men. This is immediately evident in the last characteristic of human nature, *imbecillitas*. In fact, given his great weakness, man is not the most miserable of all animals by virtue of *coniunctio* and of *societas sui similibus*. However, since *societas* among men can neither be formed nor preserved without a law, man is then subject to a law. This is also true in the case of the second and third characteristics of human nature: *pravitas* operates in such a way that a norm is required to check human passions (otherwise, the relations among men would be similar to those among wild beasts who fight each other at will) and the *varietas ingeniorum* requires a law with which to bring harmony to the contrasting desires of men. Finally, even the case of the first characteristic, that is the greater dignity of human nature in relation to the nature of animals—which seems at first sight odd in comparison to the others—is, at careful examination, reconcilable with the same reasoning which we have seen used in others. In fact, the splendid gifts which God conceded to man, gifts which require a law for them to be cultivated and not wasted in disorder and neglect, have a social relevance; that is, they are gifts which in particular concern *vitam socialem ac civilem* and, therefore, would be of 'very little use, or rather none at all, in a lawless, a brutal, and an unsociable Life' (95).

If, then, among the characteristics of human nature we do not find natural sociability, those listed (*dignitas*, *pravitas*, *varietas ingeniorum*, and *imbecillitas*) all refer in some way to *societas hominum*. To better understand exactly what kind of reference this is, we will now examine the second group of paragraphs in which Pufendorf turns to analyse *ex professo* human nature.

The third chapter of this second book—after a digression on the state of nature in the second chapter—continues from the conclusion of the first chapter: that man is unable, given his condition, to live *exlex*. It is therefore now a question of establishing what is this 'most general and universal Rule of human Actions, to which every Man is obliged to conform, as he is a reasonable Creature' (II,3,1,95), namely, to determine what is called law of nature, an expression which (Pufendorf notes) had already entered common language. In a series of paragraphs which constitute the *pars destruens* of the argument, it is shown what is not a law of nature, what it does *not* concern, and from where it is *not* deducible (II,3,2–13). This is followed by the *pars construens* of the argument in which a definition of the law of nature is drawn from the analysis of *hominis natura (conditio et inclinationes)* (II,3,14–15). In this third chapter, the analysis of human nature then is introduced as a way (of which no better is known) *ad investigandum ius naturale*. In fact, since the law of nature had been imposed on man 'to advance his Happiness, or to check his Wickedness (which might otherwise break out to his own Destruction)' (II,3,14,133), the best method of understanding what is the law of nature is by examining 'in what Points and Respects he [man] hath need of Assistance, and in what he hath occasion for Restraint and Controul' (133), namely, by examining what is human nature. This, according to Pufendorf, is characterised by the following traits:

In the first Place then, Man hath this in Common with all other Creatures endued with a Sense of their own Being, that he loves himself as highly as is possible, that he endeavours, by all ways and means to secure his own Preservation, to obtain what appears conducive to his Good, and to repel what is in his Judgement Evil; [moreover] Besides this Self-love, and this Desire of preserving himself by all Means and Methods,

there is discoverable in Man a wonderful Impotence and natural Indigence; so that if we should conceive any single Person quite destitute of the Assistance of others, we should conclude his Life was given him rather for a Punishment than for a Blessing. It is further manifest, that, next to the Support and Defense of Heaven, Men draw their chief Help and Comfort from each other. [...] And as Men thus appear to be so vast a Support and Help to each other, so may they, likewise, in as eminent a manner, prove a mutual Plague and Mischief; and they do often actually prove so, either upon the Instigation of their brutish Passions, or being compell'd by their Necessity of defending themselves from the Injuries and Assaults of others (II,3,14,133–4).

The characteristics of human nature in this passage are *amor sui*, *imbecillitas*, and the fact that man can help as well as harm his fellow men. It is easy to recognise in this at least two of the four characteristics listed in II,1: *imbecillitas*, which in the earlier chapter resulted in man needing the help of other men, appears here as such and as the capacity of men to be helpful to each other, while the characteristic *pravitas* of II,1 is here presented as a disposition of men to be harmful to each other. However, the other element of this passage is that no one of the characteristics of human nature derives from natural sociability.

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

Thus much being granted, it is an easy Matter to discover the Foundation of Natural Law. Man is an Animal extremely desirous of his own Preservation, of himself expos'd to many Wants, unable to secure his own Safety and Maintenance, without the Assistance of his Fellows, and capable of returning the Kindness by the Furtherance of mutual Good: But then he is often malicious, insolent, and easily provok'd, and as powerful in effecting Mischief, as he is ready in designing it. Now that such a creature may be preserv'd and supported, and may enjoy the good things attending his Condition of Life, it is necessary that he be social; that is, that he unite himself to those of his own Species, and in such a Manner regulate his Behaviour towards them, as that they may have no fair Reason to do him Harm, but rather incline to promote his interests and to secure his Rights and Concerns. This then will appear a Fundamental Law of Nature, *Every Man ought, as far as in him lies, to promote and preserve a peaceful Sociableness with others, agreeable to the main End and Disposition of human Race in General.* [...] From all which it follows, that since he who obliges us to any End cannot but at the same Time, be suppos'd to oblige us to those Means, which are necessary to the Attainment of that End, *all actions which necessarily conduce to this mutual Sociableness, are commanded by the Law of Nature; and all those, on the contrary, are forbidden, which tends to its Disturbance, or Dissolution* (II,3,15,134).

From this passage, it is clear that *socialitas* is not a characteristic of human nature, but a type of behaviour that man must follow, so that he may be 'preserved and supported, and may enjoy the good things attending his Condition of Life' (*ut salvum sit bonisque fruatur quae in ipsius conditionem heic cadunt*).⁷ This behaviour consists in acting towards others in such a way as to avoid giving them the pretext to do harm, but instead

⁷That here P. makes self-preservation the deductive foundation of natural law, was observed by his own contemporaries and is now also admitted by some of his shrewdest critics. Among contemporaries see, above all, Gottlieb Gerhard Titius, *Observatio* 78 to S. Pufendorf, *De officio hominis et civis ... cum notis G.G. Titii*, Leipzig 1703. Among more recent authors, Istvan Hont. *The Language of Sociability and Commerce*: S. Pufendorf. *The Theoretical Foundation of the 'Four-Stages Theory'*. Ed. A. Padgen. *The Languages of Political theory in Early-Modern Europe*. (Cambridge, 1987) 253–276, in part. p. 267; R. Tuck, *The 'modern' theory of natural law*, ivi, pp. 99–119, in part. p. 105. The relationship between Pufendorf and Hobbes has been at the centre of many recent discussions in the specialised literature. Here, I mention only those texts that I regard as having made the most interesting contributions on this subject: Michael Seidler, *Introduction to his edition with English translation of Pufendorf's Dissertatio De statu hominis naturali*: S. Pufendorf, *On The Natural State of Man. The 1678 Latin Edition and English Translation. Translated, Annotated and Introduced by Michael Seidler*, Leviston 1990. James Tully, Editor's Introduction to *Samuel Pufendorf, On the Duty of Man and Citizen According to Natural Law*, edited by James Tully, translated by Michael Silverthorne, Cambridge 1991. Thomas Behme, *Samuel von Pufendorf: Naturrecht und Staat. Eine Analyse und Interpretation seiner Theorie, ihrer Grundlagen und Probleme*, Göttingen 1995. Pauline Westerman. *The Disintegration of Natural Law Theory. Aquinas to Finnis*. (Leiden, New York, Köln, 1997) 181–227. Kari Saastamoinen. *The Morality of the Fallen Man. Samuel Pufendorf on Natural Law*. (Helsinki, 1995). Knud Haakonssen. *Natural Law and Moral Philosophy. From Grotius to the Scottish Enlightenment*. (Cambridge, 1996) 37–43. J.B. Schneewind. *The Invention of Autonomy. A History of Modern Moral Philosophy*. (Cambridge, 1998) 118–140. Ian Hunter. *Rival Enlightenments, Civil and Metaphysical Philosophy in Early Modern Germany*. (Cambridge, 2001) 148–196. The best annotated bibliography on Pufendorf in general (at least until 1992) can be found in the important study by Detlef Döring. *Pufendorf-Studien: Beiträge zur Biographie Samuel von Pufendorf und zu seiner Entwicklung als Historiker und theologischer Schriftsteller*. (Berlin, 1992).

giving them reasons to do good. In this passage, the *sociabilis* character of man is not a fact of his nature but a moral imperative.⁸ Pufendorf does not say ‘man is naturally sociable’, but rather ‘man must be sociable’. To be sociable is an ideal to which men must aspire, and not a fact of nature.⁹ It is difficult to account for the common image of Pufendorf as someone who, having assigned the attribute of *socialitas* to human nature, makes this the foundation of natural law, if we do not allow for the fact that, in truth, Pufendorf’s use of the notion of *socialitas* is less univocal than it may so far appear.

In fact, when Pufendorf defines the law of nature as ‘that which is agreeable with the natural and sociable Nature of Man’ (*De officio* I,2,16,52),¹⁰ and when he says that *socialitas* is the ‘Principle which we have established for deducing the Law of Nature, as it is the most Genuine and the most clear; so we take it to be in such a high Degree adequate and sufficient’ (*De iure*, II,3,19,139), he understands under the traditional image (but not for this any less ambiguous) of a social nature of man two different concepts, even though there are connections between them. On one hand, when he indicates that God has given man a social nature, what he means to say is what he expresses better when he affirms that ‘God has given Man a sociable Nature’ (II,3,6,121), and better again when he makes it clear that ‘this Supreme Being having so formed and disposed the Nature of Things, and of Mankind, as to make sociable Life necessary to our Subsistence and Preservation’ (II,3,20,141). He means to say then that human nature is made in such a way that man is not able to do without the help of others: he is sociable in the sense of ‘needing *societas*’. On the other hand, when he makes *socialitas* the foundation of natural law, what he has in mind is the *law of socialitas*, which says that ‘every man ought, as much as in him lies, to preserve and promote society’ (*De officio* I,3,9,56). What he means to assert is that there is no ‘natural Obligation [...] the reason of which is not terminated here’ (*ullum praeceptum iuris naturalis [...] cuius ratio non ultimo exinde petatur*) (*De iure*, II,3,19,139–140), or rather that *socialitas* is the foundation of all precepts of natural law in the sense that *socialitas* summarises them in itself, just as it said in the Gospel ‘dilectio summa legis dicitur.’¹¹ In Pufendorf’s doctrine of *socialitas*, one should not see the venerated conception of man, as an animal who loves his fellow men’s company, and is naturally inclined towards entering society, but rather a conception of man as a weak and potentially wicked animal, compelled by *amor sui* to defend his own life and by the superior gifts which he has been given to make his life *culta*, and who, being unable to obtain these ends without the help of his peers, enters society with them, and behaves in such a way as to maintain society.

All of this was represented by Pufendorf in the notion of *socialitas* because the *law of socialitas* refers to the imperative ‘be sociable’, or ‘behave in so as to not alienate but reconcile yourself with your fellow men’ and because the *natura sociabilis of man* refers to the notion of a man who, given his weakness and wickedness and the greater demands that he has in respect to other animals, cannot do without the *societas* of his fellow men to live and be happy.

The state of nature

If this is how we believe the conception of human nature and of *socialitas* can be reconstructed, how does the notion of the state of nature enter into all of this and what function does it have in the Pufendorffian construction of the discipline of natural law? This question is not as superfluous as it would seem at first glance, due perhaps to the recognition of the great importance that Pufendorf gives to the position of man in the state of nature already at the offset of his ‘system’. In fact, since the first book of *De iure* acts as a general

⁸In the first chapter of my *Pufendorf discepolo di Hobbes*, I discussed at length the fact that the moral imperative to ‘be sociable’ is a law only in so far it is God’s will. For a discussion of the strong rationalist character that the ‘voluntarist’ foundation of the law of nature has in Pufendorf, see F. 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) 397–420.

⁹This is the main difference between P. and Grotius. On this topic, see: F. Palladini, ‘*Appetitus societatis*’ in Grozio e ‘*Socialitas*’ in Pufendorf, ‘*Filosofia Politica*’ X (1996) 61–70.

¹⁰All citations from *De officio* include page references to the English translation by Andrew Took (1691): Samuel Pufendorf. *The Whole Duty of Man According to the Law of Nature*, Edited and with an Introduction by Ian Hunter and David Saunders (Natural Law and Enlightenment Classics, Knud Haakonssen General Editor). (Indianapolis: Liberty Fund, Inc., 2003).

¹¹Samuel Pufendorf. *Gesammelte Werke* General Editor Wilhelm Schmidt Biggemann, vol. 5: *Eris Scandica*. Ed. Fiammetta Palladini. (Berlin: Akademie Verlag, 2002) 64 (lines 17–18) = *Epistola ad Scherzerum* (1674). From now on quoted as *ES* followed from page and lines.

introduction to the problems of moral science (as explicitly stated by the author)¹²; the second chapter of the second book, which is entirely dedicated to the treatment of *de statu hominum naturali*, is the actual beginning of Pufendorf's treatment of the discipline of natural law. Nevertheless, while Pufendorf's description of the state of nature remains impressive, the reader who focuses his or her attention on the logical framework in which this is placed may realise—not without some surprise—that in *De iure* such a description is presented more like a parenthesis in an argument that seems to stand on its own. In fact, when he begins the deduction of the law of nature, which we have discussed above, Pufendorf does not link this to what he has just said on the state of nature, but rather to the preceding chapter in which he demonstrated that the condition of man does not suffer liberty *exlex*. And, since the condition of man had been delineated in that chapter independently from the consideration of the state of nature (as we have seen above), it would seem that this last consideration is not logically necessary to the deduction of the fundamental law of nature. On the other hand, Pufendorf himself seems to understand things in these terms, judging from the way in which he organised the themes of his system of natural law so as to present them schematically in *De officio*. In fact, in this shorter work, the doctrine of the state of nature is not a preamble to the deduction of natural law, as in *De iure*, but rather it is placed after it and after a long analysis of the duties of man implicit in that law. It serves then as the introduction to the analysis of the duties of the citizen. The organisation of the material of *De officio*, therefore, seems to confirm the impression that one gets from the study of the logical framework in which the doctrine of the state of nature is placed in *De iure*; namely, that the doctrine of the state of nature is not indispensable to the foundation of natural law. However, in examining this carefully, things are much more complicated than they seem from this first consideration, and therefore it would be useful to take up again from the beginning the entire subject *de statu hominis naturali* and go through again the various formulations which Pufendorf gives to it.

The definitions of the state of nature

Pufendorf in fact turned to this theme many times, tirelessly re-proposing distinctions and sub-distinctions of the various meanings of the 'state of nature' in an attempt to obtain a level of clarity that, to tell the truth, was vain to look for in definitions. This lack of clarity, as we shall see, was due to the complexity of the role that the notion of the state of nature played in his system. We will refer here only to the systematic analyses of the state of nature (therefore leaving aside the numerous important passages of his polemical writings, where Pufendorf returned to discuss this or that aspect of his doctrine, in order to respond to objections moved against it, and to clarify the meaning of those passages that had caused some dispute). They are the two discussions contained in *De iure* (the famous analysis in the second chapter of the second book which we have already mentioned and the analysis found in the doctrine of moral entities (I,1,7)), the discussion, already cited, in *De officio* (II,1), the dissertation of 1674 entitled *De statu hominum naturali*, and, finally, the chapter concerned entirely with the state of nature in the polemical work *Specimen controversiarum* (cap. III).

If we limit our analysis to the definitions of these discussions, it seems easy to say what the state of nature is for Pufendorf. For example, one cannot doubt that the state of nature is a moral entity if one just pays attention to what he says in book I of *De iure* as an explanation of a thesis already outlined in the *Elementa*,¹³ in analogy to physical substances, implying a space in which they exercise their physical motions, moral persons are conceived as being in a state in which they exercise their actions and their effects. This state which designates, therefore, the moral *ubi* of the agent can be either *natural* or *adventitious*: the first is that which 'was imposed by God himself, not by Man, and affects us immediately upon our Nativity'(I,1,7,4) and the second is the state which 'obligeth Men at, or after their Birth, by the Authority of some human Constitution'(5). Pufendorf himself says that this state, therefore, as a moral entity is called natural not 'because such a State flows from the internal Principles of human Essence, antecedent to the Power of Imposition; but because it

¹²*De iure*, I,1,1.

¹³S. Pufendorf. *Elementorum Iurisprudentiae universalis libri duo* (1 ed. Hagae Comitum 1660), repr. of the ed. Cambridge 1672 with Engl. translation of W.A. Oldfather in 'Classics of International Law 15, Oxford-London 1931 (repr. New York, Oceania, 1964), Book I, Definition III: 'Status est ens suppositivum morale, in quo obiecta moralia posita et potissimum personae dicuntur esse' [The state is a 'supporting' moral entity (in the sense that it acts as something that supports and lies underneath), within which one discerns moral objects and moral persons].

was imposed by God himself, not by Man, and affects us immediately upon our Nativity' (4). He repeats many times that this state is considered natural in a threefold sense. In the first chapter of *De iure* he writes:

We are wont to consider the natural State of Man, either absolutely, or with relation to other Men: The former Notion, till we can find a more convenient Term, we may express by the word Humanity, importing that Condition in which Man is plac'd by his Creator, who hath been pleas'd to endue him with Excellencies and Advantages in a high degree above all other Animate Beings. [...] To this State is oppos'd the Life and the Condition of irrational Animals. [...] The Natural State of Man, consider'd with relation to other Men, is that which affects us upon the bare account of an universal Kindred, resulting from the Similtude of our Nature, antecedent to any human Act or Covenant, by which one Man is rendered peculiarly obnoxious to the power of another. According to which Sense, those Persons are said to live in a State of Nature, who neither obey one Common Master, nor are at all subject one to the other, nor have any Acquaintance by the means of Benefits, or of Injuries. To which may be added a third Notion of a natural State, as it abstracts from all Inventions and Institutions brought in, either by Human Industry, or by Divine Revelation, for the Grace and the Conveniency of Life (I,1,7,4–5).

More schematically, in *De officio* he affirms that:

The Natural State, by the Help of the Light of Natural Reason alone, is to be considered as Threefold, Either as it regards God our Creator, or as it concerns every single Man as to Himself, or as it affects other Men; concerning all which we have spoken before. The Natural State of Man consider'd in the first mention'd Way, is that Condition wherein he is plac'd by the Creator pursuant to his Divine Will, that he should be the most excellent Animal in the whole Creation. [...] So, that the contrary to this State is the Life and Condition of Brutes.

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 not cultivated by the Industry of Men.

After the Third Way, we are to regard the Natural State of Man, according as Men are understood to stand in respect to one another, merely from that common Alliance which results from the Likeness of their Natures, before any mutual Agreement made, or other Deed of Man performed, by which one could become obnoxious to the Power of another. In which Sense, those are said to live reciprocally in a State of Nature, who acknowledge no Dominion over his Fellow, and who do not render themselves known to each other, either by doing of good Turns or Injuries. And in this Sense it is, That a Natural State is distinguished from a Civil State, that is, The State of Man in a Community (*De officio*, II, 1,2–5,166–68).

In the *Specimen controversiarum*, after having observed that 'vocabula naturae et naturalis quam maxime esse ambigua'(III,3, *ES* p. 134 (6–7)) and that the natural state of man means one thing to the *Physicus*, another to the *Medicus*, yet another to the *Interpres Juris Romani*, and yet another to the *Theologus*, Pufendorf continues:

In the discipline of the Law of Nature, I have considered the natural state in three different manners. In the first mode—in so far as this is opposed to the state and condition of animals—man is considered as an animal that is superior to all the others, and to whom God has granted such distinguished gifts, which allow him to recognize the Creator from his works, to admire him, and to conduct a life remarkable for its honesty, decorum and orderliness.¹⁴

To this condition which in the first book of *De iure* he had designated as a condition of humanity, he gave the name natural because 'men do not choose and institute a life of this kind by their own will, but the obligation of leading a similar life was commanded by the Creator at man's birth and in order to recognise it is sufficient the light of reason that still remains in man today'.¹⁵ The second way in which the natural state of

¹⁴In disciplina autem iuris naturalis triplici a me modo status hominum naturalis consideratus fuit. Uno modo, prout opponitur statui et conditioni brutorum, per quem homo spectatur tanquam eximium prae caeteris animal insignibus a Deo praeditum donis, per quae idoneum sit Creatorem ex operibus suis agnoscere mirarique et vitam agere honestate ac decore ordine conspicuam', *ES*, p. 134 (20–24) [The translations of this and of the other passages from this text are by the Author].

¹⁵*ES*, p. 134 (24–27).

man is considered is ‘that in opposition to the state of civilisation, which has come about in human life thanks to the help, the industry, and the discoveries of other men, or thanks to their own reflection and merit, or because divine help.’¹⁶ To attribute the qualification of natural to this state is not out of place ‘because corresponds perfectly to common use to distinguish that which is natural, namely what is present at birth from what occurs in the second moment as a consequence of the action of others or oneself’.¹⁷

Finally, in the third way, the natural state was considered:

As that opposed to the civil state, where men are subject to the same civil authority. According to this manner of considering the natural state, it is evident that such a condition applies to those who have neither a common sovereign on this earth, nor do they order or obey each other, that is, those who are not reciprocally united by any tie other than that established by the fact that they have a common human nature, that is other than the fact that the other is a man like us.¹⁸

And, this was called a natural state not only following the example ‘of several recent political writers but also because it is very common that the natural is opposed to that which comes from a human action or pact’.¹⁹

From the passages just cited, there seems to be little doubt that Pufendorf introduced a threefold consideration of the natural state in his system. He intended it to be at one moment the human condition imposed by God on men as opposed to the animal condition, and then as the condition without civilisation in which man finds himself at birth as opposed to life *exculta* from the help and intervention of humans, and finally as the condition of exemption from any subjection as opposed to the civil state. It is then evident from these passages that all three states are called natural as opposed to a state which is due to human intervention: in the first case, natural state is the condition imposed upon man by God and not by human will; in the second case, it is the condition achieved without human inventions and institutions; and finally, in the third case, it is the condition of exemption from any subjugation, characterising human relationships before any human action or pact.

Yet, if we go on to verify in the concrete configuration of the doctrine whether the conception of the state of nature, which results from this, is adequately represented by the scheme outlined here, we will then begin to have doubts about the adequateness of the way which Pufendorf presents his own thought.

The effective use of the notion of a state of nature

Initially, one is struck by the fact that wherever the doctrine of the state of nature is given a concrete function, Pufendorf discards his first definition of the state of nature. He would seem to do so *ex professo*, at least in the passages from *De iure* and the *Dissertatio* of 1674, where it is said that the natural state to be discussed is neither the most perfect condition nor the condition ‘which is ultimately designed for him by Nature’ (*quam natura ultimo intendit*) (*De iure*, II,2,I). But it certainly follows, as we shall see, from the way in which in *De iure* as well as in *De officio* and the *Dissertatio*, the natural state of man conceived as the condition of *animal eximium prae caeteris animantibus* plays no relevant role, whereas a prominent role is given to the other two meanings of the state of nature.

In order to demonstrate what we have just stated, it would be helpful to look at the most important analyses of the state of nature presented by Pufendorf. In studying them, we will also realise that the two meanings of this notion (which we have stated to be the only ones effectively operating in the Pufendorffian doctrine) do not remain unchanged in the static physiognomy given to them in the definition by Pufendorf. Instead, they

¹⁶prout opponitur illi culturae, quae vitae humanae ex auxilio, industria et inventis aliorum hominum propria meditatione et ope aut divino monitu accessit’. *ES*, p. 134 (28–31).

¹⁷*ES*, p. 134 (40–41).

¹⁸prout opponitur statui civili, per quem plures eidem summo imperio civili sunt subiecti. Iuxta hanc considerationem illi invicem in statu naturali vivere patet, qui neque communem in terris habent Dominium et quorum unus alteri non imperat aut paret, quique adeo nullo alio vinculo invicem iuncti sunt, quam quod ex communi humana natura resultat, seu quod alter aequae homo sit atque nos’. *ES*, p. 134 (41–46).

¹⁹*ES*, p. 135 (1–2).

interact on each other, first coming together as one, and then distinguishing themselves again, with the third meaning predominating decisively over the second, the reasons for which we will now begin to investigate.

The analysis can begin with the way in which Pufendorf presents the state of nature in the opening to the famous second chapter of the second book of *De iure*. We will quote the initial paragraph of this chapter in its entirety because it anticipates all the themes which Pufendorf sets about to tackle later on in his discussion:

By the natural State of Man, in our present Enquiry, we do not mean that Condition which is ultimately design'd him by Nature, as the most perfect and the most agreeable; but such a State as we may conceive Man to be plac'd in by his bare Nativity, abstracting from all the Rules and Institutions, whether of human Invention, or of the Suggestion and Revelation of Heaven; for the Addition of these Assistancess seems to put another Face on things, and to frame human Life anew, by an exacter Model. By this wide Exemption we do not only exclude all the various Arts and Improvements, and the universal Culture of Life, but especially civil Conjunctions and Societies, by the introducing of which Mankind was first brought under the decent Management of Order and Regularity. That we may be able to form clear and distinct Notions of this suppos'd State, we will first consider it in itself, and examine especially what Rights and what Inconveniencies attend it; that is, what would be the Condition of particular Men, if there were no Arts or Inventions set afoot, and no Communities form'd and establish'd in the World. And then, secondly, we will consider it in order to other Men, whether in this Regard it bears the Semblance of Peace, or of War; that is, whether Men who live in a natural Freedom, so as neither to be subject to one another, nor to acknowledge a common Master, are likely to prove Enemies or Friends. In this second Consideration the State we are speaking of is capable of a Subdivision, being either full and absolute, and so bearing an equal Regard towards all Men in general; or else limited and restrain'd, as it has Respect only to a certain Part of Mankind. This double Notion of a State is answerable to the double Manner in which we may consider the Men who are to compose it, either as each particular Man lives in a natural Liberty towards all others; or as some Men have entered into a Society between themselves, but are join'd to all the rest of the World by no other Ties, besides those of common Humanity (II,2,1,98–9).

As it is clear from this passage, once again Pufendorf indulges in the temptation of offering another of his schematisations full of distinctions and sub-distinctions, an art in which he was a master. But first, we shall attempt to show how the different meanings of the state of nature considered by Pufendorf relate to those listed in the passage of the first book cited above. We need to start, however, by clarifying some possible misunderstanding. This is the result of the rather infelicitous use that in the first and second book of *De Jure* Pufendorf makes of equivalent (*absolute/in se*) or even identical (*in ordine ad alios homines*) expressions. Such expressions may give the impression that the division of the second book, between a state of nature considered *in se* and one considered *in ordine ad alios homines*, coincides with the division of the first book, between a state of nature considered as *absolute* and one considered in *ordine ad alios homines*. In fact, the two distinctions are very different. What Pufendorf calls the *absolute* state of nature in the first book—this being the privileged condition assigned by God to man, relative to the condition of other animals—does not appear at all in the second book, or when it appears, it is only to be put aside as of no interest to the author in this context. This follows from our assumption that the ‘Condition which is ultimately designed him by Nature, as the most perfect and most agreeable’ (which in II,2,1, is explicitly excluded by the author as being at the centre of his consideration) is none other than the condition that in I,1,7 was presented as that of the state of nature considered as *absolute* (‘in which Man is placed by his Creator, who hath been pleased to endue him with Excellencies and Advantages in a high Degree above all other animate Beings’).

In support of this identification, there is the obvious equivalence between Creator in the passage from the first book and *natura* in the passage from the second, as well as the plausibility of interpreting the extraordinary condition relative to that of other animals in which man was created by God (and, because of this, must acknowledge his maker, honour him, admire his work and behave in a way that is different from brutes) as the most perfect condition that nature (that is, God) assigned to man as his end. However, even if the suggested identification is rejected, the fact remains that, in the passage of the second book which we are analysing, the only state of nature that Pufendorf declares he is concerned with is the condition in which man is understood as being formed at the moment of his birth as human inventions and institutions are left out of consideration. This condition has nothing to do with the *absolute* natural state considered in the first book,

which is therefore excluded from the analysis of the second book. The identification of the state of nature considered as *absolute* in the first book and the state of nature considered *in se* in the second book can therefore not be put forward.

It would then seem more plausible to find a further possible equivalence between the distinctions made in the first and second books. This is that the natural state considered in relation to other men (*in ordine ad alios*) in the first book coincided with that of the second book, while the natural state considered *in se* in the second book is more similar to the state that in the first book is called *tertia status naturalis consideratio*, and not the state of nature considered as absolute. Anyone who established this correspondance, in fact, could invoke in support of their thesis the fact that both the natural state in *ordine ad alios* of the first book and its homonymy of the second book both make reference to the situation of men who do not have a common authority and who are not subjects while, on the other hand, the third notion of a natural state in the first book and the natural state considered *in se* in the second both refer to the condition of men without *omnia inventa* (*artes* and *cultum*) and *instituta humana* (*civitates*, for example). However, anyone who argued in this way would be letting themselves be seduced by the charm of symmetries rather than guided by the logic of the texts. On one hand, on careful examination, the definition given of the *tertia status naturalis consideratio* in I,1,7—which to this admirer of symmetry had seemed completely like the definition of 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 begins this second passage, before the distinction between the state of nature considered *in se* and the state of nature considered *in ordine ad alios* is introduced. On the other hand, the natural state in relation to other men mentioned in the first book has a completely diverse function to that of the second book. Indeed, in the first book, Pufendorf asks what the natural state *in ordine ad alios* means or, in other words, what to live mutually in the state of nature means. His answer is that it means not have a common authority and not to be subjected one to another. In the second book, he asks whether those who live together in the state of nature—namely those who are not subordinate one to another and do not recognise a common authority—are friends or enemies.

Nevertheless, one must admit that, to be seduced by the charm of symmetries, it is not only the reader who cannot overcome the impression (which is always re-emerging despite the above considerations) that there exists after all some correspondence between the state of nature *in ordine ad alios* of the first book and its homonymy of the second, and between the third notion of a natural state in the first book and the natural state considered *in se* in the second. The first to have succumbed to this charm was Pufendorf himself when, in the second edition of his major work, in the passage of I,1,7, he added a *tertia status naturalis consideratio* which had not been there in the first edition. This addition answered an understandable need: to make the treatments of the state of nature of the first and second books more congruent. Pufendorf realised that the conception of the state of nature—as the condition in which men are deprived of all human arts and inventions, a condition, which played an important role in the presentation of the state of nature in the second book—was missing from the analysis made in the first book of the first edition. For this reason, in the second edition he resolved to insert this point already in the first book. By analogy with his analysis of the state of nature as developed in other places of *De Jure*, which, as we have seen, is characterised in three different ways; and influenced by the similarity of terminology used in the first and in the second book (in both cases the natural state *in ordine ad alios*); Pufendorf presented his addition as the *tertia status naturalis consideration*. From this, it would seem to follow the irresistible conclusion that such a third notion is related to the second (the state of nature considered *in ordine ad alios homines*), in the same way in which the state of nature considered *in se* is related to the latter, as used in the second book. The equivalence thus created *a posteriori*, between the distinctions proposed in the first and in the second book, obscured the fundamental principle of the analysis of the state of nature presented in the latter, namely that there is a single state of nature which is relevant to the discipline of natural law: that which is obtained by leaving aside all human inventions and institutions. This state (the only one which interests Pufendorf) is none other than the one, which in the first book he had called the state of nature *in ordine ad alios homines* (taking there in consideration only the most important characteristic which is the absence of any relationship of subordination). Once it is understood that the state of nature which Pufendorf sets about to analyse in the second book is one single state, one may appreciate that the considerations *in se* and *in ordine ad alios* regarding such a state do not have the function of determining two diverse meanings of the state of nature, but rather that of highlighting the characteristics that pertain to such a

single natural state—which is the proper subject matter of the discipline of natural law—by emphasising on the one hand the condition of men taken as individuals, and on the other the condition of men as seen in their reciprocal relationships.

The state of nature in De iure

We will now analyse the various discussions of the state of nature outlined by Pufendorf to demonstrate our theory that the only state of nature which plays a role in Pufendorf's system is the human condition before or without human intervention—the latter understood in its double valency as aid and experience to make life *culta* and as actions or pacts which create relationships of subordination—and that the second of these two meanings has the more relevant role (and more ambiguously relevant) in Pufendorf's system. We can start with the second chapter of the second book of *De iure* from which we began this paragraph. It is well known that in this famous passage in the writings of Pufendorf the condition in which man is conceived (if human inventions and institutions are left aside) is presented by our author as *miserrima*. It is also well known that to represent this condition he uses the *fictio* of a man 'thrown at a Venture into the World, and then left entirely to himself, without receiving any further Help or Benefit from others' (II,2,2,98). I will however not focus on these obvious points and nor will I stop to underline the strong Lucretian influence which emanates from these pages, the most famous of Pufendorf's works.²⁰ In order to understand the function of the state of nature (understood in the sense which we have been discussing) in Pufendorf's system, it would be more useful to mention several logical deviations, which are made in the description of this state on the pages in question.

The first and most significant of these deviations could certainly escape the reader who abandons himself to the charm of the fiction of man thrown into the world from who knows where. This, however, does not make it less clear. If, in fact, one focuses on the logical connection which ties this fiction with the conclusion that is drawn from it, one will observe how Pufendorf begins to identify the man of the state of nature as a man 'left entirely to himself, without receiving any further help or benefit from others than his bare Nativity' (II,2,2,98) (as a man who has no parents, no companions, no *soci* of any kind and, for this reason, has a life *miserrima ac fere belluina*). One will also observe how he concludes, on the contrary, that 'the Condition of Men had been most deplorable and base, if no Societies had been set on foot, but every one had reigned a separate Prince in his own Family, and suffered his Children, when once grown up, to seek their Fortunes in a State of natural Liberty' (II,2,2,101) (namely, how he concludes by identifying the *misera et foeda* condition of the state of nature in the life of families *extra civitates*). In fact, this conclusion is not only completely incompatible with the hypothesis of the man of nature as a man 'left entirely to himself' (*sibi soli plane relictus*), but clashes with the very definition which Pufendorf had given of the state of nature in the introductory paragraph of the chapter which we have quoted above. In that passage, in fact, the state of nature had been defined as the state in which man is understood as being formed from birth without any human inventions and institutions (and therefore also without any families), or as that state in which no one is subject to another (and then nor to one's father). It follows from this that the deviation in Pufendorf's reasoning is twofold. On one hand, Pufendorf starts from a hypothesis, that of man abandoned by himself, which underlines the absence of human relations rather than the absence of relationships of subordination, and concludes by revealing the misery of a condition characterised essentially by the absence of relationships of subordination, the misery of life *extra civitates*. On the other hand, Pufendorf contrasts the state of nature with all states which involve a relationship of subordination (including that of the family), and concludes by contrasting the state of nature with only one of the other states: the civil state. This twofold deviation is particularly significant for us, for it shows two recurrent ways in which Pufendorf uses this notion, in contrast to his formal definition of the state of nature. The first shows that of the two traits characterising the definition of the state of nature (a state deprived of the inventions of human genius, and a state exempted from any subordination) Pufendorf has mainly in mind the latter. The second recurrent characterisation of Pufendorf's notion is that, having focused on the element of subordination (or lack of it), he tends to be selective with regard to the various relationships of subordination which he considers in his doctrine: that of a son to his father, of a wife to her husband, of a servant to his master, of a subject to his sovereign. It is only this last one, in the end—despite the numerous

²⁰See footnote 6.

and explicit declarations to the contrary²¹—which he feels it is truly opposed to the state of nature. We will cite a single example, the most explicit, of these declarations which are coherent with the definition of the state of nature as the state in which men are not subject to each other and do not have a common authority but which clash with the use actually made of this notion. In the *Apologia*, our author protests vehemently against the authors of the *Index*—who had maliciously observed that since the state of nature for Pufendorf is the one in which no one is superior to any other person, one must deduce from this that for him, in the state of nature, a father is not master of his son and a husband is not master of his wife.²² He writes:

Who could swear without hesitation that these words had been pronounced by a man? Perhaps you have forgotten, oh silly!, to have cited a little before p. 6 [I,1,7], where the natural state in relation to other men is described as one in which men find one another by that pure and universal kinship which derives from their similarity in nature, before any human action or pact makes them subjected one to another in a particular way? Or rather, if these words seemed obscure to you, do not read p. 146 [II,2,5], in which it is said that those who live in the state of nature do not have a common authority and do not obey or command one another? Do you still not understand, then, that between husband and wife and between father and sons there is a human action and pact by which one had been made subject to another in a particular way and bound by a tie stronger than this common tie which is the result of a similarity of nature? Do you still not understand, I ask, that the husband with his wife, the father with his sons do not live reciprocally in the natural state because a husband is master of his wife and a father of his son? (*Apologia*, section 35, *ES*, p. 40 (28–38)).

As one can see in this passage, Pufendorf is categorical in affirming that the natural state is opposed, by his own definition, not only to civil society, but also to the family as a social state. Viceversa, it is only by shifting the line of demarcation between the natural state and adventitious states (comprising the relationships between husband and wife, parent and sons, and master and slave, all of whom can be summarised in the concept of the family) and by the consequent inclusion of the family in the state of nature that Pufendorf is able, in the final passage of *ING* II,2,2, to establish the equation ‘state of nature = the state *extra civitatem*’ and to cite the famous Hobbesian opposition between the condition of man *in civitate* and *extra civitatem* (*De cive* X,1) in order to illustrate the *incommoda* of the state of nature. This results in an oscillation in determining the borders of the state of nature. To stay within the definition, the state of nature should be contrasted with all the adventitious states, but in reality it is only contrasted with that particular adventitious state which is called the civil state. This is not a contingent episode in Pufendorf’s thought but re-emerges repeatedly in all of his discussions of the natural state of man.

It re-emerges, for example, in the passage of *De officio* (II,1) cited above. In this, and speaking of the third meaning of the state of nature, defined as the state in which men have no common authority and are not subordinated to each other, Pufendorf says that ‘the Natural State is opposed to the Civil State’ (*opponitur statui civili*) (*De officio*, II,1,5). While, instead, to remain truthful to his definition, one should say that it is opposed to all states that imply a relationship of subordination. It is present in the dissertation *De statu hominum naturali*, in which the second way 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’ (section 7, 117).²³ It is also repeated with great clarity in the chapter on the natural state in *Specimen controversiarum*, in the passage concerning the third way to consider the natural state, which we have cited above.

Yet, the contradiction which runs throughout the work of Pufendorf, of having defined the state of nature as one in which men live in the situation of natural liberty (namely, not subject to the authority of any other man) and of having than understood this state as merely opposed to the civil state, it is not the only contradiction in which the most important trait qualifying the state of nature (that is, a state free of any relationship of subordination) becomes entangled. In fact, we are confronted with many difficulties if we

²¹*Apologia* Section 35 (fully quoted below), *Spicilegium controversiarum* (1680), III,2 (*ES* 232 (41–42)), Julii Rondini *Dissertatio Epistolica* (1684), section 2 (*ES* 245 (33–37)).

²²[Josua Schwarz and Nicolaus Beckmann], *Index quarundam novitatum* (1673), Art. XXX (in Palladini, *Discussioni*, cit., p. 169).

²³All citations from *De statu hominum naturali* refer to Michael Seidler’s translation: *Samuel Pufendorf’s ‘On the natural state of men’*, cit.

examine the distinction that Pufendorf introduces in the natural state *in ordine ad alios homines* (which, as we have seen, is precisely the state exempt from any subordination) between a natural state which is *merus aut absolutus* and one which is *limitatus et restrictus*. This distinction, which as we know appears in *De iure* II,2,1, is presented as a distinction between the state in which all men in general and each in particular live together in natural liberty (the natural state *merus aut absolutus*) and the state in which men entered with some of their fellow men into a civil society while with others they kept only the bond of common humanity (the natural state *limitatus et restrictus*). After having described the misery of the state of nature and the rights that come with it, this distinction was justified as follows:

We are ready to acknowledge it for a most certain Truth, that all Mankind did never exist in a mere Natural State: In as much as, upon the divine Authority of the Scriptures, we believe all human Race to have proceeded from one original Pair. Now it's plain that Eve was subject to Adam, Gen.iii.16 and those who were born of these primitive Parents, and so on, did immediately fall under paternal Authority, and under Family Government. But such a State might have befallen Mankind, if, as some of the Heathens believ'd, they had in the Beginning of their Being, leap'd out of the Earth like Frogs [...]. A state of Nature then did never naturally exist, unless qualified, and, as it were, in Part; namely while some Party of Men join'd with some more in a civil Body, or in some Confederacy like that; but still retain'd a natural Liberty against all others. (Tho' it must be own'd, that the more and the smaller those Societies were, into which Men at first divided, the nearer Approach was made to a meer natural State.) Thus of Old, when Mankind were parted into distinct Families, and now since they are fallen into separate Communities, those might have been then, and may now be said to live mutually in a State of Nature, neither of whom obey the others and who do not acknowledge any Common Master among Men. Thus, in the primitive Age, when Brethren left their Father's House, and set up particular Families for themselves, independent from any other, then they began to live in a natural State, or Liberty. Therefore not the first Mortals, but their Offspring, did actually exist in such a State (II,2,4,105).

As one can see from this passage, the distinction between a *merus* natural state and one which is *temperatus* is introduced by Pufendorf in response to the question about the actual existence, in the historical reality of either the past or present, of the state of nature understood as a condition of natural liberty. To this question, warns Pufendorf, anyone who believes in the Scriptures can only respond that, since men descend from a single couple tied by the bond of conjugal subordination, those who lived together in the state of nature were not the first men but their descendants. A situation of reciprocal independence emerged slowly from the moment when the sons of the first couple left the paternal family and founded independent families.

Pufendorf's discussion is then placed, in this case, on the level of a historical consideration based on the authority of the Scriptures. This means that it is placed outside of the science of natural law, which, according to Pufendorf, is such only in so far as it is independent of revelation. We could easily therefore take no interest in a paragraph like this one given that it has been determined by obvious religious preoccupations, by the necessity to prevent dangerous accusations of impiety, and to make very clear how, despite the description just presented of a state of nature in which men are considered as 'thrown at a Venture into the World' (*undecunque in hunc mundum proiecti*), yet its author does not believe in the pagan fables of men who had 'leaped out of the Earth like Frogs'(105) (*'ranarum instar e terra provenissent'*) or, 'had come up from Seed, like Cadmus's human Crop'(105) (*sicuti Cadmaei fratres, semine sparso*), but rather he is a good Christian who believes in the Bible. We could then leave this paragraph out, if it were not for the fact that Pufendorf qualifies the condition in which there once lived brothers who had left the paternal family and now live in single states as a condition of a moderate and partial natural state, something that seems to suggest some serious contradictions in the foundation of the notion of the state of nature. If, in fact, one assume that men born from the earth like mushrooms do not remain, with respect to other men born in similar conditions, in a situation of a more radical natural independence than that which passes between two brothers who, having left the original family, establish autonomous families (indeed, in both cases the people concerned live in a state of reciprocal independence of which there cannot be anything greater), it is not clear how the distinction between a *merus* and a *temperatus* natural state is born and how it is justified. In fact, if one focuses on the relations between men—whether taken as individuals or as families or states—these will take the form of relationships of natural liberty or of reciprocal subordination (or, as a third possibility, of common subordination). Men

will live together then either in the state of nature or outside it, without giving, in this view, the third possibility in which men live together in a state of nature which is not actually radical, but temperate and partial. Yet, if we then go from the formal definition of the state of nature (as the condition in which no one is subject to another and there is no common authority) to the image which Pufendorf had constructed of this state (a *miserus et foedus* state dominated by insecurity and bestiality), one can understand how Pufendorf believed that the situation in which individual members of families or of diverse states, or even these families or these states (and not isolated individuals) lived in the state of reciprocal natural liberty did not correspond to the image of the natural state he had presented. Since, in fact, the *incommoda* typical of the state of nature are very toned down or even nonexistent in this situation, Pufendorf was driven to refer to this as a condition of temperate natural state. It was temperate because it lacked the most characteristic connotation of the state of nature as Pufendorf had described it: its misery and insecurity. It was then for this reason that our author could speak with a certain psychological, if not logical, plausibility of a temperate natural state. To this, the most important reason for the ambiguity of the notion of the state of nature in the Pufendorffian system, we can add a further, though not less significant, reason. Pufendorf qualified the situation of those who live with others in the state of nature, and with others outside of it, not only as a temperate natural state, but also as a *partial* natural state. He was able to do this with a certain plausibility because, if one considers the condition of the single individual and sees that he lives with some in a state of natural liberty and with others in a relationship of subordination, one could say that this individual lives in a partial state of nature, namely, that he lives partially in the state of nature (or with some he does and with others he does not). In this way, analogously, if one shifts the consideration from individuals to human kind itself, this condition can be called a partial natural state, because not all of mankind but only some live in natural liberty. By reasoning in this way, Pufendorf nevertheless finished inexorably by finding in his hands a notion of the state of nature completely different from the one from which he had first departed. An extremely technical notion, suited to qualifying the connection, which ties together individuals or groups of individuals, was transformed, without the author successfully controlling the transformation, into a generic notion of the human condition (individual and collective), which was far from the technical precision, which a system of natural law requires.

The difficulties in which the famous analysis of the state of nature in the second chapter of the second book of the most important of Pufendorf's works is entangled emphasise then some recurring features of Pufendorf's thought relative to the state of nature. The first feature is that although he considers the absence of any subordination as the most important characteristic of the state of nature, he continues to also assign a fundamental role to the state of nature conceived as a state of solitude and abandonment, of the absence of the company and help of others. The second is that although, in defining the state of nature as a condition of natural liberty, he considers it as in sole opposition to the civil state, his definition compelled him to stick to a conception of the state of nature as opposed not only to *civitas* but also to the relationships of familial subordination. We will try to understand to what requirements of his system these contrasting affirmations may have responded by analysing the presentation of the doctrine of the state of nature in two other works, *De officio* and the *Dissertatio* of 1674.

The state of nature in De officio

We have already noted that in *De officio* the analysis of the state of nature is placed at the beginning of the second book. At this point in the text, Pufendorf has already left behind him the deduction of the fundamental law of nature and the analysis of the duties towards God, towards oneself, and some of the duties towards one's fellow humans. Of these last duties, in fact, he had already dealt with all of the *absolute* duties and most of the *hypothetical* duties, namely, those, which presuppose the human institutions of language and of property. He then only had to analyse those duties, which presuppose the third and last human institution, *imperium*. The second book should then open with the analysis of this last kind of duty toward one's fellow humans but instead it opens with the doctrine of the state of nature which is presented by our author as the introduction to the doctrine of the duties which are incumbent on man in the diverse states in which he finds himself in common life. However, since the only duties, which he has not yet analysed are those connected with adventitious states which presuppose human *imperium* (namely, marriage, the parent–son and master–slave relationships and the civil state), the doctrine of natural state should serve as an introduction to duties relative to all four of these states. This is true in a rather generic sense, for one who describes certain

states as adventitious, ought to explain that these states are such in so far as they are different from a state that is called natural, and that it is then described as such. In the more specific sense according to which the description of the state of nature provides the foundation for the duties in an adventitious states, this solely applies to the civil state.

One may observe, in fact, how the analysis of the state of nature is depicted in *De officio*. Pufendorf introduces his distinction in the three ways of considering such a state, and says (in a contradictory way, as we have already noted) that the state of nature considered in the third way—as the situation in which there is no common authority and no one is subject to another—is opposed to the civil state. He continues: ‘Moreover, the Property of this [*huius*] Natural State may be considered, either as it is represented to us notionally, and by way of Fiction, or as it is really and indeed’ (*De Officio*, II,1,6,168). With this statement, Pufendorf is stating clearly that the natural state, the characteristics of which he is about to illustrate, is only the last [*huius*] of the three outlined immediately before: that which is understood as the state in which man is subject to no other man. In fact, consistent with this initial assertion, Pufendorf deduces the fundamental law in force in the state of nature (the right to act exclusively according to one’s reason and will) from the condition of exemption from any subordination, which characterises the state of nature in its third meaning. After then having outlined the state of nature as a condition of equality and liberty, he continues:

And yet this Natural State, how alluring soever it appears to us with the Name of Liberty, and flattering us with being free from all manner of Subjection; yet was it clogg’d, before Men join’d themselves under Governments, with many Inconveniences; whether we suppose every single Man as in that Condition, or only consider the Case of the Patriarchs or Fathers of Families, while they lived independent (*De Officio*, II,1,9, 170).

The inconveniences (*incommoda*) of the situation of those who live separately in the condition of natural liberty are pointed out by Pufendorf through the *factio* of man ‘in hoc mundo destitutus’, the *factio*, which helps us in understanding how bestial life in these conditions could have been. But even when the *familiae segreges* and not individuals are living together in the condition of natural liberty, the life of their members, although being ‘more comfortable’ (*paullo cultior*) than the life outlined in the *factio*, cannot be in any way comparable to the kind of life which is led in civil societies: ‘not so much for the Need’, states Pufendorf, ‘as because in that state they could have little Certainty of any continued Security’ (II,1,9,171). Therefore, the comparison between life in the state of nature and life in civil society can be established with the same, famous words of Hobbes (*De cive*, X,1). In fact, continues our author, the condition of equality in the state of nature implies that, in a case of dispute, there is no one who could resolve it *pro imperio*. Consequently—although having immediate recourse to arms is unlawful and one has the duty to appeal to an arbiter in the first instance—it is nevertheless impossible to hide the fact that:

this Alliance [that is the Kindred amongst all Mankind] is found to be but of little Force among those who live promiscuously in a State of Natural Liberty, so that any Man who is not under the same Laws and Possibilities of Coercion with ourselves, or with whom we live loosely and free from any Obligation in the said State, is not indeed to be treated as an Enemy, but may be look’d upon as a Friend, not too freely to be trusted (*De Officio*, II,1,10, 171–72).

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 great capacity to harm each other. The transformation of such a capacity into an act will is due to various reasons, which can be summed up in the desire of some to cause harm and in the corresponding need of others to defend themselves from them. The final image of the condition of natural liberty—or, of immunity from any subordination—which is deduced from all this is then, according to Pufendorf, the following:

So that in this State, ‘tis hardly possible but that there should be perpetual Jealousies, Mistrusts, Designs of undoing each other, Eagerness to prevent every one his Fellow, or Hopes of making Addition to his own Strength by the Ruin of others.

Therefore as it is the Duty of every honest Man to be content with his own, and not to give Provocation to his Neighbour, nor to covet that which is his; so also it behoves him who would be as wary as is needful,

and who is willing to take Care of his own Good, so to take all Men for his Friends, as not to suppose yet that the same may quickly become his Enemies; so to cultivate Peace with all Men, as to be provided though it be never so soon changed to Enmity (*De Officio*, II,1,10,172).

It is this analysis of the state of nature, which Pufendorf presents to us in *De officio*.

As one can see, its characteristic principle is, on one hand, in the assertion that the only state of nature which he is concerned with here is the state of those who are *superiorem non recognoscentes*, and, on the other hand, in the emphasis placed on the disadvantages of such a condition, identified in the condition of those who live *extra civitates*. Having pointed this out, if the narrowing of the consideration of the state of nature to the only state of exemption from any subordination permits Pufendorf to present the doctrine of the state of nature as a general introduction to the examination of the human conditions which involve the presence of a superior (whether a husband, father, master or sovereign), we are now in a position to understand better how we were, on our part, justified in asserting that it performs this function only with regard to the civil state. In fact, if the focus in the analysis is placed on the delineation of the disadvantages of the condition of those who live *extra civitatem*, it is the need for *civitas*, which is demonstrated, and it is the foundation of the duties of the sovereign and of subjects, which is being investigated. In brief, the doctrine of the state of nature turns out to be propaedeutic to the theory of the civil state only.

It would then seem possible to conclude that the only function that the doctrine of the state of nature has in *De officio* is that of demonstrating the necessity and the foundation of civil society, and that, Pufendorf having focused for this reason on the third meaning of the state of nature, the other two meanings tend to disappear from the picture. Not only the first meaning, as in *De iure*, but also the second meaning (the condition of abandoned man without the aid of other humans) which in *De iure*, as we have seen, still played a primary role, disappears. However, it is actually not exactly like this. In fact, at careful examination, the condition of man ‘left alone to himself without any Help from other Men’ (*De Officio*, II,1,4,167), which to stick to the explicit statement of our author must remain outside of the description of a state of nature understood as the condition of exemption from any subordination, is entirely recovered in this same description. It is, in fact, easy to see that the *fictio* of man *destitutus*—which Pufendorf uses to show the *incommoda* of the position of those who live in the condition of natural liberty *uti singuli*—does nothing more than reproduce *ad verbum* the definition of the second of the three ways of understanding the state of nature which were made distinct at the beginning. However, in his system Pufendorf does not use this *fictio* only to depict the state of nature but also, outside of the analysis *de statu hominum naturali*, to show human *imbecillitas*. In *De officio*, for example, this *fictio* appears for the first time precisely in order to illustrate that characteristic of human nature which is ‘the weakness of man in comparison with brutes’ (*imbecillitas hominis prae brutis*) (I,3,3). In the same way, in *De iure*, we find it almost at the beginning in the chapter in which, to demonstrate how *licentia exlex* is not suited to man, the human condition is analysed to reveal *imbecillitas* as one of his most fundamental traits (II,1,8). In any case, whether it is presented as an image of the state of nature, or whether it is used as a hypothesis suitable for demonstrating human weakness, the *fictio* of man abandoned in this world without the aid of other humans has the same function: to show how much human beings need their fellow humans. This is, as we have seen above, one of the indispensable premises in the deduction of *socialitas*: it is precisely because man needs other men, that he has much to gain from being sociable. The consequence of this reasoning is that—in both *De iure* and *De officio*—the doctrine of the state of nature is linked not only to the theory of *civitas*, but through the *fictio* of man *destitutus*, namely, through the consideration of the second meaning of the state of nature (the state of a man who has no human interaction), it is also tied to the deduction of natural law. Indeed, at close examination, the doctrine of the natural state is not linked to this deduction only by the fiction of miserable man. The description of the state of nature, in fact, is presented as the most effective illustration of the other characteristic of human nature which is indispensable for the deduction of the law of *socialitas*: *pravitas*. It is evident in fact (and it is Pufendorf who confirms it on many occasions) that the climate of insecurity, instability, and mutual distrust, which reigns in the state of nature is born precisely from this *pravitas humani ingenii*. But this *pravitas*, this proclivity of humans to harm each other, is for Pufendorf one of the fundamental principles proving that human beings need to be subjected to laws, and that such a law requires sociable behaviour.

The different positions of the doctrine of the state of nature in *De iure* (before the deduction of *socialitas*) and in *De officio* (before the deduction of the duties connected to the states which presuppose human *imperium*), are then due to the double function which the doctrine performs in Pufendorf's system: on the one hand, as an introduction to the theory of *socialitas*, and, on other hand, as an introduction to the theory of civil society. It is nevertheless true that of these two functions it is without doubt the second, which prevails over the first. We have emphasised many times the fact that Pufendorf goes back continually to propose again and again a conception of the state of nature as one, which is opposed to the civil state. That from the beginning he had considered the theory of the state of nature as related to the theory of *civitas* is what Pufendorf himself tells us in what, in our opinion, is the most successful of the many analyses of the state of nature presented by him and in which he comes very close to relating in words the spirit of his doctrine.

The state of nature in the Dissertatio of 1674

We will now examine the dissertation *De statu hominum naturali* which had been debated in Lund in 1674²⁴ and, in 1675, put among the academic dissertations considered by their author as worthy for a wider public.²⁵ In the preamble to this dissertation, Pufendorf claims the importance of the consideration of the state of nature within the limits of political science in following way:

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 analyse 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 organisation [...], 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*, section 1, 109–110).

The doctrine of the state of nature then claims, according to Pufendorf, the first place in the *politica architectonica*,²⁶ because for anyone who proposes to investigate the nature of the most noble of moral bodies, *civitas*, it is not enough to be an expert of its outer appearance, but it is necessary to know the intimate disposition of the parts which constitute it. To this end, it is extremely useful to go beyond all societies and to imagine what would be the condition of man outside of these societies and without all human inventions and institutions. In this way, one succeeds in grasping the reason that had compelled men to establish civil societies, the powers and obligations, which are linked to their nature, and finally the advantages which man draws from them.

Never had Pufendorf been so explicit in asserting that the state of nature is conceived as being related to the theory of *civitas*. The doctrine of the state of nature could in fact be, according to Pufendorf, the instrument through which, in the case of *civitas*, the resolution of a compound into its parts is realised, which is the method of scientific enquiry. It is only when one transcends all societies and imagines the state of man outside of them (namely, when one hypothesises a state of nature) that one succeeds in grasping all the elements, which make up civil society. How one can assert that the hypothesis of the state of nature permits an

²⁴see J.H. Liden. *Catalogus disputationum in Academiis et Gymnasiis Sueciae*. (Upsaliae, 1778–1779).

²⁵S. Pufendorf. *Dissertationes academicae selectiores*. (Lund, 1675).

²⁶The expression is recurrent in the title of 17th century works such as J.F. Horn, *Politicorum pars architectonica de civitate*, Utrecht 1664 (see F. Palladini (Ed.), *La Biblioteca di S. Pufendorf. Catalogo dell'asta di Berlin del settembre 1697*, Wiesbaden 1999 (Wolfenbütteler Schriften zur Geschichte des Buchwesens, vol. 32), No. 841). The expression was used by Aristotle, *Eth.Nic.* I,2 1094 a 26–28, but the similarity is in Pufendorf mainly terminological and not substantial, since for P. architectonic politics is not, as it was for Aristotle, the science that subordinates in itself the ends of all other sciences, but rather the science concerned with the 'architecture', that is the structural elements, of the state.

understanding of the constituent elements of *civitas* is first revealed by the very structure of the dissertation of 1674. After the first paragraphs (1–8) were dedicated to clarifying the notion of the state of nature and its various meanings, the emphasis of the analysis focuses on the notion of the state of nature as a state of exemption from any subordination and on the rights which come from such a condition. But since (and it is the famous Pufendorffian thesis which is here again confirmed) in the actual historical reality, the *civitates* are subjected to the condition of natural liberty, it follows that the rights, which are in force in the state of nature are the same rights that the *civitates* or their *rectores* enjoy. This means that by determining the rights, which are in force in the state of nature, Pufendorf is also establishing the prerogatives of the *civitates*, or their very constitutive elements, which was indeed what he was looking for. In fact, it is evident that in this dissertation the rights that are in force in the state of nature are treated in function of the prerogatives of sovereign power. The liberty of natural man, for example, is properly understood when compared with the liberty enjoyed by the *civitates* (sections 8 and 14). The right exclusively to follow one's own judgment, which man has in the state of nature, is an appropriate illustration of the relationship between the sovereign and his counsellors. The right to provide for one's own preservation by using all the methods suitable to that end, that is, including the pacts of mutual aid: sections 10 and 11—a right that each one has in the state of nature—is a way of affirming the right-duty of the *rectores civitatum* to provide above else for the preservation of the state, subordinating to such an end any alliance in which they might enter (section 19). Neither can one ignore how the full treatment of the *lubrica et parum fida* nature of the peace in force in the state of nature (sections 15 and 18) serves to establish the different rights of sovereigns, linked, for example, to the necessity of observing one's neighbours (the right to have *legati* and *residentes* in the states of others: section 20), or to the necessity of preventing the other states from increasing their power too much (the right of allying with the weakest against the strongest: section 21), or to the necessity of depending above all on one's forces (the right to keep an efficient army and to procure the financial means necessary for this aim: section 22).

Therefore, the first way in which one can rightly say that the compound *civitas* is successfully broken down into its parts through the doctrine of the state of nature is when, while locating the rights in force in the state of nature, the prerogatives of sovereign power are identified and the very essence of *civitas* is therefore revealed. Yet, there is another, and no less important, way in which the doctrine of the state of nature serves to break down *civitas* into its constituent parts. It is when Pufendorf asserts that, through this doctrine, 'one can clearly discern the necessity of and reason for the formation of civil societies' (section 1, 109). In fact, this 'genetic' consideration which indicates the reason why men had established *civitates* helps us in understanding their function in the development of human life and the indispensable prerogatives for the correct fulfilment of this function: namely, the constituent elements whose essence we were in search of. The simplest way of demonstrating the necessity of forming civil societies is to present the condition outside of them (the state of nature) as a negative condition from which it is necessary to leave. To accomplish this, Pufendorf must construct a completely negative image of the state of nature. It is then understandable why, in this dissertation, he recovers the notion of the state of nature understood as a condition of deprivation from all human discoveries and institutions (a meaning which is here indicated as the first way in which to consider the state of nature), and why he also makes reference (section 4) to the state of nature as *miserrimum*, which he already developed in *De iure* and *De officio*.

The notion of the state of nature which operates in the theory of *civitas* is then not only the notion of a state of exemption from any subordination, but also the notion of a condition in which man is considered *sibi solo plane relictus*. After all, from the very beginning Pufendorf had presented it as such, realising that in order to penetrate the intimate nature of *civitas* it was very useful to imagine what could have been the condition of man not only *extra societatem*, but also *ab omnibus artibus et institutis humanis vacua*. However, this does not mean that in this dissertation we no longer find the theme of the importance of this last way of considering the state of nature for the theory of *socialitas*. In fact, on closer inspection, never had Pufendorf been more explicit in pointing out the existing connection between the hypothesis of *destitutus* man and the theory of *socialitas*. In fact, after having described the *miserrima* condition of man 'left entirely to himself', he justifies his interest for 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 (section 5, 114).

Of the two reasons adopted by Pufendorf to justify this way of considering the state of nature, the first says clearly that the hypothesis of man *destitutus* serves to show to men how much they owe to their fellow human beings and to dispose them to behave sociably.

Since we have paused to note one of the examples in this dissertation of Pufendorf's attempts at self-clarification (in which he theorises not only about the state of nature but also at the same time about its function in the 'system'), it would be useful to also note another example, which, in our opinion, is particularly significant. It is the way in which Pufendorf makes more precise an observation already made in *De iure*. In section 2 of the *Dissertatio*, in fact, he warns us that:

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 (section 2, 110).

As one can see, Pufendorf adds a very important clarification to the words of *De iure* (II,2,1): namely, that since his state of nature is not the norm for civil society which, indeed, is depicted by far as more perfect than the state of nature, it is then not against nature to proscribe (as he puts it) the state of nature to enter the civil state. In the first place, this observation is particularly important because it explains how the Pufendorffian state of nature cannot be interpreted as the ideal model to which the human legislator must conform, and how Pufendorf then was not interested in this common conception of the doctrine of natural law. Secondly, it is important because it helps us in understanding better why Pufendorf had linked the doctrine of the state of nature so closely to a 'genetic' consideration of civil societies. If, in fact, civil society is by far more perfect than the state of nature and if it is this state, which one must reject, in order to enter into civil society, the problem concerning the motive, which compelled men to form civil societies acquires great importance. And, it is this problem, which is important in Pufendorf's dissertation.

Pufendorf first takes a position on this question in section 3, when in defending himself against the accusation—which we know to have been one of the first²⁷—of having placed at the foundation of his state of nature a man who is *pravitare infectus*, instead of the *integer* man as related to us in the Scriptures, he justifies his method 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 man 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 (section 3, 112).

While affirming that he has considered men as they actually are, namely corrupt, because he does not succeed in understanding how useful it would be to the civil doctrine to consider men in their primitive innocence, Pufendorf advances two hypotheses for the 'Causes and Motives inducing Men to establish civil Societies' (for the *causa impulsiva constituendae civitatis* as he had expressed it on another occasion²⁸): that

²⁷Already during the years 1676–1677 in the works of Valentin Alberti and Samuel Strimesius, on which see Palladini, *Discussioni*, cit.

²⁸This is the title of the first Chapter of Book VII of *De iure*.

civil societies had been formed to ward off indigence or that they had been formed to assure a defence against the evils which threaten man by other men. At this point, he does not choose between these two hypotheses, and he seems rather to maintain both in the consideration of the formation of civil societies (while the image of a state of nature as a state of misery in the ‘genetic’ consideration of *civitas* continues, as we have seen, to have importance). However, Pufendorf did take a position, as every reader of the seventh book of *De iure* knows, and this is confirmed in this dissertation. In fact, after having described the misery of the state of nature understood as the first way in which to consider it, he observes:

Furthermore, men’s desires 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 to share life’s amenities.... 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 (section 6,116–7).

If it is true that the desire to distance oneself as much as possible from the state of great misery just described is the motivating cause for *societas inter homines*, the meaning of this passage is that *societas civilis* is nevertheless different from this exchange of reciprocal services, commercial dealings, the uniting of domiciles and those encounters which allow distancing from this misery, and that it had not been established for these purposes. And, this is because the exchange of works and the trade of objects and information with individuals could equally be achieved by those who had not entered a civil society. But, if the primary aim of the formation of civil societies is not to promote *cultus vitae* (even if it is also true that this comes from civil societies *ex consequenti*), only the other of the two possible hypotheses indicated in this dissertation remains: namely that civil societies had been formed ‘for securing man against the evils threatened by their fellows’ (*ad pariendam securitatem adversus mala quae homini ab homine imminet*) (section 3).

The consequence of this choice for the ‘Causes and Motives inducing Men to establish civil Societies’ is that, even if the misery of the state of nature continues to play a role, the characteristic of this state which he is interested in highlighting will be above all its insecurity and precariousness. In fact, the theme of the insecurity of the condition of the individual in the state of nature reverberates resoundingly in this dissertation. We can look, for example, at the question of the power of pacts of mutual aid in the state of nature. According to Pufendorf, from the right of one who is *in naturali libertate constitutus* to provide for his own preservation, it follows that everyone in the state of nature can, for his own defence, count only on his own forces and on those of whom he has made an alliance *de auxilio ferendo* with. But, observes Pufendorf, since all pacts of this type in the state of nature contain this tacit limitation: ‘insofar as I can contribute to your security and further your interests without destroying my own’ (section 11, 123), it follows that the only help which one can count on with certainty in the state of nature is one’s own.

We can now look at the question concerning whether men, in the state of nature, are friends or enemies. Leaving aside for the moment the interesting argument by which Pufendorf reaches a conclusion on this point (to which we will return later), this very conclusion, as it is particularly significant, will now suffice:

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 (section 18, 130).

Our author maintains that there exists an alternative between those who assert that the security of men is sufficiently protected by reverence for the law of nature, by pacts and by the faith given to them, and between those who assert that the state of nature is a state of war of all against all (section 17). However, in the last analysis, the natural state which he describes—a state which cannot be called one of actual war but which certainly is a condition of unstable and unreliable peace, a state in which one cannot depend on the presumed friendship of others because of human wickedness and the power of desires and passions—is, between the two extremes, much closer to the second than to the first alternative. This impression is confirmed by the subsequent paragraphs in which, by extending the consideration of individuals in the state of nature to relations between states, sovereigns are given advice such as: to expect help only from those 'who are bound to us by common interest and to whom it matters that we be safe' (131), to bear in mind that pacts between states last as long as they are mutually useful (section 19), to be like Argus with a hundred eyes in order to observe, through the *residentes* and *legati*, what is happening in the states of others and to anticipate possible threats to the security of one's own state (section 20), to prevent another state 'from excessively and unnecessarily increasing [its] strength to the point of being able to overwhelm them' (132) (section 21), and to ensure that one's own forces are always powerful and to take care of all that pertains to the *res militaris*.

Therefore, if this is the condition of the individual in the state of nature, if these are the advantages resulting from natural liberty, one can understand how Pufendorf was able to draw the following conclusion: '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' (section 14, 125–126). According to this conclusion, natural liberty is of little use to the individual who has all the reason to exchange a condition with many evils for the advantages of civil subjection.

There begins to emerge here a further meaning in which one can say that the doctrine of the state of nature justifies the genesis of *civitas*. The doctrine in fact performs this function not only in the sense that the *fictio* of the state of nature allows the identification of the causes which lead men to leave the state of nature in order to enter the civil state but also in the sense, which is completely different, that it has a function, when demonstrating the advantages which can be obtained from civil subjection, of 'inviting' *civitas*. The entirely negative image, which Pufendorf presents of the state of nature plays this fundamental role of 'invitation' to civil society. Pufendorf, in fact, says this in a paragraph, which we cite in its entirety as further confirmation of the effort of self-consciousness 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 hand 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 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 make 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 inconveniences 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 greatest civil evils (section 23, 134–135).

This passage—which practically ends the dissertation—allows one to conclude with certainty that, for Pufendorf, the theory of the state of nature is also a moral tale suitable for creating the *cordatus civis*: the subject who not only tolerates patiently the burdens imposed by sovereigns for the defence of the state, but also those burdens which could be imposed on him *praeter rationem*, and the citizen who, while recognising the general imperfection of human things and knowing how for the most part men change while their customs do not, shuns changes in public affairs. This, however, does not allow us to conclude that this use of the doctrine of the state of nature is the single or even the most important use in Pufendorf's system. Anyone who had interpreted it in such a way, in fact, would not be rendering justice to the complexity of this doctrine because he would be reducing to a single one the many-sided faces which, as we are finally able to see, the doctrine assumes in this system.

The state of nature is for Pufendorf the device through which he believes he successfully captures the essence of the nature of man, stripping man of all of human interventions, to capture him in his original nudity without the tinsel of civilisation and softening of the *societas hominum*. It is the hypothesis, which founds the prerogative that constitutes sovereign power: independence from any subjection. It is the condition, which explains the causes for the formation of civil societies and also their function. It is the *exemplum ad deterrendum*, the pedagogic apologue, suited for creating a good citizen. The study of the *Dissertatio* of 1674 demonstrates, nevertheless, that all of the functions of the notion of the state of nature can be summarised in its *being for civil society*. As we have seen, even though of crucial importance in helping to deduce the law of *socialitas*, the first of the different notions of the state of nature just mentioned is deployed to construct an overall image of the state of nature as something entirely negative, so that this becomes the indispensable condition which explains both the logical and psychological genesis of civil society. We can then end our examination of Pufendorf's doctrine of the state of nature and affirm that is substantially and principally an introductory doctrine to the theory of civil society.

I have tried to reconstruct the complexity and fundamental ambiguity of this doctrine in this rather long and tiring analysis. However, with this reconstruction, we are now able to understand the reason for the oscillations in the notion of the state of nature in Pufendorf's thought. Why this is used as a strictly technical notion (the condition of exemption from any subordination), but also as a generic image of the condition of man outside of civil society. Why natural man seems to be at one moment lonely and abandoned, deprived of any tie with other human beings, and at another a man with social and familial relationships, but who has not yet entered into a civil society. Why the condition of life in the family is first thought to be like a state of nature and later as its opposite. It is evident, in fact, that when Pufendorf uses the state of nature as a methodological hypothesis suited to establishing the independence of sovereign power, he holds on to a strictly technical conception of the state of nature, as the condition of exemption from any subordination of anyone who lives in such a condition, whether a single individual, a head of a family (*paterfamilias*), or a representative of a *civitas* (a sovereign). When, vice versa, he uses the state of nature to explain the causes of the formation of civil society, the independence which is spoken of will no longer be, indifferently, the independence of the individual, the *paterfamilias*, or the sovereign, but will have to be necessarily only the independence of the individual or of the *paterfamilias*. The state of nature will then become the condition of man outside of civil society, a condition for which it is necessary to show all the disadvantages, in order to make it the *state from which it is necessary to leave*. Moreover, it is evident that if in order to present what which Pufendorf once called the *symptomata* of the state of nature (*De statu* section 7) in their most extreme form, he must place the emphasis on the *fictio* of abandoned man in this world without any human aid, then natural man will only be able to be man alone, while the family, in which the individual finds all the help and comfort he needs, will tend to take a form that is completely opposite to the state of nature and sufficient to avoid its inconveniences.

When, vice versa, we recognise that the misery and absence of comfort in the state of nature are not sufficient in explaining the renunciation of natural liberty and the acceptance of civil subordination (because these disadvantages could be amended by other kinds of *societas hominum*), the insecurity in the state of nature then becomes the authentic *causa impulsiva constituendae civitatis*. The family—which is successful in making human life more comfortable (*cultior*), but does not protect men from the evils threatened by other men—will then be driven into the vortex of negativity of the state of nature and will no longer be represented in any way as its opposite. However, as Pufendorf must hold firm the point that the state of nature is the state in which there are not relationships of subordination, while in the family there is a relationship of subordination, it is unavoidable that the family for him takes the form, in a contradictory way, as the state of nature and as its opposite. The family is like the state of nature because it does not absolve the essential function of civil society (to guarantee security), which is therefore the only one that can be depicted as the true opposite of the state of nature. It is the opposite of the state of nature because in the family there is a relationship of subordination and because the more comfortable life which the family assures is far from the *inculta* life of the man *destitutus* which, as we have seen, contributed greatly to the complex negative image of the state of nature, as a state from which one needs to leave.

The Hobbesian inheritance in the doctrine of *socialitas* and the state of nature

If this is the true face of the Pufendorffian doctrines of *socialitas* and of the state of nature, one understands how these doctrines are closer to several Hobbesian theses than it is generally believed. We can begin with some of the well-known aspects of Hobbesian philosophy. For example, the idea of *conservatio vitae* is placed by Hobbes at the foundation of the laws of nature just as the idea of *ut salvus sit* is for Pufendorf the underlying principle of the law of *socialitas*. Hobbes emphasises—as Pufendorf will also have to do against his own inclination—the incapacity of the laws of nature to guarantee the goal of human preservation. As Hobbes laid down the *mutuus metus* at the origin of *civitas*, Pufendorf recognised this as the true *causa impulsiva constituendae civitatis*. If one examines several particular points (which are not any less important or significant), for example, it is clear that the Pufendorffian doctrine which states that in order to know a composed whole (*civitas*) one needs to disassemble it into its constituent parts, is none other than an application of the methodological maxims affirmed by Hobbes in the Preface of *De cive*: ‘for everything is best understood by its constitutive causes’ (p. 98).²⁹ Hobbes, on his method of research, writes that, ‘I took my beginning from the very matter of civil government, and thence proceeded to its generation, and form, and the first beginning of justice’ (*De cive*, Preface, p. 98). It is also clear that the immediate inspiration of the famous Pufendorffian *factio* of the *homo in hunc mundum proiectus* is the more famous Hobbesian invitation to consider men ‘as if but even now sprung out of the earth, and suddenly (like mushrooms) come to full maturity’ (*De cive*, VIII,1,205). It is also evident that the Pufendorffian thesis according to which there has never existed a *merus* or *absolutus* state of nature (one in which each person in relation to others is in a condition of natural independence) comes directly from the Hobbesian admission that ‘but though there had never be any time, wherein particular men were in a condition of warre one against another; yet in all times, Kings, and Persons of Sovereigne authority, because of their Independency, are in continual jealousies, and in the state and posture of Gladiators.’³⁰ Neither, on the other hand, is it difficult to realise that, if Pufendorf places so much attention on the distinction between *societas* and *civilis societas*, between the desire for the company of other humans and the need to enter into a civil society with them, and if he affirms that, far from being born, good citizens can be formed by education, and in some cases not even by this, it is because he has learned well Hobbes’ lesson. Hobbes writes:

wherefore I deny not that men (even nature compelling) desire to come together. But civil 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 whereof to those who have not yet tasted the miseries which accompany

²⁹All page references to *De cive* refer to: Thomas Hobbes. *Philosophical Rudiments concerning Government and Society*, in *Man and Citizen*. Ed. Bernard Gert. (Indianapolis/Cambridge, 1991).

³⁰T. Hobbes. *Leviathan*. Ed. Richard Tuck. (Cambridge, 1991) 90, Chapter XIII.

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 mind, or want of education, remain unfit during the whole course of their lives; yet have they, infants as well as those of riper years, a humane nature wherefore man is made fit for society not by nature, but by education (note 1 to *De cive* I,2,110).

However, these similarities are relatively easy to pick out. Less easy to identify, but no less evident after careful examination, are the similarities between Hobbes' and Pufendorf's fundamental laws of nature. In the first place, in fact, both exclusively look at interhuman relationships and both leave out of consideration any problem of the improvement or self-improvement of the individual. Secondly, in both cases it is from a single fundamental law that all the different precepts of natural law are deduced, and these precepts, for the most part, fully coincide (for example, the imperatives 'Observe one's pacts,' 'Consider others as one's equals,' 'Be grateful,' 'Support the comfort of others,' as well as the rules for the behaviour of the judge or the mediator).³¹ Thirdly, and most importantly, the fundamental law of Pufendorf ('Every Man ought, as far as in him lies, to promote and preserve a peaceful Sociableness with others' (*De iure*, II,3,15,134) is a different formulation of the fundamental law of Hobbes: '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,2,123). In fact, the invitation to promote and preserve 'as far as in him lies, a peaceful Sociableness with others' is none other than a different way to say that one needs, in a Hobbesian way, 'to seek Peace where it may be had, and where not, to defend ourselves' (as the title of section 2 of the second chapter of *De cive* reads, p. 121). When advocating violent self-defence, Pufendorf had affirmed explicitly that the laws of nature are those that aim to establish and preserve peace (therefore to say *leges naturae* and *leges pacis* are the same) and above all, significantly, that to be *insociabilis* is equivalent to acting 'contrary to the law of peace' (*De iure*, II,5,1,180). Hobbes, in the first version of his political system, the *Elements*, had affirmed that: '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, 95).³² He is saying, while using the same term (*sociable*) made famous, almost thirty years later, by Pufendorf, that the sum of the laws of nature is to be *sociable* with anyone who is sociable, and fearful of anyone who is not: namely (as Pufendorf will do) that the fundamental law of nature prescribes man to be sociable 'as far as in him lies' (*quantum in se*).³³ The law of nature of Pufendorf is then fully Hobbesian. It is Hobbesian by its scope of application: restricted by both to this life, to external actions and to those actions, which concern interhuman relationships. It is Hobbesian because of its deductive foundation: recovered by both in human nature and in particular in the instinct-right of self-preservation. It is Hobbesian because the foundation of the obligation to obey this law derives from God's command for both of them. Finally, it is Hobbesian by its very formulation, since the Pufendorffian invitation to be sociable, as long as this behaviour does not allow us to become prey to others, only repeats with different words the Hobbesian invitation to look for peace where it is possible, and where it is not possible to provide otherwise for one's own preservation.

The doctrine of the state of nature of the two authors also presents impressive analogies. We have already spoken of the 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 the security and, therefore, the survival of man. But what is more significant is that the use, which the two authors make of the notion of the state of nature is quite similar. For both, the state of nature is the device with which to understand the constituent characteristics of human nature. For both, it is the state of nature from which one needs to leave in order to enter civil society.

³¹Compare the III book of *De iure* with *De cive*, III.

³²Thomas Hobbes. *The Elements of law Natural and Politic*. Ed. F. Tönnies. (London, 1889). That, according to Hobbes, the expressions 'to be sociable' and 'make peace' are equivalent is demonstrated by the fact that in the *Elements* he expresses the very same concept in the following way: 'The sum [of law of nature] consisted in making peace' (I,XV,2,75).

³³That it is possible to interpret Hobbes's fundamental Law as equivalent to Pufendorf's Law of *socialitas*, is demonstrated by Christian Thomasius's observation in his *Fundamenta iuris naturae et gentium*, ed. quarta, Halae et Lipsiae 1718, I,6,18 (footnote): 'Quaerendam esse pacem ubi haberi potest, ubi non potest, quaerenda esse belli auxilia' 'videtur idem inculcare ac custodia socialitatis' ('it is obvious that Hobbes's maxim, 'quaerendam...' recommends the very same thing recommended by the cure of *socialitas*').

For both, the rights in force in the state of nature are the foundation of the rights of the sovereign. Not to mention how Hobbesian is the Pufendorfian use of the state of nature as an *exemplum ad deterrendum*, as a way to invite to civil society. In short, it is striking to note how identical functions of the notion of the state of nature correspond to identical difficulties with that notion in the works of the two authors. Hobbes, for example, like Pufendorf, in order to emphasise the negativity of the state of nature, delineates an image of the state of nature as not only insecure but also miserable.³⁴ In this way, nevertheless, he incurs the inconsistency of maintaining, next to the principal cause of the entry of men into civil society (the *metus*), an accessory cause (namely, the desire for the things necessary to live well and to make life more comfortable) which, by his own admission, was not able to have any role in the decision to undertake the civil bond.³⁵ Another example: Hobbes (unlike Pufendorf who had distinguished various meanings for the state of nature) seems to allow for only one way of understanding the state of nature (which he designates as the *conditio hominum extra societatem civilem*³⁶) and continually uses the alternative in *statu naturali-in statu civili*,³⁷ understanding it strictly as an alternative between the condition of one who lives outside of a civil society and the condition of one who lives inside it. But, when he characterises (exactly as Pufendorf will do later) the fundamental trait of the state of nature as a condition of liberty, natural equality and exemption from the obligations derived from pacts,³⁸ he is obliged to oppose the state of nature not simply to civil society, but also to the father–son relationship.³⁹ It is true that the English author was able to do this with greater ease than Pufendorf, because, while the latter denied that the family is a *civitas* and is forced to distinguish between family and state.⁴⁰ The former insisted throughout his work on the mere quantitative difference between the one and the other,⁴¹ so as to be able to affirm, with great ease, that the paternal dominion is a *genus civitatis* and that the political body can be made up of only two persons.⁴² However, in the use of the notion of the natural state Hobbes seems to move imperceptibly between its generic sense of the state ‘opposed to the civil condition’ and the more technical definition of it as the condition which precedes any pact. This slippage of meaning allows Hobbes to hypothesise situations—like that of pacts made in the state of nature,⁴³ which, strictly speaking, are contradictory. In fact, if the state of nature is defined as the condition preceding each pact, either it is the state of nature, but there are no pacts, or there are pacts, but it is no longer the state of nature. As we noticed with Pufendorf, Hobbes is able to speak of pacts made in the state of nature because he conveniently forgets that the state of nature is a technical notion, which designates the very condition that predates pacts, while in this case he understands it in its most generic sense of the human condition outside civil society.

³⁴Already in the Preface to *De cive*: ‘all men as soon as they arrive to understanding of this hateful condition, do desire, even nature itself compelling them, to be freed from this misery’, p. 101.

³⁵‘But though the benefits of this life may be much furthered by mutual help; since yet those may be better attained to by dominion than by the society of others, I hope no body will doubt, that men would much more greedily be carried by nature, if all fear were removed, to obtain dominion, than to gain society. We must therefore resolve, that the original of all great and lasting societies consisted not in the mutual good will men had towards each other, but in the mutual fear they had of each other.’ Hobbes, *De Cive* I,2,113.

³⁶‘The foundation therefore which I have laid, standing firm, I demonstrate, in the first place, that the state of men without civil society, which state we may properly call the state of nature, is nothing else but the mere war of all against all...’, Hobbes, *Preface to De Cive*, p. 101.

³⁷See for example the oppositions in *De cive* II,18.

³⁸Hobbes, *Elements* I,XIV,12, p. 73: the natural state is an ‘estate of liberty and right of all to all’; I,XV,10, p. 78: ‘estate and liberty of nature’; I,XV,13, p. 79: the nature has gives the man the liberty ‘of governing himself by his own will and power’; II,III,2, p. 127: the state of nature is ‘without covenants or subjection one to another’; cf. also *De cive* I,10, p. 116, where it is said that to talk of ‘the bare state of nature’ is the same as to say ‘before such a time as men had engaged themselves by any covenants or bonds’ (pp. 116–117); and VIII,1, p. 205, where Hobbes says that in the natural state men are ‘without all kind of engagement to each other.’

³⁹In the footnote to *De cive* I,10, p. 116–117, in answer to the objection of those who criticised him because from his premises would follow the absurd consequence that a son who kills his father in the state of nature would do no injury to him, Hobbes retorted that ‘a son 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 owes his protection as soon as ever he is born.’

⁴⁰Pufendorf, *ING* VI,2,10 and VII,3,6.

⁴¹Hobbes, *Elements* II,4,10, p. 135, *De cive*, VIII,1, p. 205; IX,10, p. 217; *Leviathan* XVII, p. 118.

⁴²Hobbes, *De cive* V,12, p. 171; *Elements* II,III,3, p. 128.

⁴³‘But the covenants which are made in contract of mutual trust, neither party performing out of hand, if there arise a just suspicion in either of them, are in the state of nature invalid.’ Hobbes, *De cive* II,11, p. 127.

Pufendorf's 'anti-Hobbesian' arguments on the state of nature

Pufendorf's thought is then tied to Hobbes' not only in a few, although important doctrines, but also in its fundamental principles. If this is the case, one may also understand why some of Pufendorf's criticisms of Hobbes seem so extrinsic and superficial. The reason for this superficiality cannot be found—as many interpreters have thought—in any weakness in the speculative ability of Pufendorf,⁴⁴ but rather in the very impossibility in which the author found himself. Although he had accepted the Hobbesian principles as his point of departure, Pufendorf still wanted to differentiate himself from Hobbes on fundamental issues. Thus, he ended up looking for an extrinsic difference, where he could not deny an intrinsic agreement.

I will not spend too much time on Pufendorf's 'facile' criticisms of Hobbes (which as such are weak or even incorrect) and will cite only the most significant example: namely, Pufendorf's refutation of the Hobbesian thesis that the state of nature is a state of war (*De iure*, II,2,5–10). The weakness of this refutation is not so much (as one is tempted to believe) in the fact that the first argument adopted by Pufendorf *pro contraria sententia* is a Scriptural argument: that the common descent of human kind from a single couple binds human kind by the feelings which bind blood relations together (II,2,7) (since Pufendorf is perfectly aware of the fact that, in putting forward the authority of the Scriptures, he was not adopting an argument of reason).⁴⁵ The weakness lies in the levity of the very arguments of reason. This is how these arguments are presented by the author:

In the first place, those cannot immediately hurt one another, who are divided by Distance of Place; for he who is absent cannot hurt me, except by some body else who is present, [...]: Therefore, since those who live separately, or at a Distance from each other, can offer no mutual Hurt so long as they continue thus distant, it doth not appear why such Men should not rather be reckon'd Friends than Enemies. [...] And then, as for that Equality of Strength which Hobbes asserts, it is certainly more fit to restrain, than to provoke a Desire of hurting. For no Man in his Wits is very fond of coming to an Encounter with his Equal [...]. Besides, the Causes alledg'd by Mr. Hobbes, why Men must have a mutual Desire of hurting, are particular, and therefore cannot infer a Necessity of an universal War of all Men against all, but only a War of some particular Men against some others. And then it doth not always happen, as he would suppose, that modest and civil Men should have a more fierce and insolent Generation living near them; or, if the Case be so, yet it is not necessary that the latter should be in a Humour of invading the former. Contention of Wit prevails only amongst Men exalted above the ordinary Level [...]. Nor has the All-wise Creator been so unkind, or so sparing in his Provisions for human Race, that two Persons must always lay Claim to the same Thing. Farther, the general Wickedness of Men may have so much Effect, as to hinder any one from rashly thrusting, or offering (as it were) his bare Breast to another, especially if he has not a Knowledge of him. [Plautus, *Asinar*. A Man doth not shew himself a Man, but a Wolf, to another whose Temper and Designs he is not acquainted with.] But, that this Suspicion or Diffidence should proceed so far, as to the seizing, or the oppressing another, unless he hath declar'd a particular Desire and Design to hurt us, no Man of Sense will admit. (*De iure*, II,2,8,109–110).

⁴⁴The originator of such criticisms is Pufendorf's arch-enemy, G.W. Leibniz, with his well-known and too often quoted dismissal of Pufendorf as 'a man who had little merit as a jurist and none at all as a philosopher', Leibnitii. *Opera Omnia*. L. Ed. Dutens. (Genève, 1768) vol. IV,3, p. 261. For an anthology of the summary 'liquidations' of Pufendorf in the French and Anglo-Saxon literatures, see Alfred Dufour, *Pufendorf's Ausstrahlung im französischen und im anglo-amerikanischen Kulturraum*, in *Samuel Pufendorf 1632–1982, Ett rätthistoriskt symposium i Lund 15–16 januari 1982*, Ed. Kjell Å. Modéer. (Lund, 1986) 96–119. One of Pufendorf's last critics in the Anglo-Saxon world, who rehashed many of the trite and malign prejudices of Pufendorf's enemies was A.H. Chroust. *Some critical Remarks about Samuel Pufendorf and his Contributions to Jurisprudence*. in 'The American Journal of Jurisprudence' 24 (1979) 72–85. This author's dislike of Pufendorf is almost pathetic, so much it is a caricature of Pufendorf and of his work. Poor Pufendorf, after three centuries it is still regarded as an unpardonable sin to have spoken ill of the pope (as the good Lutheran that he was!), to have considered scholastic philosophy as rotten and obscurantist, and ... to have had different ideas than Chroust's on Grotius's role in the history of natural law.

⁴⁵Indeed, after having adopted the scriptural argument, Pufendorf says: 'Sed nec deest quod Hobbesii *rationibus* reponatur' (*ING*,II,2,8 [emphasis added]).

The elegance of the revision introduced to the Hobbesian saying of the *homo homini lupus* may not have escaped the attentive reader. Even when less successful, there is something noteworthy in Pufendorf. Pufendorf's is an elegant revision because he identifies and recovers in its entirety the Plautine source of Hobbes, which he was one of the first to identify.⁴⁶ Nonetheless, the reader may also see the fundamental weakness of our author's reasoning. The core of his reasoning is all in the affirmation that, since the causes put by Hobbes for the origin of the *bellum omnium contra omnes* are not always universally in operation, it follows that a war of all against all is not always actually in progress. It is in fact clear that this reasoning, in the first place, does not constitute a refutation of the thesis of Hobbes, who (as anyone who knows his doctrine has noted) by 'war' does not mean waged war, but any situation open to conflict. Secondly, it contrasts with the same intelligent re-explanation, which Pufendorf had made of his adversary's thesis, an explanation in which right the particular way that Hobbes uses the term 'war' had been put into prominence by the author.⁴⁷ This peculiar gap between the depth of Pufendorf's understanding of Hobbes, as shown in his ability to explain his thought, and the misunderstanding transpiring from Pufendorf's own criticisms, does not occur only in connection to the notion of war. In fact, the argument according to which the equality of forces can only discourage war, not foster it (as Hobbes instead believed), is valid only if equality of forces means an actual parity of the power between the two opponents, that when looking at each other and showing themselves to be of roughly equal robustness of body (or of an equal strength of armed forces), they avoid testing each other in a combat which, by itself, offers an uncertain outcome. However, it is not valid if equality of forces means—as Hobbes had meant and as Pufendorf had not failed to relate in an effective synthesis of his adversary's position⁴⁸—the equal capacity that, in the final analysis, every man has to inflict on any other man, however strong, the greatest of natural evils: death. The reason for this gap, I repeat, lies in the fact that, given that Pufendorf deeply shared the Hobbesian doctrine of the state of nature as the state of *bellum omnium contra omnes* (which suggested that the condition of nature is necessarily a condition of insecurity, which does not guarantee the preservation of man), he could only object to it by taking it in its literal and extrinsic sense—a meaning which he himself knew it did not reflect its true sense.

If one still doubts the unconditional agreement of Pufendorf with the Hobbesian doctrine on the state of nature, it would help to re-read carefully two sections already used in this article: the first chapter of the seventh book of *De iure* and the *Dissertatio de statu hominum naturali*. If we run through *De iure* VII,1 again, we see that, in the first place, the arguments used by Hobbes in the first chapter of the *De cive* against the theory of man as a political animal are accurately and sympathetically re-explained (*De iure*, VII,1,2). Secondly, the importance of his own counter-arguments on this point (those adopted in II,3,17–18) is curtailed, thus underlining (in the same words as in the note to *De cive* I,2) the difference between sociable relationships and civil society (VII,1,3). Thirdly and most importantly, he accepts *in toto* not only the Hobbesian thesis in which the formation of a good citizen is a question of education and 'that very many continue, all their Life long, to be impolitick Animals, or, which is the same Thing, evil Subjects' (VII,1,4,623),⁴⁹ but also the Hobbesian thesis that the true cause of the formation of civil societies had been mutual fear. Such unconditional agreement is, on the one hand, mediated by the clarification—presented with Hobbes's same words⁵⁰—that 'fear' does not have to mean to be frightened, but rather the taking of precautions against possible evils; and, on the other, by the following assertion: 'indeed, that men have abundant Reason to apprehend and fence against mutual Danger, we have, in other Place, fully proved. [Bk.II. Ch.ii. 6,12]' (VII,1,7,627). This passage is important because, as one can see, in support of the thesis that men have many good reasons to be frightened of each other, Pufendorf makes reference to two other

⁴⁶F. Tricaud. 'Homo homini Deus', 'Homo homini lupus': *recherche des sources des deux formules de Hobbes*. Eds. R. Kosellek e R. Schnur. *Hobbes-Forschungen*. (Berlin, 1969) 61–70 fails to mention this passage from P., and does not say who was the first to identify Plauto as Hobbes's source.

⁴⁷Pufendorf, *ING* II,2,5 where it is reproduced the passage from Leviathan in which *war* is compared to the 'Foule weather' (since, as Hobbes says, its nature 'lyeth not in a showre or two of rain; but in an inclination thereto of many days together', XIII, p. 88) in order to clarify that *war* is not just the battle in the moment in which this is taking place.

⁴⁸Pufendorf, *ING* II,2,6 at the beginning.

⁴⁹Cfr. Hobbes, *De cive*, I,2, nota 1, p. 110.

⁵⁰Cfr. Hobbes, *De cive* I,2, nota 2, p. 113.

passages in his work. Of these two passages, while the second is the passage in which he argues his own thesis (moreover, as we have seen, the fully Hobbesian thesis) of the peace of nature as an unreliable peace (II,2,12), the first passage is dedicated to explaining the arguments adopted by Hobbes to prove *his* thesis, that the state of nature is a state of war. Indeed, the same arguments which, after having been re-explained in the passage of II,2,6, were then refuted with the weak counter-arguments referred to above. This means that here, in the seventh book, Pufendorf is in agreement with the Hobbesian thesis which, in the second book, he had refuted. On the other hand, that the reference to the passage in II,2,6 is not the result of a momentary distraction or, worse, of a misprint, is demonstrated by the fact that Pufendorf in the passage that immediately follows this reference defends those causes of reciprocal fear between men which he had criticised in the anti-Hobbesian passage of II,2,8 (cited extensively above). In fact, in response to the thesis of J.F. Horn,⁵¹ in which ambition cannot bring about the beginning of *civitates*, as it appears only after their establishment, Pufendorf writes:

And if it were not Ambition, which occasioned the first Murder in the World; when Cain was enraged, that his Brother's Offering should find more Acceptance with God, than his own! Besides, Ambition is but one Root of those Evils, which spring, in like manner, from Perverseness of Temper, and Competition of Desires. Of which, even in those plain and primitive Ages, the former produced that savage and brutish Fierceness in the Race of Giants; the latter occasioned Strife and Dissension betwixt the nearest Relations. [Genes, xiii.7. xxvi.15,20,21.] In the Breasts of Kings, Ambition, it is true, reigns with greater Violence, and transports them to Actions more bloody and cruel; yet we may trace some Footsteps of the same Passion in Shepherds and Rusticks (VII,1,7,627–628).

Even leaving aside the use of the example of Cain (which also irresistibly calls to mind chapter XIII of *Leviathan*, in which Cain is used similarly as an example), one sees how at least two of the reasons for the reciprocal fear of men mentioned by Hobbes are retrieved by Pufendorf with his full and unconditional support: what Pufendorf calls *ambitio*, which in *De cive* Hobbes referred to as the need of the mind to ‘triumph and to vaunt itself’ (I,5, p. 115), and in *Leviathan* as *glory* (XIII), and what Pufendorf calls the *concursum circa eandem rem*, which Hobbes had designated in a similar way in the first chapter of *De cive* and in the thirteenth chapter of *Leviathan*.⁵²

At this point, I would like to finish this analysis of *De iure* VII,1 and go on to the dissertation *De statu hominum naturali* and to take up again the arguments (which we had momentarily left aside during the study this dissertation) adopted by Pufendorf in response to the question of whether the state of nature is one of peace or of war. On examining the paragraphs of the dissertation of 1674 relative to this argument (sections 15–17), we immediately realise how the contrast between the explicit criticism of the Hobbesian thesis of the state of nature as a state of war and his substantial agreement with it—a contrast, which we have found operating in *De iure*—tends to disappear. In this short work, in fact, not only are the Hobbesian theses on the nature of interhuman relationships accepted in toto, as in the seventh book of *De iure*, but the anti-Hobbesian arguments of the second book in the larger work, when they reappear in the dissertation, undergo an attenuation and a limitation, which takes away their capacity, which was still in *De iure*, to be taken as an alternative interpretation of the state of nature. An example of this attenuation is provided by the way in which the theme of *coniunctio hominum*, in section 15 of the dissertation, is dealt with: the theme of man's natural similarity. Here, in fact, the common origin of human kind from a single couple is cited only to exclude it from actual consideration (‘That there is a natural similarity in all of humankind is acknowledged even by those who do not know all human beings⁵³ to be derived from one conjugal pair’ (section 15, 126)). The entire discussion by Pufendorf does not aim so much at underlining, as in *De iure*, the natural similarity among men (with the union and friendship which follows) than at demonstrating how necessary is for human beings to behave in such a way, in order to make friends with other men. On one hand, from the fact that ‘nothing is

⁵¹Horn, *Politicorum pars architectonica de civitate*, cit.

⁵²‘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.’ Hobbes, *De cive* I,6, p. 115. See also, *Leviathan*: ‘... therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies’ (Chapter XIII, p. 87).

⁵³Here we have amended the English translation.

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' (127). On the other hand, from the fact that 'very many goods and no fewer evils can redound to a person from others' follows the necessity that 'one who values his own well-being must 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' (section 15, 127). The natural *coniunctio hominum* surveyed by Pufendorf, therefore, does not refer so much to the fact that men are naturally friends but rather to the recognition that they are obliged to behave amicably at least with those with whom they desire to have relationships or of whom they have a need. If we then go on to section 16, dedicated to the careful examination of the *inclinationes hominum*, we come across a good example of Pufendorf's unconditional support for the Hobbesian analysis of human nature. Pufendorf begins in fact by stating: 'it is well known...that people consider self-love and their own advantage and glory to be nearly the most important in life'⁵⁴ (section 16, 127) As far as the first of the two fundamental inclinations of man so characterised is concerned (self-love and the quest for his own advantage which follows), it is known—observes Pufendorf—that one's advantage is often pursued not only by not considering the advantage of others, but by definitely harming one's fellow man. The consequence of this is that the wickedness 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 [...] are all but forced to break the peace and fortify themselves against it by whatever means. [...] Thus can one man's troubles keep even many temperate men embroiled in constant disputes'(section 16, 127–128). As one can see, our author accepts here fully the Hobbesian thesis in which the wickedness of a few is enough to throw the majority into *perpetuae lites*. As far as the second of the fundamental inclinations of man is concerned, *gloria* (and one notes how here Pufendorf, unlike in *De iure* in which he spoke of *ambitio*, uses the very term used in *Leviathan*),⁵⁵ our author notes that men even consider disagreement by itself as an offense:

most mortals have a temperamental stubbornness that not only makes them consider their own variously acquired opinions as true, and eager for others' acknowledgement thereof, but that also makes them hate those who see things differently. These they labour to afflict with the gravest evils simply because they disagree with them (section 16, 128).

In this observation, no one will have difficulty in recognising the well-known thesis of Hobbes.⁵⁶ As well, the observation in relation to the evil effects of the confluence of the desires of many persons for the same object is also strictly Hobbesian:

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 cannot 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 (section 16, 128).

Finally, the conclusion that Pufendorf makes from this is completely in accordance with the Hobbesian thesis of 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 (section 16, 128).

This is a conclusion which differs from Hobbes' thesis only by the suggestion that the 'suspicions and mutual distrust', not war, are constant.

⁵⁴Our own translation.

⁵⁵Hobbes says: 'So that in the nature of man, we find three principle causes of quarrel. First, Competition; Secondly, Diffidence; Thirdly, Glory', *Leviathan* XIII, p. 88 (the third cause is *gloria* in Latin).

⁵⁶Furthermore, since the combat 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 less than tacitly to accuse him of an error in that thing which he speaketh: as in very many things to dissent, is as much as if you accounted him a fool whom you dissent from.' Hobbes, *De cive* I,5, p. 114.

This last passage provides us with another example of this retrieval, although attenuated, of the anti-Hobbesian arguments of the second book of *De iure*, which we have referred to above. It will, in fact, not go unnoticed by the attentive reader that the argument of the spatial distance between men who live in the state of nature—which in *De iure*, II,2,8 had served to deny that it was possible to have conflict among those who have not contact with each other—reappears here, in a changed form, in the affirmation that the constant suspicions are as much justified as the ‘opportunities for harming one other’ increases. On the other hand, the argument of spatial distance—used with the same critical valency as it had been used in *De iure*, II,2,8—reappears in section 17 with other anti-Hobbesian arguments which were also adopted in the same passage of *De iure*. Nevertheless, what we had been laboriously maintaining up to now is here almost explicitly stated: that the criticism which Pufendorf makes of the Hobbesian conception of the state of nature as a state of war of all against all is valid only if the Hobbesian thesis is understood in its most extrinsic literality. In section 17 of the *Dissertatio*, after having given in the two preceding paragraphs the answers, which we have just seen to the questions on what was the *coniunctio* and what were the *inclinationes* of men, Pufendorf in fact affirms:

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 promised 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 (section 17, 128–129).

As one can see, here Pufendorf observes that the likely causes for conflict are neither universal nor do they always lead to hostile acts. But the only consequence that he draws from this (an extremely weak consequence, and entirely in line with our interpretation) is that these causes are not then sufficient to warrant the *simplistic* qualification of the state of nature as a state of war. It is then evident that Pufendorf is fully aware of being critical of the thesis of the state of nature as a hostile state, understood so *simply (ita simpliciter)*, that is, in its literality.

The conclusion of my analysis of the Pufendorffian critique of the state of nature as a state of war of all against all is that there is a deep convergence between the Hobbesian and the Pufendorffian views of the state of nature. This has to be rescued from the facile and extrinsic view that opposes Hobbes, as someone who maintains that the state of nature is a state of war, to Pufendorf, who, on the contrary, maintains that the state of nature is a state of peace. This means that the importance and significance of Pufendorf’s criticism of

Hobbes concerning the state of nature cannot be found within the arguments encompassing this extrinsic opposition, but must be looked for in some other places, for example, in Pufendorf's examination of the Hobbesian concept of the natural equality of men.

With regard to the Hobbesian way of conceiving this equality, Pufendorf in fact acutely notes that supposing, and not conceding, that men are substantially equal in strength and in other faculties of mind, one cannot oppose, as Hobbes does, this presumed equality of strength with the inequality introduced among men by civil law. Such an opposition could actually be introduced only at the price of a serious confusion, which he points out as follows:

When he [Hobbes] subjoins, that 'the present Inequality has been introduc'd by Civil Law' [*De cive* I,3], he seems to me very much to have forgotten himself. For he had been speaking before of the natural Equality of Mens Strength, to which it is a great Impropriety to oppose the Unequalness arising from politick Institutions, which does not affect or regard the Strength of Men, but their State and Condition; does not make one Man stouter than another, but greater in Quality and Honour (*De iure*, III,2,2,224).

Therefore, according to Pufendorf, as Hobbes makes a mistake in opposing what is a *physical* equality with what is a *moral* inequality, so also the equality which natural law prescribes to keep among men is not that of strength and of other faculties of mind, but is of another kind:

For as in well-order'd Commonwealths, one Subject may exceed another in Riches, or in Honour, but all are equal Sharers in the common Liberty; so under this Regulation of Nature, how much soever a Man may surpass his Neighbours, as to bodily or intellectual Endowments, he is still obliged to pay all natural Duties, [...] And this Equality we may call an Equality of Right; the principle from which it springs is this, that the Obligation to a social Life equally binds all Men, inasmuch as it is the inseparable Companion of human Nature, consider'd simply as such (*De iure*, III,2,2, 225–226).

Men, therefore, according to Pufendorf, are naturally equal not because they possess equal strength, in the end, not because they have equivalent intellectual gifts, but because they all have an equal right to be considered by others as their equal, no matter how weak of body or wanting in intellect they may be. To tell the truth, this thesis had already been adumbrated by Hobbes in *De cive*, when he had shifted the emphasis away from the discussion of an actual equality among men to the affirmation of the necessity of having to recognise each other as equals:

Whether therefore men be equal by nature, the equality is to be acknowledged; or whether unequal, because they are like to contest for dominion, it is necessary for the obtaining of peace, *that they be esteemed as equal* (*De cive*, III,13, 143).

Pufendorf must have had this paragraph of *De cive* in mind as he made a great resource of it in taking up and examining closely (*De iure*, III,2,8) the Hobbesian criticism of the Aristotelian doctrine of slaves by nature, and as, in reproaching his predecessor for the confusion between physical equality and moral equality, he attributes the error to a momentary distraction, and presents to us a Hobbes who slumbers like the great Homer.

Yet, the importance of Pufendorf's criticism of Hobbes regarding the state of nature must be found above all in his attempt, repeated again and again by our author, to demonstrate that it is no longer necessary to assert with Hobbes that *in statu naturali non esse locum iniustitiae*, once the Hobbesian *ius in omnia* is reinterpreted in a way suited to at least one of the aspects of the thought of the English author. The critical reinterpretation of *ius in omnia* is in fact constructed by taking advantage of elements and agents present in Hobbes' thought, namely using the choice of one Hobbes against another.

Pufendorf, when he returns once again⁵⁷ to *ius in omnia* in the first chapter of the seventh book of *De iure*, observes that:

And that Right and Power of all over all, with which Mr. Hobbes invests Mankind in his State of Nature, ought to be extended no farther than right Reason allows of; amounting only to this Sense, that Man, in a

⁵⁷P. had already commented at length on the hobbesian *ius in omnia* in *ING* I,7,13, II,2,3, III,5,3. These passages are analysed in the first part of my *Pufendorf discepolo di Hobbes*, cit, pp. 39–44.

State of natural Liberty, has a Right to imploy, against all Persons, all such Means for his Preservation, as Reason judges necessary for him to use, and dangerous to let alone. Wherefore to carry our Caution farther than right Reason shall prescribe, is doubtless a Breach of the Law of Nature. So that he, who, on any uncertain Fears, kills the Person he is afraid of, when he might as conveniently have escaped from him, must be adjudged guilty by the said Law. Whence they appear to be certainly in the wrong, who imagine that this Principle justifies Rapines and Robberies, upon such as are not open and professed Enemies. For Robbery and Rapine plainly denote such Means, as sound Reason can never judge necessary to a Man's Preservation, but such as are rather made use of to serve the Ends of Avarice and Cruelty: It being never alledged in Plea for Robbers, that they spoil Men of their Goods in their own Defence (VII,1,7,628).

As one can see, Pufendorf—having defined the *ius in omnia* as the right that each person has in the state of nature to use all the methods which *recta* or *sana ratio* suggests to him as necessary to his own preservation—criticizes the Hobbesian thesis according that the *incertus metus* is enough to justify the aggression of a potential enemy in the state of nature as well as the thesis that *latrocinia* are permitted in such a state. This criticism is founded upon the consideration that, by the first proceeding, we ‘carry our Caution farther than right Reason’ grants. As far as robbery, it is not tenable that the *sana ratio* allowed robbery to be a necessary means for one's preservation, since it is rather an action which is undertaken ‘to serve the *Ends of Avarice and Cruelty*’. In these Pufendorfian observations, it is easy to hear reverberating an implicit reproach of Hobbes, for not having followed his own principles and for having forgotten, when asserting the theses criticised here, to have 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 laws of nature (*De cive*, note to I,10, 116).

Or, to have said that the ‘right reason’ (*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 rebound to the damage or benefit of his neighbours (*De cive*, note 1 to II,1, 123).

Recta ratio is, according Hobbes, an act of reasoning on the effect of one's actions, not only one's *own* personal but also true reasoning, which must infer ‘from true principles rightly framed’(*ibid.*). From this assumption he concludes that:

the whole breach of the laws of nature consists in the false reasoning, or rather folly of those men, who see not those duties they are necessarily to perform towards others in order to their own conservation (note 1 to *De cive* II,1, 123).

It is above all in Pufendorf's final observation (namely that persons devoted to ‘Robberies and Rapines’ do not regard these as the means to guarantee their own preservation, but as the means to satisfy their ‘Avarice and Cruelty’) that it is easy to hear more than one echo of a famous, crucial observation of Hobbes, with which the latter, to tell the truth, destroyed from its foundation his very own thesis that ‘the laws of nature, in the state of nature, are silent’ (*De cive*,V,2, 166). It is, namely, the observation that,

there are certain natural laws, whose exercise ceaseth not even in the time of war itself. For I cannot understand what drunkenness or cruelty [...] can advance toward peace, or the preservation of any man (note to *De cive* III,27, 149).

In fact, it is certainly because he is thinking of this Hobbesian passage that Pufendorf puts forward cruelty as an example of the kind of behaviour which cannot be justified by the need for self-preservation.

With this intelligent capacity to seize the internal tensions of Hobbesian thought and to use them to his own ends, Pufendorf achieves, in my opinion, the most convincing results and the utmost in conceptual depth. He is not, on the other hand, as persuasive in his attempt to demonstrate that there exists a ‘natural and not merely conventional right’ (*De statu*, section 10, 122) to which corresponds an obligation to respect it, which is binding in a perfect way by the only law of nature. However, the disappointing results on this point take nothing away (and I have argued this at length in chapter one of my book *Samuel Pufendorf*

discepolo di Hobbes) from the importance of Pufendorf's reflection on the notion of *superior* as embedded in his doctrine of *moral entities*, namely, the distinction between physical power and moral power. It is therefore on these critical points that the importance of Pufendorf's examination of Hobbes' thought must be measured. This means that anyone who aspires to put Pufendorf in his rightful place in the history of the doctrine of natural law and is not content with producing simplifications (good enough perhaps for textbooks, but sterile and without any real understanding) cannot stop at the defining and simplifying aspects of his thought. This person cannot repeat with him that 'the natural State of Men, altho' they be considered as not united in Commonwealths, is not War but Peace' (*De iure*, II,2,9, 110), but must reconstruct the complexity of Pufendorf's analysis of the state of nature and of the law that governs it. If one attempts this rather difficult endeavour, one will see (as I believe to have made clear to the reader who has had the patience to follow this up to now) that, under formulas which seem to be antithetical to Hobbesian formulas, there lies a thought which is in fundamental agreement with Hobbes', a thought which, although without any obtuse subjection, is shifted in its entire span onto the traces of Hobbesian problems.

Birth of the *topos* of an anti-Hobbesian Pufendorf

How has it been possible, then, that this historiographic *topos* has been established, according to which the doctrine of *socialitas* is the one which most distances Pufendorf from Hobbes, putting him, instead, nearer to the Aristotelian-classic tradition of a man as a social animal and to the *appetitus societatis* of Grotius?

There are many reasons for this, and for a more detailed account I would refer readers to the second part of my book, *Pufendorf discepolo di Hobbes*.⁵⁸ Here I would like to draw attention simply to the fact that the first author of that *topos* was Pufendorf himself, who, under pressure of the necessity to defend himself from the vociferous accusation of Hobbesism, which were equivalent to those of atheism and moral indifference, rethought his own position in the history of ethics, putting himself on the side of the Stoics, of Grotius and of Cumberland, against Epicurus and Hobbes.⁵⁹ In a kind of retrospective illusion, our author, having to convince his adversaries that his principles could not be associated, in a summary condemnation, with those of Carneades, Machiavelli and Hobbes, ended up by convincing himself that his philosophy and that of Hobbes were fundamentally opposed.

That, instead, he was initially fully aware of the close affinity between his *socialitas* and Hobbesian principles is shown by a very significant admission that he made in *Apologia* (1674), against the accusations of heterodoxy levelled at him by the authors of the *Index novitatum*. Here, in fact, Pufendorf replies to his adversaries' accusations of having put the social nature of man at the foundation of the law of nature—that is same *socialitas cum duce suo Hobbesio haeretico*⁶⁰—saying that he did not understand why Hobbes had to be labelled as a heretic if his only fault was to have made of *socialitas* the foundation of the law of nature.⁶¹ By replying thus Pufendorf in no way doubts the thesis of his adversaries about the fact that Hobbes made *socialitas* the foundation of the law of nature and thus he accepts *in toto* the idea that his foundation and that of Hobbes had a very close affinity.

This is how things stood originally in Pufendorf's mind; and we have tried to show above how he, (and his adversaries), were perfectly right to see things this way. But it then appended that our author was stung by the pain caused by the association of the accusations of both Hobbesism and atheism and he realised that it was useless, indeed counterproductive, to insist on the *sensus sanus* of Hobbes philosophy. Needing powerful allies, he put his own doctrine under the august, reassuring banner of Stoicism and of Grotius, putting his principle of *socialitas*, as a Stoic and Grotian principle, against the Hobbesian principle of the search for its proper utility, which had a Epicurean and Gassendian origin. This way of indicating the relationship of his own thought with that of Grotius and Hobbes will develop into a real and

⁵⁸F. Palladini, *Pufendorf discepolo di Hobbes*, cit., pp. 175–283.

⁵⁹Pufendorf, *Specimen Controversiarum* I,6 in *ES*, pp. 126–127.

⁶⁰[Josua Schwarz and Nicolaus Beckmann], *Index quarundam novitatum* (1673), Art. XXIII (in Palladini, *Discussioni*, cit., p. 168).

⁶¹Pufendorf, *Apologia* section 28 in *ES*, p. 37 (21–22).

proper theorisation of their respective places in the history of ethics. This story is too well known for us to have to go over it again here⁶²; it is at the root of the historiographic *topos*, enlarged by Jean Barbeyrac, of a Pufendorf who, making himself in this a follower of Grotius, vindicates, against the anthropological pessimism of Hobbes, the social nature of man, by putting as the foundation of natural law, principles which are totally opposed to those of Hobbes. A *topos* that here I have tried to question and to bring forward as a topic for further discussion.

⁶²On the histories of Enlightenment ethics, and the context of Pufendorf's treatment of it, see now T.J. Hochstrasser, *Natural law Theories in the Early Enlightenment*, Cambridge 2000, pp. 1–71. Besides the already cited essay by Tuck on *The 'modern' theory of Natural Law*, one of the first to attract the attention on Pufendorf's 'history of natural law' was J. Schneewind, *Pufendorf's place in the history of ethics*, 'Synthèse', 72, 1987, pp. 123–155.