

De Jure Naturae et Gentium: Samuel von Pufendorf's Contribution to Social Choice Theory and Economics

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April 2003

Abstract

Pufendorf's major work on "The Law of Nature and of Nations" has never been considered to have had much influence on economics and on the development of economics as a science. The present paper by no means attempts to propagate a different view. This would be inappropriate. However, what Pufendorf says about the importance of contracts among the members of a community and the formation of supreme sovereignty is highly relevant for the social sciences. But not only this. Economists will, perhaps, be surprised to read something about externalities and future discounting in Pufendorf's work. Also the phenomenon of conspicuous consumption was clearly described. Most stunning for social choice theorists probably will be that Pufendorf more or less explicitly discussed a preference structure that was single-peaked along a single dimension. And the collective result proposed conforms to that of the median voter.

*Most of this research was done at STICERD, London School of Economics. My gratitude goes to the Institute for its generous hospitality. Helpful suggestions by Pat Suppes are also gratefully acknowledged.

1 The Man and His Work

Samuel von Pufendorf, son of a Lutheran clergyman, was born in 1632. He began studying theology, law, philosophy, history and political theory in 1650, first in Leipzig, then, from 1656 on, in Jena, and finally (1659–61) in Leiden. His first major position was a professorship for law of nature and nations at the University of Heidelberg (1661). In 1670 Pufendorf joined Lund University. When Lund was occupied by Denmark, Pufendorf went to Stockholm to become a political–jurisprudential councillor at the courts of Sweden (1677–1687). During this period Pufendorf wrote a 33 volume history of Sweden. In 1688 he was appointed historian in Brandenburg–Prussia. Pufendorf died in 1694. In this paper, we will be particularly concerned with his magnum opus, *De Jure Naturae et Gentium* (The Law of Nature and of Nations), completed in May 1670 and published in 1672.

Pufendorf came to intellectual maturity shortly after the end of the Thirty Years War, with desacralised states sanctioned by the Treaty of Westphalia (1648). According to Hunter (2001, p. 162), the fundamental task of Pufendorf’s natural law was to remove metaphysical moral philosophy from academic ethics and politics and to replace it “with a civil philosophy suited to the moral comportment of the subject of the deconfession-alised state”. Pufendorf who was heavily influenced by Grotius and Hobbes, but also by ancient works on moral philosophy, the Stoic school in particular, considered the theory of the natural law as a science that analyses and encompasses the total order of human life. The foundation of natural law arises from man’s need to live in society. Therefore, Pufendorf’s emphasis is on the community based on social action and human interaction. For Pufendorf, human conduct is open to rational interpretation: Humans have learned to weigh and to compare, and consideration is taken of the means best suited to the end. Man’s prime goal is to strive for general well–being and perfection. However, humans have various characteristics that render them unsociable. Consequently, a series of contracts has to be formed in order to offer effective protection against harm both from others within the community and from those outside. Such a situation creates the duty of obedience on the part of the citizen and the duty of care and protection on the part of a sovereign.

Pufendorf distinguished natural law from both civil law and moral theology. “From the first flow the most common duties of man, particularly those which render him capable of society [*sociabilis*] with other men; from the second flow the duties of man as a citizen living in a particular and definite state [*civitas*]; from the third, the duties of a Christian” (*De Officio Hominis et Civis juxta Legem Naturalem*, Libri Duo, 1673, Pref., p. 7, quoted in Hunter (2001, p. 149)). The duties of the man and the citizen will converge in a system where a superior has been granted the right to govern others in exchange for security and protection that he offers them.

2 The Role of the State and Supreme Sovereignty

In the absence of a superior, men very often tend to follow their own ideas and interests at the expense of others around them. Also, an arrangement to which one has agreed earlier, may later on appear as a hindrance so that men strive for departing from what they had consented to originally. Pufendorf argued that men should gain for themselves as much security against the wickedness of their fellows as possible.¹ However, in order to achieve security and protection it is not enough that several men “form a society for mutual aid, and exchange promises that they will direct their actions and strength to the same end and the common good” (DJN, book VII, chapt. 2.3, p. 969). Something more solid has to be formed which can defy the many divergent wills of men. A union of wills and strength has to be built from which eventually a state arises which must gain sovereignty.

Pufendorf saw but three forms of a regular state, “based upon the subject proper of the supreme sovereignty, according as that subject is one simple person, or one council, composed of a few, or of all the citizens” (DJN, book VII, chapt. 5.3, p. 1024).² When the supreme sovereignty is vested in a council which consists of all the citizens each of whom has the right to vote, one obtains the case of democracy. When the supreme sovereignty is vested in a council consisting of selected citizens, one obtains the case of an aristocracy. Monarchy or kingdom has the supreme sovereignty vested in one man.

The future citizens of a state have to enter into an agreement among themselves saying that they desire to form a single and perpetual group and to administer the considerations of their safety and security by common council and leadership. The next step then is to pass a decree that determines the form of government that shall be introduced. “For until this decision is reached, it will be impossible to take consistent action on matters concerning the common safety” (p. 974). “After the decree upon the form of

¹“For the wickedness of man’s character and his proneness to injure others can in no way be restrained more effectively than by thrusting in his face the immediate evil which will await him upon his attacking another, and by removing every hope of impunity” (De Jure Naturae et Gentium (henceforth abbreviated as DJN), Libri Octo, 1672, p. 967). This rather blunt description of man’s character reappears at various instances in DJN, but also in some of Pufendorf’s other work. In De Officio Hominis (1673), for example, when comparing man with the beasts, Pufendorf wrote: “Many other passions and desires are found in the human race unknown to the beasts, as, greed for unnecessary possessions, avarice, desire of glory and surpassing others, envy, rivalry and intellectual strife. It is indicative that many of the wars by which the human race is broken and bruised, are waged for reasons unknown to the beasts” (book I, chapt. 3.4, p. 34, quoted in Hunter (2001, p. 171)). And he continued: “Man, then, is an animal with an intense concern for his own preservation, needy by himself, incapable of protection without the help of his fellows, and very well fitted for the mutual provision of benefits. Equally, however, he is at the same time malicious, aggressive, easily provoked and as willing as he is able to inflict harm on others” (De Officio Hominis, book I, chapt. 3.7, p. 35, again quoted in Hunter (2001, p. 171)).

²From now on, page numbers refer to Pufendorf’s De jure naturae et gentium, unless otherwise stated.

government, a new pact will be necessary when the individual or body is constituted that receives the government of the group, by which pact the rulers bind themselves to the care of the common security and safety, and the rest to render them obedience, and in which there is that subjection and union of wills, by reason of which a state is looked upon as a single person” (p. 975).

A bit further on in book VII, Pufendorf elaborates more on the concept of a state and the latter’s relationship to its members. “A state is a moral body which is understood to have one will.³ But since it is made up of many physical persons, each of whom has his own will and inclination, and since these wills cannot be physically compounded into one, or combined into a perpetual harmony, it follows that the one will in a state is produced in the following fashion. All the persons in the state submit their will to that of one man, or of a council, in whom the supreme sovereignty has been vested” (pp. 1010–11). It is understood to be the task of the supreme sovereignty to make clear and to prescribe what should be done or avoided. General rules have to be laid down since due to the large number of citizens in a state and their very diverse interests, it would be impossible to issue special commands for each act of each of its members.

According to Pufendorf, the notion of supreme sovereignty, though being in itself a single and undivided thing, has several parts. The prescription of general rules of conduct is called the legislative power. In so far as the controversies of citizens are settled, the judicial power of those rules stands out. When citizens are armed against foreign enemies or citizens are ordered to keep the peace, the right of war and peace is in the centre of sovereignty. Finally, when it comes to the business of the state, supreme sovereignty proclaims the right to set up magistrates. All these arrangements serve the chief end of states, viz. “that men should by mutual understanding and assistance be insured against losses and injuries . . . and that by these means they may enjoy peace and have sufficient protection against enemies” (p. 1011).

Pufendorf’s desacralisation of politics was accompanied by a privatisation of religion. “If Pufendorf’s uncoupling of civil governance from transcendent morality renders the state absolute in the political domain, then it simultaneously precludes the exercise of political power in the moral domain” (Hunter, 2001, p. 194). Civil society was instituted for the end of worldly security, not to achieve man’s salvation and eternal happiness, Pufendorf argued in “*De Habitu Religionis Christianae ad Vitam Civilem*”

³Pufendorf did not believe in an actual or ideal union of wills or, as we would say in social choice theory, in an effective way of aggregating preferences. “. . . A union of wills cannot possibly be encompassed by the wills of all being naturally lumped into one, or by only one person willing, and all the rest ceasing to do so, or by removing in some way the natural variation of wills and their tendency to oppose each other, and combining them into an abiding harmony” (p. 972). This union is rather the outcome of an agreement among individuals to strive for common security and safety. So they subordinate their will to that of one man or of a single council, and the man’s or the council’s decree has to be regarded as the will of each and every person. However, the members of the civil society only resign rights conditionally. Should the civil power violate terms of the agreement or contract, the citizens can resume their rights.

(1687). Civil duties are limited to man's external conduct of civil life, while religious duties depend only on the laws of God and concern man's inner religious life. Civil governance and religion belong to different domains. Political and religious life each have a separate status. "God's role was reduced to that of a merely punitive sovereign who could apply sanctions in an afterlife . . ." (Hochstrasser (2000, p. 71)). Pufendorf's position to "marginalise" the role of God within a civil society was heavily criticised by Leibniz who attempted to provide civil authority with a metaphysical-moral basis, stressing the eternal truths of a divine mind.

3 Council Decisions

(a) Unanimity vs. Simple Majority

When decisions of a state are made in a council, it has to be clarified right from the beginning, whether the consent of each and every member of the council is needed in order to reach a decision or whether the will of the council is determined by the majority of its members. Pufendorf discusses a veto structure "where the dissent of one person can render void an agreement of all the rest" (p. 987). He has a situation in mind where council members have declared explicitly, when entering a body, that they would not feel committed to anything to which they have not agreed. However, Pufendorf realizes that in such cases improvements that are to the advantage of others may be obstructed and, as at other instances in his work, the idea of cooperation is proposed in so far as "a part should conform to the good of the whole" (p. 987).

Universal assent may make it very difficult to carry on business since there may be no outcome at all due to differences in opinions. Therefore, if a man joins some group or council "absolutely and without exception", it is regularly assumed that "he has obligated himself to follow and approve what the great majority of his associates have agreed upon" (p. 987). And if a man has been outvoted, he should be supporting and not act carelessly. Should he think that this is too much to ask for, he would always have the option to leave the body in question. "Therefore, in all councils the votes of a majority have the force of those of all the members, not because there is any necessity by nature for it to be so, but because there is scarcely any other way for them to carry on their business" (p. 988). In this context as in others, Pufendorf quotes Pliny the Younger who in his Letters, book II says that "votes go by number, not by weight; nor can it be otherwise in a public assembly, where nothing is so unequal as the equality which prevails in them." And in book I, Plinius declares that "individual members are at liberty to express dissent; but when once carried, the whole house was bound to support the decision of the majority" (quoted in DJN, p. 988).

(b) Weighted Voting

However, it can happen that the more prudent are outnumbered by the more imprudent. "...It is repugnant to nature that the more imprudent will of a majority should prevail over the more prudent will of a few, and that in this way the former can obligate the latter to undertake some act of folly" (p. 988). Therefore, Pufendorf suggests that weights be attached to opinions when decisions are made with respect to "theoretical truths". Pufendorf quotes Seneca who declared that when we are considering a happy life and there are different views on this, it should not be the majority which determines which is the better course. And being worried that fools might be able to please the crowds, Pufendorf adds a few words from the Greek rhetorician Dio Chrysostomos who said that "long-continued belief by foolish men does not make a thing true". But having said all this, Pufendorf realizes that normal decisions may then become very difficult. "...Who will render the decision as to which opinion is the more prudent?" (p. 989). Therefore, attaching weights to opinions is not a rule that can be applied to the conduct of business in a council the members of which enjoy equal rights. Neither would arbitrators from outside the council or a special voting power of the presiding chairman be wise arrangements. In the latter case, Pufendorf is aware of the possibility of some kind of dictatorship since if the actual control of affairs lies in the hands of a president, an opinion might eventually come forth that is different from any that has been proposed. "Therefore, it is considered the most convenient thing to follow a method which admits of no difficulty or obscure judgements, than which none can be found more practicable than to count the number of opinions" (p. 989).

(c) Qualified Majorities

On some issues, there should be qualified majority voting. "...In some bodies it is not enough for one opinion to prevail by one or a few votes, but in some cases it must exceed the other by a certain number" (pp. 989–90). Pufendorf refers to the election of a pope and decrees of the senate in Ancient Rome. If the votes are equal, no action will come about. The status quo will persist. Pufendorf discusses trials before court where the defendant is acquitted when the votes are tied. One could even imagine that the accused would not be found guilty if only one more vote was cast for the person's condemnation than for his acquittal.

4 The Structure of Alternatives and Preferences

While most of the considerations in the previous section are fairly general and have probably been expressed in a similar form by various other scholars way before Pufendorf,

the following thoughts are particularly illuminating with respect to modern social choice theory. Longer quotations from Pufendorf should clarify this assertion (see also Lager-spetz, 1986, who discusses the same point).

(a) Decomposition and Single–Peakedness

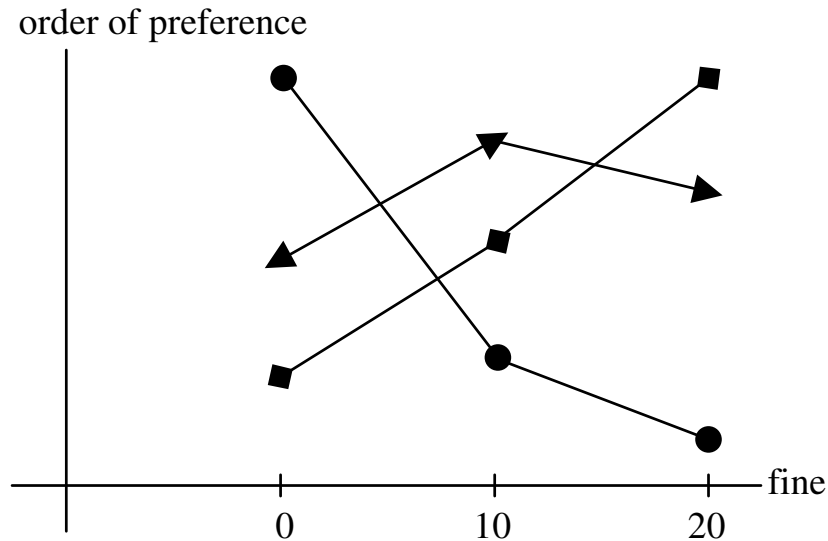
“... When there are more than two opinions, the question arises as to whether they are to be voted upon separately, so that the one is carried which commands more votes than each of the others, or whether two or more, though opposed, may be combined to beat a third, upon the elimination of which the others may then be taken up, so that the one of the remaining questions is carried which has the majority of the votes” (p. 991).

While the first of the two aggregation rules comes close to the plurality rule where each voter casts one point for his top–ranked alternative and zero points for all the others (it is not quite clear whether Pufendorf had a ranking over all alternatives in mind), the second procedure is a variant of successive pairwise majority voting.

The idea to combine opinions where this is possible and makes sense is well illustrated in the following sentences from section 18 of chapt. II in book VII. “If we fix our eyes upon mere natural equity, without reference to agreements or special laws, it appears that we should distinguish between opinions which are entirely different from one another, and those where one includes a part of another, or which, in other words, differ only in quantity, so that they can be united on the points in which they agree, while the former cannot. Thus those who fix a fine upon a man, at twenty units of value, may be united with those who fix it at ten units, against such as would acquit him altogether, and the defendant will be fined ten units, because this is agreeable to the majority of the judges, in view of the fact that those in favour of the twenty, are included with those in favour of the ten” (p. 991).

For contemporary social choice theory, this passage is very interesting. Pufendorf argues that one should distinguish between cases where the alternatives differ qualitatively and cases where the alternatives differ only in quantity. Pufendorf’s example can be depicted in the following way. There are three judges who have to decide on a fine for a particular defendant. There are three options: acquittal, a fine of ten units and a fine of twenty units of value. Though the preferences of the three judges are only vaguely described, they seem to be such that one person prefers twenty to ten to zero (Pufendorf says this explicitly), one person has the opposite preference and the third person prefers most to have a fine of ten and disprefers both zero and twenty to ten. These are single–peaked preferences. Pufendorf states explicitly that there is a majority which prefers a fine of ten or more to zero. He does not say that there is also a majority against the maximal fine of twenty. Nor does he say explicitly that a fine of ten is the only alternative against

which there does not exist another option supported by a majority of the judges. But this observation is “visible” behind the formulation used. Pufendorf states that the defendant will be fined ten units. In other words, the median voter wins.



(b) Manipulation

The proposal to decompose a motion and seek a majority for one or several of its parts is known from the Roman senate. This suggestion, however, does not work in a situation where the options differ qualitatively or where it is not possible to arrange the alternatives along a single dimension as in the previous example. Pufendorf describes a case where a defendant may face banishment, execution or acquittal, and he argues that those who favour banishment definitely want to punish, an acquittal would not be acceptable for them. On the other hand, banishment is not a part of death. Such a situation was the topic of several writings in Ancient Rome; Pufendorf provided various references. Some scholars found this problem insoluble. Pufendorf does not offer a clear-cut solution either. He seems to favour a path where, whenever it is the case that the alternatives at stake have some common element, this element should be separated from the rest and there should be a vote on it. In this context, Pufendorf mentions an instance of manipulation of agendas, reported by the Greek historian Polybius. Some Achaeans were held captive in Rome and the issue before the senate was what to do with them. There were three options: to release, to condemn or to hold them for a

while. The senators were very divided on this point, but those who favoured a release were more numerous than the others taken separately. When the time for voting came, the presiding person in the senate came up with a trick. He did not allow a possibly pairwise vote over all three alternatives. He redefined the alternatives and reduced them to just two options. One was to release, the other was not to release. Due to this trick, there now was a majority against release. It is not reported whether there was a second round of voting.

5 Pufendorf, “The Economist”

(a) On Decision Rules

Pufendorf asserted that human beings “by careful thought to balance well the reasons for good and ill” (p. 39) are able to obtain an accurate judgment on a given subject. Pufendorf distinguished between two types of judgments or reflections, the right conscience and the probable conscience. The first concept clearly knows that the conclusion, at which it has arrived to do or to avoid something, rests on sure and unquestionable principles. The second holds its conclusion true but resorts to commonplace arguments so that “it does not have so clear and fixed a recognition of its correctness” (p. 42). Regarding a right conscience, the rule is clear. Every action which is opposed to it is sinful and depraved. For the case of a probable conscience, Pufendorf specified various rules of conduct, some of which are as follows (p. 43):

- (α) When two opinions are advanced, neither of which is opposed to a law, and one rests on more substantial considerations, while the other is safer, either may be taken.
- (β) When two opinions are advanced, one of which rests on weaker considerations, while the other is safer, the safer is properly preferred.
- (γ) In matters of great importance, if probable arguments are to be found on both sides, the safer side is to be preferred, or the side from which, even if one should fail by a wide margin to achieve his purpose, less harm can come than from following the opposite course.

These decision rules express a rather cautious behaviour where the risk of possibly incurring damage is kept as small as possible. Cautiousness requires that in a situation where it is not possible to decide whether something is good or evil and, consequently, it is unclear whether something ought to be done, one should abstain from an action in order not to become guilty of sin. Pufendorf calls such a situation a case of doubtful

conscience (p. 45).

(b) On Externalities and Discounting

As mentioned several times in this paper, Pufendorf was concerned about the fact that men have unsociable inclinations so that they will never refrain from hurting each other, unless they are forced to make proper restitution. Damage to a person is seen in a broad sense. It includes every injury which affects a man's body, reputation and virtue. However, it is more than this. It also includes the avoidance or refusal of some act which a person was under a perfect obligation to perform. As an illustration of the latter, Pufendorf quotes the Roman rhetorician Quintilianus from his "Declamations" where it is argued that a man who covered the flowers in his garden with poison, from which his neighbour's bees die, had been the cause of his neighbour's damage. The argument according to Pufendorf is as follows: "Since all men agree that bees are roving animals, which cannot possibly be trained to get their food in any one place, therefore, wherever it is right to keep them, the neighbours of such a place are understood to be under a kind of liability or easement, whereby the bees are allowed to wander here and there without anyone preventing them" (p. 315).

Determining the amount of damage, one should not only take into consideration the immediate damage, not merely the thing belonging to a man or owed him which is damaged or destroyed but the fruits as well which come from it, "whether they have already been received . . . or are only hoped for, provided the owner might have received them" (p. 316). And then Pufendorf adds something about discounting future gains. "But the estimate of expected fruits is raised or lowered, according as they are *nearer to or farther from the time of their uncertain harvest* (the italics are ours). Thus a crop lost in the blade must be estimated at a lower figure than one that is yellow in the full head" (p. 316). Pufendorf's reasoning in economic categories is also present in the following passage where he argues that whoever burns a man's house must not merely rebuild it, "but also make good the rent which would have come from it in the meantime" (p. 316).

(c) On Prices and Markets

Pufendorf distinguished between legal and common or natural prices. Legal prices fixed by decree or by law have to be in agreement with justice and equity. These prices admit of no latitude, "so that any variation whatsoever constitutes injustice" (p. 686). Common prices have some latitude within which more or less can be demanded and given. Pufendorf argued that there usually are three levels of common price, viz. a lowest or generous, a middle or moderate, and a highest or rigorous price. A thing can be bought and sold more dearly or more cheaply, provided it is kept within this

latitude” (p. 687).

It is interesting to note that Pufendorf had a clear picture of free markets and exchange. He said that in a state of “natural liberty” each potential seller is allowed to fix the price of a commodity of his at his own pleasure and for however much another person may want to set a price upon a thing of the first person, it will still be within this person’s power to accept or reject the other person’s price bid. Even if the price is set at an outrageously high level, no one should complain about this. If the others feel that the price is too high, there is a very simple course of action, viz. to leave the potential seller in possession of what he has. A just cause for complaint is only given when a man, “through inhumanity or out of hatred or envy . . . refuses to sell to one in need, things of which he enjoys a superfluity . . .” (p. 686). Therefore, “. . . the prices of all things are fixed by agreement between the parties concerned, and that a man cannot be charged with a sin against the rules of commerce, if he does not overlook a chance for profit, provided he show no inhumanity toward the needy” (p. 686).

Pufendorf discussed the relationship between the price level of a commodity and its degree of scarcity. Pufendorf realized that some goods which are important for mankind have a relatively low price. One observes “that those things are the cheapest which men are least able to do without, and this for the reason that by a special provision of God nature bestows them in great abundance” (p. 680). Pufendorf quotes Plato from “Euthydemus” where the latter stated that only what is rare is valuable, and water, which is the best of all things . . . is also the cheapest. “. . . The chief factor in high price is scarcity, the maintenance of which is considered by some to be one of the secrets of business”⁴ (p. 680). Things of daily use such as food, clothing, and arms can also experience very large increases in price “when scarcity of them is joined with necessity, such as is seen in times of famine, and in sieges and delayed voyages, when hunger and thirst must be appeased and life preserved at any price” (p. 683).

Pufendorf also observed aspects of snobbery and conspicuous consumption in men’s behaviour. “For the ambition of men especially values what they have in common with but a few others, while on the other hand whatever is seen in almost any one’s house, is of little worth in their eyes. Nay, men are often so perverted that a thing is rated highly because its use has been forbidden, the mere proscription serving to whet their curiosity” (p. 681). And Pufendorf continued: “So . . . in general men scarcely ever consider a thing valuable which does not yield to the holder some distinction and position above that held by the rest of men, and by reason of which they cannot vaunt themselves above others” (p. 681). And Pufendorf added: “. . . Whoever prides himself on the fact that others lack the good things in which he abounds, appears in fact to delight in the ills of others . . .” (p. 681). All these observations are close to what

⁴Pufendorf mentioned the Egyptians who did not permit the papyrus plant to grow in too many places and the Dutch who destroyed the clove and nutmeg plants in various parts of India in order to prevent an over-supply.

Veblen, in his *Theory of the Leisure Class*, more than 200 years later described as the idiosyncrasies of “the pecuniary culture”.

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