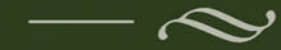
The POLITICAL WRITINGS *of* SAMUEL PUFENDORF



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Editor's Introduction

Samuel Pufendorf was one of the most prominent political and legal thinkers of the seventeenth century. His stature as an intellectual figure of some historical importance has long been understood by students of natural law, who remember him as the architect and systematizer of the modern natural law tradition begun by Grotius. His reputation has grown in recent times, however, as scholars in diverse fields have begun to explore his influence on the Enlightenment, classical liberalism, and modern jurisprudence. Yet, as the work of someone who labored to demonstrate how it is possible to live with political authority, and why it is not possible to live well without it, Pufendorf's political philosophy also remains most pertinent for anyone who wonders about the ethical legitimacy and practical necessity of the modern state. He intended his political thought to be, at least in part, a response and corrective to what he considered the cynicism and excesses of Thomas Hobbes. He strongly opposed the methodological individualism that he correctly understood to be a central feature of Hobbes's political thought, and he labored to developed an alternative view inspired, in large measure, by the Grotian notion of sociality. Contemporary students of politics can thus find in Pufendorf an alternative to Hobbesian and liberal individualism built upon a distinctive vision of human sociality.

Pufendorf was born in 1632 in a rural region of old Saxony. As a young man, he entertained thoughts of following his father and entering the Lutheran pastorate, but a taste of orthodox theology during his student years at Leipzig sent him in more philosophical directions. While this early experience left him with a desire to avoid the limitations of Lutheran orthodoxy, it did not alter the religious orientation of his thought. But it did leave him sufficiently dissatisfied with theological traditionalism to be receptive to new and emergent philosophical methods that would eventually guide his political theory.

By his own admission, Pufendorf was an eclectic thinker, both in terms of methodological style and field of interest.[1] His intellectual endeavors ranged beyond moral and political thought to theology, history, anthropology, law, and even political sociology. But eclecticism also aptly characterizes a lifetime of situation

[1]Pufendorf to Thomasius, June 19, 1688, in Konrad Varentrapp, ed., "Briefe von Pufendorf," *Historische Zeitschrift*, 70 (1893), p. 31.

and career changes that mirror his intellectual meanderings. Following six years of study at Leipzig, he left for Jena (1656) and there fell under the spell of the rationalist mathematician and philosopher Erhard Weigel. Under Weigel's influence, he developed his interest in moral and political thought and undertook the challenge of building a new natural law doctrine upon a rationalist foundation. He took as his first premise the idea that God has bestowed upon humankind a certain "light of the mind" in the form of sound reason (*sana ratio*) that allows humankind, if judiciously exercised and observed, to forge its own future and escape its own folly (DJN, I,1,2). Through the exercise of sound reason, humankind can gain insight into the law God has ordained to govern human affairs, an insight that permits human beings to appreciate the necessity—or rationality—of the social conventions that have emerged through time.

Upon leaving Jena (1658), Pufendorf took a position as tutor to the family of Baron Peter Julius Coyet, the Swedish minister in Denmark. He had no sooner arrived in Copenhagen when the already poor relations between Sweden and Denmark degenerated into war and Pufendorf was tossed into a Danish prison. He put this time to good use, however, writing from behind prison bars the text of his first major work in political theory, *Elementorum jurisprudentiae universalis* (*Elements of Universal Jurisprudence*), which he eventually published in 1660. Following his dreary experiences in Denmark and a brief stay in Holland, Pufendorf returned to Germany and took a position on the philosophy faculty at Heidelberg (1661). Nine years later he was off again, this time to Sweden where he had been offered a position on the faculty of the University of Lund. At Lund his thoughts were devoted exclusively to political thought, and he soon completed and published (1672) his most important work, *De jure naturae et gentium* (*On the Law of Nature and of Nations*), along with a short summary of this work designed to be used as a text, *De officio hominis et civis juxta legem naturalem* (*On the Duty of Man and Citizen According to Natural Law*), which appeared in 1673.[2] The latter work proved remarkably successful and served in its role as text on the fundamentals of natural law for over a century.

In 1676, Pufendorf's career, along with his intellectual focus, took a change of course. He managed to be appointed royal historiographer to the Swedish Court, and with this his scholarly concerns changed to history. He remained in this position for ten years—a long stay for him—before returning to Germany to assume similar duties at the court of The Great Elector of Brandenburg, Frederick William. In 1694, Pufendorf again ventured to Sweden to retrieve a manuscript confiscated by the Swedish crown upon his leaving for Germany. His success at prying the hostage manuscript loose proved a pyrrhic victory. He took ill as a consequence of the rigors of the journey and died in the fall of 1694.[3]

[2]For a new edition and English translation of this work, see Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, ed. James Tully, trans. Michael Silverthorne (Cambridge: Cambridge University Press, 1991).

[3]For a more thorough biographical sketch of Pufendorf, see Michael Seidler's introduction to Seidler, ed., *Samuel Pufendorf's "On the Natural State of Men"* (Lewiston, NY: The Edwin Mellen Press, 1990); see also Horst Denzer, *Moralphilosophie und Naturrecht bei Samuel Pufendorf* (Munich: C. H. Beck, 1972).

The main corpus of Pufendorf's political thought is composed of eight works. Along with *Elementorum* (EJU), *De jure* (DJN), and *De officio* (DOH), this body of work includes *De statu imperii germanici* (*On the Constitution of the German Empire*), published in 1667 under the pseudonym Severinus de Monzambano; *Dissertationes academicae selectiores* (*Select Academic Dissertations*), published in 1675; *Specimen controversiarum* (*A Sample of Controversies*), published in 1677; *Eris Scandica* (*Scandinavian Polemics*), which appeared in 1686; and *Einleitung zu der Historie der vornehmsten Reiche und Staaten so itziger Zeit in Europa sich befinden* (*Introduction to the History of the Principal Empires and States Presently Existing in Europe*), published between 1682 and 1686. The present volume is limited to excerpts from his two most important and thorough contributions to political theory: EJU and DJN.

The extraordinary differences that separate these two works are (perhaps unhappily) minimized by the editing process. While EJU is a shorter piece, committed to a rationalist methodology, that moves along with a certain ease and flow of argument, DJN is a much longer, greatly labored, meticulously referenced, and exhaustively argued work. EJU begins with a conceptual analysis that yields a series of definitions (twenty-one in all) intended to serve as the foundation for two axioms, or basic principles, of morality. From these principles Pufendorf "derives" five observations, presented in propositional form, that state a set of conclusions about the nature of morality and political life. The work is faithful to Pufendorf's conviction that a natural law theory free from both religious orthodoxy and Aristotelian traditionalism was needed to meet the new challenges of political legitimacy. The challenges he had in mind came from skepticism on the one hand and the intolerance associated with religious orthodoxy on the other. In the absence of an objective theory of law and politics capable of legitimating the emergent state and justifying the presence of political authority, political association would almost invariably decay to a contest of belief and an accompanying struggle for power. As Pufendorf understood, such a condition would merely exacerbate the insecurity and conflict that the state system promised to transcend.

Yet the abstract, rationalist style of EJU proved unable to establish the solid foundation for the first principles of natural law that Pufendorf wished to defend. The assertion of these principles based solely upon sound, albeit abstract reason could only persuade those already dedicated to the superiority of the rational method over more theological, traditional, or historical modes of inquiry. Pufendorf took to heart the welter of criticisms his early work generated and set about, in response, to construct a methodological viewpoint that would remain faithful to the idea of sound reason and yet provide the systematic rigor required to achieve the desired synthesis between his rationalism, on the one hand, and religious orthodoxy and Aristotelian traditionalism, on the other.[4] His solution to these methodological difficulties—forthcoming in DJN—was to generate a dialogue between the demands of sound reason and the insights of ancient and contemporary authorities on moral

[4]Timothy Hochstrasser, "The Foundations of the History of Morality: Samuel von Pufendorf and the Invention of a Tradition," written for The Workshop on Modern Natural Law, convened by Istvan Hont and Hans Erich Bodeker, Max Planck Institute for History, Göttingen, Germany (June 26–30, 1989), pp. 26-28.

and political matters, as recognized by the traditions of theology, law, history, and philosophy. Classic and contemporary texts were culled with care to discover instances where they could be used to supplement, reinforce, or illustrate the requirements of sound reason, and in turn sound reason was used at times to expose and correct the errors, confusions, and contradictions on display in these texts.

The result is an exceptionally thorough and meticulously, if not always consistently, argued theory of political legitimacy. DJN contains both a defense of Pufendorf's version of modern natural law—a theory that develops the view that natural law is imposed by God upon human beings and is not built into them in the form of intrinsic dispositions—and an elaborate discussion of the logic of human development from a natural, or non-civil, condition to the emergence of the modern state. Throughout the text, Pufendorf labors to place the logic of political association within the larger context of humankind's social, economic, and legal development. This leads him to discuss and examine in tedious detail the emergence of the family, the rise of private ownership, and the nature of the socio-economic forces that inform the challenges of political association.

Much of this detail, most of the nearly 6,000 citations,[5] a great deal of Pufendorf's anthropology, and a large amount of the argument that had relevance only in the seventeenth century are the necessary casualties of editing. The editorial objective has been to provide the reader with a readable and comprehensive introduction to Pufendorf's moral and political thought by reducing both EJU and DJN to their basic points and fundamental arguments. The passages from EJU serve both as an introduction to Pufendorf's political project and as a supplement to the more laborious argument of DJN. Despite their methodological differences, the substantive elements of the two works are generally consistent. Readers should also be able to discern the moves Pufendorf makes to strengthen his overall argument in those rare cases where the argument of DJN diverges from his positions in EJU. To be sure, Pufendorf develops his basic political themes with greater precision, and with a stronger understanding of the complexity of the problems he is addressing, in his more mature work. In some areas, however, precision is achieved at the expense of increased confusion, and here the selections from EJU can guide the reader through the text of DJN.

Man, Politics, and Society

Pufendorf constructed his political theory at the dawn of the modern nation-state following the Peace of Westphalia in 1648. Like both Hobbes and Grotius, his more illustrious predecessors, he looked to the state as the primary vehicle of order and stability in social life. He shared their view that social prosperity and economic development could progress only in the presence of a state system capable of maintaining internal order and tranquillity and international peace and security. The defense of this point constitutes the first stage of his theory of political legitimacy.

[5]Horst Denzer, "Pufendorf," in Hans Maier, Heinz Rausch, and Horst Denzer, eds., *Klassiker des Politischen Denkens*, 2 vols. (Munich: C. H. Beck, 1968), vol. 1, p. 42.

Pufendorf took inspiration from Hobbes's effort to raise law and politics to a scientific level and establish with certainty the need for the state. But he rejected Hobbesian methodological individualism and cynicism, and in his own words, "fought against Hobbes at close quarters."[6] By way of refuting Hobbes, he endeavored to build a scientific—and hence objective—theory of politics upon the notion of human sociality. However, his convictions about the necessity of the state did not detract from his realization that the state itself posed a fundamental threat to the very order and security it was designed to promote. In fact, Pufendorf was one of the first to state the dilemma of modern politics:

> Here it is evident . . . that no form of commonwealth can be so precisely outfitted with laws that no disadvantage can, through the inattentiveness or wickedness of rulers, redound on the citizens from the very government established for their welfare. The reason for this is that supreme sovereignty was established in order to repel the evils threatening mortals from each other. But that very sovereignty had to be conferred on men, who are surely not immune from those vices which provoke men to molest one another. . . . (DJN, VII,5,22)

So, the second challenge of his theory of political legitimacy is to discuss whether it is possible to moderate the threat posed by sovereign authority and to examine whatever rights citizens hold against their sovereign that might conceivably justify resistance.

He achieves his first objective—the defense of civil association—by means of the systematic development of a natural law theory coupled with an anthropology (intended to replace Hobbes's reliance upon physiology and psychology) devoted to the historical manifestation of human sociality. While the appeal to natural law establishes that human beings must comprehend sociality as a fundamental law of nature binding on all persons at all times, his anthropology illustrates how this natural law requirement has come to be concretely implemented through the emergence of specific social conventions.[7] His second objective is achieved, on the other hand, by means of independent but reinforcing theories of limited sovereignty, civic responsibility, and civic education. Although Pufendorf is sufficiently realistic to recognize that there is no ultimate guarantee against possible sovereign tyranny, his argument advances the search for legitimacy by introducing the need for constitutional or structural limits upon sovereign authority, and by illustrating how an informed and astute citizenry can contribute to a just and stable polity.

Natural Law and Obligation

It is difficult to underestimate the importance of God in Pufendorf's political thought. He refused, for example, to countenance even for the sake of argument

[6]Samuel Pufendorf, *De jure naturae et gentium, libri octo, . . . accedit Eris Scandica*, ed. Gottfried Mascovius (Lausanne & Geneva: Marcus-Michael Bousquet, 1744), vol. 2, p. 341 (trans. by Michael J. Seidler).

[7]Cf. Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: The Clarendon Press, 1991), p. 67.

the possibility that God does not exist, and he went so far as to chide Grotius for his decision to entertain, albeit hypothetically, this very possibility (DJN, II,3,19). He understood that natural law argument slides easily toward secularism once it is divorced from Christian faith. If God becomes ancillary to reason as a lawgiver, then faith in reason and philosophy replace religion as the final source of epistemic certainty. But any such slide will inevitably erode natural law and consequently disrupt the ability to construct an objective science of law and politics.

No doubt this is a fitting attitude for the son of a Lutheran minister, but Pufendorf's insistence upon God's pivotal role in any conception of the natural law is not simply a matter of religious conviction. He embraces the traditional jurisprudential view that law is the command of a superior will; there can be no law without a sovereign legislator possessing the right to command (DJN, I,6,4). Law, in turn, is an institution used to order and coordinate the relations of objects and subjects; without law, and therefore without some sovereign to impose the law on its subjects, there is only chaos. So, if natural law exists—and reason informs us that it does—then there must also be a divine Legislator; for the legislator is conceptually prior to the law.

Pufendorf has still another use for God in his theory of natural law. Again following traditional jurisprudence, Pufendorf further understands law to constrain a rational being's will or to restrict freedom of choice. Subjection to law means standing under an obligation to obey. But his understanding of obligation is somewhat tighter than the one on display in contemporary moral and political discourse. He believed that two conditions must be met for someone to stand under an obligation: the requirement of obedience must be both rationally compelling and effective (EJU, I,df.XII,14; DJN, I,5,5 & 12). Law is compelling if it promotes the good; this supplies a reason for a rational being to subscribe to it. There is of course no question about whether the natural law promotes the good; the insights of sound reason remove all doubts on this score. The effectiveness of an obligation, on the other hand, resides in the power of a superior to enforce compliance with some obligatory act; consequently the command of someone who lacks the power to coerce others into obedience fails to qualify as law even if the commanded action has moral value (EJU, I,df.XII,16). The natural law qualifies as law, then, because God does double duty as the divine Legislator and Executor of the law.

It is perhaps understandable that Pufendorf should model his vision of the natural law after domestic legal systems. The terms we use to conceptualize a legal system fix what it is possible to understand a legal system to be, regardless of whether we imagine it in a civil or natural context. Yet there is a limit to the extent the analogy can be pressed. While civil laws are made known through statutes, Pufendorf subscribes to the standard natural law view that God's law cannot be known—or cannot be known in its entirety—in this fashion. Instead, he imagines that insight into the natural law is achieved by rationally reflecting upon the human condition. Pufendorf wants us to understand the resultant insights of reason as natural laws, for only if we do so can we establish a science of politics capable of objectivity. Only the commands of a superior sovereign can obligate. If the insights of reason are advanced as merely prudent ideas, they cannot obligate; and they

are therefore subject to rejection by those whose beliefs or traditions carry them in alternative directions.

This point has considerable importance for Pufendorf's political thought. One way to theorize in the face of contesting traditions and belief systems (a way imagined by Hobbes) is to identify a basic ground or Archimedean point epistemologically prior to whatever convictions might accompany any given belief system. Epistemic primacy presumably guarantees universal acceptance of the Archimedean point and so the next task is to rationally deduce or infer certain conclusions from the Archimedean point which must then also seem rationally compelling. Pufendorf was wary of this—now rather popular—method of theorizing. Any effort to identify such an Archimedean point will seem arbitrary and unpersuasive to a group whose belief system or traditions counsel in favor of something else. Instead of establishing neutral ground, the identification of an Archimedean point will likely only generate a new belief system and thus succeed only in adding another voice to the squabble.

A second way to theorize is to look for some universal agreement or common base shared by all contending belief systems and traditions. This leaves tradition and customary belief in place and does not require that they be bracketed off. The idea of God as the Supreme Being fulfills this latter objective for Pufendorf. By linking the insights of reason to God's law, Pufendorf is able to achieve the common ground that would be lacking in any theory that simply claims its conclusions to be objective because "rational." Since there can be no such common ground without God, faith must be prior to theory. But faith also gives a point and purpose to theory. The basic belief in a loving God directs the student of philosophy to inquire into those fundamental laws God has ordained to govern humankind; for this is a job for human reason.

Pufendorf's most important theoretical task is to establish his notion of human sociality as the first principle of the law God has imposed upon humankind. To avoid the pitfalls of orthodoxy, this principle must be deduced from the human condition using reason alone. In EJU, he introduces two basic observations about the human condition (II,obs.IV,4). First and following Hobbes, he claims that humans are motivated by a self-love that inclines them toward self-preservation and the promotion of their well-being. Second—and now following Grotius—he insists that humans need the society of others in order to sustain themselves and to enhance their well-being. The complementarity of these two insights is clear: if humans need others to sustain themselves and flourish, then associating with others is the obvious thing to do. In DJN, the requirement of sociality is directly inferred from the apparent paradox of humankind's social dependency coupled with its asocial tendencies:

> Man, it is clearly apparent, is an animal most eager to preserve himself, essentially in need, ill-equipped to maintain himself without the aid of those who are like him, and very well suited for the mutual promotion of advantages. All the same, he is often malicious, insolent, easily annoyed, and both ready and able to inflict harm. For this kind of animal to be safe and enjoy the goods that befall his worldly condition, it is necessary that he be sociable. (DJN, II,3,15)

The rational acknowledgment of each person's inescapable need for the society of others is put forward as the basic principle of natural law; "Any man must, inasmuch as he can, cultivate and maintain toward others a peaceable sociality that is consistent with the native character and end of humankind in general" (DJN, II,3,15). By drawing such a tight association between individualist and societal visions of humankind, Pufendorf constructs an alternative to methods of theorizing that see pre-civil humans in an isolated and largely independent condition. To consider our own self-preservation requires us also to appreciate the degree to which it is linked to our association with others. As individuals we naturally desire to preserve ourselves, but self-preservation is possible only through our association with others. Therefore, human beings must be regarded as social creatures.

The point expressed in Pufendorf's basic principle of natural law is undoubtedly a good idea. But the strength of his argument depends upon his ability to convince his readers that this is also a command of God; for only if it is recognized as such can it qualify as an obligatory natural law. By refusing to allow reason to carry independent normative force, he commits himself to a theory that demands a theological presence. But in the absence of such a commitment, Pufendorf offers no reason to think that it is possible to construct a viable natural law theory. There can be no natural law without a natural lawgiver.

Pufendorf's Anthropology and Humankind's Natural State

To establish the legitimacy of the emergent state system, Pufendorf needs to demonstrate that the civil state is required by natural law or that the move to civil association is necessary in order to promote the ends of sociality for some group of individuals. His own theory of sociality complicates this since he cannot simply imagine that social life is the proper remedy for certain defects of the human character and then insist, as Hobbes had done, that civil association is the necessary condition for bringing social life into being. If humans need society in order to preserve themselves, then society must be a constant feature of human history since humans have managed to preserve themselves. Social life must therefore be prior to the emergence of political units, and if social life is possible without political association, one wonders why the move to a state system has become necessary in the strong fashion required by natural law.

To make his case, Pufendorf adopts a two-pronged strategy. First he imagines a hypothetical natural condition—a condition typified by the absence of any artificial or conventional authority relations—that enables him to identify the basic moral relations that hold naturally among human beings. This imagined natural state provides Pufendorf with an analytical device with which to display the fundamental moral rghts and obligations individuals enjoy under natural law. But he develops alongside this analytical device an anthropological account of humankind's social development. His account, culminating in the need for civil association, characterizes the way the ideals of natural law come to exemplify themselves in human history. The Hegelian sound of this is not misleading; Pufendorf's argu-

ment is a justification of social and political developments based upon the belief that they advance the end of human sociality.

The fit between the moral vision that emerges from Pufendorf's hypothetical natural state and his anthropology is not always comfortable. While he employs many of the traditional tools of the social contract tradition, his use of such notions as consent and natural freedom is frequently tortured. Because human beings are subject to the will of God, natural freedom is circumscribed by the law of nature. So, humankind's hypothetical natural condition is typified by the absence of any *earthly* or secular authority. The only rule governing the relationships among persons, in this imagined state, is the natural law requirement of sociality. But Pufendorf's natural law does not tell us exactly how to be social; it only commands that we be sociable. The emergence of conventional relations that give substance to the notion of sociality is thus entirely consonant with natural law, but in accordance with natural freedom, they can have currency only if they are consented to by all participating parties.

Pufendorf follows legal tradition in identifying two methods for expressing the consent necessary for the establishment of a conventional relationship between persons: pacts and contracts. He reserves the notion of a contract for commercial agreements and transactions only and uses the term 'pact' to describe all other types of voluntary agreements and arrangements. But the claim that all conventional arrangements and practices must be the product of some anterior pact or contract gives rise to an obvious problem that typically plagues consent theory. The customs and conventions in which we participate are, for the most part, simply present for us; as we grow from childhood to adulthood we are socialized into them and we almost invariably come to take them for granted. Rarely, if ever, does one ponder their social viability, moral validity, or logical necessity and render an official decision to consent to them. This problem is particularly troubling for Pufendorf, who wants both to explain and to justify existing social arrangements by reconciling them with natural law.

His remedy for this problem makes it necessary to qualify severely his standing as a consent theorist. He approaches the question of consent occasionally in historical and occasionally in analytic terms. This mixture of strategy suggests that he believed only those social arrangements and conventions logically and practically necessary for the pursuit and development of social life actually come into being. For Pufendorf, social customs are composed of shared and necessarily learned rules that structure and organize social life, rules that are explicable in terms of the rights and obligations they bring into being. Rules of this sort can exist of course only if they are recognized, understood, and accepted by those subject to them. Because human beings need one another to sustain themselves and because this need can be met only through the acceptance of customary rules that constitute and coordinate social life, Pufendorf concludes that people have embraced rule-based associations from the earliest times forward. Such rules are thus understandable as a conscious effort to implement the natural law requirement of sociality and construct coordinated systems of association or societies.

Seen historically, the social customs that emerge simply implement a division

of labor and role differentiation, considered necessary and logical at some given historical moment, in order to promote sociality and human flourishing. The need for such divisions gives rise to customary practices and authority relations to which people are presumed to consent (tacitly or otherwise) in the face of this need. Seen analytically, however, the enhancement of sociality and flourishing that is realized by social custom and convention continues to provide reason for new generations to accept these practices. This reduces the question of consent to a matter of historical fact. For Pufendorf, existing social conventions must have emerged from general consent and acceptance; otherwise they could not have endured and gained their present status, that is, a mutually recognized, understood, and accepted system of rights and obligations. The apparent weakness of this argument could hardly have escaped Pufendorf's notice, but it does not particularly seem to bother him. In more candid moments he insists that if a given social arrangement promotes human sociality one should consent to it, and this is all that is required to establish an obligation to adhere to its rules.

So at best, consent serves only to legitimate the origin of social conventions and customary practices. Once in place, their continued legitimacy and obligatory character follow from their supposed contribution to sociality. Thus, the artificial authority relationships that come into being through consent do not require the express consent of future generations in order to be binding upon them, provided their continuation still contributes to human sociality. Pufendorf does not worry to any great degree, for example, about the need for future generations to consent expressly to sovereign authority before they can be said to have an obligation to obey the law. Because new-born members of the state benefit immediately from the presence of sovereign authority, their consent to this authority is simply assumed. (DJN, VII,2,20).

This is, to be sure, an odd-sounding consent argument. Pufendorf's attempt to situate consent historically is weak and unpersuasive. But this is disappointing only if one privileges Pufendorf's view of natural freedom and human equality over his anthropology, something Pufendorf himself does not do. When the inevitable tensions between these two elements of his theory become extreme, consent gives way to utility as the chief mechanism of defense and legitimacy, though he struggles, awkwardly at times, to have these two reinforce one another.

While this argument seems awkward by contemporary standards, it is not entirely without merit, and if it fails, its failure is instructive. Pufendorf wants to reconcile two separate ways of appreciating the human condition, both of which carry a considerable amount of moral importance. Since he is committed to the basic moral equality and natural freedom of persons, consent is a necessary component of his theory if he is to explain the emergence of social conventions and justify human authority relationships. But since he also sees humans as social beings whose social life is as old as humankind, he must also emphasize our socially situated existence. The integrity and necessity of at least some of these conventions—and here Pufendorf emphasizes property relationships, the family, and civil association—are fundamental aspects of human sociality to be supported, rather than challenged, by a theory of consent. Because we are social beings, and no longer creatures enjoying an initial condition of natural freedom, the role consent can and should play in

our lives is severely mitigated and circumscribed by our social reality. Thus Pufendorf preserves a place for consent in his theory without also moving toward a position of social atomism. His dependency upon consent tends to be overwhelmed by the role that the socio-historical reality of our situatedness plays in his thought. But if we are to escape atomism and build a sense of ourselves as situated creatures into a theory of civil association, it is difficult to imagine how this could be otherwise.

Pufendorf completes his anthropology with a meticulous discussion of the emergence and development of property relationships and the family unit. The family unit is typified by the woman's acceptance of, and the child's recognition of, the authority of the male (DJN, VI,1,9; VI,2,4). As a basic social unit, the extended family is capable, in Pufendorf's view, of providing all the social assistance necessary for self-preservation; therefore, if all other things stand equal, the natural law requirement can be fulfilled by committing oneself to the health of the family. But things have not stood equal according to Pufendorf's anthropology. The emergence and growth of economic relations have brought with them a force that encourages humankind's propensity toward evil and exacerbates the natural human inclination toward ambition, vengeance, and "raging against" others (DJN, VII,1,4).

Pufendorf viewed the new economic order of his day as the ideal environment for these defects of the human character to grow and flourish; therefore, he believed it necessary to take appropriate precautions against them. Quite predictably, he imagines the proper precaution here to involve the move to civil society:

> Although the race of mortals is molested by various evils, its cleverness has devised a remedy against each one. Against the power of illnesses the arts of physicians have been invented; the harshness of climate and weather is resisted by means of dwellings, clothes, and fire; hunger is driven off by men's industrious cultivation of the earth; the ferocity of beasts is restrained by weapons and traps. But against those evils which humans, on account of their depraved character, enjoy directing against one another, the most effective remedy had to be sought from man himself, from men joined together into states and from the establishment of sovereignty. . . . And after men were so organized that they could be secure from mutual injuries, it easily followed that they had that much richer an enjoyment of the advantages that can come to men specifically from men. (DJN, VII,1,7)

Civil Society and Sovereign Authority

The socio-economic development characterized in Pufendorf's anthropology situates the problem of politics for Pufendorf and establishes the necessity of the state according to the principle of sociality. The problem a science of politics must now address involves demonstrating how the state can deliver on its promise to protect humans from themselves and cure the inclination toward evil. Pufendorf thinks the challenge here is primarily educational; it falls to political theory to enlighten us first on the character of civil association, and second on the nature and role of sovereign authority. If we are to believe Pufendorf, the necessary conditions for

a just state depend upon the emergence of a citizenry and a sovereign who understand, according to the strictures of sound reason, the importance of civil association and the roles and responsibilities appropriate for each.

The move to civil society is an act of both unification and subjection. Because human beings are not fundamentally political animals in Pufendorf's estimation (DJN, VII,1,4), they must learn to appreciate the nature and consequences of their commitment to civil association. Entrance into civil society constitutes the formation of a body politic enjoying the status of a moral person and possessing one will in the form of sovereign authority. The newly constituted citizens stand in relation to one another as part to whole; yet to assure that each remains faithful to his commitment to all, a sovereign authority capable of enforcing each citizen's commitment is necessary. By conceptualizing the new state as a moral person, Pufendorf wants to demonstrate how it is possible to get the new associates on the same side, so to speak, and to identify their personal interests with the interests of the new community. Through unification, the variety of differences that otherwise separate persons from one another are transcended, and a sense of mutual identification valuable for political stability is generated (DJN, VII,2,5).

Pufendorf uses the familiar device of the social contract to illustrate the move from family units existing in a pre-civil condition to civil society. He uses it, moreover, both as a heuristic device and as a historical artifact. It facilitates his educational objectives by detailing the moral nature of civil association. He imagines a two-stage process involving the formation of two separate pacts (EJU, II,obs.V,2; DJN, VII,2,7–8). (In DJN he adds to the process an intervening decree allowing for a moment of constitutional design.) With the first pact, the future citizens come together and unite themselves into a single group for purposes of achieving security and promoting their collective welfare. The second pact completes the process through an act of subjection and a corresponding act of sovereign empowerment. With the introduction of the sovereign, a new authority relation emerges with the sovereign pledging to promote the security and welfare of the new state and the people, for their part, pledging obedience to the sovereign. Interestingly, Pufendorf also locates in this pact the moment of unification at which point the people become one moral person. So it is something more than a pact detailing the dual responsibilities of sovereign and citizen; it is also a constitutive moment that bonds previously disparate family units into a singular moral entity. From a moral perspective, of course, the two-stage contract is necessary to account for the surrender of natural freedom and the assumption of the duties of sovereign and/or subject—depending upon the form of government adopted by the community—associated with the transition to civil society. But as Pufendorf well knew, the historical need for such a justificatory claim is somewhat beside the point; given the presence and moral necessity of civil association, it matters only that the citizenry understand that the obligations of citizenship have replaced the opportunities of natural freedom.

Pufendorf's second educational task is rather more taxing, and yet here the merit and originality of his political thought are most on display. In order to mollify the potential dangers imaginable from the presence of sovereign authority, he needs to show how it is possible to blend the dual roles of citizen and sovereign together

into a just and secure state. This requires considerable educating on the roles and responsibilities of both parties. He first examines the possibility of adopting structural safeguards against potential sovereign abuse. Next, he discusses the importance of political obligation and the required limits upon permissible citizen opposition to sovereign authority. Finally, he turns to the job of the sovereign whose responsibilities to maintain the state and secure its welfare require the cultivation of good (i.e., obedient and faithful) citizens.

Pufendorf's political realism is evident, in part, in his appreciation of the fact that sovereign authority must be supreme. A sovereign is by definition not rightly answerable to anyone or subject to any earthly political authority (EJU, II,obs.V,16; DJN, VII,6,1). Yet the rather crude description of sovereign authority he offers in EJU is subtly amended and qualified in DJN. In the latter work he emphasizes that sovereign authority need not be absolute, although it must be supreme within its proper sphere. It is possible, he insists, and desirable to place legal limits upon the reach of sovereign authority by carefully delimiting its desired jurisdiction.

The argument for the importance of limitations upon sovereign authority is a quiet testimony to Pufendorf's political cautiousness.[8] At best the argument is elliptical; nowhere does he advocate the adoption of a constitutional structure that limits sovereign authority. Instead, he advises that the people contracting to establish a state can, at the time they vote to decree a particular form of government, choose either to institute a general pact with the sovereign that empowers him to do as he wishes and obligates only his (or its—in case sovereignty is lodged in a council) conscience, or to construct a specific pact that identifies and enumerates certain limitations upon the reach of sovereign authority (DJN, VII,6,10). In the event anyone is worried about the potential abuses that might result from an unlimited sovereignty—and Pufendorf's general pessimism about man's propensity for evil indicates that everyone should be so worried—then it would be wise to opt for a specific pact, though Pufendorf leaves this inference to his readers.

Although limited sovereignty might be a reasonable guard against an abusive sovereign, it has its risks. A government needs the authority to govern and Pufendorf was a sufficiently perceptive politician to understand that a people who so limits sovereign authority from fear of sovereign tyranny that it renders its government ineffectual has done little to promote its own welfare. So he offers a second defense against an abusive sovereign designed to permit sufficient political flexibility to allow government to respond to political necessity without leaving the citizenry vulnerable to the excesses of sovereign authority. He advises, in effect, that a system of checks be implemented where the sovereign (Pufendorf seems to have in mind a monarch here) is required to refer matters of policy "over whose disposal he has not been left absolute authority to a council of the people or leading men," whose agreement is required before policy can become law (DJN, VII,6,10). Rather uncharacteristically, Pufendorf candidly endorses this proposal as a matter of political prudence and insists that a "people is not sufficiently watching out for itself" if it does not adopt this plan.

[8]For a comprehensive analysis of Pufendorf's political thought that works from the idea that Pufendorf was generally careful not to upset those political actors who were in a position to benefit his career, see Leonard Krieger, *The Politics of Discretion* (Chicago: University of Chicago Press, 1965).

Constitutional architecture, to be sure, offers only a modest relief from the potential dangers of an abusive sovereign. Pufendorf thinks the sovereign abuses its authority when it ignores the fundamental laws adopted to limit its authority or when it violates the natural law. Following the traditional view, Pufendorf is willing to state that there is no obligation to obey a sovereign's command if doing so results in a violation of natural law, and he even permits a right of self-defense against the sovereign in the event the latter threatens one's life (EJU, II,obs.V,17; DJN, VII,8,6). But he does not countenance a general right of rebellion against the sovereign. Only those directly subject to the sovereign's injustice are allowed to defend against this abuse and to flee the state if possible. The people more generally are never justified in rebelling against their sovereign since it is wrong to take back by might the authority that the sovereign has received by the consent of the people and is therefore allowed to exercise by right (DJN, VII,8,6).

In place of a theory of justified rebellion, Pufendorf advances a lecture on the responsibilities of citizenship as a defense against the tendency toward political instability that might result from an unappreciative or uninformed citizenry. He allows citizens to emigrate in the face of oppression, but he also insists that the general public should tolerate rather than oppose an abusive sovereign. Not only would a right of rebellion render pointless the people's contract with the sovereign, since the people could void the contract whenever they wish, but it would also leave the people as the judge of proper or improper sovereign behavior. In Pufendorf's judgment, this is unacceptable because the people are ill-placed and too poorly informed to judge the community good for themselves.

To reinforce this argument, Pufendorf advances a limited theory of political neutrality. He thinks the sovereign is the only one properly situated to judge the true interests of the state free from personal bias; the people themselves are unlikely to distinguish between their own particular interests and the general interests of the community (DJN, VII,8,6). This argument offers appropriate testimony to Pufendorf's own beliefs about the realities of pluralism and the evils of faction in the state. It is this very disparity of interests and ideas that serves as the cause of domestic unrest and necessitates the state in the first place, and regardless of his characterization of the state as a unified moral person, he understands that ideological, theological, and personal interests will continue to divide the body politic. So it is dangerous to worry about sovereign authority in a manner that pits the sovereign against the people, for the people are not easily assimilated into a singular entity. Instead, distinct factions that believe the sovereign is acting against their interests may likely rush to sound the alarm of sovereign abuse, and Pufendorf's refusal to countenance a right of rebellion seems a sober precaution against this potential source of political instability. Once again Pufendorf's political savvy is on display in his theorizing; for he reminds us that the commitment to sovereign authority should be made in sight of the realization that political unrest and social injustice can be catalyzed as easily by an uninformed, unaware, or impassioned public as it can be by the abuse of political authority.

Perhaps then it should not come as a surprise that Pufendorf would insist upon the cultivation of good habits in the citizenry as the surest way to insure a just and stable political system. For civil association is not only a mechanism for insuring

sociality by establishing peace and security; it is also a most effective instrument for teaching the virtues and values capable of sustaining and promoting the spirit of sociality. The task of proper habituation falls to the sovereign. The sovereign must promote religion; establish public schools and see to the general level of education; set a proper example of exemplary behavior for the citizenry; make only clear and simple laws; increase the well-being throughout the state; and encourage industry while guarding against laziness in the citizenry and a tendency toward materialism or consumerism (DJN, VII,9).

Pufendorf was hardly the first theorist to offer the sovereign instruction on the responsibilities of political office, but he is one of the first to entrust the sovereign with the affirmative responsibility both for maintaining a degree of economic and social welfare and for overseeing the social and moral development of the citizenry. This latter responsibility, in particular, is indicative of Pufendorf's general view that human beings are not by nature fit for civil society and can only become so through careful nurturing and cultivation. In his more pessimistic moments he seems to think that most human beings will fail to develop a proper political consciousness and will continuously require the threat of punishment to bend them to political obedience (DJN, VII,1,4). Yet he does not permit this pessimism to stifle his own theoretical convictions that civil association can work and that a state system can breathe a much needed stability and security—and even a modicum of justice—into human life.

The proof of the matter likely lies with the success of the sovereign in encouraging good citizenship, however. For the sovereign can control those who remain bad citizens only with the aid and cooperation of good citizens (DJN, VII,2,5). Yet a lingering doubt surfaces at this point. If humankind is as prone to wickedness as Pufendorf suggests, how is it possible to cultivate good citizens? This can be partially answered by indicating that the human character is not a fixed thing for Pufendorf; it is capable of growth and maturation. While we learn from his anthropology that an unfettered social and economic growth has generated an atmosphere where humankind's wicked inclinations can work toward destructive ends, we also learn from his theory of political legitimacy that it is possible to develop methods for instilling and cultivating in people a sense of responsibility and beneficence. But of course it remains incumbent upon humankind to develop and socialize its own character, and this is the rub that only the exercise of sound reason can match. Yet if sound reason provides the guidance and inspiration Pufendorf requires here, political association becomes the vehicle he thinks necessary for the proper cultivation of the human spirit.

Pufendorf and Political Theory

Pufendorf's political thought seems an ambiguous moment in the narrative of western political ideas. There is, to be sure, ample evidence that he deserves to be recognized as one of the initial architects of modern liberalism. Not only does he insist that man's natural state is governed by a moral law discoverable through reason; he also derives from this standard natural law posture a theory of human

equality premised upon a rudimentary, but not insignificant, theory of individual rights. While Pufendorf's list of natural rights is not as robust as Locke's, it does nevertheless cover the individual right of self-preservation and self-determination so central to the liberal creed (DJN, II,2,3). Moreover, Pufendorf's derivation of his natural rights is both more simple and in certain ways more convincing than Locke's maker's rights thesis. Since natural law does not reveal any natural earthly superiors among humankind, all persons stand equal under natural law, and all persons are responsible for judging and pursuing their own well-being under this law.

But Pufendorf does not press his natural rights thesis beyond a crude ethical individualism. Instead his anthropology situates humankind within the conventions and traditions he concludes are necessary for the human end of sociality. The natural freedom of individuals thus fades into historical myth, and the social roles that have emerged to give exact expression to sociality determine and obligate us as social beings. With the notable exception of a citizen's right to preserve himself against a life-threatening attack from his sovereign, a person's social role as citizen, as family-father or wife, and/or as master or slave fixes one's social being and cements one's social commitments. The rich individualism of the liberal tradition that seeks to unmask as arbitrary and morally questionable the social conventions that configure social life is thus completely missing in Pufendorf's thought. Nor is its absence mitigated significantly by Pufendorf's generally unbelievable effort to reconcile social being with natural freedom by insisting that social roles must necessarily be understood as the result of voluntary expressions of (tacit) consent authored and offered by naturally free persons.

There are also methodological reasons to distinguish Pufendorf from the liberal tradition. Limited though his ethical individualism is, there is more to it than there is to his methodological individualism. He does of course rely upon some basic biological and psychological characteristics of human beings. But these are intended primarily to illustrate the degree to which humans are tied to one another and in need of human companionship and the governance of law. By comparing humans with brute animals, he details human frailty and dependency on others. And by exploring the psychological propensity toward evil, he displays the importance of law and the cultivation of goodness through education for a sociable life. While humans in a natural state are not the sorry creatures Hobbes imagined, they are also neither particularly noteworthy nor noble. Without the society of others they simply cannot endure, and if they are not careful, even in the company of others they might behave in a fashion that jeopardizes sociality. But if humans are not naturally noble, if they do not naturally possess a particularly strong sense of justice or empathy, they can at least ennoble themselves by dedicating themselves to the leadership of sound reason. In many respects then, Pufendorf is the antithesis of Rousseau, who also emphasized human sociality but who was perhaps more pessimistic than Pufendorf on the ability of education and law to check the corrosive elements of the human psyche.

Ambiguity aside, there is much to dislike in Pufendorf's thought. His anthropology—his science of man's social evolution—is poor social history. In spite of his awareness that states emerge mainly from the violence of the conqueror and

the horrors of war, he insists on maintaining the fiction that social and political conventions are the product of voluntary consent and mutual agreement. Yet he can perhaps be forgiven for bad social history; after all, this detracts only from his *science* of politics and not from his moral characterization of human sociality. But of greater concern is the fact that his own use of social utility seems inconsistent with his ethical individualism. There are clear limitations upon the ability to invoke arguments appealing to the collective good built into any theory that takes individual rights seriously, and Pufendorf's argument is no exception. No matter how extensively some social conventions might aid human sociality, they are surely objectionable if those subject to them do not accept them voluntarily. Pufendorf wants finally to avoid the need for actual consent by claiming that enduring social conventions continue to commend themselves to sound reason by facilitating sociality. But the argument is unduly conservative; even if a given social convention really was instrumental for the promotion of sociality at some historical moment, it is not clear that it remains so, or that it could not—and should not—be replaced by another convention that might serve sociality just as well and more closely approximate the social manifestation of the ideal of equality. In effect, he makes no effort to reconcile his own moral egalitarianism with his natural law commitment to sociality, and the resultant tension between the two erodes the success of his social theory.

Poor social history and bad social theory are probably reason enough to account for the withering of Pufendorf's intellectual influence on the development of political ideas. If they are not enough, the conservatism of his thought must also be acknowledged as a contributing factor. In his day of course he was a radical thinker; his natural law theory set a new standard that helped wash away the vestiges of traditionalism and orthodoxy. But he was not radical enough; his ethical individualism was too underdeveloped and his theory of political legitimacy too steeped in traditionalism and too wedded to the need for political stability to withstand the scientifically and politically radical days of the Enlightenment that followed him.

Yet it is a mistake to be unduly negative here; for there is also much in Pufendorf—in the often challenging ambiguity of his thought—that contemporary students of politics will find both likeable and edifying. Just as it did in his own day, Pufendorf's thought continues to offer a possible source of relief for those who think that much of the theorizing about politics that remains in the shadow of Hobbes is premised upon an excessive or unnecessarily abstract individualism. The remedy Pufendorf offers, however, does not involve resorting to a reworked Aristotelianism or a reconstituted communitarianism. His effort to reconcile his ethical individualism with his anthropology is itself an attempt to build a theory of politics that gives proper weight to the integrity of the individual within the larger moral context of human sociality.

Pufendorf's egalitarianism is central to his individualism. Although some persons deserve greater esteem than others by virtue of the lives they have led, there are no natural superiors among humankind (DJN, II,2,3). Yet this egalitarianism also informs his "socialism." As social beings, the well-being of each is a part of—or perhaps more precisely a product of—social well-being. Therefore, we are