

The Moral Person of the State

Pufendorf, Sovereignty and Composite Polities

Ben Holland



This is the first detailed study in any language of the single most influential theory of the modern state: Samuel von Pufendorf's account of the state as a 'moral person'. Ben Holland reconstructs the theological and political contexts in and for which Pufendorf conceived of the state as being a person. Pufendorf took up an early Christian conception of personality and a medieval conception of freedom in order to fashion a theory of the state appropriate to continental Europe, and which could head off some of the absolutist implications of a rival theory of state personality, that of Hobbes. The book traces the fate of the concept in the hands of others – international lawyers, moral philosophers and revolutionaries – until the early twentieth century. It will be essential reading for historians of political thought and for those interested in the development of key ideas in theology, international law and international relations.

Ben Holland is a lecturer in international relations in the School of Politics and International Relations at The University of Nottingham. He has published articles in academic journals such as *History of Political Thought*, *International Studies Quarterly* and *Philosophy & Social Criticism*. He is currently an editor of *Political Studies* and *Political Studies Review*.

'In this fascinating book, Holland provides a refreshing reinterpretation of Pufendorf's notion of the state as a moral person, with profound implications for our understanding of the subsequent trajectory of this notion and its impact on posterity, both of which are not very well known. Highly original and persuasively written, this book should be of interest not only to students of political thought, but to anyone interested in the increasingly shaky foundations of modern political and legal order.'

Jens Bartelson, *Professor of Political Science, Lund University, Sweden*

Cover illustration: Europa regina (Queen Europe) from the *Cosmographia*, 1570. Private Collection. Artist: Münster, Sebastian (1488–1552). Photo by Fine Art Images/Heritage Images/Getty Images.

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For my parents

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Introduction

Bodies, Souls, Persons, States

Analogy has aptly been described as ‘the fuel and fire of thinking’.¹ When confronted with novel situations and problems, human beings often try to make sense of these, for themselves and for others, in terms of already familiar categories. Analogies suggest that some weakly understood object of concern is ‘isometric or parallel with or similar in relevant respects to something else which is familiar, well-understood and uncontroversial’.² Hannah Arendt thus called analogies ‘the threads by which the mind holds on to the world even when ... it has lost direct contact with it’.³ The history of human intellection and imagination at any level of abstraction will be in some part a history of analogies. One task that the intellectual historian might set himself, then, is what the film critic Jean Douchet called ‘the creative act in reverse: starting with the analogy, to discern and disclose what caused it to come into being’.⁴

In this book, my concern is the history of political thought, and specifically the intellectual history of one of the most important political concepts: the state. It focuses on how the idea of the state was handled by the Saxon philosopher, lawyer and historian Samuel von Pufendorf (1632–1694), one of the major theorists of the state in the modern period and surely one of its most influential. The understanding that Pufendorf came to have of the state he developed by means of an analogy, which was to the human *person*. This book moves in two directions. It moves backwards from Pufendorf to investigate the category of the person to which he analogised the state, in order to disclose its functions and purposes in his work; it then moves beyond him and examines some of the impacts that his theory of the state understood by analogy to the person had on subsequent political thought.

¹ Douglas Hofstadter and Emmanuel Sander, *Surfaces and Essences: Analogy as the Fuel and Fire of Thinking* (New York, 2013).

² Elliot Zashin and Phillip C. Chapman, ‘The uses of metaphor and analogy: Toward a renewal of political language’, *Journal of Politics*, 36 (1974), pp. 290–326, at p. 312.

³ Hannah Arendt, *The Life of the Mind*, vol. 1, *Thinking* (New York, 1978), p. 109.

⁴ Jean Douchet, *L’art d’aimer* (Paris, 1987), p. 53.

Pufendorf's main concern when theorising the state was to show how a particular kind of state – the composite state, which is to say one self-identifying political community which is itself a union of other self-identifying political communities – can still be an agent, a sovereign actor in its own right. The book is thus an account of how Pufendorf's conception of the state as being what he called specifically a *moral person* was designed for this task, and of its fate down the centuries.

Pufendorf, to be sure, stood in a tradition as old as Western philosophical reflection on politics itself. Political communities have long been analogised to some aspect of the human being. The soul came first, and here the soul was compared to the polis in order that the former might be better understood. In the *Republic* (ca. 380 BCE), Plato had Socrates argue that the tripartite city of rulers, warriors and merchants was analogous to the tripartite soul of reason, high spirit and appetite, where reason guided the soul along its path, spirit kept it noble and through appetite it sought satisfaction. The purpose of the analogy was to facilitate a proper understanding of justice, by seeing it first writ large in the city so as better to detect it written in the smaller letters of the soul.⁵ 'In the case of the city, we decided it was just because each of the three types of nature in it was performing its own function'. If 'the individual too has these same elements in his soul, we shall feel entitled to expect that it is because these elements are in the same condition in him as they were in the city that he is properly titled by the same names we gave the city'.⁶ Aristotle's discussion in the *Nicomachean Ethics* (ca. 350 BCE) of *akrasia*, or the failure to act according to one's better judgment, compares such a mental state to the situation in which a city prescribes good laws but fails to put them into practice. The akratic agent seeks something that appears to be good to one part of the soul rather than that part by which he or she is supposed to be governed; the akratic city fails to act on the maxims produced after a process of deliberation as a result of the emergence of factions that assail the city's orderliness.⁷ The soul-city analogy became something of a trope following the recovery of Aristotle during the thirteenth century. For Walter of Bruges (died 1307), for instance:

⁵ Nicholas D. Smith, 'Plato's analogy of soul and state', *Journal of Ethics*, 3 (1999), pp. 31–49.

⁶ Plato, *Republic*, ed. G. R. F. Ferrari, trans. Tom Griffith (Cambridge, 2000), 435b–c, p. 130.

⁷ Carlos Cortisoz, 'The soul-state analogy in Aristotle's *Politics*', paper presented at the twenty-eighth annual joint meeting of the Society for Ancient Greek Philosophy and the Society for the Study of Islamic Philosophy, New York, October 15–17, 2010.

the human soul bears the likeness of a well-ordered and well-established city, because the will is present in it as king and ruler [*rex et imperator*], the intellective or reasoning power is its counsellor, while the lower powers, namely, the irascible, concupiscible, and moving powers, that is to say, those which carry out movement, are like ministers, whose office is to carry out the orders of the will that reigns over and commands them. The senses are all ministers and runners, going hither and yon and reporting whatever they learn in the outer world.⁸

Soul analogies persisted into modernity, but from the medieval period they were supplemented by analogies drawn to the human body. Now the purpose of the analogy was to organise knowledge of increasingly complex political systems in light of parallels to the body. As Edward Forset put it in the heyday of the image in 1606:

The Commonweale with all her parts, orders, qualities, and requisites whatsoever, is (for better apprehension & illustration) set forth by sundry fit resemblances ... but by none more properly than eyther by the universall masse of the whole world ... or else by the body of man, being the lesser world ... It were a paynes well bestowed, to observe the good correspondence betweene every the particular parts or faculties in man, and the other distinct parts, powers, and operations of the bigger bulke.⁹

The 'body politic' is, of course, a more famous image than the soul-state.¹⁰ John of Salisbury first used it in his *Policraticus*, written around 1159, according to which the prince is the head; the priests the soul; the senate the heart; the judges the ears, eyes and tongue; the officials the hands; the treasury the belly; and the husbandmen the feet, all in order to say that the misery suffered by this latter group afflicted the whole body.¹¹ The soul was still present here, but figured as one part – a special part, with otherworldly access – of the body politic. Increasingly, though, it was the distinction between body and head of the body politic that came to carry argumentative weight. Christine de Pizan argued in 1406 that in 'one polity like a living body' 'the prince and princes hold the place of the head in as much as they are or should be sovereign',

⁸ Quoted in Roland J. Teske, 'The will as king over the powers of the soul: Uses and sources of an image in the thirteenth century', *Vivarium*, 32 (1994), pp. 62–71, at pp. 64–65.

⁹ Quoted in Margaret Healy, 'Medicine, metaphor, and "crisis" in the early modern social body', *Journal of Medieval and Early Modern Studies*, 46 (2016), pp. 117–139, at p. 120. On Forset's mixed metaphors, see James Daly, 'Cosmic harmony and political thinking in early Stuart England', *Transactions of the American Philosophical Society*, 69 (1979), pp. 1–41, at pp. 16–19.

¹⁰ A useful historical overview is A. D. Harvey, *Body Politic: Political Metaphor and Political Violence* (Newcastle, 2007).

¹¹ John of Salisbury, *Policraticus*, trans./ed. Cary J. Nederman (Cambridge, 1991), pp. 66–68.

while ‘other kinds of people are like the belly, the feet, and the legs’.¹² Early organic analogies did not always include the monarch as head: Nicholas of Cusa claimed in 1434 that the land was the skeleton of the state, the people the flesh, and the law the nerves, but he said nothing of the head.¹³ But the image of the corporate whole stabilised around the bipartite division of people as body and king as head under the influence of the posthumously published writings of Sir John Fortescue from the mid-sixteenth century.¹⁴ Thus the famous doctrine of the king’s two bodies,¹⁵ here explained by Sir Francis Bacon:

the King has two Bodies, the one whereof is a Body natural ... and in this he is subject to Passions and Death as other men are; and the other is a Body politic and the Members thereof are the subjects, and he and they together compose the corporation, and he is incorporated with them and they with him, and he is the Head, and they are the Members; and the Body is *not* subject to Passions and Death, for as to this Body the King never dies.¹⁶

The body politic became the preeminent metaphor undergirding theories of monarchical power.¹⁷ That formative text for the modern concept of sovereignty, Jean Bodin’s *Six livres de la république* (1576), argued that ‘the Citie, or state’ was a ‘union of the people under the same soveraigntie of government’, and that the people ‘in one bodie’ require ‘one soveraigne monarch’ as head if they are to compose such a state.¹⁸

The most famous somatic representation of the state is, of course, the frontispiece of Thomas Hobbes’s *Leviathan* (1651). In the Introduction, Hobbes renders one of the most elaborate analogies between the human being and the ‘Artificiall Man’ of the state:

¹² Christine de Pizan, *The Book of the Body Politic*, trans./ed. Kate Langdon Forhan (Cambridge, 1994), p. 4.

¹³ Martin Wolff, ‘On the nature of legal persons’, *Law Quarterly Review*, 54 (1938), pp. 494–521, at p. 499.

¹⁴ On Fortescue, see J. H. Burns, ‘Fortescue and the political theory of *dominium*’, *Historical Journal*, 28 (1985), pp. 777–797; Andrei Salavastu, ‘The idea of body politic in English thought in the XVth century: The new paradigm of John Fortescue’, *Cahiers de Psychologie Politique* 20 (2012), <http://lodel.irevues.inist.fr/cahierspsychologiepolitique/index.php?id=1979> (accessed June 15, 2016).

¹⁵ The classic study is Ernst H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (Princeton, 1957).

¹⁶ Sir Francis Bacon, quoted in Kenneth Robert Olwig, *Landscape, Nature, and the Body Politic* (Madison, WI, 2002), pp. 86–87.

¹⁷ In an earlier draft I had ‘absolutism’ rather than ‘power’, but I was persuaded to replace the former by the latter after reading Daniel Lee, ‘Office is a thing borrowed: Jean Bodin on offices and seigneurial government’, *Political Theory*, 41 (2013), pp. 409–440.

¹⁸ Jean Bodin, *The Six Bookes of a Commonweal*, ed. Kenneth D. McRae, trans. Richard Knollys (Cambridge, MA, 1962), I, ii, p. 10, and I, viii, p. 99.