



Max Weber Lecture Series

MWP – LS 2010/06
MAX WEBER PROGRAMME

NATURAL LAW AND PERSONHOOD:
SAMUEL PUFENDORF ON SOCIAL EXPLANATION

Knud Haakonssen

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
MAX WEBER PROGRAMME

*Natural Law and Personhood:
Samuel Pufendorf on Social Explanation*

KNUD HAAKONSSEN

MAX WEBER LECTURE No. 2010/06

This text may be downloaded for personal research purposes only. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper or other series, the year, and the publisher.

The author(s)/editor(s) should inform the Max Weber Programme of the EUI if the paper is to be published elsewhere, and should also assume responsibility for any consequent obligation(s).

ISSN 1830-7736

© 2010 Knud Haakonssen

Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
Hwww.eui.eu
Hcadmus.eui.eu

Abstract

Today the idea of natural law is generally considered a subject in ethics, politics and jurisprudence and concerned with the status of basic norms. During the last one and a half centuries natural law has come to be seen as particularly central to Catholic theology's contributions to these fields. These modern concerns have tended to obscure some important features of natural law thinking in the preceding period from the sixteenth to the early nineteenth century. This is the subject of the present lecture.

Early-modern natural law was as inter-disciplinary as the Max-Weber-Lecture programme and in fact became a major seed-bed for early forms of social science. This development was premised upon the articulation of a concept of social phenomena, a sphere that had some sort of identity separate from the individual persons 'manning' it. The means to this end were the notion of contracts as vehicles for the exchange of rights and the idea that contracts are linguistic performances. But were such transactions not simply reducible to human nature? And were the status of rights and the obligation of contracts not dependent upon God's natural law?

It will be argued that in their attempt to deal with religious metaphysics in politics, some of the natural lawyers, notably Hobbes and Pufendorf, began to articulate ideas of social phenomena per se. But at the same time they encountered the problem of how to relate the social to human nature – to the psychological, as we would say. And to the extent that they reached some clarity about a social sphere, they raised the issue of its historical character and, hence, that of the forms of explanation to which it was open.

Keywords

Natural law, Hobbes, Pufendorf

The lecture was delivered on 17 February 2010.

*Knud Haakonssen
Professor of Intellectual History
University of Sussex*

Contractualist explanations of social relations vary so greatly according to context and purpose that it is of dubious value to talk about ‘the social contract tradition’ in this as in other connections.¹ The theory which has often been seen as the defining exemplar of such a tradition, that of Samuel Pufendorf, is so strikingly singular that it instead serves to undermine the whole idea. Pufendorf’s theory can in fact only be understood in its historical specificity. What we find in this way is a radically reductionist theory of personhood or agency which, taken in the abstract, may seem disconcertingly modern, and which in a sense points far beyond Pufendorf, but which in fact was required by his philosophical and theological commitments. I want to suggest that the voluntarist view of humanity’s situation in the world to which Pufendorf was committed for theological reasons led him into a conventionalist view of morals so extreme that he had to undermine not only religious but also naturalistic notions of human agency that otherwise were congenial to him. In the process, he clarified the role in moral argument of what in traditional moral theory was called ‘natural goods’, as distinct from ‘moral goods’.² The result was a new perspective on social phenomena.

Pufendorf built his theory of social relations on an apparently arcane conceptual apparatus that was derived from late scholastic thought but had been adapted to Cartesian philosophy by his Jena teacher Erhard Weigel, who also taught Pufendorf’s great adversary Leibniz.³ On this view, the world is made up of two kinds of objects, *entia physica* and *entia moralia*, physical and moral entities. Physical entities are everything that exists in time and space and is subject to physical causation, while ‘moral’ entities are everything that directly or indirectly depends upon acts of will by some agent. The word ‘moral’ is thus used in the old and very wide sense that includes everything that we would call social phenomena. Moral entities presuppose the existence of natural phenomena, upon which they in various ways are superimposed. Moral entities are therefore not, properly speaking, entities at all but, in one way or another, an addition to or modification of physical entities. Moral entities are, says Pufendorf, imposed upon the physical world which in itself is a-moral. Or to put it differently, there are no inherent values in nature. It is conceptually cogent that God could have created the physical world alone, but as a matter of fact he did impose moral entities upon nature. At least, he imposed the most basic moral entity, namely, the law of nature, as a consequence of which humanity itself imposes a plethora of moral entities, namely, all the moral and social rules and institutions by which we live.⁴ Pufendorf takes this voluntarist proposition very strictly, and the following shows just how strictly. There really are no moral entities – no ‘values’ – in the world that have not been introduced by human acts of will, the ultimate divine act of will being outside of human (rational) ken and hence outside of natural law. This reductionist drive runs right through the large text, affecting all aspects of the argument, a good example being the discussion of the value of persons and the price of things both in

¹ See the deconstruction of the idea of a unitary contract tradition in Harro Höpfl and Martyn P. Thompson, ‘The history of contract as a motif in political thought’, *The American Historical Review* 84 (1979): 919-944.

² My general line of interpretation is close to that of Ian Hunter, *Rival Enlightenments. Civil and Metaphysical Philosophy in Early Modern Germany*, Cambridge 2001, Chapter 4, to which I am greatly indebted.

³ See Erhard Weigel, *Arithmetische Beschreibung der Moral-Weißheit von Personen und Sachen* (Jena 1674); cf. Wolfgang Röd, ‘Erhard Weigels Lehre von den entia moralis’, *Archiv für Geschichte der Philosophie* 51 (1969): 58-84, same, ‘Erhard Weigels Metaphysik der Gesellschaft und des Staates’, *Studia leibnitiana* 3 (1971): 5-28. For an interpretation of Pufendorf’s use of the concept of entia moralia that is profoundly different from the one offered here, see Theo Kobusch, *Die Entdeckung der Person. Metaphysik der Freiheit und modernes Menschenbild* (Darmstadt 1997), pp. 67-100; same, ‘Pufendorfs Lehre vom moralischen Sein’, in *Samuel Pufendorf und die europäische Frühaufklärung*, eds., Fiammetta Palladini and Gerald Hartung (Berlin 1996), pp. 63-73.

⁴ Pufendorf, *De jure naturae et gentium libri octo* (1672; 2nd ed. 1684), Pufendorf, *Gesammelte Werke*, ed. Wilhelm Schmidt-Biggemann, Berlin 1996 - , vol. 4, Berlin 1998, ed. Frank Böhling, Book I, Chapter 1, sections 2-6 (subsequent references in the form I.1.2-6). Unless otherwise indicated, translations are from *The Law of Nature and Nations*, 5th ed. London 1739, ed. Jean Barbeyrac, trans. Basil Kennet.

nature and in society in Chapter Four of the final book of *The Law of Nature and Nations*, as we will see. However, first we have to raise the fundamental question, how can acts of will directly or indirectly introduce ‘value’ into the natural world? Here Pufendorf transposes the distinction between natural and moral entities into the traditional one between natural goods and evils and moral goods and evils, and in this form he uses the scholastic terminology to some radical purpose. Moral goods and evils are, as we have seen, imposed upon the natural world by acts of will, but the activity of willing is a matter of choosing between perceived goods, ‘originally’ (i.e., when considered pre- or a-morally) those things that attract some aspect of humanity’s natural desires.⁵ Since humanity uniquely has the capacity for a plurality of such goods, its natural condition involves choice-making, and this is one of the sources of the need for guidance, especially in relation to the choices of others.⁶ It is in this situation that the will needs to be guided by reason in the interpersonal sense of reasoning as a matter of giving reasons for what the person wills. Humanity is in a condition where it has to live by reasoning that at some basic level has direct or indirect reference to things and events in the natural world - natural goods to be sought or natural evils to be avoided. Thus life, food and sex will commonly be considered natural goods and their loss as natural evils, as evidenced by our passions and desires, and it is with reference to such evidence that we will have to seek ways of maintaining duties and rights in these aspects of life, i.e., have to impose moral entities upon our natural lives.

There is no general theoretical connection between natural and moral goods; it is not a matter of logical inference from one to the other; and so there is no ‘naturalistic fallacy’, which is instead what Pufendorf accuses both the Aristotelians and Grotius of. The relationship between natural and moral goods is, rather, a matter of motivation and the giving of reasons for willing this or that to be considered morally good or evil, right or wrong, obligatory or free, etc. The moral goodness of behaviour does not consist in or derive from its natural goodness, its ‘utility’, but human agents make behaviour morally good when they act in accordance with a rule – ultimately the law of nature – and their motivating reason for doing so is, directly or indirectly, a concern for this or that natural good.⁷ In other words, the connection has to be created or introduced ad hoc by human persons as they make their particular decisions in life.

This is the core of Pufendorf’s voluntarism, and it determines the method he is applying. He is offering what he considers a series of empirical observations of the natural condition of humanity, the condition in which the species considered pre- or a-morally has to make its choices for living. Such observations are elaborated and systematised into the various disciplines, and in line with so many of his contemporaries and successors in the Enlightenment, he thought that empirical natural religion, supported by the sciences, showed that the world, including humanity, was dependent upon some sort of creator. However, in keeping with his fundamental Lutheran beliefs, he considered humanity to be radically cut off from any direct access to the divine intentions; in so far as these intentions could be accessed at all, it was not through the clergy’s special theological insight, as asserted by his orthodox co-religionists, but by means of empirical observations of the given world. This procedure disclosed four general characteristics of human nature which were either pointless or patently tended to lead to humanity’s self-destruction, if the species was left alone as nothing but a part of the natural creation on a par with animals. And since it would be nonsensical to assume this to be the creator’s intention, we must draw the conclusion that regulation is required. The regulation consists in the basic law of nature, which prescribes that we adopt a sociable attitude and practice, but the only way in which we can

⁵ For Pufendorf’s general theory of will, see *Law of Nature*, I.4, and *De officio hominis et civis* (1673), Pufendorf, *Gesammelte Werke*, vol. 2, Berlin 1997, ed. Gerald Hartung, Book I, Chapter 1, section 9-17 (subsequent references in the form I.1.9-17). Unless otherwise indicated, all translations are from *The Whole Duty of Man, According to the Law of Nature*, trans. Andrew Tooke (5th ed. London 1735), ed. Ian Hunter and David Saunders, Indianapolis, IN 2003.

⁶ Cf. Horst Denzer, *Moralphilosophie und Naturrecht bei Samuel Pufendorf. Eine geistes- und wissenschaftliche Untersuchung zur Geburt des Naturrechts aus der Praktischen Philosophie*, Munich, 1972, pp. 77-78.

⁷ Cf. *Law of Nature*, I.2.6: ‘all human Actions falling under the Guidance of the Law of Nature, may be finally resolv’d into that natural Strength and Force which they bear in advancing the Profit or the Harm of Men, considerd either in a single or in an united State; yet it does not follow ... that whatever Thing is endowed with a natural Power of doing good or harm ... is therefore the Object of that Law.’ Translation slightly altered.

make this prescription specific enough to guide our actual behaviour is by reference to the de facto situation in which we happen to find ourselves, i.e., the natural goods which we and those around us pursue. This is the motivation for the construction of the necessary moral entities that make up social life. There is in this argument no intended invocation of transcendent factors, for about the creator we can know only what the observable world discloses to us. In so far as the divinity is beyond our world, he, or she, is a kind of limiting figure, a place-holder in the argument.

Radical though it is, this argument may appear to leave one traditional figure in place as a key factor in the argument, namely, that of the agent whose acts of will are supposed to introduce moral value by reference to natural goods when he or she is obeying the basic law of nature. In this connection Pufendorf has often been taken to be a sociability theorist in the sense that he, like Grotius, saw sociability as a natural endowment of humanity that motivated people to live socially with each other. This line of interpretation has been effectively set aside by Fiammetta Palladini, who has shown how sociability, rather than a feature of human nature, is a prescription by the law of nature, and one that is necessary exactly because whatever sociable inclinations individuals may happen to have from the hand of nature are not only defeasible but, commonly, defeated.⁸

Nevertheless, to the modern philosophical mind Pufendorf's scheme may seem incomprehensible unless the human agent is issued with some sort of moral power that gives it moral standing to be obligated by the law of nature and to undertake contractual moral relations with other agents. To take the issue of obligation to the law of nature first, all moral powers in humanity arise from natural law.⁹ When an action is done in voluntary compliance with the law of nature (whatever other motives it may have), then it becomes a moral action that is imputed to an agent, as distinct from a natural event caused by a human organism. It is this voluntary human activity in accordance with natural law that creates the sphere of moral entities by means of which we try to guide and coordinate our behaviour sufficiently for social living to be possible. More particularly, it is this reference to natural law that endows persons with the moral powers of undertaking duties and demanding rights as the core of sociability. Accordingly, the question of our obligation to natural law seems crucial for Pufendorf's theory: Can we account for such obligation on the basis of his supposedly strict voluntarism, or does he in fact smuggle a pre-voluntary element of morals into the natural world of human beings, namely, the moral power of God and a moral power on the part of humanity to recognize this divine attribute?

Pufendorf is clearly saying that we are under such an obligation to natural law and that this is a matter of two concurring factors in the divinity, namely a 'sufficient Strength to denounce some Evil against us upon Non-compliance', and 'just Reason to require the retrenching of our Free-Wills by his own Pleasure.'¹⁰ In order to understand Pufendorf's argument, we have to remember the starting point for his natural law theory, namely, that such a theory has to stay within the bounds of empirically informed reason. This means that we appreciate God's 'Strength' by contemplation of and extrapolation from the world we observe as His creation, and this quite suffices to imbue us with the expectation that he has power 'sufficient'. As for the 'just Reason' in question, it is a matter of appreciating the basic point of the law of nature, namely, its prescription of sociability. When we do so, we take God's point of view in creating the world such that the prescription of natural law is a rational requirement – to the extent that we can do so, and that is of course simply saying that all the good (natural) reasons for obeying the law of nature that experience can give us suffice to motivate us, i.e., shape our will; by making those reasons our own, we are acting freely obeying the law of nature. But of course a significant factor in this motivation is awareness of God's actual power, whose reality we perceived through its observable effects, for only that makes the following of his intentions a safe bet for how to live with other people.¹¹

⁸ See Fiammetta Palladini, 'Pufendorf disciple of Hobbes: The nature of man and the state of nature: the doctrine of *socialitas*', *History of European Ideas* 34 (2008): 26-60, esp. 27-31.

⁹ On obligation, see above all Ian Hunter, *Rival Enlightenments*, pp. 154-63.

¹⁰ *Law of Nature* I.6.9.

¹¹ It should be noted that Pufendorf has not been served well in this or any many other crucial matters by his English translators. Both the 18th-century translation (see note 3 above) and the more recent one have him ascribe a 'right' to God

In sum, Pufendorf certainly has a theory of humanity's obligation to the law of nature and to its author, but it is not a theory that presupposes any special moral powers in either party, it is a theory of how free wills are being determined by reasons that so to speak come naturally to agents in the world as they experience it. The rest of our moral powers are derivative from the basic obligation to the law of nature. They consist in nothing but the combined ability to act freely on our own motives and to see the reasons behind prescribed law and other moral entities that arise from humanity being obliged to the law of nature. It is this that enables us to impose obligations on each other, including contractual obligations. These follow similar lines to those that apply to the way we are obliged to God.

However, this is not quite the end of the question about the depth and cogency of Pufendorf's declared intention of explaining all moral phenomena through acts of will. The sociability that is prescribed by the law of nature is in practice realised by those who are obliged by the law to enter into contractual relationships of a wide variety – perfect, imperfect, explicit, tacit, quasi. The question may therefore be raised, what kind of moral standing must such individuals have in the state of nature in order for them to be able to undertake any kind of moral relations with each other?

His basic voluntarism makes it impossible for him to ascribe innate rights to the natural human being *per se*.¹² As he says in the general analysis of the concept of *ius*, this is an acquired quality.¹³ Like all duty, rights must derive from law, ultimately from the law of nature, and those that do so derive are called 'natural'. The state of nature is, by definition, a state of liberty in the negative sense of being without established authority by some human beings over others; by itself, this is thus not an ascription to natural human agents of any moral quality. The human person is also free in the sense of having a free will, but by itself this is hardly a moral description of the person either. The free will only becomes morally relevant by the fact that the law of nature is prescribed for humanity and thus becomes the potentially dominant motive determining the will. Pufendorf does ascribe natural equality to the human species, but this consists in nothing more than the circumstance that all are equally obliged by the law of nature. The actual content of such obligation – what specific duties any person has – entirely depends upon the circumstances in which the individual has to fulfil the edict of living socially. This may obviously mean very unequal duties among people, but that is another matter.

There is, however, one aspect of Pufendorf's account of the moral condition of humanity in the bare state of nature that would appear to ascribe a significant moral feature to natural man, namely, that we are issued with an equal human dignity. It is this feature of Pufendorf's text that has given rise to firm suggestions that he presented a substantial version of Christian-Stoic ideas of human dignity as the foundation for natural law, and that he did so in a manner that was a clear forerunner of Kant's argument.¹⁴ Others have suggested that it is the inherent dignity that makes us equal.¹⁵ One of the central texts for these ideas is this:

(Contd.) _____

as creator of obligatory moral entities and the latter version talks of the divine sanctions as 'moral good or evil'. See *Law of Nature* I.1.4 and 18; and the translation by C. H. and W. A. Oldfather in vol. 2 of the edition in *Carnegie Classics of International Law*, Oxford 1934, pp. 6 and 18. None of this has any sanction in the Latin text, where God is simply said as creator to be able to guide the will by making men susceptible to what is 'commodum vel incommodum', i.e., convenient, advantageous or the opposite, and to be able in addition to circumscribe the human will by the threat of bad things ('malo'). Those are things that, in Pufendorf's eyes, are common experience to mankind.

¹² In this paragraph I summarise points of some disagreement with the outstanding analyses of Pufendorf by Kari Saastamoinen, 'Liberty and natural rights in Pufendorf's natural law theory', in *Transformations in Medieval and Early Modern Rights Discourse*, eds. V. Mäkinen and P. Korkman (Dordrecht 2006), pp. 225-56; and 'Pufendorf on natural equality, human dignity, and self-esteem', *Journal of the History of Ideas* 71 (2010): 39-62. This is a discussion to be pursued elsewhere.

¹³ *Law of Nature* I.1.20.

¹⁴ See Hans Welzel, *Die Naturrechtslehre Samuel Pufendorfs. Ein Beitrag zur Ideengeschichte des 17. und 18. Jahrhunderts* (Berlin 1958), pp. 47-49. In my rejection of the human-dignity interpretations of Welzel and others (see the next note) I am in agreement with Saastamoinen, but I go about the criticism in a different manner and use it towards an alternative interpretation with which I expect that he would disagree.

The Dignity [*dignitas*] of Man, and his Excellency above all the other Parts of the animal World, made it requisite that his Actions should be squar'd by some Rule; without which no Order, no Decorum, no Beauty can be conceiv'd. Hence it is his greatest Honour [*dignatio*] that he has obtain'd an immortal Soul, endu'd with the Light of Understanding, with the Faculties of judging and of choosing Things, and with an admirable Capacity for Arts and Knowledge. ... Of all these Powers and Abilities there would be very little Use, or rather none at all, in a lawless, a brutal, and an unsociable Life. Now the more Gifts God has bestowed on Man, and the greater Inlargements he has granted to his Wit and Mind, the more unseemly would it be that these noble Endowments should rust for want of Culture and Regulation ... (*Law of Nature*, II.1.v, p. 95).

It would seem that all the ingredients are here for a concept of dignity as a basic feature of human nature conceived in traditional manner in its relationship to the divinity. However, on further reading this image shifts. For it turns out that this *dignitas* is only one of the four features of humanity that, according to Pufendorf, make it evident that the species alone of all the animate creation cannot live without the regulation of law. The other three features that we human beings naturally exhibit are *pravitas*, corruption, *varietas ingeniorum*, diversity of temper and disposition, and *imbecilitas ac naturalis incultus*, weakness and natural "rudeness", as the old English translation has it. In this situation, it is arbitrary to single out *dignitas* as of special importance in Pufendorf's argument. It is the package deal of the four qualities that make up or characterise human nature.

What is more, this argument has nothing to do with moral qualities or entities. Pufendorf is specifying the presuppositions for natural law. As the chapter heading says: "Hominis naturae non congruere, ut vivat exlex" – "It is not agreeable to the Nature of Man to live without Laws" (II.1, p. 93). The point is that Pufendorf wants to explain why it is that humanity alone of the animal creation has a need for being regulated by rules, and the natural ensemble of *dignitas*, *pravitas*, *varietas* and *imbecilitas* is the explanation he offers.

This passage is in fact part of Pufendorf's explanation of what is virtually the most basic form of the state of nature, namely, the individual human being's natural state with itself, *in se*. There is an even more basic natural state, namely, man's natural state with God, *ad Deum*. These natural states of humanity are, for Pufendorf, emphatically and explicitly matters of conceptual analysis, whereby he abstracts from all traces of human institution or imposition upon the world. We are in the pure state of nature with God, when we consider nothing but our capacity for having rules imposed upon us for our guidance; and we are in a pure state of nature with, or in, ourselves, when we are considered simply as solitary beings distinct from the animal creation, i.e., as helpless and in need of cooperation in order to avoid becoming beasts. The next layer of natural states is that among several, in principle all, human individuals (*ad alios homines*), which I will take up in a moment. In addition, there is of course one further state of nature, namely, that between political societies, or their sovereigns, which is outside the present concern.

It is the four natural characteristics mentioned earlier as distinctive for human nature that make prescription of the law of nature necessary (and obvious), and the law is simply that:

Every Man ought, as far as in him lies, to promote and preserve a peaceful Sociableness with others, agreeable to the main End and Disposition of human Race in general. (*Law of Nature*, II.3.xv, p. 134).

The law of nature is nothing but a framework for such duties as we must deem are necessary for the peace to be kept among natural creatures of the above description. And those duties are in fact the ones that Pufendorf sets out to explain, dividing them in traditional fashion into duties to ourselves, duties to others, and duties to God. Of the so-called absolute duties to others, that is, those duties that do not presuppose organised institutions (i.e., the state of nature *ad alios homines*), the most fundamental one is not to harm others, the next one is to "account all Men" "by Nature equal", as he

(Contd.) _____

¹⁵ See Horst Denzer, *Moralphilosophie und Naturrecht bei Samuel Pufendorf* (Munich 1972), p. 148; Thomas Behme, *Samuel von Pufendorf: Naturrecht und Staat. Eine Analyse und Interpretation seiner Theorie, ihrer Grundlagen und Probleme* (Göttingen 1995), pp. 90-92.

says. In the latter duty some have found another apparent concern with human dignity and its inherent connection with human equality, even though this is rendered implausible by the simple fact that the equal dignity in question is being prescribed, not ascribed. Here is the central passage in question:

The Word Man is thought to carry somewhat of Dignity (*dignatio*) in its Sound; and we commonly make use of this, as the last and the most prevailing Argument against a rude Insulter, “I am not a Beast, a Dog, but I am a Man as well as yourself.” Since then human Nature agrees equally to all Persons, and since no one can live a sociable Life with another, who does not own and respect him as a Man; it follows as a Command of the Law of Nature, “that every Man should esteem and treat another as one who is naturally his Equal, or who is a Man as well as he”. (*Law of Nature*, III.2.i, p. 224).

The important point is conveyed by the little word “as” (in Latin “qualiter”): we should treat the other as if an equal; the point is not that the other is an equal. For Pufendorf goes on to berate Hobbes for trying to derive the relevant equality from people’s supposed natural equality of mental and physical strength: “... the Equality which we are now treating of is of a different Species”. It is not an equality that is given by nature in the way in which strong arms and sharp wits are given us; it is rather an equality that is created as a demand by the law of nature in the same manner as civic equalities are creatures of the state. In other words, we do not have an obligation to treat each other as equals, because of some quality we each possess. Rather, it is because we have a duty prescribed for us to treat each other as if we are equal, that we have a certain equality, namely, the natural-law fiction of equal humanity. This “Equality we may call an Equality of Right; the Principle from which it springs is this, that the Obligation to social Life equally binds all Men, inasmuch as it is the inseparable Companion of human Nature, consider’d simply as such.”¹⁶

This discussion of the natural state among individuals is thus in fact not about human dignity *per se*, but about our natural tendency to assert ourselves excessively against others by maintaining our own non-beastly humanity. Indeed, Pufendorf presents this as a passion, a passion on a par with those for the natural goods of life, and, like these, it has to be curbed in order not to lead to strife. Just as the first duty to others was that of not harming them in their physical integrity, so the second duty – about equal dignity – is the duty not to harm others in their integrity as persons by demanding their credentials for being human. If we do, they will see us as “the rude Insulter” and will start yelling about not being dogs. The dignity of which Pufendorf is speaking is nothing more – or less – than the uniquely human ability to be obliged by natural law, and while this for him is the basis for humanity’s imposition of moral entities upon the natural world, it is not in itself a moral concept in any proper sense and independently of the natural law’s prescription of sociability. It is because man understands himself as obliged by the law of nature that he treats others as equals, irrespective of how unequal they may be by nature; it is the law that makes equality, not vice versa. Hence it is called ‘*aequalitatem juris*’.

This leaves us with a strange notion of the person or agent considered so abstractly that nothing more can be said about it than that it is capable of natural law. We are meeting the individual who is truly pre- or a-moral in the sense that no acts of will, other than that of God imposing the law of nature, have been taken by or concerning this individual. This is a topic that Pufendorf takes up again towards the end of his large treatise and in a very different context. Hitherto he has considered the question of whether humanity is issued with any natural or inherent moral qualities as part of his fundamental theory of the state of nature and of the law of nature as the prescribed guide for life. In this context human dignity, as we have seen, was considered in absolute terms, as something that humans have, in the sense of having it prescribed by natural law, while other beings do not. Later he takes up the question of dignities that are relative between individuals as part of the moral universe that humanity has derived from the natural-law obligation to live socially.

¹⁶ *Law of Nature*, III.2.ii. The Latin text gives no warrant for ‘inseparable’, but the Carnegie translation is even more distorted, suggesting that the obligation to natural law is ‘an integral part of human nature’! The whole point is that human nature ‘as such’, i.e., in abstraction from all institution, is accompanied by such obligation (*comitetur* – as a companion, *comes*).

This happens in his extensive discussion of sovereignty, where Pufendorf offers a chapter called ‘Of the Power of the Sovereign in determining the Value of Subjects’ (*Law of Nature*, VIII.4). In accordance with his general method, he prefaces the question of how the value of persons is determined within civil society by first laying down the central concepts in the simpler context of the state of nature. In this discussion the basic concept is no longer termed *dignitas* but *existimatio*, and we may foreshadow the troubles that this labelling of Pufendorf’s idea provides by noticing some of its translations. Barbeyrac’s influential French version had it as ‘estime’; one of the main eighteenth-century English translations went for ‘esteem’, while the other leading translation preferred ‘reputation’; and the contemporary German rendering tended to be either ‘Achtung’ [regard] or ‘Ansehen’ [repute, standing]. It is noticeable that this vocabulary apparently mixes up a personal quality and an attitude to this quality, a matter to which we will return.

Pufendorf identifies his core concept by distinguishing between the value (valor) of things, which he calls price (pretium), and the value of persons, which is termed *existimatio*. This has led to the suggestion that we here have the beginnings of Kant’s well-known distinction between *Würde* and *Preis*. I cannot pursue this issue in its entirety, but the suggestion will be undermined when it is shown that Pufendorf’s *existimatio* is very far indeed from Kant’s *Würde*.

Pufendorf divides *existimatio* into *simplex* and *intensiva*, and he considers both in the state of nature and in the civil state. The simple *existimatio* in the state of nature is of crucial importance to the present discussion, but it is also a textbook example of language which is in danger of being insufficient for the author’s intended purpose. This is, of course, an arrogant suggestion which requires textual justification. I paraphrase Pufendorf closely as follows: ‘Simple Esteem’ in the state of nature consists primarily in this, that a person’s attitude and behaviour show him to be a good man (*vir bonus*), inclined to follow the laws of human sociability, and thus ready, as far as possible, to observe the law of nature towards others.¹⁷ Pufendorf also defines the concept negatively. Every man, he says, is owed this simple esteem, ‘till his own evil Actions deprive him of it. And therefore it may be said, that all Men naturally have an equal Share of this Species of Esteem, and, before they have been guilty of any Criminal Action, must be suppos’d to be equally *honesti*.’ This, he continues, ‘is the Ground for that common Saying, *Every Man should be suppos’d a good Man, till the contrary is proved*.’¹⁸

The problem here is, of course, the idea of the ‘good man’. It should be stressed that this expression conjured up the Ciceronian idea that mere justice, as distinct from benevolence, made a man ‘good’. What is equally important, *vir bonus* suggested the purely legalistic notion of the man of ‘good faith’ in Roman law.¹⁹ It is as well that Pufendorf’s language thus opens up for a much less moralistic reading than the one that at first suggests itself to the modern reader, for people’s recognition of each other as subjects of the basic law of nature certainly did not include moral goodness. In that case the law’s prescription of sociability would have been rather superfluous. What is more, goodness is a quality in which individuals notoriously vary, and the whole purpose of Pufendorf’s argument is to show that esteem is a comparative quality in persons, and that the simple form of this comparison shows that people are equal in their most elementary personhood. In view of the juridical motto that he quotes, presumably from the Glossators or Canonists, we can say that he is in need of a clearly neutral notion of innocence and thus of the presumption of innocence in the state of nature.²⁰

In view of this, it is perhaps not surprising that the perhaps sharpest intellect among his immediate adherents, Christian Thomasius, could see what was needed to make things clear. We should not, Thomasius maintained, suppose, ‘that whoever has not done an infamous Action, is a good, or an honest Man: But [we should rather make the point] in a negative Sense, which amounts to

¹⁷ This is a close paraphrase of *Law of Nature* VIII.4.ii. Cf. *Duty of Man* II.14.iii.

¹⁸ *Law of Nature* VIII.4.iii. The translation has ‘good and virtuous’ for ‘*honesti*’, which is clearly tendentious.

¹⁹ See, e.g., Cicero, *De officiis*, I.20 (et al.); *Digest* XIX.2.24 pr.

²⁰ For some of the historical trajectory of this principle, see e.g., François Quintard-Morénas, ‘The presumption of innocence in French and Anglo-American legal traditions’, *The American Journal of Comparative Law* 58 (2010): 107-149.

this, *That such a Man is not a bad Man.*²¹ In other words, Pufendorf's argument demands a value neutral concept of esteem, or of the human being's most basic standing in the state of nature. The defining feature of this standing is simply that such a human being is a person, which means that he or she is subject to the basic law of nature, and that, again, is tantamount to no more than having the ability to follow or not follow that law. Once a person does follow the natural law, that person is beyond simple esteem and is subject to the graduated, or 'intensive', esteem, as he calls it (or, of course, its negative equivalent for breaching the law).²²

It will now be clear that Pufendorf has honed in on the same elementary concept of human moral standing under the law of nature that I identified earlier. In the first instance, the context was the standing of humanity in comparison with the rest of the animal creation, that is, our distinctively human character, and the operative concept was called *dignitas*. In the argument we have just analysed, it is a question of individual human beings' standing vis-à-vis each other, that is, how they 'estimate' in comparison. When such estimation is imagined in abstraction from all other forms of moral institutions, or relations, all humans get an equal estimate as being merely *bonus* in the neutral sense of having done nothing (yet) under the law of nature that they are subject to: they are presumed 'innocent'.²³ Following his inclination to shape a vocabulary that suits his ideas, Pufendorf calls this for simple estimation, and this is hardly well captured by 'esteem' and the other translations listed above.

We have already considered the striking fact that Pufendorf does not explain this notion of basic human standing in terms of a right. This matter is put into relief if we briefly contrast simple *existimatio* with the 'intensive' or graduated form. While the former is a matter of our equal humanity under natural law, 'intensive' *existimatio* is 'that by which some persons, though otherwise equal to others in terms of simple reputation [= *existimatio*], are given preference over them ... [on the basis of] qualities ... which move men's minds to honour them.' And those qualities may be anything 'that has a notable degree of perfection and superiority, or is judged to give evidence of such, provided their effect is congruous with the purpose of natural law or of states.'²⁴ In other words, 'intensive' *existimatio* is a matter of individual achievement that incurs honour, and he specifies that, 'Honour is not really in him who receives, but in him who gives it.'²⁵ While simple natural *existimatio* may be said to be 'objective' in the sense that it is each person's unavoidable standing subject to natural law, 'intensive' *existimatio* is a matter of the relations between agent and observer. This point is reflected in the way Pufendorf addresses the question of rights.

The qualities or achievements that make up a person's 'intensive' *existimatio* qualify that person for honour or respect (*veneratio*); or, in Pufendorf's language, it gives him or her an 'aptitude' (*aptitudo*) for such honour and respect. In the language that he took over from Grotius, this means that the person has 'only an imperfect Right to demand Honour and Respect from others; so that, if a Man deny it where it is really deserv'd, he cannot be said to have done an Injury, but only to have been guilty of some Discourtesy or Incivility.'²⁶ Only civil authority or contractual agreements can turn these claims into proper, perfect rights. Other than that, they are part of the general register of imperfect rights which people may honour with imperfect duty and thus oil the machinery of social life. We may then conclude that the graduated 'intensive' *existimatio* that may be due as a

²¹ Thomasius, *De existimatione, fama et infamia* (1709), as translated in Barbeyrac's annotation to *Law of Nature* VIII.4.iii.

²² 'Intensive' is derived from *intendo* and may be meant to suggest the connotation that any *existimatio* that goes beyond the purely 'simple' depends upon some sort of deliberate human activity.

²³ Pufendorf's role in the development of the doctrine of presumption of innocence is thus of a distinctly different kind than the proto-Kantian argument hitherto ascribed to him. See, for example, Joachim Hruschka, 'Die Unschuldsvermutung in der Rechtsphilosophie der Aufklärung', *Zeitschrift für die gesamte Strafrechtswissenschaft* 112 (2000): 285-300; same, 'Existimatio: Unbescholtenheit und Achtung vor dem Nebenmenschen bei Kant und in der Kant vorangehende Naturrechtslehre', *Jahrbuch für Recht und Ethik/Annual Review of Ethics* 8 (2000): 181-95.

²⁴ I am here quoting the modern translation of *De officio, On the Duty of Man and Citizen*, trans. M. Silverthorne, ed. J. Tully (Cambridge 1991) II.14.xi and xiii. Cf. *Law of Nature* VIII.4.xi-xii.

²⁵ *Law of Nature* VIII.4.xi. Cf. *Duty of Man* II.14.xi.

²⁶ *Law of Nature* VIII.4.xiv. Cf. *Duty of Man* II.14.xiv.

consequence of our actual performance in life cannot be claimed as a right, properly speaking. Contrariwise, the basic status as a person under natural law, simple *existimatio*, which is morally neutral and purely formal, clearly has the characteristics that would make us think of it as a perfect right. Yet, Pufendorf neglects to discuss even this as a right, and the reason is quite obvious. To say that we should be esteemed as a matter of right for being human prior to all imposition of moral entities (other than the God-imposed natural law) would inevitably be taken to imply a positive moral content that being human does not have and cannot have, since it has to be willed and imposed by the very human beings in question.

So the upshot of the discussion is that in honouring the basic natural-law obligation of living peacefully, we should treat the other person *as if* he or she were an equal irrespective of how equal or unequal nature in fact has made us in this or that regard. Furthermore, Pufendorf has of course at the outset of his argument stipulated that for the purposes of natural law we must disregard any claims that people may make to super-natural qualifications. In other words, as far as natural law is concerned, the equality of humanity that is relevant to the moral life of the species is not a dignity that is given us either naturally or super-naturally; it is instead a task or duty that is imposed upon each of us equally irrespective of who we are, and for that reason each person concerned has the simple esteem of being a person under natural law. Or to employ another of Pufendorf's key notions, equality, dignity and esteem are in fact all features of the basic office that we have to undertake, namely that of living in accordance with natural law. So equality, dignity and esteem, although "natural" in the sense of being demands of natural law, are in fact artifices that we adopt towards, or, in Pufendorf's language, impose upon ourselves and upon others when we deal with them outside of, or in abstraction from institutionalized social structures.

Of course, we can hardly imagine ever being in that situation in actual life, and the point of the exercise is that these artifices must be considered as presuppositions for understanding all the social relationships that make up organized life as we do know it. All social relations are contractual or quasi-contractual in character, which is to say that they are directly or indirectly human made, not instituted by nature or by God. But that implies that there is a social relationship so elementary that all we can say about it is, that it consists of two or more individuals adopting the artifice of regarding each other as no more and no less than human beings each equally justified in claiming not to be a beast and in seeing each other as equally subject to the law of nature, while all other features in principle are irrelevant to the relationship. There is no presupposition of a community of spirit, no foundation in transcendental values or in human nature, no recognition of human dignity beyond the prudence of not calling each other a dog or an underling, for that does tend to break the fundamental law of nature about peace. It is a philosophy of how to see the other as anonymous, as a human cipher in the most basic of social relations.

This attempt to conceptualise human beings without moral qualities, but as capable of morality (of obligation to natural law) and for that reason as persons is the strict implication that Pufendorf draws from his voluntarism. But at the same time the idea serves an additional critical purpose for him. If we were to found our social relations on substantive ideas of what "real" or "true" human nature is, ascribing natural or innate moral qualities - whether as rights, duties or virtues - to them, then we would sow the seeds of strife. It is well known that Pufendorf saw moral theory based upon confessional religion as such an attempt, and that this was his central reason for rejecting such theology as the foundation for morals and politics. He similarly rejected naturalistic foundations for humanity's moral standing, not only Aristotelian, but even Hobbes's theory of natural equality, despite the proximity between his own and the Englishman's anthropology. In both cases he seems to have seen the arguments as attempts to find a permanent metaphysical foundation on which one could step outside of the ever-shifting agreements or conventions by which human life has to be lived. Pufendorf thought that such claims to metaphysical privilege led to claims of political privilege and were thus the ideological root of civic strife. The basic aim of his philosophy was to bracket civic life from metaphysics, especially of a religious nature, a protective move that he considered equally important from a religious and a secular political point of view.

Forced by his politico-theological commitments into an extreme voluntarism in morals, Pufendorf had to follow through by attempting a notion of personhood that is radically a-moral in the

sense now explained. He deprived social theory of notions of essential personhood, of the real self in whichever of the philosophical traditions he found them. For him the person that was relevant in social and political life was a matter of imposition, construction, convention, artifice – the more or less plausible labels intimate the historical perspectives in which Pufendorf's argumentative move can be seen. With such a line of argument went the idea that the impositions, constructions, conventions, artifices, etc. could be seen as matters of specific events in time, and this historical turn was precisely the one that he himself took. In order to appreciate the full depth of Pufendorf's voluntarist view of humanity in its moral aspect, one has to see it as an attempt to explain why humanity of necessity is a historical species that has to be understood accordingly, that is, in its particularity. His major historical works are specific attempts to do this. Similarly, as a philosopher of the malleability of human affairs, Pufendorf saw politics as a matter of pragmatic behaviour, and he offered his opinion and advice accordingly.²⁷ In sum, the apparently universalist philosophico-juridical works were meant to offer the rationale for why it was necessary to present such particulars of history and politics as he offered in his other works.

²⁷ Pufendorf's history and politics understood in this perspective have been studied in a series of essays by Michael Seidler; see the bibliography in his article on 'Pufendorf's moral and political philosophy' in the *Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta: <http://plato.stanford.edu/archives/fall2010/entries/pufendorf-moral/>, which provides the best short introduction to Pufendorf in general.

