

# The Multitude, the People, and Popular Sovereignty

## *Pufendorf and Locke in Reply to Hobbes*

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### Abstract

In the early iterations of his political thought, *The Elements of Law* and *De Cive*, Hobbes proposed a new account of the nature of the people. In Section 2 I describe Pufendorf's critical response. Pufendorf's theory of the people is a neglected aspect of the political argument of the *De Jure*. Just as neglected is Locke's theory of the people in *Two Treatises of Government*, though there is better reason for neglect in Locke's case, in so far as he fails in his major work of political philosophy to present anything resembling a *theory* of the people at all. In Section 3 I bring Locke's thinking about the people into clearer focus. In the concluding Section 4 I explore some of the weaknesses of his position.

### Keywords

Hobbes – Pufendorf – Locke – sovereignty – people – multitude

## 1 Hobbes

In the early iterations of his political thought, *The Elements of Law* and *De Cive*, Hobbes proposed a new account of the people. He proposed, in other words, a new account of how the people exists both as many individuals and, at the

same time, as a corporate entity, or person, possessed of a single will and a capacity for agency. In this paper I first describe Pufendorf's critical response to Hobbes's account of the people, and then consider Locke's failure to directly engage with it. Hobbes's strategy with respect to the people was of a piece with his strategy with respect to the idea of an original contract. Prior to Hobbes, contractualism had usually been deployed by those seeking to vindicate a right of resistance against the tyrant – where the tyrant could be, simply, a king who was a Christian of the wrong kind. It was motivated by a fundamental commitment to the idea that princes owed their authority to the people and not to God, and was intended to justify the presumption that when the prince misused the power he had been given by his subjects, he could be deposed and replaced. Hobbes, on the other hand, argued that the only conceivable original contract was one that created an absolute sovereign who was in no sense morally accountable to his subjects.<sup>1</sup> In the same way, prior to Hobbes careful distinctions had been made between the unruly and many-tongued multitude and the ordered and single-minded people, in order to make it plain that a right of resistance would not lead to anarchy, but would instead be exercised in the interests of the community as a whole. Theories of the people were the preserve of those who asserted the superiority of the people over the monarch, in reply to those who denied that the populace contained, in itself, any principle of order or unity.<sup>2</sup> Hobbes, on the other hand, argued that the only conceivable means whereby the chaotic multitude could be transformed into a unified people was the voluntary subjection of each member of the multitude to a person (an individual or a council) who would henceforth be empowered to will on their behalf. Unlike other apologists for absolutism, Hobbes believed in the existence of the people as something distinct and different from the multitude. But unlike defenders of the right of resistance, he did not believe in the existence of the people as something distinct and different from the sovereign. The Hobbesian people exists in the will of the sovereign, and so, by definition, can issue no challenge to the will of the sovereign.

Hobbes's approach in *De Cive* to the distinction between people and multitude suggests that he thought that the multitudinousness of the multitude

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- 1 Grotius had also deployed the language of contractualism in order to problematise the idea of a right of resistance, arguing that it was possible for a people to contract themselves into absolute subjection. The Grotian people, however, remains in existence despite having made such a contract, and this leaves it possible in principle for there to be argument between people and king about whether or not the contract is being adhered to. On Hobbes's theory of the people – where, in a monarchy, the king *is* the people – there can be no such argument.
  - 2 See, e.g., Cesare Cuttica, *Anti-Democracy in England 1570–1642* (Oxford: Oxford University Press, 2022).

had not so far been properly characterised. “The first and crucial question is this,” he declares at the start of Chapter VI: “what actually is a Multitude of men (who unite by their own decision in a single commonwealth)?”<sup>3</sup> The essential feature of a multitude is not so much disagreement or unruliness but, simply, plurality. Even where a crowd of people agree about a particular matter, they are not really *of one mind*. There are actually as many opinions – and also volitions, and actions – as there are men. The essential feature of a people, by contrast, is *singleness*, or *unity*. A people, but not a multitude, is *one person*. And a multitude becomes one person if they “agree that the will of some one man or the consenting wills of a majority of themselves is to be taken as the will of them all.”<sup>4</sup> The result, Hobbes says in the *Elements of Law*, is “a city ... defined to be a multitude of men, united as one person by a common power, for their common peace, defence, and benefit.”<sup>5</sup> The Hobbesian people, then, wills through the will of one person – either a single individual, or a council voting on a majority basis. In that person’s will, and only in that person’s will, the multitude is united and turned into a city, a corporate entity to which can be attributed volitions and actions, and rights and responsibilities. The consequence of this, Hobbes asserted, is that “[i]n every commonwealth the *People Reigns*,” regardless of the form of government: “In a *Democracy* and in an *Aristocracy* the subjects are the *multitude*, but the *council* is the *people*; in a *Monarchy* the subjects are the *multitude*, and (paradoxically) the *King* is the *people*.”<sup>6</sup> The intention here, plainly enough, was to drain the doctrine of popular sovereignty of any hint of subversiveness. In a monarchy, the sovereign people was not in any sense elevated *above* the king, and the king in no sense was accountable to it. The people was king – but nothing politically interesting followed from that fact.<sup>7</sup> As Gierke put it, Hobbes had eliminated

3 Thomas Hobbes, *On the Citizen*, trans. Michael Silverthorne, ed. Richard Tuck (Cambridge: Cambridge University Press, 1988), 75 (VI.1). Silverthorne and Tuck translate ‘multitudo’ as ‘crowd’. I think ‘multitude’ is truer to the usage of the early seventeenth century, and more likely to be suggestive of plurality, not unity.

4 Hobbes, *On the Citizen*, 76 (VI.1).

5 Thomas Hobbes, *The Elements of Law Natural and Politic*, ed. Ferdinand Tönnies, second edition (London: Frank Cass, 1969), 104 (1.19.8).

6 Hobbes, *On the Citizen*, 137 (XII.8).

7 Daniel Lee calls Hobbes “the preeminent English theorist of popular sovereignty” (*Popular Sovereignty in Early Modern Constitutional Thought* [Oxford: Oxford University Press, 2016], 311). Lee emphasizes the fact that there is no necessary connection between Hobbesian popular sovereignty and democratic politics. Even so, Lee reads Hobbes as distinguishing the “citizen-body,” the “people assembled,” from their representative. I do not. It is perhaps significant here that Lee bases his reading of Hobbes on popular sovereignty on *Leviathan*. See footnote 10 below.

the traditional dualism of people and ruler: he had “dealt a death-blow to the idea ... that the People possessed a separate personality.”<sup>8</sup>

Hobbes’s deflationary treatment of the people-multitude distinction has not made much of a mark on scholarship devoted to his political thought.<sup>9</sup> This might be because it is far less prominent in *Leviathan* than in the *Elements* and *De Cive*. Whether or not Hobbes changed his mind about the people in the four years which separated the official publication of *De Cive* and the appearance of *Leviathan* is a large topic which could only be properly treated in a separate paper.<sup>10</sup> My concern in Section 2 of the present paper is with

8 Otto Gierke, *Natural Law and the Theory of Society 1500–1800*, transl. and ed. Ernest Barker (Cambridge: Cambridge University Press, 1934), 44.

9 The only articles or chapters devoted to the distinction seem to be Janine Chanteur, “Note sur les Notions de ‘Peuple’ et de ‘Multitude’ chez Hobbes” in *Hobbes-Forschungen*, ed. Reinhart Koselleck and Roman Schnur (Berlin: Duncker & Humblot, 1969): 223–35; Omar Astorga, “Hobbes’s Concept of Multitude,” *Hobbes Studies* 24, no. 1 (2011): 5–14; and Mikko Jakonen, “Needed but Unwanted: Thomas Hobbes’s Warnings on the Dangers of Multitude, Populism and Democracy,” *Las Torres de Lucca: Revista Internacional de Filosofía Política* 5, no. 9 (2016): 89–118. See also Jakonen’s PhD dissertation, *Multitude in Motion: Re-Readings on the Political Philosophy of Thomas Hobbes* (University of Jyväskylä, 2013). It receives little or no discussion in most books on Hobbes’s political thought. Among the exceptions are Deborah Baumgold, *Hobbes’s Political Theory* (Cambridge: Cambridge University Press, 1988); Mónica Brito Viera, *The Elements of Representation in Hobbes: Aesthetics, Theatre, Law, and Theology in the Construction of Hobbes’s Theory of the State* (Leiden: Brill, 2009); Sandra Leonie Field, *Potentia: Hobbes and Spinoza on Power and Popular Politics* (Oxford: Oxford University Press, 2020); and Philip Pettit, *Made with Words: Hobbes on Language, Mind, and Politics* (Princeton: Princeton University Press, 2008).

10 For an argument that Hobbes decisively changed his mind in *Leviathan*, see Murray Forsyth, “Thomas Hobbes and the Constituent Power of the People,” *Political Studies* 29, no. 2 (1981): 191–203. Forsyth’s view is that Hobbes’s later position anticipates later theories of the constituent power of the people. A more moderate account of the differences between *Leviathan* and the earlier texts is given in Field, *Potentia*, 78–143. Field holds that in *Leviathan* Hobbes moves from the view that there is no collective power outside of formal juridical union towards a theory of *non*-juridical collective power. She accepts, though, that in many circumstances this collective power is not to be identified with the people. Another possible approach would be to explore the idea that in *Leviathan* Hobbes, for political reasons, is no longer interested in accommodating the language of the people at all. One of this journal’s referees expressed the view that Hobbes came to see the very idea of “the people” as part of the problem he wanted to solve in *Leviathan*. My own, tentative, hypothesis is that Hobbes neglects the people-multitude distinction in *Leviathan* because it was not relevant to the political argument underlying the Civil War, which was an argument not between people and king, but between rival claims about who – king or parliament – could best be said to *represent* or *embody* the people. I take this to be one moral of Quentin Skinner’s work on the context of *Leviathan*: see, e.g., “Hobbes on Political Representation” in *From Humanism to Hobbes: Studies in Rhetoric and Politics* (Cambridge: Cambridge University Press, 2018). I do not see a reason to think that Hobbes changed his theory of the people in *Leviathan*. But as I say in the main body of the text, this is a topic for a paper of its own.

the critique of Hobbes's earlier position developed by Pufendorf in Book VII of *De Jure Naturae et Gentium*. Pufendorf's is, so far as I know, the only sustained engagement with the theory of the people in *De Cive*. Pufendorf had read both *De Cive* and *Leviathan* (presumably in the Latin translation), and treated them as complementary expressions of a single political philosophy. But in Book VII he explicitly targeted formulations found solely in the earlier book, and it is these attacks on Hobbes that I want to get the measure of here. Pufendorf agreed with Hobbes when it comes to how a people is different from a multitude. "A *People* or a State," he says, "makes but one Person, having one Will, and performing only one and the same Action. Neither of which can be said of the *Multitude* of Subjects, opposed to the Prince or Sovereign Council."<sup>11</sup> Yet, as we shall see, Pufendorf's view is less clear-cut than this suggests. He allows that a single corporate entity worthy of being called 'the people' can – in fact *must* – exist independently of the will of the sovereign. Disagreeing with Hobbes, then, he reasserted the dualism of people and ruler – while at the same time seeking to limit the power of the people to cause political instability. Pufendorf's theory of the people is a neglected aspect of the political argument of the *De Jure*. Just as neglected is Locke's theory of the people in *Two Treatises of Government*, though there is better reason for neglect in Locke's case, in so far as he fails in his major work of political philosophy to present anything resembling a *theory* of the people at all. The people is hardly absent from the text of the *Two Treatises*. On the contrary, it is the people's right to resist a tyrant that is the book's principal concern. Clearly, Locke, too, affirms the dualism of people and ruler. But, like Hobbes and like Pufendorf too, he is worried about the potentially destabilizing consequences of such a dualism. In Section 3 below I try to bring Locke's thinking about the people into clearer focus. In the concluding Section 4 I explore some of the weaknesses of his position.

## 2 Pufendorf

In the *De Jure* Pufendorf joined all theorists of an original contract in attacking the idea that sovereign power could only be bestowed by God.<sup>12</sup> The particular

11 Samuel Pufendorf, *Of the Law of Nature and Nations*, transl. Basil Kennett, ed. Jean Barbeyrac, 2nd edn. (Oxford, 1710), 519 (VII.ii.14).

12 No more in Pufendorf's case than in Locke's does it follow directly from opposition to this view that political power is to be understood in purely secular terms. For vigorous opposition to the idea that Pufendorf offers a secular theory of natural law, see Kari Saastamoinen, *The Morality of the Fallen Man* (Helsinki: Finnish Historical Society,

exponent of this view whom he had in his sights was his German contemporary Johann Friedrich Horn.<sup>13</sup> In *Architectonica de Civitate* Horn had argued that, in Pufendorf's words, while states might be established by covenants, "the Sovereignty is conferr'd on Princes immediately by GOD himself, and ... nothing which proceeds from Men, doth at all contribute to its Production".<sup>14</sup> Horn's principal argument to this conclusion, as reported by Pufendorf, was "*That since neither particular Men, nor a loose and ungovern'd Multitude, are themselves endued with Majesty, therefore neither can they confer it on a Prince.*"<sup>15</sup> We will see Pufendorf's response below, but we can note for now the reference to the natural state as being that of multitudinousness. While he rejected Horn's position and endorsed the idea of the human manufacture of sovereign power, Pufendorf, like Hobbes, worried about how that idea lent itself to misinterpretation on the part of those opposed in principle to absolute monarchy, opposed even to monarchy as such. He recognised, and shared, Hobbes's desire "to oppose those seditious and turbulent Spirits, who ... labour'd to bring down the Regal Power to their own Model, and either utterly to extinguish, or to render it inferior to the Subjects."<sup>16</sup> The fundamental imperative in politics for Pufendorf as for Hobbes was the promotion and preservation of peace in the face of the seditious consequences of misguided conceptions of the rights of sovereigns, and of the rights of absolute monarchs in particular. Yet despite this shared goal of countering an anti-monarchical construal of the implications of contract theory, Pufendorf rejected Hobbes's attempt to eliminate the people as a corporate body existing independently of the sovereign. He gave an essential role in the origination of the sovereign power to a covenant between people and sovereign. Exactly as Hobbes feared it would, this covenant – in certain circumstances – gave rise, in Pufendorf's hands, to the possibility of a right of resistance on the part of the people, when the sovereign failed to meet the obligations incurred by it. We need, therefore,

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1995), echoed by Ben Holland, *The Moral Person of the State: Pufendorf, Sovereignty and Composite States* (Cambridge: Cambridge University Press, 2017). For an overview of the debate concerning the centrality of religion to Pufendorf's moral and political thought, see Ian Hunter's introduction to *The Cambridge Companion to Pufendorf*, ed. Knud Haakonssen and Ian Hunter (Cambridge, 2023).

- 13 For a brief account of Horn as an "extremist" in his political thinking, see Robert von Friedeburg, "Natural Jurisprudence, Argument from History and Constitutional Struggle in the Early Enlightenment: The Case of Gottlieb Samuel Treuer's Polemic Against Absolutism in 1719," in T. J. Hochstrasser and P. Schröder (eds.), *Early Modern Natural Law Theories in the Early Enlightenment* (Dordrecht: Kluwer, 2003), 154.
- 14 Pufendorf, *Law of Nature*, 528 [VII.iii.3].
- 15 Pufendorf, *Law of Nature*, 529 [VII.iii.4].
- 16 Pufendorf, *Law of Nature*, 514 [VII.ii.9].

to understand why Pufendorf was confident of the possibility of distinguishing between people and sovereign, and why he was confident also that such a distinction would not destabilize the state.

Pufendorf accepted Hobbes's way of differentiating between multitude and people. "[P]roperly speaking," he wrote, "a *Multitude* of Men is not one compound Body, but many separate Persons, each of which hath his own Judgment, and his own Will to Determine him in all Matters that shall be Proposed."<sup>17</sup> It was certainly the case, according to Pufendorf, that prior to the establishment of civil society and the state, social existence for human beings was characterised primarily by diversity of will and judgment. This marked a fundamental difference between human beings and animals. But, as Hobbes had argued, the problem was just as much the simple fact of plurality as it was diversity. Just because a multitude was a collection of individuals, it was impossible to ascribe to it any one action distinct from the actions undertaken by those individuals. For an individual who found himself caught up in a multitude, there was no sense in which the actions of the rest were *his* actions if he happened to disagree with them. Without an explicit agreement between members of the multitude, each one acted only for himself, no one acted for anyone else. In order, then, for a multitude to turn itself into a *people*, capable of acting as one person, and of taking on rights and duties as a collectivity, it was necessary for there to be an act of union. "A *Compound Moral Person*," Pufendorf had asserted in Book I of the *De Jure*, "is ... constituted, when several Individual Men are so united together, that what they *will* or *act* by virtue of that Union, is esteem'd a single Will, and a single Act, and no more."<sup>18</sup> Only an act of union could ensure that where there was agreement between members of a multitude, that agreement would not later fracture, causing some no longer to accept the actions and responsibilities of the rest as their actions and responsibilities. Pufendorf was concerned with how it might be that a people could continue the same thing through time, and possess the same rights, duties, and privileges, even while its membership changed.<sup>19</sup> He was concerned also about the tendency of individuals, through "a sluggish Coldness in Business, and an Aversion to doing willingly, what we know to be for our Interest," not to be motivated to do what a majority might decide is good for the whole.<sup>20</sup> The solution to all these problems was "that each Member, of the Society, submit his Will to the Will of one Person, or of one Council; so that whatever this Person or this Council shall resolve, in Matters which necessarily

17 Pufendorf, *Law of Nature*, 51 [VII.ii.6].

18 Pufendorf, *Law of Nature*, 6 [I.i.13].

19 See, e. g., Pufendorf, *Law of Nature*, 723 [VIII.xii.7].

20 Pufendorf, *Law of Nature*, 510 [VII.ii.5].

concern the common Safety, shall be deem'd the Will of All in general, and of Each in particular".<sup>21</sup>

The solution, in other words, was a *covenant*, for

to join a Multitude, or many Men, into one *Compound Person*, to which one general Act may be ascribed, and to which certain Rights belong, as 'tis opposed to particular Members, and such Rights as no particular can claim separately from the rest; 'tis necessary, that they shall have first united their Wills and Powers by the Intervention of Covenants without which, how a Number of Men, who are all naturally equal, should be link'd together, is impossible to be understood.<sup>22</sup>

What was necessary, in fact, was *two* covenants. The first was made by all members of the multitude, and was an agreement "to join into one lasting Society, and to concert the Measures of their Welfare and Safety, by the publick Vote".<sup>23</sup> That is, it was an agreement to concert measures – in the first instance, the form of government to be instituted – by majority voting. But Pufendorf did not imagine that that agreement was inherently unconditional. Some might agree to be bound by the majority view whatever it was, but some might not. These would agree to stay a part of the society just so long as the majority view was the same as their private view. The unity produced by this first covenant was therefore loose and liable to be impermanent. Pufendorf made it clear that, like Hobbes, he did not imagine that the will of a majority had any kind of inherent authority over a minority.<sup>24</sup> "*The greater part draws the less*," he argued, "only in Bodies already constituted, not in those which are still to be established," and "the Prerogative of the Majority, in a settled Council, to oblige the rest, is really owing to Human Compact and Institution, not to Nature."<sup>25</sup> Natural reason advised acceptance of majority voting as a decision making procedure for large groups, but put minorities under no obligation to be bound by such votes. Thus when a society went on to pass what Pufendorf called a "decree" specifying under what form of government it would live, the authority of that government over all members of the multitude – its capacity to speak, will, and act for all – was not guaranteed.

21 Pufendorf, *Law of Nature*, 510 [VII.ii.5].

22 Pufendorf, *Law of Nature*, 511 [VII.ii.6].

23 Pufendorf, *Law of Nature*, 512 [VII.ii.7].

24 "[I]t is not a natural rule," Hobbes says in *De Cive*, "that the consent of the majority should be taken for the consent of all ... Rather, the rule has its origin in civil institution" (*On the Citizen*, 89 [VI.20]).

25 Pufendorf, *Law of Nature*, 555 [VII.v.20].



A second covenant was needed, therefore, to create an obligation on the part of all to recognise the will of the government, whatever its form, as the will of all, and thereby to turn the multitude into a “compound person” properly so called.<sup>26</sup> This covenant specified who in particular was to be given sovereign power, and conferred such power on them by way of a general submission of will, made on the understanding that that person, or those persons, were now themselves under an obligation to preserve and protect the common peace and security. Pufendorf was not as clear about the nature of this second covenant as one could have wished. Presumably, though, it was a covenant sufficient to bind *everyone* to obedience, so that those who had made the first covenant conditionally were no longer free to separate themselves from society if joint decisions – now made in the form of laws issuing from the sovereign’s will – were not agreeable to them. It was in this sense, one imagines, that this second covenant was sufficient for the state to be conceived of as “but *one Person*,” and for the state to receive “its final Completion and Perfection.”<sup>27</sup> On the other hand, Pufendorf described the second covenant as made “between Prince and People.”<sup>28</sup> It would seem, then, that there was also a sense in which personhood, so to speak, had been achieved by the multitude by the first covenant, so that it was able to act as one, not only in the choice of form of government, but also in the creation of a sovereign power. Pufendorf seems to have operated with a variable concept of “unity,” such that the product of the first covenant was a unity inferior in degree, or in “completion and perfection,” to the unity produced by the second. A people was produced by the first covenant, but that people was made *more* of a people, unified more absolutely, by the second. One way of understanding this, perhaps, was provided by a distinction made by Pufendorf between unity *by compact* and unity *by sovereignty*. The latter was a stronger tie between men than the former, he argued, for “they who are bound to each other under the same Government, do not continue equal to the Government it self.” Where there is a power of punishment, “all Persons lie under a far greater Necessity to remain obedient, than if they were united by Compact only; which could not take away the Equality of the Members, or their Right of administring their private Affairs, according to their own Judgment.”<sup>29</sup>

26 As Michael Seidler puts it, “[t]he second pact completes the process [of unification] through an act of subjection and a corresponding act of sovereign empowerment” (Editor’s Introduction to *The Political Writings of Samuel Pufendorf*, ed. C. Carr, transl. M. Seidler [New York: Oxford University Press, 1994], 14).

27 Pufendorf, *Law of Nature*, 512 [VII.ii.8]. It should be noted, though, that, Pufendorf allowed a natural right of emigration: see *Law of Nature*, 714–17 [VIII.xi.1–3].

28 Pufendorf, *Law of Nature*, 514 [VII.ii.10].

29 See Pufendorf, *Law of Nature*, 535–36 [VII.iv.9].

However, it was also important to Pufendorf's understanding of the union produced by the second contract that it had a properly moral basis, so that obedience to the sovereign was not merely a matter of rational self-interest. The single covenant that Hobbes had described as sufficient for the establishment of both union and sovereignty was not sufficient precisely because it was merely a compact made out of self-interest between equals.<sup>30</sup> It signalled non-resistance and a surrender of natural right on the part of everyone except the sovereign. According to Pufendorf, though, the conferral of a *right* to govern upon the sovereign necessarily involved more than non-resistance. Considered generally, the creation of a duty also required, as Pufendorf put it, "an inward Inclination to make good the Contract,"<sup>31</sup> in the form of binding of the will expressed verbally by a promise. The first, Hobbesian, covenant was not a commitment to obey anyone in particular. It was a commitment made to others on the understanding that they made the same commitment, and it could be no stronger than the reasons that there were to believe that others would keep to it. It was, in other words, an inherently conditional undertaking, in the sense that, as we have already seen, there was nothing to stop someone refusing to go along with the decision of the rest if they judged it to be in their interest to do so. All that kept the Hobbesian subject bound to obedience, as Pufendorf saw it, was fear of the alternatives. A state would be more firmly unified, and sovereign power more securely established, if each subject recognised the sovereign to have a *right* to command obedience. And such a right was what the second covenant, made between prince and people, conferred. That covenant created rights on the part of the ruler which made it obligatory for the subject to obey even if obedience was judged to be contrary to self-interest. The existence of this obligation was confirmed, from the point of the view of the subject, by the fact that the covenant at the same time imposed duties on the sovereign, so that the sovereign was not left in possession of a brute power to enforce obedience come what may. It was also, Pufendorf pointed out, contrary to experience to construe political obligation in terms of a pact made by the subject with other subjects. Someone joining a

30 See Michael Nutkiewicz, "Samuel Pufendorf: Obligation as the Basis of the State," *Journal of the History of Philosophy* 21, no. 1 (1983): 15–29, and Craig L. Carr and Michael Seidler, "Pufendorf, Sociality, and the Modern State," *History of Political Thought* 17, no. 3 (1996): 354–78. Ian Hunter, by contrast, argues that Pufendorf proposed a thoroughly 'Epicurean' theory of political obligation: see *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001), ch. 4.

31 Pufendorf, *Law of Nature*, 211 [III.v.4].

political community did so by making a pledge of allegiance to the sovereign, not to his new compatriots.<sup>32</sup>

Pufendorf, then, sought to preserve a distinction between people and sovereign, so that the people brought sovereign power into existence while remaining – as a product of the first covenant – a corporate entity separate from the sovereign. Of course, in a democracy, where the people governed itself, the people was both subject and sovereign, but in a monarchy or aristocracy the distinction between people and sovereign was both important and sharp. Only in a democracy could the obligations of the people be taken to be obligations to itself. Like Hobbes, Pufendorf maintained neutrality, in principle, when it came to the choice between forms of government. Democracy, aristocracy and monarchy could all be “regular” forms of the state, just so long as sovereign power was not divided.<sup>33</sup> But where a democracy decided to replace itself with a monarchy, there was no implication that, as Hobbes had claimed, the people literally *ceased to exist* just because it no longer governed itself. In such circumstances, “the People are *dissolv’d* in this respect only, that the Supreme Authority doth no longer reside in a General Assembly; but they are by no means dissolv’d into a loose Multitude, not united by any mutual Bands; for they still continue one Society, held together by one Government, and by their original Covenant amongst themselves.”<sup>34</sup> By the same token, when a monarch died without an heir, or gave up his throne, the kingdom was “not Absolutely *dissolv’d*, but only reduced to a state of *Interregnum*”: subjects “continue[d] still united to one another, by the Original *Bond* and *Compact* of *Society*.”<sup>35</sup> A people, according to Pufendorf, was “the *same*, whether the Government be *Monarchical*, *Aristocratical*, or *Popular*.”<sup>36</sup> But, plainly, he did not mean by this what Hobbes meant when he claimed that in every commonwealth the people reigns. That was just “idle Affectation and over-much Nicety” on Hobbes’s part.

32 See Pufendorf, *Law of Nature*, 515 [VII.ii.11]. This raises the question of how Pufendorf conceived of consent on the part of those who grow up into subjection to the government of the country in which they were born, a question he answers in terms of a distinction between tacit and express consent. On his view, it would seem, founders of nations are able to consent on behalf of their posterity, so that “[a]ll who are born within such Dominions, are hereby supposed to have submitted themselves to the standing Government” (*Law of Nature*, 523 [VII.ii.20]). On Pufendorf on consent, see Laetitia Ramelet, “Pufendorf’s Solution to the Puzzle of Consent and Natural Law,” *History of Political Thought* 41, no. 2 (2020): 299–323.

33 Pufendorf, *Law of Nature*, 540 [VII.v.3].

34 Pufendorf, *Law of Nature*, 517 [VII.ii.12].

35 Pufendorf, *Law of Nature*, 714 [VIII.xi.1].

36 Pufendorf, *Law of Nature*, 721 [VIII.xii.1].

For either “the people” meant “the whole State” or it meant “the body of the Subjects.” If it meant the former, then the claim that the people reigned was no more than the “ridiculous Tautology” that “the People, that is the State, rules in every State.” If it meant the latter, then the claim was simply false, for it was plainly not true that, as Pufendorf put it, “the People as distinct from the Prince, rules in every state.” The claim that the will of a monarch was always the will of the people was really only the claim that “in a Monarchical Government, the Will of the Prince is supposed to be the Will of the State.”<sup>37</sup>

The question Pufendorf’s position raised, from the point of view of one who, like Hobbes, was concerned above all about the preservation of order, was whether it did not create room for confusion about the true site of sovereignty. If the people, considered as a distinct corporate entity, gave the sovereign his sovereignty, did that not imply some kind of superiority of people over sovereign? Did it not imply the possibility of a contest for superiority between people and sovereign, or at the very least, the possibility of a division of sovereignty between people and king or council? It was in order to exclude such possibilities that Hobbes sought to show the identity of people and sovereign. Pufendorf, in order to exclude them, sought to discredit established ways of characterising the relationship between sovereign power and the people conceived of as the origin of such power. Some had distinguished between *real* and *personal* sovereignty, attributing the former to the people, and the latter to the monarch.<sup>38</sup> They had claimed that this distinction was motivated by the fact that when a king died or a royal family became extinct, “the People so far return to their first Right and Freedom, as that they may at their Pleasure, either choose a new King, or set up another form of Government.” Without denying that this might happen, Pufendorf dismissed the distinction between real and personal sovereignty as a way of “turning every Kingdom into a Monster with two Heads, and exposing it to utter Convulsion and Ruine.”<sup>39</sup> He dismissed also the idea this distinction had a basis in a further distinction drawn, by Grotius and others, between the *common* and *proper* subjects of sovereignty. That was a distinction between where sovereign power was lodged, which was in the commonwealth or “state” as a whole, and who bore sovereign power, which might be king or council or people. It was not, though, on Pufendorf’s view a distinction between two sovereign powers, one real and in the people, one

37 Pufendorf, *Law of Nature*, 519 [VII.ii.14].

38 See, e.g., Hermann Kirchner, *Respublica ad Disputationis aciem Methodice Revocata* (Marburg, 1608), Disp. II, “De Potestate Majestatis,” esp. 24–25; and Christoph Besold, *Dissertatio Politico-Juridica de Politica Maiestate* (Tübingen, 1625), 1–2. I am grateful to Knud Haakonssen for these references.

39 Pufendorf, *Law of Nature*, 559 [VII.vi.4].

personal and in a king.<sup>40</sup> In addition, Pufendorf rejected the claim made in the Monarchomach text *Vindiciae, contra Tyrannos* that it followed from the fact that kings were given their power by the people that they could not properly speaking be sovereign over the people. Furthermore, he rejected the claim that it followed from the fact that political power was instituted for the sake of the people that the people were superior to their governors.<sup>41</sup> There was no ground in such claims for any qualification of the people's subjection, in a monarchy, to a king or, in an aristocracy, to the ruling council.

Pufendorf had another, and perhaps more decisive, means of answering the charge that his conception of the relation between people and sovereign risked subverting the sovereign's absolute right to assert his will as the will of the commonwealth as a whole. Both Grotius and Hobbes, as much as Filmer and Horn, held that sovereign power could only be bestowed by someone who already possessed it. For no one could give something away that they did not themselves possess. Filmer and Horn took this to be a conclusive argument in favour of God being, necessarily, the source of sovereign power.<sup>42</sup> Grotius and Hobbes, on the other hand, described the origin of sovereign power in terms of the surrender of rights by naturally free human beings.<sup>43</sup> Pufendorf, by contrast, drew on his strongly voluntarist conception of morality in general in order to argue that the rights possessed by the sovereign, and the duties possessed by subjects, were created *ex nihilo* on the occasion of the second covenant, by the act of will with which subjects bound themselves to obedience. There was, according to Pufendorf, no natural basis for any right or duty. As "modes" rather than substances, superadded to natural things and their motions, all rights and duties were created, whether by God or by human beings, by "imposition."<sup>44</sup> Thus, as Pufendorf summarised his position, "*Bodies*

40 See Pufendorf, *Law of Nature*, 560 [vii.vi.4]. This appears to count against Richard Tuck's claim that "[l]ike Grotius, [Pufendorf] believed in distinguishing between the common and proper subjects of sovereignty" (*The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2016, 111).

41 See Pufendorf, *Law of Nature*, 561–62 [vii.vi.6].

42 According to Filmer, all human beings are born into a state of absolute subjection. A king's power can only be inherited, ultimately from Adam, who was given his power by his creator. Royal power has no possible source in the choices of subjects. See *Patriarcha and Other Writings*, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1991), 6–7.

43 As Hobbes puts it in *De Cive*, "[i]n a union the Right of all is transferred to one" (*On the Citizen*, 69 [V, summary]).

44 See Pufendorf, *Law of Nature*, 2–3 [I.i.iii–iv]. For a recent discussion of Pufendorf's theory of *entia moralia*, see Thomas Ahnert, "The Metaphysics of Moral Entities," in Haakonssen and Hunter, eds., *Cambridge Companion to Pufendorf*; and also Hannah Dawson, "The Normativity of Nature in Pufendorf and Locke," *The Historical Journal* 63, no. 3 (2020): 528–58.

*Politick* which are *compounded of a number of Men*, may have a Right resulting from such a *Composition*, which no one of the *particulars* was *formally* possess'd of; which *Right*, derived from the *Union*, is lodged in the *Governours* of such *Bodies*.<sup>45</sup> In reply to Horn, Pufendorf contended that "it may and often does happen, that a Moral Quality ... shall be produc'd in another Person, by the Concurrence of those who had it not, truly and properly, in themselves before."<sup>46</sup> In the case of sovereignty, the moral quality in question "results from the Non-resistance of the Subjects, and from their Concession that the Sovereign shall dispose of their Wealth and Strength."<sup>47</sup> An essential mark of sovereignty, according to Pufendorf, was the power of life and death. That was a different power from the right of self-preservation that everyone possessed in the state of nature.<sup>48</sup> It had to be recognised as a power created out of nothing by the covenant between people and prince. That covenant brought into existence an entirely new persona for the prince, as judge of matters of life and death, and also for subjects, as potential objects of a death sentence legitimately passed by another human being.<sup>49</sup>

There were no limits, in principle, to the power of Pufendorf's sovereign. Certainly there were no limits imposed by the fact that sovereignty had its source in consent on the part of the governed. Sovereign power was absolute by definition, in the sense that it was up to the sovereign to decide, on behalf of the commonwealth, on all means tending to the preservation of society as a whole. This power, Pufendorf added, "is attended with an *Absolute Command*, or a Right of prescribing those Means to the particular Members, and of compelling them to a due Obedience and Conformity."<sup>50</sup> Yet absolute power was not arbitrary power. The sovereign's power was restricted to matters relevant to the peace, and prosperity, of the commonwealth, and there was according to Pufendorf a strict distinction to be drawn between the political

45 Pufendorf, *Law of Nature*, 615 [VIII.iii.1].

46 Pufendorf, *Law of Nature*, 529 [VII.iii.4].

47 Pufendorf, *Law of Nature*, 529 [VII.iii.4].

48 See esp. Pufendorf, *Law of Nature*, 150–51 [II.v.7–8].

49 On the new personae of sovereign and subject created by the two original pacts, see esp. Hunter, *Rival Enlightenments*, 185ff. "The key to understanding Pufendorf's conception of the formation of civil sovereignty," Hunter observes, "is that he regards it not as the realisation or execution of a natural capacity but as the invention and imposition of a new moral entity or status" (186). See also T. J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2000), 102: "while the sovereign authority only embodies the covenanted authority of the citizen, it nevertheless possesses powers not held by any individual will or simple aggregation of wills."

50 Pufendorf, *Law of Nature*, 563 [VII.vi.7].

and the private domains.<sup>51</sup> A people might in fact decree a form of monarchy with rules and forms built into the definition of its rights.<sup>52</sup> Whether or not political power was constitutionally circumscribed, Pufendorf accepted that it was possible for a sovereign to overstep the limits of his authority and, as a result, to inflict injustice on subjects. Contrary to what Hobbes had claimed, there was a distinction to be drawn between monarchy and tyranny. Every right and privilege possessed by the sovereign had a proviso built into it, that it was not to be exercised contrary to the safety or needs of the public. In almost all real-world circumstances it was likely that the safety and needs of the public spoke in favour of the maintenance of the power of the sovereign. In the interests of the commonwealth, Pufendorf recommended self-imposed exile over armed resistance. But, even so, “there is in the People, or in particular Persons, a Right of Defending their Life and Safety against their Prince, upon the Approach of extreme Danger, and when the Prince is manifestly turn’d an Enemy towards them.” “[A] People,” Pufendorf continued, “may defend themselves against the extreme and unjust Violence of their Prince, which Defence, if it succeeds prosperously, brings Liberty along with it, as a necessary Attendant.”<sup>53</sup>

In conclusion, though, we should note the importance of a distinction between what Pufendorf terms “two very different things.” There was the people’s right of self-defence when their prince had turned into their enemy. And there was the people’s possession of a “power of applying Force to their Rulers, and of reducing them to Amendment, when they do not govern according to their Will.”<sup>54</sup> Pufendorf worried that the former would be confused with the latter, with too much latitude given as a result to the people’s right of resistance.

51 Hunter claims that Pufendorf “gives birth to the ‘liberal’ sphere of extra-political rights and freedoms” (*Rival Enlightenments*, 194). See also Knud Haakonssen, “Between God and Nature: Pufendorf on Power and Liberty,” at <https://oll.libertyfund.org/pages/lm-pufendorf> [posted 3 January 2017].

52 See Pufendorf, *Law of Nature*, 564–65 [VII.vi.9]. According to James Moore and Michael Silverthorne, “Pufendorf thought that sovereigns were limited in their power by the end of government, by their obligation to promote sociality or life in society” (“Protestant Theologies, Limited Sovereignities: Natural Law and Conditions of Union in the German Empire, The Netherlands, and Great Britain,” in John Robertson (ed.), *A Union for Empire: Political Thought and the Union of 1707* [Cambridge: Cambridge University Press, 1995], 172).

53 Pufendorf, *Law of Nature*, 590 [VII.viii.6]. On the “strong theory of resistance, even of revolt, in Pufendorf”, and Pufendorf’s endorsement of the English revolution of 1688, see Michael Seidler, “‘Turkish judgment’ and the English Revolution: Pufendorf on the Right of Resistance” in Fiametta Palladini and Gerald Hartung (eds.), *Samuel Pufendorf und die europäische Frühaufklärung* (Berlin: Akademie Verlag, 1996), 83–104.

54 Pufendorf, *Law of Nature*, 590 [VII.viii.6].

What dominated his account of the relation between people and sovereign was the necessity, in practically all situations, of complete submission on the part of the people. He meant constantly to instil acceptance of the superiority of the magistrate over those who had, ultimately, given the magistrate his authority. “[H]e, who Constitutes Another with Authority over himself,” Pufendorf affirmed, “can no more be supposed to continue Superior to him, than he can, at the same time, and in respect of the same Person, Command and Obey.”<sup>55</sup> There was no possibility that a prince might hold his power as a matter of merely usufructuary right, so that the people, as *dominus*, might repossess that power if it saw fit. For “a People who have given themselves up for Slaves, or rather, who have put themselves under the Command of an absolute Sovereign, have no more a Right of regaining their Liberty by Force, than I have of recovering a thing by Force, which I have already, upon Bargain, delivered to another Man.”<sup>56</sup> There was, contrary to what Hobbes had feared, no threat to the unity of sovereignty posed by a distinction between people on the one hand, and acting sovereign power on the other.

### 3 Locke

I noted above an apparent equivocation in Pufendorf’s account of the creation of the unity of a people out of the irreducible plurality of the multitude. On the one hand, it appeared that the first covenant between disaggregated and disagreeing individuals in the state of nature was sufficient for the creation of a body with a single will, a will determined by the decision of the majority in its selection of a form of government. The second covenant specifying a particular individual, or individuals, as the possessors of sovereign power was, according to Pufendorf, a covenant between *people* and prince, or council. On the other hand, that second covenant was necessary for the full realisation of “that Submission and Union of Wills, by which we conceive a State to be but *one Person*”. It gave the state “its final Completion and Perfection”.<sup>57</sup> I suggested that what explained the need for the second covenant was a distinction made by Pufendorf between “unity by compact” and “unity by sovereignty”. The empowerment of a sovereign with coercive powers gave rise not only to decisive prudential reasons to keep to the initial covenant, but also to a *moral* obligation of allegiance. Now I turn to the Locke of *Two Treatises of Government*,

55 Pufendorf, *Law of Nature*, 561 [VII.vi.6].

56 Pufendorf, *Law of Nature*, 590 [VII.viii.6].

57 Pufendorf, *Law of Nature*, 512 [VII.ii.8].



who was explicit about there being a need only for one covenant in the unification of individuals into a body politic. The difference between Locke and Pufendorf on this question, and its implications for Locke's conception of the relation between the people and sovereign power, is my principal concern in this section. Locke made no explicit reply to Hobbes's argument that the will of the sovereign is, necessarily, the will of the people. He wrote as if there were nothing problematic about the idea of the people as a corporate body existing, in a monarchy or aristocracy, independent of the governing power. Furthermore, of course, he attributed to the people (and possibly also to private citizens) a right, in certain circumstances, to resist the government.

Locke's account of how a multitude becomes a people is, in effect, given at the start of Chapter VIII of the Second Treatise, "Of the Beginning of Political Societies." As already noted, this was not a direct reply to Hobbes. It reads, rather, like a reply to Pufendorf. What Locke described was how a number of naturally free, equal, and independent individuals became "incorporated," so as to "make *one Body Politick* wherein the *Majority* have a Right to act and conclude the rest."<sup>58</sup> Locke's explanation of why such incorporation was necessary – in other words, his account of the state of nature – was different to both Hobbes's and Pufendorf's, but it was premised on the same need for individuals "to joyn and unite into a Community, for their comfortable, safe, and peaceable living one amongst another, in a secure Enjoyment of their Properties, and a greater Security against any that are not of it."<sup>59</sup> By their consent to be made into a community whose actions were determined by the majority, the plurality of individuals "made that *Community* one Body, with a Power to Act as one Body", in so far as the consent of the majority could be "received, as *the act of the whole*."<sup>60</sup> In what was surely a hostile reference to Pufendorf's schema of two covenants, Locke added that "barely agreeing to *unite into one Political Society*" was "*all the Compact* that is, or needs be, between the Individuals, that enter into, or make up a *Common-wealth*."<sup>61</sup> There was no need, then, for a further covenant, as in Pufendorf's account of the constitution of civil

58 J. Locke, *Two Treatises of Government*, ed. Peter Laslett, student edition (Cambridge: Cambridge University Press, 1988), 331 [II §95].

59 Locke, *Two Treatises*, 331 [II §95].

60 Locke, *Two Treatises*, 331, 332 [II §§96, 98].

61 Locke, *Two Treatises*, 333 [II §99]. In the notes to their French translation of the *Second Treatise*, Jean-Fabien Spitz and Christian Lazzeri describes this as "une critique explicite de la théorie pufendorfienne des deux conventions" (John Locke, *Le second traité du gouvernement* [Paris: Presses Universitaires de France, 1994], 213). In his notes, by contrast, Laslett makes no mention of Pufendorf here – and, I think, systematically underplays Locke's engagement with Pufendorf throughout his edition.

states, for a covenant between people and the “person or persons” on whom political authority is conferred. The first covenant was sufficient to ensure the unity of the people, in the sense that it ensured not just a power on the part of the people to enforce its will on all members of the community, but also a moral authority and *right* on the part of the people to assert its will as the will of everyone. Pufendorf, as we have seen, was explicit that majority rule was not guaranteed at the stage of the first covenant. Some of the parties to that covenant bound themselves to the will of the community only conditionally, and remained free to exit the community if they chose to do so. They only became members of the new state when they “expressly consent[ed] to the Government resolv’d upon” in the second covenant. In denying that a second covenant was necessary, Locke was in effect denying that there was a distinction to be drawn between those who joined the society “upon absolute Terms” and those who joined “upon Conditions.” What explained this difference between Locke and Pufendorf was, possibly, the differences between their accounts of the state of nature. Locke’s account of the non-civil state was *Hobbesian enough* to ensure that the very idea of voluntary exit from the nascent political community made no sense.<sup>62</sup>

The sufficiency of a single compact rested on the ability of a majority to “conclude the rest,” so that no one had the right to go back on the initial agreement of incorporation if the majority view did not accord with their judgment as to what was necessary for their comfortable, safe, and peaceable living. It is crucial to Locke’s theory of the people – such as it is – that “the *act of the Majority* passes for the act of the Whole, and of course determines, as having by the Law of Nature and Reason, the power of the whole.”<sup>63</sup> For Pufendorf, as for Hobbes, the majority principle is, by contrast, a convention the authority of which depends upon agreement on the part of every member of the community. So we need to understand why, on Locke’s view, fifty percent plus one of a given collection of individuals should be *naturally* empowered to call their will the will of the people, such that they had the right to speak and act for everyone else.<sup>64</sup> It could be that Locke’s thinking here was guided by a distinction between what fallible individuals actually will and what they *would* will were they guided in their deliberation and decision-making by the law of nature and reason. And it could also be that he did suppose that, all

62 In this connection it is important that (as I will point out below) the Lockean right of resistance is not exercised by dissociated individuals in the state of nature, but by an incorporated political community.

63 Locke, *Two Treatises*, 332 [11, §96].

64 For an elegant exposition of the difficulties here, see Wilmoore Kendall, *John Locke and the Doctrine of Majority Rule* (Urbana, IL: University of Illinois Press, 1959).

things being equal, a larger number of individuals was more likely to be closer in its judgments to the law of nature and reason than a smaller number. Then he would have had some reason to think that there is a sense in which the will of a minority is, properly speaking and despite appearances to the contrary, the same as the will of the majority, *and also* that the will of the majority is plausibly regarded as guided by the law of nature and reason. The problem with such an interpretation is that it is at odds with the deep pessimism about human rationality expressed in *An Essay concerning Human Understanding*. His analysis there gives us no reason to suppose that through the exercise of reason and judgment we will ever arrive at a shared grasp of the truth.<sup>65</sup> So perhaps Locke's thinking here has nothing to do with anyone's grasp of the law of nature and reason. Perhaps, instead, it is a brutally pragmatic argument which has to do with the conditions of the possibility of political community as such. A political community, by its nature, has to make difficult decisions in difficult circumstances. And the simplest and quickest way to make those decisions is by majority vote. This, of course, leaves unexplained why the majority view should be described as *the will of the people*, such that its will is everyone's will, and such that what the majority does is something that everyone does.

The fact that one compact was all that was needed to establish a commonwealth made it necessary for Locke to describe the institution of government (the second stage of the Pufendorfan account) in non-contractual terms. The terminology he chose instead was that of the creation of a *trust*.<sup>66</sup> Yet he did not highlight this use of the language of trust in place of the language of contract, nor explain in detail what he took to be distinctive of a trust that gave a government its powers, as contrasted with other, more everyday kinds of trust. A central element of Locke's view of government power was that it was, as he put it, "only a Fiduciary Power to act for certain ends"<sup>67</sup> – but that did not do much to unpack the idea of government as trust, for the idea that

65 Here I follow Hannah Dawson, "Liberty before Licence in Locke," in *Rethinking Liberty before Liberalism*, ed. Hannah Dawson and Annelien de Dijn (Cambridge: Cambridge University Press, 2022), 75: "There is no obvious way within the epistemology that Locke lays out in the *Essay* that even the majority could have anything resembling one mind." This line of argument creates severe difficulties for Kendall's suggestion that the "latent premise" of Locke's support for majority rule is that Locke "subscribed to the proposition that a 'safe' majority of men ... are rational and just" (134).

66 The centrality of trust to Locke's political thought has been a major theme of the work of John Dunn. See especially "The Concept of Trust in the Politics of John Locke" in Richard Rorty, Jerome Schneewind and Quentin Skinner (eds.), *Philosophy in History: Essays on the Historiography of Philosophy* (Cambridge: Cambridge University Press, 1984), 279–301; and also *Locke: A Very Short Introduction* (Oxford: Oxford University Press, 2003).

67 Locke, *Two Treatises*, 367 [11, §149]; see also 371 [§11, 156].

governments were empowered only to act for certain ends was, as we saw above in the case of Pufendorf, not unique to Locke. Locke also described government power, and legislative power in particular, as “a delegated Power from the People.”<sup>68</sup> On his characterisation of the origin of government, power was given by people to magistrate. This helped further to explain the claim that one rather than two compacts was needed to make up a commonwealth. As we have seen, according to Pufendorf a contract between people and prince (or council) created sovereign power out of nothing. That power, like all moral powers on Pufendorf’s view, had no natural basis. According to Locke, on the other hand, the power of government *was* a natural power, possessed by individuals in the state of nature, transferred in the first instance to the majority, who then conferred it on the government. Locke was explicit, in fact, that the people could not give to its government a power it did not already have. That was why it was certain that no government could have a power “absolutely *Arbitrary* over the Lives and Fortunes of the People.” Having been created by God, no individual had an absolute and arbitrary power over himself, and “no Body can transfer to another more power than he has in himself.”<sup>69</sup> The distinctive power of government, the power of life and death, was a power that, according to Locke, individuals possessed in the state of nature. This was the “*Execution of the Law of Nature ...*, whereby every one has a right to punish the transgressors of that Law to such a Degree, as may hinder its Violation”<sup>70</sup> – a power supplementary to the bare natural right of self-defence. Perhaps – though there is no evidence here – part of the reason why Locke (twice) called the idea of such a natural power a “strange Doctrine”<sup>71</sup> was that Pufendorf had argued against it.<sup>72</sup>

In a sense, then, according to Locke, government had its origin in a primal democratic moment, as the community voted on a majority basis to transfer or delegate the power of life and death, along with the right to decide when

68 Locke, *Two Treatises*, 362 [II, §141].

69 Locke, *Two Treatises*, 357 [II, §135].

70 Locke, *Two Treatises*, 271 [II, §7].

71 Locke, *Two Treatises*, 272 [II, §9] (where it is a “very strange Doctrine”), and 275 [II, §13].

72 Grotius had argued for a natural power of “chastisement” (as distinct from a mere right of self-defence) in the Prolegomena to *De Iure Praedae* (see *Commentary on the Law of Prize and Booty*, ed. Martine Julia van Ittersum [Indianapolis: Liberty Fund, 2006], 91–92). But this text was not published until the nineteenth century. In *Leviathan*, by contrast, Hobbes argued that the state’s right to punish “is not grounded on any concession, or gift of the Subjects” (ed. Noel Malcolm [Oxford: Clarendon Press, 2012], ch. 28, p. 482 [161]). Laslett comments in the notes to his edition of *Two Treatises* that calling the doctrine strange “seems to be Locke’s way of announcing that his doctrine of punishment was, or was intended by him to be, a novelty” (272).

and how that power, along with other lesser measures, should be exercised. It is worth noting, however, that Locke moved quickly to counter the idea that there was something *essentially* democratic about politics as such. In the strikingly brief Chapter x of the Second Treatise, “Of the Forms of Government,” comprising only two paragraphs, Locke did two notable things. He argued, disagreeing with both Hobbes and Pufendorf, that a community “may make compounded and mixed Forms of Government, as they think good.”<sup>73</sup> And he sought to make clear that by “commonwealth” he was to be understood to intend “not a Democracy, or any Form of Government [i.e., any form of government in particular], but any *Independent Community* which the *Latines* signified by the word *Civitas*.”<sup>74</sup> Locke insisted that he meant by the word “commonwealth” nothing different from what King James I had meant by it.<sup>75</sup> Also, in the conjectural history of government contained in Chapter VIII, Locke allowed that the first governments in order of time were probably elective monarchies, where naturally free peoples had either “by their own consent submitted to the Government of the Father,” or, as family units, “generally put the *Rule into one Man’s hands*.”<sup>76</sup> Even so, it might seem hard to deny a natural association of ideas connecting Locke’s conception of the beginning of political societies with the people as ineliminably possessed of some kind of fundamental authority over government, regardless of the form of government that they had chosen to put themselves under. It is tempting, that is, to suppose the Lockean people to have something answerable to what, since Sieyès and the French Revolution, has been called “constituent power,” a power over constituted government that always stands to be recalled and expressed in a new way. Thus it has been argued that, faced with the possibility, indeed actuality, of a conflict between competing claims to sovereignty on the part of Parliament and King, Locke ascribed ultimate sovereignty to the people considered as distinct from any body that claimed the right to represent them.<sup>77</sup> The Lockean people, on this argument, possessed a “real majesty,”

73 Locke, *Two Treatises*, 354 [11, §132].

74 Locke, *Two Treatises*, 355 [11, §133].

75 As Laslett suggests, Locke was probably thinking in terms of the passages from James’s speeches to Parliament quoted in §200 of the Second Treatise (399–400), where James claimed that “the Wealth and Weal of the Commonwealth” was his own “greatest Weal, and worldly Felicity.”

76 Locke, *Two Treatises*, 343 [11, §112].

77 See Julian H. Franklin, *John Locke and the Theory of Sovereignty* (Cambridge: Cambridge University Press, 1978), ch. 4. Franklin’s claim is that Locke was decisively influenced here by the ‘adequate solution to the problem of resistance in a mixed monarchy’ proposed by George Lawson in *Politica Sacra et Civilis* (1660).

distinct from the “personal majesty” of a king or council, that was incapable of being transferred to a representative.<sup>78</sup>

Faced with the idea that post-French Revolution conceptions of popular sovereignty were implicit in Locke’s political thought, we should remember Locke’s insistence on the distinctive nature of the political power that popular consent brought into existence. In the first instance, what mattered to Locke was that it be recognised that political power is quite different from the power of parents. That was the major theme of the *First Treatise*, but Locke returned to it at length in the *Second Treatise*, where he also differentiated it from the power of husbands over wives and of masters over servants. But it is important also to consider what was distinctive of the relationship brought into existence by a people’s *entrusting* or *delegating* powers to the magistrate to exercise on their behalf. The lack of a clear exposition on Locke’s part of a political form of trust makes it necessary to speculate here, but it would seem likely that Locke took political trust to be different from the kind of trust involved in, for example, the relationship between a client and a lawyer, or between a proprietor and an agent or factor. Locke’s primary concern in the *Two Treatises* was with what we now call “political obligation,” what in Locke’s time was called the duty of allegiance. He was interested in the origins – and, of course, also the limits – of a moral obligation on the part of subjects to obey those in positions of political power. Government may have been delegated its powers by the people, its members may have been the people’s representatives, but at the same time government, as Locke understood it, was entitled to the perfect obedience of subjects right up until the moment when resistance became legitimate. Government could rightly think of itself as having the power to coerce subjects into doing things they might well not want to do, for example pay taxes, or serve in defence of the realm. Refusal to obey was, at the limit, treasonous, and punishable by death. Locke *published* (rather than wrote) the *Two Treatises* in order to demonstrate the full right of William III, “our Great Restorer,” to the complete allegiance of the English people.<sup>79</sup> That allegiance was allegiance to the person of the monarch, not to an abstract entity called “the state” or “the nation.” It seems likely that Locke meant his book to be a

<sup>78</sup> Franklin interprets this distinction as identical to the distinction between constituent and constituted power: see *John Locke*, 64–69. Lucia Rubinelli, by contrast, questions the possibility of applying the concept of constituent power to political contexts predating its explicit formulation in the 1790s: see *Constituent Power: A History* (Cambridge: Cambridge University Press, 2020). She also argues that the point of the idea of constituent power, beginning with Sieyès, was in fact to avoid questions concerning sovereignty.

<sup>79</sup> Locke, *Two Treatises* [‘The Preface’].

contribution to a long and complex debate occasioned by the imposition on office holders of a requirement to take an oath of allegiance to the new king and his queen. It was meant to show that the authority of William and Mary was not that of merely *de facto* possessors of the throne.<sup>80</sup>

It might be replied that some ways in which Locke expressed himself on the subject of the people's power suggest a rather different characterisation of that power. Did not Locke, for example, claim that because the legislative was only a fiduciary power, "there remains still *in the People a Supreme Power* to remove or *alter the Legislative*, when they find the *Legislative* act contrary to the trust reposed in them"?<sup>81</sup> Did he not end the *Second Treatise* with a declaration of a right of the people, when faced with the dissolution of government, "to act as Supreme, and continue the Legislative in themselves, or erect a new Form, or under the old form place it in new hands, as they think good"?<sup>82</sup> We need to be careful how we read such passages. Consider the former one. Locke ended the paragraph as follows:

And thus the *Community* may be said in this respect to be *always the Supreme Power*, but not as considered under any Form of Government, because this Power of the People can never take place till Government be dissolved.

This appears to make it clear that *while under government*, the people did *not*, on Locke's view, possess supreme power. The people's power to act in self-defence and rid themselves of those who invade the fundamental right of self-preservation cannot "take place" – meaning, presumably, something like 'cannot be said to come into existence' – until government is actually dissolved. The next paragraph begins: "In all cases, whilst the Government subsists, the *Legislative is the Supreme Power*."<sup>83</sup> This did not mean only that

80 In the wake of Laslett's groundbreaking work in the 1950s, scholarly attention has been almost exclusively focused on Locke's intentions in the initial *composition* of the *Two Treatises*, rather than on his intentions in *publishing* the book ten years later. The context for publication is provided by Mark Goldie, "The Revolution of 1689 and the Structure of Political Argument: An Essay and an Annotated Bibliography of Pamphlets on the Allegiance Controversy," *Bulletin of Research in the Humanities* 83 (1980): 473–564. For a more detailed treatment of Locke on the moral authority of the Williamite regime, and of Locke's argument that Filmer was incapable of doing that authority justice, see James A. Harris, "Treatises of Anarchy and Treatises of Government: Locke versus Filmer Revisited," *Locke Studies* 19 (2020): 1–32.

81 Locke, *Two Treatises*, 367 [11, §149].

82 Locke, *Two Treatises*, 428 [11, §243].

83 Locke, *Two Treatises*, 367 [11, §150].

the legislative is supreme with respect to the other powers of government, the executive and federative powers, but also that the legislative was supreme over “all other Powers in any Members or parts of the Society, derived from and subordinate to it.”<sup>84</sup> The legislative was supreme over all those to whom it gave law, which meant all members of the commonwealth, including members of the legislative in their capacity as members of the commonwealth. Later in Chapter XIII, “Of the Subordination of the Powers of the Commonwealth,” Locke alluded to the inequality of representation in England, and to the case in point that were the two parliamentary seats of Old Sarum. Foreigners were rightly amazed by a parliamentary constituency with no resident voters, but it was hard to think of a solution, because there seemed in England to be no means of reforming the constitution. Locke explicitly ruled out that such reform could be made by the people – for “the *People*, when the Legislative is once Constituted, [has] in such a Government as we have been speaking of, *no Power* to act as long as the Government stands.”<sup>85</sup> In final paragraph of the *Two Treatises* Locke also wrote:

So also when the Society hath placed the Legislative in any Assembly of Men, to continue in them and their Successors, with Direction and Authority for providing such Successors, *the Legislative can never revert to the People* whilst that Government lasts: Because having provided a Legislative with Power to continue for ever, they have given up their Political Power to the Legislative, and cannot resume it.<sup>86</sup>

The reversion of supreme power to the people described in the paragraph’s last sentence took place when, and only when, government had been dissolved.

Like Pufendorf, but unlike Hobbes, Locke distinguished between the dissolution of government, and the dissolution of the entirety of the social order. This was one reason why he was able to affirm a right of resistance: action against the government was action on the part of an organised body, a people, determined by the will of the majority.<sup>87</sup> It did not take place in the

84 Locke, *Two Treatises*, 368 [II, §150] (emphasis added).

85 Locke, *Two Treatises*, 373 [II, §157].

86 Locke, *Two Treatises*, 428 [II, §243]; emphasis in the original.

87 There is disagreement in the secondary literature as to whether or not Locke allowed a right of resistance on the part of individuals as well as on the part of the people. For the case against, see Jacqueline Stevens, “The Reasonableness of John Locke’s Majority: Property Rights, Consent and Resistance in the *Second Treatise*,” *Political Theory* 24, no. 3 (1996): 423–63; for the case for, see J. K. Numao, “Right of Resistance Non-Anarchic: A Consideration of the Character of Locke’s Defence,” *Locke Studies* 13 (2013): 65–96.



context of a wholesale reversion to the chaos of the state of nature. However, dissolution of government as Locke understood it, when it was not caused by foreign conquest, happened “from within.” It could happen in two ways, when the functioning of the legislative power was disturbed, or when either the legislative or executive betrayed the trust reposed in them, overstepped their powers, and invaded the freedoms of the people.<sup>88</sup> Locke illustrated the first way of dissolving government from within, the alteration of the legislative, using the example of the English form of government, where aspects of the legislative power were distributed among a hereditary king, a hereditary chamber, and an elected chamber. He gave four examples of how the legislative might be altered, all consisting in misdeeds on the part of one or other element of government. The implication of this account of the dissolution of government taken as a whole was that dissolution of government was something that government did to itself, and not something that the people might do to it. Then, in the second half of the *Second Treatise’s* chapter on the dissolution of government, Locke responded to the worry that a people told that it had a right of resistance might interpret that right as a power to “set up a new Legislative, whenever they take offence at the old one.”<sup>89</sup> It could with reason be pointed out that Locke did not explicitly say that that was *not* what he himself took the right of resistance to be a power to do. All he actually said was that there were no grounds for thinking that this would in fact be the consequence of letting the people know about their right of resistance. They were slow and averse to quit their old constitutions; they would rise up against ill treatment anyway; they put up with a great deal of abuse of power; and a people disposed to resist gross abuse of power was the best way of preventing such abuse from happening in the first place. But the overall tenor of Locke’s account of the dissolution of government, especially given the passages analysed above concerning the proper location of supreme power, was that the right to resist was *not* a power in the people to set up a new legislative whenever they took offence at the old one. It was an essentially reactive power, the ability to do what was necessary to re-establish political order when faced with its destruction by a tyrant – though there might be occasions when it could also be exercised proactively, in anticipation of an imminent threat to constitutional and natural rights.<sup>90</sup>

88 It is noteworthy that Locke described the consequence of alteration of the legislative in terms of the dissolution of what “*gives Form, Life, and Unity to the Commonwealth*” (*Two Treatises*, 407 [II, §212]).

89 Locke, *Two Treatises*, 414 [II, §223].

90 Nathan Tarcov, however, argues that it was Locke’s innovation to claim that, considered generally, “[r]esistance is prevention not a last resort” (“Locke’s *Second Treatise* and ‘The Best Fence against Rebellion,’” *Review of Politics* 43, no. 2 [1981], 211).

We know that Locke thought well of Pufendorf's work, and of *De Jure Naturae et Gentium* in particular.<sup>91</sup> The *De Jure* was, he remarked in "Some Thoughts concerning Reading and Study for a Gentleman," "the best book" on that part of politics which contained "the Original of Societies, and the rise and extent of political power."<sup>92</sup> It is worth asking what Locke agreed with in Pufendorf's book, what he disagreed with, and why. Any attempt to relate Locke to Pufendorf's political thinking, however, has to acknowledge also that Locke had almost nothing to say about the concept of sovereignty, the organising principle of the two books of the *De Jure* which deal with political questions. He did engage in the *First Treatise* with aspects of Filmer's theory of sovereignty, but in the *Second Treatise* the word is barely used, and no analysis is given of the concept. This, presumably, was not accidental. It seems reasonable to suppose that Locke deliberately avoided the language of sovereignty, and there are several possible explanations. It might have been tact, or at least prudence, when faced with the delicate matter of locating sovereignty in England in the aftermath of the Revolution of 1688. It might have been a conviction that in a mixed constitution such as England's, there was no one place where sovereignty lay. It might have been the belief that sovereignty was simply the wrong concept to apply in an analysis of the power of one human being over another, regardless of the nature of the power in question. I do not claim to know whether Locke had a theory of sovereignty, nor, if he did, what it was, and how he applied it to the English case. All I hope to have done in this section is to have put some obstacles in the way of the idea that, to the extent that he had a theory of the people, he took sovereignty to be an inherent property of the people. No more than Pufendorf, I think, did Locke believe that sovereignty had to be attributed to the people just because the people, not God, was the *source* of political power.

#### 4 Conclusion

From Hobbes's point of view, the question whether sovereign power came from God or from the people involved a fundamental confusion. Hobbes gave

<sup>91</sup> Even so, almost all English-language Locke scholarship concentrates solely upon his English political and intellectual context. An exception is Dawson, "Normativity of Nature". See also the literature she cites in note 17, 535.

<sup>92</sup> John Locke, "Some Thoughts concerning Reading and Study for a Gentleman," in *A Collection of Several Pieces of Mr. John Locke, Never Before Printed* (London, 1720), 236–37. Locke mentioned also Pufendorf's *De Officio Hominis et Civis*, Hooker's *Ecclesiastical Polity*, and Sidney's *Discourses* (even though he had not read it), as well as an anonymous "Treatise of 'Civil Polity'" and his own (still unacknowledged) *Two Treatises*.

no sign of thinking that it was even a possibility that such power might come from God, but this did not imply that it was his position that it had to come from the people. He argued, instead, that the source of sovereign power was a surrender of rights on the part of *individuals*. Government had its origin in a decision on the part of a multitude, but that multitude did not make that decision as a single entity with a single will. Rather, it made the decision as a disorganised group of individuals, where nobody spoke for anyone else, and where each and every member was supposed to lay down his natural right to act on the basis of his own decisions about the nature of his self-interest. A people, according to Hobbes, meaning a unified body capable of volition and action, was the *product* of such a general surrender of right. The institution of sovereign power, we might say, enabled the multitude to act *as if* it were a people, in the sense that the sovereign's will was henceforth everyone's will, so that the sovereign was empowered to act in everyone's name. It was true then that in every commonwealth the people reigned, but that was, as Pufendorf pointed out, no more than the uninteresting tautology that in every commonwealth the sovereign reigned. It implied no control over government by the governed. There is, obviously enough, something deeply counterintuitive about Hobbes's position. Ordinary ways of speaking identify the people with, precisely, the governed, and (except in a direct democracy) distinguish the people from the *government*. In Section 2 above we saw Pufendorf argue in his reply to Hobbes that it is possible to talk about the people in the normal way. In Section 3 we saw Locke speak in that way too, apparently without any awareness of Hobbes's argument. Both Pufendorf and Locke affirm that the people as a body is the source of sovereign or governmental power, with the consequence that the possessor of political power has a duty to respect the rights and further the interests of the people. Yet, so I have argued, neither Pufendorf nor Locke used the language of the people in a way that stood to subvert or in any way weaken the supreme power of a king (in a monarchy) or a ruling council (in an aristocracy). The people, on their view, bestowed sovereign power without it being entailed that the people itself was sovereign. A popular origin for political power was compatible with the absolute (though not unlimited) authority of the government.

In extreme circumstances, according to both Pufendorf and Locke, the authority of the governing power lapsed, along with the obligation of subjects to obey. Then, they argued, the people was entitled to act to protect its interests and restore order as it saw fit. But how? Without the institutions of government, and in what would presumably always be circumstances fraught with confusion, how might a nation as a whole make a decision about what policies to pursue? How could it be known what, exactly, the will of the people

was? There would very likely always be a variety of possible courses of action, and choices would have to be made, but, again, how? The implication of both Pufendorf's and Locke's account of the origin of government would seem to be that the people would make these choices by majority vote. But, once again, how? How, in time of violent disorder, could a plebiscite involving millions of people be organised? Locke's *Two Treatise of Government*, unlike Pufendorf's *De Jure Naturae et Gentium*, is an explicit defence of the right of resistance, but it provides no account of how the will of the people might be formed and promulgated in a time of dissolution of government. No account is given of how to distinguish, in such circumstances, between the will of the people and will of a faction. Locke believed, so we know from the Preface to the *Two Treatises*, that the Revolution of 1688–89 had been an action on the part of the English people. The people of England had acted to preserve their just and natural rights, when the nation was on the brink of slavery and ruin.<sup>93</sup> Locke may have believed also that in some way or other – there is no scholarly consensus as to how Locke thought implicit consent was given<sup>94</sup> – everyone apart from the Nonjurors had, by the summer of 1689, signalled their approval of the Williamite regime. But he surely did not believe that in 1688 *everyone* in England had abandoned allegiance to James II and actively supported his replacement by a Dutch prince with only a very indirect claim to the throne. So what was it that had made that course of action the will of *the* people, rather than the will of *some* people?

The Hobbesian position is that there is no way of answering such a question in circumstances where government does not exist. In those circumstances, there is only the clash of factions. Even if there is some way of knowing what policy a majority of the populace supports, the majority is not entitled to call its will 'the will of the people,' where that implies some kind of right to impose that will on the rest, and some kind of obligation on the part of the rest to comply. The very idea of that there might, outside of the structures of representative government, be something worthy of being called 'the will of the people' is, from the Hobbesian point of view, intrinsically divisive and potentially dangerous. For not only is the will of the people (so understood) always a potential threat to the authority of government, but it also problematises the political status of those whose will is not the will of the majority. It makes it possible to portray them as distinct and different from 'the people' properly so called. And that

93 Locke, *Two Treatises*, 137–8 ['The Preface'].

94 For a recent treatment of the difficulties of Locke's discussion of consent, see Michael Davis, "Locke, Simmons, and Consent: A Lawyerly Approach," *Social Theory and Practice* 43, no. 4 (2017): 667–90.

is bound to be a recipe for trouble. Hobbes's strategy was to try to prevent such trouble by taking seriously the idea that, properly speaking, the people is *everyone*, and to show how it could be that a single will might be attributed to everyone. The result was, on the one hand, a clear distinction between the people and the multitude of subjects, and, on the other hand, no distinction at all between the people and the institutions of government. Pufendorf appears to be the only figure in the history of political thought to have engaged critically with Hobbes's theory of the people. Locke simply ignores it, and so has almost all subsequent work on the people and its sovereignty. This has made it all too easy for politicians and protestors of both the left and the right to dignify their cause by claiming to speak and act for the people, even while they acknowledge, implicitly or explicitly, that there are many in the political community whom they do not speak and act for.