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Samuel Pufendorf: National Territory and the Law of Nature.

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Samuel Pufendorf: National Territory and the Law of Nature

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Synonyms

Indigenous rights; Modern political philosophy; Natural law; Samuel Pufendorf; Self-determination

Description

The following entry presents Samuel Pufendorf's conceptualization of territorial rights, as it can be articulated from his mature works on natural law, *De Iure Naturae et Gentium* and *De Officio Hominis et Civis Juxta Legem*. The first section offers a general overview of his philosophical work and reconstructs the key underpinnings of his territorial rights theory. The second section analyzes Pufendorf's concept and justificatory strategy of territory and assesses its limits. Finally, the third section addresses the political significance of Pufendorf's contribution in modern and contemporary debates on territorial rights.

Definition

The following entry presents Samuel Pufendorf's conceptualization of territorial rights, as it can be articulated from his mature works, *De Iure Naturae et Gentium* and *De Officio Hominis et Civis Juxta Legem*. In both works, Pufendorf attempted to construct a systematic body of knowledge of moral discipline, adequate to the modern standard of natural science. The first section, thus, offers a general overview of his philosophical work and reconstructs the key underpinnings of his territorial rights theory. Within this theoretical framework, natural law displays a set of moral values and validity criteria upon which agents can evaluate the legitimacy of human institutions. Therefore, his systematic theory of natural law is an adequate starting point from which his territorial rights theory can be fully apprehended. The second section analyses Pufendorf's concept and justificatory strategy of territory and assesses the limits of territorial rights. Although carefully differentiated, both territory and property rights may be labeled under one general concept, dominion. Pufendorf's argument grounds these rights on a historical account, a logical normative analysis of natural law theory and hypothetical consent. While the genetic description empirically explains the origin of dominion, both natural law and consent provide its moral justification and determine the scope of territorial rights. Finally, the third section evaluates the political significance of Pufendorf's

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contribution in modern and contemporary debates on territorial rights. Pufendorf's analytical device provides a solid defense of the integrity and independence of atomized territorial units, in accordance with natural equality. His theory respects cultural variability and entails a defense of indigenous group's rights to self-determination, which may be used to protect minorities' rights. However, his argument relies on a retrospective rationalization of ownership-regimes and provides no critical parameters to understand structural injustices.

General Overview

Samuel Pufendorf (1632–1694) was a well-known philosopher, jurist, and historian in early modern Europe. His major works on natural law were translated into different European languages and were used in university education throughout continental Europe, Scotland, and the American colonies during the seventeenth and eighteenth century. Although his influence waned in the latter half of the eighteenth century, in the last decades, his theory has received renewed attention, thanks to his refined account on natural law and his normative theory of territorial rights (See Schneewind 1999, pp. 199–120).

Pufendorf's thought is situated in the aftermath of the Thirty Years' War. Born in the Saxon village of Dorfchemnitz in 1632, as a child he experienced the turmoil caused by the religious civil war. In addition, his generation bore witness to the political arrangement which followed Peace of Westphalia. Equally important, Pufendorf lived in the group of European states which felt endangered by the kind of imperialist expansion politics delivered by the British and Dutch (Tuck 2002, p. 142). It is against this background that Pufendorf developed a theory which defended the supreme authority of atomized political units and conceived them as "ethico-political subjects of moral duties" (Fiorello 2017).

This entry is concerned with Pufendorf's theory of territorial rights, as it can be articulated from his major works on natural law, *De Iure naturae et gentium* (1672) and its abridged student version, *De officio hominis et civis* (1673). In both works, Pufendorf attempted to construct a systematic body of knowledge of moral discipline, adequate to the modern standard of natural science. In general terms, he understood science to be a universal body of knowledge whose results are derived with logical necessity from self-evident and primary principles (Pufendorf 1702, p. 12). Therefore, in order to thoroughly understand Pufendorf's theory of territorial rights, a general overview of his natural law theory is necessary.

Firstly, Pufendorf sets a significant distinction between physical and moral entities: the former category considers the world as containing bodies put into motion, whereas the latter intend to guide men's free actions. Moral entities are defined by Pufendorf as "modes" since they are not self-subsistent but are "superadded" to things which are "already existent and physically complete" (Pufendorf 1702, I.I.3, p. 2). These arise when intelligent agents reflect upon the natural world and their own actions; however, moral entities are not grounded on physical properties nor can they be reduced to mental ideas. These remain logically distinct since moral entities are externally assigned to a world in which action guiding principles are absent: the existence of moral entities depends on the act of imposition of the will (Pufendorf 1702, I.I.4, p. 2). *Dominion,* alongside other rights, obligations, moral persons, states, and values, are conceptualized as "moral entities." For the purpose of this entry, it should be noted that both territory and private property are labeled under "dominion," albeit differentiated as developed further in the next section.

Pufendorf thus puts forward a theological-voluntarist account of natural law in which reason plays an instrumental role. Yet, reason's importance is not downplayed, since it is through its exercise that we become acquainted with the rationale behind the law and its substantive content. The foundational principle of law of nature commands "to cultivate and maintain towards others a peaceable sociality which is consistent with the native character and end of humankind in general" (Pufendorf 1702, II.III.14, p. 108). Moreover, from Pufendorf's approach, "he who obligue us

to an end, cannot but at the same time oblige us to those means which are necessary for the obtainment of that end" (Pufendorf 1702, II.III.14, p. 108). It follows that every action required for the maintenance of social peace will be morally necessary and adequate to man's social and rational nature. From these tenets, "absolute" and "hypothetical" obligations are deduced. These are distinguished because the latter presupposes some human deed or agreement and derive their moral and obligatory force from absolute duties. However, Pufendorf carefully distinguishes hypothetical injunctions from positive laws which are concerned with the particular interest of the state only (Pufendorf 1702, II.3.24, p. 121).

Absolute natural law order us to preserve ourselves and our families, to refrain from harming others, to offer reparations in case damage is inflicted (Pufendorf 1702, III.I.1, p. 165) and "to esteem and treat other as one who is naturally his equal" (Pufendorf 1702, III.II.1, p. 174). Besides these minimalist requirements, we must also seek to benefit others, according to the natural law of humanity (Pufendorf 1702, III.III.1, p. 182). However, this precept only imposes incoercible duties which do not mutually bind parties to make equal retributions to each other (Pufendorf 1702, I.VII.7, p. 62). This leads to a relevant distinction between perfect and imperfect duties, which Pufendorf puts in terms of enforceable correlative rights and duties. Perfect duties may be compelled by force in the natural state or by an action taken into the court of justice in a political community. Conversely, imperfect duties are not enforceable and only bind in *forum internum*—except in special circumstances, as will be developed further in the next section.

Given the law of humanity cannot secure regular social intercourse, law of nature *indefinitely* prescribes men to get engaged in agreements with others. However, men are free to choose which agreements to get involved with (Pufendorf 1702, III.IV.2, p. 201). Perfect rights arise from these, since obligations require someone who may compel the obligee to perform their duty (Pufendorf 1702, III.IV.1, p. 205). Nonetheless, agreements' obligatory force ultimately rests on natural law, which commands us to keep our faith, provided it involves no contradiction with natural duties (Pufendorf 1702, III.IV.1, p. 201). This natural injunction provides the necessary passage between "absolute" and "hypothetical" duties (Pufendorf 1991, 9.1, p. 68). *Dominion,* along other relevant human institutions such as language and commerce, belongs to these hypothetical injunctions.

Concept and Theory of Territorial Rights

Justificatory Strategy

As noted by Carr and Seidler (1999), there's an important temporal dimension in Pufendorf's natural law theory (p. 155). This feature is reflected on Pufendorf's justificatory strategy of territory: he provides a historical account of the origin of *dominion* which intersects his normative theory of natural duties. In this regard, his argument is similar to the one Grotius puts forward in *De Iure Belli* (On Grotius's justification, see Marey 2019, p. 72; Grotius 2005, II.2). The genetic explanation shows that *dominion* is empirically necessary in order to fulfil natural duties. In addition to this, Pufendorf appeals to hypothetical consent to show ownership is morally justified and to the natural duty to keep faith to ground its obligatory force.

At the initial position, human beings are entitled to use available resources, provided no harm is done to the others. From Pufendorf's stance, rights of use are entailed in our innate right of self-preservation (Pufendorf 1702, II.II.3, p. 82) and are allowed by God's benevolence, who holds an absolute right over his creation (Pufendorf 1702, IV.III.2, p. 313). Nonetheless, such permission entails no express or immediate prescription concerning ownership (Pufendorf 1702, IV.IV.4, p. 320). *Negative communion of goods* thus appears as the historical backdrop against which dominion is established. This concept is distinguished from positive communion, which refers to the collective legal possession. In contrast, negative communion of goods is understood in a privative sense and means that the material world belongs to no one (Pufendorf 1702, IV.4.2, p. 318). Although both of them entail common rights, positive communion supposes

exclusive rights, which limit third parties' actions. On the contrary, in negative communion, every resource on Earth is initially available to anybody. Since no portion of the communal possession has yet been properly allocated nor their extent has been specified, Pufendorf points out there are only indefinite rights over common resources (Pufendorf 1702, III.V.3, p. 206).

Pufendorf's strategy seeks to prove that rights of use to negative common resources are ineffective and fruitless since there are no means of *rightfully* enforcing them. This may be properly understood following from Pufendorf's concept of active rights, which he almost equates to that of power (Pufendorf 1702, I.I.20, p. 10). Pufendorf defines power or right as "that by which a man is enabled to do a thing lawfully and with a moral effect*"* (Pufendorf 1702, I.I.19, p. 9). In other words, active rights denote the power to modify deontic positions of individuals rightfully, that is, in accordance with law. It is thus distinct from the natural ability to do something which only carries morally indifferent physical effects (Pufendorf 1702, IV.V.3, p. 206). For this reason, Pufendorf claims that a bare corporeal act of possession cannot lawfully lay obligations upon others: in accordance with natural equality, unilateral and nonconsensual duties imposed on third parties are ruled out. Thus, at the initial position, we are entitled to use an object while we are holding onto it—thanks to God's grant—yet we cannot lawfully hinder third parties from seizing those resources we had intended to use (Pufendorf 1702, IV.IV.5, p. 311; IV.IV.10, p. 327). In addition to this, since no proper allocation has taken place yet, no one knows what to abstain from (Pufendorf 1702, IV.IV.9, p. 326). Nonetheless, from Pufendorf's stance, things are only serviceable for men if they lay hold of them (Pufendorf 1702, IV.IV.5, p. 311).

In accordance with natural equality, ownership arises only if third parties *"*expressly or tacitly renounce their liberty of using such a thing which before they enjoyed in common with him" (Pufendorf 1702, III.V.4, p. 206). In this regard, it should be noted that "tacit" consent does not have to be expressed by signs, but it is "sufficiently gathered from the nature and circumstances of the business" (Pufendorf 1702, III.VI.1, p. 211). As Saastamoinen (2006) points out, this means tacit consent does not necessarily have to be a conscious act of the will (p. 250). In other words, the fact others did not interfere with one's ownership is enough to judge they had renounced their rights over it. Hence, Pufendorf infers that in the earliest ages, men must have first tacitly agreed not to seize whatever each of them picked up with the intention of using it (Pufendorf 1702, IV.IV.5, p. 311).

According to Pufendorf's explanation, however, ownership did not stem from a single covenant, but from a gradual process in which two factors intervened: firstly, population growth and relative scarcity of resources, and, secondly, the development of cattle growth and agricultural techniques. Upon scarcity of basic means of subsistence, equals-users laid claims onto the same object, which thus led to quarrels. Following the development of cattle-raising, humans could not properly observe precepts derived from equality, if anyone was entitled to make profit from other's labor. In fact, natural law commands "that he who uses the assistance of others promoting his own advantage ought as freely to be at their service when they want his help on the like occasions" (Pufendorf 1702, III.II.4, p. 177). Later, houses were agreed to belong to groups of people or individuals who had previously occupied them to avoid quarrels. In each of these stages, men tacitly agreed that food and clothes, cattle, and houses could be appropriated correspondingly.

In Pufendorf's historical account, land-property appears only in the last stage. According to Pufendorf, it had not been required in the earliest ages of humanity because of land abundance. Cattle growth, however, rendered ownership of lands a necessary requirement for the maintenance of peace (Pufendorf 1702 IV.IV.11, p. 329). Although tacit consent was enough to reinforce previous occupancy, an express agreement was necessary for men to allocate property among those who inhabited lands in common (Pufendorf 1702, IV.IV.9,p. 326). Moreover, men tacitly agreed that vacant lands should belong to its first occupant. Yet, this covenant included a condition for its appropriation: lands should

belong to "the manurers and improvers of them" (Pufendorf 1702 IV.IV.4, p. 322).

All in all, although natural law does not expressly prescribe the institution of dominion, ownership is required by the foundational principle of sociability and our natural duty to observe equality. In fact, Pufendorf states that property's ultimate aim is the maintenance of peace and to ensure that individuals acquire the means to self-preservation from their own labor (Pufendorf 1702, II.VI.6, p. 160). Thus, Pufendorf claims that natural law "advises" separate dominions should be introduced (Pufendorf 1702, IV.IV.15, p. 331). In this theoretical framework, hypothetical consent indicates minimalist requirements everyone is supposed to agree, according to sound reason and judgement. Nonetheless, this does not mean ownership has to be established uniformly in all times and places. Rather, it depends on human's will and judgement to decide what specific property regimes should be established depending on social context (Pufendorf 1702, IV.IV.4, p. 321). Following human agreements, natural law enforces whichever duties arise from the introduction of property, according to our natural duty not to violate faith. Therefore, Pufendorf claims that ownership "belongs" to natural law, yet it is not a natural law itself (Pufendorf 1702, IV.IV.15, p. 331).

This said, territorial rights originate in the same way as private property: either from division or occupation (Pufendorf 1702, IV.VI.1, p. 339). However, as opposed to property, territory is understood as positive communion of land, which belongs exclusively to a collective and not to a single individual (Pufendorf 1702, IV. IV.2, p. 318). In regards to its occupancy, Pufendorf admits that it may be the result of a sum of tracts of land already possessed by particular individuals. However, from his stance, territorial rights derive from collective appropriation (Pufendorf 1702, IV.VI.6, p. 340). This supposes that the community makes some kind of physical contact with space—be it partial or total—along with intention of making some use of it and setting it up within fixed boundaries, although Pufendorf admits these may not be precisely marked off (Pufendorf 1702, IV.VI.11.p. 342). More importantly, from this approach, collective dominion is prior to private appropriation. Before dividing lands, each individual holds an equal and indefinite right to land; yet, allocation depends on the method which the community judges as more convenient for their public welfare (Pufendorf 1702, IV.VI, p. 340). Territorial rights, however, do not dissipate after private parcels have been allotted: collective and private rights may overlap, yet do not coalesce. This thesis is implied in Pufendorf's definition of *dominion*:

> Property (propietas) or dominion is a right by which the very substance as it were of a thing, **so belongs to one person that it does not, in whole, belong after the same manner to another**. (Pufendorf 1702, IV.IV.2, p. 318; the bold letters are ours)

In a nutshell, territory and private property may apply to the same thing, yet they differ in regards to the "manner" in which the object is held. In this vein, Pufendorf distinguishes "plenary rights" and "diminutive rights." The former primarily denotes the eminent right which the state holds, whereas "diminutive" applies to individual rights, which are confined and may be further diminished by positive laws (Pufendorf 1702, IV.IV.3, p. 319). It is worth to note that Pufendorf's theory attempts to harmonize subjective individual rights, collective ownership, and the supreme power held by the sovereign. In fact, Pufendorf holds the state is primarily established to secure men's safety (Pufendorf 1702, VII.I.7, p. 136) and consequently rulers have the power to regulate property, insofar it affects the states' security and welfare (Pufendorf 1702, VII.IV.7, p. 167). This power entails regulating private property (Pufendorf 1702, IV.IV.2, p. 319), imposing sumptuary laws, levying taxes both on property and foreign trade, and the sovereign "transcendental power," that is, the right to use the subject's possessions in cases of necessity, provided restitution is done once necessity is over (Pufendorf 1702, VIII.V, pp. 217–222). Nonetheless, none of these rights rest on the ruler's dominion, arising from sovereignty itself. In effect, Pufendorf distinguishes between sovereignty or *imperium* and dominion: the first is defined as the "power over other men" whereas the latter refers to objects (Pufendorf 1702, I.I.19, p. 10). Therefore, from this theoretical framework, sovereignty is only improperly applied to places, insofar it refers to the

inhabitants' subjection to the sovereign's jurisdiction (Pufendorf 1702, IV.VI.14, p. 348). In addition to this, the collective dominion is prior to the establishment of states, and private property may not be formalized under government. Thus, individual's rights to live within the state's dominion of the state are contemplated by the initial agreement which gave origin to civil society. Therefore, although the government may exercise their power onto private and public property to some extent, the collective's consent is required to make chief changes on territory, such as its alienation (Pufendorf 1702, VIII.V.9, p. 223).

On another note, it follows from what has been said—that communities may lay unilateral claims over the material world and acquire exclusive rights over vast spaces. Unlike private property, which requires land to be manured and cannot extend beyond that which is necessary for a family's maintenance (Pufendorf 1702, IV.VI.2, p. 339), collective dominion may encompass vacant spaces which remain undivided and the resources within them (Pufendorf 1702, VI.V.4, p. 341). Alien parties claiming these cannot impose perfect and enforceable claims upon the state, unless a pact or grant has been agreed between them. The sovereign is only bound by an imperfect duty of humanity to grant unused resources, which he ought to perform only if it does not entail any further cost or damage to public welfare. The ruler is thus at liberty to choose how to dispose of the vacant spaces: these may be used to raise public funds, conferred upon subjects or conferred to a foreigner (Pufendorf 1702, IV.6.4, p. 341). The sovereign also has the authority to decide upon the right to "innocent profits" that thirds parties may claim, such as the right to use running water, migrants' rights, rights to peaceful passage, traffic and commerce, necessary means of subsistence, among others (Pufendorf 1702, II.III.4–13, pp. 185–196).

Limits on Territorial Rights

Rights of Necessity

Pufendorf's theory includes two major limits on territorial rights: common resources and rights of necessity. In regards to the latter, it should be noted that Pufendorf attempts to reconcile ownership-regimes with demands of needy individuals: rights of necessity arise in extreme situations in which self-preservation cannot be maintained. As Saastamoinen (2006) argues, these are derived from the laws set up by authority (p. 238): they are grounded on a tacit article included in most laws, which exempts from the observance of its obligation if its performance might lead to utter destruction, unless it expressly commanded otherwise (Pufendorf 1702, II.VI.1, p. 156). Therefore, even if the actions we undertake in extreme situations seem to contradict the law's injunctions, these are not adjudged transgressions of law: rights of necessity confer immunity on the right-holder.

Pufendorf is reluctant to claim all natural precepts include this tacit clause and to equate rights of necessity to an unlimited power. In the case of hypothetical injunctions, he asserts that rights of necessity as well as their extent are derived from the institution's end (Pufendorf 1702, II.VI.2., p. 156) which, in case of ownership, is the maintenance of peace and the secure industry of laborious individuals. Following these considerations, Pufendorf denies that the end of property regimes is private profit and boundless accumulation. On the contrary, according to Pufendorf, ownership is the condition which makes charity possible. Albeit charity is an incoercible duty, it may be enforced if the owner denies material relief to the individual in want. In this case, duties of humanity may be enforced either by civil law, in civil societies, or compelled by the individual in distress in the state of nature (Pufendorf 1702, II.6.5, p. 160).

Nonetheless, Pufendorf establishes a set of requirements to rights of necessity. In the first place, the legitimate right-holder must have not performed any action which led to the situation they are in. Needy individuals are supposed to have tried all alternative courses of action, such as appealing to the magistrate or offering his services to the proprietor, before enforcing their rights. In addition to this, the right of necessity imposes no duties upon those who are equally in need or may end up in a distressful situation if they confer their goods upon others. Finally, equal restitution is required if the object was valuable; in case it is not, gratitude is owed to the proprietor if he

performed his duty willingly. However, none of these are owed to those who refuse to discharge duties of humanity (Pufendorf 1702, II.6.5, p. 162).

Common Resources

On the other hand, Pufendorf also places limits on the extent of territorial rights. He mainly approaches this topic when he discusses maritime jurisdiction, which was the object of major international disputes throughout the whole seventeenth century. Theoretical controversies revolved around the possibility and morality of dominion over oceans and seas. From Pufendorf's stance, to decide upon this topic we should ask what conditions are required for an object to be capable of property. First of all, it must be useful, either directly or indirectly, and proprietors must be able to hinder third parties from using it. Nonetheless, in accordance with the law of humanity, nobody should be excluded from never-yielding natural resources, such as running water, air, etc. (Pufendorf 1702, IV.V.1–2, p. 333). However, as Nine (2019) notes, rights to common resources are not grounded on physical qualities (p. 1). In accordance with Pufendorf's theory of moral entities, rights cannot be derived from intrinsic physical principles; these are ultimately referred to social relationships between humans (Pufendorf 1702, I.I.17, p. 8). Therefore, Pufendorf states that we may have claim-rights to abundant resources, on condition we have incorporated the object into some kind of industrious activity. In which case, we appoint *services* on others: that is, we lawfully claim third parties not to interfere with the advantages we may accrue from commons (Pufendorf 1702, IV.V.2, p. 333).

Furthermore, Pufendorf admits different anthropogenic activities may render natural resources inexhaustible whereas others don't (Pufendorf 1702, IV.V.4, p. 334). Pufendorf thus considers that it is reasonable to hold onto property those natural resources which, albeit may admit unrestricted use in some regard, would not be serviceable to men if held in common. In this case, the owner is bound by an imperfect duty to allow third parties the use of his property, provided these activities do not deplete resources available and no damage is done to him (Pufendorf 1702,III.III.3–4, p. 185–7; IV.V.4, p. 334). On the contrary, he provides several arguments throughout the text to prove that it is "repugnant to reason" to claim exclusive ownership over those objects which cannot be used up without regard to the number of users and to anthropogenic activities.

Pufendorf is thus able to justify the dominion a state holds onto surrounding seas and shores and, at the same time, hold that oceans must remain as negative communal possession. According to Pufendorf, sea dominion is both morally legitimate and practically possible. He argues that the sea can only be of use to humankind if regulations are established; otherwise, if everyone were allowed to fish freely, it would eventually be depleted. In the same vein, he considers it necessary for the safety of coastal states to regulate commerce and navigation. In accordance with the requirements of property, territorial acquisition of seas and the resources within it is legitimate provided the exercise of dominion will be useful to public welfare and may be held onto by forts or naval ships (Pufendorf 1702, IV.V.6–7, p. 335). However, according to these parameters, to assert ownership of the whole ocean, which admits unrestricted fishing and navigation, is unreasonable and unjust. According to Pufendorf, to effectively hold possession over the oceans, that is, to hinder others from their access, would be unprofitable or ineffective (Pufendorf 1702, IV.V.6, pp. 335–336). More importantly, from this theoretical framework, to lay a unilateral claim over the whole ocean would lead to quarrels (Pufendorf 1702, IV.V.6, p. 335) and diminish third parties' rights to the advantages they accrue from their common use (Pufendorf 1702, IV.V.9, p. 338). Following these considerations, Pufendorf infers that the first agreement did not allow oceans to be appropriated by the first occupant (Pufendorf 1702, IV.V.9, p. 338). All in all, the ocean and their resources must be common negative resources since:

> no one has obtained such a right over the ocean as will justify them in shutting out all others from their benefit; and it ought to be because the law of general kindness and humanity requires. (Pufendorf 1702, IV.V.11, p. 338)

It must be noted that Pufendorf's criteria put the burden of proof onto territorial acquisition. Moreover, further restrictions are imposed on unilateral claims over common resources and unoccupied regions. On this note, Pufendorf indicates that reason enjoins us to "rest contented with the acquisition of so much as is likely to suffice for the service of themselves and their dependents" (Pufendorf 1702, IV.V.10, p. 338). To go beyond this limit is termed "avarice," and it applies to men who claim property on common resources with no other reason than excluding others from their access (Pufendorf 1702, III.II.4, p. 177; IV.V.10, p. 338).

Significance of Pufendorf's Theory

It follows from previous sections that Pufendorf's theoretical framework defends integrity and independence of atomized territorial units, in accordance with natural equality. In the first place, territory is understood to belong exclusively to the collective, who is entitled to dispose of vacant spaces insofar these will be used for their future advantage. In doing so, Pufendorf avoids culturally biased descriptions regarding what counts as "vacant" or "waste" land. As previously mentioned, natural law does not require property to be established uniformly in all times and places. Property regimes are socially constructed, since they result from collective agreements within a settled group. Thus, Pufendorf's theory respects cultural variability and entails a defense of indigenous group's rights to self-determination, which may be used to protect minorities' rights. In fact, in contrast to Grotius' or Locke's, Pufendorf's theory works as a critique of colonial enterprises. He defended Amerindian's perfect rights over uncultivated lands (Pufendorf 1702, IV.IV.13, p. 331) and was severely critical of European nations who set their customs as a universal standard everyone should conform to (Pufendorf 1702, II.III.8, p. 98). From this approach, doing this is against natural equality since it amounts to setting a double standard, which is regarded as a self-contradictory behavior (Pufendorf 1702, III. II.4, p. 177; For a comparative study of Pufendorf against other authors, see Tuck 2002, pp. 155–163; Cavallar 2008).

On another note, Pufendorf places limits on territory's extent and rejects territorial monopolies. His normative criteria may be contrasted to Grotius', which relies on object-qualities only, or to Locke's "no spoliation" condition, which does not stem from agreements. Conversely, Pufendorf places emphasis both on consent and on the amount of resources available in relation to anthropogenic activities. More importantly, his theory reflects on the material conditions upon which each civil society exercises their freedom, in accordance to natural equality. Acknowledging natural equality implies an injunction which orders men "(…) not claim more for himself than for the rest, but allow others to enjoy a right equal" unless they have obtained a special right (Pufendorf 1702, III.II.4, p. 177). Set in the context of interstate relationships, Fiorello (2017) proposes we understand this precept as the mutual commitment to allow other civil societies their freedom (p. 203), i.e., the faculty to establish the ways and means most appropriate for preservation, in accordance with natural law (Pufendorf 1702, VII.V.20, p. 188). For this reason, Pufendorf claims that territorial monopolies are "oppressive" and that they provide a just cause for war (Pufendorf 1702, IV.V.10, p. 338): they entail curtailment of third parties' freedom, since these deprive them from material opportunities.

Following these considerations, an actualized version of his theory has been propounded by Nine (2019). From her standpoint, Pufendorf's normative criteria can provide effective guidance to assess contemporary socio-ecological conflicts and territorial disputes over oceans. However, several difficulties arise from adopting Pufendorf's theory. In the first place, it relies on an unhistorical account of ownership-relationships, which abstracts from actual social relationships. History is presented as the logical application of natural law and in a progressive fashion, since it results in a system of accumulation. Therefore, it actually functions as a rationalization of the present state of things. Moreover, his theoretical account is far from being adequate to socio-ecological claims. Although he rejects a teleological and anthropocentric view on nature (Pufendorf 1702, IV.III.1, p. 313), Pufendorf

holds that only humans are subjects of rights and duties, as opposed to nonhuman nature. From this stance, the biophysical environment is morally irrelevant, and humans are allowed to use natural resources at their own pleasure. Although states are bound by the law of humanity not to "waste" their resources (Pufendorf 1702, IV.III.8, p. 317), "waste" is measured in accordance with industrious activities only, without regard to environmental requirements. In the same fashion, third parties are only allowed to use proprietors' surplus in extreme situations. Nonetheless, the conditions of rights of necessity are far too restrictive and may be ineffective in concrete situations.

Conclusion

To sum up, both *De Iure Naturae et Gentium* and *De Officio Hominis et Civis Juxta Legem* provide an insightful and refined account on territorial and property rights. Pufendorf provides a historical explanation which shows that dominion is empirically necessary in order to fulfil natural duties. Although natural law does not expressly prescribe the institution of dominion, ownership is required by the foundational principle of sociability and our natural duty to observe equality. Furthermore, within this theoretical framework, a bare corporeal act cannot lay duties on third parties, because nonconsensual acts are against the natural law of equality. Therefore, Pufendorf appeals to hypothetical consent to show ownership is morally justified and grounds its obligatory force on natural law. Following his historical approach, at the first ages of humanity, men tacitly agreed that lands were to be privately owned by the first occupant, upon the condition they improved and worked over them.

From this approach, territorial rights arise in the same way property rights do, yet these concepts do not coalesce. Pufendorf's theory tries to harmonize both individual rights, collective property and sovereignty. Although both property and territory entail exclusive rights, the latter belongs to a collective and is prior to private acquisition. Therefore, private property may be confined and regulated by positive laws, insofar it is required for the state security and welfare. Nonetheless, since collective appropriation is prior to the establishment of government, the authority cannot make chief changes to private and public property without the collective's consent. On another note, Pufendorf asserts that a collective may lay unilateral claims onto vast spaces and is entitled to dispose of vacant places insofar these will be used for their future advantage.

This theoretical framework defends integrity and independence of atomized territorial units, in accordance with natural equality. From this approach, property regimes are socially constructed, as they result from collective agreements within a settled group. Moreover, he avoids culturally biased definitions of what counts as "vacant" places. Thus, Pufendorf's theory respects cultural variability and entails a defense of indigenous group's rights to self-determination, which may be used to protect minorities' rights. Moreover, Pufendorf rejects territorial monopolies, arguing that they deprive third parties from material opportunities.

Although Pufendorf's ideas may be seen as a progressive account on territorial rights, his theory relies on an unhistorical account of ownership-relationships and functions as a rationalization of the present state of affairs. Additionally, the conditions of rights of necessity are far too restrictive and privileges the proprietor's perspective. Overall, Pufendorf's natural law theory is a conservative enterprise which does not provide critical parameters to judge historical and structural injustices.

Cross-References

- ▶ Cara Nine: Global Justice and Territory
- ▶ Hugo Grotius: Mare Liberum
- ▶ John Locke: Property Rights and Labour Mixing

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