Samuel Pufendorf on Multiple Monarchy and Composite Kingdoms

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Abstract: This article expounds Samuel von Pufendorf's evolving theory of multiple monarchy, from the publication of his early work on the form of the Holy Roman Empire, through his natural jurisprudence, to his historical accounts of European statesmanship. Although his comments on the irregularity—indeed, the monstrosity—of composite kingdoms are well known, it is less often appreciated that Pufendorf came to be able to accommodate them within a typology of constitutional systems developed against the background of his theory of the moral personality of the state. Pufendorf's political thought after his early book on the Holy Roman Empire is the record of a consistent attempt to confront the complexities of multiple monarchy rather than capitulate in the face of them.

Keywords: Pufendorf; monarchy; sovereignty; Holy Roman Empire

Before the ascent of the nation-state from the nineteenth century, it was the rule rather than the exception for a monarch to reign over several kingdoms or principalities as opposed to just one. Indeed, this was the 'most common form of premodern monarchical rule'.[1] Yet it was only during the latter decades of the twentieth century that we began to acquire a scholarly vocabulary fit for the analysis of these systems of organising rule. In 1978, the historian H. G. Koenigsberger argued that we lacked 'anything approaching a satisfactory overall theory' about how a 'relatively uniform system of political partnership' between late-medieval European monarchs and parliaments gave way during the early-modern period to a more variegated picture in which either monarch or parliament clearly predominated.[2] Koenigsberger adumbrated a theory of his own, positing that the differential structures of Europe's 'composite monarchies'—and specifically whether the king's lands were contiguous or divided by sea or other states—came to exercise a serious impact on the relationship between kings and parliaments. Following Koenigsberger's lead, in 1992 J. H. Elliott distinguished between composite monarchies based on accessory unions, 'whereby a kingdom or province, on union with another, was regarded juridically as part and parcel of it', and those based on union *aeque principaliter*, 'under which the constituent kingdoms continued after their union to be treated as distinct entities'.[3] He maintained that although the latter form of composite monarchy was more adaptable, the dominant component of the union nearly always triggered insecurity and disquiet among the king's other dominions, and thus that composite monarchy nurtured within it the seeds of its own destruction in the force of national identity.

The literature on what I shall call 'multiple monarchy' has grown apace since Koenigsberger's and Elliott's initial forays.[4] Some of this has focused on the history of the

[1] Charlotte Backerra, 'Personal Union, Composite Monarchy and Multiple Rule', in *The Routledge History of Monarchy*, ed. Elena Woodacre, Lucinda H.S. Dean, Chris Jones, Zita Rohr, Russell Martin (Abingdon: Routledge, 2019), 89.
[2] Koenigsberger, H. G. 'Monarchies and Parliaments in Early Modern Europe: *Dominium Regale* or *Dominium Politicum et Regale*?' *Theory and Society* 5, 2 (1978): 191–217, at 194–6.
[3] J.H. Elliott, 'A Europe of Composite Monarchies'. *Past and Present* 137 (1992): 48–71, at 52.
[4] See, e.g. Jenny Wormald, 'The Creation of Britain: Multiple Kingdoms or Core and Colonies', *Transactions of the Royal Historical Society* 2 (1992): 175–94; Harald Gustaffson, 'The Conglomerate State: A Perspective on State Formation in Early Modern Europe', *Scandinavian Journal of History* 23, 3–4 (1998): 189–213; D.W. Hayton, James Kelly and John Bergin (eds.), *The Eighteenth-Century Composite State: Representative*

political thought—theories of multiple monarchy *avant la lettre*— particularly in the British context of the personal union of the crowns of England and Scotland in 1603 and the incorporating union of 1707.[5] In this article, I shall concentrate on one of the most misunderstood theories of multiple monarchy. In histories of the most complex multiple monarchy of them all, namely the Holy Roman Empire, Samuel von Pufendorf (1632–94) is usually mentioned as the person who, writing under the flamboyant pseudonym of Severinus de Monzambano in 1667, compared the Empire to 'some mis-shapen Monster', and thereby set the tone for a whole succession of statist and eventually nationalist critiques.[6] It is much less frequently noted that Pufendorf revised his views about the Empire in the second edition of the *Monzambano* (as his book has come to be known), probably at least in part in view of the fact that he had found a way, in Book VII of his *The Law of Nature and Nations* (1672), by which to bring conceptual order and shape to the German Empire.[7]

Part I of this article describes the debate on the nature of the Empire in the years following the Peace of Westphalia in 1648, situating Pufendorf's coruscating remarks on the irregularity of the Empire against those of his opponents, who tried to make it fit the categories of monarchy, aristocracy or democracy. In Part II, I show how Pufendorf had changed his mind about the irregularity of composite kingdoms in general, as recorded in *The Law of Nature*. This change of perspective, I argue, was made possible both by his adoption of a conception of sovereignty as a comparative rather than superlative concept and, especially, his application of a composite model of human decision-making at the level of what he would call the 'moral person' of the state. Part III details the pressing political reasons for Pufendorf's change of mind and shows how his theoretical insights were applied in his writings on multiple monarchies and composite kingdoms. Part IV discusses the reasons why Pufendorf's insights about the Holy Roman Empire as a composite kingdom came to be buried after the eighteenth century, but it also points to the more recent resurgence of literature on the Empire which has, usually indirectly, done much to lay bare their acuity.

I

Pufendorf published the first edition of the *Monzambano* (actually entitled *De statu imperii Germanici*, and later printed in English as *The Present State of Germany*) in 1667. This was to be his final year as professor of international law and philology at the University of Heidelberg,

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Institutions in Ireland and Europe, 1689–1800 (Basingstoke: Palgrave Macmillan, 2010); in French: Bartolomé Bennassar, 'Pratiques de l'état moderne en France et en Espagne de 1550 à 1715', in *Les monarchies française et espagnole: milieu du XVIe siècle-début du XVIIIe siècle*, ed. Jean-Marie Constant (Paris: Presses de l'Université de Paris-Sorbonne, 2001); in German: Arno Strohmeyer,'"Österreichische" Geschichte der Neuzeit als multiperspektivische Raumgeschichte: Ein Versuch', in *Was heißt 'österreichische' Geschichte? Probleme, Perspektiven, und Räume der Neuzeit-Forschung*, ed. Martin Scheutz and Arno Strohmeyer (Innsbruck: Studien Verlag, 2008); in Spanish: Peter Rauscher, 'El gobierno de una "monarquía compuesta": Fernando I y el nacimiento de la Monarquía de los Austrias en el centro de Europa'. In *Fernando I, 1503–1564: socialización, vida privada y actividad pública de un emperador del Renacimiento*, ed. Alfredo Alvar Ezquerra and Friedrich Edelmayer (Madrid: Sociedad Estatal de Conmemoraciones Culturales, 2004). I prefer 'multiple monarchy' to 'composite monarchy', not only because it is alliterative, but also because I want to designate the polities subject to the rule of such monarchs as 'composite kingdoms', and to differentiate between forms of rule and the commonwealths over which authority is exercised more clearly than is sometimes achieved in the literature.

[5] E.g. John Robertson (ed.), *A Union for Empire: Political Thought and the Union of 1707* (Cambridge: Cambridge University Press, 1995); Kidd, Colin. *Union and Unionisms: Political Thought in Scotland, 1500–2000* (Cambridge: Cambridge University Press, 2008).

[6] Samuel Pufendorf, *The Present State of Germany*, tr. Edmund Bohun, ed. Michael J. Seidler (Indianapolis, IN: Liberty Fund Press, 2017), VI.9, 176; Peter H. Wilson, *The Holy Roman Empire: A Thousand Years of Europe's History* (London: Allen Lane, 2016), 2.

[7] This article develops an argument I have made in Ben Holland, *The Moral Person of the State: Pufendorf, Sovereignty and Composite Polities* (Cambridge, Cambridge University Press, 2017).

and there has long been speculation that Pufendorf decided to leave the German lands because of the upset caused by the book. He had been passed over several times for a professorship in the law faculty; and when he jumped to the defence of an ostentatiously named Italian, who had materialised from the earth like a mushroom, with an unlikely grasp on German constitutional issues, and whose book had been banned by the imperial censor, Pufendorf's colleagues were under no misapprehension about the identity of the author of the abusive treatise.[8]

Pufendorf had waded into a heated debate on the constitutional form of the Holy Roman Empire. This had arisen in response to at least two intellectual prompts: Bodin's influential argument in *Les six livres de la république* (1576) that sovereignty was indivisible; and the rising analytical prominence of political Aristotelianism, and the corresponding proposition that rule in any political society must be monarchical, aristocratic or democratic.[9] The German states were by no means the only ones where both these propositions appeared difficult to square with political reality, but the unique political architecture of the Empire stood in especially stark relief *vis-à-vis* these theoretical postulates. Moreover, Germany provided a socially and institutionally propitious context for such a debate to take place, for confessional tensions were especially pronounced, a programme of 'streamlining' in local governments had been underway since the 1570s, and the many small jurisdictions of the estates supplied a kind of 'economy of scale' to literature advising rulers on the general nature as well as the minutiae of imperial public law.[10] The debate was given a new lease of life by the Peace of Westphalia (1648), which brought an end to the Thirty Years' War. The peace treaties reformed the Imperial Constitution to create new processes for adjudicating religious disputes and reduced the authority of the German princes over religious matters, thereby seeming to strengthen the Empire as a political entity. The 'experimental' character of the provisions enumerated by the treaties encouraged further debate about the nature of the Empire reorganised by the Peace.[11]

There were three basic positions in the debate known as the *Reichspublizisten.*[12] Nobody claimed that the Empire was a democracy, so there was no case to rebut here. Pufendorf simply argued that to describe the Empire as a democracy would 'deny the Name of Citizens to Free Men and Patriarchs' who were not represented in the Imperial Diet, an absurdity given that they all held by constitutional tradition various privileges or freedoms.[13] The first position proper was that the Empire was monarchical, the emperor being in full possession of Bodinian sovereignty. Bartholomaeus Keckermann, Hermann Kirchner and Daniel Otto were the most prominent advocates of this perspective before the treaties of Westphalia in 1648, and Dietrich Reinkingk the most prominent after it. Reinkingk advanced a fairly common interpretation of chapter 7 of the book of Daniel, which recounts a vision of

[8] Arild Sæther, *Natural Law and the Origins of Political Economy: Samuel Pufendorf and the History of Economics* (Abingdon: Routledge, 2017), 27–31, persuasively argues that the speculation is ill-founded, and that Pufendorf simply accepted a more exciting position at the new Lund University, which aspired, in the manner of every contemporary British institution of higher education, to be a 'global' university.

[9] Dreitzel, Horst. 'Reason of State and the Crisis of Political Aristotelianism: An Essay on the Development of Seventeenth-Century Political Philosophy', *History of European Ideas* 28, 3 (2002): 163–87.

[10] Robert von Friedeburg, 'Reformed Monarchomachism and the Genre of the "Politica" in the Empire: The *Politica* of Johannes Althusius and the Meaning of Hierarchy in its Constitutional and Conceptual Context', *Archivio della Ragion di Stato* 6 (1998): 129–53.

[11] Benjamin Straumann, 'The Peace of Westphalia as a Secular Constitution', *Constellations* 15, 2 (2008): 173–88.

[12] For more discussion, see, e.g. Gerhard Oestreich, *Neostoicism and the Early Modern State* (Cambridge: Cambridge University Press, 1982), 205–7; Franklin, Julian. 'Sovereignty and the Mixed Constitution: Bodin and his Critics', in *The Cambridge History of Political Thought, 1450–1700*, ed. J. H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991).

[13] Samuel Pufendorf, *The Present State of Germany*, tr. Edmund Bohun, ed. Michael J. Seidler (Indianapolis, IN: Liberty Fund Press, 2017), VI, 3, 161–62.

'four great beasts' representing 'four kingdoms that will rise from the earth'. 'The fourth beast is a fourth kingdom that will appear on earth. It will be different from all the other kingdoms and will devour the whole earth, trampling it down and crushing it'.[14] This, however, would be the last such kingdom on earth, and its overthrow would mark the end of the age. Reinkingk considered that the four beasts corresponded to the Babylonian, Persian, Macedonian and Roman empires, and argued for a *translatio imperii* from Rome to Germany until the end of time, such that the Holy Roman Emperor was the same kind of sovereign as a Roman Caesar.[15] Reinkingk had been ennobled by Ferdinand III for making this argument, but Pufendorf considered that it 'deserve[d] to be *hissed* at than answered seriously'.[16] In fact, the *Monzambano* reveals an admiration for the work of the 'learned' Hermann Conring,[17] who in his *On the Origins of German Laws* (1643) had already demolished the basis for Reinkingk's case, showing that Roman law had only gradually been introduced into the Holy Roman Empire, and arguing further that there had been far more than four empires in history, and that 'the Roman Empire had not even included all of Europe, much less the new world'.[18]

A second argument was that the Empire was an aristocracy. Henning Arnisaeus, for example, considered that, if sovereignty were shared and indivisible at the same time, then this meant that commoners, estates and emperor held any power granted to the others in the same measure and simultaneously, and that the Empire was thus an aristocracy because the nobles held the balance. A similar position was also that taken by Bogilslaw Cheminitz, writing as the Westphalian treaties were being negotiated (and whose book was burned by the imperial executioner). He maintained that the emperor was accountable to the estates, and thus that their authority was more fundamental than his. Pufendorf answered that the emperor's accountability derived from a mutual 'Compact and Agreement' between himself and the estates. The accountability therefore ran both ways. While the emperor had to 'give an account of his Actions' to the estates, this did not mean that he was not their superior. 'For though the Emperor can in truth do nothing against the Consent of the States, yet I think it is as true, that no man ever heard the States pretended to do any thing without the Consent of the Emperor'.[19] Furthermore, a superior may bind his own power by a promise, but that does not signify his inferiority to the other party; as Pufendorf wrote in *The Law of Nature*, God himself has promised salvation through the second Covenant. 'GOD cannot, any other way, become a Debtor to mortal Man, but upon Account of his free Promise, the Breach of which would be repugnant to his Goodness'.[20] Arguments that the Empire was an aristocracy were, then, 'strangely absurd', positing the emperor as a sort of 'subordinate Magistrate, that wears a great many proud Titles precariously bestowed upon him; as if whenever the Monarchy is not Absolute, it must presently degenerate into an *Aristocrasie*, and a Prince must presently acknowledge all those to be his Superiors whom he would not command and govern as he pleased'.[21]

Thirdly, the likes of Christian Besold, Veit Ludwig von Seckendorff and Johannes Limnaeus, arguing against the Bodinian mainstream, held that sovereignty was shared in the sense that different sovereign powers fell to different agents in the system. Such an

[14] Daniel 7:23, The New International Version.
[15] See the editorial notes in Pufendorf, *Present State*, VI, 6, 168, fn. 5.
[16] Pufendorf, *Present State*, VI, 6, 167–68.
[17] Ibid., V, 13, 134–35; and V, 14, 137; see also T.J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2000, 47–60).
[18] Constantin Fasolt, 'A Question of Right: Hermann Conring's *New Discourse on the Roman-German Emperor*', *Sixteenth Century Journal* 28, 3 (1997): 739–58, at 747.
[19] Pufendorf, *Present State*, VI, 7, 171.
[20] Samuel Pufendorf, *The Law of Nature and Nations*, tr. Basil Kennet, ed. Jean Barbeyrac, 5th edn. (London, 1749), I, IX, 5, 91.
[21] Pufendorf, *Present State*, VI, 7, 170.

understanding of sovereignty did not, for Pufendorf, approximate to the reality of the Empire. In Germany, 'the whole Supreme Power is not undividedly in the hands of many, nor are the Parts of it divided between divers Persons or Colleges'.[22] That is, there was no one council where undivided sovereignty resided, nor were all the parts of sovereignty clearly apportioned between different agents.

Having dismissed these three general positions, Pufendorf turned to consider another category of political organisation, exemplified by Switzerland and the United Provinces, to which Germany seemed to bear some resemblance. This he called a 'Confederate System', describing several states linked together 'into one Body' by virtue of a permanent league or alliance.[23] Pufendorf recognised that the Diets in the Netherlands and Switzerland were not the sovereign senates of aristocratic states. Rather, they were the common councils of confederations, states united by *foedus* but neither entirely fused together nor incorporated one state into another. These confederations manifested themselves as constituted unities capable of making laws for their members, but, in Murray Forsyth's words, they were 'not the constituted unity of one *people* but a unity constituted by *states*'.[24] The Holy Roman Empire bore a superficial sameness to these confederations, because there existed a central organisation, the *Reichsstände*, in which the estates coordinated their activities. Nevertheless, Pufendorf regarded the presence of the emperor as sufficient to exclude Germany from membership of this category. The treaties of Westphalia had determined that 'every one of the Electors, Princes and States of the *Roman* Empire, are so establish'd and confirm'd in their antient Rights, Prerogatives, Libertys, Privileges, free exercise of Territorial Right'.[25] As Pufendorf understood, these 'antient Rights' were not of sovereignty, or of some share in sovereignty, but rather pertained to the German feudal system, which supplied a scheme of customary law in the event of the silence of positive law.[26] Jurisdiction of any affairs not dealt with in specific laws belonged to the emperor in virtue of his *ius reservata*, and the emperor's prerogatives 'remained the same in 1648 as they had been in 1618'.[27] A pyramidal arrangement of vassalages and overlords superintended by the emperor to some extent remained even after 1648, despite the confederal configuration of the political body of the estates, which continued to exercise their 'Territorial Right'. As Peter Schröder points out, because a number of the smaller states did not feel secure in their own territorial power, the emperor was 'important to his old clientele as a guarantor of their independence and undisturbed existence'.[28] The emperor controlled the Imperial Aulic Council, providing for subjects to appeal against their prince and neighbouring princes to appeal against one another to the emperor, and '[r]ather than Westphalia limiting the potential of the Emperor and the Reich to interfere in territorial conflicts, a chronological listing of Imperial executions of judicial verdicts against *Reichsstände* reveals the opposite, with the majority of executions occurring after 1648'.[29]

What, then, was the Holy Roman Empire? It was not a democracy, nor an aristocracy, nor a monarchy, nor any reasonably straightforward mixture of any of these. Nor, according to

[22] Ibid., VI, 8, 173–74.
[23] Ibid., VI, 8, 175–176.
[24] Murray Forsyth, *Unions of States: The Theory and Practice of Confederation* (London: Leicester University Press, 1981), 15–16.
[25] *Treaty of Westphalia*, Article LXIV.
[26] Pufendorf, *Present State*, chapter V, 111–58.
[27] Andreas Osiander, 'Sovereignty, International Relations, and the Westphalian Myth', *International Organization* 55, 2 (2001): 251–87, at 270.
[28] Peter Schröder, 'The Constitution of the Holy Roman Empire after 1648: Samuel Pufendorf's Assessment in his *Monzambano*', *Historical Journal* 42, 4 (1999): 961–83, at 977; see also Peter H. Wilson, 'Still a Monstrosity? Some Reflections on Early Modern Statehood', *Historical Journal* 69, 2 (2006): 565–76, at 568.
[29] Patrick Milton, 'Intervening Against Tyrannical Rule in the Holy Roman Empire during the Seventeenth and Eighteenth Centuries', *German History* 33, 1 (2015): 1–29, at 5.

the *Monzambano* of 1667, was it 'a *Body* or *System* of many Soveraign States and Princes, knit and united in a League'. Instead, it was 'something (without a Name)' that fluctuated between a limited monarchy and a system of states.[30] '[T]he Government, State, or Empire of *Germany* hath something of Irregularity in it', Pufendorf observed, 'which will not suffer us to bring it under any of the principle or regular forms of Government, as they are usually described by the Masters of Politicks'.[31] Understood in terms of those categories, the Empire was 'an Irregular Body, and like some mis-shapen Monster'.[32]

II

One recent study of monstrosity in the history of ideas has pointed to the frequent 'scandalous' intentions of those authors who have made use of it as a trope.[33] The *Monzambano* caused a scandal. It was swiftly the object of an imperial prohibition and confiscation order, although this 'merely whetted appetites and increased the circulation': over 300,000 copies are estimated to have been distributed by 1710.[34] In the second edition, prepared during the early 1690s and published posthumously in 1706, the passage comparing the Empire to a monster was excised. By then, the international situation had altered, with France in particular pursuing a menacing foreign policy along the Rhine, so that it was certainly politic of Pufendorf to dampen his criticisms of the Habsburgs. I want to suggest, though, that between the publication of the first and second editions, he also found a way of bringing conceptual order to Holy Roman Empire.

In *The Law of Nature*, published six years after the *Monzambano* first materialised and about two decades before he began work on the second edition, Pufendorf distinguished between two kinds of system of states.[35] The first is what he had in the *Monzambano* named a confederate system, 'when two or more States are link'd together in one Body, by Virtue of some League or Alliance'. The second, however, is where 'two or more States are subject to the same King'.[36] It is possible in the case of *'Moral* Bodies [*corporibus moralibus*], to have but one Head over several of them together, and, consequently, to have one Person the Head of many distinct Bodies', even though in the case of natural bodies such a configuration 'would bear so monstrous [*monstrosum*] an appearance'.[37] Clearly, the second category could be said to apply to the German Empire, and thus the Empire no longer appears as monstrous, for the Empire was a union of moral bodies.

Why, though, should multiple monarchy mean that the composite kingdom over which the monarch reigned was not a monstrous entity? In the *Monzambano*, Pufendorf had said that sovereignty in a regular state had to be vested in 'one Soul'.[38] In 1667, he had reflected that the many layers of governance in the Empire made this impossible; by 1672, however, he thought differently. The principles of philosophical psychology, on the one hand, and of sovereignty, on the other, that Pufendorf set out in *The Law of Nature* gave him reason to think that political decisions could be made as if from a single soul even in the Holy Roman Empire.

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[30] Pufendorf, *Present State*, VI, 9, 176–77.
[31] Ibid., VI, 1, 159.
[32] Ibid., VI, 9, 176.
[33] Filippo Del Lucchese, *Monstrosity and Philosophy: Radical Otherness in Greek and Latin Culture* (Edinburgh: Edinburgh University Press), 2.
[34] Seidler, 'Introduction', in Pufendorf, *Present State*, xiii.
[35] Pufendorf in fact began as soon as 1667 to make some revisions to *Monzambano*'s arguments about multiple monarchy and the meaning of 'composition' in politics. See Ben Holland, 'De Systematibus Civitatum: Pufendorf on Confederations and Composite Kingdoms', in *Pufendorf's International Political and Legal Thought*, ed. Peter Schröder (Oxford: Oxford University Press, 2023).
[36] Pufendorf, *Law of Nature*, VII, v, 17, 681.
[37] Ibid.
[38] Pufendorf, *Present State*, VI, 8, 175.

According to Pufendorf's principles of philosophical psychology, all intentional and free human decisions have a composite character, commencing as deliberations of the understanding or intellect (*intellectus*) and terminating in an act of will (*voluntas*). The 'Beginning of a voluntary Act', as he put it, 'should regularly proceed from the Understanding'.[39] This 'Power of the human Soul, which it bears as a Light for its Guidance and Direction', operates in a speculative mode, by considering the nature of the object that it apprehends, asking 'whether it be agreeable or disagreeable, good or evil'.[40] It also operates in a practical mode, 'by which the Reasons of Good and Evil, which in several Objects offer themselves numerously on both Sides, are weigh'd and compar'd, and Judgment is given, what, when, and in what Manner we are to act, and Consultation taken about the most proper Means for the Accomplishment of the propos'd End'.[41] Thus, the understanding or intellect is the root, presupposition or *sine qua non* of freedom. However, freedom is ultimately 'a Faculty of the Will' (*facultatem voluntas*).[42] Once the understanding has done its work and 'all Requisites of acting [are] given', the will 'may, out of many propos'd Objects, choose one or more, and reject the rest; or if one only Object be propos'd, may admit that, or not admit it; may do, or not do it'.[43] This first ability 'of choosing one out of many Objects' is called 'Liberty of Specification, or of Contrariety', and the second, 'concern'd in the Admission of Rejection of one only Object', is liberty of contradiction.[44] It is the faculty of will which secures an agent's freedom, according to Pufendorf, because the will is formally 'indifferent' to its causes:

> Now *Liberty* is suppos'd to superadd to Spontaneousness, first an Indifference of Acts as to their Exercise; so that the Will is not oblig'd necessarily to exert one of its own acts, as to desire or refuse: For tho', in general, it is impossible but it should affect Good, and refuse Evil, *as such*, yet in Reference to any particular Object propos'd, it may determine on which Side it pleases, tho', perhaps, it may seem to have a greater Propension toward the one than toward the other.[45]

It is in virtue of the will's indifference to its causes that it must determine itself. This indifference means that the will is a self-determining power, 'so that the Will may, upon an internal Impulse and Motion, exert either of its Acts of wishing or loathing, just in such a Place, at such a Time'.[46] Although a voluntary action is rooted in the apprehension and judgment of the intellect, reason cannot determine the acts of the will of the rational agent. The understanding has 'only a simple Perception and Reception (if I may so speak) of Ideas with their Relations. The Determination from whence Action proceeds, is an Act of the will only'.[47] The 'chief Affection' of *voluntas*, and 'what seems immediately to flow from its Nature, is an *intrinsical Indifference*, upon the Account of which it is not restrain'd to any certain, fix'd, and unalterable Way of acting; and which cannot be entirely extirpated by the Force of any external Means'.[48]

Pufendorf thus allocated intellect and will distinctive roles in the determination of free agency. This model of the economy of decision-making is chiefly relevant to Pufendorf's political theory because he explicitly described the state as a 'moral person', configured

[39] Pufendorf, *Law of Nature*, I, III, 1, 23.
[40] Ibid.
[41] Ibid.
[42] Ibid, I, IV, 2, 33.
[43] Ibid, I, IV, 2, 34.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid., I, III, 2, 23.
[48] Ibid., I, IV, 3, 34.

psychologically in an analogous way to the human being.[49] A state comes into being when male heads of household submit their wills to that of an individual or group who is thereafter to make decisions for their common security. This 'Submission and Union of Wills' is key to the process 'by which we conceive a State to be but *one Person*'.[50] The whole composite moral person of the state, though, 'is conceived to exist like *one Person*' because it is 'endued with Understanding and Will'; it can only move itself to action because it possesses both these faculties.[51] And while the sovereign bears the will of the state, that will requires prior operations of the intellect of the moral person of the state in order to function; for although the will is not determined by its causes, it must find causes outside itself in order to motivate itself to choose anything at all.

Where a people confers absolute sovereignty on some body, singular or collective, 'there the State is supposed to choose and desire whatever that one Man (who is presumed to be a Master of Reason) shall judge convenient; in every Business or Affair, which regards the End of civil Government'.[52] The absolute sovereignty of a ruler, that is, is generated by a contract in which reason as well as will is alienated to one representative. By contrast, where a people, sets up a supreme sovereign—a superior who simply lacks an equal in the state in respect of the functions he is to discharge—the intellect of the moral person of the state is not lodged in the sovereign. While it is by no means incumbent on any people explicitly to limit their sovereign's authority, sovereignty may be 'brought into much narrower Bounds, and under much stricter Ties, if, at the first conferring of Sovereignty, it be expressly covenanted between the People and the Prince, that the latter shall govern according to certain fundamental Laws' (*leges fundamentales*). Any affairs over which the sovereign has not been granted 'absolute Disposal' he must refer to 'a Council of the Commons, or of the Nobles, and determine nothing without their Consent'.[53] Those members of the community charged with oversight of the sovereign do not constitute another will in the state but instead act as the intellect or understanding of the composite moral person. Any council with concomitant intendancy of a ruler and the fundamental laws functions purely as 'a necessary condition' (*conditione sine qua non*) for a sovereign act of will. 'Neither are there in such a State two Governing *Wills*; since whatever the common Body acts it is by the *Will* of the Prince: The Limitation of the original Grant only producing this Effect, That, unless, under such a Condition, the Prince shall not incline his Will to some particular Designs, or that such Acts of his Will shall have no Force or Virtue'.[54] The sovereign, therefore, simply cannot will something on behalf of the state if that particular act of will is not deemed reasonable by the council; or if he wills it he does so as a private citizen, 'in the Prosecution of his personal Affairs', and thus futilely from the perspective of the moral personality of the state.[55] He cannot decide to act if the council considers that there is no reason to act. Even a formally indifferent will has to be given some basis in reason to move the body to action.

For Pufendorf, then, decisions of free agents are executed by a will which is indifferent to its causes but which must, all the same, be presented with some reason to act. Moreover, polities can be understood as operating analogously to individual human beings in respect of decision-making. Each of these theoretical points is relevant to Pufendorf's more practical

[49] E.g., at ibid., VII, II, 13, 641.
[50] Ibid., VII, II, 8, 636.
[51] Ibid., VII, II, 13, 641.
[52] Ibid., VII, ii, 14, 642/651.
[53] Ibid., VII, VI, 10, 697.
[54] Ibid., VII, VI, 10, 697. Basil Kennet's translation of the Latin is less reliable for this crucial passage than it is for many others. Michael J. Seidler's more recent translation is far more accurate: 'For surely all things that the state wills, it wills through the will of the king, even if it is with the limitation that unless a certain condition exists, the king cannot will certain things, or wills them in vain' (Pufendorf, *Political Writings*, 235).
[55] Pufendorf, *Law of Nature*, VII, II, 14, 642.

purpose of providing a framework to understand composite kingdoms as regular states. First, even when consent is required from non-sovereign councils and other authorities for decisions, this consent can be understood as a condition for an act of will but not itself part of the enactment of sovereign power. Second, the advice, deliberations, debate and negotiations of institutions whose consent might be required for sovereign acts of will count as activities of the faculty of intellect or understanding of the polity and do not therefore count as acts of will, thus preserving the identification of final decision-making with sovereign will—even if, as Hegel would later write, the promulgation of that will is a mere matter of dotting the 'i's and crossing the 't's, 'merely setting to the law the subjective "I will"'.[56] Third, if sovereignty is regarded as a comparative rather than a superlative concept, designating the highest authority over particular *functionally defined* capacities, then there is no good reason why decision-making processes terminated by acts of will that are considered as authoritative in a given context cannot be counted as sovereign acts, even if multiple agents exercise such powers within a polity, or if some functions are 'higher' than others.[57]

III

These theoretical points can be unpacked in respect of Pufendorf's historical writings on monarchy and composite kingdoms. Pufendorf was court historian at Stockholm from 1676 and to Frederick William, Elector of Brandenburg, from 1686. During this time of royal service he produced a number of historical works, the most notable of which were his *Introduction to the History of the Principal Kingdoms and States of Europe* (1682) and the *Nineteen Books on the Achievements of Frederick William, the Great Elector of Brandenburg* (1695). Christopher Clark has recently commented on the slightly 'one-dimensional' nature of these accounts.[58] He goes on to add, however, that what gives the histories their unique 'analytical texture' is the 'interest in choice-making situations that was not merely historical, but philosophical'.[59] Time and again, Clark continues, Pufendorf narrates events 'through the prism of choices' faced by monarchs, 'within a threat map in which his task is to balance options, each of which implies a possible future'.[60] 'When opinions differed greatly on a controversial matter', Pufendorf wrote of the Great Elector, 'he chose one of them in accordance with his thoughts and the outcome subsequently showed that [he had chosen] the best'.[61] Pufendorf modelled prototypical sovereign action as involving the making of choices between different options, each of which is presented as having some merit. Indeed, the historical flatness of Pufendorf's histories turns largely on the fact that Pufendorf's monarchs appear in them shorn of their individuality for the deliberate reason that he sought to picture them as personifications of sovereignty as a choice-making responsibility and competency. Some economists and political scientists even see Pufendorf as just about the first writer to formulate some models in social choice theory, such as 'the difference between a situation in which the preference structure …

[56] Georg Wilhelm Friedrich Hegel, *The Philosophy of Right*, tr. T. M. Knox (Oxford: Oxford University Press, 1979), §171, 289.
[57] The distinction between comparative and superlative conceptions of sovereignty I owe to Riley, *Leibniz's Universal Jurisprudence*, 227.
[58] Clark, *Time and Power*, 60.
[59] Ibid., 60 and 63.
[60] Ibid., 60 and 62.
[61] Samuel Pufendorf, *Friedrich Wilhelms des Grossen Chur-Fürsten von Brandenburg Leben und* Thaten, tr. Erdmann Uhse (Berlin/Frankfurt a. d. Oder: n.p., 1710), 1249: 'erwehlete er eine davon nach seinen Gedancken, und hat hernach der Ausgang erwiesen, daß solche die beste gewesen sey'.

is clearly single-peaked and a situation in which the preferences cannot be ordered along a single dimension'.[62]

Monarchical sovereignty was thus, for Pufendorf, a faculty of making legitimate decisions, within a certain context, based on options identified by councillors. Aside from the 'facultative' conception of decision-making, as exhibiting a relationship analogous to that of intellect and will in the psychological economy of agency, there are two other points to make about it. First, Pufendorf's understanding of sovereignty as a comparative concept had much in common with pre-modern conceptions of sovereignty. Sovereign rights concerned concrete competences and they were hierarchical: a monarch might be superior to another in respect of one competence and inferior to him in respect of another. That is to say, for Pufendorf sovereignty does not bear one of its modern hallmarks, namely that it is an aggregate concept. 'Even a single power of final decision-making', on the pre-modern model of sovereignty, 'lent its possessor the characteristic of being sovereign'.[63]

Second, Pufendorf's account enables him to make sense of composite kingdoms. Theoretically, Pufendorf was concerned to show how composite kingdoms could still be described as regular states. We have already seen that in the *Monzambano* Pufendorf had identified, both as part of an analogy but also as the criterion of regularity, the single soul as the model for how decisions ought to be taken in a regular polity. This appears again as analogy and criterion in *The Law of Nature*. For 'in order to compleat the Essence of a just [or perfect: *perfectae*] and regular State, such an Union is required, as shall make all Things, which belong to the Government of it, seem to proceed from one Soul'.[64] Confederal systems cannot count as regular states, according to Pufendorf, for this 'Way of Mixture constitutes such a Body as is held together, not by the Bond of one supreme Authority, but barely by Compact'.[65] Composite kingdoms, however, were different inasmuch as what was willed was willed through the will of the sovereign, even if that will, in virtue of a union *aeque principaliter*, might count as the will of only one or several parts of the composite polity. All things belonging to the government of the kingdom appeared to proceed from one soul when they were pronounced or promulgated by dint of an act of will of the person with the highest independent power of disposition.

As we have seen, Pufendorf wrote some of his works as the official historian of Brandenburg, which was itself a composite kingdom. Frederick William negotiated the reincorporation of the Duchy of Prussia into Brandenburg as one of the settlements of the treaties of Westphalia; but he also acquired a land bridge to the Baltic coast and even territories outside the Holy Roman Empire, such as a colony on the west coast of Africa. And yet as an elector within the Empire, even the heads of the House of Hohenzollern, who would from 1701 style themselves as kings of Prussia, had to acknowledge themselves as subordinate in respect of certain powers to the Holy Roman Emperor. Although in Article VIII of the Treaty of Osnabrück the emperor conceded that the German rulers would exercise *Landeshoheit* or territorial superiority in their own right and not as supposed agents of the emperor, certain reserve powers remained to him, as noted above. Other reserved rights included the right to charter universities and to grant titles of nobility; all Jews living in the Empire remained his

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[62] Eerik Lagerspetz, 'Pufendorf on Collective Decisions', *Public Choice* 49, 2 (1986): 179–82, at 181. See also Wulf Gaertner, '*De jure naturae et gentium*: Samuel von Pufendorf's Contribution to Social Choice Theory and Economics', *Social Choice and Welfare* 25, 2–3 (2005): 231–41.
and Pasquale Pasquino, 'Samuel Pufendorf: Majority Rule (Logic, Justification and Limits) and Forms of Government', *Social Science Information* 49, 1 (2009): 99–109.
'Majority Rule'.

[63] Grimm, Dieter. *Sovereignty: The Origin and Future of a Political and Legal Concept*, tr. Belinda Cooper (New York: Columbia University Press, 2015), 15.

[64] Pufendorf, *Law of Nature*, VII, v, 13, 678.

[65] Ibid.

subjects alone. Furthermore, all intrareligious disputes were to be settled by imperial courts. Although the consent of the three voting houses of electors, princes and towns was required for everything touching on the powers of the Estates, war and peace, taxes, treaties placing obligations on the Empire and the movement of imperial troops, all such legislation had ultimately to be signed off by the emperor himself.[66] In short, all of this meant that the Empire was a composite kingdom of (often) composite kingdoms, but every decision, being in accordance with both a division of labour with respect to cognition of objectives, options and execution, and a hierarchy of sovereign competences, affirmed, in Pufendorf's changed mind, the regularity of the Empire in spite of all appearances to the contrary.

Why might Pufendorf have wished to insist that composite kingdoms were regular states? With his argument that a system of states could subsist as a kind of body politic when united under one crown, Pufendorf hoped to supply a political-scientific rationale for religious peace in Germany. There were solid pragmatic reasons that the figure of the emperor ought to be regarded as a supreme sovereign able to punish uncivil or unsociable behaviour and to confer the benefits of peace and prosperity on his subjects. The '*Difference of Religion* ... divides *Germany*, and distracts it', Pufendorf had written in the *Monzambano*.[67] Germany thereby had become easy quarry for external predators. During the year that the first edition of the *Monzambano* was published, Louis XIV of France, who had been rapidly expanding his military since 1661, invaded the Spanish Netherlands. As it turned out, he would go on to attack the United Provinces in 1672, and finally Protestant Germany in 1688. Pufendorf considered that Louis was trying to secure hegemony in western Europe. Catholicism, thought this Lutheran scholar, was overrunning the continent. The treatment of King Louis in the *Monzambano* is drenched in irony:

> upon all occasions he shews himself very solicitous for the general Liberty of *Germany*; offering himself as a Mediator, to compose any Differences that happen to arise between one Prince and another, and is ever ready to send Money or Men to every one of them that desireth either of them; and in short, makes it his great business to shew them, that they may certainly expect more from his Friendship than from the Emperor's, or from the Laws of the Empire.[68]

The 'End of all this Courtship', he went on, 'is the opening a Way to the Ruin of the *German* Liberty'.[69] Germany had to be united, at least in respect of the face it presented to the outside world, if it was not to deliquesce into chaos and so succumb to the Sun King's designs. It had to recognise one sovereign will in the Empire attaching to matters especially of war and peace, and that will had to be the Emperor's. In *The Law of Nature*, Pufendorf found a way to conceptualise that unity.

And yet Pufendorf still wanted to reserve to the communities constituting the Empire other competences and ultimately, as well, a right to resist the emperor. For this sovereign, like the resident of the Palace of Versailles, was Catholic.[70] Pufendorf suggested, in a chapter added to the second edition of his *History of the Principal Kingdoms* (1684), that various Emperors

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[66] Michael Hughes, *Early Modern Germany, 1477–1806* (London: Macmillan, 1992), 94–95.

[67] Pufendorf, *Present State*, VII, 9, 204. For a discussion which emphasises Pufendorf's proposals for strengthening imperial unity, see Joachim Whaley, *Germany and the Holy Roman Empire*, vol. 2: *The Peace of Westphalia to the Dissolution of the Reich 1648–1806* (New York: Oxford University Press, 2012), 96–99.

[68] Pufendorf, *Present State*, VII, 6, 197–198.

[69] *Ibid.*, VII, 6, 198.

[70] On the tendency in the secondary literature to overstate Pufendorf's anti-Catholicism, and the resultant neglect of his support, albeit not boundless, for the Catholic Emperor, see Simone Zurbuchen, 'Samuel Pufendorf and the Foundation of Modern Natural Law: An Account of the State of Research and Editions', *Central European History* 31, 4 (1998): 413–428, at 419–21.

would have been willing to convert to Protestantism and thereby 'disentangle themselves from the Popish sovereignty', but that they had been prevented from so doing for 'reasons of State', namely the fact that to do so would have provided an occasion for French invasion, papal plotting, and even the assertion of imperial claims by the 'Secular Princes' of the Empire, who 'would then pretend to have the same right to that Dignity with the House of *Austria*'.[71] All the same, the Emperor's Catholicism meant that his being the highest of the German sovereigns was not an emphatically positive state of affairs. Pufendorf thus found himself having to formulate a theory of sovereignty that could confound the internecine conflict in the Empire but at the same time allow Protestant societies a good measure of their own autonomy and the right at some point to desist from obeying this sovereign. In his model of philosophical psychology, Pufendorf found a way to navigate the requisite middle way. Social order, he claimed, ultimately depends on the respect of citizens for God as the giver of natural law, and natural reason simply cannot extend to supplying requisites for the actions of an indifferent will that contradicts natural law. Since sovereignty is manifested in the will, a sovereign act of will that is not accounted reasonable cannot be counted as the will of the moral person of the state, or at least not for all parts of a composite kingdom. In this faculty psychology, then, Pufendorf found a basis for his own theory of sovereignty, by means of which the sovereign will in the German Empire could be identified, while allowing Protestant princes a limited sovereignty of their own, and Protestant communities, *in extremis*, a right to resist the Emperor should he will for them anything they could not agree was reasonable.

IV

As scandalous as the *Monzambano* may have been when it first issued from the press, it soon set the standard for German constitutional analysis. For instance, it reverberates in the work of 'the leading university public law expert of the eighteenth century' and the man to whom the entire University of Göttingen 'owed its reputation', Johann Stephan Pütter, especially his *An Historical Development of the Present Political Constitution of the Germanic Empire* (1786-87, English translation 1790).[72] Reflecting on the effects of the Peace of Westphalia, Pütter argued that it made of the Empire a 'compound' body, because Germany was now composed of various estates who each enjoyed their own relationship with the Emperor on the basis of the contracts of submission that they had entered into with him. 'Germany therefore, considered as one Empire, is now a political, but not like the other European nations, a simple body, but a compound one, the component parts of which are distinct States, which still preserve their connection with the Empire, as one common supreme head'.[73] This 'supreme' head is 'endowed with monarchical though not absolute power, and [is] in most respects under the necessity of acting with the concurrence of the States of the Empire', although 'it is certainly necessary for the Emperor to give his approbation before a decree of the Empire can have its legal force, or the rights of majesty be exercised throughout Germany'.[74] The contracts of submission, that is, served to circumscribe the emperor's sovereignty as much as they put limits on the freedom of the estates. Compound bodies; monarchical heads; supreme but not absolute sovereignty—all these are distinctly Pufendorfian themes. Even the specific debate,

[71] Pufendorf, Pufendorf, Samuel. *An Introduction to the History of the Principal Kingdoms and States of Europe*, tr. Jocodus Crull and ed. Michael J. Seidler (Indianapolis, IN: Liberty Fund Press, 2013), XII, §38, 509–10.
[72] Whaley, *Germany and the Holy Roman Empire*, 442; Maiken Umbach, *Federalism and Enlightenment in Germany, 1740–1806* (London: Hambledon Press, 2000), 139.
[73] Johann Stephan Pütter, *An Historical Development of the Present Political Constitution of the Germanic Empire*, tr. Josiah Dornford, 3 vols. (London: T. Payne and Son, 1790), II, 168.
[74] Ibid., II, 170 and 175.

the *Reichspublizisten*, which had occasioned the *Monzambano* is invoked by Pütter, over a century since it stopped being a live issue:

> With this idea, every difficulty which had hitherto arisen in the disputes concerning the Germanic Empire, whether its government was monarchical, democratical, or mixed, totally vanishes. People were not aware that among different forms of government there might be another division of simple and compound States, which had no conformity with any of other than the first of the different standards.[75]

Pütter's post-Westphalian German Empire was, in other words, a Pufendorfian composite kingdom.

However, the Pufendorf-Pütter consensus on the shape of the Holy Roman Empire gave way early in the nineteenth century. This seems to have been precipitated by the Napoleonic Wars. Pütter's successor at Göttingen, Arnold Hermann Ludwig Heeren, for instance, argued in 1809 that in France 'instead of the ancient royal throne, an imperial one was erected; instead of the legitimate monarch it was ascended by a successful soldier, who in defiance of all morality and policy, had just dipped his hands in the blood of a branch of the royal family'.[76] As Edward Keene argues, Heeren turned his fire on the likes of Pütter because he, Pütter, understood that the Peace of Westphalia actually 'served to prevent the estates from abusing their limited rights of territorial sovereignty by claiming to be completely independent entities'.[77] Heeren, however, feared that the French under Napoleon might 'establish their own set of "reserved rights" through treaties', and a 'new imperial system... might even be legitimized as the successor to the old one'.[78] Furthermore, Britain was at war with France when Heeren wrote, the only power endeavouring to hold the balance of power in Europe, 'and it would hardly have suited [Heeren's] purpose to call attention to the increasingly consolidated British imperial system in the world beyond Europe'.[79] Heeren thus advanced an interpretation of the treaties of Westphalia which glossed over all imperial dimensions of the Holy Roman Empire, so that it appeared simply 'as an example for all of Europe of how a states-system should be organized on the basis of mutual independence and respect for those rights of territorial sovereignty which rendered the princes effectively independent rulers'.[80]

Heeren effectively manufactured the myth of Westphalia, that the treaties established the principles of sovereign equality and independence on which a new European system of states was built.[81] He also, however, helped to obscure from future analysts the insight that the Holy Roman Empire was a composite kingdom. Writing on the occasion of the 350th anniversary of the Peace of Westphalia, Georg Schmidt echoed Pufendorf's *The Law of Nature* by arguing that the Peace issued in a new constitution for a 'complementary empire-state', a political system that operated as a kind of great republic.[82] Likewise, Joachim Whaley has even more recently maintained that Pütter was correct and that the Empire

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[75] Ibid., II, 168.
[76] Arnold Hermann Ludwig Heeren, *A Manual of the History of the Political System of Europe and its Colonies, from its Formation at the Close of the Fifteenth Century to its Reestablishment upon the Fall of Napoleon* (London: Henry G. Bohn, 1864), 337.
[77] Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002), 19.
[78] Ibid.
[79] Ibid., 26.
[80] Ibid., 22.
[81] Osiander, 'Sovereignty'.
[82] Georg Schmidt, 'The Peace of Westphalia as the Fundamental Law of the Complementary Empire-State', in *1648: War and Peace in Europe*, ed. Klaus Bussmann and Heinz Schilling, 3 vols. (Münster and Osnabrück: Westfälisches Landesmuseum für Kunst und Kulturgeschichte, 1999).

> was in reality perhaps not so different from the far from monolithic 'composite monarchies' of France, Spain or Great Britain. The Reich had a much weaker centre; its component parts, the territories and other Estates, exercised many of the functions of the state. Yet they remained parts of an interlocking system that guaranteed individual rights, regulated disputes and implemented decisions, a system that ensured internal peace and protection from external aggression. As the late eighteenth-century theorist Johann Stephan Pütter put it, the Reich was a structure 'composed of many particular states that are yet still subordinate to a common higher power'.[83]

Pütter, as we have seen, took his own bearings from Pufendorf's account of sovereignty in a composite kingdom; and thus the burgeoning scholarly consensus on the constitutional form of the Empire appears to be indebted to Pufendorf.

The reception history of Pufendorf's writings on the composite kingdom of the Holy Roman Empire is a kind of Trollope ploy. His change of mind was only noticed by the likes of Pütter, who took credit for the later analysis, and Pufendorf has gone down in the history books as the man who could see the Holy Roman Empire only as a deformed political entity. The early account played into the hands of those who would denigrate multiple monarchy in general and the Empire in particular as antithetical to the sound governance of a state. This article has attempted to present Pufendorf's change of mind as an important contribution to political theory in general and the theory of multiple monarchy in particular. Pufendorf's composite account of state personality, allied with his functional account of sovereignty, provided him with the tools to bend multiple monarchy and composite kingdoms into conceptual shape.

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[83] Whaley, Joachim. 'Federal Habits: The Holy Roman Empire and the Continuity of German Federalism', in *German Federalism: Past, Present and Future*, ed. Maiken Umbach (Basingstoke: Palgrave Macmillan, 2002), 29.

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