

Observationes  
in THE  
PUFENDORF  
LECTURES

Annotations from the teaching of

SAMUEL  
PUFENDORF

1672-1674

Edited by BO LINDBERG



KUNGL. VITTRHETS HISTORIE  
OCH ANTIKVITETS AKADEMIEN

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Portrait of Samuel Pufendorf (1632–1694), by Johann Ulrich Kraus. The distich below recommends the study of his works to know him better. A similar relation exists between the manuscripts here published and the original texts of Pufendorf.

# THE PUFENDORF LECTURES

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#### *Abstract*

This is an edition of two manuscripts with notes taken during Samuel Pufendorf's teaching at the University of Lund in the early 1670s. The shorter manuscript consists of annotations from lectures on *De jure naturae et gentium*, the lengthier renders notes taken during lectures on *De officio hominis et civis*. The texts show Pufendorf's doctrine at the pedagogic level, as it was presented to students immediately after his books were published. The effect of that is that natural law is imbedded in religion; Biblical references are numerous compared to in the printed books. Still, many comments reflect Pufendorf's conflict with local adversaries in Lund and with Lutheran theologians in Germany. The main message, however, is that natural law, i.e. Pufendorf, should replace Aristotle as foundation for the teaching of moral philosophy.

#### *Keywords*

Pufendorf, lectures, natural law, moral philosophy, Aristotle, Johann Scheffer, Hobbes, state of nature

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*Cover* The first page of the manuscript with lecture notes on *De officio hominis et civis*.  
(National Library of Sweden, Stockholm.)

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# CONTENTS

INTRODUCTION	7
<i>Background</i>	8
<i>The manuscripts</i>	13
<i>Natural law as moral philosophy</i>	23
<i>The edition</i>	39
<i>Bibliography</i>	42
 OBSERVATIONES SUPER LIBRUM DE J. N. & G. [DE JURE NATURAE ET GENTIUM] PUFFENDORFII EX IPSIUS AUCTORIS ORE IN COLLEGIO PRIVATO LONDINI SCANORUM A:O 1672 MENS. SEPTEMB EXCERPTAE	      46
 OBSERVATIONES IN LIBELLUM SAM: PUFENDORFII DE OFFICIO HOMINIS ET CIVIS EX PUBLICIS LECTIONIBUS AUCTORIS AO 1673 D. 11 FEBR.	   74
 <i>Appendices</i>	 217
 ACKNOWLEDGEMENTS	 223



## INTRODUCTION

SAMUEL PUFENDORF (1632–1694) is a key figure in the history of European political thought and moral philosophy, ranking just behind Hugo Grotius and Thomas Hobbes. His theory of natural law was immensely influential at the end of the 17<sup>th</sup> century and in the following 100 years: it dominated at the universities of Lutheran Europe and had substantial impact in France and the English-speaking countries. Much research has been devoted to the political, philosophical and theological aspects of his thought, to the spread of his ideas and to the contexts where they were formed and received. This volume presents sources pertaining to the mediation of his thought in a particular and hitherto unnoticed context – the academic pulpit. It is an edition of notes taken during Pufendorf's lectures in Lund in the early 1670s. The manuscripts comment on his two works on natural law that appeared during his stay in Lund. One manuscript is short and contains the beginning of a series of lectures on *De jure naturae et gentium* (1672). The other is longer and offers comments on the whole of *De officio hominis et civis* (1673).

No other annotations from lectures given by Pufendorf are known. That in itself is a reason to publish them: sources connecting to prominent persons may prove valuable from unforeseen aspects. But the value of the edition should be more clearly articulated. There are famous men in the history of learning whose thought is known to us only through lecture notes – Aristotle and de Saussure for example. That is not the case here. Pufendorf's doctrine is known to us through the books that had just appeared when he commented on them in the specific context of academic

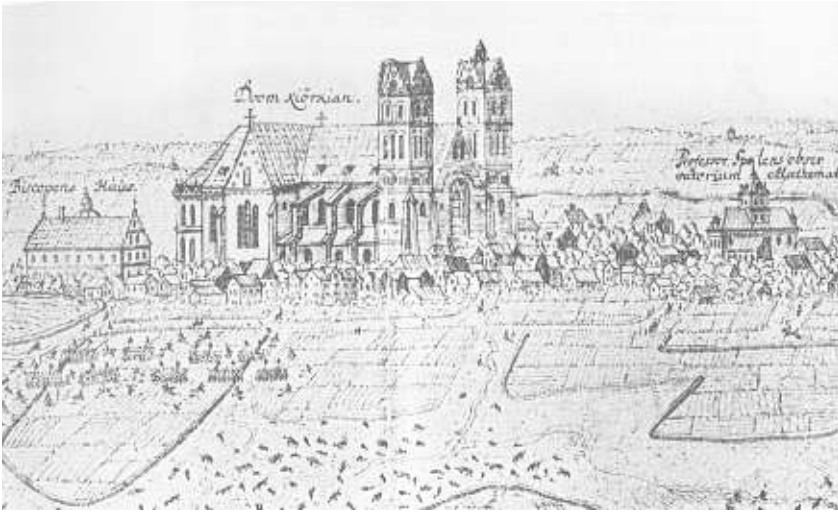
teaching. The annotations represent a delicate process of mediation: first what Pufendorf chose to emphasize when presenting his books to his audience; second what the students who took notes were able to grasp or found interesting; and third, the modification that may have occurred when the notes were transformed into a readable manuscript afterwards.

The pedagogical context may be a restriction if one looks for elaborate theory in the manuscripts. University professors in 17<sup>th</sup> century Sweden were not encouraged to linger on theoretical subtleties in their teaching, to say nothing of subversive ideas, and one should not expect Pufendorf to have presented more innovative thought as a teacher than as a writer. On the other hand, the manuscripts edited in this volume show his clear intentions about the role of his doctrine in university teaching: natural law should replace Aristotle in moral philosophy. In the introduction to the lectures on *De officio* he points out that Aristotelian ethics and politics pertain only to ancient Greek society, in contrast to universal natural law. That argument suggests a more visionary pedagogic context of natural law than the mere training of students. The overall aim of his doctrine was pedagogic. All mankind was to be educated. Our discipline, he asseverated a few years later in the midst of his quarrels with the theologians, was not invented to provide topics for academic dispute, but in order to bring the actions of individuals and nations in concordance with it.<sup>1</sup>

## BACKGROUND

The University of Lund was founded in 1668. Located in the province of Skåne, its aim was to contribute to the integration of the newly conquered province into the Swedish kingdom. During its first eight years, however, it was an international university with students and professors from Sweden, Denmark and Germany. The German professors brought with them the polemical academic culture of their homeland, including the habit of publishing anonymous or pseudonymous pamphlets with feigned places of publication. Pufendorf was among the first of the scholars recruited

1. "Specimen controversiarum", III:2, in Pufendorf: *Eris Scandica*, 2002, p. 132: "Neque inventa est nostra disciplina, ut disputandi materiam praebeat, sed ut actiones ac negotia tum singulorum hominum, tum integrorum populorum ad eandem exigantur."



Drawing of the city of Lund, by Erik Dahlberg 1676. In 1675, war broke out between Sweden and Denmark, which caused the university to discontinue, and Pufendorf to leave for Stockholm. In Stockholm he became official historian of the kingdom (*historiographus regni*). The drawing shows part of the decisive battle that took place outside Lund in 1676.

to the new university, leaving his chair in Heidelberg, where his position had become uncertain after the publication of *De statu imperii Germanici* (1667), the critique of the constitution of the Holy Roman Empire he had published under the pseudonym Severinus de Monzambano.

The Swedish authorities did not hesitate to offer him a chair at the newly-founded university: ever since the 1620s it had been a Swedish practice to appoint prominent German professors of politics in Uppsala. That tradition was continued with the well-known Pufendorf, who had previously had Swedish contacts. He arrived with his family in Lund in August 1668 to be “professor of natural law and the law of nations and of ethics and politics as well”<sup>2</sup>. His salary exceeded that of his colleagues by 50 percent.<sup>3</sup> The professorship was located in the faculty of law, like other early chairs

2. “Juris Naturae et Gentium nec non ethices et politices professor” (Ahnfelt 1859, p. 186).

3. According to the planned budget, the professor of natural law was to be paid 900 daler (Ahnfelt 1859, p. 77). Pufendorf mentions his extra salary himself in “Epistula ad amicos”, in *Eris Scandica*, 2002, p. 90.

in natural law in Europe,<sup>4</sup> but the extended specification of Pufendorf's chair to include ethics and politics indicated that he regarded natural law as a philosophical discipline.

Pufendorf did not fall short of expectations and soon became the leading figure at the university. He attracted German and Swedish students, among the latter were some of the high nobility. Alongside teaching and academic assignments he published the huge and impressive *De jure naturae et gentium libri octo*, which appeared in late spring of 1672 but had been in preparation since his years in Heidelberg. In the following year, early in 1673, came the abridged version of his magnum opus, *De officio hominis et civis libri duo*, designed for students.

His success apparently aroused envy among his colleagues, but that sentiment alone does not explain all of the criticism his works provoked among Lutheran theologians. *De jure* was criticized already before it appeared. The bishop of Lund, the Dane Peder Winstrup, and Josua Schwartz, a fervent orthodox of German nationality, scented dangerous errors in *De jure* and wanted to censure it.<sup>5</sup> In April 1672 Winstrup wrote to the chancellor of the university, Gustaf Stenbock, warning about theological errors, atheism, Hobbesianism and also against *collegia* Pufendorf had given on the notorious Monzambano. In May, Schwartz, when defending a dissertation under the chairmanship of Winstrup, took the opportunity to attack Pufendorf fiercely.<sup>6</sup> Pufendorf, however, went to Stockholm and had the

4. Ahnfelt, *ibid.* In Uppsala, natural law had been taught since 1663 by professors belonging to the law faculty (Lindberg 1976, p. 16), in Kiel Samuel Rachelius was professor of natural law in the law faculty from 1666 (Denzer 1972, p. 319). The connection between natural law and the law of nations, especially in the version of Grotius, probably made it seem reasonable to locate the chairs in the law faculty. Add to this, in the case of Pufendorf, the possibility of paying him more if he belonged to one of the higher-ranking faculties of the university.

5. There is no modern study of Pufendorf in Lund. The best account is still Almquist 1941. Additional information can be extracted from Pufendorf's correspondence in the early 1670s, published by Döring in *Briefwechsel* 1996, and in Palladini's edition of *Eris Scandinica* 2002.

6. The letter of Winstrup to Stenbock, dated April 19 1672, is published by Ahnfelt 1859, pp. 190–193. At that time, *De jure*, according to Winstrup, was already in print, but Pufendorf withheld the book until he had secured support for publication in Stockholm. About Schwartz, Almquist 1941, p. 73. The dissertation defended, *De auctoritate symbolica formulae concordiae*, has nothing to do with natural law or Pufendorf. See also the final comment in the *Index quarundam novitatum* (in Almquist 1941, p. 100; below note 8), describing the frustration of the theologians in Lund over Pufendorf.

SAMUELIS PUFENDORFII  
DE  
JURE NATURÆ  
ET GENTIUM  
LIBRI OCTO.

Cum Gratia & Privilegio S. Cæsareæ Majestatis.



LONDINI SCANORUM

Sumptibus ADAMI Junghans imprimerebat

VITUS Haberegger! Acad. Typogr.

ANNO M DC LXXII

Title page of *De jure naturae et gentium*, printed in Lund 1672. National Library of Sweden, Stockholm.

book approved by the authorities, avoiding theological control. When *De jure* finally appeared, Schwartz was asked to account for his critique of it; a number of critical points were delivered to the university senate and passed on to the authorities in Stockholm, together with Pufendorf's reply. The result was that further criticism of *De jure* on Swedish territory was ordered to cease.

The theological assault failed, but a new adversary appeared in Pufendorf's colleague in the law faculty in Lund, Nicolaus Beckman. Beckman, likewise of German origin – it is noteworthy that none of the Swedish professors in Lund took part in the attacks on Pufendorf<sup>7</sup> – envied the prosperous Pufendorf and tried to bring him into disrepute by having an anonymous pamphlet printed in Germany. In this *Index quarundam novitatum* he listed 31 serious theological and political errors in Pufendorf's *De jure naturae et gentium*. A jurist himself, Beckman had borrowed – seemingly without permission – several of the theological arguments from the errors listed by Josua Schwartz and added some political accusations. But Pufendorf, still protected by the authorities in Stockholm, could show that the arguments had been plagiarized, and also eventually that Beckman had compiled the *Index*. Beckman was outmanœuvred, tried for calumny and finally exiled. Nonetheless, Josua Schwartz and theologians in Germany continued to criticize Pufendorf, and their polemics were to continue throughout the 1670s and 80s, largely on the same issues as those raised in the *Index quarundam novitatum*.<sup>8</sup>

According to the manuscript, Pufendorf started commenting on *De jure* in September 1672 in a *collegium privatum*, i.e. to a group of students who probably paid for the teaching. On February 11 1673, he began a protracted series of public lectures on *De officio* that did not come to an end until May the following year, according to the manuscript.<sup>9</sup> Thus the lectures were

7. Pufendorf mentions this himself in "Apologia" in *Eris Scandica* 2002, § 38, p. 45. The priest and theologian Haquin Spegel wrote a memorandum where he listed possible controversial points in *De jure*, but it seems to have been drawn up by order of chancellor Gustaf Stenbock and not with the intention of attacking Pufendorf (Lindberg 1979).

8. Almquist 1941 republished the "Index quarundam novitatum, quas Dnus Samuel Pvfendorff libro suo De jure naturae et gentium contra orthodoxa fundamenta Londini edidit". The Index is rendered in Italian by Palladini 1978, pp. 163–169.

9. According to the extant lecture catalogue for 1671 he taught the "officia hominis et civis" as early as that, i.e. before the book was published.

delivered in close connection to the publication of Pufendorf's books on natural law and in an atmosphere of increasing scholarly antagonism at the fledgling university.

### THE MANUSCRIPTS

The two manuscripts are kept in the National Library in Stockholm, in a volume with shelfmark B 399 together with manuscripts from lectures delivered by other professors.<sup>10</sup> They are written in the same hand, which does not necessarily mean, however, that the same person took the original notes from Pufendorf's teaching. The first manuscript, on *De jure*, is entitled, "Annotations on Pufendorf's book On the law of nature and nations gleaned during a private *collegium* in September 1672 from the mouth of the author himself".<sup>11</sup> The words "from the mouth of the author himself" suggest authenticity; "gleaned" on the other hand indicates that the notes are selective. And indeed they are; the manuscript runs to 24 pages in 4:0 only, six of which consist of a table of the contents of the whole of *De jure* (which have not been included in this edition). The remaining 18 pages contain annotations on paragraphs from the first book of *De jure* and a few scattered passages from book two. Out of the 210 paragraphs in book one and two, covering 250 pages of the edition of 1672, only 36 have been commented on. As a rule the comments are much shorter than the corresponding paragraphs in *De jure*. The more detailed comments on book one deal with important doctrinal issues concerning Pufendorf's theological critics, and Grotius. Others are short and seem arbitrarily chosen; sometimes they are too concise to be fully understandable. The notes on *De jure* are therefore a mere torso, very soon interrupted for some reason – perhaps the student gave up or Pufendorf found the massive *De jure* too cumbersome for teaching purposes and wrote his *De officio* instead for the use of students. Still, the lecture notes on *De jure* identify theological and

10. The volume was reported missing by Almquist 1941, p. 64, perhaps because it seems to have carried another shelfmark for some decades. Now it is back where it belongs, and the old shelfmark restored.

11. *Observationes super librum de J.N.&G. Puffendorffii ex ipsius Auctoris ore in collegio privato Londini Scanorum A:o 1672 Mens. Septemb excerptae*. Henceforward referred to as ObsJ.

philosophical topics that were to be debated during the following decades.

The other manuscript, from the lectures on *De officio*, runs to 105 pages in 4:o and is titled “Annotations on the booklet on the duty of man and citizen from the public lectures of the author himself, February 11 1673”.<sup>12</sup> Compared to the *De jure* notes, this manuscript is more complete and better organized. The text is a full series of lectures, ending on May 15 1674. Several annotations are more detailed than the corresponding paragraphs in *De officio*. However, the annotations are somewhat imbalanced. Out of the 105 pages, 71 are devoted to book one of *De officio*, and only 34 to book two. The annotations on book one are more detailed, starting with a connected *exordium* and proceeding to comments on the paragraphs of the following chapters, although not all of them.<sup>13</sup> Those on book two become progressively sparser, ending up in the last chapters in occasional brief comments, similar to the arbitrary notes in the manuscript on *De jure*. The dates of the lectures are not given after December 3 1673, when Pufendorf had reached chapter three of book two.

Usually, the annotations are based on a line or a single word from the text of *De officio* to clarify what exactly is commented on; in the other manuscript on *De jure* there are only occasionally vague directions about what part of the paragraph is commented on. The presence of these quotations from *De officio* in the manuscript makes it likely that the listener taking the notes had a copy of the *De officio* at hand.<sup>14</sup>

#### THEIR HISTORY

The state of the manuscripts provokes a number of interesting questions, to which, however, no definite answers can be given. One peculiarity of the *De officio*-annotations concerns their dating. The date of the first lecture is given as February 11 1673. The dedication of the printed *De officio* to the counsellor Gustaf Stenbock is dated the day before, on February 10. It seems very unlikely that the book was printed and distributed in one

12. Observationes in libellum Sam: Pufendorffii de officio hominis et civis ex Publicis lectionibus ipsius auctoris Ao 1673 d. 11 Febr. Henceforward referred to as ObsO.

13. For the distribution of the comments, see appendices I and II on pp. 217–219.

14. The alternative would be that the listener had no book and that Pufendorf first read the whole paragraph in *De officio* and then the word or phrase he wanted to comment on. That seems too awkward a procedure.

day. Hence one could suspect that the dating of the first lecture is wrong. The difficulty may be explained if we assume that *De officio* was available in February 1673 in proof sheets only, without the dedication to Stenbock.<sup>15</sup> One argument for that is the manuscript's lack of annotations on the preface to the reader, in which Pufendorf made important statements on the relationship between the natural law and moral theology. Instead there is the *exordium* with the equally important critique of Aristotelian moral philosophy, which has no counterpart in the printed *De officio*.

More doubts on the dating of the first lecture are prompted by the mention in the *exordium* of an adversary to Pufendorf – “a bawler” – who, seeing that the theological objections did not work, has accused Pufendorf of horrendous political errors. This adversary is in all likelihood Nicolaus Beckman.<sup>16</sup> But his *Index quarundam novitatum* with criticism of Pufendorf did not appear until the late spring of 1673, that is after Pufendorf began lecturing on *De officio*.<sup>17</sup> There is no good solution to this problem: Beckman's opinion on Pufendorf's *De jure* may have already been known early in 1673 or the assumed date of the appearance of Beckman's *Index* may be erroneous.

The dating of the lectures on *De officio* is in itself not of decisive importance. But these possible errors arouse suspicion about how the manuscripts edited here actually came into being. It is unlikely that the manuscripts as we have them are notes taken during the lectures. It is true that the two manuscripts are written in the same hand and seemingly go together, but the scribe was probably not a student who listened to Pufendorf. Indications of this are the references in the *De officio* lectures to two of Pufendorf's later publications, the *Specimen controversiarum* and *Spicilegium controversiarum*.<sup>18</sup> These volumes appeared in 1678 and 1680 respectively,

15. Books could be ready for use before they were bound. In Winstrup's letter to councillor Stenbock (above footnote 6) proof sheets of Pufendorf's *De jure* are mentioned (Ahnfelt 1859, p. 190). Pufendorf did not send *De officio* to his colleague in Uppsala Johann Scheffer until November 1673, which may indicate that the book appeared later during the year (*Briefwechsel*, No 63). That the year 1673 is wrong is not likely; a reference to the French invasion of Holland in 1672 is made on p. 15 with the words “previous year”.

16. ObsO, p. 9: “nuperrime surrexit in me quidam magnus clamator ...”

17. Almquist 1941, p. 77.

18. *Specimen controversiarum circa jus naturale ipsi nuper motarum* (Uppsaliae 1678), actually printed in Leipzig according to Palladini, (in: *Eris Scandica* 2002, p. 401) and *Spicilegium controversiarum circa jus naturae ipsi motarum* (Francoforti 1680).

which is to say that the references have been added to the notes after the lectures were given. Furthermore, in the annotations on the chapter on man's duties towards himself, there is a parallel numbering of the paragraphs in the margin that likewise indicates the activity of a later scribe.<sup>19</sup> So do the *nota bene*-remarks (*NB*) in the margin appearing now and then, sometimes invoking a theological perspective.

Although the possibility that these additions were actually made by the note-taker at Pufendorf's lectures cannot be ruled out, I find it more likely that the extant manuscripts are the work of someone who got hold of notes taken during Pufendorf's teaching in Lund and copied them, inserting references to Pufendorf's later writings, and perhaps other references too. The notes he worked from were perhaps not always in good order or fully legible. Taking notes during lectures is not always easy. Occasionally – but not remarkably often – there are missing steps in an argument or unnecessary repetitions, which suggests that the listener has not followed it properly. The frequent use of the abbreviation “etc.” in the manuscripts may in some cases indicate that the scribe has failed to make sense of the notes he had before him.

A scribe has been proposed: Jacob Troilius (1657–1716), vicar of Husby, a parish in the diocese of Västerås 170 kilometres northwest of Stockholm. Troilius was an enthusiastic collector who assembled several volumes of manuscripts from various fields; he is also known as a sedulous copyist.<sup>20</sup> The manuscript volume B 399 in the National Library contains another two lecture manuscripts dealing with natural law and is ascribed to Troilius, and there are others by the same hand. The attribution was made en passant in a footnote in 1921 by Anders Grape: it is a reasonable assumption but cannot be regarded as more than probable.<sup>21</sup>

19. ObsO, pp. 50–52.

20. Anders Grape: “Om Schefferi Sciagraphia juris naturae”, *Nordisk tidskrift för bok- och biblioteksväsen* 1921, p. 219.

21. Grape was a librarian, well experienced in manuscript sources in Swedish libraries and may lean on observations not accounted for. I have tried to find in the Troilius collection in Västerås a manuscript incontestably written by Troilius that could prove Grape's assumption, but in vain. Extant manuscript volumes that belonged to Troilius contain manuscripts in handwriting more or less similar to that in the Pufendorf lectures (National Library, Stockholm, Mss X 503 and M 6, also in the City Library of Västerås, Ms B 6). One of these (annotations from “Collegium anatomicum” by Andreas Drossander,

If the manuscripts were written by Troilius, he is likely to have copied notes taken during Pufendorf's lectures lent or given to him either by one or possibly two individuals who listened to them, or by someone else who in turn had acquired them from the original listener or listeners. In an age when printed books were still expensive, copied lecture notes were an indispensable complement to textbooks. In this case the reputation of Pufendorf may have made them desirable not only as study material. That Troilius himself listened to Pufendorf is not credible. There is no evidence that he was ever in Lund; in 1672, he was 15 years old and scarcely able to follow Pufendorf's lectures adequately.

Our knowledge of the circumstances surrounding the Pufendorf lectures must remain obscure. The questions raised are interesting from the point of view of the history of academic teaching. They also draw our attention to the instances of reception following the delivery of the lectures. Obviously the manuscripts do not render the whole series of lectures, with the comments on *De jure* coming to an end so soon and those on *De officio* progressively petering out towards the end. Furthermore, we cannot be sure that the existing notes correspond fully to what Pufendorf chose to pay attention to: the selection of paragraphs commented on is sometimes rather arbitrary. Add to this that there may have occurred distortions or even conscious changes during the transmission from the original notes to the versions now extant. Such questions appeal to the neo-philological scholarly interest that focuses on mediation and transmission rather than on the original text. However, the main issue here is whether the circumstances jeopardize the credibility of the manuscripts as testimony to the teaching of Pufendorf.

One should not jump to hypercritical conclusions. The manuscripts undoubtedly give a fair representation of what Pufendorf actually said. The contents of the annotations fit in well with Pufendorf's opinions. Nothing contradicts them. There are several continuous passages that render his arguments soundly, often illustrated by examples taken from *De jure*. The impact of the pedagogic context of the manuscripts consists, apart from the obvious brevity and arbitrariness of some comments, of enlightening

in Ms X 503) is explicitly ascribed to Troilius, but only by a later hand, possibly that of Grape. In the end, the case must remain undecided.

similes, examples, and simplifications. Another effect is the great frequency of biblical references (see below). Finally judgements, stereotypes and latent values can be added that have little to do with the theory of natural law but belong to the social world of the 17<sup>th</sup> century.

#### THE CONTENTS

Pufendorf started lecturing on his two books before any critique of them had been published. Nevertheless, they reflect the incipient controversy with the Lutheran theologians by replying to objections raised in the Lund environment already before the final publication of *De jure* in May 1672. The notes from the *De jure* lectures, however brief and abortive, touch on several of the theological and philosophical issues that were to be raised in Beckman's *Index novitatum*<sup>22</sup> and then debated during the following decade in texts finally published in 1686 by Pufendorf himself in the volume *Eris Scandica*.

The notes pertain to crucial elements in Pufendorf's doctrine.<sup>23</sup> He defends his theory of moral entities (*entia moralia*) that constitute the moral and social world of man.<sup>24</sup> In contrast to the physical entities in the created world, moral entities are the effect of acts of the will by which a moral value or a function is ascribed to something. Human actions are moral entities and so are different roles in society – king, subject, mother, servant, official, and so on – and institutions like household, state, law, contract and money. Pufendorf's example in the lectures is the creation of a rector, on whom the function and title of a rector is imposed by the authorities. Although some moral entities are invented by God, most of them are the effects of human judgement and the doctrine of moral entities suggests in a way that the moral and social sphere is a human construct. Pufendorf's adversaries saw an opportunity here of accusing him of moral indifference, if there was no intrinsic difference between good and bad human actions. Pufendorf responds to this accusation by trying to explain the difference between the

22. See "Index novitatum" (in Almquist 1941) §§ 9, 13, 14 and 19. However, Pufendorf does not address or quote "Index ..." which had not appeared in the autumn of 1672 when he lectured on *De jure*.

23. For an analytical account of Pufendorf's doctrine, based on all his production, see Denzer 1972.

24. ObsJ, p. 1, 3.

neutral material element in human actions and their superimposed moral value.<sup>25</sup> Pufendorf's guarantee for the existence of objective moral values was of course that they were grounded in human nature created by God and expressed in natural law. Here, however, was another scandal in the eyes of his opponents, since he did not posit human nature in its unsullied form in Adam before the fall but in fallen man in the present state of corruption. According to Pufendorf, we have only incomplete knowledge of Adam in Paradise, based on what has been revealed in the Bible to Christians only, and that could not be the foundation of a moral doctrine designed for the whole of mankind. The lecture notes do not render this fundamental point of Pufendorf's clearly.<sup>26</sup> Instead, they portray him involved in purely theological arguments about the image of God as related to the doctrine of moral entities. These arguments are not quite consistent and indicate some difficulty in his endeavours to separate natural law from Lutheran theology while at the same time remaining a believer in that dogma as the road to salvation.<sup>27</sup>

Another major issue commented on with some amplitude in the lectures on *De jure* is Pufendorf's voluntarist standpoint considering natural law. God created natural law out of His free will. He was not bound by any pre-existing norms of right and wrong or some Stoic fate that would have infringed on His liberty. We cannot presuppose that natural law reflects God's essence: in fact the difference between God and man is immense and no analogies between the qualities of man and God are appropriate. The voluntarist standpoint was a position taken in a philosophical controversy that had been going on since the Middle Ages. It offended Pufendorf's theological adversaries but was also a critique of Grotius, who believed that God regarded what was right and wrong before the promulgation of natural law.<sup>28</sup>

Finally, the *De jure* lectures defend Pufendorf's epistemological position as to moral knowledge: moral precepts are not connate; St Paul's assertion in Romans 2:15 that the work of the law is "in the hearts" of the heathens

25. ObsJ, p. 8.

26. It is hinted at in ObsO, p. 72sq.

27. ObsJ, p. 2sq., 5.

28. ObsJ, p. 6sq.

is to be interpreted only metaphorically. The infant child has no moral concepts. This position does not entail relativism: there are “dictates of right reason” in man but they have to be built up by habit, accustomization and education, including, one may observe, that of the whip.<sup>29</sup> On the other hand, and not in full accordance with empiricist and historical moral epistemology, Pufendorf claims that the principal and general parts of moral knowledge can be made a demonstrable and certain science. This is opposed to Aristotle, who held that moral philosophy deals with changeable things of which there is no certain knowledge. Pufendorf reduces this insight to the concept of latitude, the inexactitude that must be applied in the praxis of moral knowledge, like for instance determining penalties.<sup>30</sup>

The lectures on *De officio* contain comments on these positions too (except on the theory of moral entities), although in a less theoretical setting, since *De officio* is a textbook without references to other authors. There are also comments on the political element of natural law, not least on Hobbes. Pufendorf’s adversaries accused him of being a follower of Hobbes, which he admits to some extent. He mentions Hobbes with respect, reprehending the usual vehement uproar against him and admitting that he is the best theorist of natural law together with Grotius; the doctrine of natural law would not have reached so far without him.<sup>31</sup> On the other hand, he is critical of the extremism of Hobbes, along the same lines as in the printed *De jure*, but with some pedagogical simplification: for instance, he describes his own position with regard to the controversial question of man in the state of nature as a middle way between Aristotle and Hobbes. Man is not a political animal longing for social life together with other human beings, as Aristotle imagined, nor are men in the state of nature essentially enemies, as Hobbes said. Instead, men in the state of nature are friends, but not trustworthy friends: hence the peace in the state of nature is unreliable.<sup>32</sup> The political aspects of moral philosophy did not give the theologians so much to quarrel with Pufendorf about. Some theologians

29. ObsJ, p. 15sq. The whip is not mentioned when the issue is dealt with in *De jure* II:3:13.

30. ObsJ, p. 6, 9.

31. ObsO, p. 7sq.

32. ObsO, p. 75sq.

probably sympathized with the theocratic doctrine of the origin of authority and state authority in particular, which Pufendorf rejects in accordance with his theory of the moral entities that makes authority a human creation resting on contract and ordained by God only indirectly.<sup>33</sup> His theory of the state was based on contract between rulers and ruled but did not lay weight on the participation of the ruled. Instead, it focused on the state as a moral person, where, in the words of the manuscript, “the will and power of many individuals are united in one will for common defence”.<sup>34</sup>

All the topics mentioned above are well-known issues in Pufendorf’s thought. Nothing else should be expected. There may be details unnoticed before. His outright acceptance of the theological distinction between the state of innocence before the fall and the state of corruption after the fall causes him to declare that the image of God (*imago Dei*) in man, that was lost in the fall, was not a moral entity, as might be expected. Instead it was a physical entity, an *ens physicum*, belonging to man’s original nature and including moral as well as physical qualities of perfection.<sup>35</sup> Furthermore, he starts his explication of *De officio* by explaining the choice of the word *officium*, duty, in the title of the book: it is to stress that the precepts of ethics should be applied in practice and not remain mere theory.<sup>36</sup> There may also be something not previously observed in the way he phrases his opinion that God’s promulgation of natural law presupposes not only the power of the divine legislator but also that He has given rational reasons for the law;<sup>37</sup> this position, which seems to contradict Pufendorf’s firm voluntarist belief that natural law is founded in God’s will alone, has prompted scholarly discussion ever since Leibniz criticized it in 1706.<sup>38</sup>

33. ObsO, p. 80, 86, 95.

34. ObsO, p. 85.

35. ObsJ, p. 3, 5, where *imago Dei* entails moral perfection, whereas in “Specimen controversiarum” in *Eris Scandica* 2002, p. 140, it is a quality of medical health.

36. ObsO, p. 10.

37. ObsO, p. 23.


38. Saastamoinen 1995, pp. 95–110.

# ELENCHUS LECTIONUM.

Qua  
Duce,

Professores in Regia Gothorum Academia Carolina Studiose Juvantuti publice  
& privatim proponere decreverunt.  
P. P. die 28. Januarii MDCCXXI.

## THEOLOGI.

 LAUS JOH. BAGGERUS S.S. Theologiae Professor Primarius, Oculi brevis absolvenda Chronologia sacra, & Historiam Ecclesiasticam V. T. subjunget. Fiet id, cum bono Deo, hora 9. in Auditorio Novo.

JOHANNES FRIDER. HIORT, S.S. Theol. Profess. Ordin. perget ea quae cepit methodo, Harmoniam Evangelistarum in compendio proponere. Praeterea ubi opportunitas miserit, persequetur summa capita Historiae Ecclesiasticae N. Testamenti a nato CHRISTO ad praesentia tempora deductae. Docet in Auditorio templi Cathedralis Majoris, hora 8.

IOSUA E. CHARTY, S.S. Theol. Prof. ordin. idemq; Pastor German. ita ut instituit, formulam Concordiae explicare perget. Absolvit enim Articulo 5. primo & secundo, tertium jam, qui est de justificatione assumet. Idq; hora 3. pomeridianâ, in templi Cathedralis Auditorio majori. Interim vero etiam ad disputandum publicè, eandem Formulam, Theologiae studiosos, hoc jam diligentius invitat, quo facilius quidem Disputationes istas proponi posse intelligit. Ipsi enim sufficere, si Disputaturus, Articuli alicujus Titulum solum unico folio indicaverit.

## JURIS-CONSULTI.

SAMUEL PUFENDORF, Juris Natur. & Gent. Prof. Primar. postquam à Superioribus jussus est Professorem Moralem simul obire, publicè lectionibus id agit, ut homini ac civis officia, quae germanam philosophiam morale absolunt, ex solidis principiis perspicue & succincte demonstrat. Docet hora prima pomer. in auditorio novo.

NICOLAUS HYLTENIUS, Juris Sveo-Gothici & Danici Professor ordinarius, interruptam aliquoties textus paraphrasin, secundum Constitutiones, lenio & qua fieri potest brevitate absolvit, ac deinceps ad uberem illam quam promissit legum explicationem, fontes eorum ex jure naturali alijsq; legibus positivis, Divinae humanis derivando, procedet. Privatim verò, si qui petierint, Institutiones Juris civilis Romanorum enarrabit. Docet verò in collegio Majori templi Cathedralis, hora 9.

## MEDICI.

CHRISTOPHORUS ROSTIUS, juxta praescriptum constitutionum Academicarum, ex institutionibus Medicinæ partis therapeuticae sectionem, quae de medicamentorum materia, Differentijs & classibus agit, publicè, hora 8. matutinâ in auditorio novo, Deo juvante, aggredietur. Post meridiem, utilissimam de febribus doctrinam, motui sanguinis circulari accommodatam, privatim, desiderantibus, & gratis quidem, proponet.

CHRISTIANUS FOSSIUS, D. Professor Medicinæ honoratior, & Medicus Provincialis Scaniae, hora IV. in auditorio novo, ortum & progressum Medicinæ breviter proponet. Inde, quod totius artis fundamentum est, corporis humani, ejusq; partium naturam explicabit, anatomicas sectiones privatim subinde instituit. Idq; hyeme praesertim. Vere autem 1. & aestate, transitum ad medica faciet, naturam viresq; plantarum demonstrans, iteratis saepius per nemora & prata excursionibus, & non neglectis quae ad Chymiam & Pharmaciam pertinent.

## PHILOSOPHI.

MARTINUS NORDMAN, Math. Pract. Prof. ordin. & h. r. Academiae Rector, cum abolverit ea, quae tam publicè quam privatim in Algebra speciosa, & Fortificatione restant, transitum faciet ad Mechanicam, explicando quinq; Fundamentales Mechanicarum machinarum Facultates; utpote Vectis, axis in Petrotrochio, Trochleæ, Cunei, & Cochleæ admirandam potentiam in movendis & attollendis ponderibus. Idq; in Aud. Novo hor. X. Privatim, incipientibus præcepta Institut. Arith. & Geometricarum; Provectoribus Geodæsiæ & Fortificationis universalem præcipuorū Europæ Regnorum, secundum ejusq; Regni varios modos, & particulares muniendi regulas, proponet.

ANDREAS EPOLE, Superiorum Mathematicarum Professor absolutum cum sit pars Generalis Optices, ad specialem perget, considerando vel Radium directum, & proponet Perisclerium, & reflexum, Catoptricam seu specularem, vel refractum, Dioptricam; vel deniq; Distractum, & experimenta quae inde elici possunt. Quibus absolutis, Artem Navigandi publicè docebit, idq; hora secunda Privatim reliquas Mathematicas partes, præcipue Trigonometriam, & usum Globorum, sine quibus scientia Navigandi bene intelligi non potest, breviter & sedulo inculcabit.

PETRUS HEDEN, Lingvarum Orientalium ac Graecæ Prof. Ordinarius, postquam Lucam Evangelistam, quem non ita pridem enarrare coepit, cum bono DEO abolverit, Epistolam aliquam brevem N. T. sed simul adhibita ac exposita Syriaca versione, interpretabitur: idq; in Auditorio Novo, hora VII. matutina. Privatim verò Hebraicam ac reliquas lingvas Orientales, pro desiderio auditorum ac profectu, diligentissime inculcabit.

ERICUS ELFWEDALIUS, Histor. & Eleg. Prof. Ordin. Historiam Romanam ex L. A. Floro publicè exponet h. j. in audit. Novo. Privatim v. operâ suâ uti volentibus, quantum per valetudine licebit, non deerit.

CASPARUS WEISERUS, Facultatis Philosophicae p. r. Decanus, & Poësis Prof. Ord. ut & Scholæ Cathedralis Londenensis Rector, absolutis quæ incepti de Arte Poëtica, Præceptis, promissis sui memor, statim progressurus est ad Virgilii libros Aeneidos, & Horatii libros Carminum alternatim explicandos: vel ad Ovidii Metamorphosin explanandam, prout Auditoribus voluisset. Privatim insuper operam singulis pollicetur, & quidem pauperibus sine pretio. Ex conclusio Consistorii, propter majorem & suam, & Auditorum commoditatem, hora XII. in Novo Auditorio publicè docebit.

NICOLAUS WOLF, Philosoph. Prof. Ordin. Ciceronis libellum de Optimo Oratorum genere, ex in defensionem ejusdem pro C. Rabirio, & Consulares orationes reliquas ordine exponet. idque publicè in Audit. Novo h. j. pomer. Privatim quoq; collegia rogatus libenter aperiet.

JOHANNES BAGGERUS, Log. & Metaph. Profess. publicas suas lectiones à doctrina Logices incipiet, usum Instrumenti utilissimum, præcipuum in Theologicis, brevitate perspicuè ostensurus. Privatim ac Auditoribus suâ operâ sit defuturus, absolutis propediem dictis Logices, transitum ad Metaphysicam gratuito faciet. Quibus si forte exercitia Disputatoria ardeant, pari fidelitate horum ingenijs se accommodare studebit. Docendi locus erit in Auditorio Novo, hora matutina sexta.

LONDINI SCANORUM, Typi Vini Habituagii Acad. Carol. Typograph.

The lecture catalogue of Lund University for the Spring semester 1671. Pufendorf, the first of the law professors, announces that he has been "ordered by the authorities" to take care of the teaching of moral philosophy, and will account for the duties of man and citizen. "Ordered by the authorities" is obviously misleading; rather he usurped the teaching of moral philosophy that normally belonged to the faculty of philosophy (University Library, Lund.)

## NATURAL LAW AS MORAL PHILOSOPHY

Such details, however, do not change the substance and structure of Pufendorf's theory. There is one theoretical element, however, that is not a novelty but is usually overlooked and deserves attention since it pertains to the role of natural law as academic moral philosophy. That is the critique of Aristotle delivered in the *exordium* of the lectures on *De officio*. The *exordium* is a programmatic declaration: Pufendorf explains why *De officio* is a new textbook in moral philosophy and points out the shortcomings of previous moral philosophy. The controversy with the theologians is less important here and only mentioned at the end.

According to Pufendorf, there are three reasons why moral philosophy has not hitherto been taught properly: first the authority of Aristotle, second the influence of Roman law, and third the scholastic philosophy of the papists. The negative role of Roman law is merely mentioned with no further comment,<sup>39</sup> whereas the shortcomings of scholastic philosophy are rejected as casuistic relativism that basically serves to make people willing to pay money to be pardoned of their sins – several times Pufendorf accuses priests, catholic clergy and those of antiquity, of being far too concerned with their economic interests.

The main constraint on moral philosophy is the exaggerated respect for Aristotle. Pufendorf adduces a basically historical and contextualist argument for his opinion. The ethics and politics of Aristotle are no longer relevant: they presuppose the citizenship of ancient Greece and the democracy of classical Athens. Pufendorf surveys the virtues described by Aristotle in the *Nicomachean Ethics* and finds that they are the effects of specific Greek circumstances and of no use to human beings in general; as for politics, the democracy Aristotle so espoused, in Pufendorf's account, is even less useful, nay even dangerous in monarchical states. Contrary to this, the moral philosophy outlined in Pufendorf's new book is general in scope, applicable to all societies and hence more appropriate for contemporary students.<sup>40</sup>

In the ensuing lectures, Aristotle's allegedly naïve belief in man as a

39. He expands on it in "Specimen controversiarum" I:3, in *Eris Scandica* 2002, p. 125.

40. ObsO, p. 1–5.

political animal is criticized; likewise his teleological concept of the state as the natural aim of human social intercourse is rejected.<sup>41</sup> Thus Aristotle – or the Aristotelian tradition, to be exact; Pufendorf is aware of the difference between the master and his followers – is the main target of criticism in the lectures on *De officio*, surpassed in that respect only by the papists; some of his gibes affect Aristotle as well, since scholastic moral philosophy was partly based on Aristotle.

That Pufendorf attacks Aristotle is no surprise; most leading philosophers and scientists in the latter part of the 17<sup>th</sup> century turned their backs on Aristotle. At the universities and schools of Germany and Scandinavia, however, Aristotle still held sway, at least in moral philosophy. There were numerous chairs in moral philosophy with names that indicated the Aristotelian framework: *ethices et politices professor*, *moralium professor*, *professor philosophiae practicae*. Teaching was often based on compendia of or commentaries on Aristotle's *Nichomachean Ethics* or *Politics*, making Aristotelian concepts, distinctions and topics the substrate of scholarly political discourse. There were also more advanced theorists who based their doctrine on a more thorough understanding of Aristotle. The most prominent Aristotelian of this kind was the polymath Hermann Conring in Helmstedt (1606–1681), with whom Pufendorf exchanged polite letters. True, Aristotelian moral philosophy began to weaken during the course of the 17<sup>th</sup> century, when much political discourse was inspired by other trends like Tacitism, Lipsianism and natural law in Grotius's version.<sup>42</sup> Nevertheless, at the level of university teaching, Pufendorf's judgement "that Aristotle resounds from every lecturer's desk"<sup>43</sup> was pertinent. Add to this the presence of Aristotle within the tradition of scholastic, that is catholic, moral philosophy.

Therefore, Pufendorf made a significant strategic move when he announced his book as a textbook in moral philosophy and the doctrine of natural law as a substitute for the ethics and politics of Aristotle. Other remarks and measures confirm that the effort to replace Aristotle with natural law was important to him. It was probably at his own request that

41. ObsO, p. 72, 74sq., 82sq.

42. Denzer 1972, pp. 296–324.

43. ObsO, p. 1.

the denomination of his chair had been extended to *juris naturae et gentium nec non ethices et politices*. In 1670, discussing the economic difficulties of the university, he recommended the withdrawal of the chair for ethics and politics in the faculty of arts, justifying the downsizing with the argument that the real and genuine moral philosophy was treated in his own chair.<sup>44</sup> The same opinion echoes in the lecture catalogue of 1671, where he announced that he had been ordered by the authorities to take on moral philosophy and that he would lecture on the duties of man and citizen, which constitute genuine moral philosophy.<sup>45</sup>

As mentioned above, the *exordium* to the lectures is absent in the printed book, the preface of which is given to the relationship between natural law and moral theology instead. Because of this the programmatic reform of moral philosophy lacks mention in *De officio*. Pufendorf did not give up the idea, however. In *Specimen controversiarum* he says that he would have developed his critique of the irrelevance of Greek, i.e. Aristotelian, moral philosophy in a special publication, had not the uncivilized rudeness of his calumniators – his critics among the theologians – directed his thought elsewhere and weakened his inclination for the project.<sup>46</sup> In 1688, in the preface to a new edition of *De jure*, he repeated the argument that ancient theories, both Roman law and the political philosophy of Plato and Aristotle, have caused serious errors in contemporary political thought. He also says that he had long since prepared a commentary on “Politica Graecanica”, Greek politics, which however was impeded by other more necessary matters.<sup>47</sup> The argument against Greek moral philosophy is repeated in a letter to Christian Thomasius in 1688 along the same lines as in the *exordium* to *De officio* 1673 and once more in a letter to Justus Schomer in 1690.<sup>48</sup>

44. “... die eigentliche und rechte philosophiam moralem tractiret ...” Letter to Gustaf Stenbock July 11 1670, in *Briefwechsel*, No 49, p. 75. Compare ObsO, p. 5, where he explains why genuine moral philosophy (*genuina Ethica et Politica*) has not been taught properly.

45. “... postquam a Superioribus jussus est Professionem moralium obire, publicis lectionibus id agit, ut hominis ac civis officia, quae genuinam philosophiam moralem absolunt, ... demonstret”. See p. 22.

46. “Specimen controversiarum”, § 4, in *Eris Scandica* (2002), p. 126: “... ni ingruens calumniatorum importunitas alio cogitationes avertissent, et alacritatem meam non parum refrigerasset”.

47. *De jure naturae et gentium* (Amstelodami 1688), “Praefatio alteri editioni praemissa”.

48. *Briefwechsel*, No 137, p. 194sq. (Thomasius); No 190, p. 286sq. (Schomer).

To these testimonies of Pufendorf's endeavour to reform moral philosophy can be added a handwritten fragment of the beginning of a text entitled "Tractatus de politica graecanica". It announces the intention to show that it is futile to teach moral philosophy with the help of Plato and Aristotle who are not concerned with general precepts, only with those that are apt for ancient Greece. The fragment was found in the University Library of Lund and probably originated during Pufendorf's stay in Lund. Is this a remnant of the aborted project mentioned in *De jure* of 1688? The handwriting allows no certain judgement, but it could be his.

#### THE ARISTOTELIAN ALTERNATIVE

Obviously, the attack on Aristotle was an important and enduring part of Pufendorf's project to reform moral philosophy. Modern scholars have not paid much attention to it. Nor did his contemporary adversaries.<sup>49</sup> Even so, the intended dethronement of Aristotle is important for the understanding of the function of Pufendorf's doctrine. What was it his theory of natural law was supposed to replace, and why would that be advantageous? An example of moral philosophy as taught with the help of Aristotle will show the effects of Pufendorf's doctrine on the practical contents and applications of moral philosophy.

At the University of Uppsala, the leading authority in the field of moral philosophy at the time was Johann Scheffer (1621–1679), an immigrant German from Strassburg who taught at Uppsala from 1648 until his death. Scheffer was an all-round scholar, a prominent philologist and even an archaeologist, known to posterity for his treatise on the Lapps, the exotic inhabitants of northern Sweden. He held a special chair of "eloquence and politics", a combination unique for Uppsala but representing the political humanism of the 17<sup>th</sup> century. Several of his pupils were the sons of Sweden's leading families whom he prepared for their future careers by teaching rhetoric, ethics and politics based on classical historians, Cicero, and Aristotle. In fact, he taught natural law as well, being appointed honorary professor of the law of nature and nations in 1665. In that capacity he wrote a compendium on natural law, which, although never printed, was widely

49. Beckman, in a pamphlet 1677, complained about the absurdity of rejecting Aristotle in ethics and politics. Palladini 1978, p. 205.

Tractatus  
DE POLITICA GRAECANICA.

Appenditur, quale civitatis generis per  
abusiunt Plato atq; Aristoteles, ad quos  
omnes in legemata retulerint. Unde manifestum  
est, quod non curare, qui libros Platoni de  
Legibus, aut Aristoteli libros Politicorum pro  
universali quaque politica venerint, quia ad  
quodvis civitatis generis applicari possit ac debeat;  
simulque prae istam politiam Graecanicam in dispari  
generis civitatibus periculi commendar.

Appenditur locus Demophilus, Aristoteli in Ethicis  
subinde ad civitatis Graecae modum respondere,  
civitate, ab ipso designatas nihil aliud esse, quam  
officia iuris in tali republ. qualem ipse sibi tamquam  
optimam et perfectissimam fingebat. Adeoque Aristoteli  
Ethicam multatim tractari in tali republ. quae  
in civitate Graecanica diversa est indolis.

"De Politica Graecanica", a fragment on Greek political philosophy that promises to show the unsuitability of the Greek political and moral philosophy for modern states. Possibly written by Pufendorf himself. (Lund University Library.)

used, as can be seen from numerous hand-written versions, and also influential during the final decades of the 17<sup>th</sup> century, when natural law was introduced in Uppsala.<sup>50</sup> However, taking up natural law was an adaptation to a new trend by a dutiful and extremely capable professor; the core of Scheffer's teaching remained classical, with its theoretical foundation in Aristotle. Scheffer and Pufendorf knew of each other, they corresponded, and Pufendorf, ten years younger than his colleague, respectfully sent Scheffer *De jure* as well as *De officio*.<sup>51</sup> Their relationship was friendly – Pufendorf was invited to Uppsala but could not come – but Scheffer must have been conscious of Pufendorf's critical attitude to Aristotelian moral philosophy.<sup>52</sup> However, we can disregard Scheffer's personal attitude to Pufendorf and natural law, using instead his lectures on Aristotle as an object of comparison in order to show the effects of Pufendorf's doctrine at the level of pedagogic application.

Extensive notes from Scheffer's lectures on ethics and politics are extant. He wrote a compendium of the *Politics* of Aristotle, *Breviarium Politicorum Aristotelis*, that was printed posthumously in 1684 and had possibly been circulated earlier in manuscript. In a volume of lectures from the end of his life, the part dealing with politics was based on the not yet printed *Breviarium*.<sup>53</sup> The situation was analogous to Pufendorf's lectures in Lund. Scheffer commented on his own compendium of Aristotle, as Pufendorf commented on *De officio*, his own compendium of *De jure naturae et gentium*. The difference is that *De jure* represented a new mode of moral philosophy, whereas Aristotle was the cornerstone of tradition.

50. On Scheffer and natural law, Lindberg 1976, pp. 54–72.

51. Pufendorf's letters to Scheffer in *Briefwechsel*, No 45, 56, 59, 63.

52. In December 1669, Pufendorf gibes at Hermann Conring, whose ongoing project of writing on natural law will probably fail, since he depends so much on Aristotle. *Briefwechsel*, No 45.

53. Manuscript in Uppsala university library, Ms P 11. There are two parts, one containing Scheffer's private lectures on ethics ("Annotata quaedam in Ethicam"), commenced in February 1678 (245 pp.), the other the commentary on Scheffer's *Breviarium Politicorum Aristotelis* (480 pp.), dated February 10, 1680, i.e. after the death of Scheffer. A thematic index after the text, but without the page numbers filled in, indicates that the commentaries were intended for publication. According to the cover, the volume was written by Johan Olderman, who eventually became professor of theology in Uppsala.

Scheffer's lectures are basically a normative exegesis of Aristotle although he cannot avoid scholarly remarks that arise because of the historical distance to antiquity. He comments on the philological problem of the obvious lacunae in the *Politics*. He is also aware of the objection that Aristotle does not write about contemporary politics, especially not monarchy, but only about the Greeks and those who live in a free state – apparently he refers to Pufendorf here, whose warnings against Aristotle he must have heard about. He gives no answer to this objection, however, except to remark that the silence of Aristotle concerning the merits of monarchy compared to democracy were due to the precarious position of the philosopher between the court of Alexander and democratic Athens.<sup>54</sup> Further, he compensates for the meagre discussion of monarchy at the end of Aristotle's *Politics* by expanding on various forms of monarchy, including tyranny. It is presupposed that monarchy is preferable, not because it is universally and always the best form of government, but because it is apt for bellicose nations like the French and the Swedes, while democracy better suits the Dutch, a nation of merchants. The argument takes as its starting point Aristotle's opinion that different nations have different constitutions due to their character, a relativist idea that Scheffer embraces energetically. A good patriot should regard the form of state he lives in as the best: that goes for philosophers too.<sup>55</sup>

Scheffer's problem with monarchy shows clearly the difficulty in relying on Aristotle, whose horizon was quite different from that of 17<sup>th</sup>-century Europe. Scheffer encounters the same difficulty, if not equally seriously, when dealing with other fundamental political concepts. A citizen, according to Aristotle, is one who takes part in decision. Why should we know about that, Scheffer asks rhetorically, knowing that there are no such citizens in Sweden. The answer is that it helps us to determine the relationship between state and citizen in our own age.<sup>56</sup> Likewise, the Aristotelian notion of the middle class and its healthy influence on the political community is not quite easily harmonized with the 17<sup>th</sup> century and its four estates. In addition, he discusses the complicated interpretation of the state

54. Scheffer: *Breviarium Politicorum Aristotelis*, p. 18.

55. Op. cit., p. 140. Scheffer refers to Lipsius, but it applies to himself as well.

56. Op. cit., pp. 112–114.



Johann Scheffer (1621–1679), holder of the chair in eloquence and politics at Uppsala University from 1648. Portrait by E. Jetsche. Photo SPA.

in terms of Aristotelian matter and form, the citizens being matter and the state imposed on them the form, while monarchy, aristocracy, and democracy are varieties of that form. The argument entails the consequence that the state ceases to exist when the form of government changes, which in turn means that the popular, common-sense concept of the state as the aggregate of territory, inhabitants and government must be rejected.<sup>57</sup>

Beside these topics that apparently do not square with early modern political realities, Scheffer renders, and defends, more philosophical parts of Aristotle's *Politics* that were at odds with the development of political thought in the 17<sup>th</sup> century. Man is a political animal, and the state is the

57. Op. cit., pp. 112–120.

purpose of the smaller associations – marriage, nuclear family, household – where virtue can be practiced and the greatest good obtained (apart from Christian salvation, of course).<sup>58</sup> Accumulating money is contrary to the aim of money, which is only the exchange of natural property. Taking interest may be appropriate but must be moderate.<sup>59</sup> Wilful agreements and contracts are secondary to nature in the formation of human society. That implies natural hierarchy; Scheffer maintains that slavery is natural, although rejecting the arbitrary treatment of slaves in antiquity.<sup>60</sup> At the same time, equality is a recurrent topic in the lectures. Contrary to the master's rule over his slaves, political rule is over equals, not only in a democracy: even in a monarchy or aristocracy, government is for the benefit of all, which implies equality. Some nations, like the Russians, may be slavish and hence apt for rule by masters (*servile imperium*), but applied to civilized nations, that would be tyranny.<sup>61</sup> Here, Scheffer echoes the old Western conviction of the despotism of the east.

Scheffer's account of Aristotle is barely coherent and only partly valid as a normative political philosophy. Furthermore, and more significantly, there is an asymmetry, or skewness, between the Aristotelian political concepts and the society of the early modern state in the making that was becoming apparent during the course of the 17<sup>th</sup> century. Scheffer, not a die-hard protagonist of Aristotle, could see that himself and started lecturing on natural law. His attitude to political theory was rather that of an academic scholar, who imparts the standard repertoire with some added critical remarks, than that of a political philosopher with a programmatic idea. Radical democracy played a substantial role in the Aristotelian repertoire and linked to it topics of equality, and even of class, since democracy is the rule of the poor. Although always rejected and, as in the case of Scheffer, compensated by much talk of monarchy, democracy was an inevitable topic in academic political teaching as long as Aristotle provided the basic material for study. To what extent concern with democracy posed any real threat to the existing order is hard to say. But obviously Pufendorf's ap-

58. Op. cit., pp. 43–52.

59. Op. cit., pp. 69–73.

60. Op. cit., p. 398q.

61. Op. cit., p. 134, 138.

prehensions about the danger of teaching politics according to Aristotle not only served to promote his new textbook but also expressed genuine unease with the possibility that republican tendencies might be stimulated by the inadequacy of Aristotelian political doctrine.

In contrast to complicated and partly maladjusted Aristotelianism, Pufendorf offered a universal moral philosophy, adapted to contemporary society and based on the rationalist scientific outlook of his time. It dealt with the duties of members of society, not the virtues of citizens participating in politics, and it avoided the intricacies of the Aristotelian theory of the state. The idea of the state as a moral person, although presupposing a contract between rulers and ruled, emphasized the unity of the state as an actor among other states. It is striking that, in the lectures, the state of nature is obviously better illustrated by the examples of sovereign state persons not subject to any authority than by the independent individuals living in the pre-political condition postulated by the philosophers of natural law.<sup>62</sup> That pedagogical simplification is confirmed when state authority is normally spoken of in terms of monarchy. The idea of the original liberty and equality in the state of nature that is given up when the state is erected to check man's negative inclinations does not entail any weakening of social hierarchy. Pufendorf may be said to have undermined the society based on estates by reducing society to moral entities based on contract, but he did not question the estate structure. The fact that natural law is derived by the common reason of mankind does not entail egalitarian suggestions. In practice, knowledge of natural law is reserved for the educated: the peasant who lacks reason cannot deduce the precepts of natural law from the principle of sociality but has to be informed about them by the priest.<sup>63</sup>

On the other hand, there is the idea of natural equality that was to be an important topic in the discourse on natural law in the 18<sup>th</sup> century. In Pufendorf's account, it certainly does not abolish social inequality, but it obliges men to regard others as fellow human beings. This is a moral equality that exhorts people to peacefulness, modesty and respect for the right of others. The idea is certainly not new: Cicero and the Stoics had it, as appears from various quotations Pufendorf adduces in *De jure*. However,

62. ObsO, p. 74, 85.

63. ObsO, p. 12, 26. Also in *De jure* (1672), II:3:13, p. 179.

it has a more systematic setting in Pufendorf's doctrine, which opened for a more radical exploitation of the idea during the following century. It applies to slaves too; discussing their treatment in *De officio*, Pufendorf uses the word *humanitas*.<sup>64</sup> The word does not occur in the lectures, but instead there are potentially egalitarian phrases like "the other is as much a human being as I am" and "I am as free as you".<sup>65</sup> Scheffer too talks about *humanitas*, not in the sense of equality, however, but to refer to the social virtue Aristotle had no specific name for but described in terms of affability, politeness and civility.<sup>66</sup> The two meanings of humanity indicate a subtle difference. Aristotelian humanity is the friendliness the citizens of the Athenian state were expected to practice in a society that was comparably equal. It is a virtue for social intercourse between fairly equal citizens, but it does not include slaves. Humanity in Pufendorf's argument is a philosophical concept lacking connotations of convivial affability but supported by a philosophical postulate of moral equality, derived from Stoic philosophy and Christian religion. It extends to all human beings, even slaves. Neither of the two implies social equality; they are rather lubricants in unequal relations, which are less equal in Pufendorf's early modern state than in Aristotelian Athens. The difference between Aristotle and Pufendorf is obvious: Scheffer, who uses the word *humanitas* for Aristotelian friendliness, vacillates between them, accepting natural slavery but opposing the Greek treatment of slaves.

#### JURISPRUDENCE

A striking feature of Pufendorf's doctrine, in spite of his efforts to make it a philosophical discipline, is its juristic tone. This is not surprising, given that natural law is indeed a law, but it becomes conspicuous in comparison with Scheffer's lectures. The juristic quality is both theoretical and practical. Pufendorf's philosophic voluntarism emphasizes that God is the sovereign legislator of natural law just as the king promulgates positive law in the state – which in turn is an analogy that corroborates the preference for

64. *De officio* (1673), II:4:5. In *De jure*, a whole chapter is given to the topic.

65. *De officio* (1673) II:4:5; ObsO, p. 10, 74.

66. Scheffer: "Annotata quaedam in Ethicam", p. 174. Compare Aristotle: *Nicomachean Ethics*, IV:6 (1126 b12). The concept is close to φιλία, Aristotle remarks.

monarchy. Obligation is a key juristic concept, presupposing the power of the superior to enjoin on someone the duty to do something. Much space is given to the concept of *imputatio*, i.e. the conditions under which people become accountable for their actions. Contract is another central juristic concept, applied to economic transactions as well as the relations between superiors and those who obey. In fact, even between warriors and duellers there is supposed to be a contract allowing both to kill each other.<sup>67</sup> The contract concept is given a paradoxically commercial connotation when applied to the discussion of absolute and limited monarchy: the former is when you commission someone to do a job for you and leave him to do it as he pleases, whereas the latter is compared to giving a hired worker instructions about how the job should be done.<sup>68</sup> Furthermore, the juristic flavour is emphasized by the numerous tangible examples, which are more often juristic than moral: cases concerning burning houses, hiring workers, keeping entrusted property, sharing gains or losses, betting etc. Add to this that the only benefit the citizen derives from the state is the possibility to have controversies settled in court or by the king. That is an elementary function of state authority and certainly not new, although probably better enforced in the 17<sup>th</sup> century than before.<sup>69</sup>

Thus, Pufendorf filled moral philosophy with legal substance. But he did not subordinate moral philosophy to study of the law. Rather the other way round: law studies were subordinated to the philosophical disciplines of ethics and politics, at the same time infiltrating them with new contents. This is noteworthy: law was one of the higher faculties of the university and its scholars enjoyed greater prestige, often better salaries too, as in Pufendorf's case. Academically, however, the field of law became subsumed and ranked below that of philosophy. The transfer of natural law from law studies to philosophy was a general phenomenon around 1700,<sup>70</sup> the deeper significance of which remains to be researched.

67. ObsO, p. 30.

68. ObsO, p. 96.

69. ObsO, p. 76, 87.

70. Observed and described by Denzer 1972, pp. 322–324.

## RELIGION

Finally, an important difference between moral philosophy as presented by Scheffer and Pufendorf respectively concerns the role of religion. God is necessary in Pufendorf's theory, as the legislator who constrains and punishes. A whole chapter of *De officio* and extensive comments in the lectures are devoted to the subject of natural religion. The idea of the political use of religion is a cornerstone in Pufendorf's doctrine. His quarrels with Lutheran theologians and his separation of natural law from moral theology are of no relevance here, although in the long run they entailed a step towards secularization. In fact, Pufendorf's attitude to religion is fully compatible with the tenor of Lutheran theology, with its distinction between the spiritual and the secular regiment, both ordained by God but the former aiming at salvation and eternal life, the latter at the maintenance of order in human society. Theologically, Pufendorf was a loyal Lutheran.<sup>71</sup> His scornful polemics reveal him as a critic of the sacerdotal guild, be it heathen, papist or Lutheran, but not a hidden freethinker, not even a syncretistic spokesman of conciliation between Lutherans and Calvinists.

Scheffer on the other hand gives no particular place to religion in his comments on Aristotelian moral philosophy. Scheffer was a political humanist, his repertoire comprised Cicero, the ancient historians, and Aristotle. It was subordinated to Christian religion, but not harmoniously integrated with it, as appears from the recurrent accusations within the Lutheran tradition against the allegedly heathen classical authorities. Of course, he says nothing contrary to religion, but his lectures include few references to the Bible. In those of Pufendorf, they are numerous. He quotes St Paul frequently but also moral precepts and examples found in Proverbs, the apocryphal Sirach and the historical books of the Old Testament. The history of Israel as told in the Old Testament is taken for granted: states did not appear until long after the Flood, God did not institute slavery but approved of it afterwards, the proclamation of the Ten Commandments in Exodus 20 is the prototype of the promulgation of a binding law.<sup>72</sup>

71. As shown by Döring 1992, pp. 55–114. In ObsO, Grotius is blamed en passant for his heterodox opinions in theology (p. 7).

72. ObsO, p. 82, 86, 23.

Pufendorf quotes or alludes to the classics too, but only half as much as to Holy Writ.<sup>73</sup> This is in striking contrast to *De jure*, where Pufendorf demonstrated his wide reading in Greek and Roman classical literature by corroborating most of his allegations with extensive quotations. There are references to the Bible too, but much fewer and rarely accompanied by quotations.<sup>74</sup>

The biblical dominance in the lecture manuscripts is due to their immediate pedagogical context: the religious and theological impact on university teaching was strong, most of the students were destined for ecclesiastic careers. However, the references to the Holy Writ also confirm the internal connection between religion and Pufendorf's doctrine. The fact that he separated natural law, deduced by reason and intended to regulate the life of all mankind in this world, from moral theology that presupposed revelation and concerned only Christians destined for eternal salvation, did not make Christian religion irrelevant for life in this world. Quite the contrary; as Pufendorf pointed out in the preface to *De officio* – the preface he neglected in the lectures – moral theology is most efficient in promoting human morality.<sup>75</sup>

In conclusion, the comparison with Scheffer indicates the advantages of Pufendorf's doctrine that made it a suitable moral philosophy for the universities in the 17<sup>th</sup> century. First, it was liberated from the Aristotelian heritage, with its awkward concepts of state and citizen and potential republicanism. Second, it was founded in contemporary philosophy and deductive method. Satisfactory as this may have been to professors with intellectual interests, it was also attractive from the political point of view,

73. In ObsO, there are 53 references to passages in the Bible, and 27 to the classics. There are 32 references to modern texts, 14 of them, however, to Pufendorf's own books. I have not found all the references in the texts indicated, but that does not affect the point here, i. e. the reversed relation between classical and biblical references in the lectures.

74. Denzer 1972, pp. 333–357, has counted all the references to classical, medieval and modern texts in *De jure*, but not those to the Bible. For instance, in the 1672 edition of *De jure*, book II chapter 2, there are 30 references to ancient texts (including two Christian) and three references to the Bible, in book VII chapter 1, there are 35 references to ancient texts (two of them Christian) and six references to the Bible. In *De officio* (1673) there are very few explicit references, and a minor number of allusions.

75. *De officio* (1673), [p. 7] preface (Benevolo lectori salutem) "Theologia quoque moralis honestatem vitae civilis efficacissime promoveat."

since it made ethics and politics demonstrable. Natural law made it possible for professors to show the necessity of the existing order and demonstrate not only the nature of royal power and entitlement but also the obligation to obey. Those truths could be corroborated from other sources, but, as an Uppsala professor stated in 1700, when it comes to proving and demonstrating “why it is so and cannot be otherwise, so that no one can say against it”, then one has to rely on natural law.<sup>76</sup>

Third, Pufendorf’s doctrine presented a theory of the state as a moral person that was in accordance with the new situation in Europe after the peace of Westphalia, where sovereign states following their interest existed and acted in a state of nature at large. Fourth, it increased the practical usefulness of moral philosophy by including more juristic material. Last but not least, it established a harmonious relation between moral philosophy and religion. True, it contained elements that paved the way for secularization, as perceived by his orthodox adversaries, but that proved no obstacle to its success as dominant theory of society, morals and politics in northern Europe during the first half of the 18<sup>th</sup> century.

Pufendorf’s doctrine suited the time and it suited the authorities. It seems that it appealed to the students too. As we have seen, some of them came from noble families of the Swedish elite, who were paying guests in his house and could meet him not only in the lecture hall.<sup>77</sup> One can imagine that there was a kind of freshness in his teaching. His criticism of the authority of tradition and force of habit and the fact that he represented something new may have met with response among the students. So too, perhaps, did his examples taken not only from the Bible and the classics but also from everyday life, some of them rendered with a slight touch of humour. Euphemistic allusions to corporeal needs and critical remarks about irrational complaints about the way young people dress may likewise have been palatable to his audience.<sup>78</sup> The same probably goes for his polemic gibes at his adversaries, which, however, are moderate compared to the excesses in the writings collected in *Eris Scandica*.

76. Quoted from Lindberg 1976, p. 86: “... hwi det är så och så, och kan intet annars wara, så at ingen der emot må något säga ...”

77. Almquist 1941, p. 69.

78. For instance ObsO, p. 16, 102.

These assumptions about the atmosphere surrounding Pufendorf's lectures seem fairly reasonable, although there is no testimony from students to confirm them. The only extant comment on Pufendorf's teaching points in a different direction and probably testifies to a deeper significance. Jesper Swedberg, a future bishop with orthodox theological views and father of Emanuel Swedenborg, studied in Lund at the beginning of the 1670s and listened to lectures on both *De jure* and *De officio*. In his autobiographic notes he remembers that Pufendorf, "taught real stuff, not scholastics":<sup>79</sup> Swedberg learnt from him "how a young man should become not only book-learned but also a polite, well prepared and a useful member of this human society".<sup>80</sup> Complaints about useless scholastic learning were platitudinous and do not say so much, but Swedberg was an interested pedagogue who criticized authoritarian and sterile methods, so his argument may reflect a genuine experience of inspiring teaching. The phrase "real stuff" (*realia*) may be a reminiscence of the many examples by which Pufendorf illustrated the precepts. One should note that in the other merit Swedberg ascribes to his studies in Lund he uses the words "useful man in this human society", where the pronoun "this" probably serves to distinguish this worldly society from heavenly eternity: a distinction that accords with Pufendorf's doctrine. Further, it is noteworthy that he says "useful man" – not citizen or subject, neither of the political terms suggesting freedom and subordination respectively. Swedberg represents members of society whose affiliation to their social estate was not indicated or presupposed. They are social agents of a kind that corresponds to the citizen in Pufendorf's *De officio hominis et civis*, a citizen who is definitely not a citizen of Athens or Rome, nor that of a liberal state, nor, however, a subject exposed to arbitrary government. Also, the epithet "useful" in Swedberg's mouth, suggests a protestant morality of industrious labour, including the ambition to be helpful to others that is consonant with Pufendorf's teaching.<sup>81</sup>

79. Jesper Swedberg: *Lefwernes beskrifning*, ed. G. Wetterberg, 1941, p. 551 sq., 295sq.: "dref realia och intet scholastica".

80. Op. cit., p. 295sq., 551sq.: "... huru en yngling skall blifwa icke blott boklärard utan en belefwd, wel skickad en nyttig man i thetta menniskliga samheldet".

81. See for instance *De officio* (1673), I:8:2, and the comment in ObsO, p. 55.

## THE EDITION

The handwriting in the manuscripts is generally fairly easy to make out. There are numerous abbreviations and contractions, which I have broken up. Abbreviations have been written out, without italicization. Abridgements have also been written out, except frequent “e.g.” (*exempli gratia*), “v.g.” (*verbi gratia*), “s” (*seu* or *sive*) and “sc.” (*scilicet*). The abridgements “tn” for *tamen* and “tm”, for *tantum*, often difficult to distinguish from each other, are written out. The scribe uses a special sign, h, that seems mostly to represent a Latin *scilicet* or *videlicet*, in German ‘nämlich’ or ‘also’, in English ‘that is’, or ‘viz.’. Sometimes it is wholly pleonastic, and one or two times obscure. I have mostly rendered it with *videlicet*, and sometimes left it out. Abridged book titles, mostly the works of Pufendorf and those in the Bible, are retained. Small initial letters have been replaced with capital letters. Underlined words or sentences in the manuscript are rendered in italics. Punctuation is modernized and extended in order to facilitate reading.

Pages of the manuscripts are given in bold type, within brackets [p. 10]. The manuscripts give only the numbers and chapters and paragraphs of *De jure* and of the chapters of *De officio*. This sometimes makes it difficult to find the context of the annotations. Therefore, the headings have been added in the edition, within brackets [...].<sup>82</sup> My changes in the manuscripts, and my failures to read it, are indicated in footnotes to the Latin text. References to texts referred or alluded to are given in footnotes in the English translation, as well as some factual comments. Indexes to the manuscripts, with names and texts quoted or referred to, have been added on page 220sq.

## LANGUAGE

The language in the manuscripts may be characterized as simple Latin without stylistic ambitions, reflecting ordinary academic usage under the stress caused by the lecture situation. One should not expect classical

82. For the headings in English, I have followed, with a few modifications, Michael Silverthorne’s translation of *On the Duty of Man and Citizen According to Natural Law* (1991) and the translation of the 1688 edition of *De jure* by C.H. Oldfather and W.A. Oldfather (1934). For the quotations on which Pufendorf often bases his comments on *De officio*, I have mainly followed Silverthorne’s translation.

standards in texts like these.<sup>83</sup> Morphology is generally correct. The syntax lacks complex clause constructions. Many comments on words or phrases are incomplete sentences begun with conjunctions and adverbs introducing a comparison: *ut, ut si, quemadmodum, sicut, ita*. Several connecting words are more or less pleonastic: *nam, verbi gratia, exempli gratia*. The rules on tenses and modes of verbs in classical Latin are not often observed. Occasionally the syntax of the vernacular becomes visible under the Latin surface.<sup>84</sup> The vocabulary mostly stays within the boundaries of Roman Latin. There are philosophical terms of medieval or later origin, like *ens* and *entia* (entity; ObsJ, p. 1) *notionalia* (conceptual; ObsJ, p. 1), *aptitudo* (aptitude; ObsO, p. 83), *absolutio* (to be freed from the restriction of the laws; ObsO, p. 96).<sup>85</sup> Other words not found in dictionaries of Roman or classical Latin<sup>86</sup> are *usurari* (pay interest; ObsO, p. 62), *uxoratus* (married; ObsO, p. 77), *immorigerus* (vicious; ObsO, p. 15), *zizania* (weed; ObsO, p. 17), and *embryo* (ObsO, p. 99). The constructions with a final gerund following after each other in ObsO, p. 19, *Non est solvendo*, unable to pay his debt, and *cui non eram resistendo*, whom I cannot resist, seem to be Neo-Latin neologisms as well.

All in all, the language of the manuscripts is a kind of academic spoken language, unsophisticated in syntax and style. It is not the Latin of Pufendorf, although the lectures use the first person: “I respond”, “we believe” etc. Still it is a functional language; almost all annotations are comprehensible, at least after checking the paragraph in *De jure* or *De officio* referred to.

83. Academic Latin in early modern Sweden is well researched; for a recent survey, see Sjökvist 2012, pp. 26–28. However, studies have dealt with printed dissertations which were expected to be written with respect to the language of ancient authors. The Latin of lecture manuscripts has so far not been investigated.

84. For instance ObsJ, p. 17: “Unde hic et suum telum extrahens alterum prosternit.” (Therefore, he too, draw his sword and destroyed the other), where he too (Germ. “er auch”, Swed. “han också”) is rendered with “hic et”; ObsO, p. 27: “Ergo ipse legislator si adsit, confiteatur se hunc in tali casu habuisse exemptum ...” (And if the legislator is present he should declare that he in such a case would have exempted him.) The predicate seems to be constructed with an auxiliary verb here.

85. Pufendorf seems aware that this is not Latin: “absolutio, ut ita loquar”.

86. As represented by Lewis & Short, *A Latin Dictionary*.

## THE TRANSLATION

There are frequent syntactical changes and repetitive or pleonastic phrases which have occasionally been cut out. Translation of Roman political words is sometimes problematic, due to their republican connotations. *Civis* has been translated with 'subject' or 'citizen', depending on the context: in the plural occasionally 'fellow countrymen'. *Respublica* and *civitas* are rendered with 'state', sometimes with 'country'. *Respublica* is frequent but has no republican connotation; it can stand in the same sentence as *regnum* denoting the same country. In the footnotes, abbreviated titles are written out and references or allusions indicated, as far as they have been identified.

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Hendrickii ex ipsius auctoris ore in collegio  
privato Londini Scanorum 4<sup>to</sup> 1672 mens. septemb.  
excerpta.

CAPIT. I. de entibus moralibus.

Observand. 3 plures statui posse classes rerum seu entium.  
Alia entia sunt (1.) physica, quae fiunt a natura, seu facta  
sunt per creationem, ut omnes res quae cernimus in hoc  
mundo. Alia (2.) entia moralia quae partim inventa sunt  
a Deo, partim ab homine, ad dirigendam hominis voluntatem,  
quae iam nos intendimus. Alia sunt (3.) rationabilia quae  
conducunt ad intellectum hominis dirigendum. Etiam ac  
tertia significatione omitti mediam non facimus.

par. 3. cum finem

finis entium moralium non est perfectio huius universi,  
ut calor & frigus sunt modi physici, qui pertinent  
ad huius universi complementum. Obligatio a. v. g. est  
modus seu ens morale, quod non resultat ex natura vel  
forma, sed ex iudicio alterius cuiusdam hominis, si sit  
quis sit rex, rector, magistratus etc. non venit ex homi-  
nis substantia, sed ex alterius impositione potestatem habentis  
talia officia faciendi. Quaedam in Deo ty. auctori assignantur,  
ut ee pater, mater etc. sunt a Deo super imposita.

Addit ibidem finis, qui est concinna harmonia vitae humanae  
sic e. g. voces hominum sunt in cantu admodum horribi-  
les, si quis pro suo arbitrio absque regula suam vocem edat;  
sic in vita humana, si quis vitam transgat secundum suum arbitrium  
ac phantasiae sine aliquo ordine, est infa concinnitas.

par.

Observationes super librum de J.N.&G.  
Puffendorffii ex ipsius Auctoris  
ore in collegio privato

Londini Scanorum A:o 1672  
Mens. Septemb excerptae

CAPUT I. DE ENTIBUS MORALIBUS

Observandum est triplices statui posse classes rerum seu entium. Alia entia sunt (1.) *Physica*, quia sunt a natura, seu facta sunt per creationem, ut omnes res quas cernimus in hoc mundo. Alia (2.) entia *moralia* quae partim inventa sunt a Deo, partim ab homine, ad dirigendam hominis voluntatem, quae jam nos intendimus. Alia sunt (3) *notionalia* quae conducunt ad intellectum hominis dirigendum. Prima ac tertia significatio-  
ne ommissa mediam nostram facimus.

par. 3. [Quid sint entia moralia, quae eorum causa, quae finis]  
circa finem

Finis entium moralium non est perfectio hujus universi ut *calor et frigus* etc sunt modi physici, qui pertinent ad hujus universi complementum. Obligatio autem v.g. est modus, seu ens morale, quod non resultat ex materia vel forma, sed ex judicio alterius cujusdam hominis. Sic ut si quis sit *Rex, Rector, Magistratus* etc non venit ex hominis substantia, sed ex alterius impositione potestatem habentis talia officia faciendi. Quaedam tamen Deo tamquam auctori assignantur ut esse pater, mater etc sunt a Deo superimposita. Additur ibidem finis, *qui est concinna harmonia vitae humanae*. Sic e.g. voces hominum sunt in cantu admodum horribiles, si quisque pro suo arbitrio absque regula suam vocem edat; sic etiam in vita humana, si quisque vitam transigat secundum suum arbitrium ac phantasiam sine aliquo ordine, esset maxima inconcinnitas.

Annotations on the book  
On the Law of Nature and Nations  
by Pufendorf, taken down from the mouth of  
the author himself in a private collegium

in Lund September 1672

CHAPTER I ON MORAL ENTITIES

Note that three classes of things or entities can be established. First, there are *physical* entities, which are natural or made by creation, like all the things we observe in this world. Second, there are *moral* entities, some of which are invented by God, others by man and the aim of which is to direct man's will; it is these I intend to deal with now. Third, there are *conceptual* entities, which contribute to the direction of man's thinking. Putting aside the first and the third meanings, I make the one in the middle mine.

par. 3. [Definition of entia moralia. Their cause. Their end]  
at the end /of the paragraph/

The aim of moral entities is not the perfection of this universe, as it is for instance with warmth and coldness, which are physical modes pertaining to the completion of the universe. But obligation, for instance, is a mode or a moral entity that does not result from matter or form but from the judgement of some human being. That somebody is king, rector or magistrate does not come from the substance of the man but from the imposition of someone who has the power of creating such offices. Some moral entities are ascribed to God, like being a father or mother, which is superimposed by God. Here is added an end, which is *the appropriate harmony in human life*. In singing, human voices are rather horrible if everyone sings as he wants to and without direction; similarly in human life, if someone leads a life according to his own will and fancies without any order, maximal disorder will arise.

par. 4. [Modus eadem producendi.

Impositio. Eorundem operatio et unde?]

[p. 2] Declarari hocce potest per exemplum v.g. Doctoris. Sic titulus ille Doctoris non fit ex eius substantia, sed alius v.g. Regis vel promotoris impositione. Nec deinceps post adeptum Doctoris titulum fit nova *creatura*. Sic quando Rector creatur, est ens morale. Ille post acceptionem vel depositionem Rectoratus nec factus est crassior vel tenuior, longior vel minor, sed venit extrinsecus illud saltem ex arbitrio entium intelligentium.

Contra hanc thesin opponitur, quod hoc absurdi hinc emergeret sc. Primum hominem creatum fuisse in puris naturalibus sc. absque obligatione ad legem et Dei conditoris praecepta, si videlicet ex auctoris sententia postmodum sint superimposita entia moralia, quale e.g. est obligatio. Respondemus (1) illos de re non bene intellecta imprudenter judicare: nam nos infra aperte statuimus homini congenitam fuisse obligationem, dum eandem distinxerimus in congenitam et adventitiam vid. Puf. l. 3. c. iv par. 3 pag 312. (2) Observanda est distinctio inter prius *tempore* et *natura*. Saepe enim causa tamquam prius natura simul est cum suo effectu, adeoque effectus et causa sic sunt simul, ut patet ex umbra hominis, lumine solis. Sic in Adamo erat statim obligatio legis; attamen consideramus jam illum tamquam priorem *natura*, cum subjectum obligationis prius natura requiratur.

Alia objectio contra ea verba, quibus dicimus, *posse deleri, sine ulla mutatione, physica entia moralia*, ut in exemplo Rectoris, qui nec major vel minor deinceps fit. Invertunt autem sic sequi amissionem imaginis Divinae in homine [p. 3] non esse aliquam mutationem, quod absurdissimum. Respondemus hoc argumento nihil aliud ostendunt quam suam ignorantiam adversarii, quasi imago Dei in homine esset ens morale, cum tamen juxta Theologiam nostram sit ens physicum sc. qualitas ac perfectio. Sic sapientia ac rectitudo voluntatis ac intellectus in Adamo non erat ens morale seu modus quidam, sed revera ens physicum. Sic peccatum originis, non erat modus, de quo jam nos loquimur, sic privationes succedentes imaginis, sunt et quid positivi, ut hominis delirium etc.

par. 4. [How they are produced. Imposition. Their operation and source]  
 [p. 2] This can be explained by the example of a doctor. The title of the doctor does not come from his substance but from the imposition of someone else, for instance the king or another conferrer of degrees. He does not become another *creature* when he has obtained the title of doctor. Likewise, when a rector is created, it is the moral entity that is concerned. After he has acquired or relinquished his rectorate, he is neither thinner, nor taller or smaller. It is all about something that comes from outside, by the decision of intelligent entities.

It is objected against this thesis that an absurdity would arise, viz. that the First man was created in the state of original purity without being subject to the law and the precepts of God. This would follow if the moral entities, such as obligation, were superimposed afterwards, as the author says. The answer is, first, that they unwisely pass judgement on something they have not understood: for I state openly, by making the distinction between congenital and adventitious obligation (see Pufendorf, *De jure naturae et gentium* book III chap. 4 par. 3), that obligation was congenital to man. Second, one must distinguish between before *by time* and *by natural order*. Often the cause, although prior by nature, is simultaneous with its effect, as appears from the shadow of a man or the light of the sun. Similarly, in Adam, there was immediately subjection to the law, but we consider him to be prior by natural order, since the subject of an obligation must be prior by natural order.

There is another objection to the words where I say that moral entities may be abolished without any physical change, as in the example of the rector who is neither larger nor smaller afterwards. From that follows, they say, that the loss of the image of God in man [p. 3] did not involve a change, which is absurd. I answer that my adversaries in this argument demonstrate nothing but their ignorance, as if the image of God in man was a moral entity, when according to our theology it is a physical entity, i.e. a quality and perfection.<sup>1</sup> The wisdom and righteousness of Adam's will and intellect was not a moral entity or a mode but really a physical entity. Thus original sin was not a mode of the kind we are now talking of; likewise, the ensuing losses that befell the image are something positive, like human madness etc.

1. According to Lutheran theologians, the image of God was a "donum naturale cum homine concreatum" as against the Roman catholic dogma of the *imago Dei* as a supernatural addition (*superadditum*) to human nature. (Johann Gerhard: *Locorum theologicorum tomus secundus*, Francofurti et Hamburgi, 1657, p. 99sq.) This explains why Pufendorf describes the image of God as an *ens physicum*, i.e. something natural in the sense of being original and not added or imposed. It may seem paradoxical that the moral perfection of Adam and Eve before the fall is described as something physical, but the perfection included immortality and health too, which are physical qualities.

par. 5. [Divisio]

Dividimus nos entia moralia in 4. potissimum praedicamenta. (1.) *substantiae*, quamvis non sint substantiae tamen concipiuntur tamquam substantiae seu analogiam quandam habent ad substantias. (2.) *qualitatis* (3.) *quantitatis* (4.) *actionis*.

par. 6. [Status quid]

Quaedam substantiae Physicae sunt *suppositivae*, seu supponunt quid, ut spacium, quod aliis substantiis substernitur: sic hoc loco est *Status* qui personis moralibus substernitur, quamquam in eo differant (nam quodvis simile est et dissimile) quod spatium post substantiae abolitionem maneat, non autem status, sublatis enim personis moralibus et status tollitur. Sic sublatis omnibus professoribus, professio ibidem non est, sublatis penalibus, penalismus tollitur. Nam status non est, nisi ibi personae sint.

par. 11. [Monita quaedam circa status]

Dicitur unam personam in pluribus statibus existere posse. Sic e.g. Rex est una persona, tamen ei non repugnat esse (1) praeter regem (2.) maritus (3.) Pater (4) foederatus (5.) hostis etc. [p. 4] Sed observandum bene quod additur, *qui status videlicet sibi invicem non adversentur*.

*Circa medium huius paragraphi dicuntur obligationes diversis principiis derivari*. Res clara clarius evadet exemplis. V.g. Theologi tractant de *magistratu*, de *conjugio* etc et Philosophi morales sed ex diversis principiis, illi ex lumine revelationis ac scripturae, hi ex lumine rationis. V.g. disserit Theologus de officio sacerdotum eisque praescribit rationem peculiarem administrandi v.g. sacramenta petita ex revelatione, quam Philosophus Moralis qua talis non novit, sed hoc tamen in genere ut omnia decenter fiant, idque suo lumine naturae, quod tenendum accurate, nam unius positio non est alterius exclusio. Fatemur plura homini esse a Sacra Scriptura praescripta ut varios ritus etc quam ex jure naturali, sed non statim excludendum est jus naturae, quod quamvis non tam exacte ac perfecte ergo nullomodo?

Quae circa finem huius paragraphi disputantur ea sunt contra *Boecleorum*, qui inutiliter prorsus hanc quaestionem movet in notis ad Grotium, quomodo futurus esset status hominis, si Adam permansisset in sua sanctitate? Hac de re sane non possumus iudicare. Res est merae revelationis.

par. 5. [Their division]

I divide the moral entities in four particular predicaments: (1) of substance; although they are not substances they are regarded as such or have some analogy with substances (2) of quality (3) of quantity (4) of action.

par. 6. [Definition of state]<sup>2</sup>

Certain physical substances sub-impose something, like space that is laid under other substances. The analogy to this is the *state*, which is laid under moral persons, although there is the difference (for everything similar is also dissimilar) that space remains after the substances have been taken away, not the state, however, for when moral persons are removed, the state is abolished as well. If all professors are removed there is no professorship, without freshmen, there is no bullying. There is no state, if there are no persons.

par. 11. [Some injunctions regarding states]

One person may exist in several states. A king is a person, but he may very well apart from king be a husband, father, an ally, an enemy etc. [p. 4] Note carefully, that *these states are not opposed to each other*.

*In the middle of this paragraph it is said that obligations are derived from different principles.* This is clear but it becomes even clearer by examples. Theologians and moral philosophers deal with *authority*, *matrimony* etc. but from diverse principles, the former from the light of revelation, the latter from the light of reason. The theologian talks about the office of priests and prescribes to them a certain way of handling for instance the sacraments that is derived from revelation. The moral philosopher does not know revelation as such but nevertheless he knows in general how these things should be handled decently, and does so through the light of nature. This is to be maintained carefully, for the one proposition does not exclude the other. It is true that the Holy Writ prescribes more rules to man concerning various rites than natural law, but one should not exclude natural law at once. It is not completely irrelevant just because it is not that exact and perfect.

The argument at the end of this paragraph is levelled against Boecler who in his comments on Grotius quite pointlessly raises the question of what the state of man would have been if Adam had remained in his sanctity.<sup>3</sup> We can make no judgement about this; the matter depends on revelation alone.

2. Note that 'state' (*status*) in this paragraph does not refer to the political community; instead, as Pufendorf explains, it is the counterpart to space in physics and rather means 'condition'.

3. Johann Boeclerus: *In Hugonis Grotii Ius belli et pacis annotata*, 1663.

Unde tacendum cum Scriptura. Interim tamen non video, quare non futurae tunc fuissent Respublicae etiamsi non tales, quales nunc sunt in statu *malitiae*, quia tunc Rex non poneretur ut gladium impiis stringeret ac nunc. Potuit esse congruus Sanctis moribus istius status. Iuxta quosdam theologos statuitur verisimiliter inter sanctos [p. 5] genios Angelos, videlicet Hierarchia ut unus imperet alii, quod si ibidem, cur ni quaeso apud sanctos homines futurus esset certus ordo imperantium et parentium.

par. 14. [Monita circa personas morales]

Quando disputatum est cum gentilibus et quidem ex rationibus sc. contra *πολυθειαν*, quia ratio nobis suppeditat plura dari non posse infinita. Respondebant eorum mentem non talem esse, quasi vellent diversos numero deos statuere et colere, sed unum saltem Numen quod propter diversa officia, variis ac diversis suis nominibus insignitur, ut Venus, Jupiter, Bacchus etc. Breviter: non plures dicunt Deos esse sc. personas physicas sed tantum morales plures.

par. 16. [Res morales]

Hic paragraphus observandus est contra authoris elementa. Nam unus dies docet alterum.

par. 23. [Entia moralia quomodo pereant]

Contra hujus theses principium, opponunt imaginem Dei in hominibus deperditam. Rs. imago Dei in homine erat ac est non ens aliquod morale ex impositione, sed maxime Physicum. Nos dicimus entia moralia ut ab impositione habent suam originem, sic ab eadem mutationes sortiri. Ita quando Deus in Veteri Testamento populo judaico dederit legem caeremonialem, obligabat statim illos ad observationem ejusdem. Quando vero deus tempore *Messiae* legem illam abrogabat statim expirabat ejusdem obligatio. Sane tunc in judaeo nulla facta erat mutatio Physica nec major, nec minor. Ita quando servo meo mandatis dederam, hoc vel illud exsequi, statim revocans mandatum, [p. 6] certe obligatio illa nulla ulterius manet, et ea obligatione amissa ac admissa servus physice non mutatus est.

Therefore, one has to be silent together with the Holy Writ. Meanwhile, I cannot see why there would have been no political societies, although not as they are now in the state of *corruption*. For then, there would have been no king who checked evil with his sword, as there is now. Adam could have been concordant with the sanctity of the original state. According to some theologians, it is likely that there is a hierarchy among [p. 5] the angels, so that the one commands the other: if it is like that with them, why would there not have been some kind of order of command and obedience among innocent men?

par. 14. [Injunctions regarding moral persons]

In the disputations with the pagans and in particular in the arguments against polytheism, it was said that reason shows clearly that there cannot be several infinite entities. The pagans answered that their intention was not to set up and worship different and separate gods, but only one Divinity which because of its diverse functions was distinguished by its various names, like Venus, Jove, Bacchus etc. In short: they did not believe there were several, i.e. physical persons, only moral persons.

par. 16. [Things moral]

This paragraph is contradictory to the author's *Elements*.<sup>4</sup> One becomes wiser with the passage of time.

par. 23. [How moral entities become extinct]

It is argued against this that the image of God in man is lost. I answer that the image of God in man was and is not a moral entity but something very physical. I say that the origin of the moral entities as well as their change is in the imposition. Thus, in the Old Testament when God gave the ceremonial law to the Jewish people he immediately obliged them to observe it. However, when, in the time of Messiah, he abrogated it, the obligation expired immediately.<sup>5</sup> And indeed, no major or minor physical change then occurred in the Jewish people. If I have ordered my servant to do this or that and recall the mandate, there is [p. 6] certainly no mandate any longer, and the servant does not undergo any physical change regardless of the imposition or abrogation of the obligation.

4. Pufendorf admits that he has changed his opinion since his *Elementa jurisprudentiae universalis*, 1660.

5. The rules on sacrifices, circumcision, holy days and eating observed by the Jews in the Old Testament do not apply to Christians, according to passages in the New Testament, for instance Colossians 2:14–17.

Sic in monetis, pretium ac valor potest minui ac crescere tamen manente eodem pondere monetae valore vel mutato vel prorsus abolito. Adhuc clarius patet ex remissione peccatorum, quae (peccata) Deus nobis condonat, sane tunc expirat illa vis damnationis in nobis, moraliter tum esset tamquam non peccavissemus, quamvis physice peccavimus. Post remissionem non fit physica aliqua mutatio, sed tantum moralis.

CAP. II [DE CERTITUDINE DISCIPLINARUM QUAE  
CIRCA MORALIA VERSANTUR]

par. 4. [In illam dumtaxat disciplinam moralem cadat demonstratio, quae de rectitudine et pravitate actionum moralium agit]

Moralis disciplinae quaedam pars videtur *Theoretica*, ubi certa datur demonstratio, quaedam *practica*, ut quando in hac vel illa Republica agitur etc an utile sit nec ne. Fatemur hic adeo certam non dari demonstrationem. Dicitur Divinam providentiam astutissime cogitata deludere ut Henricus IV. Rex Galliarum proposuit totam Europam subigere sub suam potestatem, ac deinceps subactam juxta suum arbitrium gubernare, tamen cum in hoc erat, in curru occidebatur a nebulone quodam.

par. 6. [An quid honestum aut turpe ante omnem impositionem?]

Sicuti in paragrapho praecedenti demonstratum est falsum statuere eos, qui omnem tollunt certitudinem ab entibus moralibus, ita in hoc stringemus eorum errorem, qui, posita certitudine entium moralium, in alterum extremum inciderunt, videlicet entia moralia ita stabilia esse, ut eorum rationem Deus habuerit ante impositionem seu infusionem [p. 7] qualitatum in homine, quae est *Grotii*.

Nos dicimus turpitudinem vel honestatem actionum humanarum provenire ex *lege Divina*. Nam et nostri Theologi disputantes contra pontificiorum traditiones, dicunt falsos in ea doctrina esse, quia tales traditiones ac praecepta quae ipsi fingunt, non sunt a Deo praecepta, itaque nullam habent in se bonitatem. Sic constat ex peccati definitione quod scilicet sit *ἀνομιὰ*, ante legem latam malitia nulla erat. Ita unicuique innatum est, v.g. si quis rustico diceret, quare hos lapides etc. tollas, vapulabis. Respondebit statim: quare paenam subeam, cum non sit hoc ipsum prohibitum a quopiam?

Grotius dicit Deum in legibus naturalibus ferendis respexisse ad id quod in rebus antea erat conveniens vel inconveniens: in positivis autem ideo esse justum, quia Deus ita voluit. Sed prius illud est et impium et

Similarly regarding money, price and value may decrease and increase, but the weight of the coin remains the same, even if its value has changed or been cancelled completely. This is even more obvious in the remission of sins: when God remits us from our sins, then indeed the power of condemnation expires in us, and morally it is as if we had not sinned, however much we have sinned physically. After the remission, no physical change occurs, only a moral one.

## CHAPTER II [ON THE CERTAINTY OF MORAL SCIENCES]

par. 4. [Demonstration is possible only in that moral science which treats of the goodness and evil of human actions]

Of moral science one part seems to be *theoretical*, which can be demonstrated with certainty and one *practical* as when its utility for some state is concerned. I admit that no certain demonstration of this practical part can be found. Divine providence deluded the shrewd plans of Henry IV. The King of France planned to bring the whole of Europe under his dominion and govern it according to his will. But in the middle of this, a sorry wretch killed him in his chariot.

par. 6. [Can moral good or evil exist before any imposition?]

In the preceding paragraph I demonstrated that those are wrong who remove all certainty from moral entities; here I will criticize the mistake of those who, presupposing the certainty of moral entities, go to the other extreme, believing that moral entities are so stable that God had their reasons in mind before [p. 7] moral qualities were imposed on man and infused in him; this is the opinion of *Grotius*. I say that the shamefulness and honesty of human action come from the *law of God*. Even our theologians, disputing against the traditions of the papists, hold that the papists are wrong in this doctrine, since the traditions and precepts they imagine are not of God and therefore have no goodness in themselves. It is clear from the definition of a sin, that it is a violation of the law; before the law was given, there was no evil. This is innate in everybody; for instance, if someone says to a peasant: "You took those stones, therefore you shall be flogged", he will answer at once: "Why shall I be punished, nobody has forbidden it?"

Grotius says that God in making the laws of nature considered in advance what was convenient or inconvenient, whereas in the positive laws of God the just is just because God willed it. But the former is both impious and

falsum. *Nam nihil erat justum vel injustum antequam Deus quid praecepit vel prohibuit.* Quia honestum et inhonestum est a lege, sed lex erat a Deo, et honestas ac turpitudine a Deo sc. mediante lege. Nam alias haec sequerentur absurda (1) sc. ante Deum fingere aliquem legislatorem, quod impium, vel (2) statuendum Stoicorum fatum, quod Deus nec mutare potuit. Nam lex naturalis tum esset ante Deum, quod Deus deinceps coactus fuerit imponere juxta fatum. Sic libertas Dei periclitaretur. [p. 8] Deus enim deliberabat in designandis hominibus qualitatibus. In libertate Dei erat itaque qualis homo futurus esset, dicitur in Sacra Scriptura, Gen. c. 3. Hinc maxima est eorum calumnia, qui falsissime dicunt, me statuisse *furtum* et *adulterium* esse actiones indifferentes. Quin contrarium expresse statui p. 26 etc. Sed hoc dico, quasdam actiones esse indifferentes, ut v.g. *motus seu extensio manus*, quae nec bona, nec mala, quando autem extendo illam ad eripiendam rem alienam, tunc mala, ad sumendam autem meam, tunc bona, quae malitia ac bonitas non provenit ex actione in se, sed extrinsece tantum, quantum sc. illa discrepet a lege, haec vero conveniat.

Ad locum Aristotelis adductum circa medium p. 26. Respondemus Aristotelem ibi disputare contra Stoicos statuentes omnes hominis affectus esse malos, adeoque dicit quosdam tantum esse malos, ut *adulterium*, *furtum*, *homicidium* etc quod et nos concedimus. Nec dicimus omne in actionibus absolute esse indifferens, omnes actiones esse indifferentes, sed omne *materiale* in actionibus est indifferens, ut v.g. *extensio manus*. At quae Aristoteles adfert, haec vocabula non simplicem inferunt motum physicum, sed insuper et respectum ad legem, ut furtum non est ablatio rei simpliciter sed quae legibus repugnat. Sic vocabulum invidiae etc denotat aberrationem a lege.

[p. 9] par. 8. [De latitudine actionum moralium ratione qualitatis]

Quid sit *latitudo qualitatis* sciri potest ex latitudine *quantitatis*. Quae est quando duo milites propter aequale delictum per virgam transire debent, et unus prae altero pluribus plagis caeditur, tum illud multum non refert, num magis vel minus, quae est *latitudo quantitatis*.

false. *For nothing was just or unjust before God enjoined or forbade it.* The honourable and the disgraceful come from the law, and the law was of God; therefore honesty and shamefulness are of God, through the law. Otherwise absurdities would follow, first, that one images a legislator who preceded God, which is impious; or, second, that a Stoic fate is postulated that God could not change. For the law of nature would be before God and God would have been forced to impose it in accordance with fate. That would jeopardize the freedom of God. [p. 8] For God deliberated in shaping the qualities of man. What man would be depended on the freedom of God, as said in the Holy Writ, Genesis chap. 3. Therefore, they are very malicious who falsely accuse me of claiming that *theft* and *adultery* are morally indifferent actions. Quite the reverse, I say the contrary in page 26 sqq. But I do hold that some actions are indifferent, for instance *moving or putting out one's hand*, which are neither good nor evil; however, when I put out my hand to take something that is not mine, it is evil, but good when I do it to take what is mine. The evil or the good come not from the action itself but only from the outside, i.e. it depends on how much the evil action deviates from the law and the good action conforms to it.

To the passage cited in the middle of page 26, I answer that Aristotle there argues against the Stoics<sup>6</sup> who held that all human emotions were evil, wherefore he says that certain actions are evil, like adultery, theft, murder etc., which I admit. Nor do I say that everything in actions is indifferent and that all actions are indifferent, but everything *material* in actions is indifferent, like *putting out one's hand*. The words adduced by Aristotle do not refer to a simple physical motion but also the regard to the law: theft is not simply the removal of something but one that violates the laws. Likewise, the word envy denotes an aberration from the law.<sup>7</sup>

[p. 9] par. 8. [The extent of moral actions on the base of quality]

What *latitude of quality* is can be understood from latitude of *quantity*. The latter is when two soldiers are to be flogged because of some offence, and one of them gets more raps than the other. Then it is not very important if the number of raps is larger or smaller; that is *latitude of quantity*.

6. Modern historiography of philosophy does not acknowledge any contact between Aristotle and Stoicism.

7. The passage of Aristotle is from *Nichomachean Ethics* II:6. Pufendorf quotes it in *De jure* II:1.6, however without the insinuation about the Stoics.

par. 10. [In quantitatibus moralibus datur latitudo]

Dicimus *παχὺλως* personas aestimari, ut v.g. Doctor censetur magistro vel alio docto viro praeclarior, ac existimatione major, sic consul consiliario etc. Non statim possum exacte ut in mathematicis fit, pronunciare hunc (doctorem) esse alio viro doctiorem duplo, triplo etc. Sic res se habet circa res ac actiones ut equus v.g. constans 300 thaleris, certe si emptor dederit 299 magis vel minus non adeo anxie curatur, quin ibi est latitudo quaedam. Sic et in *paenis*, ut constitutum sit aliquem in carcere mansurum 9 dies, quaeri potest cur ne 8 diebus. Respondetur: est ibi latitudo quaedam, unde certi quid non datur.

Datur et *latitudo* in omnibus fere *virtutibus*. Sic in misericordia non teneor dare pauperi 6. pecunias albas vel plus vel minus, sed hic est statim quaedam latitudo, quae a meo arbitrio dependet, tamen ut misericordiam penitus non deponam. Sic liberalis esse est etiam ex libera hominis voluntate, loco muneris dare vel centum vel 50 vel 20, vel 10 taleros.

### CAP. III [DE INTELLECTU HOMINIS, PROUT CONCURRIT AD ACTIONES MORALES]

par. 2. [Facultati intellectus repraesentativae qualis indoles?]

Metaphysici distinguunt potentiam in *liberam* et *naturalem*. [p. 10] Illa respicit opposita, haec non potest non agere positis requisitis. Iam in hoc paragrapho quaeritur, *num hominis intellectus debeat referri ad potentiam liberam vel naturalem*. Respondemus ad *naturalem*, idque patet exemplo *speculi* nam deformem speculum recte positum non potest non deformem repraesentare. Sic cum intellectu sese res habet, nam quando semel audivi viri cujusdam inscitiam in studiis, non possum non postmodum illum judicare idiotam, si quis mihi dixerit ipsum adeo doctum esse ut Salomoni non multum cedat. Nivem quoque esse non albam sed atram non possum cogi sentire, quamvis Rex aliter sentientibus supplicium capitis intentaverit. Unde recte statuitur nullum sumere debere sibi potestatem cogendi aliquem ad religionem, sed cogi tamen potest ad media quibus religio vera acquiritur, sc. frequentationem templi, lectionem librorum virorum orthodoxorum etc. Nam nec Christus misit Apostolos suos cum gladiis sed ut praedicando propagarent doctrinam caelestem.

par. 10. [Latitude is admitted in moral quantities]

We can say that individuals are rated approximately, as when a doctor is considered more excellent than a master or another scholar and more esteemed, and a consul more respected than a counsellor. I cannot on the spot state exactly, as in mathematics, that this doctor is twice or three times more learned. That is how matters stand with things and actions. If a horse costs 300 thaler it does not matter so much if the buyer gives 299 or 301, for there is some latitude. Similarly in *punishments*: if someone is sent to jail for nine days, one could ask: why not eight? The answer is that there is a latitude, and hence nothing certain. Also, there is latitude in almost all *virtues*. I am not obliged through pity to give 6 silver coins, or more or less, to the poor man; there is some latitude here, which depends on my decision. But I should not disregard it completely. Similarly, generosity too is a matter of man's free will and it depends on the office and position whether one gives 100, 50, 20, or 10 thaler.

### CHAPTER III [ON THE UNDERSTANDING OF MAN AS IT CONCURS IN MORAL ACTIONS]

par. 2. [What is the property of the representative faculty of the understanding]

Metaphysicians distinguish between free and natural faculty. [p. 10] The former concerns opposite alternatives, the latter has necessary prerequisites. In this paragraph the question is whether man's understanding belongs to the free or natural faculty. The answer is: to the natural, which appears from the example of a *mirror*. A mirror, if correctly positioned, cannot but represent the ugly as ugly. This is how matters stand with understanding: for once I have heard the ignorance of a student, I cannot but judge him an idiot afterwards, even if someone tells me he is almost as wise as Salomon. I cannot be forced to believe that snow is not white but black, even if the king threatens those who think otherwise with the death penalty. Therefore it is right to say that nobody ought to claim the power to force someone to a particular religion. However, he can be forced to use the media whereby true religion is acquired, like frequent attending church and reading books by orthodox men. For Christ did not send his apostles with swords but to propagate the Christian doctrine by preaching.

par. 10. [Ignorantia quid, et quotuplex]

Quia facta est mentio *Eustratii*, sciendum est eum optimum fuisse interpretem Aristotelis, quia erat ipse Graecus, ac Graeci interpretes admodum sunt rari, ac quot sunt, sunt meliores latinis, et prorsus miraculum est, quod Thomas et Scotus alique aggressi sunt interpretari Aristotelem, qui tamen ipsi [p. 11] graecam linguam non callebant. Unde tot errores adscribuntur Aristoteli, quae ipsi nunquam ne quidem per somnium in mentem venerunt.

par. 14. [Aut indifferentes]

Sic fieri potest ut Christianus aliquis sibi plane persuasum habeat omnino esse abstinendum ab esu sanguinis, quod praeceperunt Apostoli Act. 15. (:quod praeceptum tantum fuisse temporarium a theologis est ostensum:). Si quis credat et hoc praeceptum his aequae ac primis temporibus valere, ac nefas esse sanguinea farcimenta<sup>1</sup> edere et non edat, non peccat; si autem contra suam suasionem ac conscientiam erroneam edat, tum peccat. Sed videndum ne sub hac abstinencia quid religionis ac cultus lateat. Quia Deo non cura est quid edat quis, quid non ex suis donis, estque hoc fictum praeceptum quo Deus non colitur.

par. 15. [Error practicus]

Saepe contingit error in praxi circa *objectum*, v.g. Jacob Patriarcha erravit, quando concubuit cum Lea sorore Rachelis. Tum non errabat errorem in theoria, nam optime sciebat se non debere cubare cum ea, quae ejus non erat sponsa, sed error erat in praxi. *Error circa locum* est, ut si conduxissem aliquem ut mihi fossam effoderet, et ille alibi quam ego ipsi demonstraveram effodisset, sane praemium expectare non potest, quia ibi fossa mihi non est utilis.

par. 16. [Error circa actionem malam]

Quando maritus concubitum cupit cum ancillis et [p. 12] illae interim hoc mariti propositum herae patefaciunt, quae deinceps constituto tempore supponit, et cum illa rem habet, num adulter sit? Respondemus in foro divino ita est, non vero in humano.

1. Manuscript: *fereimenta*.

par. 10. [The nature and forms of ignorance]

Since Eustratius<sup>8</sup> was mentioned, one should know that he was a very good interpreter of Aristotle, because he was a Greek himself. Greek interpreters are rare, and those that do exist are better than the Latin ones. It is a mere wonder that Thomas and Scotus and others who [p. 11] did not themselves understand Greek have ventured to interpret Aristotle. This is why so many errors are ascribed to Aristotle that he could not even have dreamt of conceiving.

par. 14. [Theoretical error in indifferent actions]

It may happen that a Christian is absolutely convinced that he must abstain from eating blood, as the apostles enjoined in Acts 15. (The theologians have proved that precept to be only temporary.) If someone believes this injunction applies today as well as in early times and considers it sinful to eat black pudding, he does not sin. But if he eats against his conviction and failing conscience, then he sins. However, one ought to investigate if in that abstinence there lurks something that is mere worship and cult. For God does not care about what one eats, that is not one of his gifts. This is a feigned precept whereby God is not worshipped.

par. 15. [Practical error]

Error often occurs in practice with regard to the *object*. The patriarch Jacob sinned when he slept with Lea, the sister of Rachel. His error was not in theory, for he knew very well that he should not sleep with her as she was not his betrothed. Instead, the error was in practice. It is an error with regard *to place* if I have hired someone to dig a trench for me and he digs somewhere else than I showed him; then he can certainly expect no salary, for in that place the trench is of no use to me.

par. 16. [Error in an evil action]

Suppose a married man wants to sleep with his maids, and [p. 12] they tell the mistress about her husband's proposal. At the appointed time, she puts herself in their place, and he sleeps with her. Is he then an adulterer? I answer: in the court of God he is, but not in a human court of law.

8. Eustratius (fl. c. 1100 A.D.) was a Metropolitan in Nicaea, known for his commentaries on Aristotle.

CAP. IV [DE VOLUNTATE HOMINIS, PROUT  
CONCURRIT AD ACTIONES MORALES]

par. 5. [Voluntatem sollicitant constitutiones certae corporis]

Dicimus voluntatem moveri principio intrinseco. Nam vidimus quasdam res moveri ex principio extrinseco, ut navis, currus etc.

Duo sunt actus voluntatis, *velle, nolle, appetere, aversari*.

*Sponte* fieri quaedam actiones dicuntur, quae fiunt ab intrinseco principio, sed *libere* ubi praecedit aliqua electio.

par. 10. [Invitum quid]

*Coactum in se et sua causa simul est*, si vigil ratione officii noctibus plateas oberrat, ac verberatur a studiosis. Si autem studiosi tumultuantes noctu per plateas inciderint in alios a quibus verbera accipiebant, hoc est coactum in se, nam se domi debebant continere.

CAP. V [DE ACTIONIBUS MORALIBUS IN GENERE,  
DEQUE EARUNDEM AD AGENTEM PERTINENTIA, SEU  
AD IMPUTATIONEM APTITUDINE]

par. 4. [Actio moralis formaliter considerata semper est ens positivum]

Hinc constat etiam peccatum esse quid positivi, nec est quod quidam Theologi metuant, inde fieri, quod Deus fit ejus causa, cum omnium entium positivorum sit causa. Sed non distinguunt inter causam moralem et physicam. Deus omnium rerum est causa physica, non autem causa entium moralium, ad quam classem etiam peccatum pertinet. Et non quod quis facit, tantum habetur pro ente positivo, sed id quod omittit est ens positivum morale, quia homini [p. 13] eo nomine imputatur.

par. 5. [Causa, et fundamentum, cur imputari possit vel non]

In hoc paragrapho agitur de causa, cur actio homini imputanda sit, vel non? Respondemus simpliciter quia penes illum qui agit, est ut hoc fiat et non. Quod ipsum et nobis sensus communis suppeditat.

CHAPTER IV [ON THE WILL OF MAN AS IT  
CONCURS IN HUMAN ACTION]

par. 5. [Certain dispositions of the body incite the will]

I say that the will is moved by an internal principle. Some things are moved by an external principle, like a ship, a chariot etc.

There are two actions of the will, *willing and not willing, desire and shun*.

Some actions are said to be *spontaneous* when they occur because of the internal principle, but *free* if they are preceded by some choice.

par. 10. [The involuntary]

*It is involuntary in itself and in its cause too* if a watchman on patrol in the streets at night is beaten up by students. However, if students who make noise in the streets at night come across others who beat them up, it is involuntary in itself /but not in its cause/<sup>9</sup>, because they ought to have stayed at home.

CHAPTER V [ON MORAL ACTIONS IN GENERAL AND THEIR  
APPLICATION TO THE AGENT, OR THAT WHICH ALLOWS  
THEM TO BE HELD TO ACCOUNT]

par. 4. [A moral action considered formally is always a positive entity]

Of this it is clear that a sin too is something positive. That does not entail, as some theologians fear, that God is the cause of the sin, since he is the cause of all positive entities. They do not distinguish between moral and physical cause. God is the physical cause of all things, but he is not the cause of moral entities,<sup>10</sup> to which class sinful action also belongs. And not only is what someone does a positive entity but also what he omits is a positive moral entity, since man is held to account for this. [p. 13]

par. 5. [The cause or ground why something can be imputed to a man, or not]

This paragraph is about the cause of why a man is held to account for an action. The simple answer is that it depends on him who acts whether he is held to account for his action or not. Common sense confirms this abundantly.

9. The added or similar words are obviously missing here; the students were not involuntarily put in the situation where they were beaten up.

10. This seems to contradict what is said on p. 1 where some moral entities are ascribed to God.

Concludit quidam ex iis quae hoc loco habentur nos non teneri<sup>2</sup> respondere ad peccatum originis, quod sane impium. Nos enim hic dicimus, nos non debere respondere ad id, quod penes nos non est, quod sane est peccatum originis, nam in nostra potestate non est, ut ita nascamur vel non. Sed distingvendum est inter forum humanum et forum divinum. Nos hic et alibi de foro humano agimus. Deinde responderi potest etiam juxta nonnullos theologos corruptionem illam esse in nobis tanquam in sua causa, cum omnes peccavissemus existentes in lumbis Adami, ut nos omnes lapsi fuerimus, cum ille lapsus est. Sed prior responsio est manifestissima.

CAP. VI [DE NORMA ACTIONUM MORALIUM,  
SEU DE LEGE IN GENERE]

par. 3. [Et jure]

Sic dicimus: habeo jus hoc ipsum vel illud faciendi, quia non est interdictum et est libertas quaedam, et lex est quasi vinculum, quo illa constringitur.

CAP. VII [DE ACTIONUM MORALIUM QUALITATIBUS]

par. 6. [Justitia est vel personarum, vel actionum]

Distingvendum omnino est inter justitiam causae ac personae; quae distinctio maximam lucem lucratur exemplo Davidis, qui multoties in Psalmis allegat, suam justitiam videlicet non personae, quae nulla, sed causae, quia [p. 14] injusta de causa eum persequabatur Saulus. Sic aliud est vir justus, aliud actio justa, hanc et injustus aliquando edere potest. Ut quamvis sit injustus ac malus tyrannus, tamen propter aliquam actionem est laudandus.

par. 9. [Justitia distributiva]

Quid justitia distributiva sit patet ex lege, quam habent in hoc splendido oppido resultantem ex societate pastorituali.<sup>3</sup> Nam qui duas vaccas habet ac dederit tres marcas, apparet quod qui unam habet, dare cogeretur unam ac dimidiam marcam, quia est justitia distributiva, in qua observanda est aequalitas geometrica seu comparata.

2. Manuscript: *teneri*.

3. Added in the margin: *NB*.

Someone concludes from what is treated here that we are not responsible for the original sin, which is really impious. What I say here is that we ought not to answer for that which does not lie with us. This indeed applies to the original sin, for it is not within our power to be born with or without it. One must distinguish between human courts and the court of God. Here and elsewhere, I talk of the former. Further, one could answer in accordance with several theologians that corruption is in us by its own cause, since we all who are of Adam's seed sin because we fell when he fell. But the former answer is the most apparent.

CHAPTER VI [ON THE RULE OF MORAL ACTIONS,  
OR OF THE LAW IN GENERAL]

par. 3. [A law differs from right]

Thus we say that I have the right to do this or that, because it is not forbidden, and there is some liberty, whereas the law is like a bond that fetters actions.

CHAPTER VII [ON THE QUALITIES OF MORAL ACTIONS]

par. 6. [The cause of justice lies either in persons or actions]

One must distinguish wholly between the justice of cause and of persons. That distinction gains great illumination from the example of David, who says many times in the Psalms that his justice was not in his person, which was insignificant, but in his cause, since Saul persecuted him for an [p. 14] unjust cause. Hence a just man is one thing, a just action another; sometimes the latter can be performed by an unjust man. Someone may be an unjust and evil tyrant but still laudable because of some action.

par. 9. [Distributive justice]

What distributive justice is appears from the law they have in this splendid town at the proposal of the guild of cattle-dealers.<sup>11</sup> For if someone who has three cows has given three marks, then it is clear that he who has one cow must give one and a half marks, since it is distributive justice where geometric or comparative justice is observed.

11. The example seems to refer to a local guild in Lund. The unexpected effect of distributive justice that he who has one cow must give one and a half mark (instead of one) suggests that the whole comment is ironic.

par. 10. [Commutativa]

Proportio arithmetica est excessus aequalium, ut 3, 6, 9, 12, 15 etc ubi in omnibus tantum 3. excedunt.

par. 11. [Grotii sententia de Justitia]

Justitia attributrix Grotiana patet praeter exempla allata, ex hoc: Quando sc. quis adsciscitur in numerum senatorum, quamvis sit ad hoc officium capax, tamen jure suo perfecto non potest cum Rege postulare, quod non debeat praetermitti, quia hoc ipsum relictum est arbitrio Regis.

par. 13. [Hobbesii sententia de Justitia et injuria]

NB Si quis me adeat ac verberare velit, dico sane: apage scelus, quid mihi tecum; et ille potest se excusare mente Hobbesii, non sum tibi injurius, quia tecum non pactus sum, quam excusationem nullus sanae mentis pro rata habeatur.

par. 14. [Injusta actio quid?]

Qui alicui confert, quod non tenetur ac debet, quod bonum sit, dici non potest quod ei fuerit injustus, [p. 15] quia sine causa possunt deferri alicui. Quemadmodum Deus dicitur permittere solem descendere ac oriri super malos aequae ac bonos, ideo non dici potest injustus.

par. 16. [Injuria sit tantum ex proaeresi, ubi de culpa quoque]

Injustus ac injurius non sunt idem, nam injustitia est habitus, non v. injuria. Sic quando David Uriam occiderit, non vocari potest ideo injustus, sed injurius.

## LIB. II

### CAP. III [DE LEGE NATURALI IN GENERE]

par. 5. [An jus naturale Deo cum hominibus commune?]

Prototypum est v.g. sigillum in se consideratum, ἐκτύπωμα autem habet expressus inde character ex sigillo. NB Probari neque potest quod homo se gerat juxta justitiam ac sanctitatem Dei, quando juste ac sancte aliquando vivit. Nam Deus est noster Rex, Dominus ac Pater; nos sumus omnes ejus subditi ac quasi fratres sine disparitate quadam. Iam quomodo aequales esse possumus, si debeamus vivere juxta justitiam ac sanctitatem Dei, potius contrarium sequeretur, ut omnes essent reges, domini, nullus subditus nec frater, nam non bene eruditur filius, si praeciperetur ut vivat

par. 10 [Commutative justice]

Arithmetical proportion is addition in equal numbers, like 3, 6, 9, 12, 15 etc., where the increase is only by three in each step.

par. 11. [The position of Grotius on justice]

The attributive justice of Grotius is clear, apart from the examples given, from this: When someone is admitted to the number of senators, however suitable for an office he may be, he cannot with full right demand from the king not to be dismissed, since this is left to the decision of the king.

par. 13. [The position of Hobbes on justice and injury]

NB. If somebody comes up to me to beat me, I of course say: get away, you rascal, what have I done to you? Then, according to the thinking of Hobbes, he can excuse himself, saying: I am not unjust to you, because I have made no agreement with you. No sane person should consider that excuse reasonable.

par. 14. [What is injury?]

If somebody gives someone something that he not is obliged to give and which is good, he cannot be said to be unjust. [p. 15] God is said to let the sun rise and set over evil as well as good; he is not unjust because of that.

par. 16. [An injury may come only from previous moral choice. Also the nature of fault]

Unjust and wrongful are not the same, for injustice is a matter of character, not so an injury. When David killed Uriah, he cannot be called unjust, only wrongful.

## BOOK II

### CHAPTER III [ON THE LAW OF NATURE IN GENERAL]

par. 5. [Is the natural law common to God and men?]

A model is a seal regarded in itself, an *ektypoma* has the imprint and the character of the seal. NB that it cannot be proved that men, when living in justice and sanctity, behave in accordance with God's justice and sanctity. For God is our king, master and father and we are all his subjects and like brethren without any difference between us. Now, how can we be equal, if we should live in accordance with God's justice and sanctity? Rather the contrary would follow, so that everybody was king, master and father and no one subject or brother. A son is not raised well if he is taught to live like God's holiness; that would mean that he ruled his father

tanquam Deus sancte, sc. dominaretur patri et subditi regibus, quae inversio! Sed justitia Dei est longe eminentior, quae consistit in eo quod sit Rex, Dominus, Pater; esset sane nullus justus nisi qui sit rex, Dominus, pater. Ergo eo modo homines se gerere non possunt ac Deus.

par. 13. [De dictamine rectae rationis]

*scriptum in cordibus*:) non notare scientiam congenitam, sed acquisitam, ut illa ita sit impressa, ut homo eam nunquam possit exuere propter ejus claritatem et firmitatem, [p. 16] ut si vel maxime homo callum obducere vellet conscientiae, non posset eam impedire, quod praeter citata loca scripturae probatur et Prov. 3,3.

Quod autem videmus ipsos interdum discernere honesta a turpibus, hoc venit ex assuetudine. Quia potius ex actionibus infantum ac puerorum contrarium probatur, qui statim agunt contra legem naturalem, dum matrem conspurcant, ac pomum in faciem matris prociunt, quod putant sibi non ita arridere; sed tum honestorum signum produnt, dum aliquoties virga exercitati fuerint, sicut statim nec musicus, nec physicus etc quis fit, sed postmodum ex usu.

par. 16. [In Hobbesii sententiam inquiritur]

Hobbesius contrarium Aristoteli tenet principium, quod homo sit *animal* incivile, non vero πολιτικὸν et civis bonus, ut interpretatur Hobbesius, sic sane homo non est ζῷον πολιτικόν, sed per disciplinam sit tandem bonus civis, cum potius ab initio sit ζῷον incivile. Et sic reprehendit Aristotelem quod statim consideravit hominem tanquam animal politicum, et non prius inquisiverit in hominis pravas inclinationes, quae in homine reperiuntur. Contra qui Hobbesium reprehendunt, non accipiunt vocem naturae in eo sensu, ac ipse sumit, videlicet non perfecta, sed imperfecta, quae deinceps per disciplinam emendatur.

par. 17. & 18.

Hobbesius confundit societatem particularem cum universali, ex illa enim ad hanc nulla consequentia, [p. 17] si v.g. quis cum aliqua matrimonium inire nolit, quia non ita nobile est ejus genus, vel non dives etc, ergo homo in genere non debet colere societatem.

and the subjects the king. What an inversion! However, God's justice is far more eminent. It consists in him being king, master and father, and nobody would be just unless he was king, master and father. Thus, men cannot conduct themselves like God in this way.

par. 13. [On the dictate of right reason]

*written in their hearts*;) does not mean connate knowledge but acquired, and it is imprinted so that man never can cast it off, because of its clarity and firmness. [p. 16] However much a man ever wants to subdue his conscience he cannot preclude that knowledge, which is proved from Proverbs 3,3, apart from the other quoted passages from the Holy Writ.

That we sometimes see these people /i.e. boys and uneducated people/ distinguishing the shameful from the honest is due to habituation. Rather the contrary is proved by the actions of infants and boys, who at once act contrary to natural law by defiling their mothers and throwing apples at their faces, which the mothers do not find very funny. But later on, when they have been drilled a few times with the whip, they show signs of honesty. Likewise, one does not become a musician or a doctor immediately, but gradually, by habit.

par. 16. [Examination of the position of Hobbes]

Against Aristotle Hobbes holds that man is an unsociable animal, not a *zoon politikon* and a good citizen. In the end, he becomes a good citizen, but from the beginning he is instead an uncivilized animal. And he blames Aristotle for having regarded man as a political animal from the beginning without first searching man's bad inclinations. Those on the other hand who criticize Hobbes do not construe the word nature in the same sense as him, i.e. not the perfect but the imperfect nature that is subsequently reformed through discipline.

par. 17. & 18.

Hobbes confuses the particular society with the universal. There is no consequence from the former for the latter [p. 17]. That for instance someone declines marriage because he is not of noble birth or not rich does not entail that man in general ought not to be social.

## CAP. V. [DE DEFENSIONE SUI]

par. 19. [De defensione ejus, qui injuriae initium fecit]

Notandum hic obiter in aula Henrici IV Regis Galliae accidisse, ut duo aulici contenderint. Inter verba, infigit alter alteri alapam, (:quod maxime vituperandum in aula:) et deinceps tamen paenituit eum facti ut alterum magnopere rogaret sibi ignosceret. Sed alter voluit hanc injuriam necessario vindicare statim extra fores per proprium suum gladium. Alter injuriam inferens sequitur et iterum deprecatur. Verum alter ira exacutus gladium stringit et alterum vim intendat. Unde hic et suum telum extrahens alterum prosternit. Caedes ad Regem defertur, Rex jussit judices, ut hic absolveretur, eo quod facti poenituerit eum, et veniam flagitaverit cum reparatione damni dati, et non impetravit.

## CAP. VI. [DE JURE ET FAVORE NECESSITATIS]

par. 1. [Necessitas quotuplex]

Verba circa princip. p. 237 sunt paulo obscura, sensus itaque est hic: si contingat ut quis fraudem committat in defendenda sua salute, illud factum quidem non approbatur, meretur tamen veniam et miserationem, qui est sensus Boecleri. [p. 18]

*citra nostram culpam:*) Haec verba omnino attendenda sunt; nam ejus periculi in quod quis sese ipse conjicit, ratio non habetur. Ita Dina non erat absque culpa quae<sup>4</sup> expatiata fuerat absque necessitate, unde urgebatur vindictam illam in obsidenda urbe fuisse justo graviolem, cum et ipsa in culpa fuerat.

etc etc etc etc etc etc etc.

4. Manuscript: *qui*.

## CHAPTER V [ON SELF-DEFENCE]

par. 19. [On self-defence by a person who is the first to commit an injury]

Here may be noted in passing what happened at the court of Henry IV, King of France, when two courtiers had a quarrel. In the altercation, one gave the other a box on the ear (which is most reprehensible at court). But he regretted his deed afterwards and asked urgently to be forgiven. However, the other insisted on revenge for the injury immediately outdoors with his rapier. He who had inflicted the injury followed and asked once again for forgiveness. But the other, inflamed with anger, drew his rapier and attacked. The other too drew his weapon and destroyed his adversary. The killing was submitted to the king and he told the judges to acquit him, since he had repented his deed and earnestly pressed for indulgence and compensation for the damage, without obtaining it.

CHAPTER VI [ON THE RIGHT AND  
PRIVILEGE OF NECESSITY]

par. 1. [The kinds of necessity]

The words in the beginning of page 237 are somewhat obscure. The meaning is this: if someone commits an offence in defending his life, then the deed is not approved of, but he deserves indulgence and pity; this is the position of Boecler.

[p. 18] *through no fault of our own*.) These words are important, for a peril into which you put yourself does not count. Thus Dina, who erred without being forced, was not without fault; therefore it is urged that the revenge consisting in the occupation of the town was too severe, since she too bore guilt.<sup>12</sup>

12. Refers to Genesis 34. Dina, daughter of Jacob, was raped by Shekem. Her brothers killed Shekem and his father and destroyed their town, which was too severe a revenge since Dina had accepted Shekem after the rape.

SAMUELIS PUFENDORFII  
DE  
OFFICIO  
**HOMINIS**  
ET CIVIS  
JUXTA LEGEM  
NATURALEM  
*LIBRI DUO.*



**LONDINI SCANORUM**  
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Title page of *De officio hominis et civis*, printed in Lund 1673. National Library of Sweden, Stockholm.

## Observationes

in  
Libellum Sam. Pufendorfii de officio hominis  
et civis

ex publicis lectionibus ipsius Auctoris

A. 1673 7 17 Febr.

## Exordium

Hic libellus merito vocatur novus, tum ratione (a)  
formae ac dispositionis, tum (B) ratione inventivae.  
Et hoc quidem, quia eum ex aliis non transcripsimus,  
et aliqua sunt, quae imputanda sunt meae propriis  
meditationibus. Primum satis clarum est nempe de  
dispositione, quia hactenus ut omnibus notum est, per-  
sonae in omnibus scriptis Aristoteles, cuius sum  
laudem non desraudamus, maxime propter bonam me-  
thodum: nam disposuerat ac digesserat in iustam formam,  
quae ab aliis doctis fuisse tradita, nec inficiamus ipsam  
hanc rationem de sua industria addidisse. Sed proposte-  
tum admodum est credere naturam omnes suas vires pro-  
fuisse in illam ac ibi quae substituisse, quae continebatur  
in ipsa creatore. quoniam potius, quemadmodum ipse  
sumptus examinandos Platonem, Anaxagoram etc. et ut ipse  
de iis testatur dixisse: Amicus Plato, amicus alius, amicus veritas,  
ita nos secundum ejus exemplum faciamus eorum exami-  
nemus dicentes, Amicus Plato, Amicus Aristoteles, amicus veritas.

(Sed)

Observationes in libellum Sam: Pufendorffii  
de officio hominis et civis ex Publicis  
lectionibus ipsius Auctoris

Ao 1673 d. 11 Febr.

EXORDIUM

Hic libellus merito vocatur *novus*, tum ratione (a) *formae et dispositionis*, tum (b) ratione *inventionis*. Et hoc quidem, quia eum ex aliis non transscripsimus, et aliqua sunt, quae imputanda sunt meis propriis meditationibus.

*Prius* satis clarum est nempe de *dispositione*, quia hactenus ut omnibus notum est, personuit in omnibus pulpitis Aristoteles, cui suam laudem non defraudamus, maxime propter bonam methodum: nam disposuerat ac digesserat in justam formam, quae ab aliis doctis fuere tradita, nec inficiamur ipsum haud parum de sua industria addidisse. Sed praeposterum admodum est credere naturam omnes suas vires profudisse in illum ac ibi quasi substitisse, quod contumeliosum in ipsum creatorem. Quin potius, quemadmodum ipse sibi sumserat examinandos *Platonem, Anaxagoram* etc et ut ipse de iis fertur dixisse: *Amicus Plato, amicus alius, amica tamen veritas*, ita nos secundum ejus exemplum faciamus eumque examinemus dicentes, Amicus Plato, Amicus Aristoteles, amica veritas. [p. 2] Sed cum maxima sit *vis consuetudinis*, ut omnia laudemus quae patria receperat, et odio prosequamur quae exteris (:qui quoque barbari vocantur:) in usu est. Cum itaque ea putantur praestantissima quae in patria more recepta sunt, non mirum est quod Aristoteles omnia sua dogmata, et praeprimis quae ad Philosophiam moralem spectant, composuerit ad formam *democraticam*, et ipsum non ita magnanimiter sensisse de diversis illi formis. Unde qui sine praejudicio *Ethicam Aristotelis* (:ut de ea prius agamus:) inspexerit perlegeritque, deprehendet eum non instituere velle civem universi seu omnes homines, sed tantum *civem Graecum*. Hinc ordo et numerus XI virtutum Aristotelicarum primoque loco ponitur *fortitudo*. Plato quippe in perfecta sua Republica tribuit primum locum militibus, qui pro patria

Annotations on the book On the Duty of Man  
and Citizen from the public lectures by  
the author himself,

February 11 1673

EXORDIUM

This book deserves to be called new with regard both to its form and disposition as well as its idea, because I have not copied it from others and some of it should be ascribed to my own thought.

That the disposition is new is clear enough, for, as everybody knows, Aristotle resounds from every lecturer's desk. I do not cheat him of praise, in particular because of his good method: for he arranged and digested in proper order what had been handed over by others, and I would not deny that he added quite a lot through his own effort. However, it is quite preposterous to believe that nature poured all its powers on him and then halted, as it were; which is insolent towards our Creator. Rather, one should proceed like he did himself when examining *Plato*, *Anaxagoras* and others, and as he is reported to have said: *Plato is my friend, and others too, but above all truth is my friend*.<sup>1</sup> [p. 2] I will follow his example and examine him saying: Plato is my friend, and so is Aristotle, but above all truth is my friend.

Since the force of habit is strong, we praise everything that is customary in our own country and loathe all usage of foreigners (who also are called barbarians). Now, as the customs of one's own country are considered best, it is no wonder that Aristotle put together all his doctrines, and especially those pertaining to moral philosophy, on the basis of *democracy*, and that he was not equally generous towards other forms of government. Therefore, who without prejudice looks into and reads through the *Ethics* of Aristotle (to begin with that), will find that what he wants to educate is not a universal citizen or all human beings but only the *Greek citizen*.

Hence the order and number of the Aristotelian virtues, of which *courage* comes first. Plato, in his ideal republic, ranked the military first, who watch and

1. The quotation originally from Plato, *Phaidon*, 91 c. Attributed to Aristotle, but not found in his works.

vigilant atque pugnant, quem etiam Aristoteles subinde respexit. (2) locat *temperantiam*. Plato enim statuit quod uterentur communi victu. Tertia enim pars civitatum ad illa symposia seponebatur, ergo inculcanda esset necessario post fortitudinem virtus temperantiae. Si enim miles temperans non esset, centaurorum foret convivium, ubi nihil nisi rixae forent audirenturque. (3) et (4) *Liberalitatem et magnificentiam* ponit; Haec [p. 3] virtus occupata est circa magnos sumptus faciendos: jam vero maxima pars civitatum in mediocri constituta erat re; ergo omnes non tangit homines, imo ne quidem centesimam partem mortalium; nam ego et mei similes potuerunt satis officio nostro defungi sine istis magnificis sumptibus, nam ita quidem<sup>1</sup> sumus circumscripti, atque quibus alae quasi praescisae sunt ut si vel maxime velimus non possimus magnos edere sumptus adeoque magnificentiae exercere virtutem. Aristoteli vero sua constabat ratio: ille enim respexit ad civium suorum onera. Debebant enim Graeci sumptus publicos sustinere de suis propriis sponte, prout quisque esset in re lauta constitutus. Ut v.g. si classis Athenis fabricanda, non imponebatur singulis certum onus contributionis, sed ditissimi conferebant pro lubitu et illi eo modo suam exercebant magnificentiam. Qui vero in mediocri fortuna erant, eorum sumptus facti liberalitas nuncupanda est. (5) agit de *modestia* quae virtus concernit eos qui gerebant publicos honores, videlicet ne eorum essent appetentiores. (6) *modestiam* excipit *justitia*, iudicum solum officium, quod alios non concernebat. Sic (7) (8) (9) disponuntur semivirtutes, ut *urbanitas* [p. 4] *comitas*, *humanitas* etc. Quodque etiam erat e natura Graecorum, quorum natio miris modis erat dicax et faceta, et sic illius virtutis praecepta ad eos tantum pertinere. Si enim jus naturae et gentium examinaverimus, potest optime quis esse vir bonus si illis virtutibus destituatur. Et ita vidimus hactenus quid censendum sit de Aristotelis Ethica, et profecto non magnos faciet saltus ille qui unice et superstitiose ipsius Ethicae adhaereat.

Sic de Aristotelis POLITICA idem iudicium ferendum; nam prout ille erat Graecus, ita amore flagrabat *Democratiarum*, atque omnia sua praecepta in Politicis tradita in earundem usum conferebat, aversans maxime *monarchiam*. Et haec ipsa genuina est causa, quare metuendum est tantum periculi ex Aristotelis Politica, si sine correctione in scholis legetur atque inculcetur. Nam immanum quantum malum provenit ex hac re superioribus temporibus proxime antecedentibus, quod ipsum non latebit, qui eorum temporum historia exactius evolverit. Et profecto

1. Manuscript: *quidam*.

fight for their country, and Aristotle often followed him. Second comes *temperance*. Plato decided that they should eat in common. One third of the citizens were selected for these symposia; therefore it was necessary to inculcate temperance after courage. For if the warriors were not temperate, the meals would be like those of centaurs, and nothing would be heard but quarrels. As numbers 3 and 4 he ranks liberality and magnificence. This [p. 3] virtue<sup>2</sup> is about spending large sums for the state. The majority of the citizens were of moderate fortune so this virtue did not concern everybody, in fact not even one per cent. People like me can do our duty without incurring great expense; our resources are limited and with our wings clipped we cannot afford to spend a great deal, however much we want to. Therefore, we cannot exercise the virtue of magnificence. However, Aristotle had good reason; he considered the burdens of his citizens. The Greeks were expected to contribute voluntarily to public expenses, each and every one according to his property. For instance, if warships were to be built, the individual citizen was not obliged to pay a certain sum; instead the richest contributed as much as they pleased, thereby exercising their magnificence. The contributions of the less wealthy on the other hand, were called generosity.

Number 5 is about moderation, a virtue that concerned those who held public offices so that they would not become too avaricious. Next to moderation follows number 6, justice, which was the duty of the judges only and did not concern others. As number 7, 8 and 9 are arranged the semi-virtues, like courtesy, [p. 4] friendliness, and humanity; this was according to the nature of the Greeks, who were a remarkably witty and humorous nation; therefore the precepts of that virtue pertained to them only. Now, if we examine the law of nature and nations, it is clear that one can very well be a good man even if one is destitute of those virtues. Thus we see so far how Aristotle's Ethics should be rated; and indeed, he who exclusively and superstitiously adheres to his Ethics only, will not come far.

The same judgement should be passed on the Politics of Aristotle: for since he was a Greek, he was afire with love for the democracies and adapted all his precepts in the Politics to them, averse in particular to monarchies. This is the genuine reason why so much danger is to be feared from the Politics of Aristotle, if he is read and inculcated in the schools without correction. The immensity of the evil that arose from this during recent decades will be clear to anyone who reads the history of those times more carefully. And truly, that

2. Obviously, liberality and magnificence are treated as one single virtue.

ea mala non minus metuenda fuere posthac, si similiter oraculi loco adoraretur amplius in scholis, nam non potest non Monarchiarum odium inde capi. Praeterea ut nihil dicam quam sit mutila et manca, tot lacunis, tot asterismis repleta, [p. 5] sicut varie inter eruditos atque acerrime non ita pridem fuerit digladiatum. Intuitu itaque Doctrinae hujus Peripateticae nostra merito nova dicitur.

Nimia admiratio, nimiumque studium philosophiae moralis peripateticae prima causa est quare hactenus genuina Ethica et Politica non fuerit pro dignitate tradita.

(II) causa sunt Scholastici seu moralistae Pontificii, qui cum suis scriptis casuum conscientiae fecere, ut haec doctrina non potuisset ad tantum fastigium emergere, qui scriptores primo sunt tam infaceti,<sup>2</sup> ut innutritus bonis authoribus non poterit non eorum taedio ferri seu capi. Et si investigaverimus quare illi fuere tam vecordes in illis disciplinis tam perverse tractandis, inveniemus causam latitare in Pontifice, qui tam in doctrina Dei seu Theologia quam in Morum seu Ethica et Politica tam arrogans exstiterat et existit jam nunc, ut patet omnia in suo pectore latitare tanquam thesaurum opimum. Et quicquid asseclae sibi assumunt scribere, ejus *interesse* debent imprimis quaerere, et ea de causa sunt ita stulti, ut per nares ita se patiantur deduci a sacerdotibus. Et quid mirum quod tam ludicra philosophia moralis ex illis sit expectanda, quum nullum solidum ponant fundamentum. Nec ideo reliqui Laici intelligere possunt quod justum quodque injustum fuerit cum nonnisi confugiunt ad Sacerdotes eorumque placita. [p. 6] Et ea est causa cur ita invicem dissentiant in scriptis et quaeri omnino potest, quare pontifex non habeat concordem philosophiam moralem atque formaverit certa et generalia quaedam praecepta seu generales regulas, unde ceterorum calamus dirigeretur? Respondemus non est ex ipsorum usu: *nundinantur* enim suorum auditorum *peccata*, quippe si uniformes haberent regulas, interesse eorum intercideret, seu evanesceret: Nam quivis confessionarius talem imprimit suo auditori opinionem, prout novit ipsi placituram, atque ad quod vidit ipsius inclinationem vergere, sic de *castitate*, si deprehenderit sacerdos suum hominem esse deditum impudicitiae non ipsi contradicit, et alterum consolatur, ex eo quod unus istorum moralistarum statuerit contra mille alios illud genus vitii posse facile concedi observatis certis circumstantiis etc, modo voluerit *sanctum aerarium inaurare*. Omne ita-

2. Manuscript: *infeceti*.

evil is not least to be feared in the future if he continues to be venerated as an oracle in the schools: hatred of monarchy will of necessity arise from that. And, apart from that, to say nothing of how mutilated and maimed the text is, full of lacunae and asterisms, [p. 5] as was not long ago sharply disputed among scholars.<sup>3</sup> Thus, in view of this peripatetic doctrine, ours deserves to be called new.

In short, the first reason why genuine Ethics and Politics have not hitherto been taught as their dignity requires is the exaggerated admiration and study of peripatetic moral philosophy.

The second reason is the Scholastics or the papist moral philosophers, who with their writings on cases of conscience have made sure that moral philosophy has not reached the summit. First, these writers are so dull that readers brought up with good literature must be seized with disgust by them. If we examine why they have been so senseless in their perverse dealing with moral philosophy, we will find the cause lurking in the pope, who has been, and is still, so arrogant in both theology and in moral philosophy that it is clear that he conceals everything in his breast like a precious treasure. And whatever his followers take up to write about, they are bound to seek his interest in particular: because they are so foolish that they let themselves be taken in by the priests. No wonder that such a ludicrous moral philosophy is to be expected from them, when they do not give it a solid foundation. Because of this the laymen cannot understand what is just and unjust, unless they have recourse to the priests and their rules. [p. 6] Also, this is the cause why they dissent so much among each other in their writings. Indeed, one can ask why the pope does not have a concordant moral philosophy and has not formulated any fixed and general precepts or rules through which the pens of the others could be directed. The answer is that it is not useful for them: for they *trade on the sins* of their audience, and if they had uniform rules, their profit would be lost or vanish. For every confessor instills in his listener an idea that he knows will please him, and to which he has seen his inclination verge: about chastity, for instance, if the priest finds that his man is dedicated to indecency, he does not object to it but consoles him on the ground that one of those moral teachers has stated, contrary to a thousand others, that such a vice can be allowed easily, given certain circumstances, if he will only *gild the holy treasury*. Therefore, the whole thing

3. It is not clear what exactly Pufendorf refers to here. The textual problems in Aristotle's *Politics* are discussed by Hermann Conring, "Introductio in Politica Aristotelis", in *Opera omnia* tom. 3, ed. J.W. Göbel, 1730, photographic reprint, Göttingen, 1970, pp. 457-490.

que huc redit ut in confessione illa sancta auditorem<sup>3</sup> disponat ad suum lucrum.

Tertia causa est jus Romanum, quod hactenus in tanto fuerat pretio, ut non nisi ex eo tanquam perfectissimo causae dijudicarentur.

De cetero fatemur aliquot praestantia ingenia contulisse varia ad hujus disciplinae in lucem genuinam [p. 7] protractionem, et imprimis virum, si religionem excipias, undique eminentissimum *Hugonem Grotium*,<sup>4</sup> cuius librum laudatissimum de Iure Belli Et Pacis cum ipse in exilio esset, consul Doctissimus Nic. Peresc. procudit. Et sane quid reliqui omnes moliti sunt, ille invenit. In hujus tamen maxime egregio libro duo praecipue desiderantur, (1) quod tam multa immisceat heterodoxa a nostra vera religione, (2) quod multa ex scriptoribus scholasticis sumpserit bona nimium fide suaque fecerit. Et addendum (3) eum multa necessaria omisisse. Post magnum illum *Grotium* surrexit Anglus quidam, cujus nomen tam est odiosum, ut verear efferre, Hobbesius inquam. Qui profecto non tam stupidus fuit ac audiat vulgo. Et sane eos errores quos habet, non protulit ex imprudentia, sed fultus erat suis rationibus. Erat enim cum scriberet, bellum inter Regem Angliae et Parlamentum, quod dixit penes Regem non esse jus quaevis disponendi. Deinde secta erat in Anglia *Independendum*, ubi non opus erat communi aliqua religione, ut hic est in Suetia, non erant alligati ad unam et certam formulam sed secuti eam religionem, quam quisque videret sibi esse commodissimam. Jam Hobbesius conatus fuit hos errores, qui et Regem ad mortem praecipitabant, [p. 8] exterminare. Sed cum nitimur curvum baculum rectum reddere, aut in alteram partem curvum redditur, aut abrumpitur; ita Hobbesius quum tentavit infringere Parlamenti opinionem, revolutus est in alterum extremum, et sic multa inspersit suis Politicis, quae minime possint tolerari: v.g. hanc thesin alias non ita detestabilem: *Potestatem civilem conjungi debere cum sacris*. Ad quam probandam varia contorsit scripturae dicta. Et sane propter illos errores non omne scriptum est exterminandum atque comburendum. Sic Cicero in libro De natura Deorum multa habet falsa,

3. Manuscript: *confessionarium*. Dots under the word indicate that the scribe himself has doubted that confessionarium is the right word here.

4. Added in the margin: vid. praef. Osiand. in Grotium.

amounts to influencing the penitent in the holy confession to the profit of the confessor.

The third cause /sc. of the misery of moral philosophy/ is Roman law, which hitherto has been held in such high esteem that cases were decided only according to that law, as if it was perfect.

As for the rest, we recognize that some prominent men of genius have contributed in various ways to shedding true light on this discipline, [p. 7] and especially Hugo Grotius,<sup>4</sup> who is most eminent in every respect, except religion, and whose most laudable *De jure belli et pacis* was printed by the learned Nic. Persc.<sup>5</sup> while Grotius himself was in exile. Indeed, he discovered what all the others had endeavoured to. However, in his very good book there are two particular deficiencies, first that he adds so much that deviates from our true religion, and second, that he took much from the scholastic writers and appropriated it with too much credulity; third, one should add that he left out many things that are necessary. After the great *Grotius* a certain Englishman arose, whose name is so odious that I fear to mention it, I mean Hobbes. He was certainly not as stupid as people say. He published his mistakes not out of imprudence but supported by arguments. When he wrote there was war between the King of England and the Parliament, who denied that the king had the right to decide on anything. At the time, there was the sect of Independents in England, where there is no need for a common religion, as there is here in Sweden, and where people were not bound by a fixed, particular regulation, everyone following instead the religion he found most suitable. [p. 8] Hobbes tried to drive out those errors, which even brought about the death of the king.<sup>6</sup> But when we try to straighten a curved stick, it either gets bent in the other direction or breaks off. Thus, when trying to check the opinion of the Parliament, he revolved to the other extreme and larded his *Politics* with many things that are by no means tolerable. For instance, the thesis, otherwise not so detestable, *that political power should be joined with religion*. To prove that, he came out with various biblical quotations.<sup>7</sup>

But a whole work should not be exterminated and burnt because of such errors. In Cicero's book *De natura deorum*, there is much that is false, but in between

4. In the margin there is a reference to a theological commentary on Grotius by Johann Adam Osiander (1622–1697), *Observationes maximam partem theologiae in libros tres de jure belli et pacis, Hugonis Grotii* (1671).

5. Nicolas Claude Fabri, Sieur de Peresc (1580–1637), French naturalist, archaeologist, and Maecenas.

6. Refers to the execution of Charles I in 1649.

7. Refers to *De cive*, chap. III:23 and IV:1–2, where Hobbes claims that natural law is not a law in the proper sense of the word unless mediated through the Holy Writ. Pufendorf regards this as a serious error and comes back to it on p. 35.

interque ea multa egregia et bona. Et sane si Hobbesius non fuisset, non pervenisset haec doctrina ad tantum fastigium. Et mihi omnino fuit propositum ex Grotio et Hobbesio tanquam omnium optimis contrahere quae bona atque mea quasi facere, exclusis iis quae cum errore sunt conjuncta, doctus regulam Apostoli *Pauli: Omnia probate, quae bona retinete*. Mos erat Spartanis si a malo viro bona quaedam sententia fuerit prolata, ut narraretur uni Ephorum, qui ascenderet dicturus eandem sententiam ne propter malum subjectum salutaris sententia tecta maneret: Sic puto neminem sanum mihi imputaturum vel vitio versurum quod eorum vestigia tam presse alicubi secutus fuero, sed potius ut ipse dicam, [p. 9] laudem meretur, qui efficit ut juvenus tenella non imbuatur falsis dogmatibus, vel imbibat faecem dum vinum sapientis desiderat.

Quantum ad errores theologicos mihi imputatos, hactenus satisfactum puto ita, ut si quid pudoris habeant, illum sentiant. Et tam opimum lucrum unum atque alterum ex illis maledicis manserat hactenus, ut me amplius non lacescant. Et miror eos putavisse me tam idiotam esse in regulis salutis meae aeternae: meque fuisse tam temerarium, quod aucupandae famae gratia incurrere vellem praesentissimum periculum mortis, quod illos in hoc regno manet, qui novatores existunt religionis. Jam vero nuperrime in me surrexit quidam magnus clamator, impingens mihi horribiles errores in Politicis postquam vidisset me per theologos non fuisse subversum, nec pudet eum quocumque modo famam meam lacerare atque ingentes ciere clamores: *Mundum conflagraturum, si mea dogmata politica stabilita manserint*. Tria mihi vertit ingentia peccata in meis scriptis (1) fundamentum meum quod supposui esse Politices, sc. *Socialitatem*, quod omnino putat removendum (2) *quod doceam alicubi dogmata debere talia sonare, quae congruant cum usu civitatum* (3) *quod dixerim honestatem esse ex Dei voluntate, non vero ex ipsius rei natura* etc. [p. 10] Sed illum clamosum nebulonem ita depexum dedi ut in posterum desistat mihi famam lacerare. Nec tamen me sinant quiescere adhuc, quum jam etiam in Germania sint malevoli quidam, qui adornant quoddam magnum volumen lipsiense in Pufendorffium, sed et ego non desistam magnum illi opponere librum, cujus titulus erit hic: *Everticulum sapientiae Schertzerianae*.

that much that is excellent and good. And indeed, had Hobbes not lived, this discipline would not have risen to its present height. Generally, my endeavour has been to take the good things out of Grotius and Hobbes, who are the best of all, and make them mine, excluding what is connected with error. I have learnt the rule of the Apostle Paul: *test everything; hold to what is good*.<sup>8</sup> If a good proposal was made by a bad man, the Spartans used to communicate it to one of the ephors, who would stand up and speak for the same idea, so that no healthy idea should remain hidden because it originated in a bad man. Therefore, I do not think anyone sound in mind will charge me or make it a vice that I here and there followed their footsteps too closely; rather, if I may say it myself, that man [p. 9] is praiseworthy who sees to it that tender youth is not imbued with false doctrines or imbibes impurities when they long for the wise man's wine.

As for the theological errors attributed to me, I think they are made up for by the shame they who do so should feel, if they can feel it. One or two precious gains from these slanderers still remain, so that they do not irritate me any longer. How could they believe me to be so ignorant of what governs my eternal salvation? And that I was so thoughtless that I would, for the sake of fame, be willing to run into the manifest danger of death that threatens those in this country who introduce novelties in religion. Recently there appeared a big bawler who charged me with horrendous errors in politics after he had seen that I was not destroyed by the theologians.<sup>9</sup> He is shameless enough to ruin my fame by some means or other, producing enormous cries: *the world would burn up, should my political doctrines be established*. There are three immense sins in my books he alleges against me: first, that I suppose *sociality* to be the fundament of politics, which he wants to be abolished altogether; second *that somewhere I hold that doctrines should say such things that are useful for states*; and third *that I have said that moral honesty is the result of God's will, not of the nature of the thing itself*. [p. 10] However, I have given this bawling wretch such a beating that he will not disturb my fame in the future.<sup>10</sup> But they will not yet let me rest, since in Germany too there are certain malevolent people who prepare some sort of big Leipzig volume against Pufendorf. But I will not desist from writing a great work in response, the title of which will be *The Destruction of the Wisdom of Scherzer*.<sup>11</sup>

8. 1 Thessalonians 21.

9. I.e. Nicolaus Beckman.

10. Cf. Terence: *Heavton timoromenos* ("The self-tormentor"), v. 951.

11. Refers to Adam Scherzer (1628–1683), a theologian in Leipzig who is said to have caused *De jure naturae et gentium* to be banned in Saxony. Pufendorf replied to him in *Epistola ad Adamum Scherzerum* (1674), reprinted in *Eris Scandica*, 2002.

## OBSERVATIONES IN IPSUM LIBRUM

## QUI INSCRIBITUR DE

*officio*.) Sic monuimus Ethicae praecepta esse in usum transferenda, non vero consistere in nuda theoria.

*hominis et civis*.) Officia mortalium promanant ex variis fontibus. Sic multa alicui incumbunt facienda quia quis est homo et animal rationale ac sociabile, quae officia ita universalia sunt, ut erga quosvis sint exercenda, quia alter aequè homo est ac ego. Sed officium civis non aequè late patet, quia quod teneor exercere erga meum concivem, non adigor exercere erga alterius Reipublicae homines. Sic quod exhibeam officium meo regi, non astringor alterius Reipublicae regi exhibere. Sic certa sunt officia in certis civitatibus, quae nos non describimus, sed tantum generalia quibusvis competentia. [p. 11] Ita certum est officium hominis Christiani, quod tractandum relinquimus Theologis.

par. 1.

Alias *officium* denotat munus seu functionem, verum nobis est actio, sic si qui solvat quod debet, defunctus suo officio.

par. 2.

Alii ita hoc exprimunt, distinguentes inter actionem Hominis et actionem humanam: illa est quae venit abs facultate humana, ut *nutrire, conquire, digerere, accrescere, movere*, quae actiones perpetratae quidem ab homine, humanae tamen non appellari, quia eas non facit tanquam homo, sed communes habet cum brutis, de quibus actionibus non est sermo. Sed de iis quae procedunt ab hominibus quatenus distincti sunt ab aliis animantibus etc.

/par. 3./

Facultas intellectualis est vel *apprehensiva* vel *judicativa*; bruta quidem apprehendunt res, sed de iis non iudicium ferunt, ut in proverbio est: *aspicis hanc rem ut vacca novam portam*. Intellectus autem noster iudicat quid praecedat, quidve sequatur.

*notiones*.) Nam v. g. si quis fumum aspiat, ex quo ignis prodit ex colatione horum colligit fumum esse signum subsequentis ignis.

OBSERVATIONS IN THE BOOK ITSELF, TITLED ON *the duty*:) By which we exhort that the precepts of Ethics should be applied in practice and not consist of naked theory.

*of man and citizen*:) The duties of men spring from different fountains. You are obliged to do many things because the other is a human being and a rational and sociable animal; these duties are so universal that they are exercised towards everybody, because the other is a human being as much as I am. The duty of the citizen, on the other hand, is not equally wide, since I do not have to do what I am obliged to do in relation to my fellow citizen towards the human beings of another state. Likewise, I am not bound to do the duty I owe to my king for the king of another country. Thus, we do not describe here the duties of certain states but only those general duties that concern everybody. [p. 11] Likewise, there are special duties for the Christian which we leave to the theologians.

par. 1.

In other contexts, *duty* means task or function, but to us it is an action, as when somebody pays what he owes he is discharged from his duty.

par. 2.

Other scholars express this by distinguishing between the action of man and human action. The former is what comes from human capacity, like nourishing, chewing, digesting, growing, and moving, which are actions of men but cannot be called human, because he does not perform those actions as a human being but has them in common with the animals. Of these actions there is no discussion here. Instead we talk about those which proceed from human beings, in so far as they are distinct from other living creatures.

/par. 3./<sup>12</sup>

The intellectual faculty is either apprehensive or judging; animals apprehend things but they do not pass judgement, as in the proverb: *you look at this as a cow looks at a new gate*. Our intellect discerns what comes first and what afterwards.

*concepts*:) for instance, if someone sees smoke, from which comes fire, he concludes from putting these together that smoke indicates subsequent fire.

12. Omitted in original.

par. 4.

*matura aetate*;) Dicimus superesse tantum. Verum requiritur ut matura sit aetas, sicque exclusos volumus infantes qui [p. 12] ignorant discernere aera lupinis vel ut Sacra Scriptura loquitur discernere inter dextram et sinistram.

*superesse*;) Hoc loco monuimus nobis fuisse in primaevo statu amplio-rem facultatem atque illustriorem sicut in rebus divinis, ita etiam moralibus. Et certe si non alia esset differentia inter utrumque statum, vel haec erit: quod circa nostrum iudicium formandum sese obfert ingens difficultas.

*adhibita cultura*;) In Adamo erat lumen nativum, nunc vero est quasi eruendum, disciplina et meditatio est adhibenda. Ideo videmus quasdam nationes, ubi disciplina ita non est in usu, quasi quoad intellectum obrutuisse.

*saltem*;) Hic vel ad minimum sicut in omnibus nostris scriptis est capiendum.

par. 5.

Quid recta quidve probabilis sit hominis conscientia adparebit ex subjuncto exemplo. Eruditus novit reddere rationes hujus praecepti de non occidendo, de non adulterium committendo, ut nempe vita humana erit sociabilis etc. Sed Rusticus etiam tenetur vivere juxta hoc praeceptum, sed non potest artificiosam rationem reddere, videlicet eo violato turbari vitam communem, qui illud observat ex tenore vitae civilis ac autoritate superiorum, quia ita in catechismo praecipitur et ita inculcat pastor noster.

[p. 13] par. 7.

*Error vincibilis* vocatur quando res ita obscura non erat quin potuerim recte facere adhibita diligentia, ut si pharmacopola fugitivo oculo inspexerit literas, et apices exacte non observarit, ut noxia sumeret aegrotus medicamenta pro salutaribus, peccat pharmacopola errore vincibili, quod poterat et debebat non errare. *Invincibilem autem errorem* non erramus circa praecepta generalia, ut homicida et adulter non auditur, qui conatur se excusare ex ignorantia.

par. 4.

*in mature age:*) I mean that at least so much is left /of our rational capacity/. The age should be mature; thus we will exclude children, who [p. 12] do not know how the difference between weed and lupines, or as the Holy Writ says, between right and left.<sup>13</sup>

*is left:*) Here I call attention to the fact that in the original state our faculties were more perfect and manifest in divine matters as well as in moral ones. And indeed, if there is no other difference between the two states, this there is at least: an enormous difficulty to form our judgement.

*with cultivation:*) In Adam, light was innate; now it has to be drawn out, as it were, by help of instruction and reflection. Therefore, we see that some nations where instruction is not much in use have, so to speak, become brutish in understanding.

*at least:*) Here, as in my writings, meaning at the very least.

par. 5.

What right respectively probable conscience is will be clear from an example: An educated man can give reasons for the precepts about not killing and not committing adultery, i.e. that human life should be sociable etc. A peasant is obliged to live according to this precept, but he cannot give a logical reason, namely that if the precept is violated, human society would be disturbed. He complies with it because of the customs of social life or the authority of his superiors, since it is laid down in the catechism and our vicar inculcates it.

[p. 13] par. 7.

It is called *vincible error* when the matter was not so obscure that I could have acted correctly with care. When a pharmacist reads hastily and does not observe the letters exactly, so the invalid gets the wrong medication, he makes a *vincible error*, since he could and should have avoided it. We do not commit *invincible errors* against general precepts: a murderer or an adulterer, who tries to excuse himself with ignorance, is not granted.

13. Jonah 4:11.

par. 8.

*Ignorantia voluntaria* est ut si quis recusaverit perdiscere catechismum, ac velit se excusare non novisse hoc esse vetitum. *Involuntaria* autem est, quum non calleam linguam Arabicam. Nullus sane mihi hoc potest objicere, quia meum institutum non erat, nec ad hoc me posuerunt parentes ut tempus huic studio insumerem.

par. 11.

Cum alia animantia ut arbores etc agant motu uniformi ut malus nunquam poma profert; sic animantia bruta semper feruntur ad explendum ventrem. Homines agunt ex voluntate libera quae sese potest flectere ad diversas actiones. Quare autem ad diversa abeat cum bonum semper appetat et malum aversetur? Respondemus quia intellectui objecta varie repraesentantur, ut non ex omni parte videantur pura sed mixta, videlicet bonis et malis, ceu de studiis clare adparet; ex una enim parte offert sese utilitas, videlicet scientiis instructum esse, ex altera parte molestiae et alia incommoda.

[p. 14] par. 12.

*solique genius:*) E. g. Hollandica natio solers est ad omnem questum faciendum, contra Americi addicti sunt otio, ut quando Hollandus deduxit illuc colonias post unam vel alteram generationem omnem animum Hollandicum exuebant. Sic antiqui Saxones fuere populi fortissimi, sed postquam migraverunt in Angliam, redditi sunt valde molles.

*multum etiam ex diversitate temperamenti:*) Sit aliqua computatio constans multis hominibus, quando vinum vicerit, et ratio quasi curru excutiat. Incipit alter melancholicus flere, alter gladium vagina extrahere atque quibusvis minas intentare. Tertius se non continere potest a saltu, quamvis crura vix contineantur, et oberrare ac quaerere suam amasiam. Quartus sit admodum disputax, et sic deinceps.

*valetudine:*) ut podagra laborans non patitur musculum repere.

*studiorum ratione:*) Sic milites et nautae admodum sunt feroces propter mortis imminentissimae pericula prae iis, qui post fornacem sederant domi.

par. 14.

*ut hos quam illos plus favoris etc:*) Ut si delicatulusque irrumpat in culinam et lardum ac renem ex lepore surripiat, expellitur et nullam excu-

par. 8.

*Voluntary ignorance* is when someone refuses to learn the catechism and excuses himself on the grounds that he did not know it was forbidden. Involuntary ignorance is when I do not know Arabic: nobody can hold that against me, since I have not studied it and my parents did not make me spend time on studying it.

par. 11.

Other living creatures like trees act uniformly, so that an apple tree never produces pears; likewise animals are always driven to fill their belly. Human beings act by free will that can be bent to various actions. But why does it go in various directions, when it always desires the good and abhors the bad? The answer is that the objects are represented to our understanding in various ways, so that they do not appear altogether pure but mixed, i.e. good with bad. That can be clearly seen in studies: on the one hand it is advantageous to be educated, on the other hand studying is connected with irksomeness and other troubles.

[p. 14] par. 12.

*character of the earth:*) For instance the Dutch are clever at making all kinds of profit, whereas the Americans are given to an idle life. But when the Dutch established colonies in America, the Americans deprived them of all their spirit after one or two generations. Likewise, the old Saxons used to be very vigorous, but after they migrated to England, they became very weak.

*Further, much depends on different temperament:*)<sup>14</sup> Imagine a party of several people when the wine gets the upper hand and reason is driven away: then one who is a melancholic starts crying, another draws his sword, issuing threats to everybody, a third cannot help jumping, although his legs hardly hang together, rambling about seeking his lover. A fourth wants to argue about everything, and so on.

*state of health:*) He who suffers from gout does not endure the slightest movement of a muscle.

*way of life:*) Soldiers and sailors are fierce because of the risk of imminent death, compared to those who stay at home by the stove.

par. 14.

*that more goodwill and indulgence should be given to the latter passions than to the former:*) An adolescent who breaks into a kitchen and snatches lard and kidney

14. These words are not quoted from the paragraph.

sationem meretur. Ille vero non tam duriter habetur, qui tale facit fame pulsus [p. 15], quia natura hanc abhorret. Unde Syracides dicit adulterum magis peccare quam furem. Hic enim non saepe necessitate pellitur.

par. 18.

*ut et operationes:*) Ut si mons igneus Aethna incendium evomuerit noxium, nec ego nec ullus hominum est in culpa.

*quivis eventus:*) Ut nobis imputari non potest, quod Rex Galliae superiori anno tot urbes occupaverit in Hollandia, nec hodierna tempestas etc.

*moderari:*) Si alterius moderationi subjectus male se gesserit vel bene, utraque actio imputatur moderatori. Quemadmodum regi imputatur, si dissolute vivant subditi, legibus non latis, vel earum observatione neglecta, vel neglectu non punito. Quemadmodum et sacerdotibus imputatur, si membra ecclesiae sinant ruere in quaevis peccata. Nam Ezech. III v. 18. habetur, quod si patiatur sacerdos auditorem suum mori in suo peccato, eumque cum posset, non correxerit, tenetur reddere rationem coram tribunali divino de ejus anima. Iisdem cancellis circumscribuntur parentes ut de sacerdote Eli habetur 1.Sam. 2.13 sq. Qui non sat rigidam adhibuerat diligentiam versus suos filios immorigeros proindeque poenam dedit. Dicitur quidem quod eos jusserit bene vivere, sed scabioso capiti acre lixirium est adhibendum.

*ut quis uni perpetuo:*) Posse dicitur vel (1) *physice* ut [p. 16] homo ambulare, vel ipsum non posse volare, quia non habet pennas, (2) *moraliter et civiliter*, sic eo modo impossibile est ut moderator ita regere sibi subjectum, quin aliquando et se invito subjectus quid mali admittat. Nam non potest assidue ipsi assidere et quasi esse vinctus, ut quondam Romae erat, quod miles qui reum custodiret, copulabatur cum eo quem servaret. E.g. si praeceptor discipulos severe administraret et eos, quando delinquerent, castigaret, ut suum officium censeatur implevisse; si autem exiret ad tale opus, quo nullus hominum supersedere posset, et pueri interim invicem se laceraverint ac turpe fecerint; tum praeceptor culpam non incurrit, sed patrans nempè discipuli ac eorum petulantia. Ratio est haec, quia praeceptor erat hoc impossibile, non (1) *physice* (: responderi enim posse pro discipulis, si domi mansisset hoc non esset factum:), sed (2) *moraliter ac civiliter*; nam gessit sese iuxta tenorem ac cursum hujus vitae nec potuit, salva venia, apud discipulos in hypocausto alvum exonerare. Idem de pastore tenendum, qui quidem est custos animarum, sed non tenetur nec

for pleasure will be kicked out and deserves no excuse. He who does the same out of hunger is judged less strictly, [p. 15] since nature abhors hunger. Hence Sirach says that an adulterer sins more than a thief.<sup>15</sup> For the adulterer is seldom driven by necessity.

par. 18.

*no operations of any other things:*) If the volcano of Etna vomits harmful fire, neither I nor any other person is guilty.

*no event:*) I cannot be blamed for the occupation last year by the King of France of numerous towns in Holland, nor for today's weather.

*guide:*) if someone who is under the leadership of another does well or badly, both actions are ascribed to the leader. The king is blamed if his subjects live laxly because there are no laws or given laws are not observed nor crimes punished. Likewise, the priests are blamed if they allow the members of the church to sink down in all kinds of sin. In Ezekiel III:18 it says that if a priest lets his hearer die in sin and has not corrected him when he could, he will have to answer for his soul before the divine tribunal. The same limits restrict parents as is told about the priest Eli in 1. Samuel 13 sq. He had not been strict enough when instructing his disobedient sons and was therefore punished. It is said that he ordered them to live decently, but scurfy heads need sharp medicine.

*as if someone were permanently attached to one person:*) To be capable can be understood either (1) physically, [p. 16] a man being able to walk or unable to fly because he has no wings, or (2) morally and socially: in that sense it is impossible for a guide to exert such complete control that the subordinate does nothing evil against the will of his supervisor. He cannot constantly sit by him and be chained to him, as in Rome, where the soldier who was to watch over a culprit was coupled together with him. For instance, if a teacher handles his pupils severely and punishes them when they offend, he is considered to have fulfilled his obligations. If however he goes out for an errand that no man can avoid, and the boys mangle each other or behave shamefully; then the teacher is not to blame, only the offenders, i.e. the pupils and their misbehaviour. The reason is that this was impossible for the teacher not (1) *physically* (: for in defence of the pupils it could be answered, that this would not have happened, if he had stayed at home), but (2) *morally and socially*, for he behaved according to the conditions and conventions of human life and could not for the sake of decency relieve himself in the washroom. The same goes for the vicar who, to be sure, is custodian of the souls, but is not obliged and

15. Reference not found in Sirach. See, however, Proverbs 6:30–33.

potest omnes homines visitare; verum vitia vulgaria ex suggestu debet reprehendere in genere, sic censetur suo satisfacisse officio.

*sic et quaevis mala etc.:*) Exemplum est, quod in vetere [p. 17] Ecclesia, ut et jam apud populos orientales moris est, usurpare tecta plana, quare lege sancitum erat, ut quivis paterfamilias lorica circumduceret suo tecto, ne deciderent homines. Si autem aliquis vel propter avaritiam vel negligentiam mandato morem non gesserit, ipsi culpa imputabatur. Ita lege erat sancitum divina, ut quis puteum vel fossam tegere deberet, ne vel jumenta vel homines inciderent imprudentes in eandem; qui autem secus fecerit manebat eundem paena culpae.

*rerum naturalium operationes:*) Sic quando videmus agrum bene excultum, laudamus non tam ipsum agrum vel fructum, quam agricolam qui eundem excolendo ac stercorando tam indefessam curam adhibuerat. Et e contra dedecus manet ipsum cuius ager totus ac plenus est zizaniis vel nullum protrudit fructum.

*qui alias supra humanam directionem sunt:*) Quod optime intelligitur exemplo Eliae, ad cuius preces caelum quasi claudabatur, ne pluviae deciderent, et hoc modo homines converterentur ad Deum, sic et pluvia fiebant deinceps ejus precibus. Siccitas ergo et pluvia imputabantur ipsi prophetae supra cuius vires tamen erat ille actus.

*de propriis actionibus:*) Alias grande et detestabile vitium est πολυπραγμοσύνη ex aliarum actionum nimia cura. Sic Paulus dicebat se curam [p. 18] nullam gerere eorum qui constituti erant extra ecclesiam. Quia alterius actionis vel commodum vel incommodum in me non redundat. Unde sapientissime monet Sapiens Hebraeus Syracides: *Quae tibi non commissa sunt, in illis non exerce tuam petulantiam, quia multa tibi sunt commissa quae sustinere non potes.*

par. 20.

Sic Abimelechi factum Gen. 20 quando Saram vellet in uxorem ducere erat impossibile moraliter. Ipse enim Rex juxta communis vitae tenorem credidit verum esse, quod dixerit Abraham, nec moris erat tum temporis mittere servos suos et explorare num res ita sese haberet, et arbitrabatur Abraham esse virum veracem.

cannot control every human being; but he is supposed to castigate common vices from the pulpit in general and in doing so is considered to have fulfilled his duty.

*Similarly all misfortunes:*) For example, in the ancient [p. 17] Church and still among the peoples of the Orient it was customary to make use of the flat roofs and therefore it was sanctioned by law that every paterfamilias should erect a fence around his roof so that people would not fall down. But if someone out of avarice or negligence did not follow the custom, he became responsible. Similarly there was a divinely sanctioned law that one should cover a well or a ditch so that cattle and imprudent people would not fall into it: anyone who did otherwise was considered guilty of crime.

*the operations of things in nature:*) When we see a well-tilled field, we praise not so much the field and the crop as the peasant who has devoted such indefatigable care to it by tilling and manuring. Inversely, shame befalls him whose field is full of weed or gives no crop.

*who are above human guidance:*) This is very well understood from the example of Elias, through whose prayers the sky closed, so that the rain ceased and the people became converted to God: thereafter rain too came on his prayers.<sup>16</sup> So both drought and rain were ascribed to the prophet, but both those events were beyond his power.

*one's own actions:*) A big and detestable vice is meddlesomeness out of too much interest in the actions of others. Paul said that he did not care about [p. 18] those who were outside the church. For the actions of others cause neither advantage nor disadvantage to me. Hence the Hebrew Sirach admonishes most wisely: *Do not practice your petulance on what is not your business, for there is much of your business you cannot control.*<sup>17</sup>

par. 20.

Abilmeh's deed in Genesis 20,<sup>18</sup> when he wanted to marry Sarah, was morally impossible. In accordance with prevailing custom and way of life, he believed what Abraham had said to be true. In those days it was not customary to send one's servants to find out how things stood and he believed Abraham to be a veracious man.

16. 1 Kings 17–18.

17. Sirach 3:23.

18. Genesis 20 tells the story about Abilmeh who married Sarah believing her to be Abraham's sister, not his wife.

par. 22.

*commodus locus*:) Sic reprehendi quis nequit, quod non cantet testudine in diversorio quodam quum ibidem semper sit strepitus, ne vel viri clamor exaudiri queat, aut pila ludat in parva navi, ad quam rem amplius campus erit.

Quis simul potest sorbere et flare? Nam illa actio significat attractionem spiritus, haec vero protrusionem adeoque sunt motus contrarii, qui una et simul effici nequeant, nam homo se dividere non potest.

[p. 19] par. 23.

Unde de obaerato quaestio ex hoc loco decidi potest facile. Num si is conjiciendus est in carcerem, qui non est solvendo? Dici solet, qui non habet in aere, luat in corpore. Sed attendenda est restrictio: posse videlicet in carcerem compingi, quando opes perdiderit ac decoxerit luxuria, non vero quando easdem amiserit fatali calamitate. Huc referendum exemplum de militibus pollices sibi abscindentibus. Et culpa redargui potest arator si omnia instrumenta corruperit vel reddiderit inidonea ad arationem.

par. 24.

Prior coactio vocari potest *corporalis* si tertius sumserit meam manum, ac cum ea tanquam instrumento alteri impegit colaphum cui non eram resistendo. *Altera* illustratur hoc exemplo, si validior me, gladio exserto mihi jam jam necem intentaret, nisi facem immitterem tecto, sane ideo ego non sum in culpa si facem admoveam, declinando eo modo mortis periculum, cum non video, quare vitae dispendium patiar pro tecto stramineo, et ille, si ego non fecissem, alias fecerit idem post meum obitum.

par. 27.

*qui alterum auctoritate sua ad quid permoverunt*:) E.g. si pater jubeat filium adultum facinus quoddam patrare, tum uterque est in culpa si fiat, sed pater gravius delinquit, qui firmiore est judicio ac filius, et deberet potius [p. 20] in peccata ruentem retrahere: nec evadet notam peccati filius, nam sciebat non teneri ad obedientiam patri praecipienti legi repugnantia.

*consensum requisitum adhibuerunt*:) Si feroces quidam juvenes in urbe obsessa petunt a duce, ut faciant irruptionem, quam consecuta ingens clades, quae utrique imputatur, et juvenibus qui comprimere debebant suam

par. 22.

*convenient place*.) Nobody can be blamed because he does not sing and play the lute in a tavern, where it is always so noisy that not even a shout is heard, or because he does not play darts in a small boat, for which ample space is needed.

Who can suck and blow at the same time? The former action means a contraction of the breathing, the latter its ejection, and therefore they are opposite motions, which cannot be produced simultaneously: a human being cannot divide himself.

[p. 19] par. 23.

Here, the question of the debtor can easily be decided. Should anyone who cannot pay his debt be put into prison? It is usually said: He who has no money shall pay with his body. However, there is a restriction to observe in putting people in jail: someone who has wasted his fortune through extravagance can be confined to prison, not however someone who lost his through a fatal calamity.

To this topic /of weakening one's power by one's own fault/ can be referred the example of soldiers who cut off their thumbs. And the farmer who can be proved guilty if he has destroyed all his tools or made them unfit for tilling.

par. 24.

The first kind of coercion could be called *corporeal*, if somebody, whom I cannot resist, grabs my hand and uses it as a tool to strike another. The *second* kind is illustrated by this example: if someone stronger than me, sword in hand, threatens me if I do not set a house on fire, then I am really not guilty if I apply the firebrand, thereby avoiding mortal peril, since I do not see why I should lose my life for a straw cottage; and had I not done it, he would have done it at another time after my death.

par. 27.

*those who incited the other person to action by their own authority*.) For instance, if a father orders his adult son to commit a crime, then both are guilty, but the father offends more since his judgement is more stable and he should have restrained [p. 20] his son from drifting into crime. Nor does the son escape reproach, for he knew that he was not obliged to obey his father if he told him to do something unlawful.

*those who gave the necessary consent*.) If, in a town under siege, some ferocious youngsters ask the commander for permission to make a sally that results in disaster, then both are responsible: the youngsters who should have tempered their

importunam ferociam, et duci ipsi, qui nosse debebat e re non esse talem fieri irruptionem, qui et plus peccavit quam illi, nam sine ejus concessu non irrupissent feroces milites.

*qui poterant et debebant prohibere*.) E.g. si pater videat filium petulanter facere et effringere fenestram vicini, si eum non castigat pater, ne desistat a tali pacto, est in culpa pater, qui debebat et posset prohibere eum.

*ad facinus patrandum conducunt*.) Quemadmodum sit in Italia, ubi est maximus fervor vindictae, ac magna seges hominum proscriptorum, qui alios interficient. Aequè sicarius ac qui conducit est in culpa. Idem etiam patet de incendiario.

*qui adjuvant*.) Ut in furto qui scalam admovet, vel alio modo efficit ut fur sine difficultate ac periculo res auferat.

*qui receptum ac defensionem praestant*.) Uterque enim censetur fur, tam qui furatus est, quam qui sciens talibus [p. 21] receptum praestat, quod notum etiam est de duce Saxoniae qui et est proscriptus, cum a Caesare proscriptos recepisset.

*opem ferre injuriam patientis* etc.) Ut constat de militibus, qui constituti sunt adprehendendos latrones, eos tamen impune latrocinium facere permittentibus.

*consilium speciale*.) Quod est notum ex historia notissima in Scriptura Sacra de Juda Christi proditore, qui suppeditabat consilium Pharisaeis ac scribisprehendendi Christum in horto ubi sciebat eum fuisse solitum preces fundere. Satis sane egregium locum is invenit in hoc facinore.

## OBSERVATIONES AD CAPUT II

D. 6. MARTII 1673

[DE NORMA ACTIONUM HUMANARUM,  
SEU DE LEGE IN GENERE]

par. 1.

Ante officium duo veniunt notanda: (1) quomodo sese habere debent actiones hominum, de quibus in capite praecedente; (2) facienda est regula seu norma ad quam conformare debemus nostras actiones. Ad illustrationem hic dictorum multum facit similitudo ex RE MUSICA petita. Quaedam enim voces ibi sunt acutae, quaedam graves, unde oritur maxima discrepantia ac miser horribilisque ululatus, cum quilibet suam cantet cantilenam. Erit ergo qui cujusque sonum examinet et consonantiam faciet, unde resultat demum suavis harmonia ex confusissima dissonantia.

dangerous ferocity and the commander who ought to have known that such a sally would be detrimental; and in fact, he failed more than they did, since without his permission, the soldiers would not have launched their sally.

*those who could and should have prevented:)* For instance, if a father, seeing that his mischievous son breaks the window of the neighbour, does not admonish him to give up such behaviour, then the father is guilty, since he could and should have prevented him.

*hire someone to commit a crime:)* As it is in Italy, where the passion for revenge is enormous and there is a large supply of outlaws who kill others: here, both the perpetrator and the hirer are guilty. The same applies to arson.

*those who help:)* As in a theft, he who applies the ladder or in some other way helps the thief to carry away the loot without difficulty and peril.

*those who provide refuge and protection:)* Both are considered thieves, the thief as well as he who deliberately provides refuge to such people. [p. 21] A known case of this is the Duke of Saxony, who was outlawed because he had given refuge to people who had been outlawed by the Emperor.

*/those who did not/ help the victim:)* As with soldiers who should capture bandits but allow them to rob with impunity.

*special advice:)* This is known from the well-known tale in the Holy Writ of Judas the traitor, who advised the Pharisees and the scribes to arrest Jesus in the garden where he knew he used to say his prayers. Indeed he found a suitable place for this deed.

## ANNOTATIONS ON CHAPTER II

MARCH 6 1673.

### [ON THE RULE OF HUMAN ACTION OR ON LAW IN GENERAL]

par. 1.

Before we come to the duties, two things should be noted. First, how the actions of men we dealt with in the preceding chapter ought to be regarded: second, a rule or norm must be established to which we should ensure our actions conform. To illustrate what has been said here a simile from the sphere of music is helpful. In singing, some voices are treble, others bass; from this arises great discrepancy and a miserable and horrible noise, when everyone sings his own melody. Therefore, there must be someone who supervises the sound of everyone, bringing about consonance so that then indeed lovely harmony results from confused dissonance.

Sic se res habet in actionibus humanis, necessaria enim ibi est lex, quae diversitatem hominum conformet. Quid? si unus vel alter in societate prae fractus vivat, turbatur equidem tota societas, si hoc, quid futurum esset, si singuli ex suo arbitrio agerent.

[p. 22] par. 3.

Notius est quam ut dici mereatur duplicia esse vincula, (1) *corporalia*, ut catena, funis, quae brutis imponuntur, quibus motus corporis restringitur (2) *moralia*, quae necessitatem injungunt in nostra conscientia quale est v.g. *pudor*, *studium famae*, ne turpi vitio sese maculet. Lege libertas non plane extinguitur in homine, quod simili, quamvis dissimili illustratur: v.g. equus generosus cui frenum est impositum, et per quod dirigitur in ea via, qua debet incedere, in eo tamen tantum est virium, ut sessorem soleat deponere ac a via secedere; ast frenum tamen vellicat ejus os, ut sentiat quando incedit recta quando non recta via. Similiter et lex facit in homine.

par. 4.

Quaedam entia sunt tum abjectae ac ignobilis naturae, ut capacia non sint legum, v.g. bruta animantia et inanimata: quaedam vero entia tam nobilis conditionis ac naturae, ut nec in ea cadat ulla lex. Quale majestas eminentissima Divina.

*per naturam ad uniformem modum:*) V.g. ignis adeptus idoneam materiam non potest non urere eamque consumere, ut si quis vel maxime leges praescribat eidem durissimas, ille tamen similiter urit, nec effici potest ullo praecepto ut ignis refrigeret, sicut et frustra feruntur leges ad bovem esurientem ut uno die a pabulo se contineat. Certe perinde est ac si quis velit surdo narrare fabulam.

par. 5.

Si non animadvertatur in eum, qui leges flocci pendet, videntur omnino leges esse frustraneae, requiritur [p. 23] ergo in legislatore *potentia* paenas infligendi inobedientibus. Deinde ea non sufficit sola, sed *ratio* debet adesse. Quod patet exempli diaboli, qui est viribus instructissimus adeoque et facultate praescribendi leges. Sed is debet allegare causas ac *rationes* v.g. se esse nostrum creatorem, defensorem etc. Cum cernimus ejus rationes esse falsas, ergo ipsius legibus non obtemperamus. Sic si considerare velimus quare legibus Dei obtemperare debemus, primoprehendimus

This applies to human action: there is a necessary law that brings order to the diversity of men.<sup>19</sup> If one or two live self-indulgently, the whole of society is disturbed. What would happen if the individual acted according to his will?

[p. 22] par. 3.

It is so well known that it is not worth mentioning that there are two kinds of bond, first the *corporeal*, like chains and ropes that are placed on animals and restrict corporeal motion. Second, there are *moral* bonds, which impose a constraint on conscience, such as for instance *shame, concern for one's reputation*, so that one is not disgraced by shameful vice. The law does not extinguish human liberty, which is illustrated by a parallel however dissimilar: a noble horse equipped with a bridle by which it is manoeuvred in the right direction still has so much power that it may throw the rider and deviate from its course, but the bridle nips its mouth so that it feels when it is going in the right direction or not. The law has the same effect on man.

par. 4.

Some beings are of such low and ignoble nature that they are not legally competent, for instance animals or inanimate beings. Other beings are of such noble rank and nature that they can be subject to no law. Such is the most eminent divine majesty.

*by nature to a uniform mode of behaviour:*) If fire catches a suitable material, it cannot but burn and consume it. Even if somebody prescribes the strictest laws, it continues to burn and no precept can make it cool off. Similarly, laws are given in vain to make a hungry ox abstain from fodder for one single day. Indeed, it is like telling stories to the deaf.

par. 5.

If someone who considers laws insignificant is not punished, all laws seem worthless. Therefore, it is necessary [p. 23] for the legislator to have power to punish the disobedient. But power alone is not sufficient; there must be reason too. This is clear in the example of the devil, who is most powerful and able to prescribe laws. But he should adduce causes and reasons, for instance that he is our creator and defender. When we see that his reasons are false we do not obey his laws. Hence, if we consider why we ought to follow the laws of God, we will find first that he

19. Pufendorf uses the same musical simile in the comments on *De jure*; above p. 47.

ipsum omnium esse potentissimum et exinde oritur *metus*, deinde nobis se ingerunt *rationes* quod nos creaverit, sustentet, amet, beneficia in nos conferat etc. Exinde oritur *reverentia*.

*is terrere quidem me potest:*) Si e.g. capiar a latronibus ex ipsorum minis cogor multa agere contra meam inclinationem ac voluntatem, idque metu mortis; sed cum ab ipsorum manibus elabor, potius summo quaero studio quomodo ipsos quovis malo possim mactare, adeoque sola potentia sufficiens non est. Ita Deus quando Populo suo decalogum promulgavit, non provocabat tantum ad *potentiam* suam, qua ipsos omnes posset fulmine perdere uno ictu oculi. Sed dixit: Ego sum Deus fortis. Sed et allegavit *rationes* adjiciens: Ego sum qui te ex servitute Aegypti eduxi etc.

*ni potentior aliquis hujus auctoritatem proculcatam adsertum eat:*) Si parens senio confectus ac decrepitus habeat filios immorigeros qui nihil minus quam parentis jussa exsequuntur, in tales solet magistratus animadvertere [p. 24] et si eorum effugiant castigationes, non eludent severissimas Dei poenas.

*actu hujus directionem sibi vendicet:*) E.g. si ponamus iuxta Epicuraeos Deum creatorum nullam gerere curam, sed nos reliquisse vivere nostro arbitrio; et si parens filiorum curam postponat, ut eos plane negligat. Non tenetur creatura nec filius sese ad Dei vel parentis voluntatem componere actionesque suas dirigere. Sed ex adverso ideo tenemur Deo ac parenti obedientiam praestare, quia actu in nos conferunt beneficia et nostri directionem sibi vendicant.

*ultra alteri sese subjecerit:*) Quod Rex protendit in subditos rebelles, quod videlicet semel consenserint in ipsius directionem. Ergo et obstricti sunt ad non mutandam sententiam. Sic maritus dicit ad uxorem, et haec vicissim ad eum vulgatissimo dicterio: Hastu mich genommen, solstu mich befallen. Ita servus non potest recusare Domini imperium, quamdiu durat tempus conductionis, in quod semel consenserat.

par. 6.

Cognitio necessaria est (1) *legislatoris*, ut si literas accipio continentes mandatum quoddam, primum inspiciendum sigillum ac nomen, ut in decalogo factum, praemissum est nomen auctoris et promulgatoris Ego Jehova. Et mos idem obtinet in decretis Regum. Praemittitur enim v.g. talis titulus Nos Dei gratia Carolus XI etc. Sic Pharao quaerebat a Mose

is the most powerful of all beings, from which comes *fear*, but then the *reasons* present themselves that he created us, preserves us, loves us and bestows benefits on us. Of this comes *respect*.

*may indeed terrify me:*) If bandits capture me, I will be forced by their threats to do many things against my inclination and will, and this because of fear of death. But when I get away from them, I will be eager to find out how I can hurt them. Therefore, power alone is not sufficient. When God promulgated the Decalogue to his people, he did not only appeal to his power, with which he could destroy them all in the glance of an eye. But he said: I am almighty God. And he also adduced reasons, saying: I am that I am and I led you out of Egypt.<sup>20</sup>

*unless a more powerful than he comes to assert the authority I have flouted:*) If an old and sick father has disobedient sons who do everything but obey his instructions, then the authorities will censure [p. 24] them, and if they evade that correction, they will not escape the strictest punishments of God.

*actually claims direction of him:*) Suppose, according to the Epicureans, that God did not care about the universe but had left us to live according to our own will, and suppose a father neglects concern for his sons completely. Then neither the universe, nor the sons are obliged to adapt to the will of God or the father and direct their actions accordingly. On the contrary, we are obliged to pay obedience to God and our father, because they bestow benefits on us and claim to be our guides.

*voluntarily submitted to him:*) This is what a king asserts vis-à-vis rebellious subjects, viz. that they have once consented to be governed by him. In consequence, they are obliged not to change their minds. Similarly, the husband says to his wife, and she to him with the common saying: Hastu mich genommen, solstu mich befallen.<sup>21</sup> The servant cannot reject his master's control as long as the term of service to which he consented lasts.

par. 6.

It is necessary that it be known, (1)<sup>22</sup> who the legislator is. If I receive a letter containing an order, I should first inspect the seal and the name, as it is in the Decalogue, where the name of the author and promulgator is indicated in advance: Ego Jehovah. The same is customary in royal decrees, for instance in an inscription like We Charles XI by grace of God<sup>23</sup> etc. Similarly, when Moses came to Pharaoh, he

20. Exodus 20:2–5.

21. German: "If you have taken me, you will command me."

22. (1) is not followed by (2).

23. Charles XI, King of Sweden 1672–1697.

ad se veniente nomen Jehovae, quis nimirum esset ille Deus? Qui deinde edoctus est, qualis esset. Quum [p. 25] decretum fit, necesse est ut prius de auctore legitimo constet, ut illud non putetur esse supposititium.

par. 7.

Sanctio paenalis in omnibus legibus cernitur, ut e.g. in decalogo: nam Jehova primo praeponit nomen, deinde proponit leges ipsas, ultimo demum clausulam seu sanctionem paenalem hisce verbis: Ego sum Deus tuus fortis, Zelotes, visitans Patrum iniquitatem in filios etc., vide Exod. 20,5 seq. Deut. 5, 9, 10.

*in vetita tendere amantis:*) Obiter hic notanda est historia, quam commemorat Franciscus Petrarca in libro *De fortunae remediis*, de quodam sutore, qui nunquam pedem extulit extra urbis portam in tota sua vita. Cum autem urbs urgeretur obsidione gravi, suspicabantur quidam eum rem habere cum hoste. Ille apud iudices jurabat se nunquam fuisse extra urbem, multo minus hac vice, unde absolutus. Sed postquam videbat vetitum esse extra urbem vagare ad hostes, statim ac domum rediit, exiit, ex quo facile cuivis est intellectu quam amat homo in vetitum tendere.

*Legis vis:*) Distinctio legis in directivam et coactivam (:quae distinctio adhibetur quando respondent ad vexatissimam quaestionem: num magistratus summus sit legibus absolutus, dicentes a vi legis coactrice, non directrice eum esse absolutum:) minus accurata est, cum legislator nos cogat, lex vero est tantum instrumentum. Vide I. N. et G. 1.6. 14. p 97.

[p. 26] par. 8.

Omnes leges quidem semper habent conjunctam utilitatem, sed istud commodum omnibus semper non ita adparet, ut rusticis vel propter Reipublicae ignorantiam, vel propter ingenii hebetudinem, qui itaque de Rege suo debent praesumere esse virum sapientem ac prudentem.

par. 9.

*materia legis quadrat:*) Ut si de barba lex feratur, ei sane obnoxii non sunt pueri, vel faeminae. Talis lex si praescribitur ordini ecclesiastico, exempti omnino erunt laici. Notandum quando nulla restrictio vel exemptio

was asked who this god with the name Jehovah was.<sup>24</sup> And Pharaoh was informed what kind of god he was. When [p. 25] a decree is issued, it must be clear that the author is legitimate so that the decree is not considered false.

par. 7.

In every law, there is a penal sanction, for instance in the Decalogue: for Jehovah first declares his name, then he proposed the laws and finally the penal sanction with these words: I am almighty God, jealous, and will visit the sins of the fathers upon their children, vide Exodus 20.5 seq., Deuteronomy 5.9.10.<sup>25</sup>

*loves to do what is forbidden:)* By the way a story worth noting is told by Francisco Petrarch in his book *De fortunae remediis*<sup>26</sup> about a shoemaker who had never in all his life put his foot outside the town gates. However, when the town was under heavy siege, some people suspected him of collaboration with the enemy. Before the judges, he swore that he had never been outside town, least of all under circumstances like these, and was acquitted. But when he saw that it was forbidden to walk outside town to the enemy he went out, as soon as he had returned home. From this anyone easily understands how man loves to do what is forbidden.

*force of the law:)* The distinction between directive and binding law (which applies to the much disputed question of whether the supreme power is set free from the laws, where it is argued that he is free from binding law but not from directive) is less accurate, since the legislator compels us, while the law is just an instrument. See *De iure naturae et gentium* book 6. Chap. 14. p. 97.

[p. 26] par. 8.

All laws always are connected to some utility but the benefit is not always obvious to everybody, for instance to the peasant because he is ignorant of state affairs or of feeble intellect. Therefore, such people should believe their king to be wise and prudent.

par. 9.

*the substance of the law applies:)* If a law is made about having beards, boys or women cannot, of course, be punished. If such a law is enjoined on the ecclesiastic estate, laymen will be entirely exempt. Note that when no restriction or exemption

24. Exodus 5:2.

25. The reference to Deuteronomy seems irrelevant.

26. The full title of this book on consolation by Petrarca is *De remediis utriusque fortunae*, written around 1366.

addatur, tum illam legem omnes promiscue concernere. Sicut Decalogus omnibus hominibus praescriptus, ergo et nobilibus, qui aequae sunt homines ac rustici.

*cavendum ne dispensa promiscuantur* etc.) Ut de gradu consanguinitatis<sup>5</sup> matrimoniis quibusdam contrahendis. Ubi aliquando et certis personis dispensatio fit; si fieret promiscue, colligeretur nullam ei rei inesse turpitudinem.

par. 10.

Quia tam multi casus contingunt in vita humana, ut impossibile sit omnes a mortalibus posse praevideri. Ergo emendatione est opus, quando legis universalitas observari non possit, sine grandi absurditate, quod vocatur aequitas. Ponamus in urbe egregie munita talem esse legem: *Nullus peregrinus ascendito moenia urbis*. Si vero contigerit, ut hostes videat adventare, et ipse sic ascenderet muros clamitans ad alios homines ut consurgant ad defendendam urbem, certe non potest negari quin egregiam [p. 27] ac laude, imo praemio dignam rem praestiterit, dum eo modo civitatem liberaret. Quid fiat si tractus fuerit in forum condemnandus juxta legis vigorem? Certe injuste cum eo ageretur, nisi emendetur legis universalitas. Ergo ipse legislator si adsit, confiteatur se hunc in tali casu habuisse exemptum, cum illos tantum indigitare voluerit, qui vel ex petulantia vel industria adscenderint muros ad explorandum eorum vel vim vel debilitatem.

par. 11.

*etsi in se honestati naturali repugnent*.) Quamvis honestati naturali repugnent, tamen nulla poena in foro humano multis actionibus est constituta, v.g. ut in hisce gentibus ebrietas, quasi in mores pertransiit; propter eandem nullus punitur in foro humano, etsi vel maxime honestati contrarietur.

Ad verba ultima /sc. paragraphi/ hoc observandum. Ut in mathesi linea recta vocatur, quae nullibi est curva, et contra non recta censetur sed curva, quum in minima parte observatur flexibilis; ita in actionibus tenendum ut malae censeantur, si in una duntaxat parte deficiant: v.g. vel in *intentione*, ut res alias laudabilis erat eleemosynas dare, sed quia intentio ac finis erat malus, ergo ipsa actio redditur talis, quae suscepta est

5. Manuscript: *consanguini*.

is added to a law, then it will concern everybody promiscuously. The Decalogue is enjoined on all human beings, that is also on the nobility who are human beings as much as peasants.

*One should be careful not to undermine the laws by indiscriminate dispensation:)*

As in marriage between individuals who are blood-related in certain degrees. Here, dispensation sometimes is given certain persons, but if that happened indiscriminately, it would be concluded that there is nothing shameful in it.

par. 10.

Since there are so many unexpected happenings in human life, it is impossible to foresee them. Hence, when the universal prescription of the law cannot be followed without absurd consequences, a correction is needed which is called equity. Suppose that in a well-fortified town there is a law that *no stranger may have access to the fortifications*. But if it happens that a stranger, observing the enemy coming, ascends the walls crying to other men to stand up and defend the town, then indeed no one can deny that he has done something distinguished [p. 27] and worthy not only of praise but of a reward in saving the town in that way. What if he is taken to court to be condemned according to the rigour of the law?

Certainly he will be unjustly treated, if the universal rule of the law is not amended. And if the legislator himself is present, he ought to make known that he releases this man in such a case since he only wanted to outlaw those who climb the walls out of petulance or in order to discover their strong and weak points.

par. 11.

*though in themselves they are repugnant to natural honesty:)* There are many actions in human intercourse for which there is no penalty, although they are repugnant to natural honesty. In these nations, for instance, drunkenness has become habitual, as it were, and no human law punishes anybody for it, although it is most opposed to honesty.

To the last words of the paragraph one should observe the following. As in mathematics a line is called straight that is nowhere curved and on the other hand not considered straight but curved when it is bent anywhere at all, one should view actions so that they are regarded as bad if they are deficient in one part only. For instance in *the intention*: normally it is laudable to give alms, but if the aim and intention was bad, the actual act also becomes bad because it was done for the

ostentationis gratia. Si autem intentio aliquando contingat esse bona, et *objectum est malum*, ipsa actio censenda est non bona. V.g. procul dubio in Pontificiis multi inveniuntur qui bona intentione suscipiunt peregrinationes ad loca (:ut putant:) sancta, [p. 28] ita jejunium quadraginta per dies suscipiunt, adorant sanctos, et quae sunt hujusmodi alia. Sine dubio inquam, hae actiones ab illis bona cum intentione susceptae; tamen quia pars aliqua sc. *objectum* illarum actionum non est legi conveniens, ergo intentio bona nec sic valet efficere actionem bonam.

par. 12.

*justi hominis non paucae possunt esse actiones injustae*;) Quod apparet exemplo notissimo ex scripturis sacris de *Davide*. Dicitur quod fuerit vir secundum cor Dei, adeoque vir justus, nec tamen sequitur quod omnia fuerint justa, quae vir ille perpetrabat. Contrarium suadet ejus pessimum facinus erga *Uriam*, quod tamen ipsi obrepserat propter imbecillitatem humanam. Ita quando Tyranni semel vel iterum edunt actionem quandam laudabilem et justam, nec statim nomen justi merentur. Sed hac in re maxime respiciendum est ad vitae scopum ac propositum, ut is censeatur juste vivere, cujus actiones pleraeque sunt justae, adeoque David injustus dici nequit. Sic Tyrannus nec justus quia ejus scopus vitae maxime consistit in Tyrannide.

par. 13.

Unde Aristoteles dixit justitiam esse ἀρετήν πρόσῃτερον et quis non censetur juste erga se facere, cum bene se gerit?

par. 14.

Aliter justitiam dividit Aristoteles, aliter Grotius, [p. 29] aliter Hobbesius, aliter moderni philosophi, quorum divisiones quamvis venditentur inter hos pro Aristotelis, ejus tamen non sunt.

Ad hanc distinctionem intelligendam plurimum facit, si observetur, quid est deberi *modo perfecto et modo imperfecto*. Illud est quando quis jus habet alterum cogere ac ad judicem trahere, ut si mihi ex mutuo quid debet, si solvere nequit, jus dicor habere perfectum ab eo vel invito exigendi, quod mihi debet. *Jure autem imperfecto* extorquere ab aliis non possum, ut pauper cui deferam eleemosynas potest quidem conqueri de mea duritie ac immisericordia, tamen jus non habet eleemosynas a me exigendi nec me eapropter in judicium citare.

sake of ostentation. However, if the intention happens to be good, but *the object is bad*, the action itself cannot be considered good. Among the papists, there are no doubt certainly many who with good intention travel abroad to what they consider holy places, [p. 28] spend 40 days fasting, worship saints and do other things of that kind. No doubt I say, these actions are entered upon with good intention; however, since one aspect of them, i.e. their *object*, is not consistent with the law, good intention is not sufficient for an action to be good.

par. 12.

*some of the wise man's actions may be unjust:*) This appears from the well-known example in the Holy Writ about David. He is said to have been a man according to God's heart, i.e. a just man, which does not entail that all of his doings were just. The opposite is adduced by his evil deed against *Uriah* that suddenly overcame him due to human frailty.<sup>27</sup> Likewise, when tyrants once or twice do something laudable and just, they do not immediately deserve to be called just. In this matter one has to consider above all the aim and purpose of life, so that he is regarded as just whose actions are mostly just; hence David cannot be called unjust. Nor can a tyrant be just, for the aim of his life mainly consists of tyranny.

par. 13.

Hence Aristotle said that justice is virtue in relation to another person,<sup>28</sup> and who is not considered to act justly towards himself, when he behaves well?<sup>29</sup>

par. 14.

Aristotle, Grotius, [p. 29] Hobbes and contemporary philosophers divide justice differently, and although the divisions of the latter are trotted out as Aristotelian, they are not. Understanding this distinction<sup>30</sup> is much facilitated if we observe what it means to be indebted *perfectly and imperfectly*. The former is when someone has the right to force the other and take him to the judge; for instance when someone who owes me money cannot pay, I am said to have perfect right to exact what he owes me against his will. One cannot extort anything from others by imperfect right. The poor man to whom I give alms may complain about my insensibility and lack of pity, but he has no right to exact alms from me, nor take me to court for that reason.

27. 2 Samuel, 11.

28. Aristotle: *The Nicomachean Ethics*, 1129 b.

29. The meaning of this comment is unclear.

30. I.e. between universal and particular justice.

Quae debentur jure imperfecto referenda sunt ad justitiam *universalem*, ut reverentia filiorum adversus suos parentes, beneficium in bene meritum, etc, quia honor non est talis res, ut possit mensurari pretio nummario. Ergo ad universalem est referendus, quia is (honor) non debetur ex jure perfecto. *Justitia distributiva* declarari potest exemplo militum in bello egregie sese gerentium, ubi magna potiti sunt praeda. Et posito quod praefectus quadruplum effecerit, quam miles aliquis gregarius, ergo et ipsi cedere debent 4 partes, sed aliis una, et haec vocatur justitia distributiva. Justitia vero *commutativa* locum maxime habet in contractu, venditione et emtione etc. *Irrogatio v. paenarum* ad neutram harum ambarum spectat, sed ad peculiarem, videlicet justitiam *punitivam s. poenalem*.

[p. 30] par. 15.

Si Deus patiatur nos mori non possumus conqueri de injuria nobis illata, quia vitam ab eo<sup>6</sup> habemus precario. Secus est si alius velit nos occidere.

*adversus auferentem valente*.) E.g. hostis meus suo jure suam tenet vitam, at in statu belli possum eum occidere sine aliqua injuria, quia quasi tacitus contractus est initus utrique licere facere quod possit et suas experiri artes. Ita et res sese habet in duello.

par. 16.

Legis naturalis descriptio optime intelligi potest ex exemplis subjungendis. V.g. Lex naturalis est *Non occides*. Illud video exinde, quia si homini liceret alteri nocere prout libet, et impune hoc semper ferret, oriretur inter genus humanum maxima perturbatio, ita ut sic diu persistere nequiret. Sic lex naturalis est *non furtum facies*. Nam quis posset pacificam degere vitam ac societatem, si non, quae mea sunt, retineam mihi? Unde sane maximae oriturae forent rixae ac contentiones aeternae: qui sane status cum rationali ac sociali hominis natura non congruit.

Legem naturalem et rationalem dici posse, quia ex lumine naturae potest investigari: sicut e contrario lex positiva non hauritur ex lumine naturae seu rationis et inde nec vocatur lex naturalis.

[p. 31] Legem positivam illustrat ac explicat exemplum de Sabbatho praecise die VIIo celebrando. Nam quamvis homo ex ratione tantum possit perspicere, ut sciat omnino se oportere aliquid tempus constituere,

6. Manuscript: *ea*.

What is owed by imperfect right is to be referred to *universal* justice, like the respect of sons for their parents, benefits to people of merit etc., because honour is a thing that cannot be measured in money. Therefore, honour is to be referred to universal justice, since it is not owed by perfect right. *Distributive justice* can be explained by the example of soldiers who have done well in a war where they have taken a rich booty. Suppose the officer has done four times as much as a commoner, then 4 parts should go to him and one to the others, and this is called distributive justice. *Commutative* justice is above all applied in contracts, buying, selling etc. The imposition of punishment pertains to neither of these, but to the special penal justice.

[p. 30] par. 15.

If God lets us die, we cannot complain about an injury inflicted on us, since we have our life on loan from him. It is different if someone else wants to kill us.

*a right valid against the depriver:*) My enemy has the right to his life, but in war I can kill him without injury because it is as if there is a tacit contract that both are allowed to do what they can and test their skills. The same applies in a duel.

par. 16.

What a law of nature is can best be understood by examples. For instance: Thou shall not kill is a law of nature. This I perceive because if a man was allowed to hurt another when he wishes and this always happened without fear of punishment, such confusion would arise in mankind that it would not exist any longer. Similarly, thou shall not steal is a law of nature. For how can I lead a peaceful and sociable life if I cannot keep for myself what is mine? Big quarrels and eternal contentions would result from that. Indeed, that condition of things does not agree with man's rational and sociable nature.

The law can be said to be natural and rational since it can be perceived by the light of nature, whereas positive law is not drawn out of the light of nature or reason and therefore is not called law of nature.

[p. 31] Positive law is elucidated and explained by the example of the Sabbath being celebrated on the seventh day. True, man can by mere reason understand that he should reserve some time when he can put mundane duties aside and indulge

in quo seponat curas mundanas ac indulgeat meditationibus divinis deprædicando ejus beneficium etc. Tamen hoc in particulari ex sua ratione non potest extorquere ut præcise diem VII sancte colat, nisi ex peculiari divina revelatione. Potest enim æque alium 8, 9, 10, 11, 12 vel 16,5 sed dependet hoc præceptum ex arbitrio legislatoris Dei.

*lex divina alia positiva:*) Ut constat de sabbatho. Nam ecclesia libertati suae tantum indulserat, ut jam non celebret eundem diem VII. ut Deus instituerat; sed eundem mutaverat in 1. septimanae in memoriam resurrectionis Christi. Ergo apparet et legem quandam divinam esse positivam, nam alias sic mutari ab homine utique non posset.

### CAP. III. D 14 MARTII

#### [DE LEGE NATURALI]

Multis eruditis quidem in ore est, hoc est legis naturalis, tamen inter illos convenire non potest, in quo ejus fundamentum consistat. Quidam enim idem (1) referunt ad ipsius Dei essentiam et tantilla creatura tantum arrogantiae sibi capit ut conetur ascendere ad ipsius Dei thronum et supra suum creatorem ut velit rimari quod ipsi non est revelatum, nam nec capere potest paucissima quae de ipso sunt nobis revelata: Ergo in ipso Deo fundamentum non possumus ponere. Conf. Puf. Specileg. Cont. c.1.par.18. item Specim. c. 4 par. 3 etc.

[p. 32] Quidam vero illud (2) referunt ad Paradisum. In qua sententia nec possumus acquiescere, quamvis quaedam generalia homo iam in hoc statu habeat cum eodem: tamen in multis particularibus longe quidem discrepat. Nam longe alia fuit ejus status conditio, ac natura jam est. Nam sicut e.g. alium victitandi modum habet et observat aegrotus, alium sanus, ita aliter vivebat tum homo, quippe tum variis casibus expositus ut nunc.<sup>7</sup> Ergo (3) nos ponimus fundamentum juris naturalis in ipsa hominis natura prout nunc est, et legem praescribimus homini corrupto. Quemadmodum medicus quando aegroto medicamenta praescribit non respicit ad ejus nativitatem, ad stellas etc. sed ad illa quae ante oculum sunt.

*ingenium hominis perscrutatus:*) Quemadmodum quis velit esse interpres v.g. legum Romanarum, omnino notitiam quandam habebit in antiquitate Romana etc.

7. Added in the margin.: Puf. specileg. c. 2. par. 5. etc. Specim. con. c.4 par. 9.

in religious meditations and prayers to the benefit of God and so on. Still, in this particular thing, he cannot discover by reason that he must keep the seventh day holy, but from God's special revelation. It could as well be the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> 12<sup>th</sup> or 16½<sup>th</sup> day, but this precept depends on the decision of God the legislator.

*divine law is either natural or positive:*) That is well known about the Sabbath. For the church granted itself so much freedom that it no longer celebrates the seventh day as God ordained, but changed it to the first day of the week in commemoration of the resurrection of Christ.<sup>31</sup> Thus, it appears that a divine law is positive, for otherwise it could by no means be changed by human beings.

### CHAPTER III MARCH 14

#### [ON NATURAL LAW]

Many scholars enlarge upon that this is the natural law, but they cannot agree upon what its foundation is. Some (1) refer to the essence of God himself: which means that a little creature is so arrogant that he tries to ascend to God's throne and above his creator in order to investigate what has not been revealed to him, when he can understand not even the least of what has been revealed to us about him. Thus, we cannot locate its foundation in God himself. See Pufendorf's *Spicilegium Controversiarum* chap. 1. par. 18, and *Specimen controversiarum* chap. 4 par. 3 etc.<sup>32</sup>

[p. 32] Some (2) refer it to Paradise. I cannot accept that opinion. Although man even in this state of corruption has some general characteristics in common with the state of innocence, he is still widely different in many particulars. The condition of that state was very different from what human nature is now. In the same way as the sick and the healthy have and observe different diets, man in those days lived differently, since he was exposed to other circumstances than now. Therefore (3) we locate the foundation of natural law in man's nature as it is now and prescribe the law to the corrupt human being. Just like a doctor prescribing medicine to the sick does not care about his horoscope or the stars, only about what is before his eyes.

*scrutiny of the nature and character of man:*) As when someone wants to interpret Roman law, he should have some knowledge of ancient Rome etc.

31. Cf. Thomas Aquinas: *Summa theologiae*, 1a 2.ae 103;4.

32. Pufendorf's two works *Spicilegium controversiarum* and *Specimen controversiarum*, published in 1680 and 1678 respectively.

par. 3.

Longe deteriorem esse conditionem vitae humanae quam bruti inanimantis quilibet largietur, qui penitius velit considerare utriusque naturam. Nam *pisciculi* statim ac proveniunt in lucem, se possunt alere ac demum pervenire ad perfectionem in suo genere. Sic *aves* quamvis per unam vel alteram hebdomadam egeant ope progenitorum, tamen statim plumis vestiuntur ut non amplius eorum opera opus habeant. At vero nullus hactenus hominum ad maturitatem pervenit sine aliorum hominum auxilio. Quamvis Justinus Lib. 44. c. 4<sup>8</sup> memoriae prodat Habidem sine humana<sup>9</sup> ope educatum. Sed haecce sunt fabulosa et praeterea educatus est ope cervae.

[p. 33] *elingue*.) Nam sermo est ab auditu, non vero a natura, unde vidimus homines surdos etiam esse mutos. Ratio est, quia nunquam audiverant homines alios locutos, unde ediscere ipsi potuerant similem sonum, ac vocem formare ad imitationem.

par. 4.

*vestiri gaudet*.) Quidam disputant esse ex adsuetudine quod homines jam gestent vestimenta, non autem ex necessitate; praecipua illorum ratio est, quod hominis facies iam aperta ac nuda est, cujus cutis est tenerrima, ut ex anatomia constat. Ergo inquiunt esse ex consuetudine habere vestimenta, non autem ex necessitate. Nos communem amplectimur sententiam, ac negamus esse ex adsuetudine, praesertim in regionibus frigidioribus. Iisdem vestimentis utitur homo ad ostentationem quae habet propter egestatem ac suum defectum. Merito ergo homines superbi ridendi, ut si quis qui tantum unum habet pedem, voluerit alterum ligneum varie exornare ad superbiam, certe parum est prudens, quia pes alter ligneus signum est maximi ejusdem defectus.

par. 6.

Qui enim unius vulpis, unius porci naturam noverit, etiam perspectam habet omnium in eodem genere, sed non ita est in homine, cum ibi tam varia inveniantur ingenia, quam varii sunt vultus ac lineamenta, cum vix duo homines inveniantur, qui non in aliquo distinguantur. Praeterea sunt homines tam leves ac tantae inconstantiae, ut merito lunae comparari possint.

8. Manuscript: 48.

9. Manuscript: *sine humana* (:sed cervae:) *ope educatum*. (:cervae:), seems redundant, since it is repeated in the following sentence.

par. 3.

Anyone who considers the nature of man and animals more deeply will admit that human life is far worse than that of an inanimate animal. Fishes, as soon as they come into light can nourish themselves and reach perfection of their kind at length. Although needing the help of their parents for one or two weeks, birds are immediately clothed with feathers so that they do not need their assistance. However, no human being has ever reached maturity without the help of others, although Justinus<sup>33</sup> in book 44 chap. 4 tells the story of Habides who grew up without human help (but was raised by a deer).

[p. 33] *without speech*.) For language comes from hearing, not from nature; that is why we find that deaf people are mute as well. The reason is that they have never heard other men speaking, from which they could learn similar sounds and form their voice in imitation.

par. 4.

*delights in being clothed*.) Some argue that men wear clothes by custom and not of necessity; their first argument is that man's face is open and nude, although its skin is thin, as is clear from anatomy. Hence they believe that we wear clothes through custom, not of necessity. I embrace the common opinion, denying that it is customary, especially in colder regions. Man wears the same clothes for ostentation as for his want and weakness. Therefore haughty people deserve to be laughed at. If somebody with only one leg wants to decorate his wooden leg in various ways for the sake of pride, he is not very prudent, since his wooden leg is the sign of his extreme defect.

par. 6.

He who knows the nature of one single fox or swine knows the nature of all individuals of that kind. It is not like that with man, since there we find as many varying characters as faces and lineaments. There are hardly two individuals who do not differ in some matter. In addition, human beings are so fickle and inconstant that they may very well be compared to the moon.

33. Justinus, *Ex Trogi Pompeii historiis externis libri XLIIII* (3rd century A.D.).

par. 7.

Quae hactenus fuse sunt dicta, jam stricte in hoc paragrapho perstringuntur.

par. 9.

*quantum in se*;) Dicit enim solet nos pace frui, quam diu vicinus [p. 34] velit. Sic cum eo socialitatem servare non possem, qui me pugnis vexat. Hanc enim imitationem adhibet Divinus Apostolus Paulus dicens: pacem servate *quantum in vobis sit*.

*qui vult finem vult et media*;) Idque demonstratur ab absurdo, vult enim contradictoria, qui eodem tempore vult finem et odit media. Ita aegrotus qui sanitatem recuperare vult respuere non debet media, quae praescribuntur ei a medico. Ita studiosus eruditionem adsequi non potest sine mediis sc. studio summo, pecuniis ac libris<sup>10</sup> etc.

Particularia praecepta ex hoc uno generali deducuntur, ut v.g. quando pacta in fide non servantur, oritur inde discordia non minima, quae perturbat valde socialitatem; ergo video pactorum servationem esse ex jure naturae.

Et sensus communis hic locum obtinet, nam regula est notissima et Christo etiam approbata: *quod tibi non vis fieri, alteri ne feceris etc.* Ita quando libido subit debitum non solvendi, vel furandi, tum statim cogitare debeo, an ego tolerem si is hoc mihi facturus esset.

par. 10.

Quamvis autem summum commodum redundet in genus humanum ex servata lege naturali, si autem contingat vel ponamus talem casum venire quod homines illam legem non curent, quemadmodum aegrotus qui cernit sine dubio sanitatem secuturam ex observatione praescriptorum medicamentorum, tamen potest ea perfracte respuere, quaeritur ergo num homo possit licite negligere legem Naturae? Negatur. Ratio est [p. 35] quia lex naturalis non est profecta ex arbitrio ac conventionem hominum ut aliae leges multae positivae, ut circa valorem pecuniae, qui licite potest immutari, quia is non est a Deo impositus, sed hominibus.

Difficile est ex sola Scriptura Sacra probare legem naturalem esse a Deo, ceu Hobbesio fuit visum, qui ideo addit suis praeceptis exempli loco dicta scripturae. Cum enim videri non potest, quomodo gentes quae

10. Manuscript: *liberis*.

par. 7.

What hitherto has been treated at length is drawn tightly together in this paragraph.

par. 9.

*as much as he can:*) It is usually said that we have peace as long as our neighbour [p. 34] wants it. I cannot remain sociable towards him who attacks me. The divine apostle Paul uses the same admonition saying: *keep peace, as far as it depends on you.*<sup>34</sup>

*he who wills the end wills also the means:*)<sup>35</sup> This is demonstrated by the argument of absurdity: he who at the same time wills the end and hates the means wills contradictory things. A sick man who wants to regain his health should not reject the means prescribed to him by the doctor. A student cannot acquire erudition without means, i.e. great industry, money and books.

From this general principle particular precepts are deduced, for instance: when agreements in faith are not honoured, great discord arises that disturbs sociality; hence it is clear that keeping agreements is in accordance with the law of nature.

Common sense is to be applied here, for there is a well-known rule that Christ established: *do not do to others what you do not want done to you.* Thus, when the desire comes not to pay a debt or to steal, I should immediately think: would I tolerate it being done to me?

par. 10.

A great good befalls mankind from observing the law of nature. Still, if it happens or we suppose it would happen that men did not care about that law, like a sick man who is aware that health will undoubtedly follow from complying with the medical precepts but nevertheless rejects them stubbornly, then the question arises if man can rightfully neglect the law of nature? The answer is no. Because [p. 35] the law of nature does not originate from human decision and convention like many positive laws, for instance the value of money that can lawfully be changed since it is stipulated by men, not by God.

It is difficult to prove from the Holy Writ only that the law of nature comes from God. Hobbes believed that and added to his precepts quotations from the Writ as examples.<sup>36</sup> Since, however, it is difficult to see how the gentiles, who did

34. Romans 12:18.

35. Scholastic rule of thought.

36. See footnote 7.

ignorabant Scripturam Sacram argui possent peccati contra jus naturae, quod tamen est factum ex Rom. 1. et 2. epist. Pauli. Nos ergo ex ratione id demonstrabimus. Conf. Seld. de I.N.1,8.

par. 11.

*in nullo animante sensus religionis:)* Quamvis quidam de avium cantu multum sed sine ratione dicant, quod proprie aves Deum celebrent, puto hoc omnino intelligendum esse *metaphorice*, ut homo occasionem capiat laudandi Deum ex ipsarum cantu. Falsum est etiam quod Plinius in historia naturali narrat de cervo salutante solem orientem.

par. 12.

*natura notum:)* Duplici modo potissimum sumitur (1) quod per acumen ingenii potest investigari absque illuminatione quadam ex Scriptura Sacra. Et hoc sensu omnes disciplinae censendae sunt natura notae, adeoque et jus Naturale. (2) quando homo in hunc mundum nascitur, statim habeat notiones ex quibus jus Naturae constituitur. Et hoc sensu acceptum negamus, nam infans vel duo annorum videre non potest: parentes esse honorandos, non furandum etc. Huc adduci solet dictum Aristotelis quo comparat intellectum [p. 36] hominis *Tabulae rase*. Sed haec res per similitudinem speculi optime potest exprimi, quod sine aliquo adveniente nullas recipit imagines, secus ac postea fit cum homo vel tale quid accedit, tum repraesentat. Ita anima non habet actuales propositiones, sed potest recipere. Jam non est sermo de infantibus baptizatis ac fidelibus, quem ex revelatione habemus. Infans enim non novit quod minus est, quomodo jus Naturae quod majus? Jonas enim dicit eos nescire distinguere inter dextram et sinistram. Et si quis periculum faciat ac de infante instituat quaerere de regula juris naturalis, non respondebit magis quam brutum. Ignorat enim nomen et verbum, ex quibus omnis propositio constat.

not know the Holy Writ, could be accused of sinning against the law of nature, as actually happens in the epistle of the Apostle Paul to the Romans, chap. 1 and 2, we will demonstrate it from reason. Compare Selden, *De jure naturali et gentium*, 1. 8.<sup>37</sup>

par. 11.

*the sense of religion in no other living creature*;) Some people talk much but without reason about the singing of birds, holding that the birds strictly speaking celebrate God. I think this should be understood *metaphorically*, man seizing from their singing an opportunity to praise God. What Pliny in his Natural history tells about a deer saluting the sun is false.<sup>38</sup>

par. 12.

*known by nature*;) is understood in a double sense: first, that something can be investigated by the intellect without illumination from the Holy Writ. In this sense all disciplines are considered known by nature, natural law as well. Second, meaning that man when born into this world is at once in possession of the notions that constitute natural law. If the phrase is accepted in this sense, we deny it. For a child of two years cannot understand that parents shall be honoured, that one shall not steal etc. Here the dictum of Aristotle is usually adduced, where he compares the intellect [p. 36] of man with an *unwritten tablet*.<sup>39</sup> But this problem can very well be described by the simile of a mirror, which does not receive any ideas unless something comes before it, as happens when a man or something similar appears before it: then it represents. Thus, the soul does not have actual concepts, but it can receive them. This does not concern baptized and faithful infants, of which the revelation speaks.<sup>40</sup> If an infant does not know what is trivial, how could it know natural law, which is of great importance? Jonah says that they do not know the difference between right and left.<sup>41</sup> If someone makes the attempt to question the infant about the rules of natural law, the infant will not answer more than an animal. For he does not know what noun and verb are, of which all propositions consist.

37. John Selden, in *De jure naturali et gentium iuxta disciplinam hebraeorum libri septem*, 1640, related natural law to the Old Testament.

38. Reference not found.

39. In the Latin translation of *De anima*, 430 a.

40. Possibly referring to Mark 10:14–16 and other passages like Acts 16:15 and 1 Corinthians 1:16 that indicate that children were baptized, which would mean that they acquired moral knowledge.

41. Jonah 4:11.

Qui contrariam tuentur sententiam, arcem quasi collocant in verbis hisce: *inscriptum in corde*. Quod putant notare notitiam innatam. *Sed fallunt et falluntur*. Nam haec phrasis nihil aliud notat quam liquidam altaque mente repositam cognitionem, ut de qua quis in conscientia sua convictus fit undecunque<sup>11</sup> eadem sit. Vid. authorem I. N. et G. 2, 3, 13 p. 178. Idque suetum est et auctoribus prophanis et sacris. *Illis quidem*, ut apud Aeschinum poetam Graecum haec phrasis habetur, quae latine ita sonat: *Tu inscribis tabulis mentis tuae*, i.e. ita infigas, ut ejus oblivio nunquam subeat. Sic Virgilius: manet alta mente repositum. Ita in lingua Teutonica: figere post aurem, i.e. ita menti infigere, ut memoria non excidat. Ita et scriptores sacri, ut apud Jeremiam c. 31, 33 [p. 37] quod repetit Apost. ad Hebr. 10, 16 ubi sermo est de evangelii doctrina, quae sane natura non est nota, sed eis verbis significat se perspicue propositurum evangelium, ut a quovis possit recipi. Ita et propheta idem c. 17. dicit peccata esse inscripta cordibus stilo ferreo, sc. non fuere (:peccata actualia:) connata, sed tam manifesta. Idem colligitur ex epist. Pauli ad Corinthios 2. cap. 3, 2, 3, quam dicit esse scriptum in eorum cordibus. Corinthii statim post nativitatem non magis noscebant Paulum quam ego, quando nascebar. Eadem phrasi usa est Maria Luc. 2. 51. Non aliter ergo denotat haec phrasis apostoli Pauli<sup>12</sup> in epist. ad Rom. 1. 2. capp. quam notitiam legis tam illis esse manifestam ut manibus quasi palpare possint, idque facile deprahenditur ex Apostoli scopo. Retundit eorum tacitam objectionem, qua uti possint, scil. quod notitia legis ac Dei possit evanescere ut fit in re ac nomine aliquo obscuro e.g. Polonico, sed Paulus reponit ac antevertit hoc, sc. illos non posse expellere eam quam habent notitiam legis saltem generalium praeceptorum. Et hoc modo ibi illa phrasis est intelligenda. Etsi impius callum vellet conscientiae obducere, ut rejiciat ipsum actum, honesti tamen notitiam non possit expellere.

Dispositus tamen est animus ad recipiendam talem notitiam, quamvis actu non insit. Quidam parum docte respondent ad notum illud Aristotelis [p. 38] de *tabula rasa*, distinguentes inter habitum *perfectum* et *imperfectum*, dicendo in infantibus esse hunc habitum.<sup>13</sup> Sed dum hoc dicunt nihil dicunt. Habitus imperfectus est terminus insignificans, et involvens contradictionem, habere aliquam notitiam sine

11. Manuscript: *undequacunque*.

12. Manuscript: *ap. Paul.*, which could be read "apud Paulum" as well.

13. In the margin: *NB*.

Those who defend the opposite opinion, take shelter in the words: *written in the heart*.<sup>42</sup> They think they mean innate ideas. *But they deceive and are deceived*. For this phrase means nothing else than that pure knowledge deep in the mind, of which everyone is convinced in his conscience, regardless of where it comes from, vide the author's *De jure naturae et gentium* 2: 3: 13 p. 178. This is usual in profane authors as well as in the sacred. In the former, this phrase occurs in the Greek poet Aeschines;<sup>43</sup> in Latin it runs: you inscribe in the tablets of your mind, i.e. you impress it so that it will never be forgotten. Likewise Virgil: it remains deep in the mind.<sup>44</sup> Similarly in German: fix behind the ear, i.e. impress in the mind so that it does not fall out of one's memory. Also the holy writers, such as Jeremiah chap. 31:33 [p. 37], repeated by the Apostle, Hebrews 10:16, where he talks about the doctrine of the Gospel which is certainly not known by nature; instead he signifies by those words that he will set forth the Gospel so that it can be received by anyone. The same prophet says chap. 17 that the sins are inscribed in the hearts with an iron stick, i.e. the actual sins were not innate but so apparent.

The same is deduced from the letter of Paul to the Corinthians 2 chap. 3: 2–3, which he says is written in their hearts. But at birth, the Corinthians did not know more about Paul than I did when I was born. Maria, in Luke 1:51, uses the same phrase. It does not mean anything different in the letter of the Apostle Paul to the Romans 1. 2 chap.<sup>45</sup> than that the notion of the law is so manifest that they can touch it with their hands. And this is easily understood with regard to the aim of the Apostle. He refutes their tacit objection that the notion of the law, and of God, can vanish, as happens in obscure things and names like Polonicus. But Paul rejects and anticipates this objection, meaning that they cannot drive out the notion they have at least of the general precepts. This is how the phrase is to be understood. Even if an impious man would want to make his conscience callous in order to reject the act itself, he cannot expel the notion of what is honest.

The soul is disposed to receive such a notion, although it is not there from the beginning. Some respond not very skilfully to [p. 38] Aristotle's *clean tablet* by making a distinction between a complete and incomplete acquired condition, saying that the latter is in infants. But saying this, they say nothing. Incomplete condition is a meaningless term, involving the contradiction that one has a notion

42. Romans 2:15.

43. The text has Aeschinus, possibly referring to Aeschines, an orator (rather than poet), in the 4<sup>th</sup> century B.C; reference not found. If we read Aeschylus instead, there is a line in *Supplices* 946 that might be a candidate.

44. Virgil: *Aeneis*, 1:26.

45. Seems to refer to Romans 2:14sq., where nothing is said, however, about touching the law with their hands.

propositionibus. Omnis nostra cognitio intrat animum per 5 januas hoc est 5 sensus. Unde scitum: *Nihil est in intellectu, quod non fuit in sensu*.<sup>14</sup> Igitur nemo est, qui conceptum facere potest de sua ipsius anima, quia in sensus non incurrit; ita nullus conceptus datur de Spiritibus ob eandem rationem, sed ex apparitionibus concipimus eos ut homines, quod absque dubio est erroneum. Confer Pufendorffii Specileg. c. II par. 19 Specim. c. 4. par. 2.

par. 13.

*ex rectae rationis dictamine*.) Hoc bene est observandum, nam ita excludimus ab nostra hac disciplina *Theologiam moralem*.

Hanc divisionem officiorum insinuat et Apostolus Paulus alicubi ad suos, quos jubet *juste* (:erga proximum:), *caste* (:erga se ipsum:) ac *pie* (erga Deum:) vivere. Tit. 2,12.

*non pro absoluto suo lubitu*.) Quemadmodum Rex non patitur suos servos laceris incedere calceis ac vestimentis, quae alias haberent, si sibi ipsi viverent, ea itaque habent in gratiam Regis; ita cum nobis respectu Dei res se habet, nam si viveremus nobismetipsis, pro nostro lubitu impie vitam ducere possemus.

#### CAP. IV D. 8 APRILIS

##### [DE OFFICIO HOMINIS ERGA DEUM, SEU DE RELIGIONE NATURALI]

[p.39] par. 1.

Finis hujus doctrinae (1) ut quasi articulus sit fidei ex Scriptura Sacra petitus. (2) quousque homo ex ratiocinio potest progredi. (3) quam segnes et impii aliqui gentiles fuere, quorumque stultitiam et Apostolus reprehendit in epist. ad Rom c. 1 et 2.

Theologi etiam proponunt (1) credenda de Deo. (2.) facienda, ita et nos in hac doctrina facimus.

par. 2.

Eodem argumento Deus ipse de se est usus ostensurus suam existentiam, dum dicebat Exod. III Mosi:  $\epsilon\gamma\omicron$  qui  $\epsilon\gamma\omicron$ <sup>15</sup> i.e. ut Theologi explicant, sum qui in me ipso essentiam habeo, a me ipso et non aliunde, et a me omnia

14. In the margin: *NB*.

15. Exodus 3:14. The manuscript mixes Latin and Greek letters. The standard Latin rendering is *Ego sum qui sum*.

without propositions. All our knowledge enters our soul through 5 doors, i.e. the 5 senses. Hence the well-known thesis: *Nothing is in the intellect that was not in the senses*. Thus nobody can form a concept from his own soul only, because it does not go through the senses. For the same reason, there are no concepts of the Spirits; instead we conceive of them from appearances as being human beings, which no doubt is false. Compare Pufendorf, *Spicilegium* chap. 2 par. 19 and *Specimen* chap. 4 par. 2.

par. 13.

*the dictate of right reason:*) Note this carefully, for in this way we exclude *moral theology* from our discipline. This division of duties is indicated somewhere by the Apostle Paul to his followers, whom he admonishes to live in justice (towards others), in chastity (towards oneself) and piously (towards God). Titus 2:12.

*not dispose of himself at his own absolute discretion:*) The King does not let his servants appear in torn shoes and clothes, which they would have if they lived by themselves; they have their clothes as a sign of their gratitude towards the king. It is the same with us with respect to God: if we lived by ourselves, we would be able to live an impious life at our own discretion.

CHAPTER IV APRIL 8  
[ON MAN'S DUTY TO GOD,  
OR ON NATURAL RELIGION]

[p. 39] par. 1.

The aim of this doctrine of natural religion is to show (1) that it is like an article of faith drawn from the Holy Writ; (2) how far man can reach with the help of reason; (3) how slow and impious some of the gentiles were, whose foolishness the Apostle reprehends in Romans 1 and 2. The theologians too expose (1) what is to be believed about God and (2) how we should act. This is what we do in this doctrine.

par. 2.

God himself used the same argument to show his existence when he said to Moses Exodus III I am that I am, that is, as the theologians explain, I have my essence within me, of myself and not from somewhere else, and everything

dependent. Ita est, nam si quis homo urbem bene dispositam intravit, videns egregias ibi esse plateas, domus, cives vivere optime inter se invicem, statim cogitet esse quandam potestatem, qua haecce omnia diriguntur; sic ex hujus mundi harmonia ac diversitate, non potest homo non colligere esse aliquem a quo haec omnia sunt profecta. Nec eo adduci possum, ut putem dari quendam *Atheum*, nam si quis ita sit, hoc exinde eveniet, quod poena Dei propter peccata antegressa sit in corde suo occaecatus, ut de Deo nihil cogitet. Quantum ad antiquiores qui hoc statuebant, illi vocabulum *Atheus* in eo sumserunt sensu, ac eos ita appellabant, qui non negabant esse quoddam summum ens, sed qui eo modo Deastros non colebant ut gentiles, eosque negabant esse Deum.

[p. 40] Quantum vero ad Psal. 14, ex quo contrariae sententiae fautores suum praecipuum sumunt argumentum, ita ut et dentur athei *theoretici*. Nos respondemus (1) hominem ita posse obrutescere, ut Deus eidem occaecationem immittat in poenam scelerum. (2) quidam dicunt hoc modo intelligendum: non est *Deus vindex*, seu quem cura tanget rerum humanarum tanquam minutarum; negant ergo illi divinam providentiam, non Dei existentiam. Vid. Grot. de verit. rel. 1.2.

*ex subordinatione causarum:*) Ut si quis domum aspiat, videt in ea ligna, quae orta ex arbore, quae ex semine, quod ex pomo quod ex alia arbore, usque dum perveniatur ad primam arborem, quae se ipsam non creavit sed ex alio superiori principio: idem de parentibus hominum usque ad primum nempe *Adam*.

*ex motu:*) Ut cernimus astra vastissimima corpora solem etc. moveri, necesse est fuisse quod eundem motum iisdem impresserat.

*ex contemplatione:*) Fingamus hominem totum stare in consideratione hujus machinae, videt hoc moveri, florescere etc. necessario colliget esse Deum, quia talia ex se non proveniuntur, quemadmodum rusticus qui nunquam organa audierat, si in templum veniens, astiterit auditurus eorundem dulcem sonum, adfirmabit organa ex se non crepare, sed esse hoc ex sapiente, videlicet homine.

*neget abs se capi posse:*) Quemadmodum barbari in India fecere ut quando Europaei nunciavere eis de religione veri Dei, praedicabant nos esse felices, sed se non posse capere nec credere Dei existentiam, quia eundem non possunt videre. Sed si non oculis tamen in operationibus cognoscitur Deus, ut anima.

depends on me. Indeed, so it is, for if a human being enters a well-ordered town, seeing excellent streets and houses and citizens living very well together, then at once he believes there is some power by which all this is arranged. Similarly, from the harmony and diversity of this world, man cannot but conclude that there is someone who brings all this about. I cannot be induced to think that there exists an *atheist*, for if any such there be, it is because he has been blinded in his heart due to punishment by God for earlier sins so that he thinks nothing of God. As for the ancients who claimed there is atheism, they took the word atheist in a broad sense and applied it to those who did not deny that there is some supreme entity, but they did not worship deities as the heathens did and denied them to be God.

[p. 40] As for the passage in Psalms 14, from which those who support the opposite position take their main argument, holding that there are also *theoretical* atheists,<sup>46</sup> we answer, (1) that man can become so brutish that God blinds him as punishment for his sins; (2) some say that the passage should be understood like this: there is no avenging God who is concerned about the most minute of human things; hence, they deny divine providence, not the existence of God. Vide Grotius, *De veritate religionis christianae* 1. 2.

*from the subordination of causes:*) If someone looks at a house, he sees in it the timber that comes from a tree that comes from a seed that comes from a fruit from another tree until one ends up in the first tree that did not create itself but comes from a superior principle. Similarly, there is subordination of causes from the parents of men right back to Adam, the first parent.

*from the motion:*) When we see stars, the sun and other enormous heavenly bodies moving, it is necessary that there is something that impelled the motion into them.

*from reflection:*) Imagine a man wholly focused on contemplating this fabric of the universe: he sees movement, blossoming and so on, and he cannot but conclude that there is a God, since such things do not come about by themselves. Similarly, a peasant, who has never heard an organ before and stops short on entering the church to listen to its delightful sound, will assert that the organ does not resound by itself but that it comes from some wise agent, i.e. a human being.

*claiming not to understand these arguments:*) Like the barbarians of India, who when the Europeans informed them about the religion of the true God, declared us to be happy, although they themselves could neither understand nor believe in the existence of God since they could not see him. But if God is not known by the eyes, he is known, like the soul, by his effects.

46. That is, "the fool has said in his heart, There is no God", as the text runs in Psalms 14:1.

[p. 41] par. 3.

*qui eum mundi animam dicunt:*) Stoicorum et Platonis haec erat sententia, ut Deus se haberet ad mundum tanquam anima ad corpus, adeoque omnem motum mundo brutali immobili ac mortuo impertiretur. Exinde dicebant omnium animalium animam vel spiritum esse particulam ex illa universorum anima, videlicet Deo: ut quemadmodum variae fistulae in organo quodam sonant varie, sed ex uno tantum spiritu, ita erit, dicunt, cum hujus universi anima seu Deo. Sed haec sententia perabsurda est, quia sic Deus esset omnium scelerum motor et author, omnes enim actiones humanae animae adscribuntur, adeoque Deo, quod blasphemum.

par. 4.

Inter alia contra providentiam Divinam objicitur et id, *quod implicari tam variis negotiis sit res miserrima*. Respondemus nos argumentamur imperite et arroganter ex nostra imperfectione ad Dei potentiam. Sine enim cura curat nos, quod secus nobiscum est, nam nos ob laborem quendam impatientes sumus. Nec non et illud, quod *in hoc mundo bonis male, et malis bene fiat*, ut etiam pii in desperationem de divina providentia ex hoc adducantur, quod apparet ex Psalm. 73. Sed respondemus ibi sibi respondere Psalmistam, et finis maxime est respiciendus. Nam res adversa nihil est aliud juxta *Senecam* quam honor quidam maximus. Nam quemadmodum in bello usu venit, ut imperator virum fortissimum praeficiat stationi periculosissimae, quod et ipse pro maximo honore acceptet, sic facit Deus quum videt infirmum, hunc calamitatibus non onerat, sed eum quem videt posse sustinere [p. 42] easdem. Et videndum est quid bene est uti<sup>16</sup> bona conscientia, et non ex vulgi sententia affluere divitiis, honore<sup>17</sup> magno affici. Ut si servus videat quosdam compotare ac usque ad extremum spiritum cerevisiae cantaras exhaustare et quam copiosissime fumigare, ille praedicabit eos esse felicissimos omnium. Sed sapiens dicit eos esse porcos ac deterius. Ergo bene non est omne quod vulgus judicat esse.

par. 5.

*aut concipi nostra imaginatione:*) Quia quo diutius nitimur concipere Deum in essentia, eo nobis obscurior evadet, quemadmodum quo magis

16. Manuscript: *bene est, ut bona*.

17. Uncertain reading of *honore*.

[p. 41] par. 3.

*who say that he is the soul of the world:*) It was the belief of the Stoics and of Plato that God was to the world as the soul to the body; hence every motion was communicated to a brutish, immobile and dead world. Furthermore they said that the soul or spirit of all that is animate was a particle of that universal soul, i.e. God. The different pipes of an organ sound differently, they say, although they stem from one single spirit – that's how it is with the soul of the world or God. But this opinion is most absurd since it would entail that God would be the mover and author of all sins, because all human actions are ascribed to that soul, i.e. God, which is blasphemy.

par. 4.

Among the objections to divine providence there is also the argument *that it is miserable to be involved in so different affairs*. I answer that we argue ignorantly and presumptuously in comparing our imperfection with the power of God. He cares for us without trouble, which is different from us, who become impatient when facing a troublesome task. There is also the argument that good people are unfortunate in this world, while the evil thrive so that even the pious are induced to despair about divine providence, as appears from Psalms 73. But we respond that the Psalmist here answers himself, and it is very important to observe the aim. For according to Seneca misfortune is nothing else than a great honour.<sup>47</sup> In war it is usual for the commander to place the bravest man in command of the most dangerous posting, which is also accepted as a great honour by him. God acts similarly when he does not burden those he can see are weak with calamities but those that can bear [p. 42] them. And one should consider how good it is to have a sound conscience rather than being honoured because one is rich, as the vulgar opinion would have it. A servant seeing some people drinking together, draining pints of beer to the last breath and smoking copiously, will call them the most fortunate of all. But the wise man says they are swine or worse. Hence, not all that the multitude regards as good is really good.

par. 5.

*or conceived by our imagination:*) Since the longer we endeavour to grasp God in his essence, the more obscure he will be. The more we want to look at the clear

47. Seneca: *De providentia*, IV:4–5.

intueri velimus clarum solem, eo magis tenebrae nostris oculis oboriuntur idque propter objecti nimiam claritatem et nostrorum oculorum imbecillitatem, ita in divinis.

Quando dicimus Deum *infinitum* etc., illud a parte Dei nullam ponit imperfectionem, sed quam maximam imbecillitatem a parte nostra. Nam exprimere non valemus quid Deus in essentia sit, sed tantum aliquatenus quid non sit.

*neque in loco etc.):* Nam locus esset majus quid contento seu ipso Deo.

*ἀνθρώπου πᾶσι :*) Solemus enim nos loqui de rebus prout easdem cognoscimus, ut cum de perfectissima loquimur, occurrit nostra ipsius imago, quam putamus esse perfectissimam, et sic quando de operibus Dei loquimur metiri conamur eadem ad nostra opera.

*appetitus* est circa id quod est absens, nam cum quid ore habeo non soleo id appetere, et spes est circa absens, nam non possum [p. 43] sperare id quod teneo. Sed apud Deum omnia sunt praesentissima, cui et nihil deesse potest.

*potentiae ab alio dependentis:)* Nam cum non video non possum de colore, cum non audio, non de sono iudicium ferre, ratio est quia dependent ab alio, videlicet sensibus.

*admiranda mundi harmonia etc.):* Nam si plures essent, qui sua peculiararia haberent quibus imperarent, sine dubio discordia oriretur in hoc mundo ex tam diversis Dominis. Etiam finitus foret, nam necesse esset alterum finire, ubi alter inciperet etc. vid. Grot. verit. rel. L. 4. par. 2.

*ab ipso non dependentes:)* Hoc additur propter trinitatem.

par. 6.

*internus Dei cultus* vocatur qui in animo haeret intus, et opponitur cultui externo, qui vocatur, cum reverentia aliqua prodit se foras.

*honor est opinio alienae etc.):* Honor involvit relationem; nam honorem proprie alicui non adhibemus, qui eundem non est promeritus, ergo dum animo considero Deum esse optimum Maximum utique non possum non ei honorem deferre.

*animus hominis:)* Honor omnino debet ex animo promanare, si contra fiat, et demississime pileum in terram mittam, ac profundissime genua flectam ac procidam in faciem, et animus non est qui reverentiam ac honorem adhibeat, certe est illusio ac honorati irrisio. Externa ergo signa

sun, the more darkness springs up in our eyes, and that is because the object is too clear and our eyes too weak. It is similar with the divine.

When we say that God is infinite, it does not imply any imperfection on the part of God, but the greatest weakness on our part. For we cannot express what God's essence is, only somehow what he is not.

*nor ... in a certain place:)* For a place is something bigger than that which it contains, i.e. God himself.

*in terms of human feeling:)* We usually talk about things as we know them; when we talk about something most perfect, the picture arises of what we consider most perfect. Similarly, when we talk of the works of God we try to measure them against ours.

*desire* is directed towards what is absent, for when I have something in my mouth, I usually do not desire it. Hope is about something absent, for I cannot [p. 43] hope for what I have. But for God, everything is most present, and nothing can be absent from him.

*power dependent on something else:)* For when I do not see I cannot pass judgement on the colour, nor on the sound when I do not hear, the reason being that they depend on something else, i.e. the senses.

*the wonderful harmony of the world:)* For if there were more than one God, each of them with their particular things to govern, no doubt discord would arise in this world between such different Lords. Such a god would also be finite, for necessarily the one would end where the other began. Vide Grotius, *De veritate religionis* book 4 par. 2.<sup>48</sup>

*not dependent on Him:)* Added because of the Trinity.

par. 6.

*the internal worship of God:)* is fixed within the soul as opposed to the external worship, which is when reverence is somehow shown in public.

*honour is a conviction that power and goodness are united in someone:)* Honour includes a repayment, for we do not really honour someone who has not deserved it. Hence, when in my mind I consider God to be the best and the greatest, I cannot but honour him.

*the human soul:)* Honour should come completely from the soul. If it does not, if I humbly throw my hat on the ground, bow my knees deeply and fall down on my face, my soul not behaving like one who pays respect and honour, it is certainly mockery and an insult to the one honoured. Thus, external and nude signs do not

48. Hugo Grotius: *De veritate religionis christianae*, 1627.

nuda non faciunt ad honorem. Nota est historia passionis Christi, ubi nebulones milites caedebant Christum, deinde coronabant eum ac genua eidem flectebant; salutabant eundem, sed animo perverso, unde nihil erat nisi summa derisio.

[p. 44] par. 7.

*Magnitudinem admiretur:)* Quemadmodum Socrates solitus erat solem contemplari ac ejus magnitudinem admirari in haecce erumpens verba: *Oportet sane eum esse magnum qui opifex fuerat talis et tanti operis:* ita et nos debemus a contemplatione hujus universi reflexionem facere ad ipsum conditorem, nec esse ac bruta et porci, de quibus dicitur, quod glandinem quidem comedunt sed nunquam oculos ad ipsum quercum tollunt. Ita nos animum attollamus post beneficia accepta.

*preces sunt signa spei:)* Nam preces non fundimus ad lapides, quia novimus ex iis nihil boni in nos proficisci posse ob negatam ibidem potentiam etc.

*non esse utendum Dei nomine temere:)* Unde inter jocos non usurpandum Dei nomen. Nec de iis solemus joculari quibus honores deferimus. Et Cicero solet quando viros honoratos nominat hoc adjicere: *quem nomino honoris gratia.* Alias censetur is contumelia affici, quo tam temere utimur in sermone. Et caput aperitur circa potentis vel regis nomen, cur ni magis circa Dei nomen. Et dolendum maxime quod in Christianos hic pravus mos irreperit, ut Dei nomen obtineat rationem *interjectionis* et pro formula elegantiae inter tertium vel quartum vocabulum nominare Deum.

*Non esse curiose et petulanter disputandum:)* Theologi scholastici hac in parte impegere,<sup>18</sup> ob suam curiositatem. [p. 45] Ubi admiramur Dei optimi tolerantiam cum in civilibus res ita *est ut non sit disputandum de legibus sed ex legibus.* Quanto quaeso crimine homuncio sese induat, tam petulanter sentiendo de Deo, ostendendove os suum adversus ipsum, quod potius esset recondendum in pulvere; derideturne rusticus praescribens ac judicans de pharmacopolii rebus? Stultissime facimus nos homunciones qui velimus includere nostri cerebelli cancellis Deum maximum.

*in suo genere sit eximium:)* Jus naturale praecise non praescribit quanam sacrificia sacrificemus, sed illud tamen facit, si quid Deo sit offerendum id sit *eximium* ac *egregium*, non vero rejectitium, quod praeter legem

18. Manuscript: *impigere*.

contribute to honour. The history of the passion of Christ is well known, when the wretched soldiers lashed him and then kneeled to him and saluted him, but with a perverse soul from which there came nothing but great scorn.

[p. 44] par. 7.

*Admire his greatness:*) Like Socrates used to contemplate the sun, admiring its greatness and exclaiming: *Indeed he must be great who is the fabricator of such a great work*,<sup>49</sup> so ought we in contemplating the universe reflect over its founder and not be like animals and swine, of which it is said that they eat the acorn but never raise their eyes to the oak. Therefore, let us elevate our soul when we have received favours.

*prayers are signs of hope:*) For we do not pray to stones because we know that through them can nothing good befall us since there is no power in them.

*not use the name of God in vain:* Therefore God's name should not be used in jest. Nor do we usually make fun of those whom we honour. Cicero, when referring to honoured men, usually adds: *and him I mention for the sake of honour*.<sup>50</sup> Otherwise someone that we use so rashly in our language is considered insulted. If the head is uncovered for the name of the mighty or the king, why not all so much more for the name of God? It is very deplorable that the bad habit has spread among Christians that the name of God has assumed the function of *an interjection*; God is mentioned as an elegant phrase between every third or fourth word.

*not engage in curious and insolent disputes:*) Scholastic theologians have laboured unduly on this issue because of their curiosity.<sup>51</sup> [p. 45] I admire God's patience here, for in the world of politics *one should not dispute about the laws, but take them for granted when discussing*. What major crime does not mere man commit by discussing God so arrogantly and turning his face against him instead of burying it in dust? Would not a peasant be laughed at who made prescriptions and passed judgement in matters of pharmacy? We humble human beings are foolish if we want to enclose God in all his immensity within the borders of our little brains.

*what is excellent of its kind:*) The law of nature does not prescribe which oblations we should sacrifice. It does, however, require that anything to be offered God has to be *excellent* and *distinguished* and not only something to throw away.

49. Reference not found.

50. For instance *Pro C. Quintio* § 28.

51. Conjectural translation due to uncertainty of the word 'impigere' in the manuscript. The comment on the scholastics is apparently rooted in Pufendorf's voluntarism that abhors speculation on God's essence and qualities.

divinam etiam ex Ethnicis colligi potest. Unde et nomen *eximii* notat illam rem quae eximitur ac eligitur. Sic et *egregium* dicitur id quod est ex grege desumptum ac electum. Et si convivae honorifico non appono cibum corruptum sed praestantissimum et si munere aliquem mactare volo, non quod est vile do. Si in civili re ita est, quanto magis hoc observandum in cultu divino. Et cum homo nihil seipso habet praestantius, ergo se ipsum Deo offerat et ut a Deo sit acceptus, *purum*.

*palam et publice colat*;) Unde Apostolus monet suos ne congregationem deserant. Unde adparet verum Dei cultum non esse, quem quidam habent in propriis ac privatis hypocaustis, ipsis forsitan cumbentibus in [p. 46] lecto cum uxore. Hoc metuendum quod vitio nobis vertatur, si nimis devote nos geramus. Sane si in nihilum nos redigamus, nos possumus satis nos humiliare.

par. 8.

*praecise*;) Ut non jungamus haecce<sup>19</sup> cum Christianorum praeceptis, sic fieret systema quoddam theologicum salvificum. Primum divortium facit a nobis in articulo de peccato originis. Ratio enim humana non potest consequi nos ipsos in causa fuisse nostrae corruptionis, quamvis Phi. Mornaeus de Relig. Christiana putet illam corruptionem demonstrari posse a natura, cujus rationes sunt plausibiles, et pro ratione<sup>20</sup> possunt haberi: sed fatendum est, id esse articulum fidei, nam neque eos articulos qui ab eo de peccato originis dependent, possumus comprehendere ratione, neque gratuita Dei promissa.

par. 9.

*religionem esse firmissimum societatis vinculum*;) Quamquam Grotius in Proleg. de I.B. ac P. dicat jus naturale esse sufficiens vinculum ad continentum homines in obsequio, tamen in hoc ipsi subscribere non possumus.<sup>21</sup> Nam jus naturae tantum quod utile est in hac vita praescribit: jam vero quantum fugiat nos spernere utilissima, ut cupiditati nostrae obediamus sicut manifestum est circa diaetam. Nam medicorum est constantissima praeceptio, ut modum servemus circa cibum et potum, si salute frui diuturna velimus. Ast quam proni sumus contemnere ejusmodi praecepta, tantum ut gulae ac gutturi ventrisque satisfiat. Ceu traditur

19. *haecce* refers to religio naturalis.

20. Manuscript: *oratione*.

21. In margin: *NB*.

Apart from the divine law, this can be colligated from the heathens. Therefore, the word excellent */eximii/* signifies what is taken out and selected, as the word distinguished */egregium/* denotes what is picked out from the flock */grex/* and elected. If I want to honour a guest I do not offer him rotten but the finest quality food, and if I want to present someone with a gift, I don't give a trifle. If this is our behaviour in civil life, how much more should it not be observed in the worship of God. And since man has nothing more valuable than himself, he should offer himself to God, and be pure, in order to be accepted.

*worship openly and publicly*.) Therefore the Apostle admonishes his followers not to fail to appear at service.<sup>52</sup> Genuine worship of God is not what some people perform in private washrooms or perhaps lying in [p. 46] bed with their wives. Nor is it to be feared that it will be held against us if we behave too devoutly. Indeed, if we reduce ourselves to nothing, we can make ourselves humble enough.

par. 8.

*in a precise sense*.) So that we do not put natural religion on a par with the Christian precepts, for then a kind of theological saving system would ensue. I differ from Christian theology first in the article about original sin. For human reason cannot reach the conclusion that we ourselves are the cause of our corruption, although Philippe Mornay in *De religione Christiana*<sup>53</sup> thinks that corruption can be demonstrated from nature; his reasons are plausible and can be considered reasonable. But one ought to confess that it is an article of faith, for we can understand neither the articles that depend on original sin, nor God's gratuitous promises.

par. 9.

*religion the ultimate and strongest bond of human society*.) Although Grotius in the Prolegomena of *De jure belli ac pacis* says that natural law is a sufficient bond to keep men in obedience, we cannot subscribe to that. For the law of nature prescribes only what is useful in this life. But it is clear from the example of diet how much we avoid what is useful in order to obey our desires. The doctors constantly prescribe moderation in eating and drinking, if we want lasting health. But how inclined are we not to neglect such precepts only to satisfy our gluttony and the

52. Uncertain reference.

53. Philippe Mornay (1549–1623), Huguenot leader who wrote *De veritate religionis Christianae, adversus atheos, epicuræos, ethnicos, judæos, muhamedistas et caeteros infideles*, 1597. The argument referred to is in chap. XVI, where Mornay argues that all men, heathens as well as Christians, are aware of their sinfulness and pray for forgiveness.

de lusco vino addictissimo, [p. 47] cui praeceperunt medici, si reciperet usum plenum videndi, ut abstineret vino: sed is poposcit poculum optimo genere vini repletum ac ori admovebat dicens: Non curo quomodo videam, tantum satiem me meoque gutturi litem.

*honestatem*:) Quid quaeso esset quod diceretur<sup>22</sup> esse honestum, fidei conveniens si religio removeretur, et quisquis grassari poterit pro suis viribus ac suo lubitu, neque ullum foedus, ulla pax servaretur, nisi esset religio? Et iuramenta maxime in naturali statu constitutos continent.<sup>23</sup> Jam iuramentum est invocatio numinis. Si removeamus numinis vindictam, quis staret promissis pactaque servaret?

*civitatum firmitas*:) Nam Rex robustiora brachia non habet ac aliquis privatus, nullumque validum sat vinculum, quo animos in obsequio tot myriadum contineret. Et quid unus adversus tantum numerum? Qui nonnisi paenam temporalem metuit tentare omnino potest et excutiat onus miseriae impositum suo dorso a principe, quia potius optat mori, quam ita in servitutem duram ducere vitam, ut obtineat quod Sueci dicunt in proverbio: anten bröd eller död.

*quis custodes ipsos custodiet*:) Nam ita Rex vivere non potest, quin aliquando nudum latus alicui offendant, et si nunquam securus esse possit, miserrimus certo erit quotidiano metu vitae amittendae. Et quamvis satellitum copia circumseptus sit, tamen et ipsi possunt corrumpi: [p. 48] illi enim ideo fidem praestant quia sat pecuniam accipiant. Sed facili negotio alius quispiam poterit eis polliceri maiorem pecuniam quam Rex dat, et sic brevi evadent Regi infidissimi.

*opera misericordiae*:) Quando mendicus petit eleemosynam, dicit Deum remuneraturum quae dedero. Si jam mihi persuasum habeam, mendicum mentiri, num ipsi quid boni contribuam? Nam magis emolumento mihi ero, si retineam illud ipsum.

*sed et tam imperantes* etc:) Nam imperatores solent facere quantum in se est, caetera in Dei manu ponunt, cuius potentiae saepe confisi heroica quam plurima patrant, sine quibus nutaretur salus Reipublicae ut in bello usu venit.

*inter se diffisuri*:) Nam et iis constituitur praemium, quamvis e numero conjurantium sint, qui deferunt conjurationem seu indicant Regi, ut ex Sueth. Ju. C. c. 17. constat.

22. Manuscript: *diceret*.

23. Manuscript: *continet*.

gullet! There is a story about the one-eyed wine addict, [p. 47] whom the doctors enjoined to abstain from wine if he wanted to regain full vision. But he demanded a bowl of first class wine, moved it to his mouth and said: I don't care how I see, as long as I souse myself and satisfy my throat.

*honesty:*) What would it imply to be honest and true to one's word if religion were removed? Anyone would rage according to his pleasure and strength, and no compact would be honoured, no peace kept, if there was no religion. Oaths greatly restrain those who are in the state of nature, and an oath is an invocation of God. If we remove divine vengeance, who would stick to his promises and keep an agreement?

*the cohesion of states:*) For the king's arm is not stronger than that of a private person, and there is no bond strong enough through which he could keep so many thousands in obedience. What can one man do against so many? He who fears temporal punishment only may try to shake off the burden of misery laid upon his back by the prince, because he would rather die than lead his life in such severe servitude that he gets, as the Swedes say in their proverb, *anten bröd eller död* (either bread or death).

*who will guard the guardians themselves:*)<sup>54</sup> The king cannot live without occasionally exposing himself and if he can never be secure, he will indeed be miserable from daily fear of losing his life. And although he is surrounded by lifeguards, these can be bribed: [p. 48] for they are loyal because they are paid enough. Someone else can quite easily promise them more money than the king, and soon they become utterly disloyal.

*works of mercy:*) When a beggar asks for charity, he says God will recompense what I give him. But if I am convinced that he lies, will I then give him anything? It will be more profitable for me if I keep it.

*rulers as well:*) For rulers too usually do as much as they can, putting the rest in the hands of God. Trusting in him they often accomplish many heroic deeds, without which the welfare of the state would totter, as often happens in war.

*distrust each other:*) There is a reward for them too, especially those who are participants in a conspiracy and talk about it or reveal it to the king, as decreed in Swedish civil law chap. 17.<sup>55</sup>

54. Cf. Juvenal: *Satires*, VI:347.

55. Swedish civil law, the law (*allmänna landslag*) of King Magnus Eriksson (14<sup>th</sup> century).

## CAP. V D. 17 APRILIS

## [DE OFFICIO HOMINIS ERGA SEIPSUM]

par. 1.

*supervacuum*.) Quemadmodum si quis leges ferre velit, ut homo omnino edat, bibat, dormiat etc. sed quidam homines tam stulti dantur, ut nihil minus quam dona sibi a Numine concessa excolant, quos ideo poenae mansurae sunt.

par. 4.<sup>24</sup>

Omnes confiteantur necesse est nostram vitam esse praecariam; jam vero precaria possessione uti quis pro lubitu non potest, sine Domini arbitrio, quemadmodum qui praecario domum habet, eam [p. 49] non potest destruere prout sibi videtur absque Domini voluntate, ita cum nostro corpore seu vita res sese habere censendum est.

*certum genus laborum*.) Etsi nimio ex labore est mors, prout de concionatoribus dicit Salomon, quos vires adeoque vita deficiunt maturius: tamen saepe contingit (1) quosdam labore induratos, adeoque nihil plane sentire passionis. (2) Nec censendus est beatissime vivere qui longissime, sed is qui egregias actiones egerat, non qui multas noctes somno egerunt. Labores ergo non fugiendi iis, qui possunt ac debent aliis sua opera inseruire; labore vero non necessario se evacuare est stultum.

Sed quid sentiendum est de eis, qui vivunt in fodinis argenti vivi, quibus ferme impossibile est ultra annum 40mum vitam ducere, quia attrectatio illius materiae solet pulmones infestare, unde necessaria tussis. Et de iis qui navigant ad insulam S. Thomae, ubi colligunt Saccarum, qui etiam diutius non vivunt ob aeris illius loci vehementiam etc. Numne impie faciunt qui tale vitae genus eligunt? Respondemus distinguendum (1) vel hoc eligi potest ob *avaritiam*, qui alio loco commode vel utcunque vivere possunt, ut si Lusitanni hoc facerent. (2) ob necessitatem ac vocationem quae provocant natos in ea regione. Hi non illi excusationem merentur.

[p. 50] par. 5.<sup>25</sup>

Saepe contingit, ut nos omnibus simul praeceptis non possimus facere satis, quando collisio fit, quid homini in eo casu sit faciendum? Quamvis nunquam inter sese opponuntur salus nostra et cultus divinus, tamen

24. In margin: § 9. The ensuing paragraphs of the chapter have parallel numbers in the margin. Why this is so is not clear.

25. In margin: § 10.

CHAPTER V APRIL 17  
[ON DUTY TO ONESELF]

par. 1.

*superfluous*.) If somebody wants to make a law that man shall eat, drink, sleep etc., but some people are so stupid that they do not at all care to improve what they have been given by God, then punishment awaits them.

par. 4.

Everybody will acknowledge that our life is uncertain. But one cannot use this precarious possession as one wants, without God's authority. A man who has borrowed a house cannot [p. 49] tear it down whenever he likes without the consent of the Master. This is how we should regard our body and life.

*certain kind of labour*.) Although death comes of too much work, as Solomon says of priests,<sup>56</sup> whose power to live is more quickly extinguished, it often happens that some men are hardened by labour so that they feel no pain. Furthermore, he who lives long is not to be regarded the happiest, but he who has performed distinguished actions and not those who have spent many nights asleep. Therefore, those who can and ought to serve others with their work should not avoid labour; but to exhaust oneself in unnecessary work is foolish.

But what shall we say about those who live in quicksilver mines, for whom it is impossible to live more than 40 years, since handling that substance usually infects the lungs, which necessarily results in coughing? And about those who sail to the island of St Thomas<sup>57</sup> to collect sugar and who do not live longer because of the harsh climate? Do they act impiously who choose that kind of life? We respond (1) that people can do it out of *greed*, if they can live well or tolerably well somewhere else, as the Portuguese would do, or (2) people can do it because necessity or an invitation make them leave their native region. The latter are excused, not the former.

[p. 50] par. 5.

It often happens that we cannot comply with all precepts. What shall a man do in cases of such a clash? Although our salvation and the worship of God are never opposed to each other, there are still often oppositions between precepts in

56. Manuscript: *concionatoribus* – unclear reference.

57. St Thomas islands in the Caribbean, Danish colony in 1666, now Virgin Islands (USA).

oppositio inter alia praecepta depraehenditur saepissime in vita communi. Nam lex quaedam est de alteri non laedendo; et lex est de se conservando. Quaestio ergo est difficilima; quousque se extendat *moderamen inculpatae tutelae* ut Scholis appellatur.

*sine ejus laesione*;) Qualis defensio est, si Princeps oppido fossam circumdet, qua irruptio hostis praescinditur. Vel si paterfamilias non satis tutam putet domum a furibus, certe nullus ei vitio vertat, si talibus modis licitis ac legitimis sese suaque eat defensum.

par. 6.<sup>26</sup>

*mei similis*;) Nullus dubitat unquam num peccem si bestiam occiderim, quia ea mea non est similis, neque ulla societas intercedit inter hominem et bestiam. Sed si mei similem et quicum societatem debeam gerere, occidam, dubium esse potest. Nam omnem debemus fugere discordiam tumultumque. Ergo si jugulum praebuero inimico praescindendum, omnis discordia alias oritura una praescinditur. Cui tamen doctrinae omnes sani homines cum fastidio<sup>27</sup> aversantur. Notus est brevis Ciceronis in Orat. pro Milone, dicentis: *non docti, sed facti, non instituti, sed imbuti, ne vitam praebeamus latroni etc.*

[p. 51] par. 7.<sup>28</sup>

*levis injuriae patientia*;) Omnes homines debent quasi ex obligatione varias molestias devorare ac sustinere, etiam ii qui extra ullius constituti sunt imperium. Quod monet etiam Salvator Matth. V dicens *quando pallium abs te abripere quis vult, da et ei tunicam*, quod est locutio parabolica<sup>29</sup> ne propter rem superfluum demittamus nos in processum molestum.

par. 8.<sup>30</sup>

*naturali libertate*;) Ut reges inter se sunt, qui nulli sunt subjecti, talis forma fuit tempore Patriarcharum. Unusquisque enim paterfamilias erat instar regis. Nullibi enim habetur Abrahamum fuisse ulli subjectum.

26. In margin: § 11.

27. Manuscript: *fastigio*.

28. In margin: § 12.

29. Manuscript has *hyper* written above *para*.

30. In margin: § 13.

common life. One law says you shall not hurt another; another law is about preserving oneself. Thus there is the very difficult question: how far am I to moderate my *justified self defense*, as it is called in the law schools?

*without injury*;) Such defense is when a prince surrounds a town with a ditch so that enemy attacks are cut off. Nobody will blame a father who considers his house not safe enough from burglars, if he takes licit and legitimate measures to protect himself and his property.

par. 6.

*a fellow man*;) No one ever would say that I sin if I kill an animal, for the animal is not my equal, and there is no social intercourse between human beings and animals. But there can be doubt, if I kill someone who is my equal and with whom I ought to be social. We should not avoid all discord and conflict. Clearly, if I present my throat to my enemy, every other discord would be cut off at the same time. But all sane men reject that doctrine with disgust. There is a well-known short dictum by Cicero in the speech *Pro Milone*, saying: *we are not taught and brought up not to expose our life to the robber; we are made and imbued by nature, not to do so*.<sup>58</sup>

[p. 51] par. 7.

*patience at a slight injury*;) All men ought to feel obliged to swallow and endure vexations, even those who live outside any political realm. Our Saviour enjoins that too in Matthew V saying: *if somebody wants to deprive you of your coat, give him your cloak as well*.<sup>59</sup> This is a parable meaning that we should not engage in a dangerous case because of a trifling matter.

par. 8.

*in natural liberty*;) In the age of the Patriarchs the order was the same as that between kings, who are subject to nobody. For each paterfamilias was like a king; nowhere in the Bible is Abraham regarded as subject to anyone.

58. Cicero: *Pro Milone*, 4, referring to the natural sense of justice.

59. Matthew 5:40.

par. 11.<sup>31</sup>

*sub obtentu defensionis:*) V.g. quamquam servi ac ancillae fidem suam mihi dederant, tamen non obstat quo minus res meas pretiosas includam. De ea re non conqueri possunt sibi injuriam factam. Si vero eosdem tantum ob suspicionem in carcerem compingam, vel alio duro modo tractavero, ut Plautinus senex avarissimus facit, qui vult exsculpere servis oculos, ne videant ollam argenteam, summa esset injuria. Ita nec licebit mihi hostem invadere ob solam ejus potentiam hoc praetextu: *canis mortuus non mordet. A posse namque ad velle non semper valet consequentia.*

par. 12.<sup>32</sup>

*jam invaditur:*) Hoc est etiam ante acceptum aliquod vulnus, contra quosdam juris consultos, qui requirunt ut quis prius laedatur ab invasore, quam cum caede repelli possit.

par. 14.<sup>33</sup>

*regulariter:*) Nisi quis fortiter velit talia pati ob Dei gloriam ac fidei orthodoxae confessionem.

[p. 52] par. 18.<sup>34</sup>

*commoditatem hominum:*) Hinc videmus quam iniquum illud sit pronuntiatum: *Fiat justitia et pereat mundus*. Hoc est<sup>35</sup> si vel maxime totus evertatur orbis terrarum, tamen tam rigida<sup>36</sup> debet esse observatio legum. Sed illud ita est corrigendum: *Fiat justitia ne pereat mundus*: nam leges sunt introductae ad conservationem hominum, non homines prognati ob istas, ergo si tantus rigor istarum contingat, sunt temperandae ad naturam mortalium. Nam neque leges positivae divinae etiam casum necessitatis involverunt, ceu ipse Christus eximit casum necessitatis circa Sabbathum, quo opus peragi potest, praeceptum illud non est inter ultima divina praecepta; quod si Deus indulserit talia, cur non homo? Ita *Davidis* factum circa esum panum propositionis non improbat quin potius commendatur: nam lex illa de panibus propositionum arcebat omnes eos, qui abundarent alio cibo, ne illi ex petulantia ac cupiditate

31. In margin: § 15.

32. In margin § 16.

33. In margin § 19.

34. In margin: § 23.

35. Manuscript: ).

36. Manuscript: *rigidus*.

par. 11.

*under cover of self-defence*;) For instance, although my servant and maid have given me their word, it does not prevent me from locking up my valuables. They cannot complain to have been injured by that. If however I put them in jail on mere suspicion or treat them harshly in some other way, it would be an utmost injury, like the greedy old man in Plautus who wants to cut out the eyes of his slaves so that they cannot see the silver jar.<sup>60</sup> Likewise, I am not allowed to attack the enemy just because he is powerful with the justification that *a dead dog does not bite*. *The capacity to do something does not always lead to action*.<sup>61</sup>

par. 12.

*already being attacked by another*;) That is even before one is wounded in some way, as opposed to certain lawyers who require that one must first have been wounded by the aggressor before one can respond with lethal violence.

par. 14.

*generally*;) Unless someone bravely endures such aggression for the glory of God or to acknowledge his orthodox faith.

[p. 52] par. 18.

*man's convenience*;) From this we understand how unfair is the saying *Let justice be done, though the world perish*,<sup>62</sup> i.e. even if the whole world is turned upside down, the observation of the laws must be that rigid. But it should be corrected like this: *let justice be done, so that the world may not perish*. For the laws have been made in order to preserve men, and men are not born for their sake; hence, if it happens that they are that rigid, they should be tempered according to the nature of human beings. For the positive laws of God do not rule out necessity, nor does Christ himself banish necessity in relation to the Sabbath.<sup>63</sup> From that can be concluded that the commandment of the Sabbath is not among the ultimate divine precepts, and if God connived at such thing, why not man? Therefore, the act of David concerning the eating of the showbread is not blamed but rather commended.<sup>64</sup> For the law about showbread kept those who had plenty of other food from eating it out of wantonness and cupidity.<sup>65</sup>

60. Plautus: *Pot of Gold*, act I:54.

61. Scholastic rule of thought.

62. A dictum ascribed to the Austrian Emperor Ferdinand I.

63. Mark 2:24–27.

64. 1 Samuel 21:6.

65. Leviticus, chap. 2 on unholy animals.

comederent ex iis. Tacite igitur excipiebantur ii, qui necessitate adacti, ac fame perituri essent, nisi vescerentur iisdem panibus. Ita est cum lege Divina praescriptum Judaeis de non *comedenda carne suilla*. Sane si Judaeus eo necessitatis compulsus ut sibi sit pereundum ne quid suppetat, quo famem utcunque tolerare possit, praeter pernam, sane Deus non obligare videtur ut [p. 53] potius mortem oppetat, quamquam legis particulum in eo casu necessitatis transgrediatur. Nisi clausula a Legislatore sit addita.

par. 23.<sup>37</sup>

*devolvendus*.) Huic rei illustrandae inservire potest exemplum quod in evangelio habetur de 10 virginibus. 5 sapientes negabant 5 stolidis petentibus oleum, ne forsitan et illae sint casurae in similem necessitatem.

par. 24.<sup>38</sup>

*citra nostram culpam*.) Si aliquis duas habet aedes in eadem platea, quibus tamen interjecta est una alius alicujus aedes, si ignem ipse injiciat in suam alteram aedem, ac deinceps conetur alterius insontis aedes disjicere ne flammae vis perveniat ad alteram aedem, certe hoc ipsi non permittitur facile, cum ipse in causa fuerit illius exorti incendii. Alias, si penes eum non stet, potest evitandi majoris incommodi gratia interjectas aedes disjicere, ut factum superioribus annis Londini in Anglia, ubi cum aqua non sufficeret, pulver pyreo collabi fecerunt aliquot aedes ut ignis sisteretur: quod vocatur *ruina* incendium sistere.

#### CAP. VI D I MAJI 1673<sup>39</sup>

##### [DE OFFICIO QUORUMLIBET ERGA QUOSLIBET, ET PRIMO, DE NON LAEDENDIS ALIIS]

par. 1.

*Absoluta et hypothetica*.) E.g. praeceptum datur, quod conjuges ament se invicem, illud non obligat pueros vel eos qui non sunt in eo statu, sed eos qui vivunt in conjugio. Ita Paulus praecipit quod simus Domino obedientes, illud non stringit nisi eos qui herum habent.

37. In margin: § 28.

38. In margin: § 29.

39. Manuscript: 1683.

Thus, tacitly those who were driven by necessity were exempt and would have died of hunger if they had not eaten this bread. Similarly, divine law prescribes that the Jews shall not eat swine meat. Indeed, if a Jew were driven to such an extreme that he would perish and could find nothing to stave off hunger except swine ham, then God does not seem to oblige him to encounter death [p. 53] instead of infringing that small detail in the law in a case of emergency. Provided that the legislator did not add that clause.

par. 23.

*likely to fall*.) This can be illuminated by the example in the Gospel of the ten virgins. The five wise virgins denied the five foolish virgins their oil in order not to get in to the same trouble.<sup>66</sup>

par. 24.

*not our fault*.) A man has two houses in the same street, with a house of another in between them. If he himself sets one house on fire and tries to tear down the house of his guiltless neighbour in order to prevent the flames from reaching his other house, he certainly cannot easily be allowed to do this, since he himself had caused the fire. It is another thing if he is not to blame: to avoid major damage he may tear down the buildings in between, as was done some years ago in London in England, where there was not enough water and they blew some buildings up with gunpowder in order to stop the fire. This is called stopping the fire by destruction.

#### CHAPTER VI MAY I 1673

##### [ON THE DUTY OF EVERY MAN TO EVERY MAN, AND FIRST OF NOT HARMING OTHERS]

par. 1.

*Absolute and hypothetical*.) For instance, there is the precept that husband and wife shall love each other: that does not oblige boys or others who are not in the same state, but only those living in marriage. Similarly, Paul says that we shall obey our master,<sup>67</sup> but that pertains only to those who have a master.

66. Matthew 25:1–13.

67. Paul's instruction in Titus 2:9 concerns slaves who should obey their masters. Pufendorf's allusion has of course a different application.

[p. 54] par. 2.

*quam isthoc desideramus:*) Non postulo ut sutor gratis calceos mihi sariat, nec sartor gratis conficiat vestes, nec volo nec possum postulare huiusmodi farinae hominum officia. Sed a quovis hoc postulare possum ut me non laedat. Alias cum perpaucis amicitias singulares colimus, tamen omnes hoc jure tenentur.

par. 5.

Damnum solet vocari quod pertinet ad rei familiaris amissionem, opum etc, non vero quando quis vulnus etc acceperat. Sed hic latissime sumitur.

par. 6.

*Fructus:*) Fructus est vel (1) *naturalis*, qui provenit sine humano aliquo cultu, et tantum ab homine colligendus. (2) *industrialis*, quis sit nomen satis demonstrat, qualis est v.g. *seges*. (3) *civilis*, qui est per artificium hominis productus, v.g. pensatio pro domus locatione, pro equo etc.

*prout propius aut longius:*) Ut de uvis constat, quarum longa alia conditio hyemis ac tempore autumnali.

*naturali necessitate:*) Si quis velit conflagratum vicini hordeum tantum, vel unam aedis partem, sed incendium serpsit in alteras aedis partes, omnino non excusatur, sed obligatur ad totius damni reparationem.

#### CAP IIX D 13 MAJI

##### [DE PROMISCUIS OFFICIIS HUMANITATIS]

par. 1.

*benevolentia alatur:*) Alias nostri amici essent animalia [p. 55] bruta ut pisces etc. quia nunquam nos laeserunt, sed requiritur ut quid boni communicemus cum aliquo. Sic illum tanquam meum patronum non possum praedicare qui mihi alapam etc non infligerit, sed eum,<sup>40</sup> qui boni quid in me contulit.

*definite vel indefinite etc:*) Prodesse possumus alteri (1) *indefinite*, sic qui docet vel scribit publice, ita fecit Salvator quando dicebat: qui *capere* potest, capiat. Sic qui egregie adinvenit artes quibus vita humana non ita facile potest carere. (2) *definite* ut docere privatim etc. (3) ut nihil nobis decedat v.g. alterius fortunam promovere recommendatione, verbo uno vel altero, laude etc. (4) *cum aliquid nobis decedat*, e.g. opera quae labore

40. Manuscript: *ei*.

[p. 54] par. 2.

*not more than this:*) I do not demand the cobbler to mend my shoes or the tailor to make my clothes for nothing. Neither do I want to ask people for meal favours, nor can I. But I can demand from everybody that he does not injure me. That obligation binds all of us; special friendship we cultivate only with few.

par. 5.

Usually what is called damage is when someone loses fortune or property and not when someone is wounded. But the meaning of the word is very wide.

par. 6.

*The fruits:*) Fruit is either (1) *natural*, i.e. produced without cultivation to be collected by men, or (2) *produced by industry*; as indicated by the word, for instance crop, or (3) *civil* which is produced by human artifice, for instance compensation for hiring a house, for a horse etc.

*as they are nearer or farther:*) As with grapes, the condition of which is very different in winter and in autumn.

*by natural necessity:*) If someone wants to burn his neighbour's barley only, or part of his house, but the fire spreads to the rest of the house, he is certainly not excused but bound to repair the whole damage.

## CHAPTER VIII MAY 13

### [ON THE COMMON DUTIES OF HUMANITY]

par. 1.

*encourage mutual goodwill:*) Otherwise, the irrational animals, [p. 55] like fish etc. would be our friends, since they never injured us. But it is a necessary condition for goodwill that we share something in common with the other. Thus, I cannot call someone my master just because he does not box my ears, but only if he bestows something good upon me.

*in an indefinite way or in a definite way:*) We can be useful to others, first, in an indefinite way by teaching or writing *publicly*. This is what our Saviour did when he said: he, who can understand, may understand.<sup>68</sup> Examples are those who have skilfully invented arts which human life cannot easily do without. And, second, in a definite way, like in private teaching etc. We are useful to others (3) without any cost for ourselves if we promote the fortune of the other by recommendations or words of praise, and (4) with cost for ourselves for instance by service that

68. Matthew 19:12.

constat, vel si tempus consumatur quod alii rei impendi poterit, vel si donamus quid pecunia aestimabile.

par. 2.

*porcorum instar*:) Nam porcus non nisi mortuus prodest, cum caetera omnia fere cicuria animalia dum vivunt prosunt, ut bos et equus aratrum trahunt, oves lanam praebent, vacca lac, canis adulatur, feras investigat, felis mures emolitur. Sed non porci qui ideo cum sentiunt se tangi, statim vocem edunt ac quiritantur cum sciant quasi mortem imminere. Sic etiam avarus: de eo nihil quod hilarem quem reddat dum in vivis est proficiscitur, sed statim ac funus ducitur et campana tonant, gaudium apud haeredes excitatur.

[p. 56] par. 4.

Ad res innoxiae utilitatis solet etiam vulgo referri *commendatio*, sed ita res se habere non videtur, nam quando alterum alteri commendo, tum (1) quasi amitto partem gratiae quam habui penes alterum, quae etiam in meos potuit impendi, ut ea meas proprias utilitates promotum irem, sed eum jam alius abstulit. (2) Si alter quem commendo, non respondet meae commendationi, sed homo est nauci, sane haud parum decedit meae auctoritati, et juxta Horatium aliena peccata mihi pudorem incutiunt, quae sane non sunt res innoxiae utilitatis, sed maximum momenti situm est in *commendatione*.

## CAPUT XV

### [DE CONTRACTIBUS, QUI PRETIA RERUM PRAESUPPONUNT, ET FLUENTIBUS INDE OFFICIIS]

par. 1.

*quibusdam promiscue*:) Sicut dicimus matrimoniale pactum et contractus matrimonialis, quamvis conjugium non praesupponat commercium.

par. 3.

*etsi illas circumstantias* etc:) Quaestio circa hunc casum vehementer torset antiquos Philosophos ut Ciceronem. in Off. lib. 3. casus proponitur talis: caritas insignis annonae erat Rhodi, jam advexit mercator multum

consists of work, or in time that could have been devoted to something else or giving something that can be valued in money.

par. 2.

*like pigs*;) A pig is useful only when dead, whereas almost all tame animals are useful when living: the ox and the horse pull the plough; the sheep give their wool, the cow its milk, the dog wags its tail and tracks wild animals, the cat stirs up the mice. But not pigs; therefore at a touch they shriek at once and grunt as if they know that death is threatening. Similarly with the greedy: while in life, nothing comes from him that may make someone happy, but as soon as the funeral bells sound, delight excites his heirs.

[p. 56] par. 4.

The *recommendation* is usually included among things which are helpful to the recipient without burdening the giver. But it seems not to be so, for when I recommend someone to somebody, I (1) so to speak lose a part of the reputation I enjoyed that I could have used towards my clients in order to promote my own utility; now someone else steals it. (2) If he whom I recommended does not fulfill the recommendation, being good for nothing, my authority is reduced quite a lot; the failures of others inspire shame in me, as Horace says.<sup>69</sup> Indeed, these consequences are not harmless utilities; on the contrary, there is a great deal of importance in a *recommendation*.

## CHAPTER XV

### [ON CONTRACTS WHICH PRESUPPOSE VALUE IN THINGS AND ON THE DUTIES THEY INVOLVE]

par. 1.

*to some of them the terms 'agreement' and 'contract' are applied indifferently*;) As when we call matrimony agreement and matrimonial contract, although marriage does not presuppose commerce.

par. 3.

*although one does not need to point out those circumstances which in themselves do not affect the thing*;) This question tormented the philosophers of Antiquity; in Cicero, *De officiis* book 3<sup>70</sup> such a case is described: When grain was exceedingly expensive in Rhodes, a merchant was about to import a great deal of corn, from

69. Horace: *Epistulae*, I:18:27

70. *De officiis*, III:12.

frumenti, quo vendito magnum nactus lucrum; sed dum in via erat, viderat illuc tendere etiam classem ab Alexandria onustam [p. 57] frumento. Jam quaeritur: num hic tenebatur indicare Rhodiis classis adventum? Cicero sane anxius in hoc casu inclinatur in affirmantem sententiam. Sed nos dicimus illum reticendo classis adventum non peccare, est enim extra contractum classem aliquam adventuram post exiguum tempus. Ponamus jam mercatorem Hollandum pretio modico emisse merces ex Ostingia, si cognoverit magnam partem mercium periisse, potest carius vendere reliquas merces, reticendo quam passus est jacturam etc.

par. 5.

*nec non a damnis* etc.) Si quis aliquem miserit in Turcas ad redimendum e.g. captivum etc ubi in carcerem conjicitur, vel alias cogitur pati jacturam suarum rerum, certe qui ipsum misit, tenetur praestare ipsum indemnem. Sed accurate distinguendum est inter *causam* et *occasionem*, cui distinctioni lucem faenerari potest hoc exemplum: Si quem rogaverim aliquo ire mei causa, et is prolapsus est in via crus frangit. Quisnam mercedem chirurgo persolvat? Non ego, quia non fui causa, sed tantum occasio cruris fracti: nam tale opus quis expedire potest si non frangatur crus. Regeri potest: nisi mandatus esset, habuisset crus integrum. Respondemus non sequi exinde debere damnum praestare; sed hoc potius habere debet tanquam fatalem calamitatem. Si ex liberalitate damnum penset, laudabiliter hac in re egerit.

[p. 58] par. 6.

*casu fortuito*.) Romanae leges generaliter hoc in casu sine ulla distinctione pronuntiant, rem sc. perire domino. Ut si librum commodavi alii, et ejus conclave igni<sup>41</sup> conflagrat. Sed distinctione opus est hoc in casu, si nempe et meum conclave eodem tempore conflagrat non tenetur damnum resarcire: alias omnino debet, nam officia debent esse sine sumptibus, detrimento et jactura.

par. 7.

*diligenter custodiatur*.) Diligentia est duplex, quaedam *vulgaris* et *communis*, alia *exactissima*. Illam sufficere statuunt jurisconsulti. Ut si quis commississet meae fidei cistam repletam rebus vulgaribus, feci meum

41. Manuscript: *igne*, but there is an *i* above *e*.

which he would profit greatly when it was sold. But on his journey he saw that a fleet from Alexandria was on its way loaded [p. 57] with corn. Now the question is: was he obliged to inform the Rhodians about the advent of the fleet?

Cicero, who is really troubled by this case, is inclined to answer in the affirmative. But I say that the merchant does not offend when concealing the advent of the fleet, for it was not in the contract that a fleet would arrive shortly. Imagine a Dutch merchant who has bought goods in East India at a moderate price: if he learns that some of his wares have been lost, he can sell the rest at a higher price, concealing the loss he has sustained.

par. 5.

*Indemnified ... as well for the losses occasioned by the mandate:)* If someone is sent to the Turks for instance to ransom a prisoner and is thrown in jail or forced to sustain the loss of his fortune, then certainly he who sent him is obliged to indemnify him. But one should distinguish carefully between *cause* and *occasion*. This example can shed light on that distinction: If I ask someone to walk somewhere for my sake and he falls and breaks his leg, who shall pay the surgeon? Not me, for I did not cause the broken leg but only provided the occasion for it. The service I asked for is one that can be undertaken without breaking a leg. It may be objected that his leg would have been whole, had he not been commanded. I answer that it does not follow that the damage should be recompensed; the damage is rather to be regarded a fatal calamity. If out of generosity the employer recompenses the damage, he acts commendably.

[p. 58] par. 6.

*If the object of the loan should perish by some accidental event:)* Roman law in this case pronounces in general terms and without any distinction at all that the owner loses what he has lent, as for instance when I lend a book to someone and his library is destroyed by fire. However, a distinction is needed in this case: if my library too burns up at the same time, he is not bound to restore the damage. Otherwise, he should indeed do so, for the favours we do each other should involve no cost, damage or loss.

par. 7.

*that the thing entrusted must be diligently kept:)* Diligence is twofold; one is *ordinary* and *common*, the other is qualified. The jurists say the former is sufficient. If someone entrusts to me a chest full of ordinary things, I do my duty if I keep it in

officium, si eam habeam in camera conclusa, non omne tempus omni in loco adjicere possum cistae illi. Si fur in conclave irruperit et abstulerit una cum meis rebus cistam depositam, in me culpa non erit. Non majorem potest requirere diligentiam a me circa rem suam quam circa meas. Sed distinguendum inter depositi naturam, si *sordidi* sit pretii sufficit vulgaris cura, si vero res sit *maximi* momenti, ut gemmae, obligationes etc exactissima cura adhibenda est, ut talem cistam includam vel in cubiculum.

Quid si incendium oriatur? An quis prius eripit suas res quam depositas? Hic non potest in universum [p. 59] pronunciari, sed adhibenda est modo explicata distinctio inter res diversae naturae. Si res meae sunt praestantiores vel aequales alterius, valet regula: Sum proximus mihimet ipsi. Si sunt aequae pretiosae res meae et proximi sive deponentis, par est eas salvam una cum meis. Par quoque est ut deponens solvat pretium rerum mearum viliorum, quas neglexi in conservandis ejus rebus.

par. 9.

*emptor statim pretium* etc.) Quod vocatur Graeca fide mercari, nam Graeca natio est valde fallax. Polybius l. 6 Hist. *Si solum illis talentum concreditur, etiamsi decem antigrapha ac totidem sigilla, denique duplo totidem testes habeant, fidem tamen servare non possunt.*

*retractus*.) Ut Nobilis egestate pressus cogitur vendere praedium avitum, tali cum conditione, ut venditori restituatur intra sex annos oblato justo pretio.

*recipiat venditor*.) Ut apud Romanos antiquus mos fuit sepeliendi suos non in consecrato certo loco, ut Christianorum est, sed in suo privato agro vel in viis publicis. Propter illam causam frequentissime accidebat, ut vendito agro sumeret quis particulam ad suam sepulturam. Unde explicandum illud Virgilii Eclog. 3 *Dic quibus in terris et eris mihi magnus Apollo, Tres pateat Caeli spatium non amplius ulnas.* Nam *Caeli* non est nomen appellativum sed proprium. Videlicet Caelius fuit vir opulentissimus, sed postmodum decoxit, quam ut non haberet amplius, quam ut sepeliri posset.

[p. 60] *per aversionem*.) Quo dicitur<sup>42</sup> nolo videre quales e.g. sint libri, dic verbo, quid tibi dabo pro omnibus in universum boni sint sive mali. Conf. ipse auctor in *opere de I.N. et G. l. 5.5.4.*

42. Manuscript: *q. d.*

a closed room; I cannot keep an eye on the chest all the time and everywhere. If a thief breaks into the room and steals the chest in my keeping together with my belongings, I am not liable. I cannot be required to be more attentive about the belongings of others than about mine. But the nature of what is entrusted can differ: if it is cheap, common attentiveness is sufficient, but if it is very important, like jewellery, bonds and the like, qualified care is needed, so that I lock up the chest in my bed-chamber. What if there is fire? If I pull out my own things before what was entrusted? No general [p. 59] principle is possible here; one has to apply the distinction between things of different nature I just explained. If my things are more valuable or the same as his, the rule 'every man for himself' applies. If my things are equally valuable with those of my neighbour, it is appropriate that I save them together with mine. It is also fair for the depositor to pay for the cheaper belongings I neglected when saving his things.

par. 9.

*the buyer immediately offers and delivers a price:*) This is called trading with Greek trust, since the Greek nation is most deceitful. Polybius says in book six of *Historiae*: *You may consign one single talent to them, but they cannot honour the promise, even if there are ten copies and as many seals and twice as many witnesses.*<sup>71</sup>

*agreement about repurchase:*) As when a nobleman for want of money is forced to sell his old estate on such a condition that it be restored to the seller within six years for a fair price.

*it is common for the seller to reserve:*) The ancient Romans used to bury their dead not in a sacred place, as the Christians do, but in their private ground or in public roads. Because of this, it often happened that he who sold his ground excluded a small part for his interment. That explains the quotation from the third Eclogue of Virgil: *Tell me on what ground and you shall be my Apollo. The space for Caelius is not more than three ells.*<sup>72</sup> For Caelius /the heavenly/ is not a common noun but a proper name, i.e. Caelius was very rich but when he had melted away, he only had enough for his burial.

[p. 60] *buying a job lot:*) When what is said is "I do not want to see the books for instance; tell me what you want for all of them together, good or bad." Compare the author in *De jure naturae et gentium* book 5:5:4.

71. Polybius: *Historiae*, VI:56:13–14.

72. Virgil: *Eclogae*, II:104sq.

*probabilis tantum spes emitur*:) Praemium dare pro spe est stultum, ut ovo dejicere passerem de tecto, illud erat certum, hic vero incertus. Sed interdum fieri solet quod adstantes piscatoribus dent pro iis qui capiendi sunt reti exposito. Unde orta est lis inter piscatores Milesios. Nam adolescentes quidam expatiati sunt ad mare, ubi piscatores rete jactaverunt, conveniunt ergo adolescentes cum piscatoribus de captura (:piscium:). Forte fortuna extraxere una cum piscibus mensam auream. Contendebatur acerrime utrinque piscatoribus sibi et adolescentibus sibi fortunam vendicantibus. Res deferitur ad magistratum, hujus casus nodum illis non solventibus, devolvitur ad oraculum, quod responsum dedit hocce *dandum sapientissimo*. Tunc temporis florebant 7 sapientes, illis modeste recusantibus singulis demum Apollini cedit. Quanam fuit ratio hujus oraculi (:notandum pleraque oracula maxime Graecorum fuisse neque a Deo, neque a Diabolo inspirata, sed sacerdotes callide constituisse circa ea:) sciebat sacerdos [p. 61] nullum mortalium principis sapientiae titulum velle agnoscere, et sic infallibiliter praedam casuram in casses sacerdotis. Vide Val. Max. 4.1.4. Auctoris I.N. l.5.c.5. par. 6.

par. 10.

*si res locata plane perierit*:) Ut si locaveram aedes meas alicuius per totum annum, jam praeterlapso tantum dimidio anni aedes conflagent, non tenetur alter ad pensionem pro toto anno seu residua anni parte, quia locaverat eas stantes.

*alterius ubertate*:) Sic rustici in hac provincia, sua certa landgillen pensare coguntur, non ratione habita ad anni vel ubertatem vel sterilitatem. Unde paterfamilias non in unum annum sed in plures agrum conducit.

*et quae ipsius culpa perdita fuerunt* etc:) Si auri faber gemmam pretiosorem sumserit, quem annulo infigat, eam vero per negligentiam fregerit; et si sartor pannum pretiosam ex quo fecerat mihi vestes, faedaverit, restituere omnino debent damnum profectum ex ipsorum negligentia.

*et qui opus faciendum conduxit* etc:) Si conduxero aliquem, qui mihi operam praestabit certo tempore, qui et praesto est; dico vero ipsi: abi quoad vocaero te. Sed tota illa dies inutiliter labitur. Quare potest suam mercedem neglectam petere.

*only a likely expectation:)* To pay for mere hope is foolish: you can certainly drive off the sparrow sitting on eggs from the roof, but the quality of the egg is most uncertain. However, it sometimes happens that people by the waterside make a bid for the fish that will be caught when the nets are laid out. This caused a controversy among the fishermen of Miletus. There were some youngsters around on the beach, where the fisherman laid their nets. They made an agreement about the haul with the fishermen. By chance the fishermen drew up a golden table together with the fish. The fishermen and the youngsters quarrelled vehemently claiming the fortune for themselves. The case was submitted to the authorities, and when they could not loosen the knot, it was left to an oracle. These were the days of the seven wise men /in Greece/, but they modestly declined, and the case finally came to Apollo. A priest knew [p. 61] that the meaning of the oracle was that no mortal would claim the title of being the wisest; therefore the prey should infallibly go to the nets of the priest. (Note that most of the oracles of the Greeks were inspired by neither God nor the devil but cunningly constituted by the priests.) See Valerius Maximus 4:1:4.<sup>73</sup> and the author's *Ius Naturae* book 5 chap. 5 par. 6.

par. 10

*if a rented object is completely destroyed:)* If I lease my house to someone for a whole year and the house burns up after half the year, he is not bound to pay for the whole year or for the rest of the year because the house was intact when he rented it.

*since a poor crop in one year is normally followed by abundance in the next:)* The peasants of this province must pay their so-called landgillen<sup>74</sup> regardless of the abundance or unfruitfulness of the year. Therefore, the landowner leases the land for several years, not one only.

*makes good anything that perished by his fault:)* If through negligence a goldsmith destroys a ring into which he mounted a more precious stone, or if a tailor sullies a valuable fabric from which he was to make clothes for me, they should indeed pay for the damage caused by their carelessness.

*and he who has contracted to perform a piece of work:)* Suppose I hire someone to do a job for me within a certain time, and he is present. I say to him, go away until I call for you, but for the whole day no use is made of him. Because of this he can demand his salary.

73. Valerius Maximus: *Factorum et dictorum memorabilium libri*, book IV:1:4.

74. Meaning land rents.

*momentaneam suam operam:*) Momentana opera [p. 62] vocatur, si aliquis vadat in vicinam urbem ut reportet literas, *continua* opera dicitur v.g. conducere servum in integrum annum.

par. 11.

*Res fungibilis:*) Si quis mihi mutuo dederit imperialem ut dicunt in specie, si alterius generis imperialem ejusdem tamen valoris dederit, censor ipsi restituisse suum imperialem, nam hic aequae bonae habetur ac alter, et unus imperialis fungitur vice alterius cujuscunque imperialis, sic de frumento proceditur, non vero de aedibus, equis etc. Vide auctoris de I.N. et G. 5, 7, 1.

par. 12.

*sors salva est, ac perit ei qui contulit:*) Est aliquis mercator merces habens 4. mill. thal. quae non possunt cum insigni lucro distrahi nisi in certo loco remoto. Ponamus illum 4 suis mill. thal. quotannis usurari trecentos imperiales, et alterius operam qui proficiscitur ad mercatum, aestimari trecent. imperial. Si merces pereunt, ille qui operam contulit, non tenetur damnum sarcire, sed ille suam operam frustra consumsit quantum ad sortem. Quod vero lucrum attinet, in aequales dividendum est partes.

*impenditur ad meliorandam rem:*) Est qui habet mille imperiales, quibus lucrari vult, et est aliquis coriarius qui petit hosce sibi dari, ad emendum coria cruda, quae et praeparat ac idonea facit ad calceos. Postmodum proficiscitur ad mercatum, ac pro illis accipit ter mille imperiales. Ergo summa ex illa venditione collecta dividenda<sup>43</sup> inter illos aequaliter.

[p. 63] *omnium bonorum societas:*) Inter Christianos primitivae ecclesiae talem societatem institutam esse constat ex Actorum cap. 5. Hodie etiam inter Anabaptistas instituta est.

par. 13.

*qui aleam continenti:*) Nam in superioribus omnibus contractibus quasi praevisio est, ut quando ad opera facienda mihi conduco ancillam, praevideo illam esse capacem operis praestandi etc. Sed hic in antecessum non constat.

*Sponsio* est v.g. si ego contendo Hollandos victuros, alter Anglos, cujus assertioni responderit eventus, ille adit pignus.

43. Manuscript: *dividrata*.

*temporary work*:) It is called temporary [p. 62] when someone goes to the neighbouring village with a letter, and *continuous* work when someone is hired to serve for a whole year.

par. 11.

*a fungible thing*:) if someone lends me one imperial specie and I give him an imperial of another kind but of the same value I am generally believed to have returned his imperial, for the one is considered as good as the other, and one imperial functions instead of any other imperial. The same applies to corn, not to houses or horses, however. See the author's *De jure naturae et gentium* 5:7:1.

par. 12.

*the risk of loss of the capital lies completely with the contributor*:) A merchant has wares for 4000 thaler, which can only be sold with a substantial gain in a remote place. Suppose he pays 300 imperials interest annually on his 4000 thaler and that the work of another who brings the wares to the marketplace is estimated at 300 imperials. In case of loss, the one who provided his labour is not bound to repair the damage, but the other's effort has been in vain as far as the interest is concerned.<sup>75</sup> In case of profit, it is to be divided in equal shares.

*devoted to improving the property*:) A man has 1000 imperials from which he wants to make a profit and there is a tanner who asks for the amount in order to curry raw leather and make it suitable for shoes. Subsequently he goes to the marketplace and gets 3000 imperials. Accordingly, the sum obtained from the sale is divided equally between them.

[p. 63] *partnership of the whole property of all the partners*:) It is clear from the Acts Chap. 5 that there was such a partnership among the Christians in the original church. Today, it is established among the Anabaptists too.

par. 13.

*contracts which involve chance*:) In all contracts above there is, as it were, an assumption that when I hire a maid for a job, I presuppose that she is capable of doing the job. But in contracts of this kind this not clear in advance.

*bet*:) is when I hold that the Dutch will win, and another the English; he whose assertion is confirmed by the event wins the bet.

75. Uncertain translation.

*nondum utrinque notorii:*) Nam absurdum est spondere, num Leopoldus sit Caesar, cum constat eum fuisse ante annos 12.

par. 14.

*quam hunc arctius teneri:*) Mirum alicui potest videri, quod ille qui re non est usus tam arcte debeat stringi. Sed ratio est in promptu, nam creditor dicit se ne obolum quidem mutuo dedisse alteri, nisi is intercesserat pro eo, nam eo modo alienum in se derivavit debitum.

*expromissor vocari solet:*) Fidejussio est vel simplex quae jam jam descripta fuit; vel expromissoria qua quis alterius obligationem plane in se recipit ac vult tractari ac ipse sumsisset; ut si peregrinus sumserit mutuo ab aliquo, pro quo expromittebat indigena. Illo domum profecto, creditor qui non potest convenire principalem debitorem quippe qui iam est in Germania vel Hollandia, compellere potest jure expromissorem prius quam principalem debitorem.

par. 15.

*et si debitoris ullo modo intersit:*) Nam multi dantur [p. 64] qui habent magnam opinionem divitiarum, quorum tamen res familiaris valde aegrotat. Si aliquis horum torquem suum aureum pignori exponat et creditor eundem collo suspenderit suo, ac ita in publicum progreditur, ut exponatur omnium aspectui. Multum sane eo modo decedit alterius opinioni. Ergo pignoribus non utendum, nisi pactum antecesserit.

par. 16.

Ex sacris scripturis notum est duo non deberi exponi pignoris (1) vestis (2) lapis molaris, ne tam securi exstant homines, ut sese coniiciant in extremam paupertatem. Si lignarius velit mutuo a me sumto, pignoris loco tradere me securim, erit signum, illum non futurum solvendo. Ita si rustico equus, et huiusmodi genus instrumenti agriculturae adimantur, certe non habebit, quibus in posterum vitam poterit sustentare suam, nam equi etc sunt ipsi necessarii ad comparanda sibi alimenta.

*not yet known to both parts*.) For it is absurd to bet about whether Leopold will become emperor when he was born only 12 years ago.<sup>76</sup>

par. 14.

*a surety may be more strictly obliged*.) It may seem odd that he who does not use the thing is so strictly obliged. But the reason is clear for the creditor says he will not lend even a penny unless the surety goes between with his credit, for in that way he diverts the debt of another to him.

*called a "new debtor" /expromissor/*.) Suretyship is either simple, as has already been described, or is based on a promise by which someone completely shoulders the responsibility of another and is willing to be treated as if he himself had been the borrower. For instance if a stranger borrows from someone and a native promises to assume the debt; if the stranger returns home, the creditor, who cannot sue him since he is already in Germany or Holland, can lawfully force the new debtor before the principle debtor.

par. 15.

*if there is any effect at all on the debtor's interest*.) [p. 64] For there are many who are believed to be very rich but whose fortune is very weak. If one of these men pledges his golden necklace and the creditor hangs it around his own neck and appears in public with it to expose it in full view of all, it is very detrimental to the debtor's reputation. Pledges should therefore not be used without a preceding contract.

par. 16.

It is known from the Holy Writ that there are two things that cannot be pledged, namely one's clothes and a millstone, in order to prevent people from being so careless that they plunge into extreme poverty. If a carpenter who borrows from me wants to leave his axe as a pledge, it indicates that he will not pay me back. Similarly, if the horse and other tools of agriculture are taken from a peasant, he will certainly not have the means to sustain his life for the future, since horses etc. are necessary for him to provide nourishment.

76. The emperor of the Holy Roman Empire was elected; hence the uncertainty.

CAP XVI D. 16 OCTOBRIS  
[QUIBUS MODIS SOLVANTUR OBLIGATIONES,  
QUAE EX PACTIS ORIUNTUR]

par. 3.

*data acceptilatione*.) Hinc adparet terminum *acceptilationis* imperite adhiberi a quibusdam theologis in negotio Salutis nostrae, uti dicunt Deum acceptilatione meriti Christi fateri se accepisse quod revera non acceperat, cum vero pater non nihil, sed revera maximum acceperit, videlicet mortem sui filii. Malus eorum non est sensus sed imperite adhibent hunc terminum juris. Observandum quod *apoca* dicatur si pecunia est soluta.

par. 4.

*nisi leges positivae id prohibent*.) Sicut in matrimonio contingit ut aegre renunciatio fiat post sponsalia. Nam in Rebuspublicis [p. 65] ubi boni mores vigeant, circa tales casus examen solet institui penes magistratum, an videlicet graves intercesserint causae in isto gravi negotio.

par. 5.

*alterius partis perfidia*.) Juxta versum barbarum: frangenti fidem fides frangatur et eidem.<sup>44</sup>

*capita praestandorum*.) Ut hoc in exemplo sunt duo capita, cum conduxissem operarium aliquem ut foderet mihi in horto, est prius caput: pro quo tibi pecuniam dabo, et posterius caput: si operarius non prius praestiterit, nec adigi possum ad praestandum posterius.

par. 6.

Ut expirat obligatio servi quando tempus servitii expirat. Sic antequam rex regno renunciavisset, tenetur defendere subditos, ac eosdem ad obsequium adigere, post renuntiationem vero nec astrictus est eorum defensionem, nec ad ipsi obtemperandum obligantur subditi.

par. 7.

Sic omni tempore novimus foedera dari non perpetua, sed ad certum tempus. Ita si alicui locaverim aedes meas ad certum tempus, quo praeterlapso si ego inquilinum non admonuissem, nec ille me allocutus fuisset, sed pergit permanere in iisdem, censetur fieri quasi prorogata fuerit ipsi

44. Manuscript: *idem*.

## CHAP. XVI OCTOBER 16

[ON METHODS OF DISSOLVING OBLIGATIONS  
ARISING FROM AGREEMENTS]

par. 3.

*by giving a formal discharge from the debt:*) Obviously, certain theologians ignorantly apply the term discharging to the question of our salvation. They hold that God acknowledges that through the merit of Christ he has accepted something that he has in fact not accepted. For it was not a trifle that the father accepted, but something really large, i.e. the death of his son. There is nothing bad in their opinion, but it is ignorant to apply the legal term. Note that it is called *apoca* /receipt of the creditor/ when the money is paid.

par. 4.

*unless the laws of the land forbid it:*) It happens in marriage that the announcement is made unwillingly after the betrothal. In countries where good manners prevail, [p. 65] an investigation is usually carried out by the authorities in such cases in order find out if serious matters have intervened in that serious affair.

par. 5.

*breach of faith of either party:*) According to the barbaric verse: He who breaks faith, loses credibility and suffers the same.<sup>77</sup>

*the latter terms of a contract:*) In this example where I hire a worker to dig in my garden there are two terms, first, the work for which I will pay money, and second, that I cannot be urged to pay him until he has done the job.

par. 6.

The obligation of a servant expires when the period of service comes to an end. Similarly, until the king announces his abdication, he is obliged to defend his subjects and extract their obedience, but afterwards he is not bound to defend them, nor are they bound to obey him.

par. 7.

We have always known that there are agreements, which are not perpetual but temporary. If I let my house for a certain time and, when that time has passed, I have not said anything to the tenant and he has not spoken to me but remains in the house, his stay is regarded as having been prolonged by a tacit convention.

77. Refers to the German saying: "Treu' gegen Treu steht Jedem zu. Wer die sich bricht dem Gleiches zu."

habitatio tacita conventione. Sic ancillae, si supra tempus manserint apud matrem familias, et si non exprimatur ab alterutra parte conventio nova, tacita subest, si renunciatio, fieri debet illa ante praefinitum tempus, ut utraque pars sibi possit proficere, quod jubetur in legibus hujus regni.

[p. 66] par. 8.

*in persona alicujus radicatae*.) Duum generum dantur obligationes: (1) Quaedam tantum ad nostram personam spectans ut est officium parentis erga liberos, mariti erga uxorem, regis erga subditos et vice versa, quae officia cuivis incumbunt praestanda, quamdiu in vivis sumus, postea vero non item, sicut Apostolus Paulus dicit: estote maritis subjectae ac alius concubitus non appetite donec maritus in vivis est,<sup>45</sup> illo vero vita defuncto licet ad secunda vota transire, quod alias esset capitale. Sic filio mortuo officium paternum expirat. (2) Quaedam obligationes dantur etiam in rebus, sicut v.g. mutuum non sufficit obligatio ipsius curae personae, sed illa mortua obligatio transit etiam in bona, sic qui aes alienum, dum vixit, contraxerat atque pignus dederat in securitatem, moriatur persona, pignus non restituitur antequam solutio fit.

*ex officio pietatis*.) Pater dum vita fruitur, tenetur prospicere suis liberis, ut iis bene sit etiam post ejus mortem (sicut et Rex). Et solent in agone mortis parentes filiis quid in mandatis dare, quibus post obitum morem debent gerere,<sup>46</sup> eorumdemque memoriae cum veneratione consulere, observantes esse eorum mandatorum. Sic regis est officium civium salutem quaerere quoad ipse vigerit, sed et insuper debet curam gerere, quantum in se est, ut bene illis sit post ejus obitum. Ejus regis dispositiones, si fuerint sapientes et non repugnaverint saluti publicae, par est ut observentur post ejus mortem.

[p. 67] par. 9.

*delegationem*.) Quam assignationem vocant, et est translatio alterius debiti in illum cui tantumdem debeo, ac ille mihi.

*consentienti*.) Dantur enim etiam mala nomina seu debitores, qui vel non sunt solvendo, vel non nisi aegerrime post multas admonitiones extricatur solutio.

45. In margin: *NB*.

46. In margin: *NB*.

Similarly, if a maid stays beyond time with her mistress, and no agreement is demanded by either part, there is a tacit convention. If there is notice, it should be given before the prescribed time, so that both parties can make their arrangements in advance, as is decreed in the laws of this kingdom.

[p. 66] par. 8.

*obligations rooted in a man's person:*) There are two kinds of obligation. Some pertain to our person, as does the duty of parents towards their children, the duty of a husband towards his wife, and the duty of the king towards his subjects and vice versa. These duties are incumbent as long as we live, but not afterwards, as the Apostle Paul says: be obedient to your husbands and do not try to sleep with another as long as your husband is alive; after his death it is allowed to engage in a new marriage, which otherwise would be punishable by death.<sup>78</sup> Some obligations refer to things as well, as is the case with loans where the obligation of the person is not enough; when the person dies the obligation passes to his property. Thus, if a person, who has borrowed money during his lifetime and given a pledge as security, passes away, then the pledge must be restored before the debt is redeemed.

*a duty of family piety:*) A father, as long as he lives, is obliged to provide for his children so that they fare well after his death (like the King). During their death struggle, fathers usually instruct their sons about how to behave after their death and to have regard for their memory and respect their injunctions. Likewise, it is the duty of the king to procure the welfare of his subjects as long as he lives, but also to take pains as far as possible for their welfare after his death. If the measures of the king have been wise and not repugnant to the welfare of the country, it is fair for them to be observed after his death.

[p. 67] par. 9.

*delegation:*) which is called assignment and consists of the transfer of the debt of someone to whom I owe just as much as he owes me.

*the consent of the creditor:*) There are also the bad names, or the debtors who either cannot pay or only do so unwillingly after many requests.

78. 1 Corinthians 7:39.

## CAPUT XVII D 18 OCTOBRIS

## [DE INTERPRETATIONE]

par. 2. vide Puf. I.N. et G. p. 710 seq.

Sic Mahometes fecit, qui alicui caput incolume promisit et postea eum medium dissecuit (de quo Puf. Majori Opere p. 711). Cum tamen alicui caput praestare incolume, usu vulgari denotat alterum quoad totum praestare illaesum. Sic in Germania contingit, quod juvenis dissolutus polliceretur puellae credulae conjugium modo copia ei daretur rem cum illa habendi, illa prius quaerit de tempore copulationis; ille respondit: in illo templo quod nobis primo occurrit, hoc est ex famoso significato, ad quod templum ex itinere primum pervenerimus. Juvenis fidem non praestat. Illa decepta eum accusat coram magistratum, cui interroganti et examinanti inquit deceptor: Nullum templum vidimus occurrere, quia omnia sunt immobilia. Quo responso ille non solvebatur.

par. 4. Vid. Puf in maj. ope. p. 713 par. 5.

In regno Neapolitano nobilis quidam erat ditissimus, a quo ingens vis opum relinqueretur unico filiolo. Sed hoc ipsum videntes Jesuitae adeunt senem persuasuri, ut daret suum filium in ipsorum collegium, donec perveniret ad annos; res ipsis succedit, ut pater testamentum conderet, Jesuitae fierent haeredes et darent *filio quae vellent*. Qui deinceps ipsi dabant exiguam [p. 68] partem, sibi reliqua retenta. Filio vero displicuit eorum vitae genus et res defertur ad proregem De Osina (cuius celebria dicta ac facta quam plurima sunt:), qui re perspecta, quod Jesuitae vellent rapere sibi totam haereditatem, pronunciabat eadem ambiguitate, *date filio quae ipsi vellent*, sc. habere; ita pro spe lucri maximum invenerunt ludibrium. Vid. Puf., loc. cit.

*posterius derogabit prioribus:*) Si pactum iniverim cum vicino meo circa rem quampiam, quod et iterum inter nos sit, si aliqua ambiguitas deprehendatur; posteriori est standum, nam censetur is voluntatem mutasse dum altera vice pactum iniit. Sed hoc intelligendum est de eo pacto, quod fit inter eosdem. Nam e contra est pronuntiandum, si fiat pactum circa diversos, inverso ordine res se habet. Nam si posterius priori derogaret, omnia tollerentur pacta. V.g. si servus a me conductus cum alio contractum iniverit, non erit validus, nam hic obtinet illud: qui prior tempore, prior jure.

## CHAPTER XVII OCTOBER 18

## [ON INTERPRETATION]

par. 2. See Pufendorf, *De jure naturae et gentium* p. 710 seq.

This is what Mahomet did when, having promised some captive not to harm his head, he bisected him in the middle (about this Pufendorf, the major work p. 711).<sup>79</sup> Not to harm someone's head means in ordinary use to leave the other uninjured altogether.

It happened in Germany that an insolent youngster promised to marry a credulous girl, if only she could give him the supplies to do so. The girl asked when the wedding would be and he answered: in the first church that turns up, that is, according to the usual meaning, in the church we first encounter on our way. The youngster did not keep his promise. Deceived, the girl accused him before the magistrate, and when questioned the swindler answered: We never see a church turn up, for all churches are immobile. That answer did not exonerate him.

par. 4. See Pufendorf's major work p. 713 § 5.

In the kingdom of Naples there was a very rich nobleman whose immense fortune was to be bequeathed to his only son. But seeing this, the Jesuits went to the old man to persuade him to entrust his son to their collegium until he grew up. The fortune went to them, as in his last will and testament the father ordained that the Jesuits would be his heirs and give *the son what they themselves wanted*. The Jesuits then gave him a small [p. 68] part and kept the rest for themselves. However, the son did not like their form of life and the issue was brought before the viceroy Osuna (who is renowned for many sayings and doings).<sup>80</sup> He perceived that the Jesuits wanted to lay hands upon the whole heritage and decided with the same ambiguity that they should *give to the son what they wanted themselves*, that is to have. Thus instead of the hope of maximum profit they found themselves cheated.

*the later passage supersedes the earlier:*) If I make a contract with my neighbour about something and that contract is renewed between us, then one should stick to the later agreement, if there is any ambiguity. For he is considered to have changed his intention, when he entered the contract a second time. This however applies to a contract between the same persons. The contrary applies if the contract is made with different persons; then it is the other way round. For if the later contract superseded the prior, all contracts would be cancelled. For instance, if a servant whom I hired enters into a contract with another, it will not be valid; for here the rule that applies is who is first in time is first in law.

79. *De jure naturae et gentium*, V:12:3. Mahomet refers to Mehmed II (1432–1481).

80. Pedro Téllez-Giron, Duke of Osuna (1575–1624), Spanish Viceroy of Naples.

*dextra explicatione adhibita:)* Vid. Puf. I.G et N l.5 c.12 par 6. p 714. de exemplo an mulieri sit statua collocanda? Vid. p. 715 de Zedechia etc. quod est exemplum apparentis contradictionis.

par. 5.

Sic qui de re aliqua thema conscribit praesumitur ea intendere quae ob oculos habet. Sic Mathematicus tractans de cancro, Medicus de cancro, Physicus de cancro, non necessum habent semper addere, sidus, morbum, piscem, quia hoc ex substrata materia facile patet. Ita diversimodo utuntur termino iustitiae jurisconsultus ac theologus. [p. 69] Venditores solent addere *praestabo te indemnem in omni casu*. Si jam praedium quod quis emerat, ab incendiariis vel ab hoste spoliatur, judicatur venditor non debere sarcire damnum. Nam illa locutio: indemnem te praestabo in omni casu, restringenda est ad eos casus, qui fluunt ex venditione et emptione.

Cavillationis exempla vide apud Autorem O.M. pag 786 c.12. par. 4. lib. 5.

par. 6.

*vel absurdum:)* Si lex aliqua sit ita prolata: qui sanguinem alicui elicuerit in platea, capite plectetur. Si contingit Chirurgum venas alicui secuisse, fieret istius legis reus. Nisi iudices sint plane asini, non vocarent eum in jus.

par. 8.

*ubi plures fuerint rationes:)* Lex diversarum rationum est v.g. sumptuaria in conviviis nuptialibus, ut sit certus, nec amplior justo numerus convivarum, (1) ratio: in talibus congressibus solet conjuratio institui praesertim ubi viget imperium tyrannicum. (2) Ratio, ne eo modo redigantur homines ad paupertatem. (3) ne homines assuefiant debaccationibus, qui studere debent temperantiae. Si jam cessant prima vel secunda ratio, non debet quis dicere; in meo convivio nec facta conjuratio, nec inde reddebar pauperior.

*by skilful exegesis:*) See Pufendorf *De jure naturae et gentium* book 5 chap. 12. par. 6, p. 714 on the question on whether a statue of a woman can be erected? See p. 715 on Zedechia, which is an example of a seeming contradiction.<sup>81</sup>

par. 5.

Someone who writes about something is considered to aim at what is before his eyes. An astronomer, doctor or naturalist writing about the crab need not always add the star, the disease or the fish, because this is obvious from the matter itself. Similarly, the jurist and the theologian use the word justice differently. [p. 69] Sellers usually add: *I will indemnify you in all cases*. If someone buys an estate and it is destroyed by fire or by the enemy, the seller is not considered obliged to compensate. For the saying "I will indemnify you in all cases" is restricted to selling and buying. For examples of jeering, see the author's major work page 786 chap. 12, par. 4. book 5.<sup>82</sup>

par. 6.

*or absurd:*) Suppose there is a law saying that he who sheds someone's blood in the street will have to pay with his life. If a surgeon happens to open the veins of somebody, he will be guilty according to that law. Unless they are complete asses, the judges will not bring him before the law.

par. 8.

*But when there is more than one reason for the law:*) A law with different reasons is for instance the decree about superabundance at wedding banquets in order to restrict the number of guests. The first reason is that conspiracies are often formed during such gatherings, especially under tyrannical rule. The second reason is that people should not in that way be reduced to poverty. The third reason is that people must not get accustomed to carousing, when they should rather strive for temperance. If the first or second reason does not apply, one should not say: in my banquet there was no conspiracy, nor did I become poor.

81. Discussing in *De jure* V:12:6 ambiguity in juridical speech acts, Pufendorf gives the example of statues of heroic tyrannicides being erected in Greek gymnasias in order to inspire the men; but what if the tyrannicide was a woman? – Zedechia was the last Jewish king who fatally misunderstood two seemingly contradicting prophecies, the one saying he would be brought to Babylon as a prisoner, the other he would never see Babylon; however, he came to Babylon, but blind, having had his eyes poked out.

82. The example is about the Spartan king Cleomenes, who interpreted a 'three days truce' with the enemy as not including the nights, thus justifying a successful nocturnal attack.

Sed vel tertia ratio satis potuit esse prohibendo ac modum praescribendo. Si et illa defuerit, certe voluntas regis sufficit. Vid auct. O.M. p. 720 de Aegroto navim petente.

[p. 70] par. 11.

*ex defectu materiae:*) Sicut lex erat Lusitannis, ut omnes suas barbas formarent ut caudam curvam, jam vero haec lex eos non potuit obligare, qui nulla gaudebant barba.

par. 12.

*violatum iri legem naturae:*) Si lex in hoc regno est capitationis, kopp skatt, quae omnes aequae stringit, aequitas vero excipit mendicos.

*id nimis videatur grave et intolerabile:*) Generalis lex est de observatione Sabbathi. Si contingat hostes nobis impendere, et perventuri sumus in potestatem hostium si non sumtis armis resistamus. Intelligenda itaque est exceptio quaedam. Quod fecit Mathathias in lib. Maccab. Sic quaedam opera caritatis et misericordiae die sabbathi obibat ipse noster Salvator Jesus Christus. Lex sit praecipiens jejunium tota die, aequitas suadet hanc legem non stringere aegrotos vel infantes, qui opus habent refocillatione.

par. 13.

*quod faciendum certo tempore* etc.) Ut si periculum in mora est, e.g. si incendium oritur, et ancilla lanam ducens non surgat ad restingvendum, peccat. Nam ibi periculum est in mora. Ad lanam ducendum quidvis tempus opportunum. Nec lanae rubiginem contrahunt eo tempore.

*peculiaris praefertur generali:*) Ut si cui injunctum ut solam regionem inspiciat. Si postmodum praecipiat ut hoc praedium inspiciat, huic prae priori mandato mos gerendus.

*obligationi perfectae cedit imperfecta:*)<sup>47</sup> Memorat historia Graeca [p. 71] de Phocione, cum in concione consisteret, petebant ab illo ut contribueret ad ludos. Qui tum fertur respondisse: creditor qui a tergo stat, non patitur. Primo enim est solvendum, deinde videndum num e.g. mutuo cui dare poterit. Etc.

47. Manuscript: *obligat. perf. cedit perfecta:*).

But the third reason can be sufficient reason for a prohibition and for prescribing moderation. If even that reason is lacking, the will of the king will be enough. See the author's major work p. 720 on the sick man who claimed the ship.<sup>83</sup>

[p. 70] par. 11.

*from the absence of the subject:)* The Portuguese had a law that everybody should cut their beards like a bent tail, but this law could not constrain those who did not rejoice in a beard.

par. 12.

*that natural law would be violated:)* In this kingdom there is a poll-tax, kopp skatt<sup>84</sup> which applies to everybody, but equity makes an exception for beggars.

*it would seem too oppressive and intolerable:)* There is a general law about observing the Sabbath. If it happens that the enemy is near and we will be at his mercy unless we take up arms and resist, then that is to be understood as an exception. This is what Mathathias did in Maccabees.<sup>85</sup> Our Saviour Jesus Christ himself performed some acts of charity and pity during the Sabbath. The law may prescribe fasting all day but equity recommends that this law does not apply to the sick and the infants who need to be warmed into life.

par. 13.

*What must be done at a certain time:)* As when there is peril in delay. If there is a fire and the maid does not leave off spinning wool to check the fire, she commits a fault. This is an example of peril in delay. Any time is suitable for spinning wool, and the wool does not contract rust in so short a time.

*prefer the particular to the general:)* If someone is enjoined to inspect an area, and is afterwards instructed to inspect the estate, the latter mandate is to be followed before the prior.

*An imperfect obligation gives way to a perfect obligation:)* Greek history [p. 71] tells about Phocion, who, when he took his place in the assembly, was asked to contribute to the games. He is said to have answered: one shall not allow a creditor who is in debt. Let him first discharge himself; then one can see if he can lend anything.<sup>86</sup>

83. The example, taken from *Ad Herennium*, is about Roman law saying that a crew abandoning ship lost both ship and cargo. But what if a member of the crew out of illness had to stay aboard and then the ship unexpectedly reached a port safely: would he be the owner of both ship and cargo?

84. Swedish: 'koppskatt', a tax imposed on each hide

85. Mathathias who decided to fight the enemy even if he broke the Sabbath. 1 Maccabees 2.41.

86. Plutarch: *Lives*, Phocion, chap. 9.

<sup>par. 11</sup>  
ex defectu materiae: Sicut lex erat Lulitannis, ut omnes  
 suas barbas formarent ut eundem clavum, iam v. huc  
 lesam potuit obligare, qui nulla gaudebant barba.

<sup>par. 12.</sup>  
violatum in legem naturae: Sic lex in hoc regno est  
 Capitationis, Ruyss, Butt, quod omnes in universum stringi  
 equitatis v. exigit mendicet.  
id nimis videatur grave et intolerabile: Generalis lex  
 est de observatione Sabbathi. si contingat hostes nostros in-  
 pendere, et periculis sumis in potestatem hostium  
 si non sumis armis resistamus. intelligenda est  
 est exceptio quidam quod fecit Mathathias in 2.  
 Machab. Sic quidam opera caritatis et misericordiae  
 die Sabbathi obstat ipse noster Salvator Iesus Christus. lex  
 sit precipiens ieiunium tota die, equitas suadet hoc  
 legem non stringere agrotos vel infantes, qui opus  
 habent revivificationis, ~~quod obstat~~

<sup>par. 13.</sup>  
Quid faciendum certo tempore, etc. ut si periculum  
 in mora est, e.g. si incendium oritur, et auxilia laeva  
 dicentis non surgat ad restringendum, peccat. nam si  
 periculum est in mora, ad laevam dicendum quidvis  
 opportunum. nec lumen tenebrarum contrahunt eo tempore  
peculiaris praefertur generali: ut si cui injunctum est ut  
 regionem inspiciant. si personam praecipitur ut hoc sit  
 inspiciant, tunc praeprio mandato non gerendum.  
obligat. perf. ad id perfectum: memorat hystoria gra-  
 (ca

71  
de Phoenice, cum in conuione confisteret, petebant  
ut contribueret ad ludus, qui tunc festis responde-  
bat: creditor qui a tergo stat, non patitur. Primo  
solvendum, deinde videndum num e.g. miles  
sui dare poterit. Ne

Observationes in Librum  
Secundum S. Pufendorfii  
A. 1673 d. 10 Novembrij.  
C. 1.

Hactenus tradidimus officia hominis in  
generi, non hunc vel illum, sed omnes omnino  
in quibus sint statum concernentia, v.g. Preceptum de non  
cedendo, de non contemnendo alterum, de beneficentia  
exercenda, de fide servanda, de non mentiendo, de  
iustitia adhibenda in contractibus omnes omni-  
es in universum obligant nullo excepto. Verum  
honorare parentes, non potest eos obligare qui nullos  
habent parentes, ita obtemperare heri non potest  
qui Dominum, & sic deinceps.

De statu hominum naturali: in omnibus libris  
Politico-rum, si unum vel alterum excipias, nihil  
vel parum habetur de nobilissimo hoc capite. Quod  
est fundamentum non in politica architectonica sed et  
practica. itaq. capite carentem et manum ducturam  
Politica

OBSERVATIONES IN LIBRUM  
SECUNDUM S. PUFENDORFII  
AO. 1673 D 10 NOVEMBRIS

## C. I.

## [DE STATU HOMINIS NATURALI]

Hactenus tradidimus officia hominis in genere, non hunc vel illum, sed omnes omnino in quo sint statu concernentia, v.g. Praeceptum de non laedendo, de non contemnendo altero, de beneficentia exercenda, de fide servanda, de non mentiendo, de justitia adhibenda in contractibus omnes omnino in universum obligant nullo excepto. Verum honorare parentes non potest eos obligare qui nullos habent parentes, ita obtemperare hero non stringit dominum, et sic deinceps.

*De statu hominum naturali:*) In omnibus libris Politicorum, si unum vel alterum excipias, nihil vel parum habetur de nobilissimo hoc capite. Quod est fundamentum non tantum Politices Architectonicae, sed et Practicae. Itaque capite carentem et mancā doctrinam politicā [p. 72] hactenus tradidere Politici. Quod tam jejunē hac de re scripserint adscribendum est Aristoteli qui non est in causa, sed occasionem praebuit, ita ut ejus sequaces putent abs eo omnem exhaustam esse sapientiam. Itaque male passim audiant in scholis qui proponunt vel contra Aristotelem quid, vel quod ille non habet. Quia vero Aristoteles dixerat hominem natura esse animal πολιτικόν, idem statim dicebant civitates a natura esse sicut sol et equus. Hobbesius distincte de eo statu primo tradebat, sed valde cavillatur multis in locis, qui etiam a multis vel imperitissimis maledicentia ac convitiis proscinditur.

par. 1.

*diverso statu:*) Sicut corpora considerantur vel per se, vel ut sunt in aliquo loco, vel ante vel retro, vel in sublimi vel in humili, vel ad sinistrum vel ad dextrum, sic et personae morales considerantur esse in statu. Vid. Auth. de I.N. et G., I.I.6.p.5.

*peculiarīa fere jura:*) Ut Rex administret justitiā, maritus alat uxorem liberosque pater.

par. 2.

*triplici modo considerari:*) Consideratur status naturalis (1) in oppositione brutorum (2) in oppositione eorum qui exculi sunt opera et arte

OBSERVATIONS IN  
SAMUEL PUFENDORF'S SECOND BOOK  
NOVEMBER 10 1673

CHAPTER I

[ON THE NATURAL STATE OF MAN]

Hitherto, we have talked about the duties of man in general, which concern not one or another but all together, regardless of what state they are in. For instance the precepts of not harming or being contemptuous of another, of exercising kindness, of keeping one's word, of not lying, of being fair in contracts are binding for everybody in general without exception. But the precept to honour one's parents cannot apply to those who have no parents, nor is a proprietor bound to obey a master and so forth.

*On the natural state of men:)* In all books on politics, with one or two exceptions, there is nothing or only little about this important chapter. It is the foundation not only of political theory but also of practical politics. Therefore, until now the doctors of politics have supplied an imperfect doctrine [p. 72] if that chapter is missing. That they have written so sparsely on this topic must be ascribed to Aristotle, who however is not the cause of it but has provided the opportunity, so that his followers consider all wisdom to have been exhausted by him. Everywhere those who propose something against Aristotle or that he lacks something are held in bad repute. Since Aristotle had said that man is a political animal, they immediately said that states are as natural as the sun or a horse. Hobbes was the first to teach distinctly about the state of nature, but he quibbles very much in many passages; hence many ignorant people cut him down with malicious objections.

par. 1.

*the different states:)* As physical bodies are considered either in themselves or in their position, either forward or backward, high or low, to the left or to the right, so moral persons too are considered to be in a situation, see the author's *De jure naturae et gentium* 1:1:6 p. 5.

*its own distinctive laws:)* As the king administers justice, the husband feeds his wife and the father his sons.

par. 2.

*in three ways:)* The state of nature is considered as opposed to (1) the animals (2) as opposed to those who are improved by human work and art (3) as

humana (3) in oppositione ad statum civilem qui extra societatem consideratur. Vid. Auct. de I.N. et G. p. 139, par. 1.

*solo praelucente rationis lumine:*) Hoc addidi ad praescindendas calumniationum cavillationes et indicandum me non loqui [p. 73] de statu Adami.

par. 3.

*dum eximium prae caeteris:*) Quod etiam Ethnici agnoverunt, ut Ovidius libro Metamorph. Fab. 11 vers. 53 seqq.

Pronaque cum spectant animalia caetera terram,  
os homini sublime dedit, caelumque tueri  
jussit, et erectos ad sidera tollere vultus.

Sic et Sallustius, alia animalia, inquit, ad pabulum abjecit. Structura itaque hominis monere nos debet nostri officii, ut non cogitemus nos vivere ut edamus, sed edere ut vivamus etc.

par. 4.

In hoc statu sunt infantes projecti in locum desertum. An primi parentes primum expulsi paradiso fuerint in eo? Respondemus <sup>48</sup>

par. 7.

*paulatim exolevit:*) Postquam vero exoleverunt quasi generationes et nullus sensus cognationis superfuit, tum coepit vinculum commune humanitatis atque status naturalis. Patriarchae rem quaerebant ex re pecuaria, pecudes vero amplum requirebant spacium, unde separatio et hominum digregatio. Hi populi Europaei a plerisque censentur originem suam duxisse ex Japheto; si jam Asiatico cuidam dixero: Tu es meus Patruelis etc, irrideret mihi quocum non nisi communem habeo humanitatem.

par. 8.

*aequalis censetur:*) Notandum aequalitatem vel esse (1) virium, quo modo homines semper non sunt aequales, nam rusticus potest esse robustior

48. No answer is given.

outside society and opposed to the civil state. See the author's *De jure naturae et gentium* p. 139, par. 1.

*in the light of reason alone*;) This I add in order to check the criticism of my critics and show that I do not talk of [p. 73] the state of Adam.

par. 3.

*excelling other animals*;) Even the pagans acknowledged this, as does Ovid in the book of *Metamorphoses* Fable 11 verse 53sqq.:<sup>87</sup>

And, though all other animals are prone and fix  
their gaze upon the earth, he /a god/ gave to man  
an uplifted face and bade him stand erect  
and turn his eyes to heaven.

Sallust too says that God degraded the other animals to fodder.<sup>88</sup> Thus man's structure reminds us of our duty, not to think that we live to eat but that we eat to live.

par. 4.

In this state<sup>89</sup> are infants cast out in a desert area. Were the first parents in paradise in this state? We answer ...<sup>90</sup>

par. 7.

*gradually withered away*;) After the descendants had, so to speak, faded away and there was no sense of kinship left, the bond of humanity and the state of nature commenced. The patriarchs procured their property through breeding cattle and cattle needed a great deal of space, which entailed the separation and dispersion of men. These European peoples are usually believed to have originated from Japheth. If today I say to an Asian: You are descended from my father's brother, he would mock me, since we have only our humanity in common.

par. 8.

*considered equal*;) <sup>91</sup> Note that there is equality first with regard to physical strength, where men are not always equal, for a peasant can be stronger than a

87. In modern editions *Metamorphoses*, 1 v. 84–86.

88. The quotation not found in Sallust; therefore God is the unverified but likely subject.

89. I.e. the state of nature as opposed to life improved by human work and art (number 2 in par. 2).

90. No answer is given.

91. The words are not found in § 8.

Rege. Sed sciendum inaequalitatem virium non esse tantam, quin interdum validiori ab imbecilliore imminere possit periculum. Nam maxima [p. 74] est<sup>49</sup> inter vermiculos et homines, ab iis tamen iugulamur. Confer fabulam de aquila et vulpe nec non historia de ingenti et robusto Goliatho et pusillo homuncione Davide. (2) est aequalitas solertiae et ingenii. Verum sicut vix reperiri potest facierum aequalitas, ita nec ingeniorum. Quidam enim sunt animo forti, quidam timido, quidam ingenio acuto, quidam hebeti etc. (3) ut hoc loco<sup>50</sup> est aequalitas *juris* seu *libertatis*, ut quis dicere alteri possit, ego aequè liber sum atque tu, ego aequè rem meam geram juxta meum arbitrium atque tu. Eo modo omnia regna sunt aequalia, quamvis unum regnum alteri praestat potentia virium, atque ingenio. Gallia est validius et ingeniosius, ut apparet ex manufacturis, sed non ideo potest sese efferre super alia regna imbecilliora, quae non necessum habent ideo Galliae majestatem adorare. Sicut hodie unus Rex alteri superiorem locum non concedit. Contendit enim quivis se cuius alii regi esse aequalem, quod provenit ex libertate naturali.

par. II.

Dubitatio non minimi momenti est, *An sc. in statu naturali alter sit meus amicus, an vero meus hostis?* Duae extremae hic sunt sententiae, (1) *in excessu* peccans est eorum qui stolidi moti quod legerint apud Aristotelem hominem natura esse ζῶον πολιτικόν, statuerunt omnes homines ita esse amabiles ac jucundos, ut ab se invicem nihil [p. 75] mali possint timere, quod dum statuunt stolide probant suam generis humani ejusque actionum ignorantiam. (2) Altera in defectu peccat, cujus auctor est Hobbesius qui hanc in politicis suis conatur defendere propositionem: *omnes videlicet homines in statu naturali inter sese esse hostes*. Hinc quando pax est inter integras Respublicas asseritur non esse amicitiam vel pacem aliquam, sed tantum *inducias*, desumpta similitudine ex iis qui pugnis decertant, qui sicut tum quiescunt cum mutuo defatigati sunt, sed recuperato habitu et decedente calore, irruunt invicem in capillos: ita dicit fieri in statu naturali, et inducias tantum esse ad vires recolligendas, cum tamen nos dicimus pacem esse. Aliam certe pessimam format regulam: *Prudentem non debere ullam occasionem negligere alterum opprimendi*. Nam meus hostis nullum tempus negligit ad me opprimendum. Sicut duo depugnatores, quibus haec lex ut non desistant priusquam alteruter cadat.

49. Sc. inaequalitas.

50. Manuscript: *h.l.*

king. But one should know that the difference in strength is not that great; the stronger can sometimes be threatened by the weaker. There is a very great [p. 74] inequality between snakes and men, yet we get killed by them. Compare the fable of the eagle and the fox and the story of Goliath, the strong giant, and David, the insignificant little man. Second, there is inequality with regard to shrewdness and abilities. As rarely as you can find identical faces, can you find identical abilities. Some are brave, others timid, some are intelligent others dull and so on. Third, there is, as in this passage, equality in right and liberty, whereby one can say to the other: I am as free as you; I run my own business at my own will as much as you. In this way all kingdoms are equal, although one kingdom may be superior in power and talent. France is stronger and more talented, as appears from their manufactures, but she cannot elevate herself over other weaker kingdoms, and these do not need to adore the majesty of France. Today, no king concedes a superior placing to another. Everyone claims to be the equal of all the others, which comes from the natural liberty.

par. II.

A most important question is *whether, in the state if nature, the other is my friend or my foe?* There are two extreme positions here: one that is wrong by excess is taken by those who, foolishly affected by having read in Aristotle that man is a political animal, believe that all men are so amiable and agreeable that they cannot fear anything [p. 75] evil from each other; by saying this they foolishly prove their ignorance of the human race and its actions. The other position is wrong by deficit. Its origin is Hobbes who in his political doctrine tries to defend the proposition that *all men in the state of nature are enemies*. Therefore, when there is peace between independent states it is not friendship or peace but only *an armistice*; there is an analogy of two fighters who take a rest when both are exhausted but fly at each other again when they are restored and cooled down. This is how it is in the state of nature, Hobbes says; the truce is only to recoup power, although we call it peace. He states another very bad rule: *A prudent man should not miss any opportunity to oppress the other*. For my foe loses no time to oppress me. It is like two fighters who follow the law that they do not cease until either falls.

Certe stultum facio si praebeam ipsius cuspidi meum nudum pectus, quin potius occasione allubescence ipsum transfoderim. Sed neutra sententia nobis probatur et (1) prior quidem statuens hominem animal esse humanissimum et blandissimum ignorat generis humani ingenia. Nunc enim nobis non est sermo de statu innocentiae ante lapsum. [p. 76] (2) Posteriores omnes saniores politici detestantur et graviter pronuntiat Cicero in libro aureo de Officiis: Non ita comparata est vita humana, ut sit status gladiatorius, ubi nisi alterutrum opprimamus ab alio nos opprimi necessum est. Quapropter inter haec duo sequenda est media via, quae convenit cum sana ratione, et hujus mundi praxi: *Homines videlicet in statu naturali esse amicos, sed non fidos, pacem inter eos esse lubricam et infidam*. Quod vero jam amicitiam firmiorem colamus cum civibus, id facit metus ex iudice, nam si injuriam alicui intulero, vel mihi illata fuerit, iudex statim paratus est ad vindicandum quod in statu naturali non fit, ubi nullus iudex. Ad hunc paragr. vide Auct. O.M. l. 2 c. 2.

*studium aliorum vires subruendi*.) Qui vident in statu naturali alium nimis augeri potentia, omnes vires intendunt ut aequa sit lanx, singulae inquam<sup>51</sup> republicae curant ut in aequilibrio omnes degant. Quod ipsum provenit ex infida illa amicitia. Non vero ita est in *statu civili*. Ibi non opus habemus expiscari si qui forte in nos quid struant, habemus dominum superiorem, Regem videlicet. Deinde per me quivis fiat Crassus,<sup>52</sup> nam Rex potest me defendere contra ejus potentiam si opus sit. Sed contra in statu naturali. Ergo pactis non satis fiditur, licet nomen fidei sit sanctum. Nam si quis pactis non steterit, non habeo dominum communem qui me defendat injuriarumque ulciscatur.

[p. 77] CAPUT II D 28 NOV.  
[DE OFFICIIS CONJUGALIBUS]

par. 3.

*sentiatque se plus utilitatis posse etc.*.) Et exinde est quod Paulus Apostolus et Patres antiquiores commendent tantopere caelibatum, eumque praeferant matrimonii statui, qui hoc non dignior in se, nam longe melius consulitur in genus humanum cum manet species post nos quam cum non. Sed Paulus et Patres sunt intelligendi de talibus hominibus,

51. Uncertain reading.

52. Uncertain reading. The manuscript has Craesus. If read as a distortion of Croesus, it could refer to the Lydian king, but the Roman Crassus, known for his ruthless greed, is a more plausible candidate.

Certainly, I am stupid if I expose my naked chest to his spear, rather than stab him through when an opportunity presents itself.

But we approve of neither of these positions. The first, in stating that man is a most human and agreeable animal, is ignorant of the character of humankind; we are not now talking about the state of innocence. [p. 76] The other position is denounced by all sane doctors of politics; Cicero in his golden *De officiis* declares impressively: Human life is not ordained to be a state of gladiators, where we are crushed by another unless we crush him.<sup>92</sup> Therefore a middle way is to be followed between these two positions that is in accordance with sound reason and the praxis of this world: *Human beings in the state of nature are friends but not trustworthy, and peace between them is uncertain and unreliable*. That we entertain a firmer friendship with our fellow countrymen comes from the judge, for if I injure someone, or vice versa, the judge is at once there to take vengeance, which does not happen in the state of nature, where there is no judge. To this paragraph, see the author's major work, book 2 chap. 2.

*eagerness to subvert the strength of others*:) Those who, in the state of nature, see that someone is becoming too powerful direct all their powers to bring an equal weight. Indeed, the individual states are solicitous that there is a balance between them. This is because of the unreliable friendship. It is not like that in the civil state, where we do not have to find out if someone perhaps is preparing something against us, since we have the king as superior master. Hereafter anyone may be a Crassus, as far as I am concerned, for the king can defend me against his power if necessary. In the state of nature it is the other way round. Thus, contracts are not reliable enough, even if they are confirmed by the name of trust. For if someone does not keep contracts, there is no common master to defend me and revenge my injuries.

[p. 77] CHAPTER II NOVEMBER 28

[ON THE DUTIES OF MARRIAGE]

par. 3.

*and feels that he can achieve more good for the human race ... by not marrying*:) This is why the Apostle Paul and the elder church fathers so much recommend celibacy, preferring it to the state of matrimony. Celibacy is not better in itself, for it is much better for the human race if there is progeny after us. But Paul and the fathers

92. Cicero: *De officiis*, possibly III: 5, but the phrase *status gladiatorius* is not found there.

qui plus commodi generi humano afferunt caelibes quam uxorati. Sicut e.g. tempore Pauli in ecclesia instituenda Paulo et aliis discipulis erat ambulandum in universum orbem, variaque subeunda pericula pro doctrina Christiana propaganda. Quod caelibis facilius erat quam uxorato. Ergo propter praesentem necessitatem Paulus suadet caelibatum. Praepostere ergo dicta illa allegunt Pontificii, nam alia facies est ecclesiae constituendae ac constitutae, quamvis imperitis hanc rationem dicant, quod conjugium sit impurum, tamen alia est ratio politica apud eos, nam ratio status non fert sacerdotes uxoratos, si enim cardinales videant sacerdotes inferioris dignitatis uxoribus gaudere, etiam illi volunt esse uxorati.

par. 5.

*unum una esse contentum*.) Distinguendum inter matrimonium perfectum et imperfectum. Illud est quod Deus animo instituit jussitque nos contentos esse una. Nam (1) quaelibet mater corripit ad se suamque prolem in alterius fraudem. (2) Polygamia [p. 78] ad mendicitatem via praebetur, cum iam orbis terrarum sit repletus hominibus, secus ac erat primis temporibus, quando hominibus vacuus erat. Verum hisce seculis tantum abest hominum defectus ut multitudo sit morbus, et tantum abest ut toleranda sit polygamia, ut potius maxime cavenda ne pessum det respublica. Nam si hoc in regno usitata esset polygamia, per 50 annos unus alterum penitus devoraret, nisi cautum esset per colonias ducendas. Unde (3) infinitae rixae oriturae. Hae sunt rationes politicae contra Polygamiam. Sed ad hoc ultimum regerunt quidam: Ast inter Mulieres Muhamedanas non deprehenduntur rixae. Respondemus in causa est quod polygamia illis sit pars praecipuae religionis. Illis enim est persuasum Dei voluntatem esse multas habere simul conjuges. Nam cui persuasum est Deum hoc vel illud velle eique placere, homo non recusat adire quantacunque fiat cum incommoditate; quod quoque patet ex Pontificiis. Quidam addunt hanc rationem, ut Populus reddatur servilis. Nam qui habet multos liberos, ejus substantia evacuatur, et inde redduntur prouiores ad jugum subeundum.

*gentium Christianarum*.) Primis Christianis temporibus viguisse inter Christianos *πολυγαμίαν* affirmaverim facile, cum Apostolus dicat quod Episcopus debeat esse unius uxoris vir. Ergo praesupponit aliquos plures habere uxores. Sed quantum invaluit religio Christiana tantum quoque monogamia.

thought of such men who contribute more to mankind by being celibates than married. In the time of Paul, for instance, Paul and other disciples had to travel all over the world to organize the church and to undergo various perils to propagate the Christian doctrine. This was easier for a celibate than a married man. Thus it is because of present necessity that Paul advocates celibacy.<sup>93</sup> Therefore, the papists adduce these words preposterously, for the church is different when established from when she is being established. And although some ignorant people say that marriage is impure, they have another political reason: the reason of state cannot accept married priests, for if cardinals see that priests of lower dignity enjoy wives, they too will want to be married.

par. 5.

*that one man be content with one woman:*) One should distinguish between perfect and imperfect matrimony. The first is what God planted into our soul commending us to be content with one woman. First, every mother grabs for herself and her baby to the detriment of others. Second, polygamy [p. 78] opens the way to mendacity, since the world is now fully populated which it was not in the first age. But nowadays we are so far away from a population deficit that overpopulation is a disease; far from tolerating polygamy we should rather beware that it does not harm the state. If polygamy was practised in this kingdom, people would devour each other if one did not care to found colonies. Third, infinite quarrels would arise. These are political reasons against polygamy. However, against this last argument some people retort that there are no quarrels among the Mohammedans. The answer is that for them polygamy is part of their particular religion. They believe it is God's will that they shall have several wives at a time. And he who is convinced that God wants or is pleased by this or that does not object to submit to anything, however inconvenient; this is obvious with the papists as well. Certain people add the argument that polygamy makes the people obsequious. Having many children drains their fortunes, which makes the fathers more inclined to submit.

*Christian nations:*) I can confirm that polygamy existed among the Christians during the first centuries, since the Apostle admonishes that a bishop ought to have one woman only.<sup>94</sup> Hence, he presupposes that some have several wives. But as Christianity prevailed, so did monogamy.

93. 1 Corinthians 7:7 is often interpreted as a recommendation of celibacy.

94. 1 Timothy 3:2. Pufendorf does not mention polygamy among Christians in *De jure* (VI: 1:15–19), but he did not clearly declare it to be contrary to natural law, for which he was attacked by his critics.

[p. 79] par. 6.

*nisi principalis* etc.) Pacta enim stant mutua fide, si unus desciscit, alter non tenetur ad fidem. Ergo si ab alterutro violantur capita contractus matrimonialis, necessum est etiam ipsum contractum matrimonii rescindi.

par. 8.

Male faciunt Pontificii qui 7 gradus requirunt inter quos matrimonia non iniri possunt, qui et assignant affinitatem spiritualem, quae est, cum puer et puella in eodem baptismo una baptisati sunt. Sed exhinc, ut ex aliis suis statutis lucrum habent. Nam quo plures gradus sunt prohibiti, eo saepius dispensandi copia datur, quod non faciunt nisi acceptis largiter pecuniis.

par. 9.

*solemnia*.) Sacerdotalem benedictionem seu copulationem non putamus fuisse ab initio inter Christianos sed hunc morem invaluisse inter alios pios. Nuptias enim Antiqui etiam celebrabant convivio, ad quod etiam sacerdotes invitati, qui preces fundebant pro conjugibus. Qui mos laudandus est et pius, qui primo fuit *honestatis*, factus est deinde *necessitatis*, ut sacerdotes interessent omnibus conviviis, et pecunias acciperent. Unde in iure pontificio necessarius est. Quaeritur an et inter nos necessarius? Respondemus quod sit, quia lex civilis potest injungere tales ceremonias ut observemus tanquam necessarias, et nisi istae observantur conjugia sint irrita. Civis enim non tantum tenetur ad observationem legis naturalis, sed et civilis.

[p. 80] CAPUT III D 3 DECEMBER 1673

[DE OFFICIIS PARENTUM ET LIBERORUM]

par. 1.

*antiquissimum*.) Etamsi conjugium sit antiquior societate paterna, tamen radii imperii non elucet ex conjugio. Sunt enim conjuges pares. Nam Eva non erat desumpta ex Adami planta pedis sed ex costa sive medio viri, ut illam agnosceret sibi comparem et non procuraret suis sub pedibus, unde dicitur antiquissimum, sine quo imperium civile non est. Est et sanctissimum ut Ethnici dicunt pietatem sive venerationem laedi vel ex vultu moroso liberorum erga parentes.

[p. 79] par. 6.

*unless the original terms of the agreement have been violated:*) For agreements rest on mutual trust; if one part falls off, the other is not obliged to be faithful. That is, if someone violates the terms of the matrimonial contract, the contract itself is annulled.

par. 8.

The papists do ill when they require seven degrees between which matrimony is not possible, including spiritual affinity, which is when a boy and a girl have been baptized together. But from this they make profit, as from their other regulations, for the more degrees that are forbidden the more frequent are the exemptions, which are not granted without large compensation.

par. 9.

*solemnities:*) I do not think that the benediction and consecration of the priest was in use among Christians from the beginning; this custom became dominant among other pious people. For the ancients celebrated their weddings in a social feast to which priests were invited who prayed for the spouses. This was a laudable and pious custom that was first practiced out of probity but later of necessity, so that the priests were present at all wedding feasts and were paid for it. Therefore, the custom is necessary among the papists. Is it so among us as well? The answer is yes, since civil law can enjoin such ceremonies to be observed as necessary and that marriages become invalid otherwise. For the subject is obliged to follow not only natural law but civil law as well.

[p. 80] CHAPTER III DECEMBER 3 1673

[ON THE DUTIES OF PARENTS AND CHILDREN]

par. 1.

*oldest ... form of authority:*) Although marriage is older than paternal society, the rays of power do not shine out from it. For spouses are equal. Eve was not taken from the sole of Adam's foot but from his rib, from the centre of the man, so that he would acknowledge her as his equal and not place her beneath his feet. Because of that marriage is the oldest society and without it there is no civil authority. It is also the most sacred, as indicated by the pagan saying that the peevish air of the children towards their parents offends piety and veneration.

par. 2.

Duxi disserendum aliquid esse in antecessum in genere de origine iuris parentum in liberos. Ubi notandus error Hornii, qui statuit *omne imperium immediate esse a Deo*, quem errorem etiam passim inculcant qui sacra tractant. Fateor libens omnem ordinem bonum esse a Deo, nec nego imperium esse ordinem bonum; sed illi quiescunt in generali causa, videlicet Deo. Sed accuratius est philosophandum, ac descendendum etiam ad causas particulares. Non sufficit dicere liberis, quod Deus constituerit quod liberi parentibus obedientiam praestent, sed et causae secundae sunt inquirendae. Sic concedimus Magistratum esse a Deo, sed illud non sufficit, sed in causas secundas et proximas est inquirendum. Ut stultitia eorum magis appareat, addam quaedam exempla. Syrach dicit *ne contemne medicum, Deus enim illum creavit*. Ibi dicitur medicus Dei [p. 81] creatura, certe stultus erit non experientissimus medicus si negligat libros evolvere, contemnat bonos praeceptores consulere, nolit in praxi se exercere. Prov. 30 dicitur prudens uxor est a Deo, seu bona Dei creatura; certe hoc ipso causae secundae non excluduntur. Si procum non egero, cum parentibus bene loquar, si non circumspexero de ejus fama, profecto nullam consequar uxorem, vel certe admodum malam. Psal. 105 dicitur quod panis sit Dei creatura, de quo et petimus in oratione quod Deus det nobis panem quotidianum. Et quanquam non crescit sine Dei benedictione, tamen addenda sunt etiam causae secundae ac particulares, ut agrum colere, semen spargere etc.

*ad ipsorum salutem*;) Quae est causa primaria. Secundaria quidem est gaudium parentum, alias pater posset dicere, quid curo istum pusionem, habeo quantum sufficit ad meam sustentationem; tum censetur contra rationem agere, quia aberratur a scopo, qui est salus liberorum.

par. 8.

*observantiae debitum maneat*;) Hoc loco incidit quaerere, an filius possit habere praecedentiam prae patre? Ubi distinguitur inter actus publicos et privatos. Sicut de Quinto Fabio maximo cunctatore refertur, nam filius erat consul, pater vero proconsul, et mos erat desilire equo, usque dum transgressus esset consul. Misit itaque lictorem nunciatum ut equo descenderet, quod ipsum pater adeo

par. 2.

I think something should be said beforehand and in general about the origin of the right of parents over their children. Note here the mistake of Horn, who held that all authority comes immediately from God, a mistake inculcated far and wide by theologians.<sup>95</sup> I gladly admit that all good order comes from God, and I do not deny that authority is a good order. But they seek it in the general cause, i.e. God. But one must philosophize more accurately and go down to the secondary causes as well. It is not enough to tell children that God has decided that they should obey their parents. Likewise, we admit that the political authority comes from God, but that is not sufficient; again, one must seek the second and nearest causes. To show their foolishness more clearly, I will add a few examples. Sirach says: *do not condemn the doctor, for God created him*.<sup>96</sup> Here, the doctor is said to be the creation of God, [p. 81] but he will certainly be a stupid and the least experienced doctor if he neglects to read books, disdains consulting good teachers and refuses to practice. In Proverbs 30, it says that a prudent wife is God given,<sup>97</sup> or a good creation of God, but that certainly does not exclude secondary causes. If I do not plead the wooer, if I do not talk well to the parents, if I do not carefully inquire into her reputation, I will certainly not get a wife, or only a bad one. In Psalms 105 it is said that bread is a creation of God, for which we ask in the prayer that God give us our daily bread. Although it does not grow without divine blessing, nevertheless some secondary and particular causes must be added, like tilling the soil, scattering the seed and so on.

*for their own security:*) That is the first cause. A secondary cause, however, is the delight of the parents; otherwise the father could say: why shall I care for that little boy, I have enough for my sustenance. Then he acts contrary to reason, because he deviates from the aim, which is the security of his children.

par. 8.

*the debt of respect remains:*) At this passage, one can ask if a son can have precedence over his father? Here is a distinction between public and private acts. As is told about Quintus Fabius the great Procrastinator, his son was consul, the father proconsul. It was customary to dismount from one's horse until a consul had passed.<sup>98</sup> Thus, the son sent a lictor to tell him to dismount, which the father truly

95. Johann Friedrich Horn: *Politicoꝝ pars architectonica de civitate*, 1664. Compare *De jure naturae et gentium* VII: 3–4.

96. Sirach 38:1.

97. In modern editions, Proverbs 31.

98. Livy: Book XXIV:45.

laudabat. [p. 82] Contra vero fit in domo, ibi praecedat pater, etsi filius advenit ad maiorem dignitatem. Si quis pastor habeat patrem rusticum, pastor esset valde rusticus, si rusticum in mensa poneret ultimo loco.

#### CAPUT V

##### [DE CAUSA IMPULSIVA CONSTITUENDAE CIVITATIS]

Puto omnino ante diluvium non exstitisse civitates sed tantum fuisse societatem singulorum patrumfamilias segregum, quod inde potest probari, quia tam corrupta erat hominum vita tum temporis,<sup>53</sup> ut Deus consilium sumserit perdendi generis humani.<sup>54</sup> Nam si civitates fuissent, non est probabile tantam fuisse barbariem ut Deus illos tam graviter puniret universali diluvio. Nec statim post diluvium, sed plura forsitan secula effluxere, antequam civitates inciperent.

par. 1.

*vix sit jucunditatis* etc.) Nam domus propria admodum jucunda et suas habet cujusvis generis commoditates, sicut Abraham erat dives ac felix ac quivis nostrum, qui in civitatibus vivimus, cum is nulli civitati esset subjectus.

*ex hisce enim fundamentis*;) Non possumus facile judicare de potestate imperantium, vel de obligatione civium, si non intellexerimus causam, quae impulit homines ad constitutendam civitatem.

Multi imo omnes paene hactenus quasi caeco obsequio secuti [p. 83] sunt Aristotelem, quod civitatum causa fuerit natura seu homines natura esse cives, ita ut non possint non in civitate degere, sicut non possumus non sine esu et potu vivere.

par. 2.

*aliquam utilitatem inde sibi*;) Homo est animal quaerens utilitatem suam, non autem per somnum elapsi sumus in civitates. Ergo alterius videndum quid commodi respexit homo cum *subjecerit sese civitati*; nam nullus sapiens quid quaerit sine utilitate. Verum respondere tantum per *naturam*, ac in ea acquiescere est frivolum, nec ulla est consequentia in eo argumento. Idem est sane, ac ita colligerem: *Nuditas homini non est commoda, ergo gestandum est vestimentum holosericum*, nulla est consequentia. Dantur enim alia species vestium, datur pannus etc. Ita et hic

53. In margin: NB.

54. In margin: NB.

praised. [p. 82] It is different at home: there the father takes precedence, even if the son has acquired greater dignity. If a vicar has a father who is peasant, the vicar would be very rustic if he placed the peasant lowest at his table.

## CHAPTER V

### [ON THE IMPULSIVE CAUSE OF CONSTITUTING THE STATE]

I do not believe that there were states before the Flood, only a consociation of separate masters. This can be proved by the fact that the life of people at that time was so corrupt, that God decided to destroy mankind. For if there had been states it is not likely that the savagery would have been so great that God punished them with a universal flood. Nor were there any states immediately after the Flood; several centuries probably passed before they began.

par. 1.

*hardly any amenity*;) For a house of one's own is a very pleasant thing with all kinds of advantages. Abraham was as rich and lucky as any of us who live in states, although he was not the subject of any state.

*from this basis*;) We cannot easily discuss the power of the rulers and the obligation of the subjects if we do not understand the cause that made men constitute the state. Many, not to say almost all, have until now in blind obedience followed [p. 83] Aristotle's opinion that the cause of states is nature or that human beings are by nature citizens, so that they needs must live in states in the same way as we cannot live without food and drink.

par. 2.

*some advantage coming to him from it*;) Man is an animal that seeks his utility. We have not slipped into the state sleeping. There is another advantage that man considered when *he made himself subject under the state*. No prudent man seeks to get anything unless he expects some utility. It is trifling to answer *by nature* and be satisfied with that. It is as if I argued like this: *Nakedness is not advantageous to man; therefore he must wear a silk shirt*; the latter does not follow from the first. There are other kinds of garments, of cloth for instance. Likewise considering

homo a natura est animal politicum, ergo deget vitam politicam, potest enim satisfacere suo desiderio in primis societatibus. Ita homo non potest esse absque cibo, ergo vescatur perdicibus.

*Non statim ex socialitate:*) Sicut haec femina est conjugabilis, ergo erit bona uxor. Nam longe plura requiruntur in bona uxore. Ita aptitudo serviendi non statim facit bonum servum. Ita si quis homo est, ergo est bonus civis. Adeoque ipsa natura non est causa civitatum.

par. 3.

*animal politicum:*) Sic de nauta dici potest est animal aquatile. Ita qui statim vomit ac in mari versatur, non est animal aquatile. Ita animal politicum est qui vere ac bene potest esse in civitate, non vero qui naturam humanam habet.

[p. 84] par. 4.

*ut praesidia sibi circumponerent* etc.) Remotis spuriis causis iam ad genuinam pervenimus, quam etiam Sanctus Apostolus Paulus non ut novum quoddam dogma rejicit sed veram comprobatur, quando discipulos suos monet ut pro omnibus orent, et pro magistratu, ut *quietam et tranquillam vitam degamus sub eorum defensione*. Tranquillitas namque in eo constat, ut quis tutus sit ab aliorum hominum injuriis.

## CAP. VI

### [DE INTERNA CIVITATUM STRUCTURA]

par. 1.

*in longe distantia:*) Syrach dicit: Melius est habere amicum in propinquo, quam fratrem in longinquo.

par. 5.

Scrupulus hic oboriri potest, num etiam subditi censeantur consentire malas regis actiones, v.g. scortari, innocentem opprimere. Respondemus quod non. Nam in fine hujus paragraphi dicitur *quicquid de rebus ad securitatem communem* etc. Ergo privatae regis actiones v.g. edere, dormire

the state: man is a political animal, the argument goes; he leads a political life, for he cannot satisfy his longing in the first communities.<sup>99</sup> In analogy you could say: man cannot exist without food; therefore he must eat partridges.

*not infer directly from man's sociality:*) As if one argued: this woman can be married; ergo she is a good wife. A lot more is needed to make a good wife. The aptitude to serve does not immediately make a good servant. Similarly if you say: if someone is a human being, he is therefore a good citizen. So this is why nature itself is not the cause of states.

par. 3.

*political animal:*) You can say of a sailor that he is an aquatic animal. Hence, he who vomits as soon he gets into water is not an aquatic animal. Similarly, a political animal is someone who truly and successfully can exist in a state, but not one who has the nature of a human being.<sup>100</sup>

[p. 84] par. 4.

*to build protection around themselves:*) Having set aside the spurious causes we now come to the real cause, which Saint Paul did not reject as a new doctrine but approved of as being true, when he admonished his pupils to pray for everybody and for the authorities *in order that we may live in peace and calm*.<sup>101</sup> For calmness consists in being safe from the wrongs of others.

## CHAPTER VI

### [ON THE INTERNAL STRUCTURE OF STATES]

par. 1.

*of limited extent:*) Sirach says: It is better to have a friend in the neighbourhood than a brother far away.<sup>102</sup>

par. 5.

A problem may arise here about whether his subjects are considered to approve of bad actions by the king, like employing harlots or oppressing the innocent. Our answer is no, for in the end of this paragraph it says *in what concerns the common security*. The private actions of the king, like eating and sleeping are

99. I.e. the marriage, the household and the village.

100. The arguments against Aristotle are similar in *De jure* VII: 1:3, but the critique is given relatively more space in ObsO.

101. 1 Timothy 2:2.

102. Reference not found in Sirach. Should be Proverbs 27:10.

etc non imputantur subditis, ut illi dicuntur vigilare quando rex vigilat, ac esurire quando rex.

par. 10.

*unius personae concipitur*;) Persona est vel *physica* sine aliquo munere considerata, vel *moralis*, eaque vel *simplex* quando homo cum sua sanctione concipitur, ut dominus, servus etc, ubi tantum unus est homo: vel *composita*, quae constituitur ex multis individuis ut collegium, sicut vulgo dicitur: Tres faciunt collegium. Sic Academia est persona moralis una [p. 85] sed composita ex conjunctione professorum et studiosorum etc, unde corpus vocatur. Ita de corona Sueciae, Galliae, Hispaniae loquimur tanquam de una persona. Habet enim persona moralis omnes affectiones, quae in persona simplici concurrunt, ut simplex nomen, simplicem voluntatem, sua jura et res. Non ego et concivis meus sumus regnum Sueciae, sed omnes in universum. Sic regis est leges ferre, non mei vel alterius privati tributa imponere. Ita Scania est regni seu coronae Sueciae, non Petri vel Pauli.

*civitas definitur*;) Si haec definitio est obscura, aliis verbis definiri potest in hunc modum: *Civitas est societas, in qua multorum hominum voluntates et vires convenerunt ad defensionem et securitatem communem.*

par. 11.

*actionum publicarum*;) Excluduntur hoc modo actiones privatae, ut sunt edere etc. Publicae vero sunt iudicium exercere, poenas sumere etc, quae spectant ad totam coronam, adeoque totum regnum hoc velle intelligitur. Sed dicit quis: Rustici multi sunt qui aversantur bellum, cum id a rege alicui indicitur. Sed respondemus cum communi regula: *Quod ab initio fuit voluntatis, postmodum fit necessitatis.*

par. 12.

*sententias discrepantes*;) Ut si tres fuerint sententiae, (1) absolvit reum (2) ad pecuniam damnat (3) damnat ad caput. Quenam praevalebit? Si fuerint 12 iudices, 5 absolverunt, 4. damnarunt ad pecuniam 3. capitis damnarunt. Tum prima sententia praevalet.

[p. 86] par. 13.

*civitas coaluit*;) In Hollandia non vocantur indigenae seu cives originarii nisi ipsorum avus ac atavus cives fuerint.

not attributed to his subjects; they are said to be awake when the king is awake and hunger when he is hungry.

par. 10.

*conceived as one person:*) A person is either *physical* without regard to any activity, or *moral*. The moral person is either simple, as when we talk of man with regard to his position, like master or servant, or composite, where there is only one individual who is composed of several individuals, like a collegium. There is a saying: Three make a collegium. Thus, the University is a moral person [p. 85], but composite through the association of professors and students and hence called a corporation. Likewise, we talk of the crown of Sweden, France, and Spain as a person. For a moral person has all the qualities of an unmixed person, like one name, one will, rights and property. My fellow countryman and I are not the kingdom of Sweden, but all the inhabitants in general. It is for the king to make law, not for me or some other private person to impose taxes. The province of Scania belongs to the crown of Sweden, not to Peter or Paul.

*a state is defined:*) If this definition is unclear, it can be defined differently in this way: *The state is a community where the wills and powers of many have come together for the sake of defence and common security.*

par. 11.

*public actions:*) Thus, private actions are excluded, like eating and so on. Public actions are judging, punishing etc. which concern the whole crown; therefore the whole kingdom is supposed to want that. But someone says: There are many peasants who reject war when it is declared by the king. But I answer with the common rule: *What was willed in the beginning becomes necessary afterwards.*

par. 12.

*conflicting opinions:*) If there are three opinions: 1) acquit, 2) fine 3) death, what will be settled? If there are twelve judges, and there are five votes for acquittal, four for a fine, and three for capital punishment, then the first opinion prevails.

[p. 86] par. 13.

*the state was originally formed:*) In Holland they are not called natives or original citizens unless their forefathers were citizens.

par. 14.

*a Deo esse recte dicatur:)* Imperiti sunt, qui putant nos negare civile imperium a Deo esse dum assignamus eidem causas secundas, quae causae primae seu universali non sunt opponendae. Sicut si dicam medicum esse a Deo, quo ipso tamen non negare possumus illum hausisse suam scientiam a libris, doctoribus, herbis etc.

*antecedenter praecepisse:)* Aliqui inter quos Grotius, putant homines absque praecepto divino instituisse societates civiles ac demum Deum approbasse institutas ac pro suis seu a se praeceptas venditasse. Fateor quidem multa esse humana inventa quae deinceps Deus approbat et jubet. Sicut non puto Deum jussisse vel instituisse servitutem. Postquam vero homines eandem introduxissent, approbavit eandem ordinationem sicut apparet tum ex veteri, tum Novo testamento Deum eandem non displicere cum Paulus varia praecepta instillat quibus inseruit tum servos tum Dominos. Verum imperium civile a Deo est institutum primo *antecedenter*. Sicut e.g. conjugium a Deo est institutum, jam vero Deus non conjungit conjuges ut principio fecit. Tamen qui legitimo modo matrimonium contrahit censetur juxta divinam ordinationem vivere. Ita semel quidem Christus ministros sui verbi instituit, jam vero non item. Qui tamen si constituuntur nunc juxta leges civiles, censentur a Deo ordinati. Ita se res habet cum imperio civili. Illud quidem Deus hodie non praecipit v.g. ut hic vel ille eligatur in regem, sed illud penes populum est, quia Deus illud semel jussit.

## [p. 87] CAPUT VII

### [DE PARTIBUS SUMMI IMPERII]

par. 2.

*quicquid illi voluerint:)* Quemadmodum Israelitae constituentes Mosen interpretem inter se et Deum, pollicebantur illi quicquid jusserit in nomine Jehovahae se facturos etc.

*quid cuique suum:)* Ut in haereditate, quid matri quid liberis cedat, quo evitantur rixae.

*quid pro licito:)* Ea nempe quae lex naturalis in medio reliquit, unde tot jam sunt leges positivae.

*quid ex libertate naturali supersit:)* In libertate naturali parentes habent potestatem educandi suum filium ad illud studium vel vitae genus, quod illis maxime arriserit. Interim in societate civili ut in hoc regno rusticorum filii nolentes volentes in militiam adscribuntur quando regi visum fuerit.

par. 14.

*rightly said to be of God:*) They are ignorant who believe that I deny that state power comes from God because I ascribe secondary causes to it, which are not opposed to the first or universal cause. If I say a doctor to be from God, we cannot thereby deny that he learnt his art from books, teachers and herbs.

*to have given prior command:*) Some, among them Grotius, believe that men founded states without divine precept and that God only afterwards approved of them and recommended them as ordered by him. I admit that there are many human inventions that God approves of and ratifies afterwards; for instance, I do not think God ordered or instituted slavery. However, after men had introduced it, he regarded the regulation as good. It appears from both the New and the Old Testament that God did not disapprove of it, since Paul gives various precepts to be implanted in both slaves and masters. However, God established state power *beforehand*, in the same way as he established matrimony, although he does not marry the spouses as he did in the beginning. Still, he who legitimately enters into matrimony is regarded as living according to God's ordinance. Similarly, Christ consecrated the ministers of his words once for all and not any longer. But if the priests nowadays are invested according to civil law, they are regarded as ordained by God. That is how matters stand with state power. God does not prescribe it nowadays in the sense that he selects the king; that rests with the people, since God once ordained it.

## [p.87] CHAPTER VII

### [ON THE FUNCTION OF SOVEREIGN POWER]

par. 2.

*whatever the rulers wish:*) Like the Israelites, who made Moses the interpreter between themselves and God, promised to do whatever he bid in the name of Jehovah.

*what each must regard as his own:*) As in the distribution of an estate, where one must know what shall go to the mother and to the children, whereby quarrels are avoided.

*what is to be taken as lawful in the state:*) Concerns what natural law leaves undecided, which is why there are so many positive laws.

*what remains of each man's natural liberty:*) In natural liberty parents can bring up their son to the studies or the career they like best. However, in civil society, as in this kingdom, the sons of the peasants are enrolled in the army at the king's will.

*quid denique et quo modo quisque:)* In libertate naturali quis ab altero suum debitum ipse quando vult extorquere potest, non item in imperio civili, ubi res deferri debet ad judicem.

par. 3.

Dicitur in vulgari proverbio: leges sine executione sunt campanae sine pistillo.

#### CAP. VIII

#### [DE FORMIS RERUM PUBL.]

par. 1.

*De formis:)* Vulgares Politici et Scholastici *formam* appellant, per quod res est, cum existat, atque sic cuius regimini assignant formam, verum eo modo una tantum forma esset omnibus rebus publicis nempe *defensio publica*. [p. 88] Verum nos aliam constituimus formam ex eo qui summam habet potestatem sumtam. Nam sicut anima quidem regit universum corpus, quando vero de sede animae propria quaeritur quae non est brachium, pes vel podex, sed caput vel cerebrum. Ita anima sive forma civitatis est quidem in civitate; si vero quaestio instituat de particulari ac propria sede, tum in universum non potest responderi uniformiter. Diversa enim sunt subjecta ubi formae haerent, alicubi, videlicet in uno homine, alicubi in pluribus selectis, alicubi per conventum hominum. Ergo divisionis fons fluit ex diversitate subjecti ubi potestas illa haeret.

par. 3.

*dicitur monarchia:)* A Theologis vox *monarchiae* alia accipitur significatione quam a Politicis, sicut apparet ex explicatione eorum super visionem Danielis de IV bestiis denotantibus quatuor summa in mundo imperia seu monarchias. Hic obiter est monendum, multos ex eruditis putare per visionem Danielis non describi omnes monarchias ad consumationem seculi, sed tantum illas quae fuere tempore populi Judaici. Judaeorum autem regimen desiit tempore Messiae; ac potissimum Danieli propositum fuisse describere statum Judaeorum, adeoque ultimum animal denotare romanum imperium sed quod fuit tempore Reipublicae Judaicae. Sed haec suo relinquo loco.

*what each man may require and in what manner:*) In natural liberty someone can wrest a debt from another whenever he wants; in civil society, where the case should be brought before the judge, it is not so.

par. 3.

It is said in a popular proverb: laws without sanction are like bells without a tongue.

## CHAPTER VIII [ON THE FORMS OF GOVERNMENT]

par. 1.

*On forms of government:*) Ordinary political writers and the Scholastics call form the way something is when it exists and so ascribe form to every kind of government. But in that way all states would have one form only, viz. *public defence*. [p. 88] I, however, determine the form with regard to him who has the highest authority. For the soul governs the whole body, and when one asks where the soul is located, it is not in the arm or in the fundament, but in the head or the brain. Thus, there is a form or a soul in the state. But the question of its particular location cannot be answered uniformly. For the objects to which forms adhere are different; sometimes to one single man, sometimes to a number of selected men, sometimes to an assembly.<sup>103</sup> Therefore, the principle of the classification is derived from the diversity of the objects to which the power adheres.

par. 3.

*is called monarchy:*) Theologians give the word monarchy another meaning than political writers, as is clear from their explanation of Daniel's vision of the four beasts who represent the four greatest empires or monarchies of the world.<sup>104</sup> By the way, it should be pointed out that many scholars believe that the vision of Daniel does not describe all monarchies until the consummation of time, but only those existing in era of the Jewish people. The Jewish state ceased in the time of Messiah, and the intention of Daniel was to describe the condition of the Jews; hence, the last beast represents only the Roman Empire at the time of the Jewish state, not the Roman Empire we have today. But I leave this to its proper occasion.

103. Pufendorf's argument here sounds Aristotelian, but what he criticizes is the opinion of those who make the form of the state dependent on accidental varieties within the three forms, i.e. monarchy, aristocracy, and democracy. Cf. *De jure* VII:1:1.

104. Daniel 7.

*ex universis patribus familias:)* Quo excluduntur servi, liberi et foeminae, quia haec potestas non constat ex universis civibus, nam et illi veniunt nomine civium.

[p. 89] par. 5.

*alii in hominibus, alii in ipso statu etc:)* Deprehendimus enim civitatibus bona et egregia esse instituta, tamen vitia sunt penes homines, quae ut cessent, ab officio sunt removendi. Sed perpetua vitia manent licet personae mutantur in statu morbo.

par. 10.

*ad justa vicinorum odia:)* Sicut Sparta olim solebat rapacitatem exercere. Unde in vicinorum odia facile talis civitas incurrere potest et opprimi facili negotio, multis illis vicinis adunitis. Sic Judaei reddebant se odiosos vicinis, qui fugiebant omnem cum Ethnicis conversationem. Hoc quidem Deus jusserat illis, sed Dei intentionem latius extendebant quam par erat, cum omnes haberent pro hostibus, prout Tacitus de ista gente dicit: *Charitatem quidem intra se exercent Judaei, verum erga omnes alios hostile odium.*

*non tarde aut difficulter expediri:)* Sicut in Germania hoc vitium est, ubi tam multae sunt relationes et correlationes, ut omnia negotia multoties circumgyrentur antequam aliquem sortiri possint exitum, prout constat variis ex exemplis.

par. 12.

*Respublica irregularis:)* Nam civitas est pactum et dispositio quaedam, et facile fieri potest quod rectores civitatum vitium quoddam reliquerint. Sicut et in aedificiis, quorum multa dantur non extracta ad regulas architectonicas et irregularia audiunt. Sic munitiones [p. 90] multae irregulares et alibi. Ut plane necessarium nobis fuerit introducere illam distinctionem in doctrinam politicam, quae optime explicari potest per antiquam illam Romanam ante Caesares, ubi senatus et populus regnabant et hodiernam rempublicam Germanorum sub monarcha Romano. Nam Politici discrucient se quam maxime velint; nunquam extricabunt se vel sibi vel aliis prudentibus satisfacient, ni receperint hanc distinctionem.

Sed unde deprehendi potest esse rempublicam irregularem, duo attendenda sunt, (1) in quibus a sana alia republica regulari differt, (2) in quibus differt abs alia republica morbida.

*consisting of all heads of households:)* From this /i.e. democracy/ slaves, women and children are excluded, since this power does not consist of all citizens, although they are called citizens.

[p. 89] par. 5.

*some illnesses in the rulers, others in the state itself:)* In some states with good and excellent institutions, there are defects due to human beings; to end them those men must be removed from office. In sick states, however, the defects remain even if the men are replaced.

par. 10.

*the justified hatred of their neighbours:)* Like the Spartans in antiquity, who used to practice rapacity. Such a state easily attracts the hatred of its neighbours and is easily overpowered if they unite against it. The Jews made themselves disagreeable to their neighbours by avoiding all intercourse with the pagans. This was what God had commanded, but they extended God's intention further than was right, when they regarded everybody as enemies, as Tacitus says about that nation: *The Jews practice benevolence between themselves but hostile hatred towards all others.*<sup>105</sup>

*cannot be done without delay and difficulty:)* In Germany there is so much toing and froing that all issues are circulated many times before they can come to any conclusion, as is clear from many examples.

par. 12.

*irregular form of government:)* A state is an agreement and a disposition, and it often happens that the rulers leave some defect. As in buildings, of which many are not constructed according to the rules of architecture and therefore are called irregular. Likewise, there are [p. 90] many irregular fortifications. It was quite necessary for me to introduce this distinction /between regular and irregular form of government/ into the doctrine of politics. It is best explained by the form of government in ancient Rome before the era of the emperors, when the senate and the people ruled, and by the form of government of the Germans under the Roman emperor. Political theorists may trouble themselves to the utmost, but they will never disentangle themselves or satisfy others unless they accept this distinction.

To identify an irregular form of government, two things should be taken into account; first, in what respect it differs from another healthy form, and, second, in what it differs from a diseased.

105. Tacitus: *Historiae*, V:5.

Supra c. 6 et 7 dictum est *civitatis naturam consistere in unione voluntatum et virium, et in eo robur consistit, quia una ibi est quasi anima*. Sed in republica irregulari duo quasi sunt capita ac principia et animae, quae actiones publicas obibunt, sicut senatus Romanus, cujus caput duo consules fuerunt, et populus. Ibi enim talis unio non deprehendebatur ut in Republica regulari. Sicut nec unio est in Republica hodierna Germanorum, prout Severinus Monzambanus late ostendit.

*non per modum morbi:*) Nam potest facile quis objicere pertinere Respublicas irregulares ad morbos civitatis. Sed quo minus hoc procedat obstat quod morbi isti in Republica aliqua non fiant jure sed illicite, nec ullo approbante ut ex parag. 9 etc patet, [p. 91] sicut contra in Republica irregulari quae fiant irregulariter, haud injurio fieri censentur. Sicut in imperio Romano principes parere nisi velint non tenentur, nec adigi ad id possunt. Habent enim privilegium quod extat in Cap. V. Instrumenti Pacis Vestphalicae neque dici possunt contumaces, inobedientes vel rebelles.

*infiniti esse modi queant:*) Sicut in veritate contingit quae unica est, verum infiniti modi mendaciorum. Irregularis erat olim Respublica Spartanorum et Cretensis. Item perfecta illa respublica Platonica quid irregularitatis habuit.

*quam inaequales foederati:*) Sicut principes Germaniae dici possunt inaequales confoederati, Caesarem nempe reverentur. Sed si e re eorum non fuerit eos non potest adigere ad opem sibi ferendam v.g. iam contra Regem Galliae, cum experientia testetur quosdam principes adjuvare regem Galliae, quosdam plane quiescere nec imperatori obedire quamquam sollicitanti. Et cum aliis faciunt foedera, qui imperatoris vel hostes sunt. Et ideo non possunt insimulari inobedientiae vel rebellionis.

par. 13.

*Systemata civitatum:*) Nullus Politicorum hoc observavit, nisi Grotius uno vel altero verbo in lib. 1. de. J.B et P. c. 3. Talia autem systemata hodie sunt resp. Batavorum et Helvetiorum. Sic Anglia et Scotia non sunt unum regnum, sed duo. At unum tamen systema. Nam quodvis regnum suis gaudet legibus fundamentalibus, et parlamentum Angliae quod concludit non obstringit parlamentum Scotiae.

It was said in chapters 6 and 7 above that *the nature of the state consists of the union of will and forces and that this constitutes its power*, because there is so to speak a soul in it. In an irregular constitution, on the other hand, there are two heads, two principles and two souls, which conduct public affairs. As in Rome, where there was the senate with the two consuls at its head, and the people. There is no such unity as in a regular form of government. Nor is there any unity in today's constitution of the German empire, as Severinus Monzambanus has showed extensively.<sup>106</sup>

*not because of a disease:*) One may easily object that irregular constitutions belong to the diseases of states. But against that can be said that diseases of government are not lawful but illicit, as shown by paragraph 9, [p. 91] whereas the irregularities of an irregular constitution are not considered to be unjust. In the Roman Empire the princes are not obliged to obey if they do not want to and cannot be forced to do so. They have that privilege in chapter 5 of the peace treaty of Westphalia and cannot be called obstinate, disobedient or rebels.

*infinite ways of deviating from correctness:*) As when truth is perfect, then the number of untruths is infinite. In antiquity, the constitutions of Sparta and Crete were irregular. Even the perfect constitution of Plato had some irregularity in it.

*not more than unequal allies:*) The princes of Germany can be called unequal allies, since they do homage to the Emperor. However, if it is not to their advantage, he cannot force them to help him, for instance recently against the King of France. Experience shows that some of them helped the King of France and some remained completely inactive without obeying the emperor, no matter how much he urged them to. They also enter into treaties with the emperor's enemies. And because of this irregularity, they cannot be charged with disobedience or rebellion.

par. 13.

*Systems of states:*) None of the political theorists has observed this except Grotius with a few words in the book *De jure belli ac pacis* chap. 3. Such systems are today those of the Dutch and the Swiss. Similarly, England and Scotland is not one kingdom but two, but one system nevertheless, for each kingdom has its own fundamental laws and what the parliament of England decides does not bind the parliament of the Scots.

106. I.e. Pufendorf's critique of the constitution of the Holy Roman Empire, *De statu imperii Germanici*, published in 1661 under the pseudonym Severinus de Monzambano.

[p. 92] par. 14.

Sicut in hoc regno Arctoo erant et regnum Sueciae, Norvegiae et Daniae sub regina Margaretha, ut unum regnum abs altero non dependerit. Ita in Hispania per conjugium coaluere multa regna, Castiliae, Arragoniae etc. Regnum Angliae et Scotiae postquam obiisset mortem Elisabetha, nullo relicto herede.

Siquis vero ulterius voluerit speculari de hisce systematibus et regnorum unione, deprehendet haud utilem esse. Sicut regnum Suetia bis fuit talis systematis pars, prima vice temporibus Margarethae. Et semper majori amore ferebatur<sup>55</sup> in suum regnum Daniae. Ergo magna adhibenda est cautio in hujusmodi systematibus, vel potius sit nulla fieri, nam multa incommoda regurgitant ex perverso isto amore. Sicut uxor indignatur si maritus alias quam se majori amplectatur amore. Altera vice tempore Sigismundi qui electus fuit Rex Poloniae, et istud regnum Sueciae prae-tulit. Et fieri non potest ut omnia se bene habeant cum Rex non est praesens. Nam gubernatores sunt tantum mercenarii pastores, nec oves tanta cura observant ac proprius pastor.

par. 15.

Sicut in Republica Belgica, si pax, bellum, tributum etc sit decernendum, sit illud ex communi concione. [p. 93] Sed illi qui Hagae resident collegae seu generales status sunt deputati et commissarii, nec una civitas concludit quod alteri praejudicet etc.

## CAPUT IX

### [DE AFFECTIONIBUS IMPERII CIVILIS]

par. 3.

*legibus humanis sit superius:)* Nam contradictorium est regem esse supra judicia et infra eadem. Verum in Senatu dispar est ratio, ubi singuli possunt ab universo corpore judicari, sed non omnes simul sumti seu totum senatus corpus. Lex notat superiorem, ut rex vel senatus in aristocratia est summus. Sicut paterfamilias potest mandare suis servis vel domesticis ne ultra horam 8 extra domum sint, si vero ipse paterfamilias manserit, domestici non possunt eum scutica excipere.

*directe:)* Indirecte rex stringitur suis legibus nam quod continet subditos in obedientia metus poenae, illud facit apud regem pudor. Nam

55. Manuscript: *ferebantur*.

[p. 92] par. 14.

In the Nordic realm the kingdoms of Sweden, Denmark, and Norway were under Queen Margaret in a way that the one kingdom should not depend on the other. Likewise in Spain where several kingdoms were united by way of marriage: Castile, Aragon etc. England and Scotland were united after Elizabeth had passed away, leaving no heir. He who wants to look deeper into these systems or unions of states will find them of little use. Sweden was twice part of such a system, first in the time of Margaret.<sup>107</sup> But she was always led by her greater love for her own kingdom Denmark. Therefore one should be very cautious about these systems, or rather avoid them, for many difficulties are thrown up by that perverted love, as when a wife is indignant when her husband loves another more than her. The other occasion was in the time of Sigismund, who was elected king of Poland and preferred that kingdom to Sweden.<sup>108</sup> Further, things cannot possibly go well if the king is not present. For governors are only hired shepherds and do not attend to the sheep as carefully the true shepherd.

par. 15.

In the state of Holland, if they decide on peace, war, taxes etc., they do it in the common assembly. [p. 93] But the colleagues of the general estates are deputies and delegates, and one single state does not decide what can be prejudicial to another.

## CHAPTER IX

### [ON THE CHARACTERISTICS OF CIVIL AUTHORITY]

par. 3.

*sovereign authority superior to human laws:*) It is contradictory that the king is both above and beneath the courts. In a senate it is different: there the individuals can be judged by the whole corporation, but not all of them together or the senate corporation. The law indicates who has supreme power; and that is the king, or, in an aristocracy, the senate. A head of a household can order his slaves or servants not to stay out of the house after 8, but if the head of the household does that, the servants cannot receive him with the whip.

*directly:*) Indirectly, the king's laws restrict him, for the fear of punishment that keeps the subjects in obedience has its counterpart in the shame of the king. For

107. Refers to the union between Denmark, Norway, and Sweden in 1397.

108. Sigismund Vasa, who ascended the Swedish throne in 1592 and was driven away in 1598.

qua quaeso fronte poterit Rex poena exigere illius delicti, cujus se noverit maxime obnoxium?

*quorum materia in ipsum:)* V.g. lex est ut quis non vindicet sibi ipsi injuriam, sed deferat ad superiorem aliquem. At si regi facta fuerit injuria, nihil aliud est relictum quam ut ipse vindicet, nam est summus.

par. 4.

*ubi atrocissimas injurias intentaverit:)* In hoc casu expediemus nos distinctione inter injurias quae a Rege fiunt *privatis*, et eas quae *fiunt toti statui*, easque non mediocres, [p. 94] sed atroces, ut si universum velit perdere populum non amplius est inviolabilis ac pater patriae, sicut exemplo potest esse Christiernus II Idus tyrannus, qui non agebat regem Sueciae sed eius carnificem, volebatque omnem Sueciae populi sanguinem pedibus conculcare. Eo modo non regnum procurabat, et pater erat patriae, sed hostis patriae: ut si parens me adhuc sub magistro et disciplina versantem baculo plectat, ni impius sim fero toleroque; si vero jugulo intentat strictum gladium maximo in furore, possum eripere gladium ex manu ejus eidemque resistere. Ita si rex jugulo populi admoveat gladium, possumus eum in malam rem eat jubere, cum maxime mutet suum officium in diaboli et carnificis, nam nulla est ratio quare propter unicum hominem tot ac tot millia pereant plane innocenter ut suo litet furori. Si vero (2) alicui privato inferat injuriam, tum non desinit esse Rex, nam tanta est imperfectio probitatis humanae, ut quivis facile impingat et cogitet qui vult resistere ac violenter repellere regis injuriam, quod non habeat aliquod jus vel potestatem, et quid sequetur et quam multa mala soleant inundare civitates ex principis etiam scelerosi violenta nece. Satis itaque mihi fuerit mori quam totam civitatem in maximas calamitates conjicere, aut si fieri possit fugam capere, ut de Davide in Sacra Scriptura legitur etc.

[p. 95] par. 5.

*in monarchiis potissimum:)* In democratia autem imperium est uniforme, nam iidem sunt et qui imperent et qui pareant certo respectu, ergo

what face will the king assume when he punishes an offence of which he knows himself to be very guilty?

*injunction that pertains to him as well:)* For instance, when the law says that one must not oneself revenge an injury but submit it to a superior. But if the king is wronged, the only alternative is for he himself to take vengeance, for he is supreme.

par. 4.

*threatened them with the most atrocious injuries:)* In this case I arm myself with the distinction between injuries inflicted by the king on *private citizens* and injuries *on the whole state*.<sup>109</sup> If the latter are not moderate [p. 94] but atrocious and the king wants to destroy the whole population, he is no longer inviolable and a father of the fatherland, as can be exemplified by Christian II the Tyrant, who was not the king of Sweden but her butcher, wanting to trample upon the entire strength of the Swedish people.<sup>110</sup> He did not take care of his country and became its enemy, not its father. If my father beats me while I am under the tuition of my teacher, I endure and tolerate that in order not to be impious. But if in great anger he threatens my throat with a drawn sword, I may snatch the sword out of his hand and resist. Similarly, if the king holds the sword to the throat of the people we can tell him to go to hell since he has greatly turned his office into that of the devil or a hangman. There is no reason why so many thousands of quite innocent people should perish just because one single man should satisfy his insanity. If, however, the king inflicts an injury on a private person, then he does not cease to be king, for man's moral imperfection is so great that anyone easily may be incited to consider resisting and striking back violently against the king's injury, just because of some right or opportunity that he does not have. And what are the consequences? Much evil usually engulfs states through the violent death of a prince, even if he was vicious. Therefore, it is a better alternative to die than to throw the state into great disasters, or if possible escape, as can be read about David in the Holy Writ.<sup>111</sup>

[p. 95] par. 5.

*in monarchies particularly:)* But in democracy authority is uniform, for those who rule and those who obey are the same in a certain respect; thus there cannot be

109. Interestingly, the word for state here is *status*. Normally, Pufendorf has *civitas* or *regnum*.

110. Christian II, king of Denmark, who conquered Sweden in 1520 and lost it in 1523. The example from Swedish history gives some concretion to Pufendorf's opinion on resistance, but the argument is principally the same as in *De jure* VII:8:4.

111. 1 Samuel 19.

non potest esse ibi aliqua potestas limitata vel illimitata. Naturae humanae est a decretis desciscere suis quando nihil aliud obstat. Unde veteres omnes Respublicas Democraticas qui voluerit inspicere, deprehendet illis nihil fuisse aliud medium ut decreta manerent perpetua, nisi religionem juris-jurandi. Nam cum Reges Roma erant ejecti et populus in Democraticum statum transierat, adegit illos Brutus ad iusjurandum, ne eorum mutabile ingenium introduceret,<sup>56</sup> sed religio ac metus divini supplicii eos contineret in semel instituta forma democratica.

*Absolutum*.) Magni sunt hujus vocabuli abusus praesertim apud regum adulatores, qui dicant Regi absoluto quaecumque licita. Sicut adulabantur<sup>57</sup> Neroni qui omnia pro suo arbitrio fecit, et iudices persarum suo Regi, cui quaerenti num in lege licitum esset ut suam ducat sororem frater, respondent lege quidem non invenimus permissum, sed ex alio fundamento clarum est, sc. regem esse absolutae potestatis. Adeoque et illi isthoc factum erit licitum. Nec istud vocabulum innuit regem posse emungere suos cives pecunia usque ad ultimum teruncium, sicut Salmasius<sup>58</sup> vir alias doctissimus in hoc impegit in defensione regia,<sup>59</sup> ubi regia jura enumerat et ultimo eum posse pro suo arbitrio agere, quo modo non regis innocentiam declaravit, sed causam prostituit. [p. 96] *Caeterum is dicitur absolutus, qui solutus est a certa regula, non allegatus ad certum vinculum, sed liber.* At vero reges (1) non sunt absoluti sive liberi abs legibus divinis et naturalibus sed iis aequae sunt adstricti ac vilissimus rusticus. Sed (2) in quo haec absolutio, ut ita loquar, consistit apparebit ex hacce similitudine. Do alicui in mandatis vel *libero* vel *adstricto*; hoc fit, cum praescribo quomodo hoc vel illud expeditum dabit, nec in expediendo isto negotio ultra meum mandatum ac praescriptum digredietur. Illud si quando committo illi mihi quid expediendum, sed relinquo in ejus dexteritate, prudentia et libertate, ut suo arbitrio promoveat meam utilitatem. Et talis mandatorius dicitur habere potestatem seu mandatum absolutum et non limitatum. Sic quoque Rex, cui subditi relinquunt potestatem pro arbitrio faciendo quidquid ex usu publico fuerit, et talis rex dicitur habere imperium absolutum et illimitatum. Quod ipsum apparet ex libro Mosis Exod. cap. 24. v. 3: ibi Mosi dederunt absolutam potestatem prorsus certi de Mosis tenera conscientia, quod non adderet

56. An object to *introducerent* is missing.

57. Manuscript: *audulabantur*.

58. In margin: *NB*.

59. In margin: *NB*.

any limited or unlimited power. It belongs to human nature to deviate from one's decisions when nothing prevents it. He who wants to examine all the ancient democracies will find that they had no other way to make their decrees remain perpetual than the obligation of an oath. When the kings were ejected from Rome and the people went over to democracy, Brutus made them swear oaths, so that their inconstant mind would not bring in changes; instead, religion and fear of divine punishment would hold them to the democratic form they had once instituted.

*absolute*.) There is much abuse of this word, especially among the flatterers of kings who say that anything is permitted the absolute king. They flattered Nero who did all that he wanted. The Persian judges flattered their king; when he asked whether the law permitted that a brother marries his sister, they answered that in truth they could not find that it was permitted, but it was evident from another source, i.e. that the king had absolute power, and therefore this act too was permitted. Nor does that word mean that the king can cheat his subjects out of their money to the last penny. Salmasius, otherwise a very learned man, unduly stressed this in his royal defense,<sup>112</sup> where he enumerates the royal rights and eventually holds that a king can act as he desires. By this he did not demonstrate the innocence of the king but he sullied his cause. [p. 96] *But he is called absolute who is set free from a certain rule and not restricted by a certain bond but free.* But, first, kings are not released or free from divine and natural laws; they are bound by them as much as the poorest peasant. And, second, what this setting free, so to speak, consists of is clear from this comparison: In a contract, I either give the other a free or a restricted hand. The latter is when I prescribe how he shall do this or that and not transgress the agreement and my instructions while doing the job. The former is, when I commission someone to do something for me, but I leave it to his skill, prudence and liberty to promote my utility as he pleases. He who is commissioned in this way is said to have an absolute power or mandate, not a limited one. Similarly, a king to whom the subjects grant the power to do at will whatever is useful for the public is said to have absolute authority. This is made clear in the book of Moses, Exodus chapter 24 verse 3, where they gave Moses absolute power, being confident that Moses would be conscientious and add

112. Claudius Salmasius (1588–1653) in *Defensio regia pro Carolo rege* (1649), a defense of royal power against the Independents in England.

Dei praeceptis quidquam. Si vero dixissent: adjungemus tibi unum vel alterum virum ut certius nobis constet quid Deus dixerit, sic non absolutus fuisset Moses. Ex hoc apparet, longe magis gravari ejus conscientiam, qui absoluto gaudet imperio, si in commisso negotio quid secus administratur. Contra, si in expediendis negotiis non successerit illi [p. 97] qui non gaudet absoluto imperio, praetendere potest se fecisse secundum praescriptas sibi leges; si illis non contineretur potuisset rem melius peragere.<sup>60</sup> Et qui absoluto gaudet imperio, et omnia non ita expedite exequitur, habetur pro stolido, qui non veritus est id arrogare sibi, quod non potest efficere, vel pro eo qui bona fide officium suum non praestitit.

par. 6.

*imperii exercitium certis limitibus circumscribere*.) Hic illa quaestio est evolvenda: an nempe fas sit populo praescribere regi suo ejusmodi terminos et leges? In hoc regno nullus est qui dubitat. Verum alibi adulatores regum insusurrant esse maximum populi et Regis peccatum, Dei praecepto contrarium. Quod isti probant a simili ducto ex matrimonio, ubi Deus dixit maritum jus habere in corpus suae uxoris, si vero ad cornificios suos conniveat et admittat alios in torum, certe graviter sua lenitate peccat. Ita dicunt reges habere jus in populum suum, nec sine peccato tolerare praescriptiones populi, sicut is vir pro sordido habendus, qui non moechos accerrime avertit, ita Rex debet pro sua dignitate tuenda masculine sese vel vi defendere. Quidam confugiunt ad auctoritatem sacrarum literarum, et argumentum in forma est tale: Qualemcunque formam regiminis Deus praescripsit populo suo electo Israelitico, talem vult ubi-vis observari. At ibi absolutum praescripsit imperium. Ergo contra Dei voluntatem esse si Rex non habeat [p. 98] potestatem absolutam. Sed hic syllogismus est valde debilis: utraque praemissarum est falsa. Et major quidem, nam unde probatur, quod omne regimen debet sese componere ad regum Israelitarum, cum illud non fuerit in orbe antiquissimum? Nam 1. Sam. 8. ubi regem petunt, eo utuntur argumento, quia omnes alii habent suos reges. Si enim primum fuisset, et Deus voluisset illud esse exemplum omnium aliorum regnorum, manus dabimus. Deus quidem voluit ut existerent imperia in mundo, sed certam formam non determinavit. Populus ipse judaicus habebat ante statum *democraticum*.<sup>61</sup> Deus ergo non praecepit ut sit absolutus Rex, sed ut ita dicam, Deo perinde

60. Manuscript: *peagere*.

61. In margin: *NB*.

nothing to the precepts of God. If however they had said: let us call in one or two men so that we become more certain about what God has said, then Moses would not have been absolute. From this it is evident that he who has absolute authority and manages something in a way that deviates from the commission is much more troubled in his conscience. On the other hand, if the king [p. 97] who does not have absolute authority should fail in managing the affairs, he can allege that he acted according to the laws prescribed and that the outcome would have been better if he had not been restricted by those laws. And he who has absolute authority but does not manage everything so readily is regarded as foolish if he does not fear to claim credit for what he cannot achieve. Or he is regarded as someone who despite his sincerity could not manage to do his duty.

par. 6.

*restrain the exercise of authority within fixed limits:*) Here the question ought to be raised of whether it is right that the people prescribe their king such limits and laws? There is no one in this kingdom who doubts that. But elsewhere there are flatterers who whisper that this is a great fault of the people and the king and contrary to God's precept. They prove it by a comparison with matrimony, where God has said that the husband has the right to the body of his wife. But if he winks at his cronies and admits others to the marriage bed, he indeed commits a serious sin in his forbearance. Similarly, they say, kings have authority over their people and cannot tolerate orders from the people without sinning. Just as a husband who does not vehemently ward off adulterers is considered despicable, so the king ought to defend himself in a manly and forceful manner in order to guard his dignity. Some take refuge in the authority of the Holy Writ; their argument, put in logical form, is this: God wants the form of government he gave his chosen people Israel to be observed everywhere. There he prescribed absolute authority. Therefore it is contrary to the will of God if the king does not have [p. 98] absolute power. But this syllogism is very weak, and both of the premises are wrong. The first, because it argues that all government should be modelled after the kings of Israel, although that form of government is not the oldest in the world. In 1. Samuel 8., where they demand a king, they use the argument that all others have their kings. If the monarchy of Israel had been the first and God had wanted it to be the example for all other kingdoms, I would yield. He wanted state power in the world, but he did not decide a certain form for it; earlier the Jewish people themselves had *democracy*. Thus, God did not prescribe that there should be an absolute king. To him it is, so to speak, just the same, as long as the

est, modo respublica recte administretur, et reipublicae finis obtineatur. Nam si regi praescribatur, scelerosis impunitatem concedes etc, hoc modo rex instituatur contra legem naturalem, et eo modo finis civitatis non obtinetur. *Ad minorem* quae etiam indiget probatione, quod Reges Judaei absoluto gauderent imperio, nam et illi adstricti erant legibus Moisaicis. Quantum ad locum 1. Sam. 8. v. 11 seqq. ratio legis erit haec *Filios vestros accipiet* etc. Hunc locum aliqui explicant de imperio tyrannorum, quos Deus dicitur dedisse in suo furore. Sed Grotius medium insistit viam, vide ipsius auctoris de J N. et G. l. 7. c. 6. par 4. Sed clarum erit, si inspiciamus formam quae antea fuit in regimine judaico. Nam et ea habuit sua commoda [p. 99] et incommoda. Nam iudices tum jus dixerunt, et bella contra hostes gerebant, qui etiam tenui apparatu erant contenti, sicut de Esbon dicitur, quorum<sup>62</sup> 30 filii et 40 filiae equitabant in suis asinis. Populus praeterea ignorabat tributa, et quisque potuit retinere quod suis manibus acquisivit. Verum cum sic semper expositi essent hostium populationibus et animadverterent suum vitae genus esse vacare agriculturae, desiderabant regem qui militibus semper instructus arceret hostes exemplo aliarum rerumpublicarum. Et ea erat causa impulsiva, cur a Samuele regem peteret. Verum Samuel bene novit populi ingenium mutabile postquam percepissent regis incommoda. Nam nullum commodum est sine incommodo. Quare repraesentare voluit incommoda ex novo Rege secutura, ut praeponderaret eadem populus.

par. 7.

Carolus Magnus Francorum Rex divisit suum imperium inter tres suos filios. Ita in antiqua historia Romana imperatores deprehendimus testamento legasse suum regnum certo alicui. Verum hoc procedere potest non quando regnum facit regem, sed quando rex facit regnum, ut si Alexander Magnus plures habuisset liberos et voluisset regnum Persarum dividere illis, Persae non potuissent resistere ejus voluntati.

62. Uncertain reading. The manuscript has no comma before *quorum*. Inserting a comma makes it possible to make *quorum* refer to the judges in general.

state is well governed and the object of the state is achieved. For if the king is instructed to leave the vicious unpunished and so on, then the king is established against natural law, and the purpose of the state is not attained. Nor does the second premise prove that the kings of Judah had absolute authority, because Mosaic laws bound them. Concerning the passage 1. Samuel 8 verses 11sq. the principle of the law will be this: *He shall take your sons* etc. Some explain this passage as referring to the rule of tyrants whom God is said to have given in his wrath.<sup>113</sup> But Grotius takes a middle way; see the author's *De jure naturae et gentium* book 7 chap. 6 par. 4. But it will be clear if we examine the form of government the Jews had earlier. That too had its advantages [p. 99] and disadvantages. The judges administered justice and waged war against the enemies; they were also content with moderate splendour, and had their progeny riding donkeys, as is told about Esbon with his 30 sons and 40 daughters.<sup>114</sup> In addition, the people knew of no taxes, and everybody could keep what he had acquired with his hands. However, since due to this they were always exposed to enemy plundering and they realized it was their way of life to devote themselves to agriculture, they wanted a king on the example of other states who could resist their enemies with the help of a permanent military force. This was the impulse that caused them to demand a king of Samuel. But Samuel knew well that the people would be fickle when they became aware of the disadvantages of having a king. For there is nothing advantageous that does not have some disadvantage. Samuel wanted to demonstrate the disadvantages that would come with a new king, so that the people could evaluate them in advance.

par. 7.

Charles the Great, the king of the French, divided his realm between his three sons. Likewise we find in the history of ancient Rome emperors who in a testament have left the realm to someone. However, this cannot occur when the kingdom makes the king, only when the king makes the kingdom. If Alexander the Great had had several sons and wanted to divide the realm of the Persians between them, the Persians would not have been able to resist his will.

113. The passage 1 Samuel 8 was much disputed in 17<sup>th</sup> century political theory. Samuel's description of the habits of kings was in some quarters interpreted as a normative agenda for absolute monarchs.

114. The account in the manuscript is somewhat confused. Abdon (in modern reading), one of the judges of Israel, mentioned in Judges 12:13–14, had 40 sons and 30 grandsons riding on donkeys. In Judges 10:3–4 the judge Jair is mentioned who had 30 sons riding donkeys.

[p. 100] CAPUT X  
[DE MODIS ACQUIRENDI IMPERIUM,  
IN PRIMIS MONARCHICUM]

par. 4.

*imperfectam formam*.) Sicut in animalium generatione contingit, cum delineatio membrorum sit facta, neque potest vocari animal, neque rudis massa, sed aliquod medium ac tertium, sc. embryo. Ita et interregnum, non potest haberi pro statu dissoluto, quia rudimenta regni ibi sunt relicta, nec pro perfecto. Nam deest praecipuum pactum vid. supra l. 2. c. 6. par. 7. Quod plenam formam civitati solet adferre, sicut in dolio solet fieri si praecipuum vinculum rumpatur, vinum non solet contineri et quae caveant illud solent constitui vincula succenturiata.

par. 7.

*ut regnum maneat indivisum*.) Sed parentis est aequali amore complecti omnes filios, et videmus etiam teneriori affectu ferri plerumque parentes in ultimum natum. Ergo et omnibus regnum est dividendum? Sed respondetur, illud inter privatos procedere, verum in regnis eo modo debet rex suos diligere ut non cedat in Reipublicae detrimentum. Nam non solum est rex sed et pater populi. Etc.

*primogenitus praeferatur deinceps genitis*.) Paulo latius dicendum de fundamento primogeniturae, quod non est (1) simpliciter in ipsa aetate, nam aetas parum confert praesertim in adultis. Sicut aliter est in pueritia, nam ibi quidem potest plures annos natus ostendere adolescenti suam barbam. Verum si ei res sit cum [p. 101] alio qui excesserat ex ephēbis, non attenditur si plures habeat annos. Nam saepe fieri potest ut annis minor sit sapientia major. (2) Neque ejus fundamentum est *prudētia plenior* in majori natu. Verum quidem est annos multum conferre ad prudentiam in ipsa aetate crescente. Sed in adulta qui est 25 annos natus majori potest esse praeditus prudentia, ac ille qui est 30 annorum. Sed illud est primogeniturae fundamentum nempe *Sors nascendi*, nam nihil aliud possumus hic allegare, quam sortem hic valere ac regnare, nam aliud aptius medium non inveniri potest rixarum evitandarum inter fratres. Nam si alter mos esset receptus, quo prudentissimus ac sapientissimus succedere debeat in regno, tum implicarentur infinitis bellis etc etc.

## [p. 100] CHAPTER X

[ON THE WAYS OF ACQUIRING AUTHORITY,  
PARTICULARLY MONARCHICAL]

par. 4.

*an imperfect form:*) In the generation of animals, when the lineaments of the limbs exist, they can be called neither animals nor an unformed mass but something in between, i.e. an embryo. Similarly in an interregnum: it cannot be regarded a dissolved form, since the rudiments of a kingdom are left, nor a perfect form, because the particular contract is missing, see above book 2 chap. 6 par. 7. Such a contract usually confers the full form on the state, as it occurs in a jar if one particular seal breaks and reserve seals are applied to prevent the wine from running out.

par. 7.

*that the kingdom should stay undivided:*) It is proper for a father to entertain equally kindly feelings for all his sons; we also see that fathers mostly have more tender feelings for their latest born. Should therefore the kingdom be divided between all of them? The answer is that this is the procedure with regard to private property, but in kingdoms the king should love his sons in a way that is not detrimental to the state. For he is not only king but the father of the people, and so on.

*the first-born preferred to those born later:*) One ought to say a bit more about the foundation of primogeniture, which is, first, not simply a matter of age, because age makes little difference, especially between adults. It is different in boyhood, where the elder can show the younger his beard. But if he has to do with [p. 101] someone who has come to the age of manhood, it is of no concern if he is a few years senior. It often happens that the younger is wiser than the elder. Second, the foundation of primogeniture is not the *greater amount of prudence* in the elder. It is true that years contribute much to prudence in the years of growth. In adult years, however, he who is 25 can be endowed with more prudence than he who is 30 years of age. No, the real foundation of primogeniture is the time of birth, which is due to chance. That this principle should prevail and reign is the only thing I can adduce here, for there is no better way of avoiding conflicts between the brothers. With another practice, where the most prudent and wise succeeds to the throne, the brothers will be involved in endless wars etc. etc.

par. 8.

*id jus populus sibi reservasse:*) Sicut supra c. IV. dictum fuit de servis, quod qui ultro se tradiderint in servitutem homini, non possint abalienari, ita se res habet cum populo, quod illis dominus seu Rex non possit imponi, nisi quem ipsi velint.

par. II.

*cognatica et agnatica:*) Hujus successionis discrimen optime potest perspicui ex exemplorum inductione. Cognatica enim est v.g. in Suecia, Anglia etc ubi post Henricum IIX, cui natae filiae duae Maria sc. et Elisabetha et filius Eduardus, qui Patri succedit exclusis majoribus natu sororibus, illo vero decedenti absque stirpe, regnum fuit delatum non ad Jacobum Scotiae Regem, sed ad suam [p. 102] sororem Mariam, postque etiam ad Elisabetham illustrissimam illam Reginam, quae cum in vivis esse desiit etiam sine prole pervenit regnum Angliae ad Jacobum VI Scotiae regem. Sic in regno Daniae tali modo instituta est successio. Nam prima linea successioni proxima est illa quam tenet hodiernus rex Christiernus. In 2da linea est princeps Georgius, et regis prioris filiae quae nupserant duobus quibusdam in Germania et quae adhuc caelebs est. Successio vero agnatica est in familia Austriaca, regnis Hispaniae etc.

## CAPUT XI

### [DE OFFICIIS SUMMORUM IMPERANTIUM]

par. 7.

*Quod non ad usum civitatis facit:*) Unde apparet non facere ad usum Reipublicae si quis breves an prolixas an nullas gerat barbas. Ita nec in Republica detrimentum vergit si geram crines attonsos, ut stultum sit praecipere sub poena capitis habere capillos super aures attonsos. Nihil quoque damni redundat in civitatem si quis gerat calceos rotundos, hebetes, braccas laxissimas vel constrictiores. Frustra et inconsiderate detonant quidam sacerdotes<sup>63</sup> in publica de istiusmodi rebus. Nam sicuti puto me inutiliorem non reddi si geram istiusmodi vestes, ita neque Deo propterea minus placere. Qut<sup>64</sup> istae invectivae proficiscuntur magis ex ferocitate, quia ipsi calvum habent caput, ideo dolent si juvenes gaudeant prolixiori crine. Ita quia illi habent vetulas uxores dolore afficiuntur, si videant juvenes habere juvenculas uxores easque latius exornari.

63. This line and the subsequent seven have a *NB* in the margin.

64. Manuscript *sic*. Unintelligible.

par. 8.

*the people is understood to have reserved the right /to appoint the successor/for themselves:)* In chapter IV<sup>115</sup> above it is stated about slaves that those who voluntarily offer themselves to serve under someone cannot be sold. The same applies to the people, because they cannot be inflicted with a master or a king they do not want.

par. 11.

*cognate and agnate succession:)* This distinction is best understood by examples. Cognate succession applies in Sweden, England etc. where after Henry VIII, who had the daughters Mary and Elizabeth and the son Edward, who succeeded his father and his elder sisters were excluded. However, when he died without progeny, the kingdom was not transferred to James, the king of Scotland, but to Edward's [p. 102] sister Mary and after her to the famous queen Elizabeth; when she too left life without offspring, the kingdom went to James VI, King of Scotland. In Denmark, succession is instituted similarly. The present King Christian holds the first line in succession. In the second line are Prince George, who is still unmarried, and the daughters of the former king who have married some dukes in Germany. Agnate succession is in the house of Austria and the kingdoms of Spain etc.

## CHAPTER XI

### [ON THE DUTY OF SOVEREIGNS]

par. 7.

*what does not contribute to public utility:)* Obviously, it is of no concern to public utility if someone has a short beard, long beard or none at all. Nor is it detrimental to the state if I cut my hair, as it would be stupid to decree under penalty that the hair must be clipped above the ears. No damage falls upon the state if someone wears round or ungainly shoes or loose or tight sleeves. In vain and with no consideration do some priests thunder about such things in public life. I do not think I become less useful if I wear such clothes, nor that I please God less. Those invectives depend more on anger, because they are bald-headed and suffer if young men have longer hair. Likewise, they grieve because they have old women when they see young men with young women fitted out more copiously.

115. In chapter IV par. 3, not commented on in the manuscript.

Si [p. 103] Deus concesserit homini istum liberum agendi modum, cur non ista libertas quae nemini nocet, sit indulta hominibus, praesertim si ex ea delectationem quandam percipiant?

## CAPUT XII

### [DE LEGIBUS CIVILIBUS IN SPECIE]

par. 2.

*jus redditur*.) Ut apud Judaeos qui blasphemarat nomen Divinum, non tantum in foro divino poenae obnoxius fuit, sed et talis certa poena in foro civili fuit plectendus, quanquam hoc praeceptum erat divinum vel juris naturae etc etc.

par. 6.

Exemplum lex naturalis est, Deus est colendus. Lex civilis definit quo tempore, quibus ritibus etc cultus Dei obeundus. Unde apparet ordinationes ecclesiasticas esse leges civiles sed ecclesiasticae vocantur ab objecto.

par. 7.

Ita in contractibus qui sunt in cujusquam arbitrio, tamen circa illos leges civiles disponunt. Ita nonnisi in certo loco certae merces venduntur. Inde stapulae civitates, nundinae etc quae ad bonum ordinem faciunt.

*naturaliter competunt*.) Libertas nobis relicta a lege naturali, ne ea perturbationem ciat, circumscriptio facta. Ita fieri sator, sartor, miles, sacerdos lege naturali praemissum est, verum certis de causis certis hominibus civili lege prohibitum.

## CAPUT XIII

### [DE JURE VITAE AC NECIS]

par. 18.

*aetas* robustus et adultus, qui callum quasi obduxit, facilius plagas excipit quam puer. Opes viginti thaleri pauperi sunt nimia poena, diviti nulla.

par. 19.

*poena proprie dicta*.) Saepe qui magnum accipit infortunium ex alterius peccato, ut patris confiscatio liberos innocentes exponit contentui, qui tamen non habet rationem paenae proprie.

If [p. 103] God has granted man a proper measure of freedom of action, why would the kind of freedom that does not hurt anybody not be allowed, especially if they take some pleasure from it.

## CHAPTER XII

## [ON CIVIL LAW IN PARTICULAR]

par. 2.

*the giving of justice in civil courts:*) Among the Jews, he who blasphemed the name of God was guilty not only in the divine court but had to be punished in human court as well, although this precept belonged to Divine law or natural law and so on.<sup>116</sup>

par. 6.

An example is the law of nature that God is to be worshipped. Civil law regulates when and by which ceremonies the adoration of God is to be performed. This is why the ecclesiastical regulations are civil laws, but called ecclesiastical because of their object.

par. 7.

Therefore, civil laws also regulate such activities that anyone can conclude. Certain goods are sold only in certain places; there are staple towns, market-days and other regulations that create order.

*rights admissible by nature:*) The freedom left to us by nature is restricted, so that it may not cause confusion. Hence, it is allowed by nature to become a planter, a tailor, a soldier, or a priest, but for certain reasons it is forbidden for certain people by civil law.

## CHAPTER XIII

## [ON THE RIGHT OF LIFE AND DEATH]

par. 18.

*age:*) A strong adult who has become hardened can take a blow more easily than a boy. Twenty thaler are too severe a fine for the poor but nothing to the rich.

par. 19.

*punishment in a proper sense:*) It often happens that someone is struck by a great misfortune because of another's fault, as when the fortune of a father is forfeited and the children exposed to contempt; this however is not real punishment.

116. The sentence seems incomplete.

[p. 104] *Dissentienti:*) Ut in senatu, si unus vel alter dissenserit in mala conclusione. Ita Joseph quamvis assessor in synedrio ubi salvator fuit condemnatus, innocens declaratur.

*incommodum:*) Ut si collegio immunitates concessae adimantur, ille etiam sentit qui non peccavit; est ex malis fatalibus, a quibus immunis non est conditio humana.

#### CAPUT XV

#### [DE POTESTATE SUMMI IMPERII IN BONA CIVITATE CONTENTA]

par. 6.

*salvum esse queat:*) Ut urbs in bello destituta annona ac auxilio, non prohibetur quominus transigat cum hoste nec adigi potest ut se jugulet sine ulla utilitate, redundatura ea de re in Rempublicam.

#### CAPUT XVI

#### [DE BELLO ET PACE]

par. 10.

*Repressaliae* in eo consistunt: Si nos deberemus Hollandis summam pecuniae, nec volumus istis repetentibus reddere, tum possunt illi injicere manus in nostras merces etc. Vel si noster civis debet civi Hollandico summam pecuniae et quaerit<sup>65</sup> in nostro magistratu ut jus sibi fiat, sed non praestet nostra civitas justitiam, potest ille per repressalias suum repetere.

/par. 11./<sup>66</sup>

*probabilis ratio:*) Sicut habemus de Mose Exod. 2. quid ad Te, dixit Mosi. Num et me velis interfectum?

/par. 13./<sup>67</sup>

*captae:*) Sicut kryg germanica lingua denotat acquirere, *krigen. tum demum:*) Ut si equum ceperam non potest dici captus antequam veneram in loca tuta. Ita in navali pugna, ubi dicitur in portum ducere praedam. NB. De jure postliminii lege Grotium l. 3.c. 9. de. J.B.et P.

65. Sc. Hollandus.

66. Paragraph number missing in ms.

67. Paragraph number missing in ms.

[p. 104] *who did not consent*.) As when someone in the council objected to a bad decision. Joseph is declared innocent, although he was a member of the senate where the Saviour was condemned.<sup>117</sup>

*suffer loss*.) When a corporation is deprived of its immunities, even those who are guiltless suffer. That is one of the fatal ills against which the human condition is not immune.

## CHAPTER XV

[ON THE POWER OF SOVEREIGN AUTHORITY OVER  
PROPERTY WITHIN THE STATE]

par. 6.

*cannot survive*.) A town that lacks means of subsistence and help during a war is not forbidden to negotiate with the enemy and cannot be urged to kill itself if it does not bring about any advantage for the country.

## CHAPTER XVI

## [ON WAR AND PEACE]

par. 10.

*reprisals*.) If we owe the Dutch a sum of money and refuse to pay in spite of their demand, then they can lay hands on our revenues. Or if a countryman of ours owes someone in Holland a sum of money and claims his right in our court and our country fails to see that justice is done, then the Dutchman<sup>118</sup> can claim his property with the help of reprisals.

/par. 11./

*a reasonable ground*.) As with Moses in Exodus 2, to whom it was said: What do you want? Are you going to kill me too?<sup>119</sup>

/par. 13./

*captured*.) Kryg in German means acquire, *krigen*.

*from the moment /that it is beyond enemy pursuit/*.) If I capture a horse it cannot be considered captured before I reach a secure place. Similarly, in naval battles, where they say that the prey is brought to port. N.B. on the right to reprisal, read Grotius book 3 chap. 9 *De jure belli ac pacis*.

117. Refers to Joseph of Arimathea, member of the Jewish synedria, who took care of the burial of Jesus. Mark 15:42–47.

118. It is uncertain who the subject is in the last clause.

119. Exodus 2:14.

## [p. 105] CAPUT XVII

## [DE FOEDERIBUS]

par. 1.

Ita Abraham cum Abimel. Gen. 14. inibat<sup>68</sup> foedus de non laedendo invicem. Sed alia foedera sunt quae aliquid superaddunt, et antea non tenebantur ex generali praescripto legis naturalis. Observandum est legem civilem determinare certi quid cum naturalis indefinite praecipit. Ut e.g. lex naturalis generaliter praecipit de commerciis, lex vero civilis, videlicet foedere aliquo illi naturali quid addit, ut eo vel isto fiant modo non alio.

par. 7.

Sicut ante 14. annos noster et Galliae Rex foedus pepigere cum Cromwell, quod post ejus mortem non attendebatur.

## CAPUT XVIII

## [DE OFFICIIS CIVIUM]

par. 15.

*figant:)* Qui peregrinantur non desinunt esse cives suae patriae, ubi sedem suarum fortunarum habent. Non enim potest quis esse civis duarum civitatum. Si contingat duo illa regna bello committi, uni debet adhaerere. Non permittitur quiescere. Tantum. Londini d 15 Maji 1674.

Soli Deo Gloria

68. Manuscript: *iniebat*

[p. 105] CHAPTER XVII  
[ON TREATIES]

par. 1.

Abraham, in Genesis 14, entered into an agreement with Abimel that they should not hurt each other.<sup>120</sup> Other agreements add something and were not kept before the agreement according to a general prescription from the law of nature. Note that civil law settles something specific, while the law of nature prescribes at large. For instance, the law of nature gives general prescriptions concerning commerce, but civil law adds something to some kinds of agreement about how something should be prosecuted in this way and not the other.

par. 7.

As 14 years ago our king and the king of France made a treaty with Cromwell that was not prolonged after his death.

CHAPTER XVIII  
[ON THE DUTIES OF CITIZENS]

par. 15.

*settle:*) Those who go abroad do not cease to be citizens of their country, where they have their property. One cannot be citizen of two states. If the two kingdoms go to war, one ought to adhere to one of them. One is not permitted to stay neutral. That is all. Lund May 15 1674

Glory to God alone

120. Abimel is not mentioned in Genesis 14:13, only Mamre and his brothers Eshkol and Amre.



## APPENDICES

### APPENDIX I:

#### DISTRIBUTION OF THE ANNOTATIONS ON *DE JURE*

September 1672

#### **Book I**

Chapter I: On moral entities

Introduction, plus annotations on § 3, 4, 5, 6, 11, 14, 16, 23

Chapter II: On the certainty of moral sciences

§ 4, 6, 8, 10

Chapter III: On the understanding of man as it concurs in moral actions

§ 2, 10, 14, 15, 16

Chapter IV: On the will of man as it concurs in human action

§ 5, 10

Chapter V: On moral actions in general ...

§ 4, 5

Chapter VI: On the rule of moral actions, or of the law in general

§ 3

Chapter VII: On the qualities of moral actions

§ 6, 9, 10, 11, 13, 14, 16

#### **Book II**

Chapter III: On the law of nature in general

§ 5, 13, 16, 17 & 18

Chapter V: On self-defence

§ 19

Chapter VI: On the right and privilege of necessity

§ 1

## APPENDIX II:

DISTRIBUTION OF THE ANNOTATIONS ON *DE OFFICIO***Book I**

## Date

February 11 1673	[Chapter I: On human action] Introduction, plus annotations on § 1, 2, 3, 4, 5, 7, 8, 11, 12, 14, 18, 20, 22, 23, 24, 27
March 6 1673	Chapter II: On the rule of human action or on law in general § 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16
March 14 1673	Chapter III: On natural law Introduction, plus annotations on § 3, 4, 6, 7, 9, 10, 11, 12, 13
April 8 1673	Chapter IV: On man's duty to God, or on natural religion § 1, 2, 3, 4, 5, 6, 7, 8, 9
April 17 1673	Chapter V: On duty to oneself § 1, 4, 5, 6, 7, 8, 11, 12, 14, 18, 23, 24
May 1 1673	Chapter VI: On the duty of every man, and first of not harming others § 1, 2, 5, 6
May 13 1673	Chapter VIII: On the common duties of humanity § 1, 2, 4
No date	Chapter XV: On contracts which presuppose value in things and on the duties they involve § 1, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16
October 16 1673	Chapter XVI: On methods of dissolving obligations arising from agreements § 3, 4, 5, 6, 7, 8, 9
October 18	Chapter XVII: On interpretation § 2, 4, 5, 6, 8, 11, 12, 13

**Book II**

November 10 1673	Chapter I: On the natural state of man Introduction, plus annotations on § 1, 2, 3, 4, 7, 8, 11
November 28 1673	Chapter II: On the duties of marriage § 3, 5, 6, 8, 9

December 3 1673	Chapter III: On the duties of parents and children § 1, 2, 8
No date	Chapter V: On the impulsive cause of constituting the state Introduction, plus annotations on § 1, 2, 3, 4
No date	Chapter VI: On the internal structure of states § 1, 5, 10, 11, 12, 13, 14
No date	Chapter VII: On the function of sovereign power § 2, 3
No date	Chapter VIII: On the forms of government § 1, 3, 5, 10, 12, 13, 14, 15
No date	Chapter IX: On the characteristics of civil authority § 3, 4, 5, 6, 7
No date	Chapter X: On the ways of acquiring authority, particularly monarchical § 4, 7, 8, 11
No date	Chapter XI: On the duty of sovereigns § 7
No date	Chapter XII: On civil law in particular § 2, 6, 7
No date	Chapter XIII: On the right of life and death § 18, 19
No date	Chapter XV: On the power of sovereign authority over property within the state § 6
No date	Chapter XVI: On war and peace § 10, 11, 13
No date	Chapter XVII: On treaties § 1, 7
May 15 1674	Chapter XVIII: On the duties of citizens § 15

## APPENDIX III:

## INDICES NOMINUM ET RERUM

(Numbers indicate the pages of the original manuscripts.)

**A. Observationes in *De jure***

Adam 2, 3, 13  
 Aristotle 8, 11, 16  
 Boeclerus, Johann 4  
 Christ 10  
 David 13, 15  
 Dina 18  
 Eustratius 10  
 Grotius, Hugo 4, 7  
 Henry IV, King of France 6, 17  
 Hobbes, Thomas 14, 16  
 image of God 3, 5  
 imposition 2, 5sq.  
 Jacob 11  
 latitude of moral actions 9  
 Lea 11  
 moral entities 1  
 moral indifference 8  
 Rachel 12  
 Saulus 14  
 Salomon 10  
 Scotus, Johannes Duns 10  
 state (analogous to space) 3  
 Thomas ab Aquino 10  
 Uriah 15  
 will 12

**B. Observationes in *De officio***

Abilmech 18  
 Abimel 105  
 Abraham 51, 82, 105

absolutism 95–99  
 Adam 12, 40, 73, 80  
 adultery 15  
 Aeschines 36  
 Alexander Magnus 99  
 Apollo 60  
 Aristotle 1–5, 29, 35, 37, 38, 39, 72, 74, 83  
 atheists 39sq.  
 Brutus, Junius 95  
 Caelius 59  
 celibacy 77  
 Charles the Great 99  
 Charles XI, King of Sweden 24  
 Christ 31, 43, 52, 70 86, 88  
 Christian II, King of Denmark 94  
 Christian V, King of Denmark 102  
 Cicero 8, 44, 50, 56, 76  
 Crassus 76  
 Cromwell, Oliver 105  
 custom 1, 33, 35  
 Daniel 88  
 David 28, 52, 74, 94  
 the Decalogue 23, 26  
 democracy 2, 98  
 de Osuna, (Pedro Téllez-Giron) 68  
 the Devil 23  
 divine punishment 24, 47  
 duty 10, 71  
 Eli 16  
 Elias 17

- Elizabeth, Queen of England 92  
 equality 10, 50, 73sq.  
 Esbon 99  
 Eve 80  
 Fabri, Nicolas-Claude, Sieur de  
     Peresc 7  
 fundament of natural law 31sq.  
 Georgius, prince of Denmark 102  
 Goliath 74  
 Grotius, Hugo 7, 8, 29, 46, 86, 91, 98  
 Henry VIII, King of England 101  
 Hobbes, Thomas 7, 8, 29, 35, 75  
 honour 29, 41, 43  
 Horace 56  
 Horn, Johann Friedrich 80  
*imputatio* 15–21  
 indemnification 57–59, 68sq.  
 infinity of God 42sq.  
 irregular states 90sq.  
 James VI, King of Scotland  
 Japheth 73  
 Jews/the people of Israel/ 87, 88,  
     98sq., 103  
 Jonah 36  
 Joseph of Arimathea 104  
 Jude 21  
 Justinus 32  
 Leopold, Austrian prince 63  
 Mahomet (Mehmed II), Ottoman  
     Sultan 67  
 Margareta, Queen of Denmark, Nor-  
     way, and Sweden 92  
 Mary, Queen of England 102  
 Mathatias 70  
 Monzambano, Severinus 90  
 moral knowledge 11, 36sq.  
 moral persons 84sq.  
 moral theology 38  
 Mornay, Philippe 46  
 Moses 39, 87, 96, 104, 125  
 Nero 95  
 Osiander, J.A. 7  
 Ovid 73  
 Quintus Fabius Cunctator 81  
 papists 55sq., 27sq., 68sq., 77  
 Paul 8, 17, 34, 37 45, 53, 66, 77, 78, 84  
 peasants 12, 61, 64  
 Petrarch 25  
 Pharaoh 25  
 Phocion 71  
 Plato 1, 2, 41  
 polygamy 77sq., 79  
 priests 55sq.  
 right, perfect and imperfect 29  
 Sallust 73  
 Salmasius, Claudius 95  
 Samuel 99  
 Sarah 18  
 Scherzer, Adam 10  
 scholastics 55sq., 44sq.  
 Selden, John 35  
 Seneca 41  
 Sigismund, King of Poland and  
     Sweden 92  
 Sirach 15, 18, 80, 84  
 Socrates 44  
 Solomon 49  
 state 85  
 state of innocence 11  
 state of nature 71sq., 74sq.  
 tacit contract/convention/ 30, 65  
 Tacitus 89  
 Valerius Maximus 61  
 Virgil 59  
 virtues 2sq.  
 Zedechia, Jewish king, 68



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EDITING MANUSCRIPTS is a laborious but fascinating art that may tempt the beginner to jump to conclusions. For a while I believed the manuscripts edited in this volume were written by Pufendorf himself. Professor Detlef Döring, Leipzig, the editor of Pufendorf's correspondence, delivered me from that illusion while at the same time encouraging me to pursue the project.

Basically, this is a philological study, and as that is not where my professional expertise lies I consulted the experts. Hans Helander, professor in Uppsala, solved a number of *cruces* and suggested conjectures. Anders Piltz, professor in Lund, has reviewed the edition, emending several passages. He did so at the behest of the Royal Swedish Academy of Letters, History and Antiquities, which benevolently accepted the work for publication. David Jones improved my English translation. I have had the privilege to have Lena Albiñ as editor and Lars Paulsrud as designer of the volume. Throughout the process of publishing Anna Forsling, editor at the Academy, has been of great assistance.

I KVHAA Filologisk-filosofiska serien har följande arbeten utkommit:

- 1 Ström, F., *Diser, nornor, valkyrjor. Fruktbarhetskult och sakralt kungadöme i Norden* (Disen, Nornen, Walküren. Fruchtbarheitskult und sakrales Königtum im Norden). 1954
- 2 Ekwall, E., *Studies on the population of Medieval London*. 1956
- 3 Kjellén, A., *Diktaren och havet. Drift- och drömsymbolik i svenskspråkig lyrik 1880–1940* (The poet and the sea). 1957
- 4 *Svenska skrock och signerier, samlade av Leonhard Fredrik Rääf* (Popular superstitions and incantations in Sweden collected by Leonhard Fredrik Rääf. Ed. with an introduction and textual notes by K. R. V. Wikman). 1957
- 5 Wessén, E., *Runstenen vid Röks kyrka* (Der Runenstein von Rök, Östergötland). 1958
- 6 Wessén, E., *Historiska runinskrifter*. 1960
- 7 Ståhl, H., *Ortnamnen i Kopparbergslagen*. 1960
- 8 Rooth, E., *Zu den Bezeichnungen für „Eiszapfen“ in den Germanischen Sprachen. Historisch-wortgeografische und etymologische Studien*. 1961
- 9 Wessén, E., *Svensk medeltid. En samling uppsatser om svenska medeltidshandskrifter och texter. I. Landskapslagar*. (Zusammenfassung) 1968
- 10 Wessén, E., *Svensk medeltid. En samling uppsatser om svenska medeltidshandskrifter och texter. II. Birgittatexter*. (Zusammenfassung) 1968
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- 23 Lindberg, B. (ed.), *The Pufendorf Lectures. Annotations from the teaching of Samuel Pufendorf 1672–1674*. 2014. ISBN 978-91-7402-426-5



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**S**AMUEL PUFENDORF (1632–1694), the famous theorist on natural law in 17<sup>th</sup> century Europe, was a professor at the University of Lund in Sweden from 1668 to 1676. At Lund he is commemorated every year in the Pufendorf Lectures given by renowned international scholars.

This book contains his original thinking in the form of notes taken at the lectures on natural law Pufendorf delivered 1672–1674. *No other texts from his teaching are extant.* In his lectures Pufendorf commented on his own books on natural law, *De jure naturae et gentium* and *De officio hominis et civis*.

The manuscripts show how innovative ideas are disseminated and filtered through academic culture. In the history of ideas, Pufendorf is connected with secularization, a modernized concept of the state, a kind of constructivist ontology, and humanity. While this is not untrue, here his thoughts appear in their immediate pedagogic context, where theological and political considerations, academic machinations and the difficulty of taking lecture notes obscure the coherence and consistency of his theory. Its main ideas and their potential are nevertheless discernible in the midst of the conflicts and trivia of academic culture.

BO LINDBERG is emeritus professor of the history of ideas at the University of Gothenburg. His research deals with the classical tradition and early modern conceptual history.

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