

NATURAL LAW AND
ENLIGHTENMENT CLASSICS

*Two Books of the
Elements of Universal
Jurisprudence*

Samuel Pufendorf

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The Works of Samuel Pufendorf



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though they were unable to abrogate those constitutions again; but the princes signify rather thereby that their later rescripts are not serious, or have escaped from them imprudently; and by this shrewd device they rid themselves of the impudence of forward petitioners, whom they could not bring themselves to deny openly.⁶ Nevertheless, it should be well observed that the decree of one's own will can then, and only then, be revoked, when thereby some right has not been conferred upon some second person, of which he ought not to be robbed against his will. And from this it is apparent why, for example, in renunciations, when a man has yielded up his right in a second person's favour,⁷ the following words are customarily employed: "Contrary to this instrument no attempt ought to be made by me or my heirs, and if, perchance, one should be made, it is to be held invalid and null." For by this act I abdicate my right and confer it upon another. Hence, indeed, if anything contrary to that renunciation be decided upon in time to come, it will be null; because, of course, I have no further right to that thing, and it is without effect that I attempt to dispose of another's property. <233>

6. See bk. II, Observ. 5, §19.

7. See, for example, *Dig.*, XLI.ii.12, §1.

*A man is destined by nature to
lead a social life with men.*

n. b.

1. Every man whatsoever loves himself most.
2. Nature has implanted in the same the necessity and desire of cultivating society.

- 3, 4, 5. Answer is made to the arguments of those who deny that by nature man is a social animal.
6. The non-social life is the life of beasts.

1. Man has this in common with all living things to whom it has been given to realize their own existence, that he loves himself most, is zealous to protect himself in every way, and strives to acquire the things which seem good to him, and to repel the evil. And commonly, indeed, this love of each man whatsoever towards himself is so great that any and every inclination towards any and every other man yields to it. At times some seem, indeed, to embrace others with a more tender affection than themselves, and to rejoice more in the blessings of others than in those which are especially theirs, and to grieve more over the ills of others than over their own. Thus frequently parents would prefer to have transferred to themselves the pain which they see their children suffering. Thus it is well established that many have met death with equanimity, in order to save others united to them by a special bond. But, in truth, this was done either because, as the result of an intimate relationship, they regarded the good or evil of others as their own, or else because, by that display of affection or fidelity, they were on the way to acquire some special good for themselves. Thus some parents rejoice more effusively in the blessings of their children than in their own blessings, because the blessing which affects equally both themselves and their offspring is in their judgement doubled. Thus we would often be will-

ing to redeem the suffering of one of our loved ones by our own suffering, because the weapon, as it were, which seeks us would be inflicting a more severe wound by passing through so dear a body. And he who does not refuse to die for another, either hopes for so much glory from that act that he judges he can well afford to pay for it with his life, or else he fears that on the other's death such evil would come upon himself that life would no longer be worth living for him.

2. Now, in truth, man would have been very little different from beasts, nor would he be living a life much more civilized or comfortable than they, were it not that he had some other inclination also implanted in him by nature, namely, that he enjoys living in the society of his <234> kind. This is so clear that it does not need to be set forth at length. Nothing is more gloomy for a man than perpetual solitude. To him alone among animate beings has it been given to set forth to others in articulate sound the feelings of his mind, than which there is no instrument better adapted to form or to preserve society. In no genus of living beings can the advantages of one be so much promoted by others, as in that of men among one another. Such is the state of need of human life, that, were not a number to unite upon a mutual task, life could be preserved only with the utmost difficulty. The weakness of human beings just born is greater than that of any other animal, and while in the case of others but a few days or months are sufficient to enable them to look out for their own food, in the case of men a number of years is hardly sufficient. Add, also, that the earth has everywhere placed their food before beasts, but what suits man requires generally industry and cultivation. And yet the ability to gather food for the stomach is but a very small part in one's deserving the dignity of the name man. Nay, we should not simply be the prey of beasts, but should also rage against one another mutually, in the manner of wild monsters, were it not that nature had altogether bidden us to unite to form a peaceful society.¹

3. However, so that the reasons of those who undertake to deny matters as clear as the foregoing, may not, perchance, move one, it should be known: (1) These two inclinations, by which man loves himself and seeks

¹ On the Stoic origin of the double foundation of natural sociability in the natural weakness [*imbecillitas*] of man and the *telos* of his reasonable nature, see *JNG*, 2, 3, §§14–15, with numerous references to Cicero, Seneca, and Marcus Aurelius.

after society, ought, by the intention of nature, so to be tempered that nothing be lost to the latter through the instrumentality of the former. That is to say, nature commended to man self-love, in such a way that he should, nevertheless, commit nothing because of it, which would conflict with his inclination to society, or injure the very nature of society. And when, through the exorbitance of his emotions, he neglects that, and seeks his own advantage together with some hurt to others, there arises whatever disturbance there be in which men conflict with one another. (2) That definite individuals unite to form a definite kind of society comes about either in consequence of a special congruence of dispositions or of other qualities, or else because they imagine that they can obtain some special end better with these persons than with those. Now it is by no means necessary for all men to coalesce into one society in which all are equal to one another; but it is sufficient if the same persons get together in several and distinct groups, which are, nevertheless, by no means altogether mutually unsociable, but refrain from unjust injuries towards one another, and, as far as they are permitted by closer obligations, share with one another their advantages and blessings.

4. All this being posited, answer can be made without difficulty to the following position which some maintain: "It is, indeed, true that <235> for man in the course of nature, or as far as he is man, that is, immediately after birth, to have a state of perpetual solitude fall upon him, is irksome; infants need the help of others in order to live, adults their help in order to live well; and by the compulsion of nature men seek to gather together. And yet, in truth, civil societies are not mere gatherings, but they are treaties, for entering into which good faith and pacts are necessary. The force of these is unknown to infants and the uninstructed, their usefulness is unknown to those who are without experience of the losses which come from the absence of society. And so it comes about that the former, because they do not understand what society is, cannot enter into it, and the latter, because they do not know what it is good for, show no interest in it. Therefore, all men, since they are born as infants, are born unfit for society, and a very great many remain so all their life long; but, by discipline, and not by nature, man becomes fit for society."² But it is readily apparent that the

² See Hobbes, *De cive*, chap. 1, §2, no. 1.

colour of objection rises pretty much from a quibble about the Greek word *πέφυκε*, which Latin translators commonly turn ^{having been born apt} *aptus natus est* [has been born fit for], and by this is properly signified a natural inclination towards something, together with a natural potency of receiving an actual fitness for exercising that thing; even if that actual fitness should not be in him immediately by birth, but have to be introduced by industry, and it alone.

And so the sense of that trite 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; and man has been endowed with such a disposition that, by cultivation, he can receive a fitness for acting well 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 those things has been implanted by nature, may, within societies, be fashioned into suitable members of the same. Nor does this fitness exist merely within the limits of marriages or families, but it extends also to the establishment of states, where several families come together for the sake of security and a richer life, and manage their affairs by the common counsel of the society under definite laws about commanding and obeying. Such societies nature has altogether wished to have among men, although it has been left within the free choice of men, and so is to be determined by pacts, just what individuals are to be united to what society, or who is to be set at their head for governing them. Nor does the state cease to be in itself congruent with nature, because many struggle to its helm by unjust force and crimes. But, as there are a number of special forms of states, so the diverse dispositions of men better agree with diverse forms. But if, in truth, some one's disposition out of pride disdains to accept the equality of conditions, without which society cannot coalesce or stand, this is by no means an <236> indication that man is not a social animal; but that the individual in question is either less fit to live in some special kind of society, suppose, for example, one in which all enjoy an equal right; or else in a faulty way indulges more than is right in self-love, which, however, nature bade agree peacefully with the inclination towards society. But the objection which is advanced, namely, that the advantages of life can be furthered better by mastery than by mutual effort, is of no moment. For there is no stable mastery at all without society, and it is altogether impossible for all men to have dominion over other men.

5. Now as for the further objection: "If man loved man in the course of nature, that is, as man, no reason could be given why each single individual should not love each other single individual, as being equally a man, or why he should the rather frequent those in whose society honour and advantage are accorded him beyond others."³ To meet this it should be known that all men, indeed, have been brought together by the similarity of their nature towards one another, so that in actual fact that general friendship resulting from a common nature ought also to be common to all, unless some one, perchance, has by his crimes made himself unworthy of it. Now, in truth, a number of circumstances are added to that common nature which are responsible for one loving this one more than that one; suppose, for example, that there was between them a greater congruence of dispositions in regard to special inclinations, or else that their birthplaces were not far apart. But then and only then could no reason be given, if all men had grown up out of the earth together like fungi, without any relationship to one another,⁴ or if they had among one another a similarity of dispositions at every point. But as such a state of men has never existed, so no conclusion can be drawn from supposing it, contrary to what the actual facts show.

As for the rest, a man more gladly frequents those in whose society honour and advantage are accorded him, rather than to a second person, because each man loves his own advantages. And this is by no means repugnant to nature, provided only the harmony of society be not disturbed by that love. For nature has not bidden us to cultivate societies with the purpose of neglecting the care of ourselves; since, forsooth, societies bring about in the very highest degree the condition that, through the mutual sharing of aid and of blessings with a number, we can the more conveniently look out for our own blessings. And even though a man, in uniting himself to some society, should be accustomed to regard primarily his own advantage, and secondarily that of his associates, nevertheless, nothing prevents him from owing so to foster his own private advantage that the advantage of the society be not hurt, or injury brought upon individual members; or from sometimes neglecting his own advantage to care for the advantage of the <237> society. And the argument which is advanced,

3. Ibid.; cf. *JNG*, 7, 1, §2.

4. Allusion to *De civi*, chap. 8, §1; cf. *JNG*, 2, 2, §7.

namely, that the origin of great and long-enduring societies, that is, of states, did not come from the mutual benevolence of men, but from their mutual fear (using this word for any prevision and precaution whatsoever taken against a future evil),⁵ has nothing to do with the case. For it was in the highest degree congruent with human nature that, since one by one, or a few at a time, they had been exposed to injuries, a number united with one another should fortify themselves against ills; nor is the sole end and use of states the avoidance of evil. Nor is it required, in order for some society to be called congruent with nature, that it have arisen out of mutual benevolence alone, although neither is that entirely absent in establishing states; since, forsooth, at least those who lay the first foundations, as it were, of states, are most of them united to one another in mutual benevolence, although, perchance, others afterwards may be induced to join them out of fear.

6. Now it is worth while to have considered in just what condition men would be living if they should be deprived by nature of every obligation to cultivate society among themselves, or if they were not social animals. Here it is assuredly apparent that, since no right had obtained mutually among them, the result would have been that each individual whatsoever would have had equal rights with others to any thing whatsoever; and, without any injury, any one whatsoever, as far as each one's strength had admitted of so doing, could have inflicted upon any one whatsoever what he thought would make for his own preservation; and from that would have resulted the war of all against all, which is the very life of beasts.⁶ For, just as, because of the fact that man has no community of right with the brutes, any man whatsoever (when you remove the respect in which particular men have already acquired for themselves above others rights over brutes) may properly, as far as his strength allows him, whenever he so pleases, either kill any animal whatsoever, or compel it to perform a service, without thereby doing an injury to the brute; thus, if I had no obligation towards any man, assuming that I had the natural faculty to hurt or even to kill a second person, I might properly defend my life and limbs as far as I could,

5. *De cive*, chap. 1, §2 (at the end).

6. *De cive*, chap. 1, §§3ff; *Leviathan*, chap. 13.

and employ all the means serving thereto, and it would rest with me alone to judge of their aptness to that end; and so I might not merely appropriate to myself all those things which I judged to be conducive to my interest, but I might even kill any man whatsoever, or weaken or constrain him in some fashion, if, indeed, that should seem to be expedient for my security, especially since, in such a state, I could take no precautions for my security except by violence, as no mutual obligation existed. And, since any one whatsoever would have had the same licence regarding any one else whatsoever, what else would men have been but wild beasts, rapacious against their own <238> kind? But, in truth, since men have never existed in such a state, and by the intention of the Creator ought never to exist in it, it is utterly incongruous and almost self-contradictory to call this the state of nature. And so the inconveniences also directly resulting from such a state ought not to be substituted as the foundations of the law of nature (although, in actual fact, that no such state exists among men is due to the law of nature); but rather this, namely, that God has directly destined man to cultivate a social life.⁷ For had this not been the direct intention of God, it would not have been more necessary for men to enter into pacts with one

7. Pufendorf does not yet see the methodological function of Hobbes's natural state of war of everyone against everyone and its right to everything. It serves as a counterfactual supposition in contrast to the civil state, showing the necessity of the latter by a deduction ad absurdum of the former. See Thomas Hobbes, *The Elements of Law Natural and Politic*, ed. Ferdinand Tönnies, intro. M. M. Goldsmith (London: Cass, 1969), chap. 14, §10ff: "But that right of all men to all things, is in effect no better than if no man had right to any thing. For there is little use and benefit of the right a man hath, when another as strong, or stronger than himself, hath right to the same. . . . The estate of hostility and war being such, as thereby nature itself is destroyed. . . he therefore that desireth to live in such an estate, as is the estate of liberty and right of all to all, contradicteth himself. For every man by natural necessity desireth his own good, to which this estate is contrary." That methodological procedure is later adopted by Pufendorf himself in his mature work, the *JNG*, *Eris*, and the *Dissertatio de statu hominum naturali*, when he contrasts the fictitious "state of single individuals left alone by themselves" (*in se*) with the "state of culture," and the (pure) "natural state of individuals in relation to one another" (*ad alios*) with the "civil state" in order to prove the necessity of the latter states for the survival and appropriate development of mankind. See *JNG*, 2, 2, §2 and 3, §15; *Dissertatio de statu hominum naturali*, in *Dissertationes academicae selectiores* (Uppsala, 1677), §§4 and 7; *Eris*, "Specimen controversiarum," chap. iii "De statu hominum naturali," §3 (pp. 134–35).

another because of the disadvantages resulting from a non-social life, than for other animals to enter into a pact with bears, wolves, or lions to avoid the disadvantages of the non-social life which they lead. Nor is there ground for retorting that they do not have reason by which they may understand the force of pacts. For neither would God have given men reason, had He not wished to destine them to cultivate society. < 239 >

☞ OBSERVATION IV ☞

Right reason dictates that a man should care for himself in such a way that human society be not thrown into disorder.

1. The law of nature comes to be known through the dictate of reason.
2. How that dictate is to be limited; do not do to a second person what you do not want done to yourself.
3. Whence the obligation of the law of nature arises.
4. The fundamental laws of nature.
5. Whether the laws of nature are to be derived from self-love alone.
6. What may one lawfully do to the life of a second person in one's own necessity?
7. Or to his property?
8. The laws of nature regarding one's own preservation.
9. Whether a law of nature and an instinct can have to do with the same object.
10. What may a man lawfully do to his own life?
11. War becomes licit on the score of care for one's own safety.
12. When is one's own defence in place?
13. How far is it possible to proceed?
14. The force of war is an extraordinary means for men to deal with one another.
15. War is not properly undertaken on merely any grounds whatsoever.
16. What may be permissible towards an enemy?
17. Whether it be permissible to corrupt enemy subjects.
18. Restrictions of the licence of war.
19. War is to be ended as soon as possible.
20. What kind of guarantee is to be demanded about giving no offence for the future?
21. The law of nature regarding the cultivation of peace and the exercise of humanity.
22. On what score are men equal to one another?
23. The general law of nature about not doing hurt to the right of the other person.
24. Laws about not violating the body of the other person.
25. About not violating chastity.
26. About not defaming.
27. About not committing adultery.
28. About not hurting the goods of the other person.

SAMUEL PUFENDORF

*On the Duty of Man
and Citizen According
to Natural Law*

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The political order established by the Peace of Westphalia subordinated war to politics and brought a general peace and stability that Grotius and Hobbes had only imagined. Pufendorf's generation was the first to experience and reflect on this modern political arrangement, the Westphalian system of sovereign states, that has literally constituted the enduring political foundation of the modern world through over 300 years of momentous economic, scientific and social change on the surface.

In the specific sense, therefore, of being the first to present a comprehensive theory of the existing European state system, Pufendorf is the first philosopher of modern politics. This reflective stance first appears in *DSI* (Denzer 1976). He categorically divides the Westphalian era from the world of war and devastation that preceded it, and he judges the extant organization of the German Empire and the Roman law terminology used to identify it to be monstrous and anachronistic relative to the standards and concepts appropriate to the new political order of independent states. His natural law theory, which imposes these standards and concepts on to the new order, throws a unique and fascinating light on the foundation of modern politics for two main reasons.

First, Pufendorf could view the modern political configuration from within its recently established boundaries and from the other world outside its boundaries – the preceding state of war and insecurity which he had experienced as a youth. He was able to draw on this dual experience to construct the two concepts which are used in a natural law philosophy to define each other by a series of contrasts: the state of nature as a world of war and insecurity and the state of political society as a world of general peace and security. The most compelling contrast is at *DOH*, II.1.9. For later theorists, on the other hand, the state of nature is the distant and imaginary horizon of their political thought and experience, available only through theoretical abstraction or conjectural history.

Second, the change in circumstances from the age of Grotius and Hobbes to the age of Pufendorf was accompanied by a change in theoretical perspective. The question underlying and orienting the thought of Grotius and Hobbes is how to establish political society and obedience to it out of the circumstances of devastating war and insecurity. The Westphalian settlement solved this problem in practice. Accordingly, the question which underlies and orients

Pufendorf's theory (and the theories which followed) is very different: how does one conduct oneself so as to become a useful member of such a society and polity (I.3.8 and II.5.5). From this orientation, he could take what he wanted from Grotius and Hobbes and work these elements into a theoretical framework constructed to address the question at hand. As he makes clear in the Preface, his orientation and framework constitute a new *discipline of natural law*.

The demarcation argument

DOH is a compendium of Pufendorf's major work, *DJN*. In it he 'expound[s] to beginners the principal topics of natural law' (p. 6). It does not include his extensive arguments for each conclusion, nor his endlessly fascinating responses to rival views, nor his elaborate quotations from Classical, Christian, Roman law and contemporary sources. For this panorama one must turn to the larger work (*DJN*). Nonetheless, this shorter work is a genuine compendium: a short, complete summary of his whole political and moral philosophy. Furthermore, its clarity and succinctness render it both an independent statement of and a helpful guide to the unabridged version, where the density of elaboration occasionally obscures the central points. The philosophical precision of the text is attested to by the large number of philosophers who used it, rather than *DJN*, as the basis of their lectures, commentaries and polemics (Laurent 1982).

The book is dedicated to Count Gustav Otto Steenbock, Chancellor of the University of Lund, in return for the benefits he bestowed on Pufendorf in granting him tenurial protection from his critics (pp. 3–5). In all humility he cannot hope to match the benefits granted to him by his illustrious patron, but he can offer in reciprocal gratitude what such a noble person esteems – loyalty and devotion. The reciprocal performance of other-regarding social duties turns out on closer inspection to be advantageous to each party, thus illustrating for all to see the Senecan thesis of benevolence and gratitude on which his entire philosophy rests (I.3.7, *DJN*, II.3.15).

Pufendorf states in the Preface that his aim is to expound the elements of natural law in a manner which is easy to learn and so 'to steep their [students'] minds in a moral doctrine whose usefulness in civil life is accepted as obvious' (p. 6). In publishing a practical, politico-moral manual Pufendorf is performing the civic duty he

enjoins on all educators: to expound 'such doctrines as are consistent with the right purpose and usage of states, and [to ensure] that the citizens' minds be steeped in them from childhood' (II.7.8), and to 'avoid [teaching] all dogmas which tend to disturb civil society' (II.18.9).

Although the compendium was eventually adopted by the universities of Protestant Europe in the eighteenth century for this conservative purpose, the initial reception was hostile. The reason for the controversy can be seen in the razor-sharp demarcation of the discipline and practice of natural law which rounds off the Preface. It was presumably written in response to the first criticism of *DJN*: the *Index of certain novelties which Herr Samuel Pufendorf in his book on the law of nature and nations published at Lund against orthodox principles*, published in 1673 three months after *DJN*, by Nikolaus Beckmann, a professor of Roman law, and Josua Schwartz, a professor of theology (and Pufendorf's confessor), both at the University of Lund.

The demarcation argument circumscribes the field of natural law. Pufendorf demarcates the study and practice of natural law from civil jurisprudence and the institution of civil law on one side and from moral theology and divine law on the other. His practical point in doing this is to protect his theory from the criticisms of the lawyers and theologians by showing that their characteristic preoccupations are separate from the distinct realm of knowledge and of human action governed by natural law. The theoretical achievement this in turn brought about is to have constituted a distinctive juridical or law-centred discipline of moral and political philosophy. Unlike earlier and competing natural law theories, the field of study demarcated in the Preface is independent of the disciplines of legal studies and theology and possesses its own specific vocabulary, organized around Pufendorf's original concept of sociality (*socialitas*) and its cognates. This vocabulary brings to reflective awareness and partly constitutes a corresponding realm of human behaviour for study and governance – the social. Neither Grotius nor Hobbes, as Pufendorf, Barbeyrac, Tuck and Pufendorf's later critics all note, set out boundaries so clearly and drew contrasts so decisively.

Pufendorf demarcates the discipline of natural law by stating its six constitutive features and contrasting these with civil law and divine law (or moral theology). First, the subject matter of natural law is the set of universal social duties common to all mankind, 'those which

render him capable of society [*sociabilis*] with other men', whereas civil law treats the legal duties of particular states and moral theology, the duties of particular religions such as Christianity (p. 7). Second, the ground of justification of natural laws is that they are demonstrated by reason 'to be essential to sociality [*socialitas*] among men', whereas civil laws are derived from the will of the sovereign and divine laws from the will of God (p. 7). Here he repeats his novel view: it is 'sociality . . . which we have laid out as the foundation of natural law' (p. 12). Third, the method of discovery of natural law is unaided reason; that of divine law is revelation (p. 7). Fourth, the scope or aim of natural law is to conduct man in the human court 'to become a useful [*commodum*] member of human society' (I.3.8) – natural law 'forms man on the assumption that he is to lead this life in society with others' – whereas divine law in the divine court aims to form man for salvation in the next world (p. 8). Fifth, the ethical material over which natural law has jurisdiction is for the most part 'men's external action' only; divine law governs inner thoughts, intentions and desires as well (p. 9). Sixth, the condition of human nature which natural law takes as given is man as he is after the Fall: corrupt, inclined to self-love and 'seething with evil desires' (p. 10). Moral theology must treat man in both a corrupt and an uncorrupted condition.

It is not difficult to understand why this orientation and framework struck the immediate audience as a prescription for anarchy and impiety (as Beckmann and Schwartz put it) and why it took some time for Europeans to adjust to it as the ground plan for civil peace in modern Europe. Yet it is equally obvious how it aims to solve the problem of finding a morality (or, better, a sociality) capable of uniting a confessionally divided Europe by freeing natural law morality from any attachment to confessional differences. Its failure in Catholic Europe, let alone in non-Christian societies, belies its universality.

In sum, the six steps in the demarcation argument transform natural law morality into a social theory, concerned exclusively with ordering the external actions of self-loving men by social duties which render them useful members of society. As Leibniz typically commented, this eliminates, and cuts natural law philosophy off from, the essential concerns of any known or practicable moral system, either Classical or Christian: namely, other types of duty, cultivation of character and virtues, governance of the inner life of intentions,

desires and motives, and the development of moral and religious aspirations which transcend sociality (Leibniz 1706). Pufendorf's point is that only if these traditional concerns are eliminated from the publicly enforced morality, left to various church and moral authorities, and natural law reoriented to the realm of sociality, will civil peace and social life be secure.

Theorists from Locke to Kant came to accept and to conventionalize Pufendorf's initially heterodox discipline and to build on it social theories of toleration, pluralism, commercial progress and freedom, far removed from Pufendorf's basic concern with peace and order. As a result, later generations have tended to take it for granted and so overlook the decisive role Pufendorf played in establishing the juridical form of modern thought that a contemporary philosopher has called 'morality – the peculiar institution' (Williams 1985).

Sociality and utility

The aim of the compendium is to show how corrupt men can conduct themselves as social beings in their outward actions, and thus be able to live in society with others. The way Pufendorf does this is to expound, in the terms of the six demarcative features of natural law theory and practice, the duties the performance of which constitutes being a good member of human society. In Book I he sets out the duties that apply to all men and, in Book II, those that apply to men as members of basic and universal forms of human societies: the state of nature, the family, the economic unit of masters and slaves, and the state. Two chapters are fundamental. In 1.3 the basis of all social duties is explained and in 11.5 the formation of states, rulers and citizens is set forth and the point of his theory stated: the performance of the duties which sustain this political ensemble is the necessary condition for any but the most rudimentary form of social existence.

In 1.1.1 duty (*officium*) is defined as 'human action in conformity with the commands of law on the ground of obligation'. Pufendorf maps out the conditions of voluntary human action, since all duties are voluntary (1.2.4), and shows that (contrary to the moral realists) the understanding, the passions, and the free will possess no sources of orderliness and give rise to a chaos of amoral action. To avoid the confusion and disorder that would have followed, he continues in 1.2, it was necessary that some moral rule should be imposed from the

outset to which the will could be made to conform (1.2.1) and with reference to which otherwise amoral actions could be evaluated and named (1.2.11). 'Rule' is then identified with 'law', and 'law' with a 'decree by which a superior obliges one who is subject to him to conform to the superior's prescript' (1.2.2). Even one's basic sense of right and wrong is said to be acquired by being under the obligation of a law (1.2.4). This neatly encapsulates the imposition theory of *DJN* that proved to be both so controversial and so influential.

The third and final term in the definition of duty, obligation, is then explained as based on two conditions: a superior with the power to enforce his decree and a subject with good reasons to obey. The reasons are that obedience is beneficial, that the superior means well and is able to care for the subject better than himself, and that obedience is voluntary (1.2.4–5). Obligation turns on fear of punishment, as with Hobbes, and on respect for the benevolence of the superior, as with the stoics, thereby making benevolence–gratitude constitutive of every social duty. Pufendorf immediately shows that the natural law duties meet all these conditions: they are voluntary, discovered by reason, the decrees of a superior, God, who enforces them with the rewards and punishments of heaven and hell, and whose benevolence and care constitute good reasons for obedience (1.2.6, 1.2.16, 1.3.10). (For objections and replies see Leibniz 1706, Barbeyrac 1820, Palladini 1978, Schneewind 1987, Moore and Silverthorne 1989).

In 1.3.1–7 the ground of justification of natural law – sociality – is derived from 'the common character and condition of mankind' (1.3.1). In particular, the conclusion that 'in order to be safe, it is necessary for him to be sociable [*sociabilis*]' (1.3.7; cf. 1.2.16, 1.3.10), is derived from six irreducible features of the human condition. Man's first concern is, as the stoics taught, his own conservation and well-being; yet his weakness (*imbecillitas*) and wretchedness render him incapable of securing either by his own efforts. Consequently, he needs to join with others in a social life of mutual assistance to gain what he wants. Although he is capable of engaging in social life, when he tries to associate out of self-regard an unlimited number of passions flare up and drive him to distrust, insolence, enmity, the infliction of harm and injury, and so to war. As a result, it is necessary not only to join together in order to meet the first three features, as Grotius and Hobbes taught, but also to do so in a form of life that

prevents the anti-social friction of association (which Grotius and Hobbes overlooked). The only form of association which takes into account these six features and solves the social problem is for a man to be sociable with others in precisely the strategically other-regarding manner defined in 1.3.7 and laid down as the basis of natural law at 1.3.8: to 'join forces' and 'so conduct himself towards them that they are not given even a plausible excuse for harming him, but rather become willing to preserve and promote his advantages [or 'benefits': *commoda*]' (cf. *DJN* II.3.15).

Accordingly, the fundamental law of nature under which all others are subsumed is that every man ought to 'cultivate and preserve sociality' (*colendam et servandam esse socialitatem*) (1.3.9). This involves duties to God (1.4), to oneself (1.5) and to others (1.6ff.). Further, the subsumptive laws of nature that teach a man how to conduct himself in a manner which takes into account the effect of his actions on the actions of others in order 'to become a useful member of human society' (1.3.8) comprise three types of duty. First are the negative service duties of not injuring others, as Grotius and Hobbes had correctly discerned (1.6). However, these are insufficient. To eliminate the occasion of anti-social reaction it is also necessary to act towards others in a manner which evinces recognition of and displays respect for their equality of dignity as men, so that their highly sensitive and easily provoked self-esteem is not injured (1.7). This thesis that modern society also needs to rest on the mutual recognition of the equal dignity of all men, as opposed to the feudal and Renaissance honour ethic based on inequality (1.7.3), is one of Pufendorf's most profound and consequential insights (*DJN*, III.2). Third, to prevent ingratitude and the socially destructive spiral of behaviour it triggers, and to promote in others the countervailing dispositions of trust, gratitude and a willingness to reciprocate, it is necessary to perform duties of benevolence (1.8). The three types of duty provide the framework for the analysis of duties involved in contracts, agreements, oaths, property relations and language use (1.9–17), as well as of duties in families and states (Book II); and many of these are drawn from Roman law.

Although all three types of duty are necessary to preserve and cultivate the form of society in which a man can secure the conservation and well-being he cherishes, Pufendorf lays emphasis on the second and third. He does so partly because his predecessors failed to

take them into account in their minimalist theories of natural negative service duties and natural rights of self-preservation. The deeper explanation is that they are designed to eliminate what for Pufendorf (following Seneca *On benefits*, IV.18), as for Shakespeare in *King Lear* (1608), is the primary cause of the dissolution of society and the descent into madness and war: the passion 'more odious and more detestable' than 'injustice' (1.8.8) – the 'monster ingratitude' (*King Lear*, 1.5.37).

A number of critics charge that Pufendorf bases natural law on utility or interest (*utilitas*), not sociality (Palladini 1978, Barbeyrac 1729, *DJN*, II.3.15n). This is a misunderstanding. The performance of social duties has 'clear utility' (1.3.10) since the sociality this cultivates and preserves is the enabling condition of individual security and well-being (cf. *DJN*, II.3.16). However, the duties demanded by sociality frequently over-ride actions dictated by considerations of one's own immediate utility or expediency, and even involve a readiness to risk one's life for the sake of sociality (1.5, II.5.4, II.13.2, II.18.4). (Consequently, the first duty to oneself is to make oneself a useful member of society, 1.5.1). Hence Pufendorf, following Cicero, carefully distinguishes between rational or long-term utility and depraved or short-term utility and argues that social duties are consistent with, but not based upon, the former (*DJN*, II.3.10). Actions based on the latter are inconsistent with sociality and, for this reason, self-defeating. If it is made the measure of right, as with Hobbes's subjective right of self-preservation, the society in which man would be able to achieve even his basic security would never evolve (*DJN*, II.3.11, II.3.16).

In *On the natural state of men*, written in 1675, Pufendorf again contrasts his theory with Hobbes's and finally abandons his attempts to distinguish two senses of utility, thus freeing his theory from any necessary connection to utility. He says the rational sense of utility has passed from common usage and the spurious sense, in which utility is defined in contrast to both socially fitting and regard for others, has gained exclusive sway (thereby explaining his critics' misunderstanding) (Seidler 1990: no. 10, p. 95L, p. 122E).

Henceforth, as he replies to Beckmann, 'the basic premise from which I draw the principles of natural law [sociality] stands in direct opposition to the theory of Hobbes [based on a right of self-preservation]. For I come very close to the reasonable system of the stoics,

whereas Hobbes serves up a rechauffé of Epicurean theories' (ES).

Finally, the theory of sociality is clearly constructed with reference to the passage on society and gratitude in Seneca's *On benefits*, iv.18, quoted in *DJN*, II.3.15:

By what other means are we preserved but by the mutual assistance of good turns? This commerce and intercourse of kindness adds strength and power to life; and, in case of sudden assaults, puts it into a better condition of defence. Take us all asunder and what are we but an easy and unequal prey to wild beasts? Man by nature is weak on every side: society fortifies his infirmity and arms his nakedness. Those two excellences, of reason and of society, render him the most potent of all creatures, who would otherwise be obnoxious to injuries from everything about him. Thus, by the help of union, he commands the world, who, if divided, would scarce be a match for any living rival. And it is society alone which gives him his sovereign sway over inferior creation. This was the thing which first restrained the violence of diseases, which lent crutches and support to old age, and administered consolation to grief. Take away this, and you cut asunder the bond of union, the vital string of mankind.

Grotius cites the same passage, but he interprets it to involve a natural disposition to love society for its own sake (*appetitus societatis*), in addition to self-love (*DJB*, Prel. dis. 8 n.2). Hobbes denies this: 'we do not . . . by nature seek society for its own sake, but that we may receive some honour or profit from it' (*Of the citizen*, p. 42). Pufendorf accepts Hobbes's argument while rejecting what Hobbes does with it. As a result, for Pufendorf, the passage from Seneca does not make reference to a social disposition, but rather it encapsulates the six features of the human condition that conjointly render society necessary. Although this conjunction furnishes man with good reasons to be social, the narrow motive of self-love leads him to enmity instead, as Pufendorf is the first to point out (I.3.5-6). Even the love of humanity that he claims is a natural sympathy for others, while important, is too weak to temper this bleak picture (I.8.1, II.1.11). To bring man's selfish motivation in line with his strategically other-regarding social duties, and so his rational utility, the benevolent Christian God enforces duties through fear of his punishments (I.3.10-13). Since belief in a benevolent and punishing God is thereby a necessary

condition of social life (I.3.13), duties to God are the first of the social duties (I.4).

Nonetheless, Pufendorf is astute enough to observe that if men are unable to move themselves to perform the three types of duty by considering the earthly benefits that would thereby accrue to them, they are evidently not going to do much better by considering longer-term heavenly punishments or mild stings of conscience (II.5.9). So the system of sociality is incomplete because it lacks an effective means of enforcement. The missing remedy is found in Book II, where he explains that 'the effective remedy for suppressing evil desires, the remedy perfectly fitted to the nature of man, is found in states [*civitates*]' (II.5.9).

States and citizens

Book II opens with a distillation of Pufendorf's rich and unsurpassed analysis of the state of nature: the natural condition of mankind outside or prior to the establishment of states (see Denzer 1972, Seidler 1990). He defines it by three contrasts: in a condition of obedience to God versus the life of other animals; alone and weak versus the life of co-operation in states; and without political subjection versus subjection in states. In these conditions men are able to form into small associations of patriarchal families, in which women are naturally subject to men, and thus arise the duties of husbands and wives (II.2), parents and children (II.3), and masters and servants (II.4).

The primary reason why these associations are able to support only a rudimentary level of sociality is the absence of security (II.1.9). Without a common political authority the male heads of families are in a state of 'self-government'. They must attempt to enforce duties and settle disputes on an ad hoc and voluntary basis (II.1.8-10). Given the nature of man (here drawing on I.3.1-7 and adding an antipathy to subjection at II.5.4) and the ineffectiveness of the threat of divine punishment (II.5.9), self-government fails and all are exposed to the threat of attack. The ensuing and engulfing conditions of suspicion and distrust outside households prevent the mutual trust necessary for the strategically rational actor to be willing to perform and promote other-regarding social duties. '[W]ar, fear, poverty, nastiness,

cf. Kant

ditional malice is bound to offer reparation and to give evidence that there was no malice in his action, so that the victim will not regard him as an enemy and attempt retaliation. However, one who has harmed another maliciously is not only obliged to offer reparation of his own accord, but also to evince repentance for his actions and seek pardon. In turn, if the victim obtains reparation, he is obliged to grant pardon to one who seeks it in penitence and to return to good terms with him. Anyone who refuses to be content with reparation and repentance, and insists in any case on seeking vengeance on his own account, is merely gratifying the bitterness of his own heart and destroying peace among men for no good reason. On this ground vengeance too is condemned by natural law, since its only aim is to give trouble to those who have done us harm, and to console our hearts with their pain. It is the more appropriate that men forgive each other's offences, the more frequently they violate the laws of the supreme Deity and have themselves daily need of pardon.

7

On recognizing men's natural equality

1. Man is an animal which is not only intensely interested in its own preservation but also possesses a native and delicate sense of its own value. To detract from that causes no less alarm than harm to body or goods. In the very name of man a certain dignity is felt to lie, so that the ultimate and most effective rebuttal of insolence and insults from others is 'Look, I am not a dog, but a man as well as yourself.' Human nature therefore belongs equally to all and no one would or could gladly associate with anyone who does not value him as a man as well as himself and a partner in the same nature. Hence, the second of the duties of every man to every man is held to be: that each man value and treat the other as naturally his equal, or as equally a man.

2. This equality among men consists not only in the fact that the physical strength of adult men is nearly equal to the extent that even a relatively weak man can kill a stronger man by taking him by surprise or by use of cunning and skill in arms, but also in that one must practise the precepts of natural law towards another and one expects the same in return, even though he may be better provided by nature with various gifts of mind and body; his superiority does not give him licence to inflict injuries on others. On the other hand neither the scanty provision of nature nor the niggardliness of fortune in themselves condemn one to have less access to the enjoyment of the common law than others. But what one may require or expect from others, the same, other things being equal, they should have from him; and any law [*ius*] that a man has made for others, it is particularly fitting that he follow himself. For the obligation to cultivate social life with others lies on all men equally; and it is not allowed to one more

than any other to violate natural laws where another person is concerned. There is no lack of popular sayings illustrating this equality: for example we are all descended from the same stock; we are all born, nourished and die in the same manner; God has given no man a guarantee of lasting and unshakeable good fortune. Likewise the teaching of Christianity is that God's favour is won not by noble birth or power or wealth, but by sincere piety, which may exist as well in the low-born as in the highly-placed.

3. It follows from this equality that he who wants to use the services of others to his own advantage must be ready to make himself useful to them in return. For anyone who requires others to serve him, but expects to be free of demands from them, surely regards others as not equal to himself.

Hence those who readily allow all men what they allow themselves are the best fitted for society. By contrast, they are altogether unsocial who suppose themselves superior to others, demand total licence for themselves alone and claim honour above others and a special share of the world's goods, when they have no special right above others. Hence this too is among the common duties of natural law, that no one require for himself more than he allows others, unless he has acquired some special right to do so, but allow others to enjoy their own right equally with him.

4. The same equality indicates how one should proceed when a right has to be distributed among others, namely to treat them as equals and to favour neither party over the other beyond the merits of the case. For otherwise the party slighted feels himself wronged and insulted, and diminished in the dignity given him by nature.

Hence it follows that common property is to be distributed among equals in equal portions. When the thing does not admit of division, those whose right to it is equal should use it in common as much as each wants, if there is enough of it. If there is not enough, they should use it in a prescribed manner, and in proportion to the number of users. One can devise no other way of observing equality. But if the object cannot be divided or held in common, they should use it in turn, or if even this will not work, or if an equivalent cannot be given to the rest of them, the thing will have to be assigned to one of them by lot. For in such cases, no more satisfactory solution can be found than chance; for it obviates the sense of contempt and leaves the dignity of the loser intact.

5. One sins against this duty through pride. In pride one prefers oneself to others for no reason at all or no good reason, and looks down on them as unequal to oneself. We say 'for no reason'. For when a person has duly won the right to put himself above others, he is justified in exercising and protecting his right, though without empty scorn or contempt of others. So, from the opposite angle, one is justified in giving another the precedence and honour which are his due. In general, a certain honest humility is the constant companion of true good breeding. It consists in reflection on the weakness of our own nature, and on the mistakes we could have made or will make in future, which are no fewer or smaller than others may make. The result is that we do not put ourselves above anyone, considering that others may use their free will as well as we and equally have this power. The right use of his free will is the one thing a man may call his own; it is the only thing on which he may value or despise himself. To set a great value on oneself without cause is truly a ridiculous fault, both because it is stupid in itself to have a high idea of oneself for nothing, and because it takes other people for fools as if they would put a high value on you for no reason.

6. It is a still greater wrong to give signs of contempt for others by deeds, words, looks, laughter or slighting gesture. This sin is to be regarded as worse, in that it vigorously excites the hearts of others to violent anger and desire for revenge. In fact there are many men who would prefer to expose their lives to instant danger, to say nothing of disturbing the public peace, rather than let an insult go unavenged. The reason is that fame and reputation are sullied by insult; and to keep their reputation intact and unsullied is very dear to men's hearts.

Elements of Universal Jurisprudence established Pufendorf's political theory, which, when fully developed, became the most significant alternative to rights-based theories. Pufendorf rejected the concept of natural rights as liberties and the suggestion that political government is justified by its protection of such rights, arguing instead for a principled limit to the state's role in human life. The year 2017 makes us remember the 90 years of the "Ata de Incinera" (Burning Act) which destroyed more than 1600 books of Jorge Amado, and among them 214 copies of *O Paiz do Carnaval*, a novel whose first translation, which was made into the Italian language, according to the desire of Amado himself, appeared only in 1984, with a "note" by Luciana.