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978-0-521-35980-1 - Samuel Pufendorf: On the Duty of Man and Citizen According to Natural Law

Edited by James Tully

Excerpt

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Samuel Pufendorf

**ON THE DUTY OF MAN AND CITIZEN
ACCORDING TO NATURAL LAW**

IN TWO BOOKS

[LUND (ADAM JUNGHANS) 1673]

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Author's dedication

To the most illustrious and exalted hero, Lord Gustavus Otto Steenbock, Count in Bogesund, Free Baron in Chronbech and Ohresteen, etc., Chief Admiral of the Kingdom of Sweden, and Chancellor of the Caroline Academy of the Goths, etc.

Most illustrious and exalted Count, most gracious Lord,

Whether it would be quite proper to claim the auspices of so illustrious a name for so slight a work as this has been the occasion of serious scruple and anxious reflection. For I was (on the one hand) very much ashamed of the modesty of a volume which affords no opportunity for wit or brilliance, since it comprises merely the first rudiments of moral philosophy, almost wholly excerpted from our longer work. Though it may perhaps be of use to those who are taking their first steps in this subject, yet it did not appear to be consonant either with your eminence or with my obligation. On the other hand, devoted as I am to your most illustrious Excellency, I was led by your private no less than by your public services to believe that I might rightly fear to be criticized for ingratitude if I neglected any opportunity, however slight it might be, at least to declare the extent of my obligation to you.

I am not speaking of those past services by which you have rendered your country in the highest degree obliged to you for your magnificent accomplishments at home and abroad, and have at the same time long since dedicated your name to immortal glory. To recount these is the task of history, which as it labours over the glorious deeds of your nation, the successful progress of her arms

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through so much of the world, finds you ever foremost in so many great actions. History no less admires your proficiency in the arts of peace after you retired from military service, your appointment first to the administration of a great province and then to the defence and government of the whole kingdom. My duty, rather, is to commemorate all that has been done by your illustrious Excellency for this new academy in which, at the invitation of his Majesty the King, it has been granted to me to find a place. She cannot sufficiently proclaim as they deserve the wisdom and benevolence of your protection and presidency of her; every day she finds new instances of your tireless efforts, amid the press of public business, to benefit and adorn her.

As for the benefits which your most illustrious Excellency has conferred specifically on me, how can I give them the honour they deserve? For others the sum of their wishes is to become known by men of high rank and gain their approval. But your patronage of me has been so liberally, so graciously, bestowed that I have more than once experienced your benevolent influence both in promoting my interest and in turning aside the assaults of those who wish me ill. Though it is far beyond the limit of my fortune in any way to make repayment, yet surely the least I am obliged to do is to show evidence of a humbly respectful heart and make frank acknowledgement of so many benefits received. The kindness of great men has this quality too, that it gladly allows itself to be satisfied with the evidence of a grateful heart. And it is the way of the noble and magnanimous to enhance by their acceptance the value of the duty done even by a slight show of reverence. And therefore the goodness of your most illustrious Excellency bids me hope that I shall not be thought to have fallen short of your eminence, if I use so slender a work as the occasion of giving public expression to my great devotion towards you. It would be vain to expect from me any greater work, more splendid to resist the passage of time. Men's wits are monstrously dulled to find that, as they labour to extricate themselves from the common herd, spite and ignorance gnash their teeth at them and allow no scope for rest. Yet my mind will bloom with renewed vigour and cast off its mounting weariness if I learn that your illustrious Excellency has deigned to accept this my act of homage with favour, and if at the same time you bid me rest assured of your favour and your protection for the future.

So may the great and good God preserve your most illustrious

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On the duty of man and citizen

Excellency to wax and flourish through many years, to the glory and profit of your country, of your most noble family and of our new regime.

To your most illustrious Excellency,
Your devoted,
Samuel Pufendorf

Lund
X Kal. Feb. A.
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Author's preface

To the benevolent reader – greetings.

It would seem superfluous, if the practice of so many learned men had not made it almost mandatory, to write a preface explaining the purpose of this work. It is immediately clear that I have done no more than expound to beginners the principal topics of natural law in a short and, I hope, lucid compendium. I would not want students to be put off at the beginning by a massive accumulation of difficult questions, as would happen if they were to set out on the wide expanses of this subject without a knowledge of what one might call the elements. I also believe it to be in the public interest to steep their minds in a moral doctrine whose usefulness in civil life is accepted as obvious. In any other case I would naturally take it to be too trivial a task to reduce an extensive work to the form of a compendium, particularly a work of my own; but I think that in this case no sensible person will blame me for spending so much labour on a task which is uniquely useful to young people, particularly as I undertook it at the behest of my superiors. One's obligation to the young is such that no work undertaken for their benefit should be thought to be below anyone's dignity even if it gives no opportunity for brilliant or profound thought. Besides, no one with even a grain of sense will deny that such basic principles are better suited to the universal discipline of law than are the elements of any particular system of civil law.

So much might have seemed sufficient, but certain people have advised me that it would be pertinent to make some remarks directed towards understanding the character of natural law in general and towards a careful delineation of its boundaries. I am the more happy

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to do this as I may in this way remove the excuse for men of misplaced subtlety to apply their feverish criticism to the discipline of natural law. It is quite distinct from their province; there is a line of demarcation between them.

I It is evident that there are three sources of man's knowledge of his duty, of what he is to do in this life because it is right [*honestum*] and of what he is to omit because it is wrong [*turpe*]: the light of reason, the civil laws and the particular revelation of the Divinity. From the first flow the most common duties of a man, particularly those which render him capable of society [*sociabilis*] with other men; from the second flow the duties of a man as a citizen living in a particular and definite state [*civitas*]; from the third, the duties of a Christian.

Hence there are three distinct disciplines. The first is the discipline of natural law, which is common to all nations; the second is the discipline of the civil law of individual states, which has, or may have, as many forms as there are states into which the human race is divided; the third discipline is called moral theology, and is distinct from the part of theology which explains the articles of our faith.

II Each of these disciplines has its own method of proving its dogmas, corresponding to its principle. In natural law a thing is affirmed as to be done because it is inferred by right reason to be essential to sociality [*socialitas*] among men. The ultimate foundation of the precepts of civil law is that the legislator has imposed them. The final reference point of the moral theologian is that God has so commanded in the Holy Scriptures.

III The discipline of civil law presupposes natural law as the more general discipline. However if there is anything in civil law on which natural law is silent, it should not be thought for that reason that the latter contradicts the former. Similarly, if anything is taught in moral theology on the basis of divine revelation beyond the scope of our reason and therefore unknown to natural law, it would be very ignorant to set these disciplines against each other or to imagine any contradiction between them. And vice versa any positions which the discipline of natural law adopts as a result of an investigation based on reason, are not on that account in any way opposed to the more explicit teaching of the Holy Scriptures on the same subject; it is merely that they are formulated by a process of abstraction [*abstrahendo*]. For example, in the discipline of natural law, we abstract from knowledge drawn from Holy Scripture and form a conception of the

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condition of the first man so far as reasoning alone can achieve it, however he may have been put into the world. To set that in opposition to what the Divine Scriptures teach about that condition is the very essence of black malignity and is pure malice.¹

It is in fact easy to show a harmonious relation between civil law and natural law but it seems to be a more arduous task to fix the boundaries between natural law and moral theology and to determine in what parts particularly they most differ. I will give my opinion of this in a few words. I do not of course speak with papal authority as if I had the privilege of being guaranteed free of error, nor as if I were inspired on the basis of dreams sent from God or by an irrational instinct relying on some extraordinary illumination. I speak simply as one whose ambition it is to adorn, as his modest talents allow, the Sparta which is allotted to him. I am prepared to welcome suggestions for improvement from intelligent and learned men, and am ready to review the positions I have taken, but by the same token I have no time at all for the critics who imitate Midas and rashly jump to conclusions about things that are not their business, or for those like the tribe of Ardeliones whose character Phaedrus hits off so wittily: 'running around in circles', as he puts it, 'busy in idleness, sweating for nothing, always doing and never done, a torment to themselves and a great nuisance to everybody else'.²

iv 1. The first difference, then, which distinguishes those disciplines from each other results from the different sources from which they draw their dogmas. We have already touched on this. It follows that if there is anything which we are commanded to do or not to do by the Holy Scriptures, of which reason by itself cannot see the necessity, it is beyond the scope of natural law and properly belongs to moral theology.

v 2. Besides, in theology law is seen as having a divine promise attached to it and a certain kind of covenant between God and men. Natural law abstracts from this conception, since it derives from a special revelation from God which reason alone cannot find out.

vi 3. But by far the greatest difference is that the scope of the discipline of natural law is confined within the orbit of this life, and so it forms man on the assumption that he is to lead this life in society with others [*hanc vitam cum aliis sociabilem exigere debeat*]. Moral theology,

¹ Cf. Horace, *Satires*, 1.4.100–1. ² Phaedrus, *Fables*, 2.5.1ff.

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however, forms a Christian man, who, beyond his duty to pass this life in goodness, has an expectation of reward for piety in the life to come and who therefore has his citizenship [*politeuma*] in the heavens while here he lives merely as a pilgrim or stranger.³

The human heart does indeed yearn for immortality with a burning passion and violently rejects its own destruction, and hence many nations of the gentiles have seen the rise of a belief that the soul survives separation from the body, and that then it will be good for good men and bad for evil men; however a belief on these matters in which the human mind can fully and firmly acquiesce is drawn from the word of God alone. Hence, too, the decrees of natural law are fitted only to the human court because human jurisdiction does not go beyond this life. They are indeed sometimes applied to the court of God, but wrongly, since that is very much the domain of theology.

vii 4. From this it also follows that as human jurisdiction is concerned only with a man's external actions and does not penetrate to what is hidden in the heart and which gives no external effect or sign, and consequently takes no account of it, natural law too is largely concerned with forming men's external actions. For moral theology, however, it is not enough to mould men's external conduct to propriety. Its chief task is to conform the mind and its internal motions to the will of God; and it condemns actions which seem externally to be correct but which proceed from an impure heart. This also seems to be the reason why there is less discussion in Holy Scripture about actions which are judged and penalized in the human court than about those which in Seneca's words are 'beyond the scope of the statutes'.⁴ This is very clear to those who have closely studied the precepts and virtues taught by Scripture. However, moral theology does most effectively encourage a good quality of civil life since the actual Christian virtues, too, do as much as anything to dispose men's minds to sociality. And, vice versa, if you see anyone engaged in sedition and disrupting civil life, you may safely infer that the Christian religion may be on his lips but has never penetrated to his heart.

viii It is on this basis that the true lines of distinction between natural law as we teach it and moral theology become, in my opinion, per-

³ Cf. the Epistle of Paul to the Philippians, 3:20.

⁴ Seneca, *De ira*, 2.28.2.

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fectly clear. And it also becomes clear that natural law is not at all in conflict with the dogmas of true theology; it simply abstracts from certain theological dogmas which cannot be investigated by reason alone.

Hence it is also obvious that man must now be regarded by the discipline of natural law as one whose nature has been corrupted and thus as an animal seething with evil desires. For although no one is so imperceptive as not to be aware of unruly and deviant passions in himself, still without the illumination of Holy Scripture, he could not know for certain that this rebellion of the passions came by fault of the first man. Consequently, since natural law does not extend where reason cannot reach, it would be inappropriate to try to deduce natural law from the uncorrupted nature of man. This is all the more the case since many commandments⁵ of the Decalogue itself, being couched in negative terms, obviously assume that man's nature is corrupt. So, for example, the first commandment certainly seems to assume that man is prone to believe in idolatry and polytheism. Suppose there were a man endowed with a nature still uncorrupted whose knowledge of God was transparent, and who consequently enjoyed His familiar (so to speak) revelation. I do not see how it could ever come into his mind to make for himself something which he would want to worship with or instead of the true God, or to believe there was divinity in something he himself had made. So this man would have had no need of the negative injunction not to worship strange gods. The simple and affirmative precept would have been enough for him: 'thou shalt love, honour and worship God whom you know as your Creator and the Creator of the universe around you'. The same holds for the second commandment. For why would a man be forbidden by a negative precept to 'blaspheme God', if he were clearly aware of His majesty and loving kindness, not tossed about by evil desires and content to accept the position God had given him? How could he be so insane? He would only need to be reminded by an affirmative precept to give glory to the name of God. It is different, however, with the third and fourth commandments, which are affirmative, and do not necessarily presuppose a corrupt nature, and are therefore applicable in both states. But with the rest of the commandments, which have regard to one's neighbour, the thing is once again

⁵ *Praecepta*, a word used also of the 'precepts' of natural law. For the following passage see Exodus, 20:1-17.

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quite obvious. For all that you needed to tell man as he was created in the beginning by God was to love his neighbour – he was inclined to do so in any case by nature. But how could one have given him the precept not to kill, when death, which came into the world through sin, had not yet fallen upon man?⁶ Now, however, we have a powerful need of the negative precept; for instead of love, so much hatred stalks about the world, that there are even great numbers of people who from sheer envy or a passion to get possession of someone else's fortune do not hesitate to ruin others who are not only innocent but also their friends and benefactors; such people are not even ashamed to exploit that phrase of pious scruple 'if God will' to promote the savage and unconsidered impulses of their turbulent spirits. And what need was there expressly to forbid adultery among spouses who embraced each other with passionate, unfeigned love? Or what was the point of forbidding thefts, when there was as yet neither greed nor poverty, and no one regarded anything as his own which could help another? Or why was it necessary to prohibit false testimony when men did not yet exist willing to win fame and glory for themselves by staining others with crude and disgusting calumnies? It would not be inappropriate to apply the words of Tacitus: 'The earliest men, when there was as yet no evil lust, lived their lives without sin and crime, and therefore without punishment and sanctions; and as they desired nothing contrary to good morals, they were forbidden nothing through fear.'⁷

A proper understanding of this may open the way to solving the following problem: would the law have been different in the state of uncorrupted nature, or would it have been the same? The short answer is that the main principles of the law are the same in both states, but many particular precepts are different because of the difference in the human condition. Or rather, the same sum of the law may be laid out in different (but not contradictory) precepts according to the different conditions in which those who must obey it live.

Our Saviour reduced the sum of the law to two principles: love God and love your neighbour.⁸ The whole natural law may be derived from these principles in man's corrupt as well as in his uncorrupt state (with the proviso that in his uncorrupt state there would seem to have been little if any distinction between natural law and moral theology).

⁶ Cf. the Epistle of Paul to the Romans, 5:12.⁷ Tacitus, *Annals*, 3.26.⁸ Cf. Matthew, 22:37–9.