

Kari Saastamoinen

THE MORALITY
OF THE FALLEN MAN

Societas Historica Finlandiae
Suomen Historiallinen Seura
Finska Historiska Samfundet

Studia Historica 52

Kari Saastamoinen

The Morality
of the Fallen Man

Samuel Pufendorf on Natural Law

Cover: Rauno Endén & Kari Saastamoinen

The Finnish Historical Society has published this study with the permission, granted on 6 September 1994, of Helsinki University, Faculty of Arts.

Distributor: Tiedekirja, Kirkkokatu 14, 00170 Helsinki, Finland
Tel: 358-0-635177, Fax 358-0-635017

Keywords: Samuel Pufendorf – natural law – history of moral philosophy

ISSN 0081-6493
ISBN 951-710-003-5

Production: Kirjakas/Norstedts, Stockholm, 1995

Acknowledgements

This work was written as a doctoral dissertation at the Department of History, University of Helsinki. There, my greatest debt is to the late Matti Viikari, who not only suggested me to examine Pufendorf and took me into his research project on intellectual history, but also showed that history can be an intellectually stimulating discipline. I should also like to thank Pekka Suvanto and Päivi Setälä for their teaching and encouragement, and Hannes Saarinen for his help at the last stages of my work.

As for the study of Pufendorf's moral theory, I am especially grateful to Simo Knuutila, who has commented on my work at its different stages, giving me invaluable guidance and critique. He and Lars D. Eriksson have acted as the official referees of my thesis. Neither of them, of course, bears any responsibility for the views I present in my work.

Of the friends and colleagues who have helped me – sometimes in ways they are not aware of – I am especially indebted to Heikki Mikkeli, Markku Peltonen, and Juha Sihvola, who have unhesitatingly offered their assistance whenever I have needed it. I should also like to mention with gratitude Risto Heiskala, Tapani Hietaniemi, Tuomas Nevanlinna, Jarmo Pankamaa, Tuija Pulkkinen, Juha Siltala, and Iikka Turunen. Mícheál Briody has meticulously corrected the English language of the manuscript. Any errors in the final monograph are due to the additions I have made after his revision. I also wish to express my warmest thanks to the staff and researchers at the Christina Institute for Women Studies for their help and sparkling company during the last two years.

Financially this study has been supported by the Academy of Finland, Finnish Cultural Fund, Väino Tanner Foundation, and the University of Helsinki. I thank all these institutions. The Renvall-institute of Historical Research has provided me with working facilities, of which I am most grateful. I am also indebted to the Finnish Historical Society for accepting my work to their *Studia Historica* series, and to Rauno Endén for bringing it into its published form.

Finally, I wish to thank my close ones – especially my mother Maija – for their support, and for their patience.

Helsinki, February 1995

Contents

ABBREVIATIONS	9
INTRODUCTION	11
PUFENDORF'S LIFE AND WORKS	21
PART ONE: THE IDEA OF NATURAL LAW	25
The novelty of the discipline of natural law	25
The refutation of moral relativism	30
Pufendorf's Lutheran inheritance	38
PART TWO: THE THEORETICAL JUSTIFICATION OF NATURAL LAW	53
The scientific presentation of natural law	54
The problem of the fundamental principle	62
Natural law and natural inclinations	72
The foundation of natural law in <i>Elementa</i>	77
The deduction of the fundamental principle	83
PART THREE: THE NORMATIVE CHARACTER OF NATURAL LAW	95
The theory of obligation	95
The disagreement with Grotius	110
The impossibility of consequentialism	119
PART FOUR: NATURAL LAW AS A SOCIAL PHENOMENON	129
The awareness of natural law	130
Habitual behaviour	139
The pursuit of security	140
The desire for appreciation	149
The fear of God	158
CONCLUSION	172
PRIMARY SOURCES	175
LITERATURE	176
INDEX OF NAMES	179

Abbreviations

<i>Elementa</i>	<i>Elementorum juresprudentiae universalis</i>
<i>JNG</i>	<i>De jure naturae et gentium</i> , first 1672 edition
<i>JNG 1684</i>	<i>De jure naturae et gentium</i> , second 1684 edition
<i>OHC</i>	<i>De officio hominis et civis</i>
<i>IBP</i>	<i>De iure belli ac pacis</i>
<i>De statu</i>	<i>De statu hominum naturali</i> in <i>Dissertationes academicae selectiores</i>

A Note on Translations

English quotations from *De jure naturae et gentium*, *Elementorum Juresprudentia universalis*, and *De iure belli ac pacis* are principally from the translations included in the *Classics of international law* series. In some cases, however, I have altered the translations for the sake of conceptual clarity. There is a new translation of the central passages of *Elementa* and *De jure naturae et gentium* (*Samuel Pufendorf's Political Writings*, ed. G.L.Carr, tr. M. Seidler, New York 1994), which appeared too late to be used in this study. In citing *De officio hominis et civis*, I have used the translation in the *Cambridge texts in the history of political thought* series (ed. James Tully, tr. Michael Silverthorne, Cambridge 1991), while quotations from the essay *De statu hominum naturali* are from *Samuel Pufendorf's "On the natural state"* (ed. and tr. Michael Seidler, Lewiston 1990).

Introduction

For a long time Samuel Pufendorf (1632-1694) was regarded as a mere classic of modern jurisprudence and international law with little relevance for the understanding of the history of Western moral or political thought. In recent years this situation has, however, changed significantly, and there has appeared a number of studies dealing with Pufendorf.¹ Behind this new interest in Pufendorf has been above all

1 Pufendorf is scarcely mentioned in George Sabine's *A History of Political Thought* and totally omitted from Alasdair MacIntyre's *A Short History of Ethics*. On the other hand, Pufendorf is one of the few authors to whom the recent *Cambridge History of Political Thought 1450-1700* devotes a separate article (Dufour 1991). Other monographs and articles in which Pufendorf appears as a significant figure include Stephen Buckle, *Natural Law and the Theory of Property. Grotius to Hume*. Oxford University Press, Oxford, 1991; Horst Denzer, *Moralphilosophie und Naturrecht bei Samuel Pufendorf*. München 1972; Alfred Dufour, "La notion de loi dans l'Ecole du Droit nature moderne. Etude sur le sens du mot loi chez Grotius, Hobbes et Pufendorf," *Archives de Philosophie du Droit*, 25, 1980; Simone Goyard-Fabre, "Pufendorf, adversair de Hobbes", *Hobbes Studies* 2, 1989; Istvan Hont, "The language of sociability and commerce: Samuel Pufendorf and the theoretical foundations of the "Four-Stages Theory" in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden. Cambridge University Press, Cambridge, 1987; Leonard Krieger, *The Politics of Discretion. Pufendorf and the Acceptance of Natural law*. Chicago University Press. Chicago, 1965; Pierre Laurent, *Pufendorf et la loi naturel*. Vrin, Paris, 1982; Hans Medick, *Naturzustand und Naturgesichte der bürgerlichen Gesellschaft. Die Ursprünge der bürgerliche Sozialtheorie als Geschichtsphilosophie und Sozialwissenschaft bei Samuel Pufendorf, John Locke und Adam Smith*. Göttingen, 1981; Michael Nutkiewicz, "Samuel Pufendorf: Obligation as the Basis of the State", *Journal of the History of Ideas* 21, 1983; Fiametta Palladini, *Discussioni seicentesche su Samuel Pufendorf scritti latini: 1663-1700*. Bologna, 1978; *Samuel Pufendorf, disceplo di Hobbes. Per una reinterpretazione del giusnaturalismo moderno*. Bologna, 1990; Sieglinde Othmer, *Berlin und dies Verbereitung des Naturrechts in Europa. Kultur und sozialgeschichtliche Studien zu Jean Barbeyracs Pufendorf-Übersetzungen und eine analyse seiner Leserschaft*. Veröffentlichungen der Historischen Kommission zu Berlin beim Friedrich-Meinecke-Institut der Freien Universität Berlin, Band 30, Berlin, 1970; J.B. Schneewind, "Pufendorf's place in the history of ethics", *Synthese*, 72, 1987; Michael Seidler, Introduction in *Samuel Pufendorf's "On the natural state"*. Lewiston, 1991; Richard Tuck *Natural Rights Theories; Their Origin and Development*. Cambridge University Press, Cambridge, 1979; "The 'Modern' School of Natural Law", in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden. Cambridge University Press, Cambridge, 1987; James Tully, Introduction in *Pufendorf: On the Duty of Man and Citizen*. Cambridge University Press, Cambridge, 1991; Hans Welzel, *Der Naturrechtslehre Samuel Pufendorfs. Ein Beitragezur Ideengesichte des 17. und 18. Jahrhunderts*. Berlin, 1958.

his important position in the transformation of European moral and political thinking which took place in the early modern period. Together with Hugo Grotius (1583–1645), Thomas Hobbes (1588–1679), and John Locke (1632–1704), Pufendorf was the most prominent developer of the so-called modern theory of natural law and contractual political theory. Moreover, while he nowadays appears a minor figure in relation to Hobbes and Locke, from the 1670's to the second half of the eighteenth century he was by far the most widely read of the above mentioned writers. Pufendorf's massive main work, *De jure naturae et gentium* (*On the laws of nature and nations*, 1672), and its text-book version, *De officio hominis et civis* (*On the duties of man and citizen*, 1673) appeared in numerous editions and were translated into all major European languages. Knowledge of Pufendorf was regarded as an integral part of an all-round education, and while his views were seldom accepted as such, his theory was seen as a paradigmatic example of a distinctively modern approach to moral and political issues.

This work does not deal with the eighteenth-century reactions to Pufendorf's theory. Nor does it attempt to give a portrait of his natural-law doctrine as a whole. A central and influential part in Pufendorf's system was his theory of the contractual origin of social institutions such as property, money, family, and the state. These themes are not treated in the present work.² Instead I shall concentrate on Pufendorf's account of natural law as a theory of morality.

Pufendorf's theory of natural law was one of the most significant and influential early articulations of a novel understanding of morality which started to gain support from the seventeenth century onwards. At least until the sixteenth century most moral philosophers held that the principal subject matter of morality is human excellence. It was thought that there is a way of living which is objectively the best and most satisfying for a human being, and that this forms the central object of moral reflection. This assumption was apparent in the writings of classical moral philosophers as well as in medieval and Renaissance ethical theories based on classical models. These were concerned not so much with norms as with describing the character of highest human good and the dispositional features – virtues – which a person must possess in order to be an excellent human being. However, human excellence was the central issues also in the Thomist tradition of natural law, in which moral norms were identified with dictates of practical reason which guide human beings towards a way

.....
 2 A general introduction to Pufendorf's theory can be found in Seidler 1990, Tully 1991, and Dufour 1991.

of living which brings them the highest worldly happiness and is most perfect to their species.³

Much of modern moral thinking, at least before the current revival of the so-called virtue ethics, has understood morality in a way which differs significantly from the classical model described above. It has been thought that the question of highest human good and the best way of living is not a moral issue, but rather a matter of individual inclinations and preferences. The moral domain of human life has been seen as consisting mainly of the norms or principles one should follow in interpersonal relations. Virtue, which in classical ethical thinking was regarded as the capacity to live in a way which is the most rewarding for a human being, has been understood merely as a habitual disposition or willingness to obey the correct principles in one's interaction with other people. This idea of the domain of morality is most often associated with Kant's deontological moral theory and its modern versions. However, the other major trend of modern moral philosophy, utilitarianism, has also seen the principal task of moral theory as giving foundations for principles which people ought to follow in their behaviour towards other human beings.

The rudiments of this modern understanding of morality were articulated in the seventeenth-century theory of natural law. It can be found shortly sketched in Grotius' influential treatise on international law, *De iure belli ac pacis* (*On the laws of war and peace*, 1625). To be sure, Grotius still remarked that of the various manners of living practiced by human beings some are better than others. However, in distinction to the classical ethical tradition he gave no moral significance to this fact, stating only that of these many ways of living "each is free to select that which he prefers".⁴ Natural law – i.e. the moral norm which obligates all human beings regardless of their religion and nationality – consists of rules which are indispensable for maintaining peaceful and ordered social life between individuals. The same basic idea of the domain of natural law was presented by Hobbes in his political theory. Hobbes also accepted as given that human beings have different conceptions of the preferable way of living, depending on their personal dispositions, education, and cultural background. And as is well known, Hobbes was even more convinced than Grotius that the central problem of the human condition was how

3 On the general character of medieval and Renaissance ethical theories, see Wieland 1982a, 1982b, and Krays 1988. On the Thomist tradition of natural law, see Crowe 1977, Luscombe 1982, and Trentman 1982.

4 *IBP* I.3.8: "Sicut autem multa sunt vivendi genera, alterum altero praestantius, et cuique liberum est ex tot generibus id eligere quod ipsi placet: ita populus eligere potest qualem vult gubernationis formam."

to maintain peaceful co-existence between these diversely inclined individuals. What he defined as natural law was, then, a set of rational principles on the basis of which human beings are able to establish a peaceful social order.⁵

Pufendorf shared this new idea of the moral domain of human life. In his theory, natural law consisted of norms which enable human beings, who not only have different ways of living according to their personal dispositions and inclinations but also possess a strong tendency to hurt each other, to maintain a peaceful and ordered social life. There were, however, a number of features in Pufendorf's theory which distinguished him considerably from Grotius and Hobbes. The most apparent of these was the magnitude of his enterprise. As theories of morality, the accounts of natural law presented by Grotius and Hobbes were quite restricted. In the case of Grotius this was so partly because the main issue of *De iure belli ac pacis* dealt with was international law, partly because of Grotius' conviction that the content of natural law can be known with sufficient certainty by examining what norms are accepted among all civilized nations. Hobbes' account of natural law, in turn, was not even meant to be a moral theory in any conventional sense of the term. In Hobbes' political theory the principles of natural law were dictates of reason which guide human beings to establish a sovereign civil power but which as such offered no independent criterion for evaluating the rectitude of human acts. According to Hobbes, human acts could be right or wrong only within a civil society as they were either allowed or forbidden by the sovereign. His theory of natural law was, in other words, a description of the process of ratiocination which leads human beings (if they are rational) to establish a sovereign civil power and in this way to create an intersubjective criterion for the rightness and wrongness of human acts.

Pufendorf adopted the basic idea of Hobbes' theory of the origin of the state but rejected firmly his "legal positivism". According to Pufendorf, there is a pre-political moral obligation to cultivate peaceful sociality (*socialitas*) with other human beings. Moreover, this obligation serves as the foundation for an abundance of more particular duties that regulate human interaction both outside any institutional context and in relation to social institutions such as property, family, and the state. Furthermore, Pufendorf refuted Grotius' idea that the content of natural law could be deduced from the consensus of civilized nations, founding his own theory on an

5 On the development of the modern idea of morality in seventeenth century natural-law theory, see Schneewind 1990, 1991, 1993a, and 1993b.

analysis of the requirements human nature sets for the maintenance of sociality. All this made many contemporaries regard *De jure naturae et gentium* as the first full-length presentation of modern moral philosophy.

While many features in Pufendorf's theory aroused critique even among his advocates, the overall idea that the central function of morality is to regulate conflicts between human individuals found support in eighteenth-century Europe. David Hume expressed a popular attitude when he said (somewhat ironically, perhaps): "Morality is a subject that interests us above all others: We fancy the peace of society to be at stake in every decision concerning it."⁶ And it has been maintained that even Kant, despite his radically novel account of the origin of moral judgements, understood the domain morality along the lines put forwards in seventeenth-century theories of natural law.⁷ In any case, the more general idea that the moral aspect of human life is concerned principally with correct behaviour in interpersonal relations became predominant in the liberal tradition.

15

* * *

The aim of this work is to explicate the understanding of morality which guided Pufendorf's theory of natural law. In Part one I will deal with the general framework within which Pufendorf formulated his idea of natural law. My starting point here are Pufendorf's remarks concerning the history of his discipline, especially his dissatisfaction with Aristotelian moral theory and the pre-eminent position he gave to Grotius as the founder of the systematic study of natural law.

The sharp break Pufendorf posited between previous moral philosophy and Grotius was not much commented on in older Pufendorf-scholarship, which was more interested in the differences between Grotius and Pufendorf. Recently, however, especially Richard Tuck has emphasized that Pufendorf's identification with Grotius and the sense of novelty he attached to Grotius' enterprise are of central importance for understanding the character of Pufendorf's idea of natural law.⁸ Tuck has suggested that behind Pufendorf's historical account of his discipline was above all a concern about moral skepticism. By this Tuck is referring to moral relativism which

6 *A Treatise of Human Nature* III.1.1, p.456.

7 See Schneewind 1992, 1993b.

8 Richard Tuck, "The 'Modern' School of Natural Law", in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden. Cambridge. 1987.

enjoyed some popularity in early modern Europe, finding its most influential expression in the works of “new humanists” such as Justus Lipsius, Michel Montaigne and Pierre Charron. According to Tuck, what connected Grotius and Pufendorf (as well as Hobbes) was that they shared the humanist critique towards traditional ethical theories but were at the same time disturbed by the claim, associated often with the ancient sceptic Carneades, that there is no natural law common to all human beings, and that conventional moral norms can, therefore, be violated whenever the interest of the state or the utility of the individual so require. What made Pufendorf regard Grotius, Hobbes, and himself as participants in the same enterprise was a shared attempt to refute relativism by founding a system of natural law on the one inclination the universality of which the relativists did not deny: the desire for self-preservation. And Tuck holds, together with some other recent commentators, that in Pufendorf’s theory the cultivation of sociality received its status as the fundamental principle of natural law from its position as a necessary means for satisfying the natural human desire for self-preservation.

In the third chapter of Part one I will suggest an alternative context for Pufendorf’s theory. I agree with Tuck in so far as Pufendorf saw the refutation of Carneadean relativism as an important issue. I do not think, however, that this concern was constitutive for Pufendorf’s theory of natural law or that it was his reason for holding Grotius to be founder of the study of natural law. My thesis is that although Pufendorf departed radically from the theories of natural law put forward by seventeenth-century Lutheran theologians, his understanding of the general character of natural law is still best understood against his Lutheran background. Following Luther’s doctrine of the law, Pufendorf saw natural law as a rule which God has ordered on the whole of the corrupt human species in order to maintain an ordered social life and in this way to ensure the survival of humankind. What made Pufendorf dissatisfied with the Aristotelian tradition of moral philosophy was that instead of dealing with the rules and institutions which enable the irreparably corrupt human beings to live peacefully together, it had concentrated on presenting personal or local preferences concerning the character of a truly excellent human being. Grotius’ position as the founder of the study of natural law followed, then, from the fact that he made the requirements of ordered social life an independent subject of study.

In Part two I deal with Pufendorf’s demonstrative account of natural law, above all the argumentation by which he deduces the cultivation of sociality (*socialitas*) as the fundamental principle of

natural law. Here I challenge the view, presented recently by several commentators, according to which Pufendorf derived the requirement of sociality from the natural human inclination for self-preservation. I do not, however, support the mora traditional view that Pufendorf would have regarded the cultivation of sociality itself as a natural inclination. My thesis is that unlike Grotius and Hobbes, who shared the traditional idea that natural law is recognized by reflecting on the principal tendencies which govern human behaviour, Pufendorf thought that human reason understands, even without the Bible and the knowledge of the fall, that the human species is now corrupt and inclined to act against God's will. This means that the content of natural law cannot be derived simply from the predominant tendencies which govern human behaviour. What for Pufendorf offered the starting point for the discipline of natural law was the idea that there is God who has created the human species and who, therefore, obviously wants the human species to survive and prosper by using those unique intellectual abilities given to them. Observation concerning the inclinations which dominate the corrupt human species – like self-love and a strong concern about personal security – became relevant to Pufendorf when he wanted to demonstrate that in order to ensure this end God has imposed on human beings an obligation to cultivate sociality towards each other. This procedure makes understandable why Pufendorf felt free to criticize Hobbes' method of deducing natural law from the requirement of individual self-preservation, and it also explains several other distinctive features in Pufendorf's account of natural law.

17

The third theme of my work is Pufendorf's view of the normative character of natural law. On this issue his disagreements with Grotius and Hobbes are well-known. In *De iure belli ac pacis* Grotius supported the idea that the acts which fall within the area of natural law are morally good or bad in themselves. Of course, Grotius did not question that natural law is also a command of God and that this fact constitutes an elemental part of its obligating power. He maintained, however, that natural law deals with acts which are morally good or bad "in themselves and by their own nature" and therefore enjoined or forbidden by God.⁹ From this he deduced that natural law would offer normative criterion for human behaviour even in the hypothetical situation where there is no God.

Even though the last mentioned remark gave rise to a lively discussion in seventeenth-century Europe, Grotius' view of the nor-

.....
9 *IBP* I.1.10.

mative character of natural law was still rather conventional and won him the favour of many “traditionalists” such as Leibniz.¹⁰ Hobbes’ views on this issue, on the other hand, were highly provocative and incompatible with the prevailing ways of thinking. For Hobbes rejected not only moral realism but also the whole idea that there would be some pre-political criteria for the rightness and wrongness of human acts. According to him, “every action in its own nature is indifferent” and becomes right or wrong, just or unjust only within civil society, when it is either allowed or forbidden by the sovereign.¹¹ Outside such a context, Hobbes maintained, there is no intersubjective criteria for the rectitude of human acts.

Pufendorf also rejected Grotius’ moral realism, agreeing with Hobbes that in themselves all human acts are morally neutral, neither right nor wrong. Human behaviour can be characterized as morally good or bad only in so far as it agrees or disagrees with the commands of a superior, i.e. an authority who can impose an obligation on human beings. What Pufendorf did not accept in Hobbes’ position was the idea that the mere command of the civil sovereign could do the job. Like Hobbes, Pufendorf held that civil power is based on contracts. In Pufendorf’s eyes, however, this indicated that the morally obligating power of civil laws necessarily rested on a pre-political obligation to keep covenants. And the only possible source for this obligation was, according to Pufendorf, the command of God.¹²

Thus, in general terms Pufendorf put forward the so-called divine command theory of morality. There was, however, a feature in Pufendorf’s theory of obligation which made his exact position on this issue seem somewhat unclear and problematic. This was his remark that a superior is someone who possesses, among other things, “just causes” for his power to command.¹³ When Pufendorf added that this requirement is fulfilled not only in the case of legitimate civil sovereigns but also in the case of God, he gave the impression that there is some criterion of justice which justifies God’s power over human beings, and which is, therefore, independent of God’s commandments. This has made many commentators, most notably Leibniz, to accuse Pufendorf’s theory of circularity, whereas Pufendorf’s most famous advocate, the Swiss Jean Barbeyrac, explained that Pufendorf’s position was based on a distinction

10 On Leibniz’s positive evaluation of Grotius, see *Leibniz Political Writings* (ed. and tr. Patrick Riley. Cambridge 1972), p.71.

11 *De cive* XII.1.

12 *JNG* II.3.20.

13 *JNG* I.6.9; *OHC* I.2.5.

between two types of justice, of which the one that characterizes God's power over human beings is not dependent on God's own commandments. In the first chapter of Part three I will defend a thesis that neither of these interpretations is accurate. Despite some admittedly confusing formulations in his theory of obligation Pufendorf supported a genuine divine command theory of morality, in which the ultimate source of all morality and justice are the precepts of God.

The second chapter of Part three deals with sources of the disagreement between Grotius and Pufendorf on this issue. It is sometimes suggested that what made Pufendorf reject Grotius' moral realism was his commitment to divine voluntarism, i.e. to the view that God is totally free to impose any kind of a moral law he wants. In my opinion, however, the central issue of disagreement between Grotius and Pufendorf was the origin of morality as a human phenomenon. Grotius based the moral goodness and badness of those acts which fall into the domain of natural law on the classical teleological idea that since human beings are distinguished from other animals by their unique intellectual and social faculties, it can be deduced that it belongs to human nature to live a peaceful and rationally organized social life. For Pufendorf, on the other hand, even such a limited teleological conception of human nature was inconceivable. In his eyes the fact that human beings are equipped with unique intellectual faculties could serve as the basis of moral conclusions only with the further premise that there is a God who has given these abilities to the human species with a certain purpose in mind.

In the third chapter of Part three I ask why Pufendorf rejected the possibility that the normative character of natural law could be based on its utility. What makes this question worth asking is Pufendorf's insistence that acts which agree with natural law are advantageous both to general well-being of the human species and to one's personal happiness and security, while acts which disagree with this law have the contrary effect. It can be wondered, therefore, why he denied so wholeheartedly the possibility that human reason would recognize these acts as morally good or bad by contemplating the non-moral good and bad they produce. My answer is based on the observation that despite Pufendorf's forceful rhetoric on this issue, he did not think that those advantages which are most effectively reached by observing natural law would be something which all human beings by nature desire above everything else. On the contrary, the idea of happiness, on which Pufendorf founded the utility of natural law, was itself

normative and, therefore, in need of justification.

In the last part of my work I turn to Pufendorf's views concerning natural law as a social institution. Much of modern moral philosophy has been based on the assumption that all normal adults are, or at least are capable of being, competent moral agents, who are able to form moral judgements autonomously by using their personal mental faculties. One of the central tasks of an ethical theory is then to explicate the principles on which human beings more or less tacitly rely when they form moral judgements. In Pufendorf we find a significantly different idea of the task of moral philosophy. For him the central purpose of the discipline of natural law was to prove the content of natural law with a demonstrative certainty. And it was obvious to Pufendorf that the method by which this could be done was not only incomprehensible to the vast uneducated majority, but that it also had scarcely anything to do with the manner in which people in reality adopt their moral convictions and form moral judgements. However, Pufendorf's works on natural law include numerous remarks concerning what we would nowadays call moral sociology, and these make it possible to construct his conception of an average moral agent. With this purpose in mind, I examine Pufendorf's account of the manner in which people adopt and hold their moral convictions; his remarks concerning the role the pursuit for security and the desire to be esteemed by others has in motivating people to follow the precepts of natural law; and, finally, Pufendorf's reasons for holding that a tranquil civil life is possible only if the precepts of natural law are backed up with a collectively shared fear of God's punishment.

Pufendorf's Life and Works

Pufendorf was born in 1632 into the family of a Lutheran pastor in the village of Dorchemnitz bei Thalheim, Saxony.¹ He grew up in the middle of a conflict which ruined vast areas of the German heartland - the Thirty Years' War. And it is a commonplace to remark that this war and its long-felt consequences were a central motive for the quest for peace and social stability which governed Pufendorf's intellectual activities.

In 1650 Pufendorf at his fathers request went to the University of Leipzig to study theology. However, he soon got bored with Lutheran orthodoxy and became more interested in the humanities, natural science, and jurisprudence. The result was a shift to the University of Jena in 1656, where he studied natural law and moral philosophy under the guidance of the eccentric mathematician and philosopher Erhard Weigel, who later also taught Leibniz. In Jena Pufendorf became familiar with the avant-garde of seventeenth-century thought expressed in the writings of Descartes, Galileo, Grotius, and Hobbes.

In 1658 Pufendorf took a post as tutor in the family of a Swedish diplomat in Copenhagen. Soon a war broke out between Sweden and Denmark and Pufendorf was imprisoned with his master's family (the master himself managed to flee). In captivity he wrote, without the help of books, his first exposition of natural law, *Elementorum jurisprudentiae universalis* (*Elements of universal jurisprudence*). After his release, Pufendorf followed his master to Holland, where this work was published in 1660. During his stay in Holland Pufendorf met Spinoza, who he disliked both as a philosopher and as a person.² He also made acquaintance of Peter de Groot, the son of Hugo Grotius.

In 1661 Pufendorf was nominated to the post of associate professor of international law and philology at the University of Heidelberg. In Heidelberg he wrote several minor treatises, the most notable of which was *De statu imperii Germanici* (*On the constitution of the German empire*), in which he, under the pseudonym of Severinius de

1 Pufendorf's life has never been documented in any detail. The following summary is based on Krieger 1967, Laurent 1982, and Seidler 1990.

2 Spinoza's views on the state of nature are strongly criticized in *JNG* 1684 II.2.3 and III.4.4.

Monzambano, heavily criticized the constitutional system of the German empire. This work, which was generally attributed to Pufendorf, caused a scandal. It was forbidden in German universities and even condemned by the Pope. This, however, did not prevent it from becoming one of the best sellers of late seventeenth-century Europe.

In 1670 Pufendorf received a full professorship in natural and international law at the University of Lund, where he had been invited by the king of Sweden, Charles XI. Two years later he published his major work on natural law, *De jure naturae et gentium*, and in the following year a textbook version of his theory, *De officio hominis et civis*. The theory presented in these two works departed radically from the prevailing Lutheran orthodoxy and was heavily criticized by theologians both in Sweden and Germany. The result was what has sometimes been called the greatest intellectual debate in seventeenth-century Europe.³ During the 1670's Pufendorf's wrote several answers to the accusations made against his theory, which were collected in 1686 under the title *Eris scandica (Scandinavian polemics)*.⁴ Before that, in 1684, he published the second, considerably extended version of *De jure naturae et gentium*. It is sometimes suggested that because of the strong critique directed against him, the additions Pufendorf made to this edition were deliberately less controversial than the views presented in the first version. In Part two I shall argue, however, that the basic structure of Pufendorf's theory were the same in both editions.

By the time Pufendorf published the second edition of *De jure naturae et gentium* his career as a university professor had already ended. This happened in 1676 when Denmark captured Lund, after which Pufendorf moved to Stockholm to become a councillor and state historian to Charles XI. Hereafter his literary activities were dedicated chiefly to political history, first in Sweden and from 1688 onwards also in Brandenburg, where he worked as a historian and councillor to Frederick William I and later to Frederick III. His most significant work in this field was a comparative history of major European states, *Einleitung zu der Historie der vornehmsten Reiche und Staaten so itziger Zeit in Europa sich befinden (Introduction to the history of the principal realms and states as they currently exist in Europe, 1682-6)*. This work was quite popular during the eighteenth

3 On this debate, see Fiametta Palladini *Discussioni seicentesche su Samuel Pufendorf scritti latini: 1663-1700*. Bologna 1978.

4 Another collection of essays, *Dissertationes academicae selectiores*, was published in 1675.

century when it was translated into French, English, and even into Russian. To the French version editors added chapters on the more distant countries which Pufendorf had not dealt with and the work became a model for Enlightenment encyclopedias of comparative politics.

While working as a historian, Pufendorf made two forays into religious issues. The first one of these was motivated by the revocation of the Edict of Nantes by Louis XIV in 1685. The oppression of Protestants in France forced Pufendorf to sharpen his views concerning the extent to which religion should be subordinated to political power. The result was *De habitu religionis christianae ad vitam civilem* (*On the nature of Christian religion in relation to civil life*, 1687), in which attempted to show the actions of the French monarch as illegitimate without at the same time championing full-scale religious toleration. The other theological work was *Jus feziale divinium sive de consensu et dissensu protestantium* (*The law of covenants, or on the consensus and dissension among Protestants*), in which Pufendorf presented a rational basis for the unification of the Protestant churches.⁵ This work was published posthumously in 1695. Pufendorf died in 1694 during a sea voyage from Stockholm, where he had just received a barony from Charles XI.

Until the second half of the eighteenth century Pufendorf was the most widely read modern moral and political theorists in Europe. The number of the editions made of his works on natural law is impressive. Of *De jure naturae et gentium* at least forty-five editions appeared during the first hundred years after its publication. Most of these were in Latin, French, and English, but the work was also translated into German and Italian. The short *De officio hominis et civis* was understandably even more popular with over seventy editions including a Russian translation in 1726, commissioned by Peter the Great. A significant role in the spread of Pufendorf's ideas was played by Jean Barbeyrac (1674–1744), a Swiss Protestant who translated both works into French (*De jure* 1706, *De officio* 1707), supplying the major work with an extensive commentary. It was above all the “Barbeyracian” version of Pufendorf's theory which became generally known to educated classes in eighteenth-century Europe.⁶ By the

5 On Pufendorf views on ecclesiastical and theological issues, see Rabe 1958, Krieger 1965, and Laurent 1983.

6 On Barbeyrac and the spread of his translations, see Othmer 1970. Pufendorf's position in the French speaking world is treated in Dufour 1986, while Derathé 1950 and Goldschmidt 1983 analyzes Rousseau's relation to Pufendorf. Pufendorf's influence was powerful also in Scotland, where Gershom Carmichael's commentary on *De officio hominis et civis* had a central place in

second half of the eighteenth century the overall view on morality and politics which was championed by Grotius and Pufendorf had become so much the collective property of European thinking that writers increasingly found Pufendorf's views either too self-evident or too old-fashioned to be worthy of serious comment. Finally, the new concerns which were actualized by the rise of subject-centered Kantian philosophy made Pufendorf seem hopelessly unsophisticated and transformed him from one of the founders of modern moral philosophy into a mere classic of jurisprudence and international law.⁷

.....
university education. As a result, writers such as Francis Hutcheson, David Hume, and Adam Smith formulated their ideas within an Pufendorfian framework. On this, see Buckle 1991, Forbes 1982, Haakonsen 1981 and 1990, Hont 1987, Hont and Ignatief 1983, James 1990, James and Silverthorne 1983a and 1983b, Mautner 1986, Medick 1973, Stein 1980. On Pufendorf's influence in Sweden, see Lindberg 1976 and 1986.

7 On this shift, see Tuck 1987, pp.99-102.

Part one

The Idea of Natural Law

When comparing natural law with other types of law which govern human conduct Pufendorf defines it as “the most common rule of human action, according to which every human being as a rational animal should order his actions.” It is “universal, inasmuch as all mankind is bound to observe it, and perpetual, inasmuch it is not, like positive laws, subject to change.”¹ Moreover, it is a rule which can be discovered by reason alone, without any divine revelation, because of its agreement with human nature.² This idea of an unchanging and universal norm of human behaviour based on human nature and recognizable by natural reason links Pufendorf’s theory to the long series of reflections on natural law starting with the ancient Stoics. However, while Pufendorf is well aware that the notion of natural law has a long history, he maintains that the systematic study of this law is a very recent phenomenon. The discipline of natural law is something which has been “long neglected and practically ignored” and has only recently “finally begun to lay claim to its own dignity.”³ In the following three chapters my aim is to explicate the conception of natural law which lies behind this sense of novelty which Pufendorf attaches to his enterprise.

25

THE NOVELTY OF THE DISCIPLINE OF NATURAL LAW

In declaring that the systematic study of natural law is a recent phenomenon, Pufendorf does not mean that natural law would have

.....
1 *JNG* II.3.1: “[C]onsequens est ut dispiciamus de communissima actionum humanarum regula, ad quam quilibet homo, ut est animal rationale, sese componere tenetur. Eam regulam juris seu legis naturae vocabulo insignere usu invaluit; quam legem universalem vocare possis, quo ad eandem universum genus mortalium sit obstrictum; perpetuam, quod mutationi, sicut positivae leges, non sit obnoxia.”

2 *JNG* I.6.18, II.3.20.

3 *JNG* Praefatio.

been totally unknown or unexplored in previous times. On the contrary, the central principles of this law have governed the majority of human customs and actions in all ages,⁴ and many ancient discussions on moral issues, like the Bible or the Digest, have included the rudiments of natural law. Nevertheless, there had been no systematic presentation of natural law before the seventeenth century.

The main problem with earlier moral philosophy was its failure to distinguish adequately the rules common to all human beings from positive legislation – either divine or civic – peculiar to some restricted group.⁵ To be sure, Pufendorf holds that such defects did not characterize the ancient Stoic writers, who understood rightly the universal character of natural law and also held a correct general insight of its content. They had presented remarks which, “when slightly revised”, could have easily formed “a solid body of natural law”.⁶ In the preface to the second edition of *De jure naturae et gentium* Pufendorf even speculates about possibility that something “more finished and sublime than our own moral teachings” could be found in writings of Seneca, Epictetus, and Marcus Aurelius. However, the teachings of the Stoics had been neglected in scholastic philosophy, which Pufendorf sees as the principal reason for the undeveloped state of the study of natural law. The scholastics had not only ignored the Stoic doctrines but – what was even worse – had given Aristotle an indisputable status among philosophers. This had a most degenerating effect on the study of natural law. This was so, first, because in his practical philosophy Aristotle had totally ignored the requirement of universality set for this discipline. His works on ethics contained hardly anything other than a treatment of the peculiar virtues⁷ of the citizen in certain Greek city-states, while his *Politics* was mostly concerned with the various constitutional arrangements of the Greek states. These were, Pufendorf remarks, most serious defects in a discipline “which ought to be useful for the whole of mankind.”⁸

Another serious consequence from the authoritative position given to Aristotle was the opinion, supported by “the majority of scholars”, that demonstrative knowledge is not possible in moral questions in

4 *Eris scandica* p.163 (*Specimen controversiarum* I.1): “Ius naturale, humano generi coaeuum, quod omni tempore populorum mores et negotia ex pleraque parte rexit, ...”

5 *Eris scandica* p.164–166 (*Specimen controversiarum* I.2–3).

6 *Eris scandica* p.166 (*Specimen controversiarum* I.4.)

7 Actually Pufendorf speaks of duties (*officia*) not virtues, which constitute the principal subject-matter of Aristotle’s ethical works. However, for Pufendorf virtue means nothing but a habitual disposition to perform one’s duty. See *JNG* I.4.6.

8 *Eris scandica* p.166 (*Specimen controversiarum* I.4.)

which everything relies solely on probable opinions. According to Pufendorf, this view has “inflicted an immense injury” on the study of natural law. It had made “scholars to investigate but diffidently into that which they believed rested on slippery foundation” and offered those who have neglected the moral sciences altogether the plausible excuse “that they were founded on no certain demonstrations and could be treated in a rough and ready fashion.”⁹ As a result, “most of those who have thus far announced their intention to discuss moral philosophy have believed that they have expounded the greatest part of the science when they have explicated the names of the eleven virtues.”¹⁰

Hence, despite the valuable contribution made by the Stoics, there had been no truly systematic study of natural law before the seventeenth century. Although Pufendorf is anxious to emphasize his own position as the holder of the first university chair dedicated to this subject, he does not claim himself to be the first exponent in this field of study. This honour he gives to Hugo Grotius. With his *De iure belli ac pacis*, Grotius was the first who “accurately distinguished the laws of nature from positive laws, and put them in a systematic order.”¹¹ And with regard to a large part of the discipline, his contribution had been so substantial that he “had left all others nothing more than the task of gleaning after him.” Nevertheless, Grotius’ work had not been devoted to natural law as such but to the norms which ought to govern international relations. Consequently, he had not only made some obvious errors but also omitted several issues entirely and treated many others only superficially. Therefore, Pufendorf thinks that instead of presenting a mere commentary of Grotius’ work it is necessary “to lay all the material a second time on the anvil, and to reshape it into a different form.”¹²

9 *JNG* I.2.1: “Inolita dudum plerosque eruditorum tenet persuasio, disciplinis moralibus deesse illam certitudinem, quae scientiae aliae, et cum primis mathematicae gaudent; eo quod in illis locum non habeant demonstrationes, ex quibus solis liquida scientia, metuque erroris vacua provenit; sed quae circa easdem cognoscuntur, probabili duntaxat opinione constrare. Quae res quidem immane quantum nocuit nobilissimis, vitaeque humanae maxime necessariis disciplinis. Inde enim factum, ut suspensio fere brachio docti excolerent, quae tam lubrico inniti fundamento credebant; et plausibilis haec negligentibus excusatio suppetebat, certis demonstrationibus ista hautquidquam contineri, sed crassa duntaxat Minerva posse tractari.”

10 *JNG* I.4.6: “... cum hactenus plerique, qui philosophiam moralem se tradituros professi sunt, magnam disciplinae suae partem, explicatis undecim virtutum vocabulis, repraesentasse se crediderint.”

11 *Eris Scandica* p.163 (*Specimen controversarium* I.1.): “Verum, qui naturalia iura a positivius accurate discerneret, et ista in pleni systematis rotunditatem disponere aggrediretur, ante *Hugonem Grotium* nemo extitit.”

12 *JNG* Praefatio.

Besides Grotius there have been but few significant contributions to the study of natural law. In the preface to *De jure naturae et gentium* Pufendorf names only two Englishmen, John Selden (1554–1654) and Thomas Hobbes.¹³ Moreover, while Pufendorf praises Selden for showing abilities which could have given him “a position second to none”, in practice he sees Selden’s contribution as rather insignificant. Selden’s main problem was his idiosyncratic attempt to base a presentation of natural law on the so-called *precepta Noacharium* – the law which God gave to Noah’s sons after the Flood – which he reconstructed from Hebrew literature, especially from the Talmud.¹⁴ Pufendorf does not deny that God has with great probability given early human beings some announcement concerning natural law. However, by concentrating on the Hebrew tradition Selden has failed to offer an account of natural law founded on natural reason.¹⁵

28

Hobbes’ contribution to the study of natural law, on the other hand, has been truly substantial. His “works on the science of politics have a great deal that is of the highest value, and no one who understands such matters would deny that he has so thoroughly explored the structure of human and civil society that few before his time can in this field be compared with him.”¹⁶ By this Pufendorf does not mean that he would accept Hobbes’ theory in its entirety. However, even Hobbes’ errors are valuable since they make one think about matters which most probably would otherwise never occur to one’s mind. In this way his errors provide “the foothold by which moral and political science can be led to the highest peak”.¹⁷ Such estimations were, of course, highly controversial in a time when Hobbes was commonly seen as an Epicurean atheist whose theory undermined most of the things on which human societies ought to be founded.¹⁸ Pufendorf shares this evaluation in so far as Hobbes’ religious teachings are concerned. By his abominable theories in this field Hobbes “has turned many against him, and not without reason.” Yet, even this

13 In the essay *Speculum controversiarum* (originally published in 1678 and later included in *Eris scandica*) Pufendorf mentions a third Englishman, the theologian Richard Cumberland, whose anti-Hobbesian *De legibus naturae* was published in the same year as Pufendorf’s main work. On Cumberland, see Kirk 1987.

14 Selden’s major work was the *De Iure Naturali et Gentium juxta Disciplinam Erbarorum* (*On the Law Nature and Nations according to the Hebrew Teaching*) published in 1640. On Selden’s theory, see Tuck 1991 and 1993 pp.205–221.

15 *Eris scandica* pp. 163–164 (*Specimen controversiarum* I.1.)

16 *JNG* Praefatio.

17 *Eris scandica* p. 168 (*Specimen controversiarum* I.6.).

18 On such reactions in England, see Minz 1962. The same attitude was dominant on the Continent. The accusation of Hobbism was one of the main charges against Pufendorf in the confrontation which arose after the publication of *De jure naturae et gentium*.

concession to the prevailing opinion is not totally unqualified, for Pufendorf adds that Hobbes seems to have been “censured with the greatest scorn by those who have read and understood him the least.”¹⁹

The method by which Pufendorf demonstrates natural law will be treated in Part two. Before that, I will try to answer what conception of natural law makes Pufendorf see Grotius as the first scholar who had adequately distinguished natural law from other laws and why he also regards Hobbes as a significant contributor to this field of study. The incentive for these questions comes above all from the disagreements these three writers had in questions concerning the normative character of natural law. As has already been mentioned, Grotius maintained that what distinguishes natural law from other laws was the fact that it is concerned with acts which are in themselves, independent of all imposition, morally good or bad and therefore allowed or forbidden by God. From this he concluded that natural law would have some place as a normative criterion of human behaviour even if there were no God. Pufendorf, in contrast, declares that all human behavior is as such morally neutral and can be morally good or bad, right or wrong, only in so far as it is permitted or prohibited by God.²⁰ It can be wondered, therefore, why he insists so forcefully that Grotius was the first who had accurately separated natural law from other laws.

29

What makes the esteem Pufendorf shows towards Hobbes somewhat puzzling is his commitment to the idea of natural law as an universal moral standard by which the laws and customs of individual nations as well as the behaviour of states in international conflicts can be morally evaluated. For even though Hobbes had used the term “natural law” in his political theory, it can be argued that he had stripped the word of most of the normative connotations it conventionally had. Hobbes not only claimed that in the state of nature (i.e. outside civil societies) natural law is just a dictate of reason which gives no objective criteria for right and wrong.²¹ He also maintained that within civil society the rightness and wrongness of human acts are totally dependent on the commands of the sovereign and that the pacts by which civil power is created leave no criteria by which the sovereign can be said to be acting justly or unjustly towards his subjects.²² This “legal positivism” buried in Hobbes’ theory was not unnoticed by Pufendorf. On the contrary, he repeatedly criticized

.....
19 *JNG* Praefatio.

20 *JNG* I.2.6; II.3.4; II.3.20. See below chapter 3.2.

21 *De cive* 12.1.

22 *De cive* 5.7. *Leviathan* chap.17, p.227.

Hobbes for his claim that before the establishment of states there were no criteria for right and wrong.²³ And even though the practical conclusions of Hobbes' political theory were by no means disagreeable for Pufendorf, he was not ready to swallow the idea that there are no moral standards by which actions of the civil sovereign can be evaluated.²⁴ But as we have seen above, even errors of this magnitude did not prevent Pufendorf from presenting Hobbes as the second most important figure in the development of the discipline of natural law.

THE REFUTATION OF MORAL RELATIVISM

30

It seems, thus, that correct views concerning the normative character of natural law are not, in Pufendorf's eyes, the central requirement for making a contribution to the study of this law. This point has been endorsed recently by Richard Tuck in his interpretation of the modern school of natural law. According to Tuck, the appreciation Pufendorf showed towards Grotius and Hobbes did not follow from any agreement with so called "foundational" questions, but from the fact that these three shared a common concern which distinguished them radically from all previous theorists of natural law. This was the commitment to overcome contemporary moral scepticism by identifying the content of natural law in one way or another with the requirements of self-preservation.²⁵ Since Tuck's account is both an attempt to explain Pufendorf's views concerning the history of his discipline and an interesting interpretation of the modern school of natural law in general, it is worthwhile to examine it in more detail.

By moral scepticism Tuck refers to the relativist attitude to moral issues which enjoyed some popularity in Europe from the end of the sixteenth century and which found its most influential expression in the works of Justus Lipsius, Michel Montaigne and Pierre Charron.

23 See, for example, *JNG* II.3.20, VIII.1.5.

24 *JNG* VII.2.9–11.

25 Richard Tuck "The 'Modern' School of Natural Law", in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden. Cambridge, 1987. Tuck deals with the idea that the modern theory of natural law developed as an attempt to overcome scepticism also in "Grotius, Carneades and Hobbes", *Grotiana*, n.s. 4., 1983; *Hobbes*, Oxford 1989; "Grotius and Selden", in *Cambridge History of Political Thought 1450–1700* ed. J.H.Burns and Markie Goldie. Cambridge, 1991; *Philosophy and Government 1572–1651*. Cambridge, 1993.

These writers strongly criticized the idea that certain moral views would somehow be natural for human beings. Paying attention to the huge variety of human laws and customs they rejected the idea of a universal natural law which offers the foundation for civil laws. “The laws are maintained in credit,” wrote Montaigne, “not because they are just but because they are laws. That is the mystical foundation of their authority; they have no other.”²⁶ Consequently, there were no criteria by which the laws and customs of different states could be morally evaluated.

The central practical conclusion men like Montaigne and Charron drew from these observations was that a wise human being, who is principally concerned with protecting himself from harm, does not take any moral conviction too seriously, but rather adjusts himself to the laws and customs which happen to prevail in his country. However, the great diversity of moral beliefs was also used to justify the much more disturbing claim that acting against the conventional rules of justice is congenial for human beings and nations whenever this appears to be beneficial to their own interests. This attitude was usually attributed to the ancient sceptic Carneades, whose views on moral issues were known mainly through the following summary in Lactantius’s *Divinarum Institutionum*:

31

Men impose laws upon themselves for utility. These vary according to their customs, and among the same people often undergo changes as times change; and there is no law of nature. For all creatures, men as well as animals, are impelled by nature toward their own utility. Consequently, there is no justice, or if such there were, it would be supreme folly, since one does damage to oneself if one takes care of the advantage of others ... If all nations which have flourished from domination, even Romans who are masters of the whole world, would wish to be just, that is, restore other’s possessions, they would have to return to cottages and to sink into scarcity and misery.²⁷

Tuck holds that Grotius, Hobbes, and Pufendorf all shared Montaigne’s and Charron’s distrust of traditional ethical theories.

.....
26 *Essais*, Book 3, ch.13.

27 *Divinarum institutionum*, V.16: “Jura sibi homines pro utilitate sanxisse, scilicet varia pro moribus, et apud eosdem pro temporibus saepe mutata; jus autem naturalem esse nullum: omnes homines, et alias animantes ad utilitates suas natura ducente ferri: proinde aut nullam esse justitiam, aut, si sit aliqua, summam esse stultitiam, quoniam sibi noceret, alienis commodis consulens. ... Omnibus populis, qui florerent imperio, et Romanis quoque ipsis, qui totius orbis potirentur, si justi velint esse, hoc est, si aliena restituant, ad casas esse redeundum, et in egestate ac miseriis jacendum.”

However, they were simultaneously disturbed by the popularity of the Carneadian position and wanted to refute it. This concern was expressed at the beginning of the *Prolegomena* to *De iure belli ac pacis*, where Grotius remarked how “there is no lack of men” who think that the laws which govern relations among states have no reality apart from an empty name. And instead of dealing with “a crowd of opponents” he chose to take Carneades as the main representative of this position.²⁸ No worries of this sort can, of course, be found in Hobbes, who denied the idea that something deserving the name “law” could govern international relations. Tuck holds, however, that Hobbes expressed discontent with the Carneadean position in his argument against the “the Foole”, i.e. a person who believes that acting unjustly is sometimes advantageous for personal well-being.²⁹ Finally, in *De iure naturae et gentium* Pufendorf devoted two paragraphs of the chapter dealing with the foundations of natural law in order to refute those for whom the diversity of human customs has given an “excuse for alleging that there is no such things as natural law, and that all law has arisen from the convenience of individual states, and cannot be measured in any other way.”³⁰

According to Tuck, it was above all the importance Pufendorf placed on the argument against Carneadean relativism which made him feel that there was a fundamental division between the ancient and medieval natural-law writers and the modern ones. If one “is principally alert to the problem of moral scepticism,” Tuck remarks, “then it is true that both ancient and medieval moral philosophy will prove unsatisfactory.” This is because “no major work of ethics devoted explicitly to refuting the sceptic survives from antiquity, and medieval natural-law thinking is conspicuous by its lack of awareness that full-blooded moral scepticism was an intellectual possibility.”

28 *IBP* Prolegomena (§ 3–5).

29 Tuck relies on the following passage in *Leviathan*, ch.15, p.101: “The Foole hath said in his heart, there is no such thing as Justice; and sometimes also with his tongue; seriously alleaging, that every mans conservation, and contentment, being committed to his own care, there could be no reason, why every man might not do what he thought conduced thereunto: and therefore also to make, or not to make; keep, or not to keep Covenants, was not against Reason, when it conduced to ones benefit. He does not therein deny, that there be Covenants; and that they are sometimes broken, sometimes kept; and that such breach of them may be called Injustice, and that the observance of them Justice: but he questioneth, whether Injustice, taking away the feare of God, (for the same Foole hath said in his heart there is no God,) may not sometimes stand with that Reason, which dictateth to every man his own good; and particularly then, when it conducteth to such a benefit, as shall put a man in condition, to neglect not onely the dispraise, and revilings, but also the power of other men.”

30 *JNG* II.3.10–11.

Consequently, “the simple deduction which Montaigne and Charron made from the observed fact of radical moral disagreement, that perhaps there could be no universal standard of right and wrong, was something to which men at the beginning of the seventeenth century had to think up their own response.”³¹ What, then, made Pufendorf regard Grotius and Hobbes as his predecessors was that they had refuted the Carneadean position by integrating “the laws of nature into a system based on self-preservation”.³²

Grotius had formulated the new theory first in a manuscript he wrote in 1604/5. This remained unpublished until the nineteenth century, when it appeared under the title *De iure pradae commentarius*. In this early work Grotius’ conscious aim was to show that a universal moral law, albeit a very restricted one, can be established on principles which even the sceptics cannot deny. His starting point was the Stoic idea of the primacy of self-preservation in human behaviour, which Cicero in *De finibus* had expressed in the following words:

Every living creature loves itself, and from the moment of its birth strives to secure its own preservation; because the earliest impulse bestowed on it by nature for its life-long protection is the instinct for self-preservation and for the maintenance of itself in the best condition possible to it in accordance with its nature.³³

This was something neither Carneades nor any modern sceptic had denied. According to Tuck, Grotius’ new theory of natural law followed, then, from the realization that “the sceptic could be answered once the full implications of his acceptance of the principle of self-preservation had been thought out.”³⁴

In *De iure pradae* these implications were expressed within a framework of the divine command theory of morality. Grotius not only maintained that “what God has shown to be his will, that is law,” but he explicitly denied the claim that God wills something because it is already just.³⁵ The Stoic idea of the primacy of self-preservation was applied when Grotius turned to the question of how God’s will is known.

Since God fashioned creation and willed its existence, every individual part thereof has received from Him certain natural

31 Tuck 1987, p.115–116.

32 Tuck 1987, p.113.

33 *De finibus* V.24. Translation from Tuck 1993, pp.6–7.

34 Tuck 1987, pp.110–111.

properties whereby that existence may be preserved and each part guided for its own good, in conformity, one might say, with the fundamental law inherent in its origin. From this fact the old poets and philosophers have rightly deduced that love, whose primary force and action was directed to self-interest, is the first principle of the whole natural order. Consequently, Horace should not be censured for saying, in imitation of the Academics [i.e. Carneades], that expediency might perhaps be called the mother of justice and equity. For all things in nature, as Cicero repeatedly insists, are tenderly regardful of self, and seek their own happiness and security. This phenomenon can be observed not only in the human race, but among the beasts also, and even in and with inanimate objects, being a manifestation of that true and divinely inspired self-love, which is laudable in every phase of creation.³⁶

34

On these grounds Grotius derived two fundamental laws of nature: “It shall be permissible to defend [one’s own] life and shun that which threatens to prove injurious” and “It shall be permissible to acquire for oneself, and retain, those things which are useful for life.” He especially emphasized how these two principles were something which nobody had seriously questioned:

Moreover, no member of any sect of philosophers, when embarking upon a discussion of the ends, has ever failed to lay down these two laws first of all as indisputable axioms. For on this point the Stoics, the Epicureans, and the Peripatetics are in complete agreement and apparently even the Academics have entertained no doubt.³⁷

Grotius also mentioned two other general laws of nature besides those mentioned above: “Let no one inflict injury upon his fellows” and “Let no one seize possession of that which has been taken into the possession of another.” However, the precise manner in which these are known to be commands of God remained unclear as Grotius failed to explain how they follow from the desire for self-preservation.³⁸

As mentioned above, *De iure pradae* remained unpublished until the nineteenth century. Hence, in Pufendorf’s eyes, Grotius’ position as the founder of the systematic study of natural law was based solely on *De iure belli ac pacis*. And the theory of natural law Grotius presented in this work differed in two respects significantly from the one put forth in the early manuscript. Now both the argument against

.....
35 *De iure pradae*, p.8.

36 *De iure pradae*, p.9. Translation from Tuck 1993, pp.172–173.

37 *De iure pradae*, pp.10–11. Translation from Tuck 1993, p.173.

38 See Tuck 1993, pp.173–174.

Carneades and the theory of natural law were based on the idea that it belongs to human nature to desire for peaceful and rationally organized society. Moreover, Grotius abandoned the divine voluntarism he had advocated in *De iure pradae*, supporting now the rationalist position that natural law is concerned with acts which are just or unjust in themselves and therefore necessarily commanded or forbidden by God.³⁹

Tuck holds, however, that the novelties in the main work did not prevent Pufendorf from perceiving that Grotius' reply to Carneades was "to stress the importance of self-interest."⁴⁰ This was so because despite the seemingly radical changes Grotius made to his theory in *De iure belli ac pacis*, he did not abandon the original idea presented in the early manuscript.⁴¹ Grotius still cited approvingly Cicero's description of the natural primacy of self-preservation in human behaviour.⁴² Moreover, although he now remarked that the claim, according to which expediency is the mother of justice, is not true "if we want to speak accurately," he still held that observing natural law is beneficial for individual survival. Utility is "added to natural law: for in order to make us more eager to cultivate society, the author of nature wished that as individuals we should be weak, and should lack many things needed in order to live properly."⁴³

This idea of the correspondence between natural law and the requisites of self-preservation was, of course, explicitly affirmed by Hobbes. In *De cive* he defined natural law as "the dictate of right reason, conversant about those things which are either to be done or omitted for the constant preservation of life and members, as much as in us lies."⁴⁴ What distinguished Hobbes from Grotius was his claim that outside civil societies the laws of nature do not offer an intersubjective criterion for right and wrong. This view followed, according to Tuck, from the fact that Hobbes took seriously the epistemological scepticism which bothered many philosophers in the first half of the seventeenth century. Hobbes admitted that while people otherwise have most various conceptions of what is good and

39 These aspects of Grotius' mature theory will be examined in chapter 3.2.

40 Tuck 1987, p.109.

41 Tuck 1987, pp.112-113.

42 *IBP* 1.2.1.

43 *IBP* Prolegomena: "Quod ergo dicitur non Carneaditantum, sed aliis, *Utilitas iusti prope mater et aequi*, si accurate loquamur, verum non est: nam naturalis juris mater est ipsa humana natura, quae nos etiam re nulla indigeremus ad societatem mutuam appetendam ferret. ... Sed naturali juri utilitas accedit: voluit enim naturae auctor nos singulos infirmos esse, et multarum rerum ad vitam recte ducendam egentes, quo magis ad collendam societatem rapemerur."

44 *De cive* 2.2.

bad, they grant, if they are consistent, that everybody has the right to defend themselves against wanton violence. The problem was that in so far as human beings govern their conduct unrestricted by any external force, it remains for each individual to decide what is dangerous for him and what means are necessary for ensuring his safety. And Hobbes held that in such a situation an intersubjective answer to this question was even in principle impossible.⁴⁵ Therefore, so long as everybody is free to estimate the requirements of his safety independently, there is “an irreconcilable conflict over the practical circumstances in which the right of self-preservation should be exercised.”⁴⁶ Such a state of affairs can be removed only by creating an artificial consensus, i.e. a civil sovereign to which people renounce their natural right to decide about the means of self-preservation.

Pufendorf did not accept Hobbes’ account of the amoral character of the state of nature. What he did share, according to Tuck, was Hobbes’ idea that natural law is identical with the requirements of self-preservation. This idea Tuck finds affirmed in *JNG* II.3.15, where Pufendorf deduces what he calls the fundamental principles of natural law:

It is clear that man is an animal most desirous of his own preservation, in himself exposed to want, unable to exist without the help of his fellow-creatures, most fitted to advance the mutual good, and yet at times malicious, petulant, and easily irritated, as well as quick and powerful to do injury. For such an animal to stay alive it is necessary that he be sociable, that is, be willing to join himself with others like him, and conduct himself towards them in a way which does not give them any cause to do him harm, but rather gives them a reason to preserve and increase his advantage. And so the fundamental law of nature is that every man, so far as in him lies, should cultivate and conserve towards others peaceful sociality.⁴⁷

Tuck holds that Pufendorf’s starting point in this passage was by and large the same which Grotius had adopted in *De iure pradae*. How God wants human beings to behave can be gathered from the fact that he has made them principally concerned with their own preservation. Sociality as the fundamental principle of natural law follows, then, from the fact that it is a necessary prerequisite for self-preservation. According to Tuck, it was this conception of natural law which made Pufendorf regard Grotius as the founder of the whole discipline.

45 Tuck 1993, pp.306–307.

46 Tuck 1993, p.348.

47 *JNG* II.3.15. The Latin text is cited below in p.63.

Despite their disagreements on the so-called foundational questions, they both “believed that what was right (*honestum*), was so because it was fundamentally profitable (*utile*) to an individual in need of protection from his fellow men.” Correspondingly, “it was because Pufendorf believed this that he could speak of Hobbes with such approval, and bracket his name with Grotius.”⁴⁸

It is not possible for me to evaluate Tuck’s interesting interpretation of the modern theory of natural law in its entirety. In so far as Grotius is concerned, I can only say that while the position Tuck gives to the desire for self-preservation in the theory Grotius put forward in *De iure belli ac pacis* appears as somewhat one-sided to me,⁴⁹ his account certainly makes better sense of Grotius than the traditional view which sees a continuity between Grotius and the scholastic tradition of natural law. I also find conceivable the idea that in his account of the state of nature, where there are no intersubjective criteria for right or wrong, Hobbes took the Carneadean position very seriously.⁵⁰

As for Pufendorf, it is evident that he also was concerned about the popularity of Carneades’ views. In *De jure naturae et gentium* Pufendorf devotes two paragraphs in the theoretically central chapter II.3. to refute the Carneadean position. Behind this view Pufendorf sees the ambiguity of the word “utility”, which refers both to immediate but short-term and less instantaneous but lasting advantages. His main argument against Carneades is that in reality observing natural law is congenial with long-term utility.⁵¹ This argument is temporarily withdrawn in the essay *De statu hominum naturali*, which was included in the collection *Dissertationes academicae selectiores* (1675).⁵² Here, Pufendorf remarks that although the word “utility” can be understood in a way which makes it compatible with natural law, it should still be avoided in the connection of natural law, because the short-term idea of utility has become so dominant in common usage.⁵³ However, in the second

48 Tuck 1987, p.105. The idea that Pufendorf’s theory was formulated in order to refute Carneadean relativism is affirmed also in Hont 1987, p.259, and Seidler 1990, p.49.

49 See below chapter *The disagreement with Grotius*.

50 Tuck has suggested that even Hobbes’ mechanistic natural philosophy was inspired by an attempt to refute epistemological scepticism (Tuck 1989, pp.40–50, Tuck 1993, ch.7). This view is criticized in Sorel 1988 and Zagorin 1993. I am not able to take a stand on this issue. It seems to me, however, that it is separable from the question whether Hobbes’ political theory was affected by the Carneadean position.

51 *JNG* II.3.10–11

52 A modern edition and English translation of this essay can be found in *Samuel Pufendorf’s “On the natural state”*, ed. and tr. Michael Seidler. Lewiston, Queenston, Lampeter, 1990.

53 *De statu* § 10.

edition of *De jure naturae et gentium* Pufendorf gives new force to his original argument, stating now quite straightforwardly, *pace* Carneades, that actions which agree with natural law “procure some advantage and reward for a man, and contribute to his happiness,” whereas actions repugnant to these rules “may at times return some utility, and more often some pleasure, which however never endures for long, and is followed by a throng of much greater ills.”⁵⁴

However, although Pufendorf obviously regards the refutation of Carneades as a question of considerable importance, I do not think that the wish to overcome Carneadean relativism played that kind of constitutive role in Pufendorf’s theory of natural law as Tuck seems to suggest. Nor do I think that it was Pufendorf’s reason for holding Grotius as the founder of the discipline of natural law. As Tuck himself points out, the last mentioned idea cannot be found in Pufendorf’s works but was first expressed by Jean Barbeyrac in his introduction to the French translation of *De jure naturae et gentium*.⁵⁵ This, I think, is no coincidence. In the first place, even though Pufendorf repeatedly emphasizes the utility of natural law for individual security, he does not derive sociality as the fundamental principle of natural law from the instinct for self-preservation. The detailed proof for this claim will be presented in Part two. Before doing that, I aim to show that Pufendorf’s general conception of natural law and his account of the history of his discipline are, in fact, best understood in the context of his Lutheran background.

PUFENDORF’S LUTHERAN INHERITANCE

Luther is well-known for his hostility towards Aristotelian and Thomist ethical teachings. In his eyes, classical ethical doctrines taught by the scholastics only drew away attention from the invaluable teachings of Christ. However, unlike Calvin, who held that the fall had made human beings completely unable to reach a knowledge of right and wrong independently of God’s revealed word, Luther did not deny the existence of natural morality altogether. On the contrary, he maintained that every human being is aware of a moral law which is

54 *JNG* 1684 II.3.10.

55 Tuck 1987, p.107–108.

identical with the *Decalogue* and the demand of love declared in the *Gospel*. It is important to notice, however, that Luther's understanding of the character of natural moral law differed radically from the Thomist doctrine.

A fundamental feature in the Thomist theory of natural law was the idea that there is a correspondence between natural law and natural human inclinations. Human reason recognizes natural law by reflecting on the proclivities which are natural for the human species. Together with other animals human beings are inclined to self-preservation, the propagation of the species, and the raising of the offspring. Thus, human reason comprehends that natural law orders all those means which are necessary for achieving these ends. Human beings also possess, according to Aquinas, the distinctively human tendency to seek happiness by using their unique intellectual abilities. Happiness, in turn, is to be found mainly in the knowledge of God. We understand, therefore, that natural law orders us to seek such a knowledge. When human beings follow these inclinations they participate in the eternal law, i.e. in the rational principle which has always existed in God's mind and which God followed when he created the world.⁵⁶

39

In Luther we find a drastically different idea of what natural law is all about.⁵⁷ Luther not only rejected Aquinas' rationalist conception of law, adopting the voluntarist position according to which the source of law is not some eternal rational principle but God's will.⁵⁸ He also maintained that there is a radical discrepancy between the way God wants human beings to behave and the manner in which they are inclined to act. Before the fall, when they still were images of God, human beings obeyed the law spontaneously. However, as a result of the fall human beings are now totally dominated by sin and disinclined to observe the law God has imposed on them. Only those who have received God's grace and are governed by the Holy Spirit are able to follow this law for its own sake. Others – false Christians and Pagans – hate the law in their hearts and are truly concerned only with their personal advantage. This does not mean that they are unable to fulfil the letter of the law in their external behaviour. However, when they do so, it happens only for selfish reasons, either because they think that by doing so they will be able to win some personal gain or because they want to avoid punishments which might follow from the

56 See Copleston 1962, ch.33, § 5, pp.406–408.

57 The following exposition of Luther's doctrine of the law is based on Herbert Olsson's *Schöpfung, Vernunft und Gesetz in Luthers Theologie*. Uppsala, 1971.

58 Olsson 1971, pp.119–123.

violation of the law. All this indicates, of course, that the law cannot be recognized by reflecting on natural human inclinations. That all human beings still know the law follows, according to Luther, from the fact that God constantly upholds in their souls an awareness of its demands.⁵⁹

40

A noteworthy feature in Luther's doctrine of natural law is that by maintaining that the origin of the law is in God's will he did not mean that the law is a totally arbitrary command without any purpose. On the contrary, Luther named two reasons why God has ordained the law on human beings. This doctrine of the two uses of the law was analogous with his famous *Zwei-Reiche-Lehre*, according to which there are two orders through which God governs humankind: the spiritual and the temporal. In his spiritual kingdom God governs Christians through his revealed word. This government is not concerned with the external life of human beings but only with their salvation, which they achieve through redemption. In the *weltliche Reich*, on the other hand, God governs by means of secular rulers to which he has entrusted the power of the sword. The main function of this temporal government is to maintain social order and to ensure the earthly existence of human beings. It is, therefore, concerned mainly with the external behavior of human beings, not with the inner condition of their souls.⁶⁰

In accordance with the doctrine of the two regiments, Luther declared that God has ordained the law on human beings with two purposes in mind: spiritual and civic. The spiritual purpose of the law is to make human beings aware of their own fundamental sinfulness and so to seek the mercy of God. This happens when they understand that by themselves they are unable to fulfil the demand of love imposed by the law. According to Luther, all human beings have a hunch of their own sinfulness. However, this feeling becomes an active force only when a person has internalized the message of the *Gospel*. In practice, therefore, the spiritual purpose of the law functions only among the members of God's eternal government. The civic purpose of the law, on the other hand, is concerned with the whole of the human species. It consists of maintaining social order among those who are not governed by the Holy Spirit. This end the law achieves through the fact that false Christians and Pagans also believe that there is God and that God demands them to observe the law they know in their hearts. They also believe that God will reward those who observe the law and punish those who violate it.

59 Olsson 1971, pp.7-17, 157-174.

60 On the doctrine of the two regiments, see Cargill Thompson 1969.

Consequently, they often act in a way which externally agrees with the law. While such behaviour does not grant them salvation – as this cannot be achieved through deeds at all but only through God's grace – it makes possible an ordered social life.⁶¹

Thus, Luther both affirmed the existence of natural morality and held that this has an important function in worldly life. He did not, however, see any need to have a separate moral philosophy in addition to the Christian doctrine taught in the Bible. On this issue Melanchthon held a different view, making a strict distinction between moral philosophy and the Christian teaching presented in the *Gospel*. According to Melanchthon, the task of moral philosophy is the explication of natural law, i.e. those rules which are needed to maintain discipline among the human species.⁶² In doing this moral philosophy is concerned solely with the external acts of human beings and tells nothing of the requirements of salvation. The *Gospel*, on the other hand, is concerned with the inner condition of human souls and deals with issues which are relevant to salvation. It has nothing new to offer to moral philosophy, because Christ had not come on Earth in order to teach moral precepts which were already known by reason but to remit sins and deliver the Holy Spirit of those who believed in him.⁶³

In his moral philosophy Melanchthon retained the traditional idea of the correspondence between natural law and natural human inclinations, albeit in a somewhat curious way. Like Luther, Melanchthon saw human beings as predominantly disinclined to observe the moral law. However, whereas Luther thought that human beings have lost totally their character as *imago Dei*, Melanchthon's assessment of human nature was a bit more positive. Even though the fall had corrupted in human beings the spiritual understanding of God, it had left them an ability to know that there is a God who has created the human species in his own image. And this understanding of the uncontaminated human nature gives human beings the standard by which they can judge the external propriety of human acts.⁶⁴ However,

61 Olsson 1971, pp.66–94, pp.174–190.

62 Opera omnia, vol. xiv, col.167 (*Ethica doctrinae elementa*): “[Philosophia moralis] est explicatio legis naturae, demonstrationes ordine in artibus usitato colligens, quantum ratio judicare potest, quarum conclusiones sunt virtutum, seu praecepta de regenda disciplina in omnibus hominibus, congruentia cum decalogo, quantum de externa disciplina concionatur.”

63 Opera omnia, vol. xvi, col.281 (*Ennarationes aliquid liberorum Ethicorum Aristotelis*): “Non enim venit Christus in mundum, ut praecepta de moribus doceret, quae iam ante norat ratio, sed ut remitteret peccata, ut credentibus in ipsum donaret Spiritum sanctum.”

64 Opera omnia, vol. xiv, col.28–30 (*Philosophie moralis epitomes*).

in order to formulate a fully adequate moral philosophy human beings also need knowledge of the Bible. For although some idea of God and the central precepts of natural law are imprinted in the minds of every human being – wherefore also heathen philosophers like Aristotle have presented moral views which are worth studying by Christians – without the Bible corrupt human beings can have only an insufficient understanding of God and, therefore, of the human being as an image of God. Consequently, a comprehensive explication of natural law is possible only for those familiar with the Holy Scriptures.⁶⁵

* * *

42

The idea that it is the uncontaminated human nature which offers the foundation for natural law became widely accepted in the Lutheran world during the seventeenth century. It was often connected – following Melancthon's example – with a rationalist conception of the law and a keen interest in Aristotle's ethical and political theory. As a result, the idea of natural law among Lutheran theologians became a mixture of Aristotelian practical philosophy and Biblical exegesis and had many similarities with the Thomist tradition. At the same time there were many who rejected the whole Melancthonian distinction between moral philosophy and the teachings of the *Gospel*, holding that moral issues cannot be dealt independently of the question of salvation.⁶⁶

Pufendorf's clearest and most detailed statement on the issues which were discussed in the Lutheran tradition of natural law can be found in the preface to *De officio hominis et civis*, where he presents, in order to defend himself against the critique theologians had directed towards his main work, "some remarks directed towards understanding the character of natural law in general and towards a careful delineation of its boundaries." Pufendorf's main point in the preface is that there is a strict distinction between the discipline of natural law and what he calls moral theology. The discipline of natural law deals with rules which regulate the external behaviour of human beings in order to maintain social order among the whole of the human species, whereas moral theology is concerned with human beings as members of God's eternal kingdom. This, of course, resembles Melancthon's distinction between moral philosophy and

65 Opera omnia, vol. xiv, col.30 (*Philosophie moralis epitomes*); col.391 (*Ennarationes aliquid liberorum Ethicorum Aristotelis*).

66 On the theory of natural law in Lutheran orthodoxy, see Josefson 1950, Linberg 1976, pp.37–47.

the teachings of the *Gospel*. However, a closer examination of Pufendorf's argument reveals a number of significant differences between him and Melanchthon.

Melanchthon's distinction between the *Gospel* and moral philosophy was based mainly on the different practical concerns of these two doctrines. The message of the *Gospel* deals with the salvation of human souls, whereas moral philosophy has as its subject-matter the external rules of behaviour which make possible an ordered worldly life. While Pufendorf agrees with this, the point behind his own distinction between the discipline of natural law and moral theology is principally epistemological. Pufendorf separates moral theology not only from the discipline of natural law but also from that part of theology "which explains the articles of our faith."⁶⁷ This means that moral theology does not deal with all issues relevant to the salvation of human souls, in which respect faith in Christ plays of course the central role. Moral theology is a moral discipline which instructs "a Christian man, whose purpose should be not only to pass honourably through this life, but who expects the fruits of piety after this life, and who so has his citizenship in the heavens, while here he lives merely as a pilgrim or stranger."⁶⁸ In other words, moral theology teaches what God expects from those to whom he has given his revelation and who therefore have hopes of being saved. Its source of information is, of course, what God has commanded in the Holy Scriptures. The Bible, in turn, tells relatively little about the actions which are usually judged in human courts and is more concerned with deeds which – in Seneca's words – are "beyond the scope of the statutes." This is so because what God requires from the Christians is not only the external propriety of their acts but above all that they have the right inner motive for obeying his commandments. Consequently, the chief task of moral theology is "to conform the mind and its internal motion to the will of God; and it condemns actions which seem externally to be correct but which proceed from an impure heart."⁶⁹

67 *OHC* Prefatio: "Tertia Theologia moralis habetur, illi parti Theologiae contradistincta, quibus credendam exponuntur."

68 *OHC* Prefatio xii: "Ast Theologia moralis hominem Christianum informat, cui propositum esse debet non hanc solum vitam honeste transire; sed qui fructum pietatis post hanc vitam maxime expectat, quique adeo *politeia* suum in coelis habet, heic autem viatoris duntaxat aut peregrini instar gerit."

69 *OHC* Prefatio: "Ast Theologiae morali non sufficit exteriores hominis mores utcunque ad decus compofuisse; sed in eo maxime laborat, ut animus, ejusque motus interni ad placitum Numinis fingantur: illa ipsa actiones improbat, quae extrinsecus quidem recte se videntur habere, ab animo tamen impuro promanant. Quae ratio etiam videtur, quare in divinis libris haut ita frequenter agatur de illis actionibus, quae poenis fori humani sunt sancitae, aut circa quae, uti Seneca loquitur, sunt extra publicas tabulas."

The discipline of natural law also has as its subject matter the manner in which God wants human beings to behave in worldly life. However, whereas moral theology deals with the peculiar duties God has imposed on Christians through the Bible, the discipline of natural law studies those duties which God has ordered on the whole of humankind. This means, above all, that the discipline of natural law must be restricted to that which can be known by natural reason. And Pufendorf holds it evident that human reason alone cannot any knowledge of the true requirements of salvation. These can be known only through the Bible.⁷⁰ As a result, from the Christian point of view the discipline of natural law is “confined within the orbit of this life” and directs a human being only in so far as “he has to lead this life socially with others”.⁷¹ This, in turn, indicates that the discipline of natural law does not try to penetrate to “what is hidden in the soul and which gives no external effect or sign”, but is concerned mainly “with forming men’s external actions.”⁷²

Pufendorf’s instance that the discipline of natural law must be based solely on natural reason gives easily the impression that he is championing for a new non-confessional morality which ought to replace the rival Christian confessions as public morality. This view has been supported recently by James Tully. According to him, Pufendorf saw the religious differences over which the Europeans had fought so many wars as being irreconcilable. What Pufendorf aimed at, therefore, was to propose to Europeans “a new morality” which would be “independent of the confessional differences which divided them, yet also permit belief in and practice of these rival religions within the moral framework.”⁷³

It is suspect, however, whether Pufendorf regarded the prevailing religious division in Europe really as irreparable. At least his last work, the posthumously published *Jus feziale divinae*, was explicitly

70 OHC I.4.8: “Ratio quippe humana sibi relicta jam ignorant, pravitatem, quae in facultatibus et inclinationibus hominis cernitur per culpam humanam provenisse, Deique offensam et aeternum exitium mereri: eoque et necessitas Salvatoris, ejusque officium et meritum, nec non promissa Dei humano generi facta, et quae alia inde dependent, eandem latent: per quae so salutem aeternam hominibus provenire, ex divinis literis constat.”

71 OHC Praefatio: “Illud porro discrimen longe maximum est, quod finis disciplinae juris naturalis tantum ambitu hujus vitae includatur, adeoque ea hominen formet, prout hanc vitam cum aliis sociabilem exigere debeat.”

72 OHC Praefatio: “Ex quo illud fluit, ut, quia forum humanum circa externas tantum hominis actiones occupatur, ad ea autem, quae intra pectus latitant, nec aliquem effectum, aut signum foras produnt, non penetret, adeoque nec circa eadem sit sollicitum; jus quoque naturale magnam partem circa formandas hominis exteriores actiones versetur.”

73 Tully 1991, xviii.

devoted to the unification of the Protestant sects. And even though Pufendorf in this work remarked that no unification is possible between the Protestant and the Catholic churches, this was so not because of some insuperable disagreement on spiritual issues but because of the worldly interests of the Catholic clergy.⁷⁴ What is certain, in any case, is that Pufendorf did not think that the moral and political doctrine one recognizes by natural reason is neutral in regard to the competing Christian sects. This opinion is expressed clearly in the essay *De concordia verae politicae cum religione Christiana* (*On the Harmony of True Politics with the Christian Religion*), which Pufendorf included in *Dissertationes academicae selectiores*, published in 1675. Here he remarks that sects which have departed from the true and original Christian doctrine, above all Catholicism and Calvinism, contain elements which are incompatible with the true political doctrine.⁷⁵ The true Christian doctrine, on the other hand, is in perfect agreement with the political theory based on natural law.⁷⁶ And although Pufendorf does not explicitly say it in *De concordia*, the character of his political theory together with the religious views he expresses in other writings makes it obvious that he identifies this true doctrine with Lutheran teaching.⁷⁷

Furthermore, Pufendorf does not merely see Lutheran doctrine as compatible with natural law. He also maintains that the promotion of Lutheran Christianity is the most effective way to advance the observance of natural law and social tranquility. This special affinity between natural law and the Lutheran doctrine is affirmed already in his works on natural law, albeit not in explicit terms. When Pufendorf in *De jure naturae et gentium* discusses the duty the sovereign has to habituate the citizens to observe the laws of their country, he remarks that in this process the Christian religion, where it is practiced, has the greatest single effect. This, however, is so only on the condition that the Christian doctrine taught by the clergy is “pure” and “free from the false inventions of men”. In that case it contains “in addition to the teachings which lead to eternal salvation the most perfect moral

74 See Krieger 1965, p.245.

75 *Dissertationes academicae selectiores*, p.449 (*De concordia*, § 11). These erroneous religious tenets include the Catholic doctrine of the church, which teaches that the clergy is independent of civil authority; the Calvinist dogma that human life is totally predetermined; and the Puritan doctrine of conscience, which maintains that true believers receive direct information from God and are, therefore, entitled to resist the commands of the civil power. See Krieger 1965, pp.222–226.

76 *Dissertationes academicae selectiores*, p.430 (*De concordia* § 1).

77 Pufendorf offers an unqualified confession of his Lutheran faith in *Eris scandica* pp.18–19 (*Apologia* § 6). On the character of Pufendorf’s Lutheranism, see Krieger 1965 pp.244–254.

precepts which dispose the human soul in a special way to lead a good civil life".⁷⁸ In the second edition Pufendorf adds that this is the reason why in all Christian states the task of habituating citizens to observe natural law has been entrusted to the clergy. And he finds nothing objectionable in this practice, provided that the taught Christian doctrine is pure. It is only the dogmatic part of natural law which, in Pufendorf's opinion, should be left to the specialist of this field.⁷⁹ The same view is repeated in *De officio hominis et civis*, where Pufendorf declares that moral theology "does most effectively encourage a good quality of civil life since the Christian virtues, too, do as much as anything to dispose men's minds to sociality."⁸⁰ Therefore, the best way for the sovereign to accustom his subjects to observe the law is to "ensure that the pure and sincere Christian doctrine flourishes in the state, and that the public schools teach dogmas consistent with the purpose of the state."⁸¹

46

It seems, thus, that Pufendorf's aim is not to replace Lutheran Christianity as the public morality where it prevails, but rather to complement it by a rational understanding of the duties God has imposed on all human beings. The central issue of disagreement between him and Melanchthon is not the role Christian doctrine should play in everyday social life, but the theoretical question as to how the law God has imposed on the whole of humankind should be deduced.

As mentioned already, Melanchthon had founded his theory on the idea that God had originally created human beings in his own image. In moral philosophy one deduces natural law by reflecting on the character of uncontaminated human nature. Pufendorf, in contrast, maintains that "a man must now be regarded by the discipline of natural law as one whose nature has been corrupted and thus as an

78 *JNG* VII.9.4: "Ut autem ist hoc obstineatur, in rebuspublicis Christianis plurimum confert ipsa religio christiana, sincera illa, et ab humanis commnetis purgata, per pios et cordatos ministros doctrine et exemplo inculcata; quippe quae praeter dogmata ad salutatem aeternam facientia continet prefectissima praecepta moralia, quae cumprimis ad bene tolerandam vitam civilem animi mortalium disponuntur, et quae eadem tamen legibus ita commode sanciri non possunt."

79 *JNG* 1684 VII.9.4: "Quam ob causam in omnibus quas novimus, civitatibus Christianis pars paraenetica juris naturalis ministris Ecclessia exrecandam est commissa; cujus tamen pars dogmatica ad illos proprie pertinet, qui ei disciplinae peculiariter addiciti sunt."

80 *OHC* Prefatio: "Etsi cum illae ipsae virtutes Christianae animos hominum ad socialitatem quam maximum disponant, Theologia quoque moralis honestatem vitae civilis efficacissime promoveat."

81 *OHC* II.11.4: "Ad quem finem quoque facit curare, ut doctrina Christiana, pura illa et sincera, in civitate vigeat; ac in scholis publicis tali dogmata tradantur, quae cum fine civitatum conveniunt."

animal seething with evil desires.”⁸² He offers two reasons for this. The first one of these is epistemological. Since God has imposed natural law on the whole of human species, the discipline dealing with it must be based on premises which can be known by natural reason alone. Natural reason, in turn, does not have any recollection of the uncontaminated human condition and the fall which led the human species to its present state. While “no one is so imperceptive as not to be aware of the unruly and deviant passions in himself”, human reason alone is unable to know that “this rebellion of passions” was not the original condition in which God created the human species but that it “came by the fault of the first man.” This can be known only through the Bible, wherefore “it would be improper to try to deduce natural law from the uncorrupted nature of man.”⁸³

The other reason why uncontaminated human nature cannot serve as the basis for natural law is that alone it cannot give us sufficient information of the character and content of this law. This is so because natural law has a wholly different character in the present corrupt state of the human species than it had before the fall. To be sure, Pufendorf remarks that “the main principles of the law” are the same in both incorrupt and corrupt states. These are identical with the law declared by the Savior: love God and love your neighbour. “The whole natural law may be derived from these principles in man’s corrupt as well as in his uncorrupted state. ... For sociality too, which we have laid as the foundation of natural law, can readily be resolved into love of one’s neighbour.” The significant thing is, however, that “many of the particular precepts are different because of the difference in the human condition. Or rather, the same sum of the law may be divided into different (but not contradictory) precepts according to the different conditions in which those who must obey it live.”⁸⁴ By this Pufendorf

82 *OHC* Prefatio: “Unde illud patet, necessarium esse, ut in disciplina jusris naturalis homo nunc consideretur, prout ipsius natura est corrupta, adeoque prout est animal multis pravis cupidinibus scatens.”

83 *OHC* Prefatio: “Nam etsi nemo tam stupidus sit, quin in seipso inordinatos ac in devia tendentes affectus deprehendat: tamen nisi divinae literae praelucent, nemini jam constare posset, istam affectuum rebellionem per culpam primi hominis provenisse. Et consequentur cum jus naturale ad ea non abeat, quo ratio pertinere nequit, incongruum foret, idem ex natura hominis integra velle deducere.”

84 *OHC* Prefatio: “[N]um igitur lex diversa fuerit in statu naturae integrae, and vero eadem? Ubi paucis responderi potest responderi potest: summa legis capita in utroque statu esse eadem: sed multa praecepta particularia propter diversitatem conditionis humanae variare; seu potius, eadem summam legis per diversa, (non tamen contraria) praecepta sese explicare, prout diverso sese modo habuit homo, cui illa lex observanda. Summa legis Salvator noster ad duo capita redegit: dilige DEUM, et dilige proximum. Ad haec capita referri potest universa lex naturalis, tam in integro, quam in corrupto statum hominum, ... Nam socialitas, quam nos pro fudamento jusris naturali substravimus, commode in dilectionem proximi resolvi potest.”

means two things. In the first place, there are many social institutions and other phenomena in the present corrupt state which did not exist in Paradise (as examples Pufendorf mentions property, money, death and scarcity). Therefore, before the fall there could have been no moral laws related to such things. Even more significant is, however, the fact that the fall had caused a drastic change in human inclinations and made it necessary to introduce an abundance of rules which restrict human behaviour. Pufendorf illustrates this change with the example of two boys who have been entrusted to someone for their education. One of the boys is “modest, scrupulous and afire with love of letters.” The other in turn is “dissolute and saucy, more in love with lewd desires than with books.” For both boys “the sum of their duty” is the same: to learn letters. However, the particular precepts by which the two boys can be made to achieve this end are considerably different. In the case of the decent boy with an inclination for learning, it is enough that one gives him “a schedule and plan of studies to follow.” For the mischievous young man, on the other hand, such measures are far from sufficient. He must also be “admonished with the direst threats not to run around, not to gamble, not to sell his books, not to plagiarize other students’s work, not to carouse, not to run after prostitutes.”⁸⁵

The point of the example is obvious. Before the fall human beings were inclined to love both God and each other. Natural law was what Pufendorf calls an “affirmative precept”, i.e. a reinforcement of an already existing inherent tendency. In their present condition, on the other hand, human beings not only lack the natural tendencies they possessed in Paradise but are also actively inclined to disobey God and violate each other. In one of his most gloomy statements Pufendorf remarks how “there is in human nature an innate wickedness that enjoys harming others as much as possible, and that can never be entirely extirpated or corrected.” And even though this pure desire to violate other people “does not disclose itself in just any occasion,”⁸⁶

85 *OHC* Prefatio: “Sunt alicujus informationi commissi duo pueri, sed dispari plane idole. Unus modestus est, verecundusque, et magno literarum amore flagrans. Alter dissolutus petulans, foedas potius libidines, quam libros amat. Summa officii utriusque eadem, literas addiscere. Sed peculiariora praecepta disparia. Prior enim sufficit injuxisse, quae studia, quo tempore, quave ratione tractare debeat. Alteri praeter haec accerima sub comminatione vetandum, ne circumcursitet, ne alea ludat, ne libros vendat, ne in exercitiis componendis aliena vitula aret, ne pergraecetur, ne scorta consecetur.”

86 *De statu* § 17: “Et quanquam insita mortalibus malitia, quae sese quam maxime in noxam aliorum effundere gaudet, nunquam penitus heic exuatur et corrigatur; tamen quia illa non quavis occasione sese vult expromere, saepe etiam volentem facultas destituit.”

human nature is full of other immutable characteristics which make people most prone to hurt each other and disturb the social order.⁸⁷ Consequently, in the present condition natural law consists mainly of “negative precepts”, i.e. restrictive imperatives which demand of human beings to behave in a way which they are not otherwise inclined to do.

It should be noted that Pufendorf admits that “every affirmative precept implicitly contains a prohibition of its opposite.” For example, “he who is told to love his neighbour is by that very fact forbidden to inflict on him anything inconsistent with that love.”⁸⁸ Thus, in principle the few affirmative precepts which prevailed in the incorrupt state included all those negative precepts which now obligate the corrupt human species. Pufendorf holds, however, that the mere reflection on the character of uncontaminated human nature tells us nothing of the concrete content of those negative precepts which are needed in the present corrupt state. In order to define these rules we must, according to Pufendorf, first know how corrupt human beings are inclined to behave and what are the things they must, therefore, be forbidden to do.

49

The foregoing means that even if we should take as our starting point the idea that God originally created human beings in his own image, we would still have to examine the character of corrupt human nature in order to recognize natural law. And Pufendorf is eager to point out that the *Decalogue*, which Melanchthon and his seventeenth century followers regarded as the summary of natural law, is in fact expressed mainly in negative terms and clearly presupposes corrupt human nature. Already the first commandment, Pufendorf remarks, “certainly seems to assume that man is prone to believe in idolatry and polytheism.” But of course such inclinations did not characterize the uncontaminated human beings, “whose knowledge of God was transparent, and who consequently enjoyed His familiar (so to speak) revelation.”⁸⁹ There are similar assumptions concerning corrupt human

87 See especially *JNG* II.1.6.

88 *OHC* Prefatio: “Etsi enim quodvis praeceptum affirmativum virtualiter contineat interdictum omnis oppositi; (v.g. qui jubetur diligere proximum, eo ipso vetatur inferre illi omnia, quae dilectioni repugnant.)”

89 *OHC* Prefatio: “Praesertim cum pleraque praecepta ipsius Decalogi, prout verbis negativis concepta sunt, naturam hominis corruptam manifeste praesupponant. Sic v.g. primum praeceptum utique praesupponere videtur hominem ad idolatriam et *polytheoteta* credendam proclivem. Si enim ponas hominem, integra adhuc natura praeditum, in quo liquida Dei erat cognitio, et qui subinde velut familiari ejus revelatione fruebatur: non video, quomodo tali in mentem venire potuerit, aliquo sibi fingere, quod loco veri Dei, aut cum eo colere velet, aut credere in eo Numen inesse, quod ipse finxerat.”

nature behind the commandments which deal with relations between human beings: "For all that you needed to tell man as he was created in the beginning by God was to love his neighbour – he was inclined to do so in any case by nature."⁹⁰ Thus, the restrictive commandments presented in the *Decalogue* become understandable only if we assume that human beings have now become inclined to violate the life and property of other people.

50

Now we have come to what I think is the focal point for understanding Pufendorf's general conception of natural law. His remark that the discipline of natural law must regard human nature as corrupt has been usually understood to mean that instead of deriving natural law from the inclinations of the incorrupt human nature the whole fabric of natural law must be somehow deduced from the proclivities which now govern human behaviour. It has been thought, in other words, that in deriving the content of natural law Pufendorf follows the model put forward by Grotius and Hobbes. As is well known, these two writers rejected Aristotle's and Aquinas' conceptions of human nature. This, however, did not mean that they followed Luther in abandoning the idea of the correspondence between natural law and human inclinations. Like Aquinas, both Grotius and Hobbes held it as obvious that human reason recognizes the content of natural law by contemplating natural human inclinations. What in this respect distinguished these two writers from the Thomists was their much more restricted view of the inclinations which can serve as a basis for natural law. In the *Prolegomena to De iure belli ac pacis*, Grotius based the fundamental natural law to conserve society on the idea that it belongs to human nature to desire to live in rationally organized society with other members of one's species. Hobbes, in turn, founded his idea of natural law – "the Dictate of Reason, conversant about those things which are either to be done, or omitted for the constant preservation of Life, and Members" – on the assumption that human beings seek self-preservation with a similar "compulsion of nature" as by which "a stone moves downward."⁹¹

It has been customary to assume that Pufendorf also derives his fundamental principle of natural law, the cultivation of sociality, from some predominant natural human inclination. What has caused disagreement among commentators is mainly the question of what this inclination is. According to a more traditional view, Pufendorf gathers

90 OHC Prefatio: "Homini enim, qualis intio a Deo conditus erat, sufficebat simpliciter injunxisse, ut proximum suum diligeret; ad quod natura proclivis erat."

91 *De cive* 1.7., 2.1.

the fundamental principle straightforwardly from a natural tendency to sociality. A number of recent scholars, on the other hand, have maintained that the starting point of Pufendorf's theory is the instinct for self-preservation, and that the requirement of sociality is derived from the central role it plays in the maintenance of personal safety and survival.⁹²

It seems to me, however, that Pufendorf's theory is more intimately connected to his Lutheran background than what has hitherto been thought to have been the case. By this I do not mean, of course, that Pufendorf's theory of natural law would be somehow directly dependent on the Lutheran confession. Pufendorf obviously wants to present a strictly non-confessional moral theory founded solely on natural reason. What I maintain, however, is that Pufendorf's understanding of moral law, human nature, and the relationship between these two relies strongly on a Lutheran world-view. This means not only that he sees natural law as a rule God has ordered on all human species in order to govern their external behaviour in worldly life. Pufendorf also thinks that human reason, even when it is unaware of the divine revelation, is able to comprehend that human beings are predominantly disinclined to obey God's will. This means, in turn, that no natural proclivity, not even the instinct for self-preservation, can be regarded as a sign of the manner God wants human beings to behave. In other words, unlike Grotius and Hobbes, Pufendorf rejects not only the Aristotelian conception of human nature but also the idea of the correspondence between natural law and predominant natural inclinations. What offers him the starting point for the discipline of natural law is the idea that since God has created the human species and equipped it with exceptional intellectual abilities, it is obvious that God wants the human species to survive and to advance their well-being by using their unique capabilities. Observations concerning the predominant human inclinations – like the strong desire for self-preservation – become significant to him when he tries to prove the concrete content of the rules which are needed for achieving this end.

Before turning to the argument by which Pufendorf deduces the fundamental principle of natural law it should be noted that the interpretation I have outlined above is fully compatible with Pufendorf's account of the history of his discipline. If one holds evident that natural law consists of rules needed for maintaining peaceful social coexistence between corrupt human individuals, it is

92 See below pp.65–66.

small wonder that one finds Aristotle's ethical theory and the various doctrines of natural law built up on it to be deeply unsatisfactory. As is well known, the principal subject-matter in Aristotelian theory were the dispositions which characterize a truly excellent human being. When even Aristotle himself admitted that in reality most people do not possess these dispositions,⁹³ it is hardly surprising that in Pufendorf's eyes Aristotle had exceptionally little to offer to the study of natural law. What Aristotle had presented was a culture-bound opinion of the personal characteristics an ideal Greek citizen ought to possess. And descriptions of such local preferences contribute scarcely anything to a discipline which is interested in defining the rules and institutions without which real, irreparably wicked human beings are unable to maintain peaceful social coexistence.

52

The esteem Pufendorf shows towards Roman Stoics such as Seneca and Aurelius follows, then, from the value these writers gave to the benefits following from peaceful social interaction.⁹⁴ Grotius' position as the founder of the discipline of natural law, on the other hand, is due to the fact that he was the first who restricted natural law to the necessities of an ordered social life and made these an independent object of study. Compared to this achievement the fact that Grotius presented erroneous views concerning the normative character of natural law is of minor significance. Similarly, that Hobbes can be regarded as a contributor to the study of natural law follows from the fact that he also identified natural law by and large with the concrete requirements of tranquil social life. This idea was manifested most clearly at the beginning of *De cive*, where Hobbes declared that the aim of his work is to define "what are the conditions of society, or of human peace; that is to say (changing the words only), what are the fundamental *laws of nature*."⁹⁵ Hobbes' special merits were the many insights he offered into the behaviour of corrupted human beings and especially the method by which he showed how vital sovereign civil power is for peaceful social life. One of his errors, on the other hand, was his attempt to derive natural law from the instinct for self-preservation, an undertaking Pufendorf wholeheartedly rejects, as we shall see shortly.

.....
93 On one occasion Aristotle even remarks that "the mass of mankind are evidently quite slavish in their tastes, preferring a life suitable for beasts." NE 1095b14-20.

94 See the citations in *JNG* II.3.15.

95 *De Cive* 1.1. The original latin version goes: "... quae sint societatis sive pacis humane conditiones, hoc est, mutato tantum nomine, quae sint natuare leges fundamentales, ..."

Part Two

The Theoretical Justification of Natural Law

Above I argued that Pufendorf not only sees natural law as a command of God but also holds that because of the corrupt character of human nature the manner in which God wants human beings to behave cannot be derived from the inclinations which govern human behaviour. In what follows my aim is to show that this assumption is presupposed in the argument by which Pufendorf derives the fundamental principle of natural law. I will start with an excursion into Pufendorf's views concerning the study of natural law as a scientific discipline. My purpose here is not to offer a comprehensive account on this issue but merely to make understandable Pufendorf's preoccupation with the idea that the scientific presentation of natural law must take as its starting point one fundamental normative principle. In the second chapter I will deal with the central difficulties related to the view that Pufendorf derives this principle from the desire for self-preservation or self-interest in general. I will then examine those passages in which Pufendorf explicitly rejects the idea that one can derive natural law from natural human inclinations. In the fourth chapter I will show that already in the early *Elementa* Pufendorf founded, albeit in a somewhat confusing way, natural law on the idea that God wants human beings to live in a distinctively human way. Finally, I will defend a thesis that the same presupposition lies behind the deduction of the fundamental principle in *De jure naturae et gentium*.

THE SCIENTIFIC PRESENTATION OF NATURAL LAW

54

Following the traditional Aristotelian practice, Pufendorf uses the word “*scientia*” in two different senses. In the stricter sense of the term, science is indubitable knowledge of the permanent features of the universe. It is “certain and clear knowledge which is constant everywhere and at all times.” Such a knowledge is attained by demonstrations. A proposition is demonstrated when it can be gathered by a syllogistic deduction from premises which fulfil two conditions. First, they must either “require no further proof, but merit belief upon their own evidence”, or be reducible back to such self-evident verities. Second, the premises must declare a necessary (i.e. a permanent) relationship between the predicate and the subject-term of the demonstrated proposition.¹ Besides this strict sense Pufendorf uses the word “*scientia*” also as a synonym for the word “*disciplina*”. This refers to an organized body of knowledge concerning some particular topic such as mathematics, medicine, or politics. In this sense of the word science does not necessarily consists of demonstrable truths, but can equally well be an ordered collection of knowledge which does not possess such certainty and necessity.

A distinctive feature in Pufendorf’s thinking is his conviction that we can have truly demonstrative knowledge of natural law.² By claiming this he opposed not only sceptical humanists like Montaigne and Charron, who denied the possibility of all certain knowledge, but also the great majority of contemporary scholars who held that while demonstrative certainty is indeed possible in some other fields of study, ethics and politics can be termed sciences only in the looser sense of the word. In seventeenth century Germany this idea of the

.....
1 *JNG* I.2.3: “Scientia est illud, quod per demonstrationem quaerimus, id est, cognitio certa, liquida, undiquaque et perpetuo sibi constans.” I.2.2: “Demonstrare igitur nobis est, rerum propositarum certitudinem necessariam e certis principiis tanquam suis causis indubitato cognoscendam syllogistice deducere.” I.2.3: “Easdem quoque oportet esse primas, idque ut vel ulterior probatione non indigeant, sed ipsa sui evidentia fidem mereantur; vel ut demum ultimo ad aliquam primam veritatem reduci queant. ... Causae denique conclusionis ideo sunt, quod rationem contineant, quare in propositione demonstrabili praedicatum subjecto necessario competat.”

2 The idea that we have demonstrative knowledge of morality was of course not totally unprecedented in the seventeenth century. In *De homine*, (ch.10) Hobbes had maintained that knowledge of right and wrong can be demonstrated *a priori*, because human beings themselves have created the criteria of right and wrong, namely laws and contracts. This idea is rejected by Pufendorf, who holds that the principles of right and wrong were imposed by God (*JNG* I.2.4).

non-demonstrable character of moral knowledge was often justified by the somewhat curious idea that the objects of scientific knowledge must be somehow necessarily existing entities. One obvious source for this view was the Italian philosopher Jacopo Zabarella (1533–1589), one of the most distinguished late-Renaissance Aristotelians, whose *Opera logica* had a considerably influence on the formation of the seventeenth century German school-philosophy.³ Zabarella's view on this issue was based on a remark Aristotle makes in the sixth book of *Nicomachean Ethics*, according to which, the object of demonstrative knowledge is necessary and eternal.⁴ This Zabarella understood to mean that demonstrative knowledge is possible only of natural entities which either have always existed or come into existence through those necessary and eternal causes which operate in nature. From this he concluded that since human acts are consequences of free human volition and therefore contingent and arbitrary, they cannot be objects of demonstrative knowledge.⁵

Pufendorf does not deny the idea that the objects of scientific knowledge are necessary and eternal. On the contrary, he refers approvingly to the very same passage in *Nicomachean Ethics* by which Zabarella justified his position.⁶ However, unlike Zabarella, Pufendorf finds no reason to conclude that demonstrative knowledge is possible only of necessarily existing entities. The source of this erroneous belief is, according to him, the common saying that the subject of a demonstrative syllogism must be necessary. From this it has been concluded that in a demonstrative syllogism the subject term must refer to a necessarily existing entity. According to Pufendorf, the subject of the demonstration is not, however, the subject term of the conclusion but the demonstrated proposition as a whole. It makes no difference, therefore, whether the subject term refers to a necessarily existing or contingent entity. What is crucial is that the predicate of the demonstrated proposition belongs necessarily to the entity referred to by the subject term.⁷ Thus, the fact that human acts are contingent

3 On Zabarella's influence on the formation of German Aristotelism, see Petersen 1921, especially pp.195–218.

4 *Nicomachean Ethics* VI.3. 1139b19–24.

5 On Zabarella's conception of science, see Mikkeli 1992, pp.25–35.

6 *JNG* I.2.3.

7 *JNG* I.2.2: "Origo erroris inde potissimum promanavit, quod cum *subjectum demonstrationis* necessarium esse debere dicatur, id illi hoc modo sint interpretati, quod in syllogismo demonstrativo *subjectum conclusionis*, praedicato contradistinctum, debeat esse ens necessario existens. ... Enimvero *subjectum demonstrationis* non est simplex aliquis terminus, sed integra enunciatio, cujus necessaria veritas ex certis principiis syllogistice deducitur. Ubi quidem parum interest, an *subjectum propositionis* demonstrabilis necessario existat, vel non; sed sufficit, si posita ejus existentia certae ipsi affectiones necessario competant, easque eidem competere ex indubiis principiis ostendi queat."

entities arising from free decisions does not prevent them from being the subject-matter of demonstrative knowledge.

There was also another, far more generally shared argument by which the non-demonstrative character of moral knowledge was justified in the seventeenth century. This did not rely on the metaphysical status of human acts but on the irregularity which characterizes human affairs. The *locus classicus* for this view was the much quoted passage in the first book of *Nicomachean Ethics*. There Aristotle remarked that things studied in the science of politics (which included ethics) exhibit variety and fluctuation. As an example he mentioned wealth and courage, which are usually beneficial for human happiness, but which have nonetheless proved destructive for many individuals. From this Aristotle gathered that when we speak of issues like this the truth must be indicated roughly and in outline. And if the premises are true only in most cases, we must accept that the conclusions are no better.⁸

56

Whether Aristotle meant by these remarks that ethics and politics as disciplines (as distinct from practical wisdom, which is concerned with proper behavior in particular situations) include no demonstrative knowledge is an open question. For in *Analytica posteriora* he said that inferences in which the premises and conclusions are true only in most cases can be called demonstrative.⁹ However, in the seventeenth century it was customary to think that science consists of propositions which are always true, wherefore the irregularities in human affairs make truly scientific knowledge unattainable in moral issues. Such a view was a commonplace in humanist ethical and political literature, where it was associated principally with the impossibility of predicting the result of human acts. It was also shared, at least to some extent, by Grotius, who in *De iure belli ac pacis* remarked that Aristotle had been right in holding that certainty cannot be found in moral question to the same degree as in mathematical science, because in human affairs the smallest changes in circumstances can alter the outcome of one's behavior.¹⁰

As we saw above, Pufendorf by no means contests the idea that science consists of propositions which are always true. Nor does he deny that in so far as we are concerned with the maximization of personal or communal well-being the effects of our acts are always uncertain. Hence, he is ready to admit that our estimations concerning the most beneficial manner of behaving can never possess

8 *Nicomachean Ethics* 1094b 14–23.

9 *Analytica posteriora* 1.30. 87b19–27, 2.12. 96a8–19.

10 *IBP* II.23.1.

demonstrative certainty.¹¹ Correspondingly, the information given in moral and political literature which is concerned with “the successful management of one’s own actions and those of others, with an eye to the security and utility primarily of the public,”¹² does not constitute a science in the strict sense of the term. It is based on “axioms drawn by a dexterous observation and collection of the customs of men and the events of human history.” Because of the endless variety of human dispositions, and because the smallest things can change radically the outcome in human affairs, axioms of this kind cannot have the firmness required for infallible demonstrations.¹³

The situation is, however, quite different in the discipline of natural law. For the aim of this field of study is not to give instructions in the maximization of personal or communal well-being, but to define rules of behavior which human beings must observe in order to maintain peaceful social life. In other words, the discipline of natural law is concerned with human acts only in so far as they have a tendency either to sustain tranquil coexistence between human beings or to provoke turmoil among them. And Pufendorf holds that in this respect a considerable number of human acts have effects which are totally necessary.¹⁴ Therefore, the discipline of natural law “rests on a

-
- 11 In *JNG* I.2.4 Pufendorf identifies such estimations with practical wisdom as this was defined by Aristotle in *Nicomachean ethics* (*NE* VI.5. 1140b4–5): “A true and reasoned state of capacity to act with regard to the things which are good or bad for man.” He also cites approvingly Aristotle’s definition of a prudent human being as someone who is able to “see what is good for themselves and good for men in general.” (1140b9–10) In reality there is a considerably difference between Pufendorf’s idea of *prudentia* and Aristotle’s conception of practical wisdom. The latter was concerned with actions in which the reason why the act is executed is not distinct from the activity itself, because the act as such is a constituent in good human life. (1140b6–7, 114a6–36) For Pufendorf, on the other hand, *prudentia* is only an ability to form intelligent calculations concerning the means by which individual or communal security and prosperity can be most effectively ensured in concrete situations.
 - 12 *JNG* I.2.4: “...; non leve tamen discrimen intra duas illarum preecipuas licet deprehendere, quarum una versatur circa rectitudinem actionum humanarum in ordine ad leges, altera circa dextram gubernationem actionum suarum et alienarum, ad securitatem et utilitatem potissimum publicam.”
 - 13 *JNG* I.2.4: “Atque haec sua dogmata superstruit axiomatibus formati ex dextra morum humanorum atque eventuum in rebus humanis observatione et collatione. Ista tamen axiomata tam firma esse non videntur, ut inde demonstrationes indubiae deduci queant, propter insignem lubricitatem, et inconstantiam, quae subinde in hominum ingeniiis occurrit; et quod eventus rerum saepenumero levi momento impulsu in diversum cadant.”
 - 14 *JNG* I.2.5: “Et si vel maxime actiones humane ideo morales dicantur, quod sint non necessariae, sed liberae; ex eo tamen non consequitur, positis certis principiis non posse competere illis actionibus ejusmodi affectiones, quae de iis indubio possint demonstrari. Sane enim constat, actus, de quibus naturali lege disponitur, intrinsecam habere vim ad socialitatem; etsi ut isti actu existant, libera hominum voluntas efficiat.”

foundation from which one can deduce genuine demonstrations, which are capable of producing a solid science.”¹⁵

The foregoing explains why demonstrative knowledge of natural law is in principle possible. It does not, however, tell us why Pufendorf does not simply present the various rules needed in peaceful social life but is so preoccupied with defining what he calls the fundamental principle of natural law. An answer to this can be found from his views concerning the character of scientific presentation and the premises on which the demonstrative account of natural law must be grounded.

Pufendorf contemplates these issues above all in a letter he sent in 1663 to Baron Boineburg, who had requested him to write a major study on natural law.¹⁶ In this letter Pufendorf remarks that there are two proper structures for scientific disciplines. The first is that used by mathematicians “who love to deduce a great number of conclusions from a few principles.” The second is that utilized by those who study natural phenomena. In the latter case one makes general conclusions by observing and collecting numerous individual instances. This can be called the inductive method, although Pufendorf does not use the expression in this context.¹⁷

Pufendorf writes to Boineburg that many have urged him to use the latter method in the presentation of natural law. In practice this would mean that one first investigates what all individual nations have regarded as just. Then one declares as natural law those principles that all nations have in common.¹⁸ The model for such a procedure had been offered by Grotius, who in *De iure belli ac pacis* distinguished two possible ways of proving that some rule or other belongs to natural law. The first method, which Grotius characterized as *a priori*,

15 JNG I.2.4: “Ast illa disciplina, quae considerat, quid in actionibus humanis sit rectum et pravum, et cujus praecipuam partem nos jam tradere instituimus, omnino ejusmodi fundamentis nititur, ut exinde genuinae demonstrationes, quae solidam scientiam parere sint aptae, deduci queant.”

16 A modern edition of these letters can be found in Fiammetta Palladini “Le due lettere di Pufendorf al barone Boineburg: Quella nota e quella perduta.” *Nouvelles de la Republique des lettres*, 1984, 1, pp.119–144.

17 First letter to Boineburg, lines 140–146: “Mea sententia duae haec dantur viae, quarum alteram secuti deprehenduntur qui disciplinas in iustam formam redegerunt. Unam secuti sunt potissimum mathematici, qui ex paucis principiis immensam vim conclusionem elicere amant; alteram ingressi sunt, quibus res naturales investigare cordi fuit, scilicet ut ex observatione et collatione plurium singularium tandem aliquod generale concluderent decretum.

18 First letter to Boineburg, lines 146–150: “Posteriorem hanc viam in hac quoque materia insistendum esse nonnulli me admonuerunt; colligendum esse nimirum quid apud singulas gentes iustum habentur, et in quod omnes et singulae consentiant, id demum pro iure universali declarandum.”

consisted of showing that the rule in question is in necessary agreement with the rational and social nature of human beings. The other, a *posteriori* proof entailed, on the other hand, showing that all or, at least, all civilized nations have believed that the principle in question is a part of natural law. Grotius admitted that this kind of proof does not give us the same absolute certainty than the *a priori* method does. Nevertheless, he maintained that if some rule can be shown to be generally seen as a part of natural law, this makes it most probable that the precepts actually belong to natural law.¹⁹ If numerous human beings in different places and different times affirm the same principle, there must be some universal reason for doing so. And in questions concerning human conduct the reason cannot be anything other than a common agreement between nations or a right conclusion based on the principles of nature; the former indicates the law of nations and the latter natural law. Grotius admitted, however, that most writers have confused the terms “the law of nations” and “natural law”. Therefore, the distinction between these two cannot be drawn from the authors themselves. If there is some generally prevailing view which cannot be deduced from certain principles, it must be included among the laws of nations.²⁰ This, of course, left the status of the *a posteriori* method as a means of proving natural law rather unclear. For it indicated that while using this method one must already know whether the rule in question can be proved by the *a priori* method.

That Pufendorf finds Grotius’ *a posteriori*-method worthy of serious consideration follows from his assumption that natural law consists of rules which are necessary for the maintenance of peaceful social life. It is, therefore, not unreasonable to presume that at least the most important of these precepts have been somehow recognized and observed in every existing society. However, both in his letter to

19 *IBP* I.1.12: “Esse autem aliquid juris naturalis probari solet tum ab eo quod primus est, tum ab eo quod posterius, quarum probandi rationum illa subtilior est, haec popularior. A priori, si ostendatur rei alicujus convenientia aut disconvenientia necessaria cum natura rationali ac sociali: a posteriori vero, si non certissima fide, certe probabiliter admodum, juris naturalis esse colligitur id quod apud omnes gentes, aut moratiores omnes tale esse creditur.”

20 *IBP* Prolegomena (§ 40): “Usus sum etiam ad juris hujus probationem testimoniis philosophorum, historicorum, poetarum, postremo oratorum: a posteriori vero, si non indiscrete credendum sit, solent enim sectae, argumento, causae servire. Sed quod ubi multi diversis temporibus ac locis idem pro certo affirmant, id ad causam universalem referri debeat: quae in nostris questionibus alia esse non potest, quam aut recta illatio ex naturae principii procedens, aut communis aliquis consensus. Illa jus natuare indicat, hic jus gentium: quorum discrimen non quidem ex ipsi testimoniis (passim enim scriptores voces juris naturae et gentium permiscunt) sed ex materiae qualitate intelligendum est.”

Boineburg and later in *De jure naturae et gentium* Pufendorf presents several reasons for thinking that the inductive method is not able to offer premises which make possible a truly demonstrative presentation of natural law.

In the first place, Pufendorf agrees with the critique Hobbes had directed against the idea that natural law could be proved by referring either to the consent of the whole of mankind or to the agreement of the most wise and learned nations. Hobbes' argument against the former view was the simple observation that in practice human beings often follow most various and even contradictory moral convictions. The problem with the latter view, on the other hand, was that it left undetermined "who shall be the judge of the wisdom and learning of all nations."²¹ Similarly, Pufendorf remarks that it is difficult to find even one single precept which would have been universally accepted in all times.²² This problem cannot be solved by excluding the barbaric nations and concentrating on the civilized ones, as Grotius had proposed. For no nation "with enough judgement to preserve its existence" is ready to admit that it is barbaric.²³ And the things which Europeans usually regard as the criteria of civilization – higher learning and a sophisticated way of living – do not divide nations into those who observe natural law and those who disobey it. There are nations which follow natural law although they have no literary culture, whereas "learning is not always accompanied by good manners." Correspondingly, nations with a highly sophisticated life style are often surpassed in the incorruption of manners by those which are content with a more simple way of living.²⁴

Besides the problems following from the variety of moral convictions there are also unsurpassable epistemological difficulties in the inductive method. In the first place, there is the necessarily limited character of human knowledge: "For who knows the language of all people both ancient and modern, not to mention their customs and

.....
21 *De cive* 2.1.

22 *JNG* II.3.8. By claiming this Pufendorf does not contradict the assumption that the principles of natural law have governed the majority of human activities at all times. What he has in mind is that there is hardly any single moral rule which would have prevailed in every human society.

23 *JNG* II.3.7.

24 *JNG* II.3.7: "Nec desunt, qui literas, quibus non excolendis tantam operam impedimus, cavillantur, velut subsidium nostrae hebetudinis; cum quorundam aliorum ingenia, citra cultum literarum, naturali bonitate entescant; ad bonam mentem paucis opus sit literis. Neque semper literae bonos mores sortiuntur comites. Sed quaedam nationes operoso adparatu inanium aut superfluarum rerum vehementer sibi placent, despectis iis, quibus simplicior vita degitur. Atque saepe apud hos, quam illos, major morum innocentia."

institutions?”²⁵ And even in the case of the well-known nations problems are caused by the fact that these are governed not only by the law of nature but also by customs and positive laws. For this reason it is not always easy to decide what exactly are the rules which some particular nation includes in natural law. Furthermore, when some custom or positive law has been long established people easily start to regard it as a law of nature.²⁶ As a result, they often include among the laws of nature principles which are not absolutely necessary for human society.²⁷

Hence, no summary of the rules which different nations include in natural law can give us premises which would “merit belief upon their own evidence” and could so be used as the starting point of a demonstrative account of natural law. This is, in Pufendorf’s eyes, a sufficient reason for concluding that the scientific presentation of natural law must follow the procedure used by mathematicians. In practice, however, the structure of his presentation of natural law differs in two ways from that of the mathematical sciences.

First, whereas in mathematical sciences there are several equally important axioms, the discipline of natural law is established on one fundamental principle “which no sane person can question and from which everything which is universal and constant in justice can be deduced.”²⁸ Of course, by this Pufendorf does not mean that natural law could be deduced from this one principle alone without any further knowledge. What he has in mind is that the scientific presentation of natural law must be grounded on one normative principle. Besides this, we have numerous descriptive observations concerning the nature and the condition of the human species, by which we can show what particular precepts are needed in order to fulfil the general requirement declared in the fundamental normative principle. Pufendorf never explains why the number of the fundamental normative principles

25 JNG II.3.7.

26 JNG II.3.9: “Sed aliud incommodum committatur sententiam illam de eruendo jure naturali ex moribus gentium; quod nulla videatur inveniri natio, quae nudo jure naturae regatur; sed quaelibet leges scriptas aut non scriptas eidem habeat superadditas, quibus utitur, quando ipsi cives inter se negotii quid habent. ... Unde non ita facile est perspicere, quid illae nationes pro naturali, quid pro positivo et civili jure habuerint. Quid quod saepe inolita diu consuetudo naturalis rationis faciem mentitur?”

27 First letter to Boineburg, lines 178–180: “Inde haud absurde quis inferat, multas leges quae nobis tanquam per naturam traditae habentur, ad societatem humanam ita absolute non esse necessarias.”

28 First letter to Boineburg, lines 190–193: “Reiecta itaque hac methodo ego mathematicos potissimum heic sequendos censuerim, scilicet ut immotum aliquod principium et quod nemo sanus in dubium vocare ausit constituatur, ex quo quicquid perpetui et universalis sit juris deducatur.”

must be limited to one. It can be assumed, however, that he sees the existence of two or more such principles as a weakness in a science which deals with the rules of human conduct. For this would leave open the question which one of the principles ought to be followed in case they happen to contradict each other.²⁹

Another feature which distinguishes the presentation of natural law from mathematical sciences is the epistemological status of the fundamental normative principle. In mathematical sciences the axioms are analytical truths the validity of which is neither necessary nor possible to justify by some more evident truths. Thus, they most clearly belong to those principles which “require no further proof, but merit belief upon their own evidence”. And as we saw above, Pufendorf holds that the discipline of natural law must and can also be based on such first verities. Nevertheless, although he often insists that the truth of his fundamental principle is something which no sane person can deny, he does not claim that it would be immediately self-evident. The fundamental principle of sociality is a proposition the truth of which is “grounded on manifest and certain demonstrations.”³⁰ And the first task of the discipline of natural law is to deduce the fundamental principle itself from some even more evident truths.

62

THE PROBLEM OF THE FUNDAMENTAL PRINCIPLE

What, then, are those manifest verities on which Pufendorf bases the fundamental principle of natural law? It has been customary to think that an answer to this question can be found rather easily in *JNG* II.3.14–15, where Pufendorf deduces this principle.

Pufendorf opens the discussion by remarking that “there seems to us no more fitting and direct way to investigate natural law than through careful consideration of the nature, condition, and inclinations of man.”³¹ He then mentions four inherent human features which are significant in this respect. The first one is the tendency of each human

29 In the early *Elementa* Pufendorf names two fundamental principles of natural law. But as we shall see in chapter 2.3., he actually derives these two from one, even more fundamental, precept.

30 *Eris scandica*, p.187 (*Specimen controversiarum* IV.1): “...: sed eius [principii fundamentalis] veritas et existentia manifestis et certis demonstrationibus utique subnitatur.”

31 *JNG* II.3.14: “Nobis nulla via proprior videtur, et magis adposita, ad investigandum jus naturalae, quam ipsam hominis naturam, conditionemque, et inclinationes accuratius contemplari.”

being “to love most of all himself, to preserve himself by all possible means, and always to seek that which he sees as good for himself, and to avoid what he sees as bad.”³² The second is the inborn weakness (*imbecillitas*) which makes the survival and well-being of human beings dependent on the assistance they receive from other people. The third is the ability of human beings not only to survive, but also to increase their well-being considerably by the mutual exchange of goods and services. The fourth significant feature is the fact that human beings are able, and often willing, to inflict great harm and injury on other members of their species, either because of their corrupted desires, or because they are forced to defend themselves against the injuries of others.

From these human characteristics Pufendorf deduces the fundamental principle by the following argument (the passage is from the original 1672 edition):

63

After the preceding remarks it is easy to discover the fundamental law of nature. It is clear that man is an animal most desirous of his own preservation, in himself exposed to want, unable to exist without the help of his fellow-creatures, most fitted to advance the mutual good, and yet at times malicious, petulant, and easily irritated, as well as ready and well able to do injury. For such an animal to be safe it is necessary that he be sociable [*sociabile*], that is, be willing to join himself with others like him, and conduct himself towards them in a way which does not give them any cause to do him harm, but rather gives them a reason to preserve and increase his advantage. And so the fundamental law of nature is that every man, so far as in him lies, should cultivate and conserve towards others peaceful sociality [*socialitas*]. And since he who obligates man to an end obligates him as well to the means without which the end cannot be attained, everything which necessarily makes for sociality is understood to be commanded by natural law, while all that disturbs or destroys it is understood to be forbidden.³³

32 JNG II.3.14: “Id igitur primo homo habet commune cum omnibus animantibus, queis sensus sui inest, ut seipsum quam maxime amet, seipsum studeat omnibus modis conservare, quae bona sibi videntur nitatur acquirere, mala repellere.”

33 JNG II.3.15: “Ex hisce positis facile est fundamentum legis naturalis invenire. Scilicet manifesto adparet, hominen esse animal sui conservandi studiosissimum, per se egenum, sine suisimilium auxilio servari ineptum, ad mutua commoda promovenda maxime idoneum; idem tamen saepe malitiosum, petulans, et facile irritabile, ac ad noxam inferendam promptum, ac validum. Ejusmodi animali, ut salvum sit, necessarium est, ut sit sociabile, id est, ut conjugi cum sui similibus velit et adversus illos ita gerat, ut ne isti ansam accipiant eum laedendi, sed potius rationem habeant ejusdem commoda servandi, aut promovendi. Inde fundamentalis lex naturae isthaec erit: cuilibet homini, quantum in se. colendam et conservandam esse pacificam adversus alios socialitatem. Ex quo consequitur, quia qui obligat ad finem, simul obligare intelligitur ad media, sine quibus finis non potest obtineri; omnia, quae ad istam socialitatem necessario faciunt, jure naturali praecepta, quae eandem turbant aut abrumpunt, vetita intelligi.”

How should we understand this passage? Some commentators have suggested that Pufendorf here declares that there is in human beings a natural tendency towards a peaceful and social way of living. They have assumed, in other words, that Pufendorf deduces the duty to cultivate sociality straightforwardly from a corresponding natural inclination.³⁴ The main problem with this interpretation is that in *De jure naturae et gentium* Pufendorf makes it perfectly clear that he does not find any inherent tendency in human beings to act in a peaceful and amicable manner towards other people in general. On the contrary, he remarks repeatedly that we possess a corrupt nature, which makes us prone to violate other members of our species more than any other animal.³⁵ Human beings can be called sociable creatures only in the sense that in total solitude their life is most miserable, and that “men are so constituted as to render mutual help more than any other creature, just as no other creature can suffer more injury from man than can man himself.”³⁶

The foregoing has made several commentators think that in the passage cited above the words “*sociabile*” and “*socialitas*” do not refer to any natural human inclination but to moral imperative derived from the requirements of individual self-preservation. According to these scholars, Pufendorf bases his theory on the idea that since God has implanted in every human being an inclination which makes them put their personal well-being and preservation above everything else, it can be concluded that God also wants human beings to take care of themselves. The natural helplessness of human beings, their ability to survive by the mutual exchange of services, and their strong proclivity to hurt especially those they see as a threat to their own interests are, then, factors which make it obvious that individual human beings cannot achieve the end God has ordained for them unless they practice sociality towards other people. Hence, it can be concluded that this is how God wants each human being to behave.

A justification for this type of interpretation has been found especially in the second edition of *De jure naturae et gentium*, where Pufendorf strongly emphasizes the compatibility of sociality and rational self-interest. A case in point is the addition at the end of paragraph II.3.16:

34 Among modern commentators this view has been supported by Horst Denzer (1972, pp.93–96).

35 *JNG* II.1.6; II.3.14; *OHC* Prefatio.

36 *JNG* 1684 II.3.16: “Nam etiam ideo animal sociabile hominem diximus, quod homines mutua commoda, magis quam ullum aliorum animantium, promovere idonei sint; sicuti contra nullum animal plus commodi ab homine experiri potest, quam ipse homo.”

Reason plainly declares that he who regards his well-being and survival cannot renounce the care of others. For since our safety and happiness depend in a large part on the goodwill and assistance of others, and the nature of men is such that they desire for their good deed some like return, and when this is not forthcoming make and end of their benefactions, no sane person can propose to protect himself on the theory that he renounce the respect for all others. But, on the contrary, the more he loves himself the more he will endeavour by kindly deed to get others to love him. For no one can hope with any reason that men will want, of their own accord, to make any effort to increase the happiness of those whom they know to be malevolent, perfidious, ungrateful, and inhuman: sure one must rather believe that other men will watch their opportunity to repress and destroy such persons.³⁷

In another addition to the second edition Pufendorf points out that actions which are in conformity with the principle of sociality are not only honorable but also beneficial for the individual who commits them, i.e. "they procure some advantage and reward for a man, and contribute to his happiness." Actions repugnant to this law, on the other hand, "may at times return some utility, and more often some pleasure, which, however, never endures for long, and is followed by a throng of much greater ills."³⁸

These remarks have made a number of scholars to hold that Pufendorf bases the content of natural law on its utility to individual survival. According to Richard Tuck, Pufendorf "believed that what was right (*honestum*), was so because it was fundamentally profitable (*utile*) to an individual in need of protection from his fellow men."³⁹

37 JNG 1684 II.3.16: "Quin hoc ratio satis dictitat, quod cui salus et conservatio sua cordi est, aliorum curam abdicare non possit. Cum enim nostra incolumitas et felicitas magnam partem a benevolentia et auxilio aliorum dependeat, et vero ea sit hominum natura, ut pro benefactis paria sibi reponi velint, ubi id non sit, animum beneficiendi exuant: utique nemo sanus sui conservationem ita sibi pro scopo proponere potest, ut aliorum omnium respectum exuat. Sed potius quo magis se cum ratione amat, eo magis officiis suis ut alii ipsum ament, curabi. Postquam nemo cum ratione sperare potest, homines iis beandis libenter operam impendere velle, quos norunt in se esse malevolos, perfidos, ingratos, inhumanos: sed credendum potius sit, alios homines ad istos coercendos et extripandos esse incubituros."

38 JNG 1684 II.3.10: "Habent quippe hoc actiones legi naturali congruentes, ut non solum honestae sint, i.e. quae ad honorem, existimationem et disignatem hominis conservandam et augendam faciant, sed utiles, eadem existant, seu quae commodum aliquod et emolumentum homini concilient, et ad felicitatem ipsius conferant. ... Sed quae actiones legi naturali repugnant, semper quidem turpes sunt, aliquando tamen utilitatis quid saepius jucunditatis producere videntur, sed quae neque ad diuturnitatem valet, et quam longe majorum moles malorum a tergo sequitur."

39 Tuck 1987, p.105.

Similarly, Istvan Hont sees Pufendorf's theory as a result of an "attempt to reconstruct Grotius' jurisprudence by applying the intellectual method of Thomas Hobbes." This means above all that Pufendorf's account of *socialitas* is "build firmly on the notion of self-preservation."⁴⁰ Finally, Fiammetta Palladini's entire monograph *Samuel Pufendorf, discepolo di Hobbes* can be seen as a prolonged argument in favor of the same thesis.⁴¹

Now, it is obvious that Pufendorf sees a close connection between natural law and individual security and well-being. However, several passages in *De jure naturae et gentium* seem to speak against the view that Pufendorf derives the fundamental principle of natural law from the requirements of individual self-preservation. First of all, Pufendorf explicitly denies this idea. This happens in *JNG* II.3.16 - immediately after the deduction of the fundamental principle - when he comments on Hobbes' method of deducing natural law from the requirements of self-preservation.⁴² Pufendorf is ready to admit that Hobbes' procedure shows "how conducive it is for the safety of man that human beings live according to such dictates of reason."⁴³ However, Hobbes method cannot be used to demonstrate natural law:

It cannot be concluded straight away that man has a right to use such dictates as a means for his preservation, and that therefore he is also bound to observe them as by some law. If these dictates of reason are to have the force of law, they must certainly be deduced from an entirely different principle.⁴⁴

40 Hont 1987, p.253, 267.

41 Palladini 1991. Especially chapter two in *Parte prima*.

42 In *De cive* Hobbes derived natural law from the observation that all human beings regard death as the greatest of all evils. This is something everyone avoids by a similar "necessity of nature" which makes a stone move downwards. (1.7.) On this basis Hobbes defined natural law as "the dictate of right reason conversant about those things which are either to be done or omitted for the constant preservation of life and members, as much as in us lies." (2.1.) He then derived the fundamental principle of natural law from the famous claim that the natural state of humankind is that of war. The first principle of this law was "that peace is to be sought after, where it may be found; and where not, there to provide ourselves for helps of war." (2.2.) From this Hobbes derived twenty precepts of natural law, the most important of which was the requirement to stop the war of all against all by creating a civil power.

43 *JNG* II.3.16: "Quod autem ex sola propriae salutis curae Hobbesius leges naturales sat argute deduxit; circa eam demonstrationem initio est notandum; id quidem liquido ex illa constare, saluti hominum expedire, ut ab hominibus juxta ista rationis dictamina vita agatur."

44 *JNG* II.3.16: "Non tamen statim ita concludi posse; jus est homini ista media ad sui conservationem adhibere; ergo ad eadem observanda velut ex lege aliqua tenetur: Inde ut illa rationis dictamina vim legum accipiant, omnino ex alio principio est deducendum."

This does not only mean that in order to be truly laws the dictates of reason must be seen as commands of God – a point Pufendorf makes a little later in paragraph II.3.20. Also, the content of these dictates must be deduced by a different principle.

In order to illustrate the unacceptable character of Hobbes' method, Pufendorf asks his readers to imagine a nation which is so powerful that it can do whatever it wants to the neighboring countries without having to fear their revenge. He points out that if the citizens of this country respected peace and justice in their internal affairs, but simultaneously "harried, plundered, killed, and dragged others into slavery, just as they felt it to be their profit," we would most certainly say that they infringe natural law. Nevertheless, these people would be perfectly able to preserve themselves.⁴⁵

The judgement by which we condemn the nation described above follows, according to Pufendorf, from the fact that natural law wants us to consider also such human beings as our kinsmen and equals who have nothing good nor bad to offer us, or from whom we have nothing to gain or fear for. He remarks that this reason alone, even if there were no others, should make the human species cultivate friendly social relations.⁴⁶ The same point is stated even more strongly in an addition Pufendorf made to paragraph II.3.18 in the second edition of *De jure naturae et gentium*. Here he emphasizes that although a friendly attitude towards others is most often beneficial for our own interests, as a command of natural law it must be deduced not from such prudential considerations, but from common humanity:

Although by the wisdom of the Creator the natural law has been so adapted to the nature of man, that its observance is always connected with the profit and advantage of men, and therefore also this general friendship tends to man's greatest good, yet, in giving a reason for this fact, one does not refer to the advantage acquiring therefrom, but to the common nature of all men. For instance, if a reason must be given why a man should not injure another, you do

45 *JNG* II.3.16: "Unde si foret populus aliquis, internam inter se pacem et justitiam colens, tantisque pollens viribus, ut reliquis omnibus queat esse formidabilis; adeoque ab aliis laedendis hautquidquam isto metu reprimatur, ne fors sua in ipsum exempla redicant: is tamen populus in alios imbecilliores pro lubitu grassaretur, ageret, raperet, occideret, in servitum abstraheret alios, prout sibi expedire judicaret, utique ab hoc directe jus naturae violari dicemus. Et poterat tamen iste, (quod supponimus) se conservare, etiamsi nullum fors jus adversus alios adhiberet."

46 *JNG* II.3.16: "Immo si vel maxime ab aliquo neque boni quid, neque mali in me proficisci possit, nihilque, in se is habeat, quod vel metuam, vel desiderem; tamen hunc tantum cognatum et aequalem haberi natura vult. Quae etiam sola ratio, si caeterae deficerent, ad amicam societatem collendam humano generi sufficit."

not say, because it is to his utility, although in fact it is most advantageous, but because the other person also is a man, that is, an animal related by nature, whom it is a crime to injure.⁴⁷

The second edition of *De jure naturae et gentium* includes also another remark which contradicts with the view that Pufendorf derives natural law from the requirements of individual self-preservation. This is the addition at the end of paragraph II.3.14, in which Pufendorf defends his decision to give “in the investigation of the human condition the first place to man’s self-love”. He emphasizes that by doing so he does not mean that “man should under all circumstances prefer only himself before all others or measure everything by his own advantage, distinguishing this from the utility of others, and setting it forth as his highest goal.” There are, however, two reasons which speak strongly in favour of his decision. First, human beings are so formed by nature that they necessarily think of their own advantage before the well-being of others.⁴⁸ Second, a moderate self-interest is in fact necessary for the attainment of the end of natural law:

68

Furthermore, it is no one’s business so much as my own to look out for myself. For although we hold before ourselves as our goal the common good, still, since I am also a part of the human race for the preservation of which some care is due, surely there is no one on whom the clear and special care of myself can more fittingly fall than upon my own self.⁴⁹

47 *JNG* 1684 II.3.18: “Quaquam autem per Creatoris sapientiam lex naturalis ita humanae naturae sit adaptata, ut ejus observatio semper cum utilitate et commodo hominum sit conjuncta, eoque communis ille amor hominibus maximo bono cedat; tamen in assignanda hujus ratione non ad commodum inde proveniens, sed ad communem naturam solet provocari, v.g. si ratio reddenda sit, quare homo homini nocere non debeat, non solet dici, quia id utile est, etsi revera id sit quam utilissimum; sed quia alter homo, i.e. natura cognatum animal est, cui nocere nefas.”

48 *JNG* 1684 II.3.14: “Quo loco tamen illud monendum, nos in eruenda hominis conditione amoris proprio locum assignasse, non quod quilibet seipsum solum reliquis omnibus ubique praeferre debeat, aut omnia propria utilitate metiri, eamque, quatenus ab aliorum commodo separata est, summum sibi scopum proponere. Sed quia amorem proprium naturaliter homo prius sentit, quam aliorum curam eo ipso, quod naturaliter prius est sentire sui, quam aliorum existentiam.”

49 *JNG* 1684 II.3.14: “Deinde quia ut ego mei ipsius curam habeam, ad neminem proprius, quam ad meipsum spectat. Licet enim scopum nobis praefigamus bonum commune, tamen cum ego quoque generis humani pars sim, cujus salutis aliqua etiam cura debetur, nemo sane est, cui distincta magis et specialis mei cura incumbere possit, quam mihi metipsi.”

According to this passage, the end of natural law – the purpose of its existence – is not the survival or well-being of the individual but the preservation of humankind in general. To take care of one’s personal security and well-being is in accordance with natural law only because it contributes to the achievement of this more general end.

The same idea is affirmed in Pufendorf’s discussion of the legitimacy of suicide and other self-destructive behavior in chapter II.4., entitled *The duties of man towards himself*. In the first edition of *De jure naturae et gentium* Pufendorf opens the whole chapter with the following remark:

It is apparent that man loves himself and his conservation, and puts this love above all else. But there is some doubt whether it is only the natural instinct he has in common with animals which propels him to this, or whether there is in addition to this some command of natural law.⁵⁰

69

In other words, the fact that God has installed a desire for self-preservation in human nature cannot as such be seen as proof that God also commands human beings to follow this instinct. Pufendorf continues by arguing that the duty to preserve one’s life follows from the fact that “the sociality, for which human beings were created by God, cannot be preserved and exercised to good advantage unless every man improves and preserves himself to the best of his ability.” It is this observation, not the natural desire for self-preservation, which makes it apparent that “if an individual neglects his own care, he inflicts an injury not only on himself, but on God and the human race.”⁵¹

* * *

Does the foregoing mean that there is a genuine inconsistency at the heart of Pufendorf’s theory of natural law? Does he fail to observe that the argumentation by which he deduces the fundamental principle is

50 *JNG* II.4.1 (*JNG* 1684 II.4.16): “Hominem seipsum amare, conservationemque, et amorem sui omnia habere, manifestum est. Verum an solus ille naturalis instinctus, quem cum brutis habet communem, eum ad id propellat; an vero insuper accedat aliquod jussum legis naturalis, dubio non caret.”

51 *JNG* II.4.1 (1684 II.4.16): Sed cum ex omnium sapientum consensu Creator O.M. hominem condiderit, ut ipsi inserviat, excultisque bonis, ab ipso sibi concessis, ejusdem gloriam redderet illustrarem, cumque socialitas, ad quam homo conditus est, exerceri commode et servari nequit, ni quilibet seipsum quantum in se, excolat, et servet; adparet abjecta plane sui cura hominem non sibi quidem, sed Deo creatori, sed generi humano facere injuriam.”

incompatible with his moral intuition which suggests that the end of the law which God has imposed on human beings must be something more general than individual survival? Or does he actually support some sort of Hobbes-inspired conception of natural law but find this too controversial to be presented without some more conventional remarks to soften its more disturbing consequences? Or are there some unstated presuppositions which make these two seemingly irreconcilable accounts of natural law ultimately compatible with each other?

70

Two commentators have suggested that in *De jure naturae et gentium* Pufendorf presents two incompatible accounts of natural law, and that only one of them represents his true position. According to Hans Welzel, in *JNG* II.3.15 Pufendorf attempts to demonstrate natural law in a “naturalistic” fashion starting from the instinct for self-preservation, but leaves unexplained how self-preservation itself receives its normative status (Welzel neglects the deontological character of Pufendorf’s moral theory). The attempt fails conclusively when Pufendorf comes to the question of suicide and is forced to admit that the requirement to preserve one’s life must be deduced from the principle of sociality. However, paragraphs II.3.16–18, in which the general friendship between people is based on common humanity, show that Pufendorf was aware of the limitations of the naturalistic method right from the beginning. Seeing Pufendorf as a predecessor of eighteenth-century German moral philosophy Welzel interprets these remarks to mean that the ultimate criteria of natural law is the value of human nature (*Würde der menschlichen Natur*) which requires one “to respect the humanity in every person”.⁵²

Fiammetta Palladini has offered what might be characterized as an inverted version of the interpretation given by Welzel. According to Palladini, Pufendorf’s conscious intention in the first edition of *De jure naturae et gentium* was to follow Hobbes in deducing natural law from the requirements of self-preservation. However, because of the highly controversial character such an enterprise had in the seventeenth century, Pufendorf felt himself forced to soften the most disturbing consequences of such a manner of deducing natural law. With this end in mind, he added the idea of general friendship which nature requires from us towards every human being. And when he justified this with the example of the evil but unbeatable nation, he appealed to commonly shared moral intuitions instead of demonstrable certainties. Palladini points out how these remarks in

52 Hans Welzel 1958 *Der Naturrechtslehre Samuel Pufendorfs. Ein Beitragezur Ideengesichte des 17. und. 18. Jahrhunderts.* Berlin 1958. pp.43–47.

JNG II.3.16–18 were only slightly altered quotations from the early *Elementorum juresprudentiae universalis*, where Pufendorf still followed (according to Palladini) Grotius in founding natural law on a natural inclination to social life. While being comprehensible in this earlier work, the remarks became misleading in *De jure naturae et gentium*, where Pufendorf did not anymore regard sociality as a natural inclination, but as a moral imperative deduced from the requirements of self-preservation.⁵³ The initial idea was even more seriously distorted in the second edition of *De jure naturae et gentium*, since the severe criticism directed against his work made Pufendorf distinguish himself from Hobbes by remarks which were inspired by Richard Cumberland's openly anti-Hobbesian *De legibus naturae*.⁵⁴

A third solution to the problem presented above has been offered by J.B.Schneewind, who holds that in *JNG* II.3.15 Pufendorf does not follow Hobbes in deducing the fundamental principle from the desire for self-preservation, but only regards human self-love as “an important fact about us to be considered in deriving natural law.”⁵⁵ The starting point of Pufendorf's theory is idea that God is good and benevolent. From this he concludes that “at least the main features of things of each kind were created for some good purpose”, and that “those features can be used to indicate how God meant things of that kind to behave or operate.” This means, in turn, that the manner in which God wants human beings to behave can be known by examining what special features God has given them. These are their intellectual abilities, their self-love and strong desire for self-preservation, their inherent weakness, and their ability to help one another. According to Schneewind, Pufendorf thinks that we discover the fundamental principle of natural law, when we “consider these features together, and ask how they can best work for the advantage of human, which is how God must have meant them to work.” The fundamental duty to cultivate sociality follows, then, from the observation that these human characteristics “work for our advantage when we live socially, in mutually helpful groups.”⁵⁶ Schneewind thinks, in other words, that in Pufendorf's theory the principal end of natural law is not the security or well-being of an individual, but the well-being of the whole of the human species. This explains

53 Fiammetta Palladini *Samuel Pufendorf, discepolo di Hobbes. Per una reinterpretazione del giusnaturalismo moderno*. Bologna 1990, pp.193–194, 254–270.

54 Palladini 1990, p.193–194, 189–243.

55 J.B. Schneewind “Pufendorf's place in the history of ethics”, *Synthese*, 72, 1987, p.133.

56 Schneewind 1987, pp.134–135.

Pufendorf's remark that when we give a reason for the general friendship which ought prevail between human beings, we do not refer to its utility but to the common nature of all men.⁵⁷

Of the three interpretations presented above it is that of Schneewind's which, in my opinion, hits closest to the mark. I fully agree with Schneewind that Pufendorf's starting point in the deduction of natural law is the assumption that God has imposed the law on human beings in order to advance the survival and well-being of the whole of the human species. However, it seems to me that Schneewind somewhat undermines the Lutheran aspect of Pufendorf's theory. When Schneewind holds that in Pufendorf's eyes all salient human features were given "for some good purpose" and "work for the advantage of humans", he neglects the fact that Pufendorf mentions the tendency to hurt other members of one's species as one of the most significant human characteristics. Moreover, Schneewind's interpretation leaves unexplained Pufendorf's refusal to deduce the duty to preserve one's life from the instinct for self-preservation. If we assume that the manner in which God wants human beings to live can be known by contemplating the central features God had given them, it seems natural to think that the strong instinct for survival proves that God wants human beings to preserve themselves. But as we saw above, Pufendorf explicitly rejects this idea. And in what follows I will argue that his reason for doing this is the assumption that the human species is corrupt, and that no human inclination as such can, therefore, be seen as a sign of the manner in which God wants human beings to behave.

72

NATURAL LAW AND NATURAL INCLINATIONS

Pufendorf's refusal to derive the duty to preserve one's life from the instinct for survival is not an isolated slip of the tongue. On the contrary, his works include several remarks which make it clear that the mere fact that we have a natural desire or aversion to do something cannot prove that this is how natural law commands us to behave. This idea is expressed, for example, at the beginning of Pufendorf's extensive discussion on the question whether incestuous marriages are forbidden by natural law. There he mentions that some have solved

.....
57 Schneewind 1987, p.136.

this problem simply by appealing to the abhorrence human beings usually feel towards such unions. According to these writers, “all men not corrupted by bad education or vicious habits observe by their senses something repugnant in such marriages, which is a sure witness that natural law forbids it.”⁵⁸ To this Pufendorf answers, first of all, that the revulsion people feel towards incestuous marriages is not necessarily an instinctual reaction, but might as well be the result of custom and education. However, even if this aversion were a natural human feature, we would still not be allowed to draw the conclusion that such marriages are forbidden by natural law. For it is not “safe, in eliciting natural law, to consult the mere judgement of senses and passions, since the opposite conclusion can be reached, that all things to which senses and passions are strongly attached are enjoined by the law of nature, while most of them are in fact clearly opposed to that law.”⁵⁹

Behind such a remark is, of course, Pufendorf’s Lutheran view of human beings as animals “seething with evil desires”. Since human nature is fundamentally corrupt, there is no guarantee that our inherent proclivities and sentiments agree with the manner in which God wants us to behave. Most likely it is the other way around. Nevertheless, Pufendorf admits that there are a few instincts which bend us to the same direction as natural law. These are the natural desire for the proliferation of offspring and the instinct for self-preservation. However, the explanation Pufendorf gives to these exceptions is rather peculiar and does not involve the idea that natural law could be derived from the inclinations in question.

Pufendorf explains the origin of the instincts which agree with natural law in *Elementa*, when he argues against the view that since human beings are naturally inclined to seek sexual intercourse, offspring, and self-preservation, there is no need for natural law to command them to do this.⁶⁰ Pufendorf agrees with this view in so far

58 *JNG* VI.1.28: “Nonnulli heic simpliciter ad abhorrentiam affectuum humanorum confugiunt, quasi omnes, qui per pravam educationem aut vitiosum habitum non sunt corrupti, in ipsis sensibus deprehendant aliquid, tali commixtioni repugnans; id quod claro sit indicio, eandem naturali jure prohiberi.”

59 *JNG* VI.1.28: “Neque vero circa jus naturae eruendum adeo tutum est solum judicium sensuum atque affectuum consulere; cum ex adverso concludi posset, illa quoque jure naturali praecipii, in quae sensus et affectus acerrime feruntur; quorum tamen pleraque isti juri adversari manifestum est.”

60 The only example Pufendorf gives of someone who holds this view is Seneca, who remarks in *De beneficio* (IV.17) that “[i]t is superfluous to force us into the path which we naturally take, just as no one needs to be urged to love himself, since self-love begins to act upon him as soon as he is born.” See *JNG* II.4.1 (1684 II.4.16).

as “natural instincts and the dictates of reason, or natural law, are two quite distinct things.” Moreover, he holds it obvious that “in most matters these two tend in the opposite directions so that instincts leads us away from the honourable course which reason urges.”⁶¹ However, Pufendorf insists that in the case of the two instincts mentioned above it happens “that we are obliged to do something to which we are also inclined by instinct, because the dictate of reason prescribes the same.”⁶² This is so because these particular instincts were not direct consequences of the fall, but something which God found necessary to add to human nature after it had become corrupt and mortal.

The reason why God implanted in the human species an exceptionally strong sexual desire and a natural affection for their offspring was, according to Pufendorf, that as intelligent creatures human beings are able to contemplate on the burdens involved in marriage and in the raising of children.⁶³ Because of the hardships involved in these practices human beings would be unwilling to have descendants, if only natural law impelled them to do so. Therefore, God found it necessary to enforce his commands with instincts which have the same direction. The desire for self-preservation, on the other hand, was made necessary by the miserable character of human life. The pleasures which accompany the worldly life are usually so small – at least when compared to the hardships – that without an inherent dislike of dying the mere command of natural law could not prevent human beings from killing themselves at the first opportunity.⁶⁴

61 *Elementa* II.Obs.4.9: “Novimus quidem longe distinctissima esse, instinctum naturalem et dictamen rationis seu legem naturae. In compluribus etiam haec duo in contrarium tendunt, ita ut instinctus ab honestate abducatur, quam ratio suadet.”

62 *Elementa* II.Obs.4.9: “Et quanquam solus instinctus nunquam ad aliquid agendum obligat; contingit tamen, ut ad aliquid obligemur, ad quod per instinctum quoque inclinamur, quia idem rationis quoque dictamen praescribit.”

63 Pufendorf holds that without natural desire for sexual intercourse and offspring wiser men would find a companionship with women worthless and repulsive (*JNG* VI.1.3).

64 *Elementa* II.Obs.4.9: “Enimvero usque adeo non sequitur, jus naturae ista non praecipere, quia instinctus naturalis in ea jam antea sat acriter feratur, ut potius naturam eadem, tanquam seminarium generis humani servantia, quam maxime observari voluisse luculenter adpareat; dum velut diffusa soli rationis dictamini, eidem succenturiari jussit instinctum naturalem ita vehementem, ut difficulter admodum homo in contraria niti possit. Quod si enim accurate expendantur molestiae, quae vitam humanam necessario comitantur, longe excedentes exiguum illud et vile volumptatum; ac quam multis vita producat, ut fortunae materiam saeviendi praebeant: quotusquisque non primo quoque tempore vitam hanc abrumperet, si sola ratio eam servari suaderet, nec instinctus naturalis ejus amorem tam anxie commendaret?... Sic quotusquisque liberis operam daret, qui saepe materiam dolendi, aut saltem certissimam curarum ac laborum causam praebent, ni super rationem etiam inclinatio naturalis eo propelleret? Intercedente praepriis actu tam parum decoro, et consotio mulierum, quod sapienti vile juxta ac taediosum citra istas illecebras foret.”

The same explanation for the existence of instincts which agree with natural law is affirmed in *De jure naturae et gentium*, when Pufendorf deals with the question of whether human beings who are fit to marry and to have children are also obligated to do so:

For no less upon this than upon other things to which man is borne by his natural appetite, such as self-preservation and the love and the rearing of children, some men raise a doubt that they are not sanctioned by natural law. They claim that there was no need for nature to do so, since instinct and sense appetite alone sufficiently incite men to it. But, granted that natural instinct tends towards such things, it does not follow that the law of nature does not for that reason command them. In fact it appear from this very consideration that nature wishes⁶⁵ them to be observed as carefully as possible, as directly leading to the preservation of mankind, while distrusting, as it were, the mere dictate of reason she ordered so violent an instinct to come to man's aid that he can only with difficulty make headway against it.⁶⁶

75

Similarly, in his discussion of the legitimacy of self-destructive behavior Pufendorf rejects the idea that since human beings have an instinct for self-preservation, natural law does not have to command them to preserve their lives. Actually, the instinct for self-preservation “appears to have been enlisted as an aid to the dictates of reason, as if the latter by itself alone would not constitute a support adequate to sustain mankind.”⁶⁷ Again, Pufendorf refers to the miserable character of human existence:

65 When Pufendorf here and elsewhere says that “nature wishes” (or “nature commands”) human beings to behave in a certain manner, he is not speaking of some intention inherent in nature itself, but of the will of God as it can be recognized through the natural features he has given to human beings.

66 *JNG* VI.1.3: “Nam non minus circa hoc, quam alia, ad quae naturali adpetitu homo fertur, ut est conservatio sui ipsius, amor et educatio sobolis, quidam dubium movent, quasi isthaec lege naturali non sanciantur. Eo quippe opus non fuisse, cum jam antea instinctus, et adpetitus sensitivus in talia sat valide propellat. Enimvero usque adeo non sequitur, jus natuare ista non praecipere, quia in eadem instinctus naturalis fertur; ut potius exinde adpareat, naturam ista quam accuratissime voluisse observari, utpote incolumitatem generis humani immediate conservantia: dum velut diffisa soli rationis dictamini eidem succenturiari jussit instinctum ita vehementem, ut difficulter admodum homo in contrarium niti queat.”

67 *JNG* II.4.1 (*JNG* 1684 II.4.16): “Deinde usque adeo non sequitur, jus naturae istud non praecipere, quia instinctus jam ante in id satis acriter ferebatur; ut potius iste dictamini rationis velut succenturiari videatur, quasi hoc solum non solum sufficiat fundamento generis humani continendo.”

Surely if we consider the troubles which accompany human life, troubles that far surpass those small and worthless joys which recur constantly but faintly and not without disdain; and how many men there are for whom life is prolonged that they may encounter more misfortunes; who would not, at the first opportunity, take his own life, did not the instinct so forcefully commend it [*JNG* 1684: or were not death accompanied by ideas of such bitterness]? Or who would not overcome the instinct, did not the commands of the almighty Creator stand in his way?⁶⁸

76

The last remark in the passage cited above is highly curious. It seems to indicate that human beings do not feel that worldly life is in any way valuable or worth living. Without the idea that God has forbidden suicide, the instinct for self-preservation could not prevent them from ending their lives. It must be noted, however, that Pufendorf is speaking here of people who are concerned with their future lives as a whole and who also have realistic expectations concerning the hardships and joys they are likely to encounter. For such people, Pufendorf seems to say, the mere instinct for self-preservation does not offer a sufficient incentive for living. They also need the idea that God commands them to preserve their lives. The great majority of human beings do not, however, have such a rational comprehension of future events. Pufendorf holds that as a result of bad education and evil habits most people "are usually stirred on by what strikes their senses, and do not care much for their future".⁶⁹ It seems possible to think, therefore, that for this great majority the instinct for self-preservation alone offers a sufficient motive for protecting their lives by all possible means.

Be this as it may, what the remarks cited above show for sure is that our comprehension of the fact that God is concerned with the preservation of humankind and wants individual human beings to preserve their lives is, according to Pufendorf, independent of the existence of the corresponding instinct. Human reason would recognize that God forbids self-destructive behavior even if instinct were lacking, although in such a case the ability of human beings to

68 *JNG* II.4.1 (*JNG* 1684 II.4.16): "Sane enim si considerentur molestiae, quae vitam humanam committantur, longe superantes exiguum illud et vile voluptatum, eodem tenore, sed languidus fere et non citra fastidium recursans: ac quam multis vita producatur, ut plura excipere mala possint; quotusquisque non primo quoque tempore vitam abrumperet [1684: ni instinctus tantopere eadem commendaret; aut ni morti tanta opinio acerbitatis esse conjuncta]: aut quotusquisque instinctum istum non vinceret, ni omnipotentis Creatoris jussa obstant?"

69 *JNG* VII.1.11: "Tum quod magna pars mortalium praesentibus tantum imminet, futuri parum curiosa, ac illis fere movetur, quae in sensus incurrunt, ac sublimiora aegre adsurgat."

observe this rule would be very limited. Correspondingly, it is only because we already understand that God wants the human species to continue its existence that we are able to gather that unlike most of our desires, the instinct for self-preservation is in accordance with God's will. In what follows I will maintain that this idea is in perfect agreement with the argument by which Pufendorf deduces the fundamental principle in *De jure naturae et gentium*. Before that I will show that already in *Elementa* Pufendorf's theory was not based on any correspondence between natural inclinations and natural law.

THE FOUNDATION OF NATURAL LAW IN *ELEMENTA*

77

Superficially, the argument by which Pufendorf derives natural law in *Elementa* appears to be a mixture of the theories of Grotius and Hobbes. This impression follows, in the first place, from the fact that Pufendorf opens the discussion of natural law in the third Observation⁷⁰ by naming two natural human inclinations. These are self-love, which includes the tendency to protect one's life by all possible means, and the inclination to enjoy living with other human beings, for which Pufendorf also uses Grotius' expression *appetitus socialis*.⁷¹ At the beginning of the fourth Observation Pufendorf then gives the following description of the manner in which human reason discovers natural law:

By experience, therefore, it is well established that, when, out of a state of infantile ignorance, the light of reason in man reveals itself with a little greater clarity, and turns itself to the contemplation of its own nature, his reason which has not been corrupted by passions or vicious habits, dictates to him that it is right, indeed, for him to care for and save himself as far as he can; nevertheless, because he has observed that he has been destined by the creator to cultivate society with other men, it is necessary so to modify his care for himself as not to become himself unsociable with others, or not to

70 While writing *Elementa*, Pufendorf was so impressed by the certainty offered by the mathematical sciences that he organized his work in the form of twenty one definitions, two axioms, and five, what he called "observations". The actual theory of natural law was presented mainly in Observations three to five.

71 *Elementa* II.Obs.3.1-3.

have society among men disturbed. It is this very thing that we call the law of nature.⁷²

A little later Pufendorf declares that there are two fundamental principles of natural law, from which all other principles follow. The first one orders human beings to protect themselves and what belongs to them, while the second commands that they must not do anything whereby “the society among men is less tranquil.” These two precepts can be combined into the principle: “Each ought to be zealous to preserve himself so that the society of men is not disturbed.”⁷³

Now, all this certainly looks as if Pufendorf deduced natural law straightforwardly from the two natural tendencies God has implanted in human nature. This impression is, however, deceptive. In the first place, when Pufendorf later in the fourth Observation gives a more detailed justification for the first fundamental principle, the instinct of self-preservation is not even mentioned. That natural law requires human beings to take care of themselves and forbids suicide and other self-destructive behavior can be gathered from the fact that God has destined people to cultivate human society, which goal they are not allowed to abandon “after the fashion of a deserter or a soldier who fails to appear.”⁷⁴ And in another passage Pufendorf makes it clear that the requirement to cultivate society is actually the foundation of the whole of natural law. We understand that God commands us to obey this law, because he has “so formed the nature of man as to make it apparent that man has been destined to cultivate society.”⁷⁵

78

72 *Elementa* II.Obs.IV.1: “Per experimentiam igitur constat, quod ubi ex infantili ignorantia sese rationis lumen in homine paulo clarius exserit, atque ad contemplationem suae naturae se convertit, ratio ipsi per affectus aut vitiosos habitus non corrupta, dicitur, par quidem esse, ut ipse se. quantum potest, curet et conservet; quia tamen a Creatore ad societatem cum aliis hominibus colendam destinatum ses animadvertit, necessum esse, ita curam sui temperare ne cum aliis insociabilis fiat, aut ne societas inter homines turbetur. Id ipsum est, quod vocamus legem naturae.”

73 *Elementa* II.Obs.IV.4: “Sunt autem leges naturae fundamentales, ex quibus reliquae omnes fluunt duae: 1. *Ut quilibet vitam et membra sua quantum potest tueatur, seque ac sua conservet.* 2. *Ut ne perturbet societatem humanam, seu, ne facit aliquid, quo minus tranquilla inter homines societas esse queat.* Haec ita inter se conspirare, et invicem velut implaxae esse debent ut in unam velut coalescant legem, scilicet: *Ut ita quisque; conservare se studeat, ne societas inter homines turbetur.*”

74 *Elementa* II.Obs.4.10: “Quod autem ad se ipsum conservandum quis obligetur ex lege naturae, ejus rei istam rationem videri, quod a Creatore ad colendam societatem humanam sit destinatus, quam transfugae aut infrequentis multis instar pro lubidine deferere hautquidquam possit.”

75 *Elementa* II.Obs.4.3. “Obstinet autem distamen illud rationis, seu lex naturae, vim obligandi homines ex autoritate Creatoris, tanquam supremum in ipsos imperium

The foregoing does not, of course, disprove the possibility that in *Elementa* Pufendorf follows Grotius in deriving natural law from a natural inclination to social life. For in the third Observation, where the aim is to show that human beings are destined for social life, Pufendorf not only speaks of *appetitus socialis* but also remarks that “nature has ordered us to unite to form a peaceful society.”⁷⁶ It would seem, thus, that he deduces the requirement to cultivate society from a corresponding inclination.

Here we must notice two things. First, already in *Elementa* expressions like “nature orders”, “nature wants”, and “nature commends” do not refer to a natural proclivity to behave in a particular manner, but to the will of God as it can be read from the features he has implanted in human nature. This becomes apparent, for example, when Pufendorf in the third Observation says that nature has “intended” and “commended” human beings to follow their self-love in a manner which does not conflict with their inclination for society.⁷⁷ Unless we assume that Pufendorf introduces here a third natural inclination which directs the two already mentioned, we must conclude that he is speaking of the manner in which God wants human beings to harmonize the two natural inclinations he has given them.

Second, there is a crucial difference between the social inclination on which Grotius founded his theory and the one Pufendorf speaks of in *Elementa*. In *De iure belli ac pacis* Grotius derived natural law from a human *appetitus* for a peaceful and rationally organized social life.⁷⁸ No inclination of this type is presumed by Pufendorf in *Elementa*. This becomes evident when we examine closely his comments against the argument by which Hobbes in *De cive* refuted the idea that human beings are animals “born fit” for society. Since I wish to show that the disagreement between Pufendorf and Hobbes on this issue is merely verbal, I am forced to try the patience of the reader by giving two extensive quotations. The first of these is from the footnote in

.....
gerentis. Qui cum hominis naturam ita formarit ut ad societatem colendam ipsum esse destinatum satis adpareat, eaque de causa eidem animum istarum fecerit notionum capacem; intelligitur sane eundem quoque voluisse, ut homo fini ab ipso praescripto sese attemperet.”

76 *Elementa* II.Obs.3.2.

77 *Elementa* II.Obs.3.3: “Duae hasce inclinationes, quibus homo seipsum amat, et societatem appetit, ex intentione naturae ita temperari debere, ne per illam huic aliquid decedat. Scilicet homini ita sui amorem natura commedavit, ut ne tamen propter eundem aliqui committat, quod inclinationi ad societatem repugnet vel ipsam societatis naturam laedat.”

78 *IBP* Prolegomena (§ 6): “Inter haec autem quae homini sunt propria, est appetitus societatis, id est communitatis, non qualiscunquae, sed tranquillae, et pro sui intellectus modo ordinatae, cum his qui sui sunt generis.” Grotius’ theory is treated in more detail below in chapter 3.2.

paragraph 1.2 of *De cive*, where Hobbes explains what exactly he is rejecting:

It is true indeed, that to man by nature, or as man, that is, as soon as he is born, solitude is an enemy; for infants have need of others to help them live, and those of riper years to help them to live well. Wherefore I deny not that men (even nature compelling) desire to come together. But civil societies are not mere meetings, but bonds, to the making whereof faith and compact are necessary; the virtue whereof to children and fools, and the profit whereof to those who have not tasted the miseries that accompany its defects, is altogether unknown; whence it happens, that those, because they know not what society is, cannot enter into it; these, because ignorant of the benefits it brings, care not for it. Manifest therefore it is, that all men, because they are born in infancy, are born unapt for society. Many also, perhaps most men, either through defect of mind or want of education, remain unfit during the whole course of their lives; yet have they, infants as well as those of riper years, a human nature. Wherefore man is made fit for society not by nature, but by education.⁷⁹

80

In other words, Hobbes did not deny that human beings want to live in the company of other members of their species. On the contrary, he admitted that they do so “even nature compelling”. All Hobbes claimed was that the ability of human beings to behave according to the rules required in peaceful social life – which for Hobbes was identical with civil life – is totally dependent on the education they happen to receive. Therefore, it cannot be said that human beings are animals born fit for society (*animal aptum natum sociatatem*). To this Pufendorf answers:

79 *De Cive* 1.2. The original latin text goes: “Verum quidem esse homini per naturam, sive quatenus est homo, id est, statim atque est natus, solitudinem perpetuam molestam esse. Nam infantes ad vivendum, adulti ad bene vivendum aliorum ope indigent. Itaque homines alterum alterius congressum natura cogente appetere non nego. Societates autem civiles non sunt meri congressus, sed foedera, quibus faciendis fides et pacta necessaria sunt. Horum, ab infantibus quidem et indoctis, vis; ad iis autem, quid damnorum a defectu societatis inexperti sunt, utilitas ignoratur: unde fit ut illi, quia quid sit societas non intelligunt, eam inire non possint; hi, quia nesciunt quid prodest, non curent. Manifestum ergo est omnes homines, cum sint nati infantes, ad societatem ineptos natos esse: per multos etiam, fortasse plurimos, vel morbo animi, vel defectu disciplinae, per omnem vitam ineptos manere. Habent tamen illi tam infantes quam adulti naturam humanam. Ad societatem ergo homo aptus, non natura, sed diciplina factus est.”

It is instantly apparent that the colour of the objection rises pretty much from a quibble about the Greek word “*pephyke*”, which Latin translators commonly turn “*aptus natus est*”. By this is properly signified a natural inclination towards something together with a natural potentiality for receiving an actual fitness for exercising that thing, even if the actual aptitude should not be in him immediately by birth, but have to be introduced by industry alone. And so the meaning of the common saying “man is by nature a social animal” is this: Man is destined by nature to society with his like, and this is most suitable and useful to him. Moreover, man has been endowed with such inborn disposition that by cultivation he can receive an aptitude for acting right in that society; nay more, this is perhaps the principal fruit produced by societies, namely that the recently born, in whom no actual understanding of these things has been implanted by nature, may, within societies, be fashioned into suitable members of the same.⁸⁰

81

The noteworthy thing in Pufendorf’s above argument is the distinction he makes between the inclination for society on the one hand, and the ability to behave according to the rules of social life, or even the potentiality of receiving such a capability, on the other. The saying *aptus natus est* refers to two things: 1) “[A] natural inclination towards something”, and 2) “a natural potentiality for receiving an actual aptitude for exercising that thing”, which in the case we are speaking of is introduced by education alone. In other words, Pufendorf’s natural inclination to social life includes no inherent proclivity whatsoever to behave in a manner required by peaceful and ordered social life. It is nothing else than the same general wish to live in the company of other human beings the existence of which Hobbes had admitted in *De cive*. The sources of this inclination are the well-known facts that “nothing is more gloomy for a man than perpetual solitude,” and that if not “united to a mutual task,” human beings can survive only “with the utmost difficulty.”⁸¹

80 *Elementa* II.Obs.III.4: “Sed facile patet objectionis colorem fere oriri ex cavillatione vocabuli Graeci *pephyke*, quod Latinis interpretibus solemne est vertere *aptus natus est*: quo prope significatur naturalis inclinatio ad aliquid, cum naturali potentia recipiendi actualem aptitudinem illi rei exercendae; etiamsi ista actualis aptitudo non statim per nativitatem insit, sed per industriam demum sit introducenda. Sensus itaque triti istius, homo natura est animal sociale, hic est: hominem a natura destinari ad societatem sui similitudo, eamque ipsi quam maxime congruam esse atque utilem; eundemquetalis praeditum ingenio, ut per culturam possit recipere aptitudinem recte versandi in ista societate; immo hunc ex societatibus vel praecipuum enasci fructum, ut recens nati, quibus per naturam actualis istarum rerum intellectus non est insitus, in istis in idonea earundem membra efformentur.”

81 *Elementa* II.Obs.3.2.

The foregoing means that it is not possible for the young Pufendorf to derive the requirement to cultivate society from a corresponding natural inclination. What he sees as natural for a human being is the general desire to live in the company of other members of one's species and the ability to become a decent member of peaceful human society. The actual proclivity to cultivate social life, on the other hand, is totally a product of education and so in no way natural for a human being.

But if this is the case, what proof is there that God wants people to cultivate society? In *Elementa* Pufendorf's answer to this question is highly unsystematic, to say the least. However, his central idea seems to be the observation that the existence of society is a necessary prerequisite for any distinctively human way of living. This is indicated, for example, in the justification Pufendorf gives for his claim that "nature has ordered" human beings "to unite to form a peaceful society". Pufendorf does not derive this conclusion from any inclination to tranquil social life but from the observation that society is a necessary requirement for any distinctively human way of living. If social life totally collapsed, human beings would "not only be the prey of the beast, but would also rage against one another in the manner of wild monsters."⁸² The same idea is affirmed in Observation four, where Pufendorf remarks that since "the life of men without society is destined to be like the life of the beast, so the law of nature is principally founded upon the principle that social life among men is to be preserved."⁸³ This argument relies, of course, on the assumption that God wants human beings to live differently than beasts. But this is something Pufendorf thinks nobody seriously contests. For to do so one would have to maintain that the special intellectual abilities which make human beings capable of an ordered social life were given to them by God without any purpose. Since this is unthinkable, everybody has to agree that God would not "have given men reason, had He not wished to destine them to cultivate society."⁸⁴

82 *Elementa* II.Obs.3.2: "Quid, quod non solum bestiis praede essemus futuri, sed bellarum more in nos ipsos invicem grassaturi, ni in pacificam societatem omnino coire nos natura jussisset."

83 *Elementa* II.Obs.4.5: "Stat ergo, uti vita hominum sine societate bestiarum vitae similis est futura; ita legem naturae in eo praecipue fundari, quod socialis inter homines vita sit conservanda."

84 *Elementa* II.Obs.3.6: "Nam neque hominibus rationem dedisset Creator, nisi societati colendae eos destinari voluisset."

THE DEMONSTRATION OF THE FUNDAMENTAL PRINCIPLE

As we saw above, in *Elementa* Pufendorf named two fundamental principles of natural law, but actually based his account on the even more elementary but somewhat imprecise demand to “cultivate society”. In *De jure naturae et gentium* Pufendorf makes this duty the fundamental principle of his system by giving it a more concrete, rule-like content and by founding it on a more detailed analysis of human nature. In order to understand how Pufendorf does this it is important to notice that he now divides his argument into two parts. First, he proves that God has imposed a law for all human beings. This happens in the first chapter of Book two, entitled *It is not suitable for a man to live without laws*. The fundamental principle of natural law is, then, deduced in *JNG* II.3.14-15. Commentators have usually not bothered to distinguish between these two discussions, a practice encouraged no doubt by the fact that in *De officio hominis et civis* Pufendorf himself partly mixes these two arguments.⁸⁵ However, if we want to understand what are Pufendorf’s premises in his deduction of the fundamental principle, it is necessary to be aware what he has already assumed when he has proved that there is a law of nature.

83

The motive Pufendorf offers for the question whether God has imposed a law for human beings is the fact that God has distinguished them from other animals by giving them a free will. It can be wondered, therefore, how we can know for sure that God has not also wanted human beings to use this faculty without any restraints.⁸⁶ That this is not the case can be proved, according to Pufendorf, by showing that unlimited liberty would be disadvantageous to human beings, and that it is beneficial for their safety and well-being (*salus*) to be restricted by laws.⁸⁷ This Pufendorf does by analysing three human features.

In the first place, Pufendorf points out that the human way of living as we know it is totally dependent on the fact that human beings grow up and live in the company of other human beings:

Imagine a man who has been nurtured by someone without using speech so that he is merely able to move himself where he pleases,

85 *OHC* I.3.1–9.

86 *JNG* II.1.1.

87 *JNG* II.1.2: “Ut igitur paulo altius rem repetamus, ante omnia ostendendum videtur, omnimodam libertatem humanae naturae esse inutilem, ac perniciosam; adeoque ad salutem ipsius conducere, ut legibus ista contsringatur.”

a man without any information and training whose knowledge is limited to what has come from his own natural endowment. Imagine such a man left in the open, away from any assistance or company of his fellows. What a miserable animal you will behold. A dumb and ignoble creature, with no power other than to dig up plants and roots, to collect wild fruits, to slake his thirst at any spring river or pool he may happen upon, to crawl into caves so as to avoid the inclemency of the weather, to cover his body with moss and grass, to pass his time in an intolerable inactivity, to tremble at every sound or passing of another animal, and finally to perish of hunger and cold or to be torn to pieces by some wild beast.⁸⁸

It can be concluded, thus, that the reason why “the life spent by a human being is not the most miserable among all animals is due to the intercourse and society he has with others like him.”⁸⁹

84

However, “a society between men cannot be constituted nor maintained in a peaceful and stable condition without law.”⁹⁰ This is so, in the first place, because of the immense variety of individual inclinations, dispositions, and ways of living which characterizes the human race. Were this great diversity not controlled by a law, it would cause the greatest confusion in human affairs.⁹¹ Even more decisive is, however, the wickedness of human nature, the strong proclivity for human beings to hurt each other. This is so powerful that even now, “when law and punishment hang over them”, human beings hurt the members of their own species more than any other animal. It can be concluded, therefore, that without a law which restricts their desires, “every man would be a lion, a wolf or a dog to his neighbour, or something worse than these.”⁹²

88 *JNG* II.1.8: “Finge mihi hominem ab aliquo, nulla interveniente sermocinatione, nutrum, ut quo velit ambulare queat, de caetero ab omni informatione et disciplina destitutum, cuique adeo nihil sit scientiae, nisi quod ex proprio velut ingenio pullulavit. Finge eundem ab omnium aliorum hominum ope ac societate in solitudine relictum. Quam miserandum videbis animal: Mutum ac turpe pecus, cui nihil aliud relictum, quam herbas, radicesque vellere aut sponte natos fructus legere, sitim fonte, flumine, aut lacuna obvia, levare, repellendis aeris injuriis antra subire, aut musco gramineve corpus tegere, tempus taediosissimum perotium exigere, ad quemvis strepitum, aut animantis alterius occursum exhorrescere denique fame, frigore, aut lacerante fera bestia perire.”

89 *JNG* II.1.8: “Igitur quod homo non miserissimam vitam inter omnia animantia degit, a conjunctione, et societate sui similium habet.”

90 *JNG* II.1.8: “Societas autem inter homines sine lege neque iniri, neque tranquilla, et firma servari potest.”

91 *JNG* II.2.7.

92 *JNG* II.1.6: “In isthac ergo humanorum affectuum ferocia, et varietate, qualis futura erat hominum vita, si nullum jus eosdem componeret? Luporum, leonum, canum inter se decertantium turbam videres. Imo quilibet alteri leo, lupus, canis futurus erat, et his omnibus infestius quid; quippe cum nullum sit animans, quod

From the foregoing Pufendorf makes the conclusion that unless it is desired that human beings should be “the most degraded and miserable of all creatures,” it is indispensable that their behaviour be controlled by law.⁹³ Now, in order to prove that God has imposed a law for human beings we need, of course, the further premise that God does not want human beings to be the most wretched of all living creatures. That this is so can be gathered from “the dignity of human nature”. By this Pufendorf means above all those unique intellectual abilities which God has given to human beings:

The more splendid the gifts which the Creator has bestowed upon man, and the greater the intellectual qualities with which He has endowed him, the more base it would be for such qualities to waste away in disuse, to be expected at random, and to be squandered without order and without seemliness. And surely it was not for nothing that God gave man such a soul which could recognize a decorous order, and the power to harmonize his actions therewith, but it was surely intended that man should use this God-given faculty for the greater glory of God and his own richer felicity.⁹⁴

In other words, since God has given human beings an ability to live an organized social life in which they can develop their unique human capabilities and advance their happiness, it is impossible to think that God would not have wanted them to live in this way. This is something no sane person seriously contests: “[A]ll wise men agree” that “God created men to serve him, and to make his glory greater by improving those good things conferred on them.”⁹⁵ And since this cannot be done without law, it can be concluded that God has inflicted law on the human species.

The noteworthy thing in the foregoing is not the conclusion itself, but the assumption on which it relies. Pufendorf takes for granted that God wants the human species not only to survive but also to live in a

.....
 homini plus, quam homo nocere possit et velit. Et cum tot mala homines nunc invicem inferant, quando lex et poena imminet; quid futurum foret, si omnia impune fierent, si hominis desideria nullum intus fraenum compesceret?”

- 93 *JNG* II.1.8: “Igitur ne foedissimus omnium animantium, et miserissimus esse homo, exlegem eundem vivere hautquidquam conveniebat.”
- 94 *JNG* II.1.5: “Jam quo splendidioribus donis Creator hominem instruxerat, quo plura ipsius ingenium capiebat; eo foedius erat illa incultu obsolescere, aut sine ordine, sine decore temere velut effundi, et consumi. Neque vero frsutra Deus homini dederat mentem decori ordinis intelligentem, utque eidem sese posset attemperare; sed par omnino erat concessis ipsium facultatibus ita uti, ut exinde Creatoris gloria exspedenceret, ipsique homini amplior felicitas proveniret.”
- 95 *JNG* II.4.1 (*JNG* 1684 II.4.16): “Sed cum ex omnium sapientum consensu Creator O.M. hominem condiderit, ut ipsi inserviat, exultisque bonis, ad ipso sibi concessis, ejusdem gloriam redderet illustriorem.”

social condition where they have the possibility to develop their distinctively human faculties and use them in order to increase their happiness. And it is important to notice that the word used by Pufendorf to characterize this human condition is “*salus*”, a word which plays a significant role also in the deduction of the fundamental principle. When Pufendorf uses the noun “*salus*”, this is usually translated into English as “survival” or “security”, while the adjective “*salvum*” is glossed as “safe” (as I have done so far). And in many instances this practice is perfectly justifiable. However, it is obvious that by “*salus*” Pufendorf does not refer simply to sheer physical survival. Security and sufficient nourishment are, of course, necessary requirements for the *salus* of a human being so that if they are taken away, the person cannot be said to be *salvum*. Nevertheless, alone they are not enough. After all, they are something which even an insane person locked in chains might possess. In order to be fully *salvum* human beings must also possess those rational abilities which can develop only in society, and an opportunity to use these faculties in order to increase their happiness.

Now we are in a better position to understand what Pufendorf is doing when he deduces the fundamental principle in *JNG* II.3.14-15. The end of natural law – the purpose for which God has imposed it on human beings – is the *salus* of the human species. And as we saw above, the scientific presentation of natural law must be based on one normative principle from which the others are then deduced. Hence, the principal task of a demonstrative account of natural law is to define the most general rule of behaviour by which a human being can advance the *salus* of the human species. What has deceived commentators into thinking that Pufendorf somehow deduces the content of natural law from the desire for self-preservation is his understandable conviction that in order to recognize such a general principle we must first know what are the most elementary requirements for the *salus* of an individual human being. As he remarks in the second edition of *De jure naturae et gentium*, “the *salus* of the whole of human society is an unintelligible phrase, if it makes no difference whether individuals are *salvum* or not.”⁹⁶

It is at this point that human self-love and the instinct for self-preservation become important for the deduction of the fundamental principle. The requirements of both general and individual *salus* are best known “through careful consideration of the nature, condition, and inclinations of man.” In chapter II.1. Pufendorf has already men-

96 *JNG* 1684 II.4.16: “...; cum totius societatis humanae salus intelligi nequeat, si singuli salvi sint, nec ne, nihil intersit; ...”

tioned two of the four human features he sees as relevant in this respect: the proclivity of human beings to hurt each other, and the miseries which would accompany their lives if they would receive no assistance from other members of their species. In *JNG* II.3.14 he brings up for the first time the ability of human beings to increase their well-being by the mutual exchange of services and, above all, their natural self-love, which includes a strong desire for self-preservation.

What makes self-love and the desire for self-preservation so important for the *salus* of individual human beings is the powerful influence these tendencies have on human relations. This can be illustrated by imagining a situation where human beings would not be zealous about their personal well-being and preservation but, on the contrary, naturally inclined to sacrifice these for the sake of others whenever required. Even in such circumstances individual human beings would be unable to maintain their *salus*, unless they lived together with other members of their species. However, under such conditions a person would not have to pay special attention to the manner in which he behaves towards other human beings, but could expect their help and goodwill regardless of his own behaviour.

In the present condition of humankind, on the other hand, one cannot pass over the fact that the concern human beings by nature feel for their personal well-being and preservation "is usually so strong that all inclinations towards other people yield to it."⁹⁷ This has two important consequences. First, people are usually not willing to assist others unless they believe this to be somehow beneficial for themselves. Second, they are inclined to show hostility towards people who endanger their *salus*: "If anyone attempts to attack a man's *salus*, he cannot fail to repel him so vigorously that hatred and desire for revenge usually last long after he has beaten off the attack."⁹⁸ Consequently, in the present condition of the human species it is not sufficient for an individual simply to "join himself with others like him." In order to be *salvum* he must also conduct himself towards others "in a way which does not give them any cause to do him harm, but rather give them a reason to preserve and increase his advantage."⁹⁹

97 *JNG* II.3.14: "Et iste quidem cujuslibet erga seipsum amor regulariter tam validus est, ut quaevis inclinatio erga quemvis alium hominem ipsi cedat."

98 *OHC* I.3.2: "Et quicumque hominis salutem impugnatum it, eum non potest non iste aversari eoque, ut etiam depulso malo intentato plerumque odium, et cupiditas vindictae adhuc remaneat."

99 *JNG* II.3.15: "Ejusmodi animali, ut salvum sit, necessarium est, ut sit sociabile, id est, ut conjugi cum sui similibus velit, et adversus illos ita gerat, ut ne isti ansam accipiant eum laedendi, sed potius rationem habeant ejusdem commoda servandi, aut promovendi."

Now we have come to what I think is the decisive twist in Pufendorf's deduction of the fundamental principle. From the observation that to be sociable in the manner described above is indispensable for the *salus* of each individual Pufendorf does not directly conclude that this is how God requires everyone to behave. If he were to do so, it would make his theory unable to explain why we are required to practice sociality towards those who are unable either to hurt us or to promote our well-being. In other words, it would leave his theory open to the very same critique he himself directs against Hobbes. The reason why Pufendorf thinks his theory avoids Hobbes' mistake is that when he defines the fundamental principle his principal concern is not what a person does to himself, but how the behaviour of the person affects others. The tacit inference by which Pufendorf reaches the fundamental principle goes, I think, as follows. Being sociable is indispensable for the *salus* of individual human beings. The *salus* of every individual is, in turn, the central constituent of the *salus* of the human species. Thus, we understand that God wants human beings to behave towards others in a way which motivates others to be sociable towards them in turn. In order to describe this proliferation of reciprocal sociable behaviour Pufendorf introduces the neologism "*socialitas*" and declares that the fundamental natural duty of every human being is to "cultivate and conserve towards others peaceful *socialitas* in so far as in him lies".¹⁰⁰

Several passages in *De jure naturae et gentium* support the interpretation presented above. To start with, immediately after declaring the fundamental principle Pufendorf remarks that "everything which necessarily makes for sociality is understood to be commanded by natural law, while everything that disturbs or destroys it is understood to be forbidden."¹⁰¹ In other words, everything that advances sociability between human beings – also those things which do not happen to increase one's personal security and well-being - are prescribed by natural law. On the other hand, everything which makes others less sociable, whether or not this happens to be harmful to oneself, is prohibited. The same idea is made more explicit when Pufendorf in the second edition clarifies what he means by the expression "so far as in him lies" included in the fundamental

100 *JNG* II.3.15: "Inde fundamentalis lex naturae isthaec erit: cuilibet homini, quantum in se, colendam et conservandam esse pacificam adversus alios socialitatem."

101 *JNG* II.3.15: "Ex quo consequitur, quia qui obligat ad finem, simul obligare intelligitur ad media, sine quibus finis non potest obtineri; omnia, quae ad istam socialitatem necessario faciunt, jure naturali praecepta, quae eandem turbant aut abruptunt, vetita intelligi."

principle. The point of this expression, Pufendorf tells us, is that since it is not in our power to make all others conduct themselves towards us as they should, we have done our duty when “we have omitted nothing within our power which might move others to be sociable towards us.”¹⁰² In other words, a human being has fulfilled his natural duty not when he has ensured his personal *salus*, but when he has done everything within his power to make others act towards him in a way which does not endanger their *salus*.

The interpretation I have presented above also makes the deduction of the fundamental principle fully compatible with the anti-Hobbesian remarks and appeals to common humanity which Pufendorf presents in *JNG* II.3.16–18. If the end of the natural law is the *salus* of the human species, not the security of an individual, it is perfectly consistent for Pufendorf to maintain that natural law requires general goodwill towards other human beings not because of the personal advantages which may ensue from this, but because these others are members of the human species. Moreover, the same idea of natural law explains why Pufendorf does not appeal to the instinct for self-preservation when he proves the duty to preserve one’s life, but derives this precept from the duty to promote sociality.

Further enforcement for my interpretation can be found in the arguments by which Pufendorf proves three of the central precepts of natural law. The first one of these is the command not to violate the body or possessions of another human being (without proper cause, of course). As mentioned already, Pufendorf criticizes Hobbes’ method of deducing natural law for its inability to explain why this rule is not restricted to those who are somehow able to hurt us, but governs all relations we have with other human beings. In perfect agreement with this critique Pufendorf does not deduce the duty not to hurt other people from the consequences the violation of this rule might have on those who commit such an act. The crucial thing is what such behaviour does to the victim:

This duty is of the greatest necessity, since without it the social life of men could in no way exist. For if a man does me no good turn, and does not join with me even in the ordinary duties, I can still live in tranquillity with him, provided he hurts me in no way. We desire nothing more than this from most of mankind, mutual assistance

 102 *JNG* 1684 II.3.15: “Diximus autem, cuilibet homini socialitatem colendam, et actu exercendam *quantum in se*. Quia cum penes nos non sit praestare, ut alii omnes sese erga nos, prout par erat, gerant: igitur officio nostro satisfacimus, si nihil eorum, quae in nostra erant facultate omisimus, quod istos, ut vicissim erga nos sociabiles essent, permovere posset.”

being rendered only to a limited circle. But how can I live in peace with him who does me injury, since nature has bred into each man so tender a love for himself and his own possessions that he cannot help using all possible means to ward off the man who is about to do him harm?¹⁰³

In other words, that I am obliged not to injure others can be gathered from the fact that if I do, this makes it psychologically impossible for the injured party to be sociable towards me. Hence, even if the person I violate happens to be totally unable to cause me any actual harm, I still act against natural law. Instead of promoting sociality I provoke the other into abandoning his sociable attitude and in this way diminish sociality in human relations.

A similar argument is in use when Pufendorf proves that natural law requires us to regard all human beings as naturally equal (i.e. to think that all power relations between human beings follow from contracts, not from some natural superiority). In this case the relevant empirical observation is the fact that besides the love human beings feel towards their life, body, and possessions, they also have a strong sense of their own value. If this self-esteem is offended, people are rarely less and often more disturbed than when the injury is made to their body and property. Pufendorf admits that culturally adopted features can intensify this feeling of one's own worth. Still, the principal source of this passion is human nature.¹⁰⁴ The duty to hold every one as naturally equal follows, then, from the fact that to deny the humanity of another person is perhaps the gravest insult one can direct against his self-esteem:

90

103 *JNG* III.1.1: "Quin maxime necessarium idem est, quod citra illud socialis hominum vita nullo modo consistere queat. Qui enim nihil boni in me confert, qui ne vulgaria quidem officia mecum miscet, cum eo tamen tranquille vivere possum, modo nulla ratione me laedat. Imo a maxima mortalium perte nihil amplius quam isthoc desideramus: bona fere inter paucos invicem communicatur. Ast cum eo, qui mihi nocet, quomodo pacifere possim vivere? cum natura cuique tam tenerum amorem sui rerumque suarum inseverit, ut non possit non omnibus modis repellere eum, qui istis noxam inferre aggreditur."

104 *JNG* III.2.1: "Praeter illud amorem, quo homo suam vitam, corpusque, ac res prosequitur, et per queam non potest non omnia, ad eorundem destructionem tendentia, repellere aut refugere; deprehenditur quoque ipsius animo insita tenerissima quaedam sui aestimatio: cui si quis aliquid detractum eat, non minus fere, imo saepe magis solet is commoveri, quam si corpori ac rebus noxa inferatur. Quae aestimatio licet ex variis causis intendatur; primum tamen ejus fundamentum videtur ipsa humana natura."

The expression “human being” is felt to have a certain dignity, and the last as well as most effective answer to rude insults of other people is “I am not a dog or a beast, but as much a human being as you are”. Now, since human nature belongs equally to all people, and no one can maintain a social life with someone who does not rate him even as a human being, it can be concluded that natural law requires every person to esteem and treat another human being as his equal by nature, or as much a human being as he is himself.¹⁰⁵

Again the argument is not based on the consequences the violation of the rule possibly has for him who commits the act. We can imagine, for example, a powerful nobleman who denies the humanity of one of his slaves. In this case the offender hardly needs to fear the revenge of the victim. Still it is obvious, according to Pufendorf, that the nobleman violates natural law. By hurting the natural self-esteem of the slave in a most offensive way he provokes the slave to abandon sociality and so to endanger his personal safety.

Lastly, I would like to point out a case which makes the structure of Pufendorf’s theory most apparent and shows clearly to what extent the framework within which he reflects on natural law differs from those of Grotius and Hobbes. This is the argument by which Pufendorf proves that natural law allows violent self-protection. For both Grotius and Hobbes the legitimacy of violent self-protection followed directly from the instinct for self-preservation and was one of the most self-evident principles of natural law. While the overall design of Grotius’ theory was to derive natural law from the minimal requirements for peaceful social life, he saw the inherent inclination towards self-preservation as the foundation for the “first duty” of a human being “to keep himself in the condition nature has given him.”¹⁰⁶ In accordance with this Grotius declared that the right to defend oneself by force against a violent attacker has “its origin directly and chiefly in the fact that nature commits to each his own protection, not in any

105 *JNG* III.2.1: “In ipso quippe hominis vocabulo iudicatur inesse aliqua dignatio; et ultimum simul atque efficacissimum argumentum, quo aliorum insolens insultatio retunditur, isthoc habetur: utique non canis aut bestia, sed aequae homo sum atque tu. Humana porro natura, cum omnibus hominibus aequae competat, neque socialem cum isto homine vitam degere quis possit; abs quo non saltem ut homo aestimatur; inde consequitur, jure naturali praeceptum esse. *Ut quisque alterum hominem aestimet atque tractet, tanquam naturaliter sibi aequalem, seu ut aequae hominem.*”

106 *IBP* II.1.1. See below chapter 3.2.

injustice or sin of the aggressor.”¹⁰⁷ The same view was, of course, strongly affirmed by Hobbes, for whom the right to defend one’s life was the fundamental right of nature following from the irresistible force by which the corresponding instinct affected human behaviour.¹⁰⁸

In Pufendorf we find a very different approach to the whole issue. Pufendorf admits, of course, that self-defence is recommended to human beings by the love they feel towards themselves. He remarks, however, that there are people who claim that despite this natural inclination, natural law denies all use of force in self-defence. This they justify by two arguments. First, the death of one’s attacker is as great a loss for the human race as one’s own demise. Second, by defending oneself by force one is likely to cause far more turmoil in social life than would happen, if one tried to avoid being injured by all means or, were this impossible, offered one’s body calmly to the assailant. It can be concluded, therefore, that this is what natural law requires one to do.¹⁰⁹

Grotius and Hobbes would have most likely regarded these arguments as not worthy of any serious consideration. In Pufendorf eyes, however, they are based on the right normative premises (the duty to protect the *salus* of the human species and not to diminish sociality) and must be answered. Correspondingly, his counter-argument does not rely on the natural human tendency to protect one’s

.....
107 *IBP* II.1.3. Grotius also presented the argument that if all use of violence were forbidden, this would have disastrous consequences for social life: “If the right to inflict capital punishment and to defend citizens by arms against brigands and robbers should be taken away, there would follow a riot of crimes and a deluge, so to speak, of evils, since even now, with regularly constituted courts in operation, the force of evil is only with difficulty restrained.”(*IBP* I.2.7) However, Grotius made this remark not in order to prove that natural law allows violent self-defence but in order to refute the claim that Christ had forbidden all use of violence from his followers. His point was that the drastic consequences the ideal of non-violence would cause to social life made it obvious that if Christ had really denied all use of arms, he would have done this “with the most direct and explicit words.” Yet everything the Saviour had said on the issue was, according to Grotius, “either exceedingly general or obscure.” Therefore, no requirement to abstain from all use of force could be read into the Holy Scriptures.

108 *De cive* 1.7–8.

109 *JNG* II.5.1: “Isthaec defensio duplici modo instituitur, vel sine laesione ejus, qui malum nobis machinatur, vel cum ejusdem laesione ac pernicie. ... Circa posteriorem autem nonnullis ideo scrubulus fuit obortus, quod per ipsam utique laedetur aut perdatur nostri similis homo, quicum ad colendam vitam socialem adstringimur, et quo extincto parem jacturam videtur facere genus humanum, quam si ipsi pereamus. Et quod majores turbae societatem humanam videatur invadere, si vim intentantem vi repellamus, quam si vel per fugam malum declinemus, aut ubi id non datur, corpus nostrum patienter invadenti praebeamus.”

life but on the consequences the requirement of non-violence would have for the well-being and survival of the human race. If righteous people were not allowed to protect themselves by force against wicked ones, all the benefits which human beings have received from nature (i.e. from God) or by their own labour would have been conferred in vain. Moreover, in such a case upright human beings would fall prey to bad ones, which would ultimately cause total chaos in human affairs. This means that “to forbid the use of force in self-defence, far from being conducive of peace, would mean the end of the human species.”¹¹⁰

* * *

I will now sum up the argument by which Pufendorf deduces the fundamental principle of natural law. The starting point of Pufendorf’s theory is the observation that God has created the human species and equipped it with unique intellectual and social capabilities. It can be concluded, therefore, that God wants the human species to survive and prosper by using the abilities peculiar to it. This, in turn, is possible only if people live in society with other members of their species. We know, however, that the human species is characterized by such diversity of individual inclinations, dispositions and ways of living that it makes an ordered social co-existence much more difficult to them than is the case with other social animal species. When we add to this that human beings are inherently wicked and inclined to hurt each other, it can be concluded that God has not left it to human beings themselves to decide how they should act towards each other, but has given them a law which restricts their destructive tendencies.

In order to give a scientific presentation of the content of the law God has imposed on human beings, we must first define the most general rule of behaviour which is necessary for maintaining the *salus* of the human species. With this purpose in mind Pufendorf asks what are the most basic requirements for the *salus* of an individual human being. At this point four features of human nature become relevant. First, the *salus* of human individuals is dependent on the help they receive from other people. Second, in all their dealings with other people human beings are concerned predominantly with their own

110 *JNG* II.5.1: “Alias quippe omnia bona, quae natura aut industria nobis dedir, frustra forent concessa, si alteri injuste illa invadenti vim non liceret opponere; et parata praede improbis exposit forent probi, siquidem ille hisce vim nunquam deberent opponere. Sic ut violentam sui defensionem plane proscribere, hautquidquam paci, sed exitio generis humani conducatur.”

well-being and security. Third, human beings are usually willing to help others only if they believe that others are on their part ready to help them. Finally, human beings are inclined to behave aggressively towards those who they see as a threat to their own well-being or security. From these features Pufendorf gathers that the most elemental requirement for the *salus* of individuals is that they are sociable, i.e. that they not only live with other human beings but also behave in a way which does not give to others any cause to do them harm but rather makes others inclined to preserve and increase their advantage. It can be concluded, therefore, that God wants every human being to cultivate such behaviour among the human species. This means not only that they are obliged to maintain a friendly attitude towards those of whom their personal well-being and security are dependent. It also indicates that they are forbidden to act aggressively towards those who are in no position to advance or damage their personal interests or security. For even if such behaviour does not endanger one's personal well-being, it still makes it impossible for the injured party to maintain his friendly attitude and so diminishes the general sociality among the human species. The more particular precepts of natural law are then demonstrated by showing that they are a necessary means for preserving sociality between human beings.

Part Three

The Normative Character of Natural Law

In Part two I argued that the idea that natural law is a command of God plays a central role in the argument by which Pufendorf derives the fundamental principle of natural law. Such an understanding of natural law does not automatically indicate that one sees the morality of human acts as being totally dependent on the commands of God. One could think that even though there now is natural law instituted by God, human beings would recognize the same or at least some principles as their moral standards even if there were no God. Pufendorf, however, rejects this possibility, maintaining that without God's precepts all human behaviour would be morally neutral, neither right nor wrong. In what follows, I will try to answer what made Pufendorf hold such a view. First, however, I will examine Pufendorf's theory of obligation. For this has given commentators a reason to suggest that his views concerning the foundations of morality were seriously inconsistent, or that he did not present a genuine divine command theory of morality at all.

THE THEORY OF OBLIGATION

The *locus classicus* for the view that there is some confusion in Pufendorf's theory of obligation is the influential critique Leibniz's directed against it. This he presented in a letter sent in 1706 to Gerhard van den Muelen, Abbot of Locum, who had requested Leibniz's opinion about the suitability of *De officio hominis et civis* for educational purposes.¹ This letter became widely known when

¹ An English translation of the letter is included in *The Political Writings of Leibniz* ed. and tr. by Patrick Riley, Cambridge 1972.

Barbeyrac added a major part of it to his French translation of the work in 1718. In the following I will not go through all the philosophical disagreements between Leibniz and Pufendorf. What I am interested in are the internal inconsistencies Leibniz claims to find in Pufendorf's theory of obligation.

In both *De jure naturae et gentium* and *De officio hominis et civis* the discussion of obligation takes place in chapters devoted to the general character of law. In the latter work, which is the only one Leibniz comments on, Pufendorf defines law in purely voluntarist terms as "a decree by which a superior obliges one who is subject to him to conform his actions to the superior's precepts."² This is true also in the case of natural law, which would not be an obligating rule were it not a command of God.³ For Leibniz, who supports a rationalistic conception of morality, this already is a totally unacceptable position. He admits, however, that it is not an inherently inconsistent view, if by "superior" is meant someone who has the strength to punish those who disobey his commands. In this case obligation means nothing more than the necessity to conform one's actions to the orders of someone whose punishments one cannot escape.

What, then, is a mark of total confusion in Leibniz's eyes is the definition Pufendorf gives to superior:

An obligation is introduced into a man's mind by a superior, i.e. by one who has not only the strength to inflict some injury on the recalcitrant, but also just cause to require us to curtail the liberty of our will at his discretion. When a person in this position has signified his will, fear tempered by respect must arise in man's mind – fear from power, respect from reflection on the reasons which ought to induce one to accept his will even apart from fear. For anyone who can give no reason except mere strength why he will impose an obligation upon me against my will can indeed terrify me, so that I think it better to obey him for the time being to avoid a great evil, but when the threat is gone, nothing any longer prevents me from acting at my discretion rather than his. On the other hand, if a person has reasons why I should obey him but lacks the strength to inflict injury on me, I can disregard his orders with

2 OHC I.2.2: "Norma illa vocatur *Lex*, quae est decretum, quo superior sibi subjectum obligat, ut ad istius praescriptum actiones suas componat."

3 OHC I.3.10; JNG II.3.20.

impunity, unless one more powerful than he comes to assert the authority I have flouted.⁴

Leibniz finds two inconsistencies in this passage. The first one of these is Pufendorf's insistence that the superior must have just causes for his power. The problem with this statement is that elsewhere in the work Pufendorf makes perfectly clear that what is just depends always on the law and so ultimately on the will of the superior.⁵ Of course, this raises no difficulties in the case of human authorities, whose power receives its justice ultimately from natural law. What is problematic, however, is the claim that God's power to command human beings is also based on just reason. According to Leibniz, to hold such a view consistently requires that at least that part of justice which characterizes the causes God has for his power must be independent of his commands. If, however, one holds that the ultimate source of all law and justice is the command of God, as Pufendorf seems to do, "a circle is created, than which none was ever more manifest."⁶

97

The other inconsistency Leibniz finds in the definition of superior is to be found in the arguments by which Pufendorf justifies that the superior needs both just reasons for his power and the ability to punish in order to introduce an obligation. Leibniz understands these arguments as attempts to solve the above first mentioned inconsistency and remarks that they both fail to do this and bring forth a new contradiction:

Indeed, if neither coercion without reasons, nor the latter without force is sufficient, why – I ask – when force ceases and reason alone remains, shall I not return to that liberty which it is said I had

4 *OHC* I.2.5: "Introducitur obligatio in animum hominis proprie a superiore, i.e. tali, cui non solum vires sunt malum aliquod representandi contranitentibus; sed cui justae sunt causae, quare postulare queat, ex suo arbitrio voluntatis nostrae libertatem circumscribi. Talia enim ubi in aliquo fuerint, postquam quid velit significavit, necessum est in animo hominis oriri metum reverentia temperatum: illum quidem ex potentia, hanc autem ex consideratione causarum, quae etiam remoto metu allicere aliquem debebant ad istius voluntatem amplectendam. Qui enim nullam rationem allegare novit, quare mihi invito obligationem velit impingere, praeter solas vires, is terrere quidem me potest, ut effugiendo majori malo ipsi tantisper parere satius ducam. Sed eo metu remoto nihil amplius obstat, quo minus meo potius, quam illius arbitrio agam. Contra qui rationes quidem habet, quare ego ipsi parere debeam, a viribus tamen malum aliquod mihi imponendi destituitur, ejus jussa impune a me possunt negligi, ni potentior aliquis hujus auctoritatem proculcatam adsertum eat."

5 *OHC* I.2.11–13.

6 *The Political Writings of Leibniz*, p.73–74.

when, before the application of force, reason alone was present? What the author says, in fact – that, failing fear, no one can stop me from behaving according to my will rather than according to someone else’s – would be valid even if reasons existed. On the other hand, if reasons restrain even by themselves, why did they not already restrain by themselves, before fear arose? Or will this not very durable sentiment impress some indelible character on unwilling minds?⁷

Leibniz thinks, in other words, that Pufendorf is defending his position by two incompatible claims. On the one hand, Pufendorf maintains that the just reasons a superior has for his power are not enough to impose an obligation on his subjects, but that this requires also an ability to punish those who disobey. On the other hand, he distinguishes obligation from coercion by remarking that the former does not cease, even if the superior happens to lose his ability to punish. To this Leibniz remarks that one has to choose one or the other: either the reasons oblige prior to force, or they do not oblige any longer when force ceases.⁸

Does Leibniz’s critique point to real inconsistencies in Pufendorf’s theory of obligation? I will deal first with the inconsistency Leibniz saw in Pufendorf’s claim that in order to introduce an obligation the superior must have both just reasons for his power and the ability to punish those who disobey. Here we should notice that Pufendorf uses the word “obligation” in two closely related but still different senses and often fails to make clear which one of the two meanings he is using. In some instances he speaks of obligation as an awareness of what is right and what is wrong. The most obvious example is the definition of obligation he gives in *De officio hominis et civis* just before the definition of the superior:

Obligation is commonly defined as a bond of law by which we are constrained by the necessity of making some performance. That is, obligation places a kind of bridle on our liberty, so that though the will can in fact take different directions it yet finds itself imbued by it with an internal sense (so to speak), so that it is compelled to recognize that it has not acted rightly if the subsequent action does not conform to the prescribed rule. Consequently, if anything bad happens to man for that reason, he judges that he deserves it, since

7
7 *The Political Writings of Leibniz*, p.74.

8 *The Political Writings of Leibniz*, p.75.

he could have avoided it by following the rule, as he should have done.⁹

Here obligation is primarily an inner bond which tells how one ought to behave in order to do what is right. A reference is made also to the evil consequences following from the violation of the rule. These, however, are presented not as an indispensable element of the obligation itself, but as something a person is ready to accept as just, because he is aware of his obligation to follow the rule in question. This idea of obligation is also used a little later in *De officio hominis et civis*, when Pufendorf characterizes the powers possessed by the legislator:

The power of creating an obligation (*vis obliganda*), that is, of imposing an internal necessity, and the power to compel (*vis cogendi*) or to enforce observance of the laws by means of penalties, lie properly with the legislator, and with him to whom the protection and execution of the laws is committed.¹⁰

99

Here again the ability of the superior to create an obligation as an “internal necessity” is distinguished from his ability to punish.

In the former of the two passages cited above Pufendorf is explaining what is commonly meant by the word “obligation”. In this everyday sense obligation is conceptually distinct from the fear of punishment. However, as both of the cited passages suggest, in reality obligation as an inner bond always goes hand in hand with such a fear. Why this is so is explained in paragraph I.6.12 of *De jure naturae et gentium*, entitled *What force adds to an obligation*. Here Pufendorf starts by describing the just reasons from which “flows the force of obligations, which are understood to restrain our liberty as by an inner bond.”¹¹ These internal moral ties are not, however, enough to ensure “the external end of law”, that is, the goal for which the law has been

9 OHC I.2.3. “Vulgo igitur obligatio dicitur vinculum juris, quo necessitate adstringimur alicujus rei praestandae. Scilicet injicitur per eam quasi fraenum aliquod nostrae libertati, ut quamquam de facto voluntas in diversum tendere queat; intrinseco tamen per eandem velut sensu imbutam se deprehendat, ut, ni praescriptae normae conformis sit actio edita, non recte se egisse cogatur agnoscere. Adeoque si quid mali eo nomine homini eveniat, non immerito id sibi accidere judicet, cum normam prout par erat sequenti istud evitasse licuerit.”

10 OHC I.2.7: “Vis autem obliganda, i.e. intrinsecam necessitatem adferendi, et vis cogendi, seu per poenas ad observationem legum adigendi proprie est in legislatore, et cui legum custodia atque executio est comissa.”

11 JNG I.6.12: “Ex hisce duobus fontibus manare arbitramur vim obligationum, quae intrinsecum velut vinculum voluntatis nostrae libertati injicere intelliguntur, ...”

introduced. This cannot be achieved unless laws are mingled with a force to compel the unwilling.¹² The reason for this is that the great majority of human beings are governed by passions which easily overcome all considerations of the just reasons the superior has for his power.¹³ The only thing which is able to control these passions is a fear of some future evil that is expected to follow from the violation of the obligation. "Thus", Pufendorf concludes, "in the final analysis obligations get their strength (*firmitas*) from force, and from the consideration that the one who desires to produce their observance has so much strength, either inherent in him or given by others, that he can bring some grave evil upon the disobedient."¹⁴ Therefore, a law must always consist of two parts. One defines what must be done and what must be avoided, the other tells what punishments are prescribed for those who disobey.¹⁵

Thus, although there is an inner bond of obligation which is distinct from the fear of punishment, in practice the ability of laws, both natural and civil, to affect human behaviour requires also this fear. What makes Pufendorf's theory seem confused is that he uses the word "obligation" also when he refers to this practical efficiency of laws. In this case the relationship between the inner bond and the evil consequences is different. A case in point is the following comparison between obligation and coercion in *De jure naturae et gentium*:

What most of all distinguishes obligation from coercion is that while both ultimately point out to some object of fear, the latter shakes the will only with an external force, and impels it to choose some undesired object only by the sense of an impelling evil; while an obligation in addition forces it to admit that the evil, which has

12 JNG I.6.12: "Scilicet finem suum externum vix assequuntur leges, ni viribus sint succinctae, quae invitis quoque fibulam injicere possint."

13 JNG I.6.12: "Enimvero quia naturalis humanae voluntatis libertas nullo morali vinculo extinguitur, ea quoque in plurimis mortalium est animi levitas aut malitia, ut istas imperii rationes insuper habeant: igitur aliud accedere oportet, quod validiore momento enormes libidines, quam pudoris et decori sensus, premat. Idque eo magis est necessarium, quod pleraque hominum malitia aliis damno vergit. Nam alias facilius sibi quisque poterat relinqui, si nemo peccando, nisi sibi noceret."

14 JNG I.6.12: "Istum porro effectum nihil habere deprehendimus, praeter metum mali alicujus, ob violatam obligationem infligendi ab aliquo valentiore, cujus intererat ab ista non fuisse discessum. Sicut demum ultima velut firmitas obligationibus accedat a vi, utque qui earundem observationem procurare velit, tanta sit potentia instructus, domestica, aut ab aliis collata, ut grave aliquid malum detrectantibus inferre possit."

15 JNG I.6.14: "... ita quaelibet lex ex duabus partibus constare intelligitur. Per unam definitur, quid faciendum, quidve omittendum: per alteram significatur, quodnam malum praecipuum intermittenti, et interdicitum facienti sit propositum."

been pointed out to the one who deviates from the announced rule, falls upon him justly, since he might have avoided it by acting in accordance with it.¹⁶

Here the fear of punishment is an essential element of obligation, and the inner moral bond is merely an element which distinguishes obligation from compulsion.

It seems, thus, that Pufendorf has two concepts of obligation. The first one is what we nowadays usually call a moral obligation, i.e. an inner sense which tells how one ought to behave in order to do the right thing. The other concept of obligation refers to those things which make it possible for laws to achieve the ends for which they are imposed. This can be called an effective obligation. It consists first of the moral obligation following from the just reasons the superior has for his power, and second of his ability to punish those who disobey.

The foregoing makes understandable the argument by which Pufendorf in *OHC* I.3.5 (and in the corresponding paragraph I.6.9 in *JNG*) justifies his claim that the superior needs both just reason for his power and the capability to punish. The subject matter in this discussion is to define what is needed to impose an effective obligation. As we saw above, Pufendorf explains the need for sanctions by saying that “if a person has reasons why I should obey him but lacks the strength to inflict injury on me, I can disregard his orders with impunity, unless one more powerful than he comes to assert the authority I have flouted.” Leibniz understood this statement so that if someone has only just reasons for his power but not an ability to punish, one is still under no obligation to obey him. What Pufendorf seems to have in mind is, however, that the inner moral bond which follows from just reasons is not enough to create an effective obligation which ensures the external end of the law. Understood in this way, his remark does not contradict the observation that if someone has only an ability to punish and then loses it, “nothing any longer prevents me from acting at my discretion rather than his.”¹⁷

Of course, the above does not mean that Pufendorf’s use of the word “obligation” is not somewhat confusing. As Barbeyrac remarked,

16 *JNG* I.6.5: “Et in hoc praecipue obligatio differt a coactione, quod licet utraque ultimo metum aliquem ostendet; haec tamen extrinsecus tantum voluntatem concutiat, et in electionem rei ingratae per solum sensum imminenti mali impellat: obligatio autem insuper efficiat, ut quis ipse adigatur agnoscere, sibi non immerito accidere malum, quod a proposita regula devianti est propositum, cum ultro eandem sequenti istud declinare licuerit.”

17 An interpretation along similar lines can be found in Schneewind 1987, p.146.

Pufendorf could have made his point much clearer, if instead of trying to define obligation in a way which explains how the law is able to achieve its external end, he had distinguished between the reasons which give a superior the right to command his subjects and the factors which make a superior able to command effectively.¹⁸ However, what is significant in this context is that Pufendorf has the idea of obligation as an inner moral bond, which is independent of the ability of a superior to punish and follows solely from the “just causes” a superior has for his power to command.

I will now turn to the inconsistency Leibniz found in Pufendorf’s theory of obligation as an inner moral bond. As mentioned already, on this issue Leibniz criticized Pufendorf’s theory for its circularity. By maintaining simultaneously that God has just reasons for his power, and that God’s commands are the source of all law and justice, Pufendorf made the ultimate foundation of morality unintelligible.

102

On this question Stephen Buckle has recently suggested that because Leibniz was familiar only with the *De officio hominis et civis*, he actually missed the point of Pufendorf’s theory of law and obligation. According to Buckle, a closer look at *De jure naturae et gentium* reveals that “Pufendorf’s appeal to the twin elements of the will of a superior and the existence of just reasons in his account of law is ... an attempt to specify two different kinds of elements, both of which are necessary for the existence of law.” In this endeavour Pufendorf “employs a version of the traditional Aristotelian notion of formal and material causes.” What Pufendorf claims, according to Buckle, is that a law consists of the will of a superior, which is necessary for the act of imposition (the formal element), and just reasons for its imposition (the material element). An imposition has just reasons when it “reinforces or protects the beneficial structure of the natural state of affairs.” Buckle summarizes Pufendorf’s position in the following way: “The will of a superior, without just reasons, is only coercion; while just reasons, without the will of a superior, are only reasons for law, but not law itself. (They are not *compelling*.)” What, then, makes natural law a true law is that it is imposed by God, and that God has just reasons for imposing it, which follow from the fact that it is necessarily beneficial for the human race in general.¹⁹

18 “Le jugement d’un anonyme sur l’original de cet abrégé” in Samuel Pufendorf, *Les Devoirs de l’homme et du citoyen tel qu’ils sont prescrits par loi naturelle*, Amsterdam 1718, p.491: “J’ayoné néanmoins, que les pensées de notre Auteur [Pufendorf] ne sont pas ici assez dégagées, et qu’il autroit du mieux distinguer, ce qui donne proprement au Supérieur le Droit de commander, d’avec ce qui le met en état de commander efficacement.”

19 Stephen Buckle *Natural Law and the Theory of Property. Grotius to Hume*. Oxford, 1991, pp.60–61.

If I understand Buckle correctly, he suggests that actually Pufendorf does not present a genuine divine command theory at all but thinks that there is a criterion of justice which is independent of God's commands. Human beings are able to estimate that God's commands are just because they reinforce or protect "the beneficial structure of the natural state of affairs." The will of God is, then, not the ultimate source of all ideas concerning justice, but merely an element which makes human beings consider the laws of sociality more compelling.

Buckle's interpretation is possibly based on the definition of the superior Pufendorf offers in *De jure naturae et gentium*, which includes slightly different formulations than the one presented in *De officio hominis et civis*:

An obligation is properly laid on the mind of a man by a superior, that is, by one who has both the strength to threaten some evil against those who resist him, and just reasons why he can demand that the liberty of our will be limited at his pleasure. For when a person has such a power, after he has once signified what reward awaits those who obey his will, and what evil consequences those who resist, there must necessarily arise in the faculty of reason a fear mingled with reverence, a fear occasioned by such a person's strength, and a reverence arising from a consideration of the causes, which should make us obey his will even when the fear is gone, in the mode of counsel.²⁰

What might be seen here as supporting Buckle is the remark that the veneration towards the superior arises from a consideration of reasons which should make one obey his will even "in the mode of counsel." Following Hobbes, Pufendorf defines counsel as a precept in which the reason for obedience is drawn not from the authority of he who gives the precept but from the prescribed thing itself.²¹ It would seem possible, therefore, to understand the passage so that what generates the respect towards the superior is the just content of his commands. This, however, is not the only possible interpretation, nor the most

20 *JNG* I.6.9: "Introducitur autem obligatio in animum hominis proprie a superiore, i.e. tali, cui non solum sint vires malum aliquod repraesentandi contranitentibus, sed cui justae sint causae, quare postulare queat, ex suo arbitrio voluntatis nostrae libertatem circumscribi. Talia enim ubi in aliquo fuerint, postquam quid velit, simulque quid voluntatis ipsius parentes boni, renitentes mali maneat, significavit, necessum est in facultate rationis compote oriri metum reverentia temperatum, illum quidem ex ipsius potentia, hanc autem ex consideratione causarum, quae etiam remoto metu, per modum consilii sufficere debebant ipsius voluntatem amplectendam."

21 *JNG* I.6.1: "Huc fere redeunt, quae traduntur Hobbesio *De Cive* XIV.1: Consilium est praeceptum, in quo ratio quare paremus, sumitur ad ipsa re, quae praecipitur."

plausible one. It should be remembered that in his definition of the superior Pufendorf is interested in the manner in which laws can effectively govern human behaviour. What he has in mind at the end of the passage cited above is, I think, the following: If we reflect the commands of the superior independently of his ability to punish, these cannot be called laws in the proper sense of the term but should be seen rather as moral precepts given in the mode of counsel. What they in this case have in common with, say, a doctor's orders is the lack of sanctions which compel those who are inclined to disobey. However, unlike true advises, which leave to the counseled party full inner freedom to decide whether to obey them or not, the commands of a superior would be, even without sanctions, something his subjects ought to obey because of the just reasons the superior has for his power.

Be this as it may, even if the first-mentioned interpretation were the correct one, this would not save Pufendorf's theory from the charge of circularity. For also in *De jure naturae et gentium* Pufendorf makes perfectly clear that there can be no criteria of justice whatsoever independent of God's commands. It is true that in this work Pufendorf emphasizes that natural law consists of rules which are beneficial for the human species. In the second edition of the work he remarks that "the actions prescribed by natural law have through the determination of the first cause the native power to produce an effect good and advantageous to human beings, while actions similarly forbidden produce the contrary effect." Nevertheless, on the same occasion Pufendorf firmly maintains that "this natural goodness and badness does in no way constitute an action in the field of morals."²² Moral good and bad, right and wrong are attributes of human actions which arise from their conformity or discord with the law, and there can be no law prior to the command of the superior.²³ The same is true of justice and injustice. What distinguishes justice from the moral rectitude is that while the latter expression denotes simply that an act is in agreement with the law, by saying that an act is just one also pays attention to those towards whom the action is performed.²⁴ And since

22 *JNG* 1684 I.2.6: "Nam alias actiones lege naturali praeceptae ex determinatione primae causae nativam habent vim bonum et hominibus proficuum effectum producendi, sicut actiones vetitae contrarium. Verum haec ipsa bonitas et malitia naturalis actionem per se hautquidquam in genere morum constituit."

23 *JNG* I.2.6: "Cum enim honestas sive necessitas moralis, et turpitudine sint affectiones actionum humanarum, ortae ex convenientia aut inconvenientia a norma seu lege; lex vero sit jussum superioris; non adparet, quomodo honestas aut turpitudine intelligi possit ante legem, et citra superioris impositionem."

24 *JNG* I.7.7: "Differt autem justitia actionum a bonitate in hoc potissimum, quod bonitas simpliciter notet convenientiam cum lege, justitia autem praeterea involvat respectum ad eos, in quos actio exercetur."

the commands of God are the ultimate source of all law, there can be no criterion of justice prior to his will.

Do we have to conclude, then, that Pufendorf's theory is circular in the way Leibniz suggested? Not necessarily. First thing to notice here is that there is, according to Pufendorf, a substantial difference between the reasons which give human superiors their authority and the reasons which make human beings think that God is entitled to command them. In the case of human authorities the reason is the fact that human beings consent to empower others (a person or collective body) to maintain peace. The just character of such an authority follows from natural law, which requires human beings both to advance peace and to keep their contracts. God's power over human beings, on the other hand, has quite a different foundation:

For naturally one cannot but be won over by someone from whom one has received much good. And so if it appears that the same person wishes me well, can take better care of my future than I, and also lays a claim to direct my acts, there is no apparent reason why I should wish to question his power. And this is even more true if I am indebted to him for my very being. And why should not he, who gave man the power of free action, be able from his own right to limit some part of man's liberty?²⁵

105

Now, Fiammetta Palladini has pointed out that in the light of everything Pufendorf says of the origin of human authority and the consequences of human beneficence it appears as a most unsatisfactory justification for God's power to command.²⁶ This is undoubtedly true. In the first place, Pufendorf insists that a mere superiority of natural characteristics can give no human being a right to command others:

Since the man upon whom an obligation is to be laid, has in himself the ability to direct his actions, which he can feel is enough for himself, there is no apparent reason why he should be understood to be convicted by the dictate of his conscience, if he orders his

25 *JNG* I.6.12: "Nam uti naturaliter non potest non illi quis conciliari, abs quo multa bona accepit; ita si constiterit eundem et bene mihi velle, et rectius, quam ipse valeam, mihi prospicere posse, simulque idem actu mei directionem sibi vindicet, nil adparet rationis, quare imperium istius detrectare velim. Idque eo magis, si etiam id ipsum, quod esse potuerim, eidem in acceptis referam. Et qui homini dedit, ut libere posset agere, quare non is jure suo aliquam ejus libertatis particulam circumscribere queat?"

26 Palladini 1990, pp.56–58.

actions according to his own will, rather than that of someone who is by nature superior to him.²⁷

Furthermore, Pufendorf holds it evident that the mere fact that parents generate their children gives them no rights over their descendants.²⁸ And although great services create an “imperfect obligation” to show gratitude towards the benefactor, beneficence as such does not establish any real rights over other people: “An ungrateful mind does not of itself constitute an injury, since no right, in the proper sense of the term, is violated.”²⁹

Palladini remarks that had this critique been presented to Pufendorf or his advocates, they would have answered that since God is a supreme being, God’s power over the human species cannot be justified by the same criteria as the power relations which prevail between human beings.³⁰ And it seems obvious that something like this was assumed by Barbeyrac when he maintained that the seeming inconsistency in Pufendorf’s use of the word “just” disappears when we realize that the justice of God’s power is different from the justice which characterizes the reasons human superiors have for their power to command. In the latter case justice follows from the principles of natural law and so ultimately from God’s will. God’s own power to command, on the other hand, is based on reasons “which carry their justice in themselves and do not need to receive their force from somewhere else”.³¹

Palladini holds that instead of solving the problems in Pufendorf’s theory Barbeyrac’s interpretation only pinpoints the contradiction in its foundations. In order to make his theory consistent Pufendorf has to choose, according to Palladini, between two options. The first one is

27 JNG I.6.11: “Cum enim is, cui obligatio est imponenda, in seipso habeat principium regendi suas actiones, quod ipse sibi sufficere judicare potest; non adparet ratio, quare statim propriae conscientiae dictamine convictus debeat intelligi, si suo potius, quam alterius, cui natura praestantior, arbitrio agat.”

28 JNG VI.2.4: “Nobis quippe sola generatio non videtur sufficere ad titulum imperii in sobolem humanam constituendi.”

29 JNG III.3.17: “Porro licet in animo ingrato per se nulla sit injuria, quippe cum non violetur jus aliud proprie dictum.”

30 Palladini 1990, p.59.

31 *Les Devoirs de l'homme et du citoyen tel qu'ils sont prescripts par loi naturelle*, Amsterdam 1718, p.489: “Tout Supérieur, au dessous DIEU, a un Autorité fondée sur des raisons, dont la justice dépend de quelque Loi du Droit Naturel, et se rapporte par consequent aux Régles de ce Juste dont l'obligation émane véritablement de la volonté d'un Supérieur, ou de celle de Roi Des Rois, et du Seigneur des Seigneurs. Mais le droit de commander qu'a cet Etre Souverain, est fondée sur des raisons qui portent leur justice avec elles, et qui n'ont pas besoin d'emprunter d'ailleurs leur force.”

that he banishes God into the field of faith and by doing so makes God ineffable, a being who cannot be reflected on and judged by human criteria of justice. In that case, however, there cannot be any just causes for God's power and God is unable to offer a rational foundation for the moral system. The other possibility is that God is used as the first link in a rational argument by which one demonstrates the obligatory character of natural law. This requires, however, that God's power over human beings must be justified by the same rational terms as human power relations. Palladini maintains that Pufendorf chooses the latter alternative when he decides to include God's authority over human beings in his general definition of a superior and maintains that there are just causes for God's authority. Nonetheless, when Pufendorf maintains simultaneously that God's power over human beings cannot be justified by the same criteria as human power relations, he makes his justification for God's authority a mere tautology: God is in entitled to command human beings because God is God and human beings are human beings.³²

I agree with Palladini that Pufendorf's attempt to offer a general definition of superior, which includes both God's power over human beings and human power relations, makes his theory appear confused. However, I do not share Palladini's estimation that Pufendorf's idea of the origin of morality should be seen as fundamentally contradictory or tautological. Palladini's interpretation is based on the assumption, shared also by Barbeyrac, that the argument by which Pufendorf explains how God imposes an obligation attempts to be some kind of justification for God's power to command. Now, if this were the case, it would be difficult to save Pufendorf's position from the charge of circularity. It seems to me, however, that the argument is not meant as a justification, and that in the case of God's power over human beings, Pufendorf uses the expression "just causes" in a consciously rhetorical sense. In the following, I will attempt to show that Pufendorf puts forward a genuine divine command theory of morality, in which the will of God is the ultimate source of all ideas concerning right and wrong, just and unjust, and which assumes no moral criteria by which God's authority is justified.

The first thing to note here is that without an idea of a commanding God human reason can, according to Pufendorf, have no ideas concerning morality and justice:

.....
 32 Palladini 1990, pp.59-60.

If we consider reason in so far as it is not imbued with a knowledge and a sense of law, or a moral norm, it might perhaps be able to permit man the faculty of doing something more effectively and dexterous than a beast, and to assist his natural powers by skillfulness. But that reason should be able to discover any morality in the actions of man without contemplating a law, is as impossible as for a man born blind to judge between colors.³³

As already mentioned, by law Pufendorf means the command of a superior. All human superiors, in turn, receive their authority from natural law and so ultimately from the command of God. Thus, what Pufendorf says in the passage cited above is that the whole human phenomenon of morality is dependent on the fact that human beings have the idea of God who wants them to behave in a certain manner. If they were unaware of their creator, the idea that some things are right and just while others are wrong and unjust would never enter their minds.

108

The above remarks are not contradicted by Pufendorf's observation that many people, including celebrated philosophers, live in the erroneous belief that there are acts which are morally good or bad in themselves. The reason for this phenomenon is that when people are from childhood on raised to curse certain acts, this hatred achieves in their mind the force of a natural passion. As a result, they easily become unable to distinguish between the physical and the moral elements in human acts and are inclined to believe that the wicked character of these acts follows from some natural feature in the acts themselves.³⁴ In other words, the reason why human beings often support some kind of moral realism is that there are acts which are powerfully condemned in the society they live in. This does not contradict the view that if human beings were completely unaware of God, there could be no moral ideas at all. For in that case the thought that certain acts are right and others wrong could not have arisen in the first place, and there would be no commonly prevailing moral convictions to be internalized in the manner described above.

33 *JNG* I.2.6: "Nam si consideremus rationem, quatenus non est imbuta cognitione et sensu legis, seu normae moralis, potest quidem ista fortasse homini suppeditare facultatem expeditius aut dexterius quid agendi quam brutum, viresque naturales per solertiam adjuvare. Verum ut citra reflexionem ad legem in hominis actionibus moralitatem deprehendere possit, id aequae est impossibile, atque coeum natum discrimina colorum dijudicare."

34 *JNG* I.2.6: "Quodautem multi naturalem istam indifferentiam aegre concipere queant, inde est, quod a teneris istorum vitiorum detestatio nobis fuit inculcata; quae opinio simplici adhuc menti impressa, in vim naturalis cuiusdam affectus videtur invaluisse; adeoque efficit ut paucis in mentem veniat inter materiale et formale istarum actionum distinguere."

The foregoing has the important consequence that human beings are able to attribute moral qualities to God only because they are aware of God's commands. This, of course, leads to difficulties, if one also thinks that in order to hold God's commandments as a source of morality, human beings first need a moral justification for God's authority. It seems to me, however, that Pufendorf does not think this way, and that the explanation he gives to God's ability to impose an obligation is not strictly speaking a justification for God's power. In Pufendorf's eyes, only human power relations require justification. This they do because no human individual can possess such qualities or do such deeds which could generate in others the idea that they ought to obey his commands rather than their own will. In the case of God the situation is, however, quite different. Human beings not only understand that God has created them and by doing so has laid a claim to govern their behaviour. They also comprehend that God is concerned about the survival and well-being of the human species and is, because of his omnipotence, in a unique way able to help human beings. According to Pufendorf, it is not possible for human beings to have such an idea of God and not to think that they ought obey God's will. This is, in his eyes, the ultimate origin of all human ideas concerning right and wrong, just and unjust. Consequently, it is pointless to ask whether there is some justification for God's authority. For we are able to formulate such a question only because we have already adopted the idea of justice from God's commands.

In agreement with the foregoing Pufendorf declares in *JNG* II.1.3 that when he attributes the words "just" and "justice" to God, he uses them in a metaphorical sense. Strictly speaking these words can only characterize the lawful acts of human beings. Since God is not restricted by any law and does everything only according to his own will, he or his acts cannot be called just in the proper sense of the word.

When justice is attributed to God, it must not be understood as inferring any obligation or right residing in another, as the nature of human justice implies. But since God has shown both in his acts and in the revelation that such a manner of acting is proper to his most perfect nature, we mortals apply that word to him, which we use to describe such things we lawfully perform towards each other.³⁵

35 *JNG* II.1.3: "Hinc quando Deo tribuitur justitia, non illa est intelligenda respicere aliquam obligationem, aut jus in altero, sicut justitiae humanae natura id infert. Sed quia talem agendi modum perfectissimae suae naturae congruere ipse operibus, et per revelationes ostendit; inde eidem mortales id vocabulum adplicamus, quo, quae recte a nobis adversus alios aguntur, exprimimus."

In other words, to say that God is just or that God has just reasons for his power is an anthropomorphism. Precisely speaking, the whole phenomenon of morality – the idea that there are acts which are right or wrong, just or unjust – is but a consequences of the idea that there is God who wants human beings to behave in a certain way. The popular idea that God himself is just is simply the corollary of the fact that nothing in God’s own deeds makes it possible for human beings to attach to God himself the idea of injustice they learn from God’s commands. Similarly, the idea that God has just reasons for his power follows from the fact that it is impossible for a human being to think that there is something unjust in the situation that God commands human beings. That Pufendorf adopts this imprecise way of speaking when he characterizes the manner in which God imposes an obligation over human beings is hardly surprising. On this issue the significant thing for him is not whether it is philosophically accurate to attach the idea just reasons to God. What is important to Pufendorf is that there is something else besides God’s ability to punish which makes human beings think that God’s commands should be observed, namely the idea that it is wrong to disobey these commands.

THE DISAGREEMENT WITH GROTIUS

Pufendorf presents, thus, a genuine divine command theory of morality in which the ultimate source of right and wrong, justice and injustice is the will of God. In the following two chapters I will try to answer what makes Pufendorf adopt this position. Since the majority of Pufendorf’s explicit statements on this issue are directed against the theory of morality Grotius had presented in *De iure belli ac pacis*, I will first examine what exactly was the source of the disagreement between these two men.

As has been already mentioned, in his early *De iure pradae* Grotius also supported the divine command theory, maintaining not only that “what God has shown to be his will, that is law,” but also that “a given thing is just because God wills it, rather than that God wills the thing because it is just.”³⁶ However, twenty years later in *De iure Belli ac Pacis* Grotius abandoned this view, claiming now that while natural law evidently is a command of God, its normative character is not dependent on this fact. In his major work Grotius defined natural law

.....
36 *De iure praede*, p.8.

as “the dictate of right reason, which points out that an act, according as it is or is not in conformity with this rational nature [of human beings], has in it a quality of moral baseness or moral necessity, and that in consequence such an act is either forbidden or enjoined by the author of nature, God.”³⁷ Whereas God’s positive laws and human legislation regulates also acts which are as such morally neutral and become good or bad only because they are commanded or prohibited by the legislator, natural law is concerned solely with acts which are morally good or bad in themselves and, therefore, necessarily commanded or forbidden by God.³⁸ Grotius referred to Aristotle who had remarked that acts like murder or theft do not have a proper mean between deficiencies and excess, but are bad as such and therefore wrong in all circumstances.³⁹ In Grotius’ eyes, it was as impossible for God to make such acts good as it was for him to command that two and two does not make four.⁴⁰ Thus, it could be concluded that natural law “would have some place, even if we should concede that which cannot be conceded without utmost wickedness, namely that there is no God, or that the affairs of men are of no concern to Him.”⁴¹

Pufendorf offers three logically separable arguments against Grotius’ position. First, there is the simple conceptual remark that words like “murder” or “theft” do not refer to plain physical motions of human bodies, but to acts which are against the law.⁴² To say that it is no more possible for God to make murder or theft morally good than to change the rules of arithmetics is a purely conceptual truth. It does not indicate that God was under some necessity to command or forbid certain acts rather than others.

37 *IBP* I.1.10: “Ius naturale est dictatum rectae rationis indicans, actui alicui, ex ejus convenientia aut disconvenientia cum ipsa natura rationali, inesse moralem turpitudinem aut necessitatem moralem, ac consequenter ab auctore naturae Deo talem actum aut vetari aut praecipiri.”

38 *IBP* I.1.10: “Actus de quibus tale exstat dictatum, debiti sunt aut illiciti per se, atque ideo a Deo necessario praecepti aut vetiti intelliguntur: qua nota dicitur hoc jus non ab humano tantum jure, sed a divino voluntario, quod non ea praecipit aut vetat, quae per se ac suapte natura aut debita sunt illicita, sed vetando illicita, praecipiendo debita facit.”

39 *Nicomachean Ethics* 1107a8–15.

40 *IBP* I.1.1: “Est autem jus naturale adeo immutabile, ut ne a Deo quidem mutari queat. Quamvis enim immensa est Dei potentia, dici tamen quaedam possunt ad quae se illa non extendit, quia quae ita dicuntur, dicuntur tantum, sensum autem qui rem exprimat nullum habent; sed sibi ipsis repugnant: Sicut ergo ut bis duo non sint quatuor ne a Deo quidem potest effici, ita ne hoc quidem, ut quod intrinseca ratione malum est, malum non sit.”

41 *IBP*, Prolegomena (§ 11): “Et haec quidem quae jam diximus, locum aliquem haberent etiamsi daremus, quod sine summo scelere dari nequit, non esse Deum, aut non curari ab eo negotia humana.”

42 *JNG* I.2.6: “Quin haec ipsa vocabula non notant nudos et simples motus actusque physicos; sed tales, qui legibus repugnant, adeoque integras actiones morales.”

The second argument is concerned with the nature of God's freedom. On this issue Pufendorf shares the Ockhamist view, according to which the idea that there are acts which God had to command or prohibit is incompatible with God's absolute freedom:

Those who set up an eternal rule for the morality of human actions, beyond the imposition of God, seem to me to do nothing other than to join to God some co-eternal extrinsic principle which he himself had to follow in the assignments of forms of things. Still all admit that God created all things, man included, of his free will. Consequently, it lay within his own pleasure to assign whatever nature he wished to this creature who he was about to create.⁴³

Pufendorf is not, however, ready to follow the Ockhamists when they claim that God can impose a moral order which is radically opposite to the one which now prevails.⁴⁴ After God had created a human species the survival of which is dependent on the laws of sociality, it is not possible to think that God would change this law, unless God would also alter human nature.⁴⁵ Behind this position is Pufendorf's fundamental assumption that God has created human beings to "make his glory greater by improving those good things conferred on them."⁴⁶ This makes it unthinkable that God would require human beings to behave in a manner which is harmful for their preservation and well-being.

It has been suggested that Pufendorf's commitment to a divine command theory of morality was ultimately a corollary of his theological voluntarism.⁴⁷ And it is evident that Pufendorf himself sees God's freedom as a forceful argument against the idea that some human deeds could be morally good or bad independently of God's

43 *JNG* 1.2.6. "Et sane qui extra impositionem divinam moralitatis actionum humanarum aeternum aliquam statuunt regulam, nil aliud mihi videtur agere, quam ut Deo adjungant principium aliquod coaeternum extrinsecum, quod ipse in assignandis rerum formis sequi necessum habuerit. Fatentur praeerea omnes, Deum uti omnia, ita hominem liberrima voluntate creasse; cui consequens est, in beneplacito ejusdem fuisse, qualem ei, quem creaturus erat, naturam vellet assignare."

44 On the Ockhamist position, see Holopainen 1991, pp.133–149.

45 *JNG* II.3.5: "... in voluntate divina quidem positum fuisse, tale animal, cui lex naturae congrueret, producere, vel non. Sed jam postquam a Deo creatus est homo, animal quod citra observationem legis naturalis salvum esse nequit; inde hautquidquam fas est credere, eundem velle legem naturae tollere aut immutare, quamdiu natuare humanae nullam mutationem infert."

46 *JNG* 2.4.1 (*JNG* 1684 2.4.16).

47 This view is stated explicitly in Schneewind 1987, p.127. It seems to be implied also in Palladini 1990, pp.33–34 and Denzer 1972 pp.49–55.

commands. Right after declaring that God was absolutely free in creating the human species, he continues with the following remark:

How, then, can an action of man be accorded any quality which follows from an extrinsic and absolute necessity, without the imposition and pleasure of God? If all laws, both divine and human, were removed, all the movements and actions of man would be indifferent. Some of them are called naturally honourable or base, because the condition of nature, which the Creator freely bestowed upon man, most rigorously requires either their execution or avoidance. It does not follow, however, that there is, without any law, some morality in the motion and application of the physical power itself.⁴⁸

It must be noted, however, that although Pufendorf here closely connects the divine command theory of morality with theological voluntarism, the former is not a necessary consequence of the latter. Pufendorf could maintain quite consistently that God was absolutely free at the moment of creation, but then decided to create a human being who is able to find moral qualities even without the idea of God. In this case it would still be wrong to hold with Grotius that it was necessary for God to command or prohibit certain acts because they are morally good or bad in themselves. Nevertheless, there would be nothing incorrect in the idea that even in the imagined situation where there were no God, human beings would think that certain acts are right and others wrong. But as has been mentioned already, Pufendorf denies also this. If human beings were totally unaware of the creator and his commands, the idea that some acts are morally good or bad would never have entered their minds.⁴⁹ It seems to me, therefore, that the central issue of disagreement between Grotius and Pufendorf is not the character of God's freedom but the origin of morality as a human phenomenon. Grotius holds that human reason would have some idea concerning right or wrong, even if it knew nothing of God, whereas Pufendorf maintains that in such an imagined situation reason could discover nothing morally laudable or blameworthy in human behaviour.

.....
48 *JNG* I.2.6: "Quo ratione igitur actioni hominis possit competere aliqua affectio, quae ex necessitate intrinseca et absoluta, extra Dei impositionem et beneplacitum, promanet? Sic ut revera omnes motus et actiones hominis, remota omni lege tam divina quam humana, sint indifferentes; earum autem aliquae ideo tantum naturaliter honestae aut turpes dicantur, quod eas fieri aut omitti quam maxime requirebat conditio naturae, quam Creator homini libere attribuit. Non autem, quod citra omnem legem in ipso motu et adplicatione potentia physicae per se insit aliqua moralitas."

49 *JNG* I.2.6. See above pp.108–109.

What made Grotius and Pufendorf adopt dissimilar views on this particular issue? Richard Tuck has suggested that this divergence of views was concerned with the question of whether a belief that some course of action is profitable for the survival and safety of an individual “was in itself sufficient to induce a belief in an agent that the course of action was morally obligatory.” Tuck holds that “Grotius apparently believed that it was, and that an accurate assessment of social realities was enough to give rise to knowledge of obligatory moral law.” Pufendorf, on the other hand, “observed that men can often act quite knowingly against their own interests, and that therefore knowledge of what is in our interests cannot be sufficient to make us believe we are under an obligation to perform the actions.”⁵⁰

Tuck is right, of course, in holding that Pufendorf argues forcefully against the idea that the benefits following from the observance of natural law would be the source of its moral character.⁵¹ It is also true that Pufendorf hints at the possibility that Grotius had based his position on the utility of natural law.⁵² I do not, however, think this is the real issue of disagreement between Pufendorf and Grotius. It seems to me that even though Grotius emphasized the utility of natural law, in *De iure belli ac pacis* his theory of the normative character of natural law was based ultimately on a teleological conception of human nature.

The idea that Grotius derived the morally obligating character of natural law from its utility for the safety and survival of the individual seems to find confirmation in the remarks at the beginning of the second chapter of Book one of *De iure belli ac pacis*. There Grotius not only speaks of the first principles of nature which make all animals from the moment of their birth impelled to seek those things which preserve their life. He also says that from this condition arises the first duty (*primum officium*) of a human being to keep himself in the condition nature has given him and to pursue that which is in accordance with his nature and to avoid that which contradicts it.⁵³ A little later Grotius then remarks that the purpose of social life is to secure the *salus* of each individual.⁵⁴

50 Tuck 1987, pp.105–106.

51 *JNG* II.3.20.

52 *JNG* II.3.19.

53 *IBP* I.2.1: “Prima naturae vocat, quod simulatque natum est animal, ipsum sibi conciliatur et commendatur ad se conservandum, atque ad suum statum et ad ea quae conservantia sunt ejus status diligenda: alienatur autem ab interitu iisque rebus quae interitum videatur afferre. ... ; primumque esse officium ut se quis conservet in naturae statu, deinceps ut ea teneat quae secundum naturam sint, pellatque contraria.”

54 *IBP* I.2.5: “Nam societas eo tendit ut suum cuique salvum sit communi opera conspiratione.”

The foregoing as such gives the impression that the moral obligation to obey the rules which are necessary for peaceful social life follows from the fact that they are profitable for one's survival and safety. It must be noted, however, that at the beginning of chapter I.2. Grotius is paraphrasing Cicero's presentation of the Stoic philosophy in the third book of *De finibus*. And in the Stoic theory the mere fact that an action accords with primary inclinations of human nature which are common to all animals did not give it any peculiar moral value (*honestum*). Such a quality belonged to deeds which follow from the use of the distinctively human faculty of reason. This seems also to be the opinion of Grotius, who continues in IBP I.2.1 – still rephrasing Cicero's exposition in *De finibus* – with the following remark:

But after these remarks [concerning the naturalness of the instinct for self-preservation] have received due consideration, there follows a notion of the conformity of things with reason, which is superior to the body. Now, this conformity, in which moral worth [*honestum*] becomes the paramount object, ought to be accounted a higher importance than the things to which the first inclination of the soul directs itself, because the first principles of nature commends us to right reason, and right reason ought to be dearer to us than those things through which we have been brought to it.⁵⁵

115

This remark is a corollary of the teleological idea – generally shared in classical philosophy – that since reason is the feature which distinguish human beings from all other animals, it is obvious that the proper way of living for a human being, one which is in agreement with his nature, is to follow reason.

The idea that human beings ought to behave in a distinctively human way plays a central role in the critique Grotius directs against the ancient sceptic Carneades in the *Prolegomena* to *De iure belli ac pacis*. Carneades had refuted the existence of natural law on the basis that like all other animals human beings always seek their own utility.⁵⁶ To this Grotius answers, first of all, that the claim that every living creature is impelled by nature to seek only its own good is not a universal truth. Even many animals are ready to make sacrifices for the sake of their offspring or members of the same species. Grotius' central argument against Carneades is, however, that while a human

55 IBP I.2.1: "At post hae cognita sequi notionem convenientiae rerum cum ipsa ratione quae corpore est potior; atque eam convenientiam, in qua honestum sit propositum, pluris faciendam quam ad quae sola primum animi appetitio ferebatur; quia prima naturae commendat nos quidem recta rationi, sed ipsa recta ratio carior nobis esse debeat quam illa sint a quibus ad hanc venerimus."

56 See above p.31.

being is an animal, he is “an exceptional animal, much further removed from all other animals than these are from one another.” And one of the central features which distinguishes a human being from other living creatures is a desire to live in a society with other members of their own species, “not”, however, “of any sort, but peaceful, and organized in accordance with his intellect”.⁵⁷ Moreover, of all animals only human beings have been endowed with the ability to communicate their ideas and to know and to follow general rules of behaviour. Grotius emphasizes, *pace* Carneades, that when human beings use these faculties, they do not act in a manner common to all animals, but in a way which agrees with human nature.⁵⁸ Based on these observation, he then concludes that “the care for social life which agrees with human intelligence” is the source of natural law “in the proper sense of the term” (i.e. with precepts which are absolutely indispensable for any kind of organized social life and which human beings can, therefore, be forced to obey).⁵⁹

Grotius continues in *Prolegomena* by remarking that the fact that individual human beings are in need of many things has given rise to another, more extensive conception of natural law. This consists of the idea that one should always act in a way which is in accordance with one’s long-term interests. However, also in this case the source of natural law is the fact that by observing it one behaves in a distinctively human way. Grotius points out that just like the desire for a peaceful and ordered social life, the ability to estimate what is beneficial and what is harmful for oneself in the long-run is something unique for the human species. It is this observation which causes the thought that if a person does not follow a well-tempered judgement,

57 *IBP* Prolegomena (§ 6): “Nam homo animans quidem est, sed eximium animans, multoque longius distans a caeteris omnibus, quam caeterorum genera inter se distant: cui rei testimonium perhibent multae actiones humani generis propriae. Inter haec autem quae homini sunt propria, est appetitus societatis, id est communitatis, non qualiscunquae, sed tranquillae, et pro sui intellectus modo ordinatae, cum his qui sui sunt generis.”

58 *IBP* Prolegomena (§ 7): “Idemque de infantibus dicendum, in quibus ante omnem disciplinam ostendit se, ad bene aliis faciendum propensio quaedam, prudenter a Plutarcho observata: sicut in ea aetate misericordia sponte prorumpit. Homini vero perfectae aetatis, cum circa similia similiter agere norit, cum societatis appetitu eccellente, cujus peculiare solus inter animantes instrumentum habet sermonem, inesse etiam facultatem sciendi agendique, secundum generalia praecepta, par est intelligigi, cui quae conveniunt ea jam sunt non omnium quidem animantium, sed humanae naturae congruentia.”

59 *IBP* Prolegomena (§ 8): “Haec vero, quam rudi modo jam expressimus, sociatatis custodia, humano intellectui conveniens, fons est ejus juris, quod proprie tali nomine appellatur: quo pertinent alieni abstinentia, et si quid alieni habeamus, aut lucri inde ferecimus restitutio, promissorum implendorum obligatio, damni culpa dati reparatio, et poenae inter homines meritum.”

but is lead astray, for example, by fear, the temptation of an immediate pleasure, or rash impulse, he acts in a way which does not agree with human nature and which is, therefore, against natural law.⁶⁰

The same teleological idea of human nature is in use when Grotius a little later in *Prolegomena* comments on Horace's saying: *Utility is the mother of justice and fairness*. In *De iure pradae* Grotius had remarked that Horace should not be censured for claiming this.⁶¹ But by that time this remark was based on the assumption that the ultimate source of all morality is God's will, which can be derived, at least partly, from the fact that God has implanted in human beings a strong desire for self-preservation. When Grotius in *De iure belli ac pacis* abandons the divine command theory, he also feels the need to qualify his previous statement concerning Horace's saying. He now remarks that it "is not true if we speak accurately":

For the mother of natural law is human nature itself, which, even if we had no lack of anything, would create in us a mutual desire for society. The mother of civil law is that obligation which raises from mutual consent; and since this obligation derives its force from the law of nature, nature may be considered, so to say, the great-grandmother of civil law. But utility is added to natural law: for in order to make us more eager to cultivate society, the author of nature wished that as individuals we should be weak, and should lack many things needed in order to live properly.⁶²

117

In other words, utility is merely a factor which God has connected to natural law in order to make human beings better motivated to obey it. What makes human reason recognize the normative character of this law is that it is something distinctively human to seek peaceful and

60 *IBP* Prolegomena (§ 9): "Ab hac juris significatione fluxit altera largior: quia enim homo supra caeteras animantes non tantum vim obtinet socialem de qua diximus, sed iudicium ad aestimanda quae delectant aut nocent, non praesentia tantum, sed futura, et quae in utrumvis possunt ducere; pro humani intellectus modo etiam in his iudicium recte conformatum sequi, neque metu, aut voluptatis praesentis illecebra corrumpi, aut temerario rapi impetu, conveniens esse humanae naturae, et quod tali iudicio plane repugnat, etiam contra jus naturae, humanae scilicet, esse intelligitur."

61 *De iure pradae*, p.9.

62 *IBP* Prolegomena (§16): "Quod ergo dicitur non Carneaditantum, sed aliis, *Utilitas iusti prope mater et aequi*, si accurate loquamur, verum non est; nam naturalis juris mater est ipsa humana natura, quae nos etiamsi re nulla indigeremus ad societatem mutuam appetendam ferret: civilis vero juris mater est ipsa ex concensu obligatio, quae cum ex naturali jure vim suam habeat, potest natura hujus quoque juris quasi proavia dici. Sed naturali juri utilitas accedit: voluit enim naturae auctor nos singulos infirmos esse, et multarum rerum ad vitam recte ducendam egentes, quo magis ad collendam societatem raperemur."

organized social life for its own sake, regardless of its necessity for one's survival and material well-being.

To sum up: in *De iure belli ac pacis* Grotius grounded the normative character of natural law on the classical teleological idea that what is natural for human beings are not only those features which every member of the human species receive by birth, but also a way of living which is based on those rational and social abilities which distinguishes them from other animals. Unlike Aristotle and his followers, Grotius did not think that reason recommends for human beings some specified way of living (say, a life of contemplation). In his eyes, there are numerous life-forms which are equally agreeable with reason. However, what always characterizes a rational human being is a desire to live in a peaceful and ordered society with other members of one's species. Therefore, human reason understands – even without the idea of God – that a person who acts in a way which is destructive of peaceful social life does not behave in accordance with human nature and does, therefore, something wrong and morally blameworthy.

118

It is now possible to see why Pufendorf rejects (and hardly comprehends) Grotius' account of the moral character of natural law. Pufendorf agrees with Grotius in so far as it is rational to live in society with other human beings and to behave towards them in a way which does not endanger the tranquility of social relations. He also agrees that rationally organized social life is something which distinguishes human beings radically from other animals. What he does not share, on the other hand, is the idea that the foregoing could serve as the basis for thinking that to live a rationally ordered social life is somehow natural for human beings. In Pufendorf's eyes human beings can be called social creatures only in the sense that they are able both to help and violate each other more than any other animal.⁶³ Moreover, if there is something which can be called natural in the behaviour of human beings, it is their uniquely strong tendency to hurt each other.⁶⁴ Therefore, the mere fact that rational social life is something peculiar to human beings cannot as such be the basis for the moral idea that human beings ought to cultivate peaceful sociality. In order to reach this conclusion the faculty of reason requires, in Pufendorf's opinion, the further premise that there is a God who has given human beings their special intellectual and social abilities in order that they should use them.

.....
63 *JNG* 1684 II.3.16: "Nam etiam ideo animal sociabile hominem diximus, quod homines mutua commoda, magis quam ullum aliorum animantium, promovere idonei sint; sicuti contra nullum animal plus incommodi ab homine experiri potest, quam ipse homo."

64 *JNG* II.1.6.

THE IMPOSSIBILITY OF CONSEQUENTIALISM

Pufendorf's non-purposeful conception of nature and his idea of human nature as corrupt make understandable his disagreement with Grotius. They do not, however, explain why he also rejects the possibility that human reason could discover moral qualities in human behaviour by contemplating its consequences on human well-being and happiness. After all, Pufendorf not only holds that in all their behaviour human beings seek what they see as good for themselves.⁶⁵ He also emphasizes repeatedly that to observe the rules of sociality is beneficial for the well-being and happiness of human beings, while disobeying these rules is harmful to these ends. It can be wondered, therefore, why Pufendorf insists that the non-moral good and bad (or natural good and bad as he calls it) following from the observance or violation of the rules of sociality cannot serve as the basis for moral evaluations. In what follows, I will first examine Pufendorf's remarks concerning the utility of natural law and then suggest a possible explanation for his non-consequentialist position.

119

The idea that observing natural law is always the best way to advance one's well-being is not so clearly expressed in the first edition of *De jure naturae et gentium*, where Pufendorf speaks mainly of the disadvantages which would follow if all human beings neglected the rules of sociality.⁶⁶ This leaves open the possibility that in the present reality, where the rules of sociality are generally observed, individual well-being is sometimes better served by violating them. However, in the second version of the work Pufendorf makes it clear that this is not the case:

The actions prescribed by natural law have through the determination of the first cause an inherent power to produce an effect good and advantageous to human beings, while actions forbidden produce the contrary effect.⁶⁷

By this Pufendorf means not only that actions which are in conformity with the rules of sociality are advantageous for the human species in general but also that they are beneficial for the individual who

65 *JNG* II.3.14.

66 *JNG* II.3.10, II.3.16.

67 *JNG* 1684 I.2.6: "Nam alias actiones lege naturali praeceptae ex determinatione primae causae nativam habent vim bonum et hominibus proficuum effectum producendi, sicut actiones vetitae contrarium."

commits them. Actions in accordance with the rules of sociality “procure some advantage and reward for a man, and contribute to his happiness,” while actions repugnant to these rules “may at times return some utility, and more often some pleasure, which however never endures for long, and is followed by a throng of much greater ills.”⁶⁸ Thus, “in the last analysis human actions which fall under the direction of the law of nature can be reduced to the natural power they possess to cause advantages or harm to men, considered either as individuals or in general.”⁶⁹

This almost causal relationship between the acts which agree with the rules of sociality and the promotion of personal well-being is somewhat qualified in the discussion of natural sanctions which Pufendorf added to the second edition of *De jure naturae et gentium*. Here he admits that those who claim that “many are returned for their benefactions only hatred, envy, and other ills, while others enjoy without punishment the fruits of their evil deeds” are not totally mistaken.⁷⁰ It is true, Pufendorf agrees, that morally good deeds “do not secure everything that they were by nature fitted to secure.” Correspondingly, the natural effects of evil acts “are sometimes interrupted and the crimes of some men turn to their profit.”⁷¹

The explanation Pufendorf gives to this phenomenon is that the life of human beings is affected not only by the advantages and burdens which God has ordered to follow by natural consequences from the observance or violation of the rules of sociality (natural sanctions) but also by benefits and hardships which people receive from God or other human beings regardless of their own merits or faults.⁷² Pufendorf

68 JNG 1684 II.3.10: “Habent quippe hoc actiones legi naturali congruentes, ut non solum honestae sint, i.e. quae ad honorem, existimationem et dignitatem hominis concervandam et augendam faciant, sed utiles, eadem existant, seu quae commodum aliquod et emolumentum homini concilient, et ad felicitatem ipsius conferat. ... Sed quae actiones legi naturali repugnant, semper quidem turpes sunt, aliquando tamen utilitatis quid saepius jucunditatis producere videntur, sed quae neque ad diuturnitatem valet, quam longe majorum moles malorum a tergo sequitur.”

69 JNG 1684 I.2.6: “Unde actionum humanarum, de quibus lege naturali disponitur, ultima resolutio fieri potest in vires earundem naturales ad commodum aut noxam hominibus, sigillatim aut conjunctim spectatis, conciliandam.”

70 JNG 1684 II.3.21: “Quaenam autem haec praemia, et mala quibusdam idea parum certo ex actionibus bonis atque malis provenire dicantur, quod multis pro benefactis odium, invidia, et alia mala reponantur, alii contra scelerum suorum fructu, impune gaudeant.”

71 JNG 1684 II.3.21: “Ac licet non semper omnia illa bona consequantur, quae alias per rerum naturam consequi idonea erant.” “... , praesertim postquam animadvertitur, effectus malarum actionum naturales quandoque intercipi, et quibusdam scelera sua ex parte lucro cedere.”

72 JNG 1684 II.3.21: “Ac bonorum quidem alia ex liberali donatione Creatoris, aut ultronea aliorum hominum benevolentia proficiscuntur, aut etiam per industriam

insists, however, that while these undeserved advantages and misfortunes make the outcome of morally good and bad actions less certain, they do not abolish the utility of natural law.

In the first place, this uncertainty concerns only those external advantages and drawbacks which are dependent on the manner in which others behave towards us. Natural rewards include, however, not only “innumerable advantages which can be attained by the goodwill of other people and the mutual exchange of services”, but also “a serene and secure conscience” plus “a well-ordered and calm soul”. Similarly, among the natural punishments there are not only the “countless evils which arise from the provoked violence of other men, and the withdrawal of their aid”, but also “the uneasiness of conscience” and “the distress and corruption of the soul”.⁷³ Unlike external sanctions, these inner rewards and punishments are free from the disturbing effects of the undeserved advantages and drawbacks. Although the realization of external rewards is always uncertain, “the fruit” that our morally good deeds produce “within ourselves is never subject to interruption.”⁷⁴

121

The foregoing seems to open up the possibility that the utility of natural law is ultimately dependent on the existence of morality and religion as social institutions. For conscience is not, according to Pufendorf, an inborn human disposition. It is an awareness of the moral law which human beings internalize in the process of socialization.⁷⁵ Its force to generate mental tranquility or discomfort follows from the assurance that God shall punish, in one way or another, those who disobey his commands, even if they happen to

.....
hominis, ad quam is libere et ultro sese determinavit, adquiruntur. Quae legum observantiae non deberi adparet. Alia autem ex actione legibus praecepta per naturalem consecutionem promanant dum Creator certo actui legibus congruo perpetuum et naturalem effectum, bono hominis cedentem, assignavit. ... Sic malorum alia ipsam naturam hominis, et conditionem sequuntur, abstrahendo unde ea conditio primitus orta sit, aut citra peculiarem culpam ejus, cui incumbunt, contingerunt. ... Alia per naturalem consecutionem et connexionem ex peccatis proveniunt.”

73 *JNG* 1684 II.3.21: “Ac observantiam quidem legum naturalium comitatur serenitas et securitas conscientiae cum bona fiducia conjuncta, bona constitutio et tranquillitas animi, conservatio corporis a multis malis non fatalibus, ac infinita commoda, quae ex benevolentia et mutuis officiis aliorum hominum conciliari possunt. ... Contra ex violatione ejusdem legis per naturalem connexionem oritur inquietudo conscientiae, perturbatio et corruptio animi, destructio corporis, ac infinita mala, quae ab irritata violentia aliorum hominum, et a subtractione auxilii eorundem provenire possunt.”

74 *JNG* 1684 II.3.21: “... adeoque infallibiciter non praesciatur pro meritis nostris paria nobis ab aliis hominibus repositum iri, (nam qui in nobismetipsi producitur fructus, nunquam interceptitur).”

75 *JNG* I.3.4; II.3.13.

avoid all human penalties. Consequently, if human beings were unaware of God and his commands, they would have no pains of conscience.⁷⁶ This means that the only part of natural sanctions which is unaffected by undeserved benefits and hardships is dependent on the fact that human beings have already internalized the rules of sociality as commands of God.

However, although Pufendorf holds that human beings ought to be brought up so that they find happiness as much as possible from the awareness that they are behaving in a morally correct manner,⁷⁷ the utility of the rules of sociality does not rely on such a feature of human character. The greatest part of worldly happiness is still dependent on the goodwill and assistance received from other people.⁷⁸ And the observance of the rules of sociality can be seen – despite the exceptions – as the most efficient way of achieving these ends. This is so, firstly, because the undeserved benefits and hardships are something which cannot be acquired nor avoided by human foresight and endeavour. Thus, they cannot be taken into account when we estimate beforehand the consequences of human acts.⁷⁹ Second, although the observance of the rules of sociality does not ensure the goodwill and assistance of other people with absolute certainty, it still does this with great probability. Consequently, it is most likely that such behaviour brings more benefits than the violation of these rules.⁸⁰

Pufendorf maintains, thus, that observing the rules of sociality is advantageous both for the human species in general and for the happiness of the individual who behaves in such a manner, while disobeying these rules is ultimately unprofitable for these ends, at least in all probability. For a modern reader this seems like a good starting point for a consequentialist theory of morality. Is there, then, some special reason which makes Pufendorf deny the possibility that this

76 *OHC* I.4.9.

77 *JNG* 1684 II.4.9.

78 *JNG* 1684 II.3.16: “Cum enim nostra incolumitas et felicitas magnam partem a benevolentia et auxilio aliorum debendeat, ...”

79 *JNG* 1684 II.3.21: “Bene tamen observandum, heic ubi de naturali effectu actionum bonarum ac malarum agitur, non attendi illa bona et mala, quae supra ad primam classem referebamus, et quae consilio et industria nostra vel non possunt acquiri, vel non possunt evitari.”

80 *JNG* 1688 II.3.21: “...; adeoque infallibiter non praesiat pro meritis nostris paria nobis ab aliis hominibus repositum iri, ... id tamen certum est, ex bonis et justis actionibus commoda tanta cum certitudine sequi, quanta ex oppositis vitiis cum ratione sperare non possumus. Ac licet non semper omnia illa bona consequantur, quae alias per rerum naturam consequi idonea erant; evidens tamen probabilitas est, illorum non pauca secutura, aut saltem plura, quam ex malis actionibus sperari possunt.”

utility of natural law could serve as the foundation for its normative character? The only explicit statement Pufendorf gives on this issue is the following passage in *JNG* II.3.20:

If these dictates of reason [the rules of sociality] are to have the force of law, there is need for a higher principle; for although their utility is most manifest, still it alone does not set such a bond to men's souls that they could not deviate from it if their desires arouse them to neglect this utility or if they consider that they can take care of their own utility more effectively by some other means.⁸¹

Richard Tuck has suggested that Pufendorf's position is based here on the observation "that men can often act quite knowingly against their own interests".⁸² It seems to me, however, that what Pufendorf maintains is that human beings often genuinely believe that their personal well-being is better served by disobeying the rules of sociality. He mentions two reasons for this. First, people erroneously believe that the benefits which in reality follow most likely from the observance of the rules of sociality can be achieved more effectively by violating these rules. Second, people disregard the benefits which are likely to follow from the observance of the rules of sociality, because they find some other things more desirable.

The latter observation is, I think, the key to Pufendorf's position on the issue we are dealing with, and I will return to it shortly. Before doing so it must be noted that the point Pufendorf makes in the passage cited above is that a mere understanding of the advantages which follow from the observance of rules of sociality cannot be the reason why these rules are regarded as morally obligating by people who believe that violating these rules is sometimes advantageous for their personal well-being. However, Pufendorf holds that what is truly beneficial for human beings is in no way dependent on their erroneous or changeable opinions but depends "on the nature of things".⁸³ This

81 *JNG* II.3.20: "Enimvero ut isthaec rationis dictamina vim legis obtineant, sublimiori principio opus est. Quanquam enim eorum utilitas sit longe manifestissima; illa tamen sola tam firmum animis hominum indicere vinculum non valebat, quin ab istis discedi posset, si cum utilitatem eam negligere allubesceret, aut alia se via utilitati suae magis consulere posse arbitretur."

82 Tuck 1987, p.105.

83 *JNG* 1684 I.4.4: "Quo intuitu natura boni consistere videtur in aptitudine illa, qua res quaequam alteri prodesse, eandem conservare, aut perficere idonea est. Et quia haec aptitudo ab ipsa rerum natura, et nativa aut per industriam adaptata habilitate dependet; ideo isthoc bonum, quod naturale possumus vocare, firmum est atque uniforme, et nequam ab erroneis aut variis opinionibus hominum dependens."

leaves open the possibility that a correctly operating human reason discovers the normative character of the rules of sociality by contemplating their consequences to both general and individual happiness. But as we have seen, Pufendorf denies even this, maintaining that without the idea of a commanding God the faculty of reason could not find any morality whatsoever in human acts.

What makes Pufendorf adopt such a position? No direct answer to this question can be found in his works. Pufendorf holds it self-evident that human reason recognizes the existence of God. Therefore, he is not interested in examining in more detail what reason would be able to say of human behaviour, if it were unaware of God. Nevertheless, a closer look at what Pufendorf has to say about the human desires and passions reveals a feature in his thinking which makes it at least easier to understand his strictly non-consequentialist position.

124

Above we saw that Pufendorf emphasizes repeatedly that observing the rules of sociality is the best way to advance one's personal well-being and happiness. This gives easily the impression that he sees the rules of sociality as a means of achieving something which all human beings seek by nature. In this case the violation of the rules of sociality would be a result either of a miscalculation concerning the means by which one can advance one's happiness or of some sudden, unintentional burst of passion which clouds all rational judgement. However, while Pufendorf obviously sees these two as important causes for immoral behaviour, several remarks in *De jure naturae et gentium* indicate that they are not the only ones, and that the conception of happiness on which Pufendorf bases the utility of natural law is actually normative and itself in need of justification.

Already the passage in paragraph II.3.20 which I cited above showed that Pufendorf does not think that the discrepancy human beings often see between the requirements of natural law and personal happiness is solely a miscalculation concerning the means. People feel a tension between their own desires and the rules of sociality also because their passions makes them feel that there are things which are more desirable than those benefits which they are likely to receive by observing these rules. The same idea can be found in *JNG* II.3.10, when Pufendorf characterizes two conceptions of utility which govern human behaviour:

One kind is what appears beneficial for a depraved judgment of badly composed passions, which center upon advantages that are for the most part immediate and fleeting, and is little concerned with the future. The other kind is judged to be beneficial by sound

reason which not only examines what lies before its very feet, but also weighs what will happen in the future, and then regards that as really useful which will be so in general and for all time, because on no judgement can an enjoyment of a temporary advantage which will entail a long series of misfortunes be seen as desirable.⁸⁴

There are two things to notice in this passage. In the first place, although Pufendorf characterizes reason as a faculty which enables a human being to do “something more expeditiously and adroitly than a beast”,⁸⁵ he does not think that reason is destined to be solely an instrument in the service of human desires. Reason can also play a role in the formation of desires. When a rational human being estimates what is beneficial for him, he is principally concerned about his future life as a whole. Thus, his first question is what is useful “in general and for all time”. In this respect, more important than any particular advantage is the permanent goodwill of other human beings and their willingness to take part in a mutual exchange of services.⁸⁶ Consequently, in each situation the rational person tries to act in a way which does not endanger the future goodwill and assistance of other people. This is something to which all other desires are subordinated.

125

The other noteworthy aspect in the passage cited above is that to prefer long-term security over more immediate advantages and pleasures is by no means a natural human feature. There are people whose judgement of what is beneficial “center upon advantages that are for the most part immediate and fleeting”. And it is especially important to note that the source of such judgment is not any fundamental inability to understand the possible consequences of one’s actions, but rather “badly composed passions”.

Now, by passions Pufendorf means “motions of the soul” which become excited when a person observes some particular good or bad. Passions have the ability to turn the will towards the object in which this feature is observed and in this way to obscure the judgement of

84 *JNG* II.3.10: “Aliud enim utile videtur affectuum male compositorum pravo iudicio, qui praesentibus fere, ac cito transituris commodis imminent, de futuro parum solliciti. Aliud sana ratio utile iudicat, quae non tantum ante pedes posita considerat, sed quid in futurum sit inde emersurum perpendit. Cui adeo id demum vere est utile, quod in universum tale est, et ad diuturnitatem facit: nequaquam autem adpetendum iudicatur, momentaneo commodo frui, quod magnum malorum agmen post sese est tracturum.”

85 *JNG* I.2.6: “Nam si consideremus rationem, quatenus non est imbuta cognitione et sensu legis, seu normae moralis, potest quidem ista fortasse homini suppeditare facultatem expeditius aut dexterius quid agendi quam brutum, viresque naturales per solertiam adjuvare.”

86 *JNG* 1684 II.3.16. See above p.65.

the intellect.⁸⁷ Since every human being is by nature directed by self-love, in one sense all human behaviour is governed by passions. In another sense human beings can, however, be divided into those who are governed by passions and those who follow reason. The difference is that as a result of proper education and exercise (and by the help of the Holy Spirit) some are able to tame their passions so that they never last too long or become too strong.⁸⁸ Consequently, their passions do not disturb the rational orientation to always prefer behaviour which does not endanger the future goodwill and assistance of other people.

If, however, passions are not properly cultivated, they take the lead in the behaviour of the individual and start to direct his preferences. This is what happens, according to Pufendorf, to the great majority of human beings. As a result of bad education and evil habits they “become deaf to the voice of reason” and “take their lust as reason”.⁸⁹ This means that instead of seeking that which is truly useful “most human beings are led by the violence of their passions wherever their lust or false conception of utility take them.”⁹⁰ Moreover, they lack the rational orientation to be principally concerned about their future life as whole. Instead they “are usually stirred on by what strikes their senses, and do not care much for their future”.⁹¹ And what is more, in their eyes happiness does not follow principally from those moderate advantages which can be achieved by the goodwill of other people and the mutual exchange of services, nor from the assurance that the benevolence and assistance of other people will last. On the contrary, badly educated people usually measure their happiness by things which “the most degenerated of men often possess in large quantities.”⁹² In other words, they see their happiness as being dependent on things such as material wealth, power, sensual pleasure, and so on.

These remarks make it possible to conceive a person who is so gripped by his passion for, say, wealth that the benefits which he can

87 *JNG* I.4.7: “Nom parum quoque voluntatem versus certas actiones impellunt motus animi, objecta potissimum specie boni aut mali excitati, quos affectus vocant; praeterquam quod iidem non parum iudicium intellectus obfuscant.”

88 *JNG* I.4.7: “Sed primos illos motus, quos philosophi comparant oculorum nictibus, ne aut durent diu aut invalescant, diligentem attentionem et exercitationem, ante omnia vero Dei Spiritu obtineri solere.”

89 *JNG* VII.1.11: “Idque quia multitudo non ratione, sed impetu vivit, ac libidinem pro ratione habet, educationis fere et consuetudinis vitio, qua vis rationis velut obsurdescit.”

90 *JNG* VII.1.10: “Plerique inconsulto affectuum impetu feruntur, quo libido, aut fallacis species utilitatis subegerit.”

91 *JNG* VII.1.11: “Tum quod magna pars mortalium praesentibus tantum imminet, futuri parum curiosa, ac illis fere movetur, quae in sensus incurrunt, ac sublimiora aegre adsurgat.”

92 *JNG* VII.1.11: “... , praesertim cum etiam improbissimae saepe affatim adsit, quibus vulgus felicitatem metiri suavit, ...”

expect to receive by the mere mutual exchange of services appears to him to be quite insubstantial. Such a person can be perfectly aware that if he seeks prosperity by violating the rules of sociality, he faces the risk of losing even that material well-being he now possess. Nevertheless, since he feels that both his present state and the benefits he can expect from the mutual exchange of services do not bring any real happiness, he is ready to endanger them, if he thinks that there is a chance to win some really gratifying advantages by violating the rules of sociality. For such a person acting against the rules of sociality is, thus, a perfectly rational means for achieving what he really wants.

The foregoing seems to indicate that the happiness which is most effectively achieved by observing the rules of sociality is not something which all human beings naturally seek. Against this one could point out that human beings do not, according to Pufendorf, only seek what they think is good for themselves. They also have a strong inclination to self-preservation and try to protect themselves by all possible means. Therefore, even a person who otherwise disregards the advantages which can be achieved by observing the rules of sociality still sees death as the greatest of all evils and wants to avoid it at any cost. And since one always takes better care of one's personal security by observing the rules of sociality than by disobeying them, a person who violates these rules acts against his principal interests, no matter what conception of happiness he happens to have.

However, when Pufendorf says that human beings try to protect themselves by all possible means he is not maintaining that self-preservation is some kind of *summum bonum* to which all other human desires are totally subordinated. All he claims is that human beings are most concerned about their survival, and that when their feel their physical safety concretely threatened, they usually attempt to defend themselves in every conceivable way.⁹³ This natural inclination does not make them unable to endanger their own lives quite knowingly in order to reach something which they strongly desire. On the contrary, people can learn to tame their fear of death and become, for example, able to risk or even sacrifice their lives in order to save other human beings because they value the glory which follows from such behaviour.⁹⁴ Correspondingly, there are people who

93 OHC I.3.2.

94 JNG II.3.14: "Sed multos pro aliis sat aequo animo mortem oppetiisse constat, quos peculiari affectu prosequuti sunt, aut quibus sese penitus devoverunt. Quibuscumque ita sese junctos atque unitos intelligunt, tanquam minorem partem totius eoque se malunt perdere, ut alterum tanquam majorem partem conservent. ... Verum talibus janctantia fidei et affectus, atque inde orta gloria ante omnia habetur, quaeque adeo ipsa vita bene emi judicatur."

can quite knowingly endanger their lives in order to satisfy their passion for power or wealth.⁹⁵

The foregoing makes possible the following interpretation: Despite his forceful rhetoric on this issue, Pufendorf does not see the rules of sociality as a necessary means for achieving something which all human beings seek by nature. To observe always these rules is a necessary constituent in the search for happiness only for those whose passions are formed so that they do not disturb their faculty of reason. For those whose desires are governed by passions the relationship between the rules of sociality and the pursuit of personal happiness is never so absolute. And there are some for whom to risk the benefits following from the goodwill of other human being and the mutual exchange of services can seem as the only means to achieve those things which really make life worth living. In other words, Pufendorf holds that all human beings seek happiness, but admits that there is no consensus concerning the content of happiness. On the contrary, the happiness of those who follow reason can be incompatible with the happiness of those whose desires are governed by passions. This, of course, would not prevent Pufendorf from holding a consequentialist moral theory, if he only accepted the classical idea that human beings are animals meant to follow reason. However, since he does not share the purposeful conception of nature that lies behind such a view, he does not see how any observation of human features and abilities as such could lead reason to the conclusion that the desires of a human being ought to be governed by reason rather than passions. Therefore, human reason unaware of God is at most able to think that the desires of a person who knowingly risks his future well-being in the hope of, say, increasing his wealth, are governed by passions. What it cannot discern is that this person has done something wrong. And in Pufendorf's eyes the only possibility to reach this conclusion is to assume that there is a God who has forbidden human beings to do so.

.....
 95 *OHC* I.4.9. This is one of the reasons why a stable civil life necessarily requires a collectively shared belief in punishment after death. See below p.169.

Part Four

Natural Law as a Social Phenomenon

So far I have dealt mainly with Pufendorf's theoretical understanding of natural law. Now I will turn to his views concerning the manner in which natural law in practice achieves the end for which it has been imposed: the maintenance of peaceful social order. Here it must be first of all noted that as a social phenomenon natural law owes very little to the principles which govern the scientific understanding of this law. Pufendorf holds it obvious that only a few exceptionally intelligent people are able to reflect independently on how the individual precepts of natural law can be derived from the first unquestionable principles. And even though people with average intellectual abilities are able to understand such demonstrations when these are presented to them,¹ this requires that their minds have been "disciplined in the different sciences."² Since such higher education is a privilege of a chosen few, it is evident that "most men do not know or understand how the precepts of natural law are properly demonstrated."³ However, Pufendorf's works also include a number of remarks concerning the manner in which the great majority of human beings adopt natural law as their moral standards and the factors which motivate them to obey these rules to the extent that an ordered

-
- 1 *JNG* II.3.13: "Caeterum quanquam non cuiusvis sit, legem naturalem artificiosa deductione ex principio suo eruere; ut tamen omnibus hominibus, usu rationis gaudentibus, illa cognita dici possit, sufficit, quod saltem mediocria ingenia eam demonstrationem sibi ab aliis propositam capere, et ejusdem veritatem, collata naturae suae conditione, liquido perspicere queant."
 - 2 *JNG* I.3.5: "... quae a primis principiis longius distant, quaeque adeo operosiore deductione indigent; qualem comprehendere est fere supra captum eorum, qui scientiis variis animum non habent subactum."
 - 3 *JNG* II.3.13: "Neque obstat, quod qua ratione praecepta legis naturalis artificiose demonstrarentur, a plurimis ignorentur, aut non capiatur."

social life becomes possible. In what follows I will reconstruct, on the basis of these often disconnected remarks, Pufendorf's account of the average moral agent.

THE AWARENESS OF NATURAL LAW

130

In the seventeenth century most scholars supported the idea that an awareness of the central moral principles is somehow natural for human beings. This idea can be found not only in the followers of the traditional schools of moral philosophy but also in Grotius, who in *Mare Liberum* remarked that natural law can be discovered easily, because it is implanted in every human mind.⁴ By statements like these writers sometimes meant that people become aware of these central moral precepts automatically once they reach a certain stage of maturity. More often, however, the idea was that human beings have an inherent disposition to adopt correct moral principles. That this actually happens requires also proper education and even ratiocination. Nevertheless, the disposition to adopt the right views exists prior to and independently of such factors.⁵

Such ideas of natural moral consciousness were challenged during the seventeenth century in the works of a number of "modern" philosophers. Today the best known of these is undoubtedly the attack John Locke directed against innate moral ideas in his *Essay Concerning Human Understanding*. Locke presented the mind of a human infant as a *tabula rasa* with no inclinations to adopt certain moral views rather than others, and maintained that moral opinions are usually determined by education, custom, and fashion.⁶ The same basic idea was familiar to Pufendorf through Hobbes, who in *Leviathan* described the mind of the common people as a clean paper on which those who manage to attain an authoritative position are able to write whatever opinions they like.⁷

What is Pufendorf's stand in the debate concerning the origin of moral consciousness? In so far as innate moral ideas are concerned, his position is quite clear:

4 *Mare liberum*, p.5: "Lex illa e cuius praescripto iudicandum est, inventu est non difficilis, utpote eadem apud omnes; et facilis intellectu, utpote nata cum singulis, singulorum mentibus insita."

5 On seventeenth century discussion concerning innate moral principles, see Tully 1993, pp.185-188 and Colman 1983, pp.51-76.

6 *An Essay Concerning Human Understanding* I.2. See Tully 1993, pp.183-201.

7 *Leviathan* ch.30, p.233.

... we do not feel obliged to maintain that the general principles of natural law come into and are imprinted in the minds of men at their birth as distinct and clear rules which can be formulated by man without further information or contemplation as soon as he acquires the power of speech.⁸

Pufendorf also remarks that the ease by which children and uneducated common people usually distinguish right from wrong follows from habit (*assuetudo*) created by the fact that “from the earliest days, and as soon they show some use of reason, they have seen good deeds approved and rewarded and evil ones reprovved and punished.”⁹ This seems to indicate that he also rejects the dispositional theory. However, Pufendorf is clearly reluctant to assert that moral opinions would be totally determined by education or prevailing customs. In *JNG* I.3.3 he declares that the human faculty of understanding and judgement has “an inherent natural rectitude, which does not allow us to be misled in moral questions, if proper attention is paid to them.”¹⁰ He especially emphasizes that he is not speaking here of theoretical truths, “which require for their investigation the most subtle resources of mind”, but of the powers of understanding in so far as they are needed to adapt our actions to natural law.¹¹ On this issue he holds that

131

... no man of mature years, and possessed of reason, is too dull to comprehend at least the general precepts of natural law, especially those which are most commonly kept by society, and observe to what extent they accord with the rational and social nature of man. ... For these general precepts have been so fully set forth, and so interwoven with nature, that man can never descend so nearly to the level of brute beasts as to be incapable of understanding and

8 *JNG* II.3.13: “Quam ad rem tamen vix necessarium arbitramur prae fracte contendere, animis hominum ab ipsa nativitate congenita, et velut impressa esse juris naturalis saltem generalia praecepta, ad modum distinctarum, et actualium propositionum, quae statim atque usus sermonis accesserit, citra ulteriorem informationem aut meditata nem abs homine possint exprimi.”

9 *JNG* II.3.13: “Sic quod etiam in pueris, et rudi vulgo magna deprehenditur facilitas aequum ab iniquo discernendi, id ex adsuetudine provenit: dum a teneris annis, et statim atque usum aliquem rationis exserunt, vident bona probari, mala improbari, et illa laudem, haec poenam sequi.”

10 *JNG* I.3.3: “ ... ; pro certo statuendum est, in ipsa facultatem adprehensiva, et in iudicio naturalem inesse rectitudinem, quae, debita adhibita attentione nos decipi circa res morales non patiatur.”

11 *JNG* I.3.3: “Neque de eo sumus solliciti, an quis circa veritates theoreticas, subtili mentis indagine investigandas per pravam informationem falsam opinionem ita possit imbibere; ut ea se exolvere nulla ratione queat. Sed agimus de viribus intellectus, prout illis opus est ad actiones legi naturae rite attemperandas.”

judging between them. No outstanding mental ability is required for this, nor any special intellectual acumen, but the ordinary light of one's native reason is sufficient, provided the mind is not affected by some disorder.¹²

This could be understood so that even though human beings do not have any inherent moral consciousness, as soon as they become able to use their natural intellectual abilities they discover the central precepts of natural law and understand how these agree with human nature. It must be noted, however, that in *JNG* I.3.3 Pufendorf is not discussing the manner in which human beings in reality adopt and hold their moral convictions. His purpose is to show why all normal adults can be regarded as morally responsible for their actions. What worries Pufendorf is that if common people were unable to understand how natural law requires them to behave, they could not be held responsible for violating it:

132

Of course a mistake could not be ascribed to us as a fault, if we had not the ability to distinguish clearly between right and wrong. And it would be the greatest injustice to charge us with an error which we could in no way have avoided.¹³

It is in order to abolish this possibility that Pufendorf introduces the idea of the natural correctness of practical reason:

If we do not wish to destroy all morality in actions, we must at any hazard maintain that the understanding of man is by nature sound, and that upon sufficient inquiry it apprehends clearly, and as they actually are, the objects which present themselves to it. And further, that the practical judgement, at least as it concerns the general precepts of natural law, cannot be so corrupted that it may not be held responsible for any evil actions that come from it, on the grounds that they proceed from an insuperable error or ignorance.

12 *JNG* I.3.3: "Ubi arbitramur nullum hominem aetate matura, et rationis competentem tam hebetem esse, quin comprehendere queat saltem generalia juris naturalis praecepta, et quae in vita communi frequentissimum usum habent, quamque illa cum hominis natura rationali et sociali habeant convenientiam perspicere. ... Ita enim ista sunt exposita, ita penitus naturae insita, ut nunquam eosque obrutesceret possit homo, quin ad ista adprehendenda, ad dijudicanda sit adhuc idoneus. Quippe cum ad hoc non requiratur eximia quaedam ingenii vis, aut peculiaris rationis solertia, sed sufficiat quaecunque nativae rationis lumen; modo morbo mens sit oppressa."

13 *JNG* I.3.3: "Nec vitio nobis verti posset, quod male egerimus, si bonum et malum liquido discernere non datum; et non nisi per summam iniquitatem imputaveris errorem, quem exuisse nunquam licuit."

... And however much a man may have failed to through indolence to mediate one or the other precept, or through haste and boldness have reached a false decision of action, or due to false information, or else by mind corrupted by evil habits and a vicious life, have brought doubt upon their truth and necessity, or have fashioned for his own rules of action contrary to natural law, still we do not acknowledge such ignorance or error to be so insuperable that actions based upon it cannot be imputed to the doer of the same.¹⁴

Pufendorf's main concern here is that unless we assume that all normal adults have an ability to recognize the central precepts of natural law, it would not be possible for human legal institutions to function. This worry is expressed most clearly in the corresponding passage in *De officio hominis et civis*:

Concerning the faculty of comprehension and judgement called intellect, it must be taken as certain that any adult of sound reason has natural light enough to enable him, with cultivation and proper reflection, to achieve adequate comprehension of at least the general precepts and principles which make for a good and peaceful life in this world; and to recognize their conformity with human nature. If this is not granted, at least in the court of man, men could hide their wrongdoing behind a plea of invincible ignorance, since no one can be condemned in the court of man for violating a rule which is beyond his capacity to understand.¹⁵

14 JNG I.3.3: "Ergo nisi omnem actionum moralitatem velimus evertere, omnino tenendum est, intellectum hominis naturaliter esse rectum, et praemissa debita inquisitione res objectas liquido, et prout in se sunt, adprehendere. Quin nec iudicium practicum, saltem circa generalia praecepta juris naturalis, ita posse depravari, ut quae inde suscipiuntur actiones pravea, ipsi nequeant imputari, velut ex invincibili errore aut ignorantia profectae. ... Et ut maxime quis per socordiam de uno atque altero praecepto nunquam cogitaverit, aut per praecipitantiam et temeritatem falsas de agendis opiniones conceperit, aut ex prava informatione, vel corrupto per vitiosam assuetudinem, pravosque affectus animo, veritatem et necessitatem eorundem in dubium revocaverit, aut contrarias legi naturali agendi regulas sibi finxerit: istam tamen ignorantiam, aut errorem hautquidquam arbitramur invicibilem, quique adeo efficiat, ut inde susceptae actiones non possint imputari."

15 OHC I.1.4: "Circa facultatem ergo comprehendi et dijudigandi res, quae intellectus vocabulo venit, id ante omnia pro certo habendum est: cuilibet homini matura aete et mente integra tantum superesse naturalis velut luminis, ut adhibita cultura, ac debita meditatione possit recte comprehendere saltem generalia illa praecepta et principia, quae ad vitam hancce honeste et tranquille exigendam faciunt; simulque iudicare, ista utique indoli humane congruere. Hoc enim nisi saltem intra sphaeram fori humani admittatur, quibusvis suis delictis homines ignorantiam invicibilem obtendere possent: cum nemo in foro humano argui possit violasse regulam, quam capere supra ipsius vires est."

In other words, the natural correctness of practical judgement is, so to say, a necessary postulate of jurisprudential reason. In the passage quoted above Pufendorf does not deny the possibility that people sometimes violate the central rules of sociality because of some impenetrable ignorance and that their deeds are, therefore, excusable in the eyes of God. He insists, however, that such a possibility cannot be taken into consideration in human affairs.

It should be noted that while Pufendorf maintains that all normal adults must be seen as capable of discovering the central principles of natural law, he thinks that this faculty gives common people no rights to evaluate prevailing laws and customs. Pufendorf mentions three things which ought to make the unschooled, who learn natural law from “popular information”, feel secure with the conventional moral views: 1) the authority of their superiors, 2) the fact that they can find no probable reasons to suspect the validity of these rules, and 3) the daily observable utility of these precepts.¹⁶ Of these, the latter two seem to leave some room for independent reflection. However, even if a person happens to find a reason to doubt some prevailing custom, he is not allowed to present this doubt in public, unless he is able to give demonstrative proofs of his own position. To challenge some generally accepted moral view without an argumentation of this calibre is a sign of great impudence,¹⁷ a feature Pufendorf in another connection calls – citing Euripides – “the worst of all plagues infecting the human race.”¹⁸ And since only a small well-educated minority is able to take part in the scientific discourse on morality, there is no alternative left for the uneducated but to accept uncritically the prevailing laws and customs.

The natural correctness of practical reason not only fails to make common people competent members in moral discourse. It also has scarcely anything to do with the manner in which people in reality adopt their moral convictions. For the judgement of practical reason is necessarily correct only on the condition that one pays sufficient attention to the issue.¹⁹ This, in turn, is something most people fail to

.....
 16 *JNG* II.3.13: “Vulgo autem, quod legem naturae ex populari informatione, usuque publico haurire solet, ad ejusdam certitudene satis esse debet autoritas superiorum, qui illud in civitatibus exerceri curant; et quod ipsi rationes probabiles desint, quibus ejusdem veritas labefactari, aut convelli possit; et quod praesenten ipsius utilitatem quotidie deprehendit.”

17 *JNG* 1684 II.3.13: “Qui autem per ingenii hebetudinem demonstrationum nequire ignorat, valde impudens est, si sui cerebri dictas, quatenus a receptis sentiis abeunt, aliquid tribuendum postulaverit.”

18 *JNG* VI.1.31.

19 *JNG* I.3.2–3.

do. Pufendorf holds that people do not usually bother to use their own reason in moral issues at all, but accept blindly the prevailing opinions.²⁰ Behind this uncritical attitude is the fact that people are from early childhood on habituated to observe the laws and customs of their society. When they get used to govern their daily life according to the prevailing norms, “their minds become so moulded that it occurs to very few of them to question whether things could be done in any other way.”²¹ Pufendorf compares common people in this respect to artisans who learn their tools and working methods by imitating elder masters and leave it to scientists to prove the physical principles behind their art. In the same way the habits formed in childhood, the example of social life, and the infallible authority usually attached to teachers makes most people so assured of the validity of the prevailing moral views that they find it totally useless to examine them more carefully.²²

The foregoing is true even in the case where the prevailing customs are not completely in accordance with natural law. When a person is taught from infancy on to accept some opinion, this has so powerful an effect on his mind that even if the opinion happens to be a fallacious one, “the thought of questioning it scarcely ever occurs to him, at least if he has no more intelligence than common people in general.”²³ Understandably, Pufendorf feels a little uneasy about this fact and is hasty to add that we must not “attribute such strength to habit that it is capable of distorting and weakening the judgement of reason so much as to make it incapable of apprehending the truth concerning natural law.”²⁴ But as we have seen, the purpose of such remarks is to explain why people can be held responsible for their

- *****
- 20 *JNG* 1684 II.3.7: “Praeterae in isto consensu per se parum momenti esse, argumento est hoc, quod plures sint stulti, quam sapientes, et pauci investigatis ipsarum rerum fundamentis opiniones suas conceperint: plerique caeco assensu citra proprium iudicium atque scrutinium alios praeceuntes secuti sint.”
- 21 *JNG* II.3.13: “Quorum quotidianum exercitium, et totius vitae communis compages ad istum modum digesta, ita animos disponit, ut paucis dubitare succurrat, an aliter ista fieri possint.”
- 22 *JNG* I.3.5: “Plurimos vitae communis tenor, et docentium, extra fraudis suspicionem positorum, autoritas, et ipsa aduetudo, et manifestus actionum decor aut usus ita securos reddit, ut talium rationes curiosius inquirere supervacuum putent. Quemadmodum magna pars artificum ad compendiosa quedam instrumenta opera fuexegisse satis habet; artificiosa eorundem demonstratione mathematicis relicta.”
- 23 *JNG* II.3.9: “Quin tantam vim habet ab infantia alicui opinioni esse innutritum, ut licet illa falsa sit, vix unquam tamen de eadem dubitare in mentem veniat iis saltem, quois intra vulgarem sortem est ingenii perspicacia.”
- 24 *JNG* II.3.9: “Etsi hautquidquam aduetudini eas vires atribuamus, ut rationis iudicium eousque detorqueere ac depravare queat, quo ipsi impossibile sit veritatem circa leges naturales perspicere.”

behaviour irrespective of their cultural background, not to assert that they actually use their reason in order to reflect critically on the prevailing customs. In practice, the tendency to follow the example of other members of one's community is so powerful that only a few bother to think whether there is something wrong in the prevailing customs. Thus, when Pufendorf discusses those ancient nations among whom brigandage was an accepted way to acquire property and make a living, he does not maintain that all members of these nations knew in their hearts that this practice was wrong. All he claims is that there were some people "human enough" to realize that such behaviour was against natural law.²⁵ In other words, while there may always be exceptional individuals who reflect on the generally practiced customs and discover their possible disagreement with natural law, the majority adopts the prevailing views without the slightest hesitation.

Early indoctrination to prevailing customs does not only generate the tendency to accept uncritically the prevailing customs. It is also the source of two widespread misconceptions concerning the character of morality, which are held not only by many common people but by several distinguished philosophers as well. The first of these is the idea that the awareness of central moral principles is innate in human beings. The reason for this belief is the fact that people are unable to remember how they first adopted their moral views. Therefore, they easily come to think that the awareness of them is somehow inherent.²⁶ The same childhood experiences also generate the erroneous belief that there are acts which are morally good or wicked in themselves, prior to any imposition. When small children are taught to curse vicious acts, this condemnation achieves in their minds "the force of a natural passion." As a result, only a few adults come to think of distinguishing between the physical and moral elements in human behaviour.²⁷

The last mentioned remark is interesting, because it indicates a significant difference between the philosophical understanding of morality and morality as a social phenomenon. As we have seen

25 *JNG* II.2.10.

26 *OHC* I.3.12: "Inde cum a puero ex vitae civilis disciplina eorundem sensu imbuamur, et vero recordari non possumus id tempus, quando primum eadem hauserimus, non aliter de ea cognitionem cogitamus, ac si illa nobis nascentibus jam adfuisset. Id quod cuilibet etiam circa liguam ipsa vernaculam contingit."

27 *JNG* I.2.6: "Quodautem multi naturalem istam indifferentiam aegre concipere queant, inde est, quod a teneris istorum vitiorum detestatio nobis fuit inculcata; quae opinio simplici adhuc menti impressa, in vim naturalis cuiusdam affectus videtur invaluisse; adeoque efficit ut paucis in mentem veniat inter materiale et formale istarum actionum distinguere."

already, Pufendorf insists that human reason is able to discover something as being right or wrong in human acts only to the extent that these are in agreement with or against the commands of God. For philosophical reasoning the character of morality is, in other words, strictly deontological. In practice, however, moral evaluations do not follow so much from the use of the rational faculty as from socially produced emotions. And unlike reason, these feelings of appraisal or condemnation make people tempted to adopt a realistic account of morality. This does not mean that the idea of God would be unnecessary for morality as a social phenomenon. Without such an idea the human species would have been unable to discover any morality in the first place, and there would be no generally prevailing moral convictions to internalize. Nevertheless, as a result of the early adoption of moral opinions most people are inclined to think that some human acts were morally good or bad even if there were no God.

* * *

In practice the moral views of ordinary human beings are, thus, almost totally determined by education and custom. This raises the question as to how human societies have adopted customs which more or less agree with natural law. As we have seen, for Pufendorf one of the hallmarks of natural law is that it can be discovered by natural reason without any divine revelation. And he seems to hold it possible that human beings with no previous knowledge of natural law could indeed slowly discover the rules of sociality without any help from God. Pufendorf remarks that if a group of uncultivated human beings were dropped into the world, their life would first be most wretched and animal-like. Nevertheless, by helping each other and by using their natural ingenuity they would somehow not only manage to stay alive but even to advance slowly towards a civilized way of living. Pufendorf refers here to the descriptions of the early stages of the human species given by ancient writers such as Diodorus Siculus and Lucretius. According to them, human beings initially wandered in herds just like wild animals and only slowly developed language, laws, and other forms of civilized life. Since these ancient authors were unfamiliar with the true origin of the human species as narrated in the Bible, it "is not strange", according to Pufendorf, that they "give so wretched a picture of the primitive state of man."²⁸ In other words,

 28 *JNG* II.2.2: "Inde mirum non est, paganos scriptores, qui veras origines generis humani ex divinis literis ignorabant, tam foeda de primaevio hominum statu prodere." See also *JNG* IV.4.8.

if we did not have the historical testimony of the early stages of the human race as given in the Sacred Scriptures, but reflected the issue solely in the light of reason, we would have to adopt a position similar to that of Diodorus and Lucretius.

This distinction between Biblical history and human history as conceived by reason alone offered a model for eighteenth century philosophers such as Rousseau who sought to present the “natural history” of morality and social institutions. Pufendorf, however, has no wish to question the status of *Genesis* as the true historical description of the origin of the human species. Therefore, he is not interested in considering the issue in more detail, but suggests that the central principles of sociality were most probably taught to the first human beings by God, “to be passed on afterwards to others by education and custom.”²⁹

138

The task of transmitting natural law to following generations has been only a partial success. When the human species multiplied and separated into distinct groups, many nations lost the memory of the true principles of natural law and adopted many more or less corrupted customs. Hence, while there has been no nation which would have totally disregarded the precepts of sociality, there is hardly any individual principle of natural law which would not have been publicly violated in some human society.³⁰ The dispersion of the human species also caused the emergence of double standards in morality. When nations were separated from each other, they lost the sense of their common ancestry and started to think of outsiders as less human than themselves. The classical example are the ancient Greeks and Romans, who regarded all other nations as barbarians.³¹ As a result, it has become common to observe the rules of sociality when dealing with the members of one’s own community, but to disregard them in relations with foreigners, “towards whom many have a general hatred and whom they do not hold improper to treat as enemies.”³² These deviations from natural law have not, however, been

29 *JNG* II.3.20. “Ac licet probabile sit, primis mortalium praecipua jusris naturalis capita a Numine fuisse tradita, quae deinde disciplina et assuetudine fuere in alios propagata.”

30 Some of the immoral customs held by various nations are presented in *JNG* II.3.8.

31 *JNG* II.3.7.

32 *JNG* 1684 II.3.7: “Accedit denique, quod licet de consensu plerorumque populorum saltem circa generalia praecepta legis naturalis sat liquido constare videatur, ac de eorum quoque consensu, quos ignoramus, praesumere possimus ex placitis eorum, qui nobis cogniti sunt, propter naturae similitudinem: tamen ex hoc ipso tutius colligitur, quod isti erga cives suos observari eaqum duxerint, quam quit erga extraneos, in quos multis promiscue hostile odium, et quos hostili modo tritare nefas non fuit judicatum.”

of that magnitude that they would prevent Pufendorf from declaring that the rules of sociality have governed the majority of human customs and activities in all ages.³³

HABITUAL BEHAVIOUR

If human beings usually adopt natural law unreflectively from prevailing customs, what makes them observe this law to the extent that ordered social life becomes possible? Before entering on a discussion as to the factors which motivate the great majority for obeying the rules of sociality, I will make a few remarks concerning the role habit plays in moral behaviour. As was mentioned above, Pufendorf gives habituation an important place in the formation of moral convictions. The fact that people imitate the prevailing customs from childhood onwards has usually so powerful an effect on them that only few even come to think that things could be done in some other way. The effects of this daily repetition are not, however, only cognitive. Pufendorf also remarks that most people observe natural law out of habit.³⁴ But what does he mean by this? Is the idea that human beings follow the rules of sociality spontaneously, just because they have from childhood onwards been used to do so? If so, what should we think of the wretched description Pufendorf otherwise gives of human nature and of the strong emphasis he puts on the fear of punishment in the maintenance of sociality. After all, he often remarks that human beings are constantly tempted to violate natural law and that it is only because they are afraid of civic and divine punishments that an ordered social life is possible at all.

A possible answer to this question can be found in *JNG* I.4.6, where Pufendorf characterizes habitual dispositions in the following way:

What strongly inclines the will to certain acts is the frequent repetition of these acts, and the familiarity following from this, which causes the action to be undertaken easily and willingly, and the soul to seem, as it were, drawn to an object before it. When such inclinations are joined with a desire and an adroitness in action, they commonly go under the name *habitus*. These, in turn,

33 *Eris scandica* p.163 (*Specimen controversiam* I.1): "Ius naturale, humano generi coaeuum, quod omni tempore populorum mores negotia ex plerique parte rexit."

34 *JNG* II.3.13: "...; ac plerique ex adsuetudine, aut vitae communis tenore legem naturae addiscere et observare soleant."

are called either virtues or vices, in so far as they are concerned with morally good or bad acts.³⁵

140

The noteworthy thing here is the distinction Pufendorf makes between the mere inclination created by a frequent repetition of some pattern of behaviour and the true *habitus*, which also includes a conscious desire to follow this inclination. This suggests the following interpretation: as a result of daily repetition human beings are so accustomed to observing the rules of sociality that unless some desire especially inclines them to violate these precepts, they need no conscious motive for obeying them. In this sense they observe natural law out of habit. However, because of their corrupted nature and inadequate education most people lack the aspiration to observe the rules of sociality which would turn their habitual inclination into a virtue. Instead they have passions which make them often think that their personal well-being could be served better by violating the rules which they have been accustomed to follow. These evil passions can, then, be effectively controlled only by the fear of civil and divine punishments. Hence, it can be said that people both observe natural law out of habit and that their sociality is dependent on the fear of punishment.

I will deal with the role Pufendorf gives to the fear of punishment, especially divine penalties, in human sociality below in chapter *The fear of God*. Before doing this I will examine how the expectations concerning the manner in which other people are likely to react to one's behaviour motivate human beings to observe natural law.

THE PURSUIT OF SECURITY

As has been noted several times already, Pufendorf maintains that by observing the rules of sociality an individual has the best possible chance both to avoid the hatred and aggression of other people and to assure their willingness to help him in the long run. Correspondingly, by transgressing the central precepts of natural law a person increases drastically his chances of losing the assistance of other people and becoming an object of their violence. Thus, Pufendorf obviously

.....
35 *JNG* I.4.6: "Valde quoque voluntatem in certas actiones inclinatur frequens earundem actionum repetitio, et consuetudo, per quam efficitur, ut expedite et libenter actio aliqua suscipiatur, objectoque praesente in id velut trahi animus videatur. Atque ejusmodi inclinationes cum lubricitate ac dexteritate agendi conjunctae *habituum* vocabulo solent vulgo venire; qui quatenus circa actiones morales, bonas et malas occupantur, virtutes et vitia nuncupantur."

thinks that for a truly rational person reflections concerning the manner in which other people are likely to react to his behaviour offer a powerful motive for observing the central rules of sociality. But what role does such considerations play in real human behaviour? To this question, Pufendorf's seems to give two contradictory answers.

In his discussion of the origins of civil society Pufendorf distinguishes between four types of human beings according to the manner in which the fear of other's aggression affects their behaviour. First of all, there are some for whom mere reverence for God offers a sufficient motive for observing natural law. These people value "seemliness, honourableness, innocence, and trust" above everything else and would therefore observe the rules of sociality even if they had nothing to fear from other people.³⁶ It can be assumed that what Pufendorf has in mind here are true Christians, who are able, with the aid of the Holy Spirit, to overcome their corrupt nature and obey God's commands for their own sake. Pufendorf makes it clear, however, that the number of such genuine Christians is quite small. The majority of the people living in Christian states "embrace the Christian religion from no personal conviction so much as from the custom and usage of the state in which they were born." This means that "for the most of them it lies rather on their lips than in their soul, and that only a few take it to their heart to improve their soul according to its direction."³⁷

Besides the very few truly virtuous human beings there are "not a few" who are ready to leave the possessions and lives of other people untouched, because they calculate that this is the best way to ensure their own security and well-being. Pufendorf cites here a passage from *Nicomachen Ethics*, where Aristotle speaks of people who "keep their hands off the property of others from fear, on the ground that it is not easy, if one takes the property of others oneself, to avoid having one's own taken by them; they are therefore content neither to take nor to give."³⁸ "If all were of this mind", Pufendorf remarks, "it looks as there would have been no need for states at all."³⁹

What makes peaceful social life impossible without civil

36 JNG VII.1.1: "Equidem dantur homines, quibus decus, honestum, innocentia, fides quam maxime cordi est, quae ne praesita quidem impunitate violare velint."

37 JNG 1684 II.4.3: "..., quod religio Christiana, quam plerique non tam proprio judicio, quam aduetudine, et ex usus civitatis, in qua nati sunt, amplectuntur, plurimis magis in primoribus labiis, quam in animo haeret, quodque adeo tam paucis cordi est juxta scita ejusdem animum suum emendare."

38 *Nicomachean Ethics* IV.1. 1121b28–31.

39 JNG VII.1.8: "Eo ingenio si omnes essent, non audeo civitatibus opus fuisse videtur."

sovereignty is, first, the existence of people who not only hold everything sacred as worthless whenever a hope of gain lures them, but also have such confidence in their own strength or wit that they believe they are able to repeal or evade those they have injured.⁴⁰ Second, there are only a few who are “able of their own power to see what is for the permanent advantage of mankind in general and of individuals and to be willing to persist in that knowledge.”⁴¹ The majority of people are “deaf to the voice of reason” and “take their passions as reason.” Instead of seeking that which is truly useful they “are led by the violence of their passions wherever their lust or false conception of utility take them.” Moreover, these people are usually so preoccupied with “what strikes their senses, and do not care much for their future”.⁴²

These remarks give the impression that most human beings are relatively unconcerned with the anger and aggression which violations of natural law are likely to arouse in others. However, another passage in *De jure naturae et gentium* gives a very different picture of the role the consideration of such things plays in human behaviour. This is paragraph II.2.9, where Pufendorf argues against Hobbes’ famous claim according to which the natural condition of the human species is that of war. Here Pufendorf remarks that “we are not discussing the natural state of some animal which is directed only by the force and inclinations of the sensitive part of the soul [i.e. by passions], but of one whose principal feature which reigns over other faculties is reason.”⁴³ It was, therefore, an error for Hobbes in his description of the natural state “to suppose that at least the majority human beings neglect the dictate of reason which nature has set up as the final director of their actions.”⁴⁴ What made this mistake so significant was

40 *JNG* VII.1.8: Sed quanta ex adverso eorum turba est, quibus omnia sancta vilia sunt, quotiens spes lucri arriserit, et fiducia propriarum virium, aut solertiae, quae repellere, aut eludere laesos sese possent sperent.”

41 *JNG* VII.1.10: Paucissimis ea est ingenii felicitas, ut quid generi humano singulisque ad diuturnitatem conducatur, proprio Marte possint perspicere, et perspectum constanter sequi velint.”

42 *JNG* VII.1.10: “Plerique inconsulto affectuum impetu feruntur, quo libido, aut fallacis species utilitatis subegerit.” VII.1.11: “Ideoque quia multitudo non ratione, sed impetu vivit, ac libidinem pro ratione habet, educationis fere et consuetudinis vitio, qua vis rationis velut obsurdescit. Tum quod magna pars mortalium praesentibus tantum imminet, futuri parum curiosa, ac illis fere movetur, quae in sensus incurrunt, ac sublimiora aegre adsurgat.”

43 *JNG* II.2.9: “Est porro hoc probe observandum, heic agi non de statu naturali animantis, quod solo impetu et inlinationibus animae sensitivae regatur; sed cujus pars praecipua, cui in caeteras facultates regimen, sit ratio.”

44 *JNG* II.2.9: “Ac ideo male circa designandum eundem statum praesupponitur, homines saltem plerosque ductum rationis, quam natura supremam actionum humanarum directricem constituit, negligere.”

that while passions draw human beings towards the total state of war of which Hobbes had spoken, reason tells them that to attack others is not only improper (*indecor*) but also harmful (*inutile*).⁴⁵ In the second edition Pufendorf even adds that every human being understands that it is good for himself to behave in a way which enables him to profit from the benevolence of others rather than to incur their anger. Moreover, everybody can also easily presume, because of the similarity of human nature, that others feel the same way.⁴⁶

It appears, thus, as if Pufendorf gave us two incompatible accounts of the role which reflections concerning other's reactions play in human behaviour. When he wants to persuade his readers of the view he shares with Hobbes, namely that insecurity has been the principal reason for the establishment of civil power, he claims that the majority of human beings are not concerned about the aggression their immoral behaviour is likely to animate in others. On the other hand, when his aim is to invalidate Hobbes' assertion that the natural condition of the human species is war, Pufendorf insists that most people do not neglect the dictates of reason and do not, therefore, behave deliberately in a way which is likely to cause hostility in others.

Does Pufendorf really change his position so inconsistently depending on the point he wants to prove? If the remarks cited above are taken literally, their incompatibility is, I think, insoluble. There are, however, good reasons to think that in neither case Pufendorf means exactly what he says. This becomes evident when we examine what exactly is the issue in which he disagrees with Hobbes' account of the natural state.⁴⁷

The general claim Pufendorf makes against Hobbes in *JNG* II.2.9 is "that the natural state of men, even when considered apart from civil societies, is not one of war, but of peace."⁴⁸ However, by this he does not mean that without a civil sovereignty human relations would be nonviolent. What he has in mind is that the requirement to cultivate

45 *JNG* II.2.9: "Cum igitur non solum affectuum libidinem, sed rationem, non sane unice suis se commodis dimetientem, audire possit homo; a bello, in quod per pravos affectus impellitur, quale est etiam illud quod fingitur omnium in omnes, per rationem duplici potissimum argumento revocatur; nimirum quod deprehendit, bellum altero non lacessente suspectum esse indecorum, et inutile."

46 *JNG* 1684 II.2.9: "Et quia quilibet homo in seipso deprehendere potest, bonum sibi esse, si ita se gerat, ut aliis hominibus benevolis potius, quam insensis utatur: propter naturae similitudinem facile praesumere potest, alios quoque paria sentire."

47 On Pufendorf's account of the state of nature in general, see Seidler 1990, pp.25–36.

48 *JNG* II.2.9: "Ex quibus omnibus concludimus, naturalem hominum statum, etiam extra civitates consideratorum, non esse bellum, sed pacem."

sociality obligates human beings even when there is no civil power to enforce it:

Now by our assertion that the maintenance of peace towards all human beings is the natural state of man we mean that it has been instituted and sanctioned by nature herself without any human intervention, and that it rests, therefore upon that obligation of natural law by which all men are bound in so far as they are endowed with reason, and which does not owe its original introduction to any human convention.⁴⁹

144

The target here is the conditional formulation Hobbes had given of natural law. In *Leviathan*, for example, Hobbes declared that the fundamental law of nature dictates “every man” either “to endeavour Peace, as farre as he has hope of obtaining it” or, if this is not possible, to “seek, and use, all helps and advantages of Warre.”⁵⁰ And since Hobbes held that a trustworthy peace can be attained only by establishing a civil power, the foregoing meant that in so far as people do not live under a common sovereign, natural law dictates them to treat other people as enemies with whom they are at war.

The arguments by which Hobbes justified his position were slightly different in each of his three works on political theory. The main strategy, however, was the same each time. Hobbes asked his readers to imagine a situation where human beings with no previous engagements are not controlled by any form of political power. Then he pointed out human features which have a tendency to create violent conflicts even within civil societies and argued that in the natural state these would inevitably lead to general warfare. The features which Hobbes mentioned were the tendency not to tolerate opinions which differ from one’s own, the pursuit of glory and pre-eminence, and the desire to possess the same material objects as others. Hobbes admitted that a considerable number of people would understand the inconveniences which are likely to follow from attacking others and would, therefore, in principle be ready to abstain from such acts. The problem was that there are always people who either estimate their powers wrongly and put themselves above others or quite simply find

49 *JNG* II.2.11: “Caeterum eo ipso quod afferimus, pacem adversus omnes homines, ut tales, exercendam, esse statum hominis naturalem; innuimus illam ab ipsa natura institutam et sancitam, citra aliquod factum humanum; adeoque eandem niti sola illa legis naturalis obligatione, qua omnes homines, ut sunt ratione praediti, stringuntur, neque ut illa ab initio introducat, abs conventionem hominum oriri.”

50 *Leviathan*, ch.14, pp.91–92.

pleasure in hurting and oppressing other people. These would force even the moderate to join the battle. As a result, there would be a situation in which people could rely on nobody's intentions. They would have to regard everybody else as a potential aggressor who they must eliminate as soon as possible:

And from this diffidence of one another, there is no way for any man to secure himself, so reasonable as Anticipation; that is, by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to endanger him: And this is no more than his own conservation requireth, and is generally allowed.⁵¹

Hobbes never claimed, of course, that the human race as a whole had ever been in such a state of total warfare. Human beings have always lived either in patriarchal families or in civil societies. He insisted, however, that the same state of war which would prevail in the hypothetical natural state characterizes in reality the relationships between distinct human associations.

Pufendorf finds Hobbes' account of the natural state tolerable in so far as it is taken as a hypothesis concerning an imagined situation in which people are considered as totally isolated individuals with no engagements with each other. What he finds totally unacceptable, on the other hand, is that Hobbes unhesitatingly applied the results of such a thought-experiment to really existing human relations and even to natural law.⁵² Pufendorf himself does not, of course, identify natural law with the requirements of individual safety but with rules which are necessary for the advancement of the *salus* of the human species. Nevertheless, since this also includes the security of individual human beings, he must – in order to maintain convincingly that the rules of sociality obligate even outside civil society – disprove Hobbes' argument for the rationality of violent anticipation.

Pufendorf's starting point is the evident observation that in so far as Hobbes spoke of individual human beings with no engagements with each other, his state of nature was a purely hypothetical construction which has never existed among the human race nor ever will exist. In reality human beings always grow up in communities bound together by kinship ties. These usually create affection between human beings and in this way "often precludes or abates many symptoms of the

51 *Leviathan* ch.13, pp.87–88.

52 *JNG* II.3.7.

natural state.”⁵³ Moreover, an awareness of the misery which would characterize the life of human beings if they received no help from each other, promotes a fellowship between those who exchange commodities and services.⁵⁴ Pufendorf admits that the bonds following from these things are never as secure and reliable as those created by a common civil power. They do, however, make it fully irrational to regard the other party as an enemy, unless he shows some explicit signs of evil intentions.

But why should this conclusion be avoided even in the case of those with whom one has no personal engagements? Pufendorf himself admits that human beings are usually so preoccupied with their own advantage and glory that “they pay small regard to anyone with little or no ability to benefit them.” As a result, “friendships held together by a bare and in all respects sterile benevolence are exceedingly rare among the mortals.”⁵⁵ Moreover, the same self-love which motivates human beings to maintain peaceful relations with those with whom they have mutual interests often inclines them to hurt those whom they regard as non-beneficial for themselves:

Thus what is more common in the human species than trying to expel someone else from his possessions in order to augment one’s own wealth, than causing many thousands of others to lose something outstanding in order to acquire power and glory for oneself, and finally, than amusing oneself by insulting others out of natural spite, and seeking pleasure for oneself from their pain?⁵⁶

Pufendorf also admits that this human wickedness often forces those who otherwise would be inclined to act peacefully to “break peace and to fortify themselves against it by whatever means.”⁵⁷ All this has the result that

53 *De statu* § 7.

54 *De statu* § 6.

55 *De statu* § 16: “Ex adverso constat, homini amorem proprium suamque utilitatem et gloriam fere inter prima haberi. Eoque istius, ex quo nihil aut parum in nos proficisci videtur posse, exigua fere habetur ratio. Nam quae nuda, eaque undiquaque sterili benevolentia continentur amicitiae, inter morales oppido quam rarer sunt.”

56 *De statu* § 16: “Sic quid vulgatus est in genere humano, quam ut quis ad proprias opes cumulandas alterum fortis evertere aggrediatur: ut ad potentiam et gloriam sibi parandam multa hominum millia perdere egregium facinus ducat: ut denique per ingenii malignitatem aliis insultare pro delectamento habeat, et ex aliorum dolore voluptatem sibi quaerat?”

57 *De statu* § 16: “Quae pravitas id quoque mali parit, quod per eandem etiam modestioribus ingenii, et qui alias libenter suis rebus contenti aliena non adpetent, et quieti suae incumbentes aliis nihil negotii facerent, tantum non necessitas adferatur pacem abrumpendi, et quibuscumque mediis contra istam sese muniendi.”

... nearly constant suspicions and mutual distrust thrive among those who live in a natural state with each other, especially if their situation provides them with opportunities for harming one another. And many of them evince a desire to undermine and impede the growth of others's strength, to augment their own strength out of the latter's ruin and when an occasion is finally given, to beat them to the blow and crush them.⁵⁸

The conclusion Pufendorf makes from the above remarks is that life outside civil societies is most insecure. He even justifies a sovereign's right to demand the citizens to risk their lives for their country by the fact that without the protection given by the state they would be dead anyway.⁵⁹

But if relationships between people who are not bound by kinship ties or mutual interests are so full of violence in the natural state, why is it not rational in such a state to hold everybody else as one's enemy, except a close circle of relatives, friends, and people with whom one exchanges commodities and services? The answer Pufendorf gives is that none of the reasons which make human beings inclined to hurt each other characterize human relations universally and constantly. Fierce confrontations concerning opinions, for example, are something peculiar to the intelligent and well-educated elite and almost non-existent among the unschooled majority. Correspondingly, there is no such universal shortage of the basic material necessities that human beings would constantly desire the same commodities. And even though there is an inherent wickedness in human nature which enjoys harming others as much as possible, in most people this feature is not actualized perpetually.⁶⁰

The foregoing means, according to Pufendorf, that a mere contemplation of human nature and condition never makes it rational to regard another person as one's enemy. Even in the case of total strangers a violent attack against them becomes reasonable only when they have shown some signs of evil intentions.⁶¹ The practical

58 *De statu* § 16: "Inde est, quod inter eos, qui in naturali statu invicem vivunt, praesertim si per opportunitatem situs nocendi fit invicem facultas, tantum non perpetuae vigeant suspiciones, ac mutua diffidentia. In multis quoque deprehendatur cupiditas aliorum vires subruendi, et incrementa praepediendi, ex aliorum ruina vires suas augendi, data denique occasione alios praeveniendi et opprimendi."

59 *JNG* VIII.2.4: "Quin cum beneficio civitatis vitae nostra per longum temporis spatium set servata, quae dudum periisset, si in naturali statu fuisset expositi: non gravis jactura est habenda pro civitate vitam effundere, cui praesertim tam multae alia beneficia debemus."

60 *JNG* II.2.8; *De statu* § 17.

61 See *JNG* III.5.6.

conclusion one should make from the darker features of human nature is not the violent anticipation suggested by Hobbes but rather a vigilant friendliness. A rational person maintains two attitudes towards other human beings. In so far as they show no signs of willingness to do him harm, he regards them as friends and tries to maintain peaceful relations with them. However, he knows enough of human nature in order to understand that others may at any moment become his enemies, wherefore his attempts to maintain peace are always mingled with the precaution to defend himself in case he becomes an object of attack.⁶²

148

It is now possible to suggest an interpretation which makes the seemingly contradictory remarks cited at the beginning of this chapter compatible with each other. In the first place, it seems that in his discussion of the reasons for the establishment of civil society Pufendorf makes a distinction between those human beings who believe they can repel or evade those they hurt, and the great majority which is governed by badly composed passions. While both groups are a threat to peaceful social life, the latter still understands that by transgressing natural law they endanger their own security. The problem with them is that when they encounter the possibility of acquiring something which strongly excites their passions, their desire for that object easily sets aside all such considerations and they “take their passions as reason”.

Correspondingly, when Pufendorf in *JNG* II.2.9 says that the majority of human beings do not neglect the dictate of reason, and that they understand the benefits following from the benevolence of other people, he is not maintaining that people in general act rationally. Pufendorf’s idea seems to be rather that Hobbes’ claim, according to which it is rational to hold everyone as one’s enemy in the state of nature, would make sense only under the assumption that most human beings are totally irrational and, therefore, quite unconcerned with the reactions their behaviour might arouse in others. If this really were the case, the only rational thing to do in the state of nature would be to suppress others whenever this is possible. What Pufendorf points out, then, is that it was an error for Hobbes to assume that the majority of human beings totally omit all use of reason. While it is true that their corrupt nature and poorly composed passions makes them easily inclined to violate the rules of sociality, they still understand that

62 *JNG* II.2.12: “Ergo uti probi est hominis rebus suis contentum alio non lacessere, nec aliena adpetere: ita cauti est viri, suasque salutis amantis, ita omnes homines amicos credere, ut tamen iidem mox hostes fieri queant; ita pacem istam cum omnibus habere, quasi quae nunc in bellum erumpere possit.” See also *De statu* § 18.

doing so involves great risks for themselves. As such, without the enforcement of civil sanctions, the awareness of these risks does not ensure security in human relations. It has, however, the effect of making people so cautious in violating natural law that it is never rational to regard other people as one's enemies without some specific sign of their evil intentions.

THE DESIRE FOR APPRECIATION

Thus, while a concern about the aggression which violations of natural law are likely to animate in others has some effect on most human beings, for the great majority of people it offers a rather weak incentive for observing natural law. However, Pufendorf mentions also another factor which makes human beings concerned with the reactions of other people. This is the desire to be esteemed by others.

149

The idea that the veneration and contempt shown by other people has a considerable influence on human behaviour was not rare in the seventeenth century. Perhaps the best-known example is the jurisprudential formulation Locke gave to this idea in his *Essay Concerning Human Understanding*. In this work Locke distinguished three types of norms which govern human behaviour. First, there is divine law, either promulgated through the Bible or known through natural reason. This is sanctioned by punishments in the afterlife. The second norm is the civil law, which gets its governing power from the ability of the sovereign "to take away Life, Liberty, or Goods, from him who disobeys." To describe the third norm Locke used the expressions "the law of opinion", "the law of reputation", and "the law of fashion". This rule consists of the commonly prevailing opinions concerning what is virtuous and what is vicious and is sanctioned by the commendation and disdain shown by other people.⁶³

Locke not only recognized the importance of the law of opinion but maintained that it has a stronger influence on moral behaviour than the fear of civil or divine penalties. According to Locke, most human beings do "that which keeps them in Reputation with their Company, little regard the Laws of God, or the Magister." In the case of civil laws the reason for this indifference is that people "frequently flatter themselves with the hopes of impunity." Of course, no such hopes can be cherished in the case of divine penalties. This does not, however, prevent people from taking a rather relaxed attitude towards the divine

63 *An Essay concerning Human Understanding* II.28.8-10.

law. In the first place, they seldom reflect seriously on the penalties following from its violation. And even when they do so, they are inclined to comfort themselves with the idea that they can become reconciled for their present sins at some future date. On the other hand, no one believes that he can escape the censure and dislike of those with whom he keeps company. And to be under the constant disdain of others is something most human beings want to avoid by all possible means. As a result, the greatest part of human beings govern themselves “chiefly, if not solely” by the law of fashion.⁶⁴

Pufendorf offers no systematic treatment of the phenomenon Locke called the law of fashion. However, he seems to think that the esteem and contempt people show for each other has a considerable influence on human behaviour, and that this influence is mainly conducive to sociality. This is indicated, in the first place, in his remarks concerning the sense of shame in *JNG* I.2.7.

150

Pufendorf’s main purpose in paragraph I.2.7 is to refute the popular view according to which the tendency to blush after one has committed some morally bad deed proves that these acts are morally bad in themselves, independently of all imposition. In order to invalidate this idea he offers a short presentation of the psychological and social character of the sense of shame. Pufendorf’s understanding of this sentiment relies largely on Descartes’s analysis of pride and shame in *Les passions de l’ame*. In this work Descartes presented both pride and shame as corollaries of human self-love. Pride is a kind of a joy “based on self-love and results from the belief or hope that we have of being praised by certain other people.” Correspondingly, shame is sadness “based also on self-love, which proceeds from the expectation of fear of being blamed.”⁶⁵ According to Descartes, shame is natural for human beings in the sense that in youth everyone thinks that to be praised by others is good, whereas being an object of disgrace is bad. There are, however, two ways in which a person can lose this original sensitivity to acclaim and disapproval. First, if the person is frequently an object of grave insults he begins to see himself completely stripped of honour and detested by all. As a result, he loses all interest in the opinions others have of him and adopts the attitude of impudence. The same happens also if his self-esteem for some reason becomes too great. In this case it becomes impossible for him even to imagine how anyone could despise him.⁶⁶

64 *An Essay concerning Human Understanding* II.28.12.

65 *Les passions de l’ame*, § 204–205. The translation is from *The Philosophical Writings of Descartes* vol.1, Cambridge 1985.

66 *Les passions de l’ame*, § 206–207.

Pufendorf refers approvingly to Descartes's definition of shame and also to his explanation of impudence. Nevertheless, Pufendorf's own theory of the psychological origin of shame differs slightly from that of Descartes. According to Pufendorf, shame is related not only to the fear of being the object of other's disdain but also to the fear of losing their esteem. The ultimate origin of shame is in the ambitious character of human nature. By this Pufendorf means that human beings do not only want to be accepted by other people. They also want to possess qualities which gives them some pre-eminence (*praestantia*) in the eyes of other people. They "feel the greatest pleasure if they can discover in themselves something, which gives them a possibility to raise themselves in front of others and to boast."⁶⁷ Moreover, they usually regard the honour and glory following from pre-eminence as the most marvelous of all worldly ends.⁶⁸ The reaction called shame takes place, then, when a person fears that the opinion other people have of his pre-eminence is going to be lowered. This causes in him deep sadness, "a manifestation of which is visible in the special seat of man's dignity, when the heart suddenly sends blood to the face."⁶⁹ In other words, shame is sorrow which takes place when the hope of being regarded as better than others is for some reason frustrated.

This theory of shame has, in Pufendorf's eyes, the advantage that it explains why people are ashamed of many things which do not meet with any actual condemnation from other people: "Shame arises not merely because of some base action, but also from anything, even though not morally base, which is thought to diminish our reputation." The reason for this is that human beings want their pre-eminence measured not only by the avoidance of sinful deeds but by many other factors which do not involve morality.⁷⁰ Thus, one sees people being ashamed of such things as shortness of stature, physical handicaps,

67 *JNG* I.2.7: "Scilicet ambitiosum est animal homo, suaeque praestantiae cum primis jactabundum, quoque maximam animi voluptatem in eo repositam habet, si talia in se deprehendat, quibus se prae aliis efferre, ac gloriari queat."

68 *JNG* 1684 II.4.9: "Inter eas igitur judicatur vel splendidissima, et quae erectoris homines indolis praecipue sollicitare idonea sit, opinio praestantiae et excellentiae, unde honor et gloria progignitur."

69 *JNG* I.2.7: "De cujus praestantiae opinione, ubi quid apud alios sibi deesturum metuit, penitissimam animo concipit tristitiam, cujus singum in propria velut humanae dignitatis sede adparet, dum cor repente sanguinem versus faciem propellit."

70 *JNG* I.2.7: "Probe autem observandum, pudorem oriri non ex sola actionum turpitudine, verum ex quavis re, etiam moraliter non turpi, quae existimationem nostram laedere creditur. ... Ast non ex sola peccatorum abstinencia praestantiam suam vult aestimsari homo, sed ex aliis quoque rebus, quibus moralitatis nihil inest."

poverty, poor clothes, harmless mistakes, and so on.

The idea that the feeling of shame is a consequence of the human desire for pre-eminence does not prevent Pufendorf from sharing the popular view that shame is beneficial for the moral order. God has planted this sentiment in the human soul to act as “a guardian of virtue” and “a bridle for restraining evil.” Had God not wished mankind to govern their actions according to law, he would most probable not have implanted this sentiment in human beings, “since only on such grounds does it serve any use.”⁷¹ In fact, Pufendorf sees the sense of shame as a necessary constituent of human sociality. A person who is totally unconcerned about what others think of him lacks most of the inner restraints on evil behaviour and is in principle ready to undertake all possible crimes.⁷² In other words, the aspiration for pre-eminence and glory, which are the desires behind the feeling of shame, are predominantly positive forces in social life. This appears to put Pufendorf in strict opposition with Hobbes, who had presented these passions as one of the principal reasons for human conflicts. It is interesting, therefore, to compare more closely Pufendorf’s and Hobbes’ views on this issue.

152

* * *

Hobbes’ negative assessment of the role which the aspiration for pre-eminence and glory plays in social life relied largely on the assumption that in human societies the striving for these things happens without any moral criteria. In *Leviathan* Hobbes maintained the bases of all honour human beings show towards other people is power. By power (*potentia* in the Latin translation) he meant in this context all things which enable a person to obtain the objects of his desire. Power consists, thus, not only of physical strength but also of all those things which make a human being equipped to manipulate others and in this way to achieve what they want. For example, prudence, wealth, eloquence, and good looks are all forms of power.⁷³

71 *JNG* I.2.7: “Ubi fatemur quidem, sapientissimum Creatorem animis hominum indidisse affectum pudoris, qui esset velut custos virtutis, et validum fraenum reprimendae malitiae. Probabile quoque videtur, ni Deus voluisset hominem suas actiones ad legem componere, ipsum hunc affectum animis humanis non fuisse insitutum; cum citra hoc nullus ejusdem usus adpareat.”

72 This is indicated in *JNG* VII.1 31, where Pufendorf explains the prohibition on incestuous marriages by the fact that a person who has intercourse with a family member lacks all sense of shame and can, therefore, “be held to have a brazen character and such as would not stop at any other villainy as well.” In this context he also cites approvingly Euripides’ characterization of impudence (i.e. the lack of shame) as the worst of all plagues infecting the human race.

73 *Leviathan*, ch. 10, pp.62–63.

The central idea in Hobbes' theory was, then, the claim that what people value and honour in others is the possession of some power they would like to have for themselves, not the manner in which this power is used:

Nor does it alter the case of honour, whether an action (so it be great and difficult, and consequently a signe of much power) be just or unjust: for Honour consisteth onely in the opinion of power.⁷⁴

To prove his point Hobbes referred to the ancient Greeks and Romans, who "did not thinke they Dishonoured, but greatly Honoured the Gods, when they introduced them in their Poems, committing Rapes, Thefts and other great but unjust, or unclean acts." As a more contemporary sign of the same attitude he saw the honour that was attached to the practice of dueling, despite the fact that this was illegal in most countries. This followed, in Hobbes' account, from the fact that dueling requires courage, which is a quality useful to the attainment of the objects of one's desire and so a form of power.⁷⁵

153

Already the foregoing meant that the wish to be honoured by other people does not necessarily motivate people to behave in a way which upholds peaceful social relations. Honour can be achieved by means of all behaviour which is seen as a sign of extraordinary power, including sheer violence and the suppression of others. What made matters even worse, according to Hobbes, was that people are most sensitive of their own esteem and want that those with whom they live value them as much as they value themselves. If they feel that some person despises or undervalues them, they do everything within their power to force that person to show a greater valuation. When we add to this that people usually have a considerably high opinion of themselves, but are reluctant to see similar excellence in others, it is obvious that there easily arises situations where they "must determine the pre-eminence by strength and force of body."⁷⁶ And in *Leviathan* Hobbes remarked that unless this tendency is restrained by civil power, it alone – even if there were no other causes for discord – would make people destroy each other.⁷⁷

Pufendorf agrees with Hobbes in holding that human beings possess a most sensitive self-esteem; so sensitive, in fact, that if it is injured, they are often more disturbed than when their body or

74 *Leviathan*, ch.13, p.66.

75 *Leviathan*, ch. 10, p.67.

76 *Elements of law* I.14.4.

77 *Leviathan*, ch.13, p.88.

property are violated.⁷⁸ However, in Pufendorf's eyes, this human feature does not make the desire to win other's esteem a predominantly negative force in social life. This is so, in the first place, because in so far as this sense of one's own value is natural and not intensified by emotional disorder or the flattery of others, it does not make people regard themselves as better than other people. In this respect, it differs significantly from groundless haughtiness (*superbia*) which makes one feel oneself superior to others regardless of the opinion these others have on the issue.⁷⁹ Pufendorf holds, in other words, that for most human beings any feeling of their own pre-eminence is totally dependent on the valuation they receive from other people, not something they take for granted and then require others to recognize.

Equally significant is that usually the striving for honour does not happen without moral criteria. This Pufendorf makes clear in his theory of reputation (*existimatio*), i.e. the valuation human beings enjoy in social life according to which they are "equalled or compared with other persons, and ranked either before or after them."⁸⁰ In relation to Hobbes, the distinctive feature in Pufendorf's theory is the idea that in social life people are usually valued according to two different criteria. In the first place, there is "intensive reputation" based on honour which generates hierarchial relations between human beings in which some persons are given preference over others.⁸¹ Pufendorf agrees with Hobbes that honour always follows from qualities which are signs of some pre-eminence or perfection.⁸² And the examples he offers of such features do not differ much from those given by Hobbes. People honour "intelligence and a capacity to master various skills and disciplines, a keen judgement in managing affairs, a

78 *JNG* III.2.1: "Praeter illud amorem, quo homo suam vitam, corpusque, ac res prosequitur, et per quem non potest non omnia, ad eorundem destructionem tendentia, repellere aut refugere; deprehenditur quoque ipsius animo insita tenerrima quaedam sui aestimatio: cui si quis aliquid detractum eat, non minus fere, imo saepe magis solet is commoveri, quam si corpori ac rebus noxa inferatur."

79 *JNG* III.2.6.

80 *JNG* VIII.4.1: "Est autem existimatio valor personarum in vita communi, secundum quem aptae sunt aliis personis exaequari, aut comparari, eisque vel antehaberi, vel postponi."

81 *JNG* VIII.4.11: "Existimatio intensiva est, secundum quam personae, alias quod existimationem simplicem aequales, sibi invicem praeferuntur, prout uni prae altero insunt, quibus aliorum animi ad exhibendum honorem permoveri solent. Est autem honor, qui intensiori existimationis respondet, significatio iudicii nostri de praestantia alterius."

82 *JNG* VIII.4.12: "Fundamentum intensivae existimationis in genere censentur omnia illa, quae insignem aliquam praestantiam aut perfectionem habent, aut eandem judicantur arguere."

firm temper unshaken by external events and superior to temptation and fear, eloquence, physical beauty and dexterity, the good things of fortune, and, above all, outstanding achievements.”⁸³

What Pufendorf does not share with Hobbes is the latter’s claim that such qualities are honoured even if they are used in some immoral manner. In Pufendorf’s eyes, this is quite simply an erroneous sociological observation. To be sure, he admits that one sometimes sees how common people celebrate someone who shows unusual ability only in the practice of some vice.⁸⁴ It may happen, for example, that someone is admired as a great seducer or a skilful thief. However, such an adoration is an exception rather than a rule. Pufendorf points out, *pace* Hobbes, that the ancient stories about gods who commit rapes and thefts did not represent the general opinion among the Greeks and the Romans. As proof of this he cites a number of ancient writers who condemned these stories as lies which both insult the gods and deceive the people.⁸⁵ Similarly, the honour attached to dueling is not a universal human phenomenon but a perverse habit peculiar to Europeans, which many other nations detest.⁸⁶

Thus, in reality moral considerations play a significant role in the esteem and honour people show to each other and constitute a phenomenon Pufendorf calls simple reputation. Unlike intensive reputation, which follows from pre-eminence and cannot therefore be equally possessed by everyone, simple reputation is a quality which can in principle be shared by every member of the human species. Outside civil society it consists solely of the fact that a person is regarded as someone, “who is inclined to accommodate himself to the laws of human sociality, and therefore ready, to the best of his ability, to observe natural law in his relations with others.”⁸⁷ In civil societies simple reputation also necessitates that one is known as someone who obeys the laws and customs of the state, and that one is regarded as a full member of the community.⁸⁸ By the latter remark Pufendorf refers

83 *OHC* II.14.13. See also *JNG* VIII.4.12.

84 *JNG* VIII.4.12: “Nam stulto vulgi iudicio eos quoque interdum vides celebrari, qui circa vitium aliquod exercendum cum primis sese strenuos exhibent.”

85 *JNG* VIII.4.13.

86 *JNG* VIII.4.8.

87 *JNG* VIII.4.2: “Existimatio simplex inter eos, qui in naturali invicem libertate sunt constituti, in hoc potissimum videtur consistere, ut quis talem se ferat, et pro tali habeatur quicum agi quaerit tanquam cum viro bono, et ad socialitatis humanae leges sese accommodare prono, quique adeo legem naturalem adversus alios, quantum in se, observare sit paratus.”

88 *JNG* VIII.4.6: “Existimatio simplex intra civitates degentium est, qua quis pro membro saltem vulgari, eosque integro civitatis reputatur, seu ut quis juxta leges et mores civitatis pro vitioso ejusdem membro non fuerit declaratus, et aliquo esse numero, caputque habere intelligatur.”

to the fact that civil societies include people who are protected by the state, but who, because of some moral deficiency which characterizes their social position or occupation, do not enjoy a similar civil standing as other citizens.⁸⁹

Pufendorf takes the existence of simple reputation so much for granted that he does not bother to explain the psychological mechanism which upholds it. Nevertheless, given his gloomy view of human nature, it can be wondered what makes people condemn so unanimously those who violate the rules of sociality. That people feel aggrieved when someone does something wrong to themselves or to those who they regard as important for their personal happiness and well-being, does not need to be explained. However, as a social phenomenon simple reputation obviously requires that people are also disturbed when the harm is done to someone with whom they have no personal contacts. What makes them show their disapproval in such cases?

156

In the light of Pufendorf's moral theory, the idea which first comes to mind is that people have learned that violating the rules of sociality is against God's will and therefore wrong and blameworthy. Now, Pufendorf evidently thinks the idea that God commands human beings to observe natural law and will punish those who violate it offers an important motive for observing natural law. But why should this fact make people show disdain if something immoral is done to someone with whom they have no personal relations? Why are they not concerned solely with their own destiny and let others act as immorally as they like?

One possible answer is that people identify themselves with other human beings and, therefore, feel compassion to the injured party and contempt towards him who commits the evil act. And Pufendorf indeed remarks that the mere similarity of nature – the fact that people recognize each other as members of the same species – is usually seen to foster the creation of friendly bonds between human beings.⁹⁰

89 *JNG* VIII.4.6; *OHC* II.14.8. To this category belong slaves and illegitimate children in some societies. It is also the situation of those whose occupation is such that it cannot be practiced without vice. To this group belong, for example, pimps and prostitutes who enjoy the protection of civil power as long as they are publicly tolerated, but are seen as people who ought to be excluded from the company of honest citizens. Finally, there are people such as executioners whose occupation arouses so much disgust in the rest of the citizens that they are excluded from normal social life.

90 *De statu* § 15: "Similitudinem naturae in universo genere humano etiam illi agnoscunt, qui ex uno pari conjugum quidquid est mortalium ortum tranxisse ignorant. Etsi enim mira varietas et in externa corporum habitudine, ac in animis deprehendatur; ea tamen tanta non est, quo minus dici queat, unum aequae esse hominem quam alterum. Eam autem naturae similitudinem in quovis animantium genere ad conjunctionem non parum conferre, perque eandem ista inter se conciliari tralatitium est."

However, in the same context he makes clear that in practice most people are not particularly affected by this natural similitude. They are usually so preoccupied with their own advantage and glory that “they pay small regard to anyone with little or no ability to benefit them.”⁹¹ But as mentioned already, simple reputation requires that people are disturbed even when the harm is done to someone who is in no way useful for themselves.

Another possibility is that people condemn the violations of natural law because they understand that a person who does something wrong to others may do the same to themselves. And Pufendorf obviously thinks that such estimations are typical for the more intelligent and educated people. It seems, however, that these are not the reason for the general disdain shown towards evil acts. When Pufendorf wants to convince his readers that the uneducated majority adopts natural law solely through habituation he makes the following remark:

157

If anyone should undertake to examine this matter in detail, he will discover how difficult it is to give any clear explanation for many things which the common throng does at once and without a sign of hesitation. For instance, the author of *De principiis justi et decori* [the Dutch writer Velthuysen] asserts: “If anyone is caught stealing, the whole multitude are of one mind and body in striving to arrest the thief, while if someone in a fit of anger has committed a murder, everyone hopes for his escape, and no one of his own accord lends assistance for his apprehension.” The common men do not know the reason for this, which is: “Everyone runs for greater danger from a thief, who will take anyone’s property, than from a murderer, who is only angry against the one by whom he has been injured.”⁹²

The above passage would indicate that the idea that the thief may also be harmful for their own personal well-being is not the main reason for the anger common people feel towards him. Their reaction is principally habitual. This suggests that simple reputation as a social

91 *De statu* § 16: “Ex adverso constat, homini amorem proprium suamque utilitatem et gloriam fere inter prima haberi. Eoque istius, ex quo nihil aut parum in nos proficisci videtur posse, exigua fere habetur ratio.”

92 *JNG* II.3.13: “Verum si quis accuratius ista coeperit expedere, deprehendet, multarum rerum rationes redde oppido quam difficile esse, quae a vulgo tamen expedite, et citra haesitationem obeuntur. Exempli loco author *De principii justi et decori* assert: ‘Si quispiam in furto deprehensus sit, omnis multitudo animo et viribus annititur furem comprehendere: si autem quispiam ira percitus homicidium perpetraverit, omnes ejus libertatem optant, nullus saltem operam suam libenter ad illum capiendum commodat.’ Rationem vulgus ignorat, quae haec est, ‘quia plus periculi cuivis exfure, qui cujusvis fortunas rapere intendit, quam a tali homicida, qui in illum tantum excanduit, a quo lacessitus fuerat.’”

phenomenon is based chiefly on the unreflected moral attitudes people adopt in their childhood. As was mentioned above, Pufendorf holds that when people are from childhood onwards taught to curse some acts, the condemnation of these acts becomes second nature for them and acquires the force of a natural passion.⁹³ Thus, it appears plausible to think – although Pufendorf never explicitly says so – that simple reputation is principally maintained by these emotional reactions adopted in early childhood. While most people do not have any clear understanding of the foundations of natural law and easily see a discrepancy between its requirements and the pursuit of personal well-being, they usually feel spontaneous reprobation when they see others violating these rules.

Be this as it may, Pufendorf's argument against Hobbes is that the condemnation people show towards immoral acts is usually stronger than their admiration for extraordinary skills and qualities as such. This guarantees that the desire for pre-eminence has predominantly a positive effect on human sociality and that the sense of shame is able to act as "a guardian of virtue". Pufendorf admits, however, that at the same time these sentiments represent a constant danger for social life. Since honour and glory are generally regarded as the most illustrious of all worldly ends, there is always a temptation to seek them even by immoral means. Consequently, one of the most important tasks of education should be to shape the soul so that it is not too preoccupied with honour but "endeavours in every way to conserve simple reputation or the opinion that one is a good man."⁹⁴

THE FEAR OF GOD

The desire to be esteemed by other people offers, thus, an important incentive for moral behaviour. It is not, however, the strongest single motive for obeying the moral law. This is indicated in *JNG* I.6.12, when Pufendorf discusses the reason why the lawgiver must not only have just reasons for his power but also be willing and able to punish those who disobey his commands. Here, he remarks that in order to

93 See above pp.00

94 *JNG* 1684 II.4.9: "Est quoque illa culturae maxime necessaria, ut quis justum pretium rebus, quae adpetitum humanum praecipue stimulant, ponere norit. Ex hoc quippe dependet, quantum circa quamque earum coniti deceat. Inter eas igitur judicatur vel splendidissima, et quae erectoris homines indolis praecipue sollicitare idonea sit, opinio praestantiae et excellentiae, unde honor et gloria progignitur. Circa hanc animus iat est formandus, ut omni quidem studio existimationem simplicem, seu opinionem boni viri conservare laboret."

achieve their external end the laws must have the power to control the corrupt passions of human beings “with a greater force” than “the sense of shame and morality”.⁹⁵ In other words, while concern about one’s simple reputation is a necessary constituent of human sociality, the most powerful single motive for moral behaviour is still the fear of those punishments which are expected to follow from the transgression of natural law. What interests me in this final chapter is Pufendorf’s opinion that in this respect the mere fear of civil penalties is not sufficient. A peaceful social life also necessarily requires a collectively shared belief in a God who will punish those who violate natural law. What are Pufendorf’s reasons for holding such a view, and what kind of fear provides the required sociality?

Unlike his divine command theory of morality, the idea that civil life requires a belief in a punishing God did not raise that many protests among Pufendorf’s contemporaries. In the seventeenth century the fear of Hell still had a considerable impact on people’s everyday life. Even though atheism was not unknown and some Christian sects (like Socinians) rejected the idea of eternal punishments, the great majority internalized in one form or another the idea that there is a God who will punish the wicked.⁹⁶ Moreover, the idea that such a belief is indispensable for social order was generally, albeit not unanimously, accepted among intellectuals. In order to support this view it was not necessary to think like Pufendorf that the whole phenomenon of morality is dependent on the idea of God. Grotius, for example, remarked in his commentary on the Bible that “without a belief in a divine providence that visits the deeds of men with retribution and laws to direct men in the right way, men cannot avoid wandering into devious and evil ways.” Consequently, those “are considered foolish, who have no careful regard for the belief in God and his providence, but allow every man his own opinion on this point, the most pernicious thing to be found, not only, I maintain, to good morals, but to the state as well.”⁹⁷

But as Grotius’ remark indicates there were some who thought that what people think of God and his providence is of no consequence for social life. The first printed affirmation of an atheist society is usually considered to be Pierre Bailly’s *Pensées diverses sur la comète*, published in 1682. However, already much earlier several writers had

 95 *JNG* I.6.12: “Enimvero quia naturalis humanae voluntatis libertas nullo morali vinculo extinguitur, ea quoque in plurimis mortalium est animi levitas aut malitia, ut istas imperii rationes insuper habeant: igitur aliud accedere oportet, quod validiore momento enormes libidines, quam pudoris et decori sensus, premat.”

96 On seventeenth century discussion on eternal punishments, see Walker 1964.

97 *Ad liber Sapientibus*, XII.1. Cited by Pufendorf in *JNG* 1684 II.4.3.

denied the necessity of having a generally shared belief in divine retribution. Of the authors Pufendorf mentions in *De jure naturae et gentium*, such ideas were presented by Paolo Sarpi, Francis Bacon, and Thomas Hobbes. To be sure, the first mentioned, a Venetian churchman and historian, did this only in his unpublished *Pensieri*, while in his published works he supported the conventional view.⁹⁸ In print the possibility of an atheist society was hinted at by Bacon in the second edition of his *Essays*, published in 1612. While Bacon condemned atheism as a position which “destroys man’s nobility”,⁹⁹ he did not think that it would make ordered civil life impossible. In his essay *Of superstition* he declared that atheism “leaves a man to sense, to philosophy, to natural piety, to laws, to reputation; all of which may be guides to an outward moral virtue, though religion were not.” Consequently, “atheism did never perturb states, for it makes men wary of themselves, as looking no further: and we see the times inclined to atheism (as the time of Augustus Caesar) were civil times.”¹⁰⁰

Before Bailly the most provocative and widely-known of the public attacks against the conventional view was undoubtedly the religious doctrine Hobbes presented in *Leviathan*. Hobbes, of course, never championed for an non-religious society. In *Leviathan*, just as in his two earlier works on political theory, he declared that a well-ordered state includes a publicly practiced religion controlled by the sovereign. However, Hobbes’ reason for holding religion beneficial for social life was not the customary one according to which the central rules of morality must be enforced by the fear of punishments in the afterlife. On the contrary, he made it clear that he not only saw the belief in eternal punishments as socially unnecessary but also regarded it as a threat to civil life.

In *Leviathan* the social utility of religion followed mainly from the opportunity it gave to control the human tendency to superstition. Behind this view lay Hobbes’ conviction that religion as a social institution (as distinct from the philosophical understanding of God) has its origin in the inability of human beings to understand the real causes of the phenomena which they observe in the world. This causes anxiety which easily gives rise to the belief that there is an invisible power or agent which is the ultimate cause of all things, including the good and bad fortune of human beings. Such beliefs are, then, transformed into a religious cult when people start to believe that

98 On Sarpi, see Wootton 1983, especially pp.20–23, 131–135.

99 Essay XVI, *Of Atheism*.

100 Essay XVII, *Of Superstition*.

someone is “a holy man, to whom God himself vouchsafeth to declare his will supernaturally.”¹⁰¹

Hobbes maintained that religious cults were originally established by ancient rulers in order to make people “more apt to Obedience, Lawes, Peace, Charity, and civil Society.”¹⁰² The first to use such a device were Judaic leaders like Abraham and Moses. But also gentile rulers, whose only concern was to “keep the people in obedience and peace,” took care that their subjects believed “that the same things were displeasing to the Gods, which were forbidden by the Lawes.” For the same purpose they also established “Ceremonies, Supplications, Sacrifices, and Festivalls,” in which “the anger of the gods might be appeased.”¹⁰³ By all this Hobbes did not mean that the ancient social order would have been founded on the belief that there is a God who will punish those who violate the laws by something more terrible than that which the human sovereign is able to inflict. Ancient religious cults were socially beneficial mainly because they made people content with modest material wealth and less inclined to accuse rulers of their personal misfortunes. Their achievement was firstly “that the common people in their misfortunes, laying fault on neglect, or error in their ceremonies, or their own disobedience to lawes, were lesse apt to mutiny against their Governours.” Second, when the people were “entertained with the pomp, and pastime of Festivalls and Publick Games, made in honour of The Gods” they “needed nothing else but bread, to keep them from discontent, murmuring, and commotion against the State.”¹⁰⁴

In this respect the situation changed drastically at the beginning of the Christian era, when the Catholic church started to utilize superstitious beliefs in order to increase its own power at the expense of civil sovereigns. This it did mainly by deceiving human beings into believing that there are powers and punishments which they should be more afraid of than the penalties inflicted by the civil rulers. By using such beliefs the clergy managed to create an independent, multinational power network to serve its own interests. And even though the power of the Catholic church was diminished by the Reformation, Protestant sects continued to use the same devices in order to uphold their authority. As a result, human beings were asked to serve two masters: the sovereign who commanded the temporal punishments and the church who claimed that it knew how to avoid

101 *Leviathan*, ch.12, pp.83–84.

102 *Leviathan*, ch.12, p.79.

103 *Leviathan*, ch.12, p.82.

104 *Leviathan*, ch.12, p.83.

the divine ones. The outcome of this were, according to Hobbes, the endless civil wars which had devastated European nations during the Christian era.¹⁰⁵

Hobbes held it possible to liberate people from the spell of the clergy and from the irrational fears on which its power had been based. He did not, however, think that this would make publicly practiced religion unnecessary. The sources of superstitious beliefs “can never be so abolished out of human nature, but that new Religions may againe be made to spring out of them, by the culture of such men, as for such purpose are in reputation.”¹⁰⁶ It was necessary, therefore, to control this religious inclination by the publicly controlled worship of God. Nevertheless, in order to turn Christianity into a religion without unwanted side-effects for civil life, some significant doctrinal changes were needed.¹⁰⁷ And the most important of these was to get rid of the idea of Hell in which eternal torture awaits those who violate against God’s will. Richard Tuck has recently suggested that Hobbes’ principal motive for this move was not so much to give the sovereign a monopoly on sanctions, but to relieve human beings of all unnecessary and damaging fears.¹⁰⁸ Be this as it may, at the beginning of chapter 38 Hobbes made it perfectly clear that there also was an important political motive for this doctrinal correction:

The maintenance of Civil Society, depending on Justice; and Justice on the power of Life and Death, and on the lesser Rewards and Punishments, residing in them that have the Soveraignty of the Common-wealth; It is impossible a commonwealth should stand, where any other than the Soveraign, hath a power of giving greater rewards than Life, and of infliction greater punishments than Death. Now seeing *Eternall life* is a greater reward, than *life present*; and *Eternall torment* a greater punishment than *death of Nature*; It is a thing worthy to be well considered, of all men that desire (by obeying Authority) to avoid the calamities of Confusion, and Civil war, what is meant in holy Scripture, by *Life Eternall*, and *Torment Eternall*; and for what offences, and against whom committed, men are to *Eternally tormented*; and for what actions, they are to obtain *Eternall life*.¹⁰⁹

105 *Leviathan* ch.29, pp.226–228.

106 *Leviathan*, ch. 12, p.83.

107 On the relationship between Hobbes’ political theory and the Christian doctrine declared in *Leviathan*, see Johnston 1986.

108 Tuck 1993, pp.131–132.

109 *Leviathan*, ch. 38, pp.306–307.

What Hobbes then presented as the correct interpretation of the Bible was a doctrine which not only included no penalties worse than death, but also broke the connection between salvation and the manner in which a person behaves in this life.

According to Hobbes, the Sacred Scriptures teach that when Christ returns he will awaken those who believe in him, who will then continue their bodily existence on earth forever, while the unbelievers will be condemned to a second and this time a conclusive death. Such a conception of Christianity arguably gives God a somewhat greater ability to reward human beings than that which the civil sovereign possesses. As Hobbes himself admitted, an eternal life is a greater reward than the present finite existence. However, this fact had no practical consequences for social behaviour. While in *De cive* Hobbes had still strongly emphasized that salvation requires not only a belief in Christ but also correct behaviour, namely obedience to the sovereign,¹¹⁰ in *Leviathan* the discussion of salvation said nothing of the latter issue. Hobbes only stressed that while the injustice human beings do to each other can be redressed, the sins the human species perpetrate against God cannot be undone by any human deed. Salvation follows from redemption, which is earned solely by the belief in Christ.¹¹¹

163

* * *

The religious doctrine Hobbes championed in *Leviathan* offered, thus, no extra motive for observing natural law or civil laws. While it affirmed the existence of an afterlife, it gave God no greater force to threaten those who disturb peaceful civil life than what is possessed by the civil sovereign. Besides, by making salvation dependent solely on the faith in Christ it made the only special reward God had in his hands socially insignificant. The main social benefit following such a religion was that it served as a politically harmless platform for people's religious feelings.

Whether or not Hobbes himself sincerely believed in the Christian doctrine he declared in *Leviathan*, for most of his contemporaries it was pretty much identical with atheism.¹¹² What is Pufendorf's opinion on this issue is not, however, altogether clear. In his first letter

110 *De cive* 18.2, 18.12.

111 *Leviathan*, ch.38, pp.307, 319–320. On other differences between the religious doctrines presented in *Leviathan* and Hobbes' earlier works, see Johnston 1986 and Tuck 1993.

112 See Minz 1962.

to Boinenburg he remarks that many of Hobbes' hypothesis seem have a secular flavour,¹¹³ while in the preface to *De jure naturae et gentium* he admits, after praising the merits of Hobbes' political theory, that the irritation Hobbes has caused by his "abominable theories in the field of religion" has not been without reason. In the same work Pufendorf also criticizes Hobbes forcefully for his claim, presented in *De cive*, that atheism is not strictly speaking a sin, because an atheist is not God's rebellious subject but rather God's enemy, who has never submitted himself to God's power.¹¹⁴ Yet, Pufendorf never directly accuses Hobbes of atheism.

What is certain, however, is that Pufendorf himself sees tranquil social life as dependent on a collectively shared belief in a God who threatens wrong doers with greater punishments than the civil sovereign. This opinion is not so clearly expressed in *De jure naturae et gentium*, where Pufendorf is more interested in maintaining that the fear of God's punishments alone cannot maintain peace between human beings. The necessity of the fear of God is, however, made perfectly clear in the discussion of natural religion Pufendorf includes – perhaps because of the charges of atheism directed against his main work – in *De officio hominis et civis*.

As should be clear by now, for Pufendorf natural religion is not a doctrine which should replace Lutheran Christianity as the publicly maintained religious practice. Natural religion is a purely theoretical model the purpose of which is to define those religious ideas and practices which are indispensable for human society. It consists of "man's duties to God" in so far as "these can be traced out on the basis of natural reason."¹¹⁵ Reason, in turn, is able to gather the religious duties in so far as they "promote tranquility and sociality of this life". Whereas the duties which human beings have towards each other are deduced directly from the requirements of sociality, the duties they have towards God are deduced "indirectly" by contemplating what religious beliefs and practices are needed to give to the duties human beings have towards each other their "ultimate firmness".¹¹⁶

113 The first letter to Boinenburg, line 116.

114 *JNG* II.4.4.

115 *OHC* I.4.1.

116 *OHC* I.3.13: "Quanquam autem primario et directe ea praecepta legis naturalis, quae ad alios homines spectant, ex socialitate, quam fundamenti loco substravimus, derivantur: tamen etiam indirecte officia hominis erga Deum tanquam Creatorem inde deduci possunt, quatenus ultimum firmamentum officiiis erga alios homines a religione et metu Numinis accedit; sic ut sociabilis quoque non esset homo, ni religione foret imbutus. Et quia sola ratio in religione ulterius progredi nequit, quam quousque illa inservit promovendae tranquillitati et socialitati hujus vitae."

In *De officio hominis et civis* Pufendorf presents a considerably detailed account of the various religious beliefs and practices which he sees as indispensable for peaceful social order. What is significant for our present concern is that natural religion includes the idea of a God “who exercises direction over the world as a whole and over the human race.” Pufendorf especially points out that to deny this has the same moral effect as the denial of God’s existence. Both positions undermine all religion, because “there is no reason to fear or to worship a being who however excellent He may be in Himself, is unmoved by concern for us and neither can nor will confer either good or evil upon us.”¹¹⁷ A little later Pufendorf then specifies that in order to give firmness to human sociality religion must teach not only that human beings should offer God “in all things the most humble obedience as creator, lord and governor and the best”, but also that they should fear God “as most powerful, to offend whom is apt to incur the greatest evil.”¹¹⁸

Now, it is not totally unreasonable to wonder why Pufendorf thinks this way. For in his discussion of the origin of civil societies he remarks that most human beings are mainly preoccupied with the present and far less concerned with what shall happen to them in the future. This, in turn, has the consequence that even though God’s punishments should be feared more than anything else, in practice most human beings are far more afraid of human penalties.¹¹⁹ But if this is the case, why is the fear of God’s punishment needed at all? If the effect of these penalties is so much weaker than that of civil penalties, why is the belief in them indispensable for social life even when natural law is enforced by civil penalties? Why is the fear of God a necessary constituent of human sociality?

The only place where Pufendorf answers this question is *OHC* I.4.9, where he aims to show that religion “is the ultimate and the strongest bond of human society.” This he does by offering a portrayal

117 *OHC* I.4.4: “Tertium est, Deum tum in universum mundum, tum in genus humanum regimen exercere. Id quod ex admirabili et constanti ordine, qui in hoc universo cernitur, liquodo adparet. Quoad effectum autem moralem perinde est, utrum quis neget, Deum existere, an ab eodem humana curari; cum utrumque omnem religionem plane tollat. Frustra enim metuitur aut colitur, utut in se sit praestantissimus, qui nulla plane nostri cura tangitur, et nihil boni malique in nos vult aut potest conferre.”

118 *OHC* I.4.6: “...; eum timere, tanquam potentissimum, cujus offensa maximum sit malum conciliare apta; ei denique in omnibus humillime obsequi tanquam creatori, domino ac rectori optimo maximo.

119 *JNG* VII.1.11: “Tum quod magna pars mortalium praesentibus tantum imminet, futuri parum curiosa, ac illis fere movetur, quae in sensus incurrunt, ab sublimiora aegra adsurgat. Inde est, quod plurimos longe major poenae humanae metus, quam divini Numinis, quo tamen nihil magis metuendum.” See also *OHC* II.5.9.

of the calamities which would characterize human life in the situation where religion were abolished. The description Pufendorf gives of such an imagined condition is rather unsystematic and could easily be taken merely as a rhetorical exaggeration the purpose of which is to answer to the charges of atheism made against the *De jure naturae et gentium*. Nevertheless, a careful reading of this passage reveals a number of assumptions which are perfectly compatible with the general outline of Pufendorf's theory.

Not surprisingly, the central assumption in paragraph I.4.9 is the idea that the human species is fundamentally corrupt. Pufendorf's point is that the wickedness inherent in every human being would make people unable to have that trust in each other's intentions which is necessary for civil institutions to function. This opinion distinguishes Pufendorf from Hobbes, who seems to have thought that once the proper civil organization has been established and superstitious beliefs have been abolished, rulers are automatically both willing and able to protect their subjects. Correspondingly, in such a situation at least the majority of the citizens have so strong confidence in the intentions of the rulers and in the ability of the legal system to punish wrong doers that they do not regard their leaders or other citizens as a constant danger for their own safety.

In contrast to this, Pufendorf maintains that because of the corrupt human nature even the best possible civil institutions include some unavoidable deficiencies which would make the whole system collapse without a collectively shared believe in divine punishments. In the first place, there is the great power necessarily possessed by the leaders of states. Pufendorf takes it for granted that if the passions and desires of civic rulers were not restrained by the fear of God's punishments, the temptation to use high position in order to increase personal wealth would be quite simply too great to resist. As a result, the rulers would "treat all their duties, and justice itself, as available for a price." This, in turn, would create a mutual circle of suspicion and distrust between citizens and their leaders. The former, "fearing oppression by their rulers, would be constantly on the watch for opportunities to revolt," while the rulers, "living in constant fear of rebellion, ... would realize that their only hope of security lay in making their citizens as weak as possible."¹²⁰

120 *OHC* I.4.9: "Nam imperantes, nullo conscientiae vinculo constricti, omnia munia, ipsamque justitiam venalia essent habitur, et in omnibus privatum commodum quaesituri cum oppressione civium: a quorum rebellione uti sibi semper metuerent; ita suam salutem unice in eo positam intelligerent, ut istos quam maxime enerves redderent. Cives contra, oppressionem imperantium formidantes, numquam non circumspecturi forent occasiones rebellandi."

The other unavoidable imperfection in all civil societies is the legal system. In human courts the penalties must always be based on evidence. These, in turn, are often very difficult to find. Therefore, the legal apparatus alone cannot create that trust in each others intentions which is needed in civil life. If there were no commonly shared belief in a punishing God, all “crimes and misdemeanors of a profitable nature that could be committed in secret and without witnesses would be taken as evidence of smart thinking on which one could pride oneself.” As a result, “no one could be certain of another’s good faith.” Despite all the efforts of the legal apparatus, the citizens would “live in anxiety, a perpetual prey to fear and to suspicions that they would be deceived or wronged by others.”¹²¹ Pufendorf’s scepticism concerning the ability of human beings to trust each other without the shared fear of God extends even to domestic relationships. “On even the smallest quarrel, husband would suspect that their wives would use poison or some other clandestine means of death against them, and wives would suspect their husbands. A similar danger would threaten from their dependents.”¹²² In fact, the mutual suspicion would be especially strong in domestic surroundings, since the crimes made there are usually especially difficult to solve and are most often “betrayed by an unquiet conscience and by tell-tale signs of anxiety” following from the fear of God’s punishment.¹²³

To sum up: even though God’s punishments have a weaker immediate impact on human behavior than civil penalties, they are still needed in order to create that minimum trust between the corrupt human beings without which civil institutions and civil life would be impossible in the first place. Because of the inevitable weaknesses in civil institutions it is necessary that citizens have a somewhat greater confidence in their rulers and in each other than would be justified solely on the grounds of corrupt human nature. And Pufendorf holds that no other thing can create the needed trust than the fact that

121 *OHC* I.4.9. “Praeterea cives ad injurias mutuo inferendas futuri essent pronissimi. Cum enim in foro civili pronuncietur secundum acta et probata, omnia scelera et flagitia, ex quibus lucrum provenire aptum est, si occulte patrari et fine arbitris possent, pro dexteritate ingenii, in qua placere sibi quis posset, haberentur. ... Ex quo illud consequeretur, ut dum nemo in alterius fide, remotis poenis divinis, solidam fiduciam collocare posset, singuli perpetuo metu et suspicionibus anxii viverent, ne ab aliis deciperentur, aut laederentur.”

122 *OHC* I.4.9: “Quin conjuges, oborta vel levi querela, se invicem essent suspectari, ne veneno, aut alio clandestino modo necarentur. Par periculum a familia immineret.”

123 *OHC* I.4.9: “Cum enim sine religione nulla quoque futura foret conscientia, non facile esset occulta ejusmodi scelera deprehendere; quippe quae plerumque per inquietudinem conscientiae, et terrores, in exteriora indicia erumpentes, prodantur.”

citizens know that most of them are at least a little concerned about the punishments that God shall inflict on wrong doers.

Finally, a few things concerning the character of the fear of God needed in social life are worth noting. In the first place, the fear of God which serves as a minimum requirement for social life is in no way identical with sincere Christian faith. Genuine Christians obey natural law out of mere reverence towards God and need no other motive for doing so. However, the number of such true Christians is very small.¹²⁴ What makes ordered social life possible is that all but the most corrupt human beings possess a sense “which convinces them that when they sin against natural law, they offend him who has authority over men’s minds, and who is to be feared even when there is nothing to be feared from men.”¹²⁵ In other words, religion fulfills its most essential social function not by making people pious believers, but by creating in their minds a kind of “superego”, a picture of an all-powerful authority, who requires them to observe the prevailing moral code and threatens those who disobey with some great evil. Consequently, non-Christian religions also are able to maintain sociality human sociality: “A serious belief of any nature in the Divine Being and His providence, under whatsoever particular form or manner of worship, has the effect of rendering men more observant of their duty.”¹²⁶ There are people who are “addicted to a religion which is harmful to the welfare of their souls, such as Mohammedans or pagans, who, because of their belief in divine providence, show an active concern for honourableness and duty so that, so far as their outward acts are concerned, they do not seem to fall behind the majority of Christians.”¹²⁷

What, then, is the evil which people must be afraid of? Must a socially effective religion contain the idea that there are penalties awaiting the wrong doers in the afterlife, or is it sufficient to believe in a God whose punishments shall be meted out in this life?

Some of Pufendorf’s comments give the impression that he supports

124 See above p.00.

125 *OHC* 1.3.11: Abs quo generatur tener admodum sensus in animis hominum non plane corruptorum, quo convincuntur, in legem naturalem peccando offendi illum, cui in animos hominum imperium est, et qui metuendus sit, etiam ubi ab hominibus metus non impendet.”

126 *JNG* 1684 II.4.3: “... : habet tamen quaevis seria persuasio de Numine, ejusque providentia sub quocunque conceptu particulari, aut modo cultus hanc efficaciam, ut homines reddat officii observantiores.”

127 *JNG* 1684 II.4.3: “Argumento est, quod olim et nunc dentur religioni pro salute animarum pestiferae addicti, puta Muhammandanae aut Ethnicae, quos propter suam providentia Numinis persuasionem non spernenda honesti et officii cura agitat, ut saltem quad exteriores actus plurimus Cristianorum non videatur concedere.”

the latter alternative. In the first place, Pufendorf holds that reason as such is unable to achieve certain knowledge concerning the faith of human beings after death. And since the study of natural law is restricted to things which can be known by natural reason, he insists that “the scope” of this discipline must be “confined within the orbit of this life”.¹²⁸ Correspondingly, in his discussion of natural religion Pufendorf emphasizes that “the effect” of this religion is “confined to the sphere of this life”, and that it “has no effect on winning eternal salvation.”¹²⁹

On other occasions, however, Pufendorf clearly indicates that human sociality and ordered social life are dependent on the belief that wrong doers will be punished after their death. For example, when he lists in *De jure naturae et gentium* those features of character which make a person unreliable as a contracting party, those who deny the immortality of the soul are closely connected with those who deny the existence of divine providence. Both types of person know only such justice which is based on advantage measured by their own judgement.¹³⁰ The same idea is affirmed when Pufendorf in *De officio hominis et civis* explains why the internal cohesion of states would be perpetually insecure without religion. Here he starts by remarking that without religion

... the saying would apply, *He who knows how to die cannot be forced*. For those who do not fear God have nothing worse to fear than death, and anyone who had the courage to despise death could make any attempt he pleased against the government. And there might always be reasons why he would do so. He might wish for instance to avoid the disadvantages he perceives himself to suffer from being ruled by someone else, or he might aim to win for himself the advantages he sees falling to the possessor of power, particularly since he may easily persuade himself that he has the right to do so, either because the present sovereign seems to be running the country badly or because he expects to govern far better himself.¹³¹

128 OHC Prefatio. See above pp.00.

129 OHC I.4.8: “Enimvero id certum est, effectum hujus religionis naturalis, praecise et pro praesenti hominum conditione consideratae, intra sphaeram hujus vitae terminari: ad aeternam autem salutem nanciscendam nequaquam valere.

130 JNG III.6.9: “Ex quo gener sunt athei, qui vel Deum esse vel divinam providentiam abnuunt; a quibus non longe abeunt qui animas corporibus supersites negant. Hi enim non possunt non omne jus utilitate, ad judicium propriam exacta, metiri.”

131 OHC I.4.9: Tunc enim revera locum haberet; qui mori scit, cogi nescit: quippe cum Deum non mentuentibus nihil magis quam mors metui possit. Huic contemnendae qui sufficeret, in imperantes quaevis tentare posset. Ut autem id vellet, vix causa defutura foret; puta ut declinaret incommoda, quae sibi ab alterius imperio videntur incumbere; aut ut ipse potiretur commodis, quae imperii possessorem comitantur. Praesertim cum facile judicare possit, jure se id facere, vel quod, qui in praesens rerum potitur, prave rempublicum videatur genere, vel quod ipse longe melius imperaturum sese speret.”

In this statement stable civil order is made dependent on a religious doctrine which also affects those who are able to overcome their fear of death. And it is difficult to imagine how such a doctrine could be formulated without the idea that God will punish the wrong doers after their death.

The discrepancy between the above remarks is not, however, as great as it might appear at the first sight. For it seems that by maintaining that the effect of natural religion is restricted to this life, Pufendorf does not mean that natural religion does not include the idea of punishments which await wrong doers in the afterlife. It must be noted, in the first place, that his reason for holding the above view is the conviction that the true requirements of salvation declared in the Bible cannot be known by natural reason alone:

170

Human reason left to itself is quite ignorant that the depravity seen in man's faculties and inclinations is the result of human fault and merits God's indignation and eternal death. Hence too the need of a Saviour, the need of His work and merit, and the promises which God has made to the human race and all that flows from that, are unknown to human reason, although it is clear from Holy Scripture that these are the only means by which eternal salvation comes to man.¹³²

Now, by this Pufendorf does not mean to say that the idea of punishments in the afterlife is totally unfamiliar to natural reason. On the contrary, he holds that while human reason does not – at least for the moment – have demonstrative knowledge of the existence of such penalties, the fact that violations of natural law are not always followed by corresponding disadvantages in this life makes reason strongly tempted to assume that God must have ordered some other enforcement for natural law.¹³³ When we add to this the human desire to avoid death, we have the almost universally shared belief in punishments and rewards in the afterlife:

132 *OHC* I.4.8: "Ratio quippe humana sibi relicta jam ignorant, pravitatem, quae in facultatibus et inclinationibus hominis cernitur per culpam humanam provenisse, Deique offensam et aeternum exitium mereri: eoque et necessitas Salvatoris, ejusque officium et meritum, nec non promissa Dei humano generi facta, et quae alia inde dependent, eandem latent: per quae so salutem aeternam hominibus provenire, ex divinis literis constat."

133 *JNG* 1684 II.3.21: "Et sane cum constet, Deum velle, ut istae leges ab hominibus observentur, et vero adpareat, a quibusdam effectus earum naturales, saltem ex parte eludi: valde probabile est, Deum alia via malitiam istorum multaturum."

The human heart does indeed yearn for immortality with a burning passion and violently rejects its own destruction, and hence many nations of the gentiles have seen the rise of a belief that the soul survives separation from the body, and that then it will be good for good men and bad for evil men.¹³⁴

In other words, even though the true requirements of salvation can be learned only from the Bible, most human cultures still have some idea of penalties which follow after death. What Pufendorf seems to have in mind is that while the existence of punishments which await wrong doers in the afterlife cannot be proved by reason alone, a belief in them still is a necessary condition of tranquil social life. And such a belief is, in fact, taught in most human religions. From the Bible we know, however, that God's punishments cannot be avoided by the mere external observation of natural law. One must also be aware of one's sinfulness and have faith in Christ. It follows, therefore, that in practice the effect of every religious doctrine except the Christian one is "confined to the sphere of this life".

134 *OHC* Prefatio: "Quanquam enim animus hominis non solum ardenti cum affectu immortalitati velut immineat, sui que destructionem vehementer aversetur, atque inde apud plerosque gentilium involverit perusasio de animae a corpore separatae duratione, et quod tunc bonis bene, malismale sit futurum."

Conclusion

172

The aim of this study has been to explicate the conception of morality which guided Pufendorf's theory of natural law. I have maintained that while Pufendorf departed radically from seventeenth century Lutheran orthodoxy, many aspects of his theory are best understood against the background of a Lutheran world-view. Pufendorf saw natural law as a rule which God has imposed on the irreparably corrupt humankind in order to maintain social order and in this way to ensure that the human species is able to survive and to maintain a distinctively human way of living. This fundamental assumption makes understandable both his low opinion of Aristotelian moral philosophy and the esteem he showed towards Grotius and Hobbes as his main predecessors in the field of natural law. It also makes the argument by which he deduced the fundamental principle of natural law compatible with the critique he directed against Hobbes' idea of identifying natural law with the requirements of individual self-preservation. Furthermore, Pufendorf's Lutheran idea of the human being as inherently evil and corrupt can be seen as a partial motive in his conviction that the only possible source of morality are the commands of God, and it certainly was his main reason for holding that the whole social order is dependent on a collectively shared fear of God.

Within this Lutheran framework Pufendorf formulated a theory of morality with some unmistakably modern features. In Pufendorf's theory human beings seek predominantly their personal well-being and have different ideas of what this consists of, depending on their individual inclinations, education, and cultural background. Morality consists of obligating norms which regulate interpersonal relations, enabling the diversely inclined individuals to maintain peaceful co-existence and to increase their prosperity by the mutual exchange of goods and services. Another "modern" aspect in Pufendorf's theory was his strictly non-purposeful conception of nature, which made him hold that the human faculty of reason is unable to make moral judgements simply by reflecting on the natural characteristics and inclinations of the human species. This position was shared later by thinkers such as Hume and Kant, although they rejected Pufendorf's conclusion that the only possible source of morality is the will of God.

What distinguishes Pufendorf's moral theory from subsequent moral philosophy is, above all, the idea that morality is something external to human beings. Pufendorf not only thought that the whole phenomenon of morality is dependent on the idea that there is a God who wants human beings to behave in a certain manner. He also held that the moral consciousness of average human individuals is usually almost totally a product of external forces. Only well-educated experts are able to have truly reflected views on moral issues, whereas the vast majority of human beings adopt their moral convictions almost blindly from prevailing custom and from religious and civil authorities. Moreover, in Pufendorf's theory the mere knowledge of what is right and what is wrong is not sufficient to motivate people to act morally, if they happen to believe - as they often do - that their personal interests in worldly life would be better served by immoral behaviour. In such cases the incentive to obey moral law can only come from external sources such as the disapproval of other people, civil penalties, and God's punishments.

This idea of morality as something external to the human being was rejected by the main moral and political thinkers of the eighteenth century. A clear example of this change in attitudes can be found in the critique Rousseau directed against the modern school of natural law in the preface to his *Second Discourse*. Here Rousseau complained that the "moderns" - by which he meant writers such as Grotius, Hobbes, and Pufendorf, - had established natural law "upon such metaphysical principles that ... there are very few people capable of comprehending these principles, far from being able to find them by themselves." And what is more, when they had simultaneously claimed that natural law is necessary for that social life without which human intellectual abilities cannot develop, they had made "man a philosopher before making him a man," an error Rousseau himself was determined to avoid.¹

As an interpretation of Pufendorf, Rousseau's critique was, of course, misplaced, as it was perfectly clear to Pufendorf that his theoretical presentation of natural law was not comprehensible to the uneducated common folk and had very little to do with the manner in which people in reality adopt their moral convictions. What lies behind Rousseau's remarks is, in fact, a new understanding of the character of the moral agent and the task of moral philosophy. Together with thinkers such as Hume and Kant, Rousseau held that the roots of moral consciousness must not be sought outside human

1
The First and Second Discourses, ed. and tr. Roger D. and Judith R. Masters. New York 1964, p.96.

beings but in the mental abilities possessed by every normal individual. Irrespective of their different theories concerning the origin of moral judgements, these writers held that all human beings (or at least all males) should be seen as capable of becoming autonomous moral agents who do not need authoritarian supervision by religious or civil authorities in order to recognize correct moral principles. Accordingly, the central task of moral philosophy is not to prove with demonstrative certainty the validity of individual moral precepts, but to explicate the mental procedures which give arise to moral estimations and which give them the force to affect human behaviour.² It was the triumph of this idea of the moral agent and ethical theory which lead to the estimation that Pufendorf had been a mere jurist and no moral philosopher at all.

.....
2 On this shift, see *Schneewind 1993b*.

PRIMARY SOURCES

- Aristotle *The Complete works of Aristotle*, ed. Jonathan Barnes. Princeton 1984.
- Bacon, Francis *The Essays*, ed. Pitcher. 1985.
- Barbeyrack, Jean "Preface de traducteur" in *Le droit de la nature et des gens*, tr. Barbeyrack. Caen 1987. A facsimile of the 1732 edition.
- "Le judgement d'un anonyme sur l'original det cet abrégé" in Samuel Pufendorf, *Les Devoirs del'homme et du citoyen tel qu'ils sont prescripts par loi naturelle*, tr. Barbeyrack. Amsterdam 1718.
- Descartes, René *The Passions of the Soul*. In *The Philosophical Writings of Descartes* vol.1. Cambridge 1985.
- Grotius, Hugo *De iure pradae commentarius*. Oxford 1950. A facsimile of the original manuscript with a translation by G.L.Williams.
- *De iure belli ac pacis*. Washington 1913. A facsimile of the 1646 edition with a translation by Francis W. Kesley.
- *Mare Liberum*. New York 1916. A revision of the 1663 edition with a translation by R.D.Magofin.
- Hobbes, Thomas *The Elements of Law Natural and Politic* ed. Ferdinand Tönnies. London 1889.
- *De Cive*. Opera philosophica quae Latine scripsit omnia, vol. II, ed. William Molesworth. London 1839.
- *De Cive*. *The English Version*. ed. H.Warrender. Oxford 1983.
- *Leviathan*. Opera philosophica quae Latine scripsit omina, vol. III, ed. William Molesworth London 1841.
- *Leviathan* ed. Richard Tuck. Cambridge 1991.
- Lactantius *Divinarum institutionum*. Bibliotheca patrum ecclesiasticorum Latinorum selecta, vol.10, pars 1. Leipzig 1842.
- Leibniz, Gottfried "Opinion on the Principles of Pufendorf," in *Leibniz Political Writings*, ed. and tr. Patrick Riley. Cambridge 1972.
- Locke, John *An Essay concerning Human Understanding* ed. Peter H. Nidditch. Oxford 1975.
- Melanchthon, Philip *Opera quae supersunt omnia*, vol.16. (Corpus reformatorum) Halle 1850.
- Pufendorf, Samuel *Elementorum iuresprudentiae universalis*. A facsimile of the 1672 edition with a translation by W.A.Oldfather.
- "Le due lettere di Pufendorf al barone Boineburg: Quella nota e quella perduta." Ed. Fiammetta Palladini in *Nouvelles de la Republique des lettres*, 1984, 1, pp.119-144.
- *De iure naturae et gentium*. Lund 1672.
- *De iure naturae et gentium*. Washington 1934. A facsimile of the 1688 edition with a translation by C.H.Oldfather and W.A.Oldfather.
- *De officio homines et civis*. Washington 1927. A facsimile of the 1682 edition with a translation by F.G.Moore.
- *On the Duty of Man and Citizen* ed. James Tully, tr. Michael Silverthorne. Cambridge 1991.
- *Dissertationes academicae selectiores*, Uppsala 1677.
- *De statu hominum naturali*, ed. and tr. Michael Seidler in *Samuel Pufendorf's "On the natural state"*. Lewiston, Queenston, Lampeter. 1990.
- *Eris scandica qua adversus libros de Jure naturali et gentium objecta diluuntur*. Included in *De iure naturae et gentium*. Frankfurt am Main 1744.
- Rousseau, Jean-Jacques *The First and Second Discourses*, ed. and tr. Roger D. and Judith R. Masters. St Martin Press. New York 1964.

LITERATURE

176

- Buckle, Stephen, 1991 *Natural Law and the Theory of Property. Grotius to Hume*. Oxford.
- Cargill Thompson, W.D.J. 1969 "The 'Two Kingdoms' and the 'Two Regiments': some Problems of Luther's *Zwei-Reiche-Lehre*". *The Journal of Theological Studies* 20, pp.164-185.
- Colman, John, 1983 *John Locke's Moral Philosophy*. Edinburgh.
- Copleston, Frederick 1962 *A History of Philosophy*, vol. II, *Augustine to Scotus*. New York.
- Crowe, Michael Bertram, 1977 *The Changing Profile of the Natural Law*. Martinus Nijhoff. Hage.
- Denzer, Horst, 1972 *Moralphilosophie und Naturrecht bei Samuel Pufendorf. Ein geistes- und wissenschaftsgeschichtliche Untersuchung zur Geburt des Naturrechts aus der Praktischen Philosophie*. München.
- Derathé, Robert, 1950 *Jean-Jacques Rousseau et la science politique de son temps*. Paris.
- Dufour, Alfred, 1980 "La notion de loi dans l'Ecole du Droit nature moderne. Etude sur le sens du mot loi chez Grotius, Hobbes et Pufendorf." *Archives de Philosophie du Droit*, 25, pp.211-224.
- 1986 "Pufendorfs Ausstrahlung im französischen und anglo-amerikanischen Kulturraum," in *Samuel Pufendorf 1632-1983: Et rätthistorisk symposium*. Lund.
- 1991 "Pufendorf," in *Cambridge History of Political Thought 1450-1700* ed. J.H.Burns and Markie Goldie. Cambridge.
- Forbes, Duncan, 1982 "Natural law and the Scottish Enlightenment," in *The Origins and Nature of the Scottish Enlightenment* ed. Campbell and Skinner. Edinburgh.
- Edwards, Charles, 1981 *Hugo Grotius, The Miracle of Holland. A Study in Political and Legal Thought*. Chicago.
- Goldschmidt, Victor, 1983 *Anthropologie et politique. Les principes du système de Rousseau*. Paris.
- Goyard-Fabre, Simone, 1989 "Pufendorf, adversair de Hobbes", *Hobbes Studies* 2, pp.65-86.
- Haakonsen, Knud, 1981 *The Science of a Legislator: the natural jurisprudence of Adam Smith*. Cambridge.
- "Natural law and moral realism: The Scottish synthesis", in *Studies in the Philosophy of the Scottish Enlightenment* (ed. Stewart, M.A.). Oxford.
- Holopainen, Taina, 1991 *William Ockham's Theory of the Foundations of Ethics*. Publications of Luther-Agricolan society B 20. Helsinki.
- Hont, Istvan, 1987 "The language of sociability and commerce: Samuel Pufendorf and the theoretical foundations of the "Four-Stages Theory" in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden, Cambridge.
- Hont, Istvan and Ignatief, Michael, 1983 "Needs and justice in the *Wealth of Nations*" in *Wealth and Virtue. The Shaping of Political Economy in the Scottish Enlightenment* ed. Istvan Hont and Michael Ignatief. Cambridge.
- Johnston, David, 1986 *The Rhetoric of Leviathan. Thomas Hobbes and the Politics of Cultural Transformation*. Princeton.
- 1989 "Hobbes's Mortalism", *History of Political Thought*, 10, pp.647-663.
- Josefson, R., 1950 *Gud och Sveriges lag. Studier i den lutherska societetikens historia*. Uppsala.
- Kaye, Jill, 1988 "Moral philosophy" in *The Cambridge History of Renaissance Philosophy*. Cambridge.
- Kirk, Linda 1987 *Richard Cumberland and Natural Law. Secularisation of*

- Thought in Seventeenth-Century England*. James Clarke & Co. Cambridge.
- Krieger, Leonard, 1965 *The Politics of Discretion. Pufendorf and the Acceptance of Natural law*. Chicago.
- Laslett, Peter, 1965 Introduction in *Locke: Two Treatises of Government*. Cambridge.
- Laurent, Pierre, 1982 *Pufendorf et la loi naturel*. Paris.
- Lindberg, Bo, 1976 *Naturrätten i Uppsala 1655-1720*. Acta universitatis Upsaliensis. Organisationa och historia 33. Uppsala.
- 1986 "The Doctrine of Natural law in 17th Century Sweden," in *Samuel Pufendorf 1632-1983; Et rätthistorisk symposium*. Lund.
- Luscombe, D.E. 1982 "Natural morality and natural law", in *The Cambridge History of Later Medieval Philosophy*. Cambridge.
- MacIntyre, Alasdair, 1967 *A Short History of Ethics*. London.
- Mautner, Thomas 1986 "Pufendorf and the 18th-century Scottish Philosophy" in *Samuel Pufendorf 1632-1983; Et rätthistorisk symposium*. Lund.
- Medick, Hans, 1981 *Naturzustand und Naturgesichte der bürgerlichen Gesellschaft. Die Ursprünge der bürgerliche Sozialtheorie als Geschichtsphilosophie und Sozialwissenschaft bei Samuel Pufendorf, John Locke und Adam Smith*. Göttingen.
- Mikkeli, Heikki, 1992 *An Aristotelian Response to Renaissance Humanism. Jacopo Zabarella on the Nature of Arts and Sciences*. Societas Historica Finlandiae. Studia Historica 41. Helsinki.
- Minz, Samuel, 1962 *The Hunting of Leviathan. Seventeenth century reactions to the materialism and moral philosophy of Thomas Hobbes*. Cambridge.
- More, James, 1990 "The two systems of Francis Hutcheson: On the origins of the Scottish enlightenment" in *Studies in the Philosophy of the Scottish Enlightenment* ed. Stewart. Oxford.
- More, James and Silverthorne, Michael, 1983a "Natural Sociability and Natural Rights in the Moral Philosophy of Gershom Carmichael," in *Philosophers of the Scottish Enlightenment*. Edinburgh.
- 1983b "Gershom Carmichael and the natural jurisprudence tradition in eighteenth-century Scotland," in *The Languages of Political Theory in Early-Modern Europe* ed. Anthony Pagden. Cambridge.
- Nutkiewicz, Michael, 1983 "Samuel Pufendorf: Obligation as the Basis of the State", *Journal of the History of Ideas* 21, pp.15-30.
- Olsson, Herbert, 1971 *Schöpfung, Vernunft und Gesetz in Luthers Theologie*. Uppsala.
- Pagden, Anthony, 1982 *The Fall of the Natural Man. The American Indian and the origins of comparative ethnology*. Cambridge.
- Palladini, Fiametta, 1978 *Discussioni seicentesche su Samuel Pufendorf scritti latini: 1663-1700*. Bologna.
- 1990 *Samuel Pufendorf, discepolo di Hobbes. Per una reinterpretazione del giusnaturalismo moderno*. Bologna.
- Pateman, Carole, 1988 *The Sexual Contract*. Cambridge.
- Petersen, Peter, 1921 *Geschichte der Aristotelischen Philosophie im Protestantischen Deutschland*, Leipzig.
- Othmer, Sieglinde, 1970 *Berlin und dies Verbreitung des Naturechts in Europa. Kultur und sozialgeschichtliche Studien zu Jean Barbeyracs Pufendorf-Übersetzungen und eine analyse seiner Leserschaft*. Veröffentlichungen der Historischen Kommission zu Berlin beim Friedrich-Meinecke-Institut der Freien Universität Berlin, Band 30. Berlin.
- Rabe, Horst, 1958 *Naturrecht und Kirche bei Samuel von Pufendorf. Eine Untersuchung der Naturrechtlichen Einflüsse auf den Kirchenbegriff Pufendorfs als Studie zur Entstehung des Modernes Denkens*. Tübingen.
- René, Sève, 1989 *Leibniz: et l'école moderne du droit naturel*. Paris.
- Sabine, George H. 1973 *A History of*

- Political Theory* (revised by T.L.Thorson). Hinsdale.
- Seidler, Michael, 1991 Introduction in *Samuel Pufendorf's "On the natural state"*. Lewiston, Queenston, Lamparter.
- Stein, Peter, 1980 *Legal evolution: The Story of an Idea*. Cambridge.
- Schneewind, J.B., 1987 "Pufendorf's place in the history of ethics", *Synthese*, 72, pp.123-155.
- 1990 "The misfortunes of Virtue", *Ethics*, 101, pp.42-63.
- 1991 "Natural Law, Skepticism and Method", *Journal of the History of Ideas*, 52, pp.289-308.
- 1992 "Autonomy, obligation, and virtue: An overview of Kant's moral philosophy", in *The Cambridge Companion to Kant*. Cambridge.
- 1993a "The Modern Moral Philosophy: From beginning to End?" in *Philosophical Imagination and Cultural Memory: Approaching Historical Traditions*. (ed. Crooke). Durham and London.
- 1993b "Kant and Natural law Ethics," *Ethics*, 104, pp.53-74.
- Sorell, Tom, 1988 "Descartes, Hobbes and the Body of Natural Science", *The Monist* 71, no.4, pp.515-525.
- Trentman, John A. 1982 "Scholasticism in the seventeenth century" in *The Cambridge History of Later Medieval Philosophy*. Cambridge.
- Tuck, Richard, 1979 *Natural Rights Theories: Their Origin and Development*. Cambridge.
- 1983 "Grotius, Carneades and Hobbes", *Grotiana*, n.s. 4.
- 1987 "The 'Modern' School of Natural Law", in *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden. Cambridge.
- *Hobbes*. Oxford.
- 1989 *Hobbes*. Oxford, New York.
- 1991 "Grotius and Selden", in *Cambridge History of Political Thought 1450-1700* ed. J.H.Burns and Markie Goldie. Cambridge.
- 1993a *Philosophy and Government 1572-1651*. Cambridge.
- 1993b "Civic religion of Thomas Hobbes", in *Political Discourse in Early modern Britain* ed. Nicholas Phillipson and Quintin Skinner. Cambridge.
- Tully, James, 1980 *Discourse on Property*. John Locke and his Adversaries. Cambridge.
- 1988 "Governing conduct", in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites. Cambridge. Also in Tully 1993.
- 1991 Introduction in *Pufendorf: On the Duty of Man and Citizen*. Cambridge.
- 1993 *An Approach to Political Philosophy: Locke in Context*. Cambridge.
- Walker, D.P., 1964 *The Decline of Hell. Seventeenth-Century Discussions of Eternal Torment*. London.
- Welzel, Hans, 1958 *Der Naturrechtslehre Samuel Pufendorfs. Ein Beitragezur Ideengesichte des 17. und 18. Jahrhunderts*. Berlin.
- Wieland, Georg 1982a "The reception and interpretation of Aristotle's Ethics" in *The Cambridge History of Later Medieval Philosophy*. Cambridge.
- 1982b "Happiness: the perfection of man" in *The Cambridge History of Later Medieval Philosophy*. Cambridge.
- Wootton, David, 1983 *Paulo Sarpi. Between Renaissance and Enlightenment*. Cambridge.
- Zagorin, Peter, 1993 "Hobbes' Early Philosophical Development", *Journal of the History of Ideas* 54, no.3, pp.505-518.

INDEX OF NAMES

- Aristotle 26, 50, 55-56, 111
Aquinas 39, 50
Aurelius 26
Bacon, Francis 160
Barbeyrac, Jean 18, 23, 101-103,
106-107
Buckle, Stephen 102-103
Calvin, Jean 38
Carneades 31-32, 35, 37-38, 115-116
Charron, Pierre 30-31, 54
Cicero 33, 115
Cumberland, Richard 28n, 71
Denzer, Horst 64n, 112n
Descartes, René 21, 150-151
Diodorus 137
Epictetus 26
Galileo 21
Grotius, Hugo 12-14, 17-19, 21, 27,
29-35, 37, 50-52, 56, 58-59, 77, 79,
91-93, 110-118, 130, 159
Hobbes, Thomas 12-14, 17-18, 21,
28-32, 35-37, 50-52, 60, 66-67, 77,
79-81, 88-89, 91-92, 130, 142-145,
152-155, 158, 160-164, 166
Hont, Istvan 37n
Horace 34, 117
Hume, David 15, 173
Kant, Immanuel 13, 15, 172
Lactantius 30
Leibniz, 18, 95-98, 102, 105
Lipsius, Justus 30
Locke, John 12, 130, 149-150
Lucretius 137
Luther, Martin 16, 38-43
Melancthon, Phillip 41-43, 46
Montaigne, Michel 30-31, 54
Palladini, Fiammetta 66, 71, 105-107,
112n
Ockham 112
Olsson, Herbert 39-41
Rousseau, Jean-Jacques 173
Sarpi, Paulo 160
Schneewind, J.B. 71-73, 101, 112
Seidler, Michael 37n
Selden John 28
Seneca 26, 73n
Spinoza, B. 21
Tuck, Richard 15-16, 30-38, 65
Tully, James 44, 66
Velthuysen, Lambert 157
Weigel, Erhard 21
Welzel, Hans 70
Zabarella, Jacopo 55

