

12-1-1947

A Note on Samuel Pufendorf

Anton-Hermann Chroust

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Law Commons](#)

Recommended Citation

Anton-Hermann Chroust, A Note on Samuel Pufendorf, 1 *Vanderbilt Law Review* 47 (1947)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol1/iss1/12>

This Note is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

A NOTE ON SAMUEL PUFENDORF

ANTON-HERMANN CHROUST*

The work of Samuel Pufendorf was certainly the outstanding influence on continental legal philosophy during the second half of the seventeenth and throughout the eighteenth centuries. From his work comes the supposedly authoritative notion that scientific natural law and, hence, true legal philosophy as such, began with Hugo Grotius.¹ What he actually meant to say was that Hugo Grotius had secularized the natural law, that is, he had divorced it from moral theology and put it on a non-theological—and, we may surmise—on a non-ethical basis.

These statements, if Pufendorf was right, imply that there was no such thing as a scientific natural law or legal philosophy either in the Ancient World or during the Middle Ages.² Hugo Grotius, that great and shining light in the annals of jurisprudence, Pufendorf tells us, rescued natural law from its ignominious entombment during the whole of the "dark ages." For himself, Pufendorf, who is never at a loss when extolling his own virtues and achievements, claimed the glory of having carried on the work of Hugo Grotius, and of having put natural law and legal philosophy in its final and perfect form.³ Such a gigantic and unheard of undertaking, Pufendorf continued, is something both startlingly new and difficult to understand or appreciate.⁴ Thus in the preface to the first edition of his *Ius naturae et gentium* the following rather exaggerated statement can be found: "*Si ingenio aut industriae meae satis confiderem, supervacuum foret rationes conquirere, quare et ego aliquid operae sumserim circa excolendam et illustrandam nobilissimam atque utilissimam disciplinam, quae diu neglecta et fere ignorata hoc demum saeculo dignitati suae adseri coepit.*"

Thus, if the authority of Pufendorf can really be trusted, there was a

* Associate Professor of Law, University of Notre Dame. [The author wishes to thank Mr. Richard L. Kilmer for his able and untiring assistance in preparing this paper for publication.]

1. *Specimen controversiarum* chap. 1, par. 1: "Hugo Grotius, . . . vir iste incomparabilis nostro saeculo vel classicum cecinisse et signum sustulisse videtur, ut in rebus philosophicis aliquid ulterius et exquisitius investigaretur, quam quo hactenus scholarum parietes resonauerant. Sic ut si qua est pulcherrimus nostro tempore efflorescentis Philosophia gratia, isti viro non minima ex parte debeatur." Compare also *ibid.*, chap. 1, par. 5.

2. *Specimen controversiarum*, chap. 1, par. 5: ". . . in quo [*scil.*, tempore mediaevale] nulla priorum vestigia [*scil.*, iuris naturalis] . . . regebant. . . Eiusdem [*scil.*, Hugo Grotii] opus in universum solidior philosophia moralis rationibus regni tenebrarum adversatur." By "regnum tenebrarum" Pufendorf means the middle ages.—Compare also *Eris scandica*, p. 102; and *Spicilegium controversiarum*, p. 173, where Pufendorf refers to the middle ages as the "barbariei regnum."

3. *Specimen controversiarum*, chap. 5, art. 22: "Quod ego primus sim habendus, qui glaciem fregerim, viamque ad solidam de iure naturae et gentium scientiam monstraverim, id iactasse a mea semper modestia abfuit, nec tanto umquam me sum dignatus honore. Quid laboris heic exhauserim, ipse novi; quod operae praetium fecerim, optimus et eruditissimus quisque liquidissimo iudicabit. Id sane confido, si quam meritis sum eo nomine laudem, fore, ut eam furialis calumniatorum factio mihi non detrahat; et si vivum livor premat, posteritas saltem mihi decus meum rependet."

4. *Ius naturae et gentium*, book I, chap. 1, par. 1.

definite and complete break between the natural law tradition of the Middle Ages and that of modern times. As a matter of fact, Pufendorf's authority was—and still is—so great that, barring a few exceptions, no one has ever seriously challenged him on this particular point, although a passing acquaintance with the history of ancient and mediaeval philosophy or jurisprudence should at once divulge how unfounded this assertion is.⁵ It might be worth our while, however, to check on the scholarly qualifications of the man to whom we are indebted for this still dominant academic tradition that Hugo Grotius is "the real father of all natural law." Pufendorf insisted that Grotius was such because he was the first jurist to ground his legal philosophy exclusively on the social nature of man. For, to Pufendorf, in matters of the philosophy of law the Middle Ages were but a "*regnum tenebrarum*," and he himself the most scientific legal philosopher the world had so far produced.

Samuel Pufendorf was born at Flohe near Chemnitz, Saxony, January 8th, 1632, the son of a Protestant minister. He was educated at Grimma and the University of Leipzig, and then at the University of Jena, where he studied under Erhard Weigel,⁶ professor of mathematics and philosophy.⁷ He left Jena in 1657 and became a tutor in the family of Petrus Julius Coyet, resident minister of King Charles Gustavus of Sweden, at Copenhagen. In 1660 he went to the University of Heidelberg, where he was appointed to the new chair of natural law and the law of nations, the first one of its kind in Germany. This chair was established by Charles Louis, the Prince-Elector of the Palatinate. The Elector was also the protector of Pufendorf, and it was to him that Pufendorf had dedicated his first major work on jurisprudence, the *Elementa iurisprudentiae universalis*, published in 1660. In 1668 he received an appointment to go to Sweden to teach natural law at the newly created University of Lund, and nine years later, in 1677, he moved on to the Univer-

5. Christian Thomasius in his *Historia iuris naturalis paulo plenior* (published in 1719), when referring to mediaeval legal philosophy, always speaks of the "misera conditio iuris naturalis." He also calls Hugo Grotius "an instrument of divine providence." See *ibid.*, chap. 5, par. 14.

6. See Pufendorf, *Eris scandica* (4th edit.), p. 105.

7. It was Erhard Weigel who interested Pufendorf in legal philosophy and thus had a decisive influence upon the latter. Weigel, however, cannot be blamed for the many scholarly shortcomings of his pupil. For Weigel was really a good scholar and teacher, as evidenced by the fact that Leibniz was one of his disciples. Weigel's most famous philosophical works are: *Theodixis Pythagorica, h. e. demonstratio mathematica dari Deum*, Jena (date of publication unknown); *Corporis pansophici tautologia*, Jena 1673; *Spherica, Euclideo modo conscripta*, Jena 1688; *Philosophia mathematica theologica naturalis*, Jena 1693; *Idea matheseos universalis*, Jena 1669; *Error publicus in virtutibus docendis per tota saecula commissus*, Hague 1691; *De modo existentiae quae dicitur duratio*, Leipzig 1652; *Analysis Aristotelica ex Euclide restituta*, Jena 1658. It seems that Weigel suggested to Pufendorf that he write a treatise on natural law, "more geometrico demonstrata." In his *Elementa iurisprudentiae universalis*, published in 1660, Pufendorf tried to comply with the wishes of Weigel, as can be gathered from the introduction to this work.

sity of Stockholm. In 1688 he returned to Germany to join the Prussian Court in Berlin, where he died on October 25th, 1694, at the age of 62.

His first major work on jurisprudence, the *Elementa iurisprudentiae universalis* did not meet with an overly enthusiastic reception. Perhaps for this reason he revised and enlarged this work under the new title of *Ius naturae et gentium*,⁸ which was first published at Lund, in 1672. This work, in eight books, was to become his *magnum opus* and the basis for his great reputation. It was translated into German by Immanuel Weber, into French by F. Barbeyrac, into Italian by G. B. Almisi, and into Russian by the express order of Czar Peter the Great. In addition, many commentaries on the *Ius naturae et gentium* soon began to appear, the most renowned of which was that of Nicholas Hertius, a professor at the Hessian University of Giessen, in 1706. Barbeyrac also published a commentary in 1706, and Immanuel Weber added the commentaries of Hertius and Barbeyrac to his German translation. A rather thorough interpretation and defence of Pufendorf's *Ius naturae et gentium* was furnished by Christian Thomasius in his *Institutiones iurisprudentiae divinae*, which first appeared in 1688 and which saw no less than four editions, before the last one was published in 1735. Similarly popular was Pufendorf's "text book" on natural law, the *De officio hominis et civis secundum legem naturalem*, published in 1673, which likewise was translated into many languages. This *De officio* is in fact only an abridgement of the *Ius naturae et gentium*, but the reputation of this latter work was also immense. As late as 1820 the University of Paris decreed that all lectures on natural law and jurisprudence delivered at the University must be based on the *De officio hominis et civis*.⁹

The *Ius naturae et gentium* of 1672, the main juristic work of Pufendorf, is in the final analysis nothing more than an expansion of, although certainly not an improvement over, his earlier work, the *Elementa iurisprudentiae universalis* of 1660. Aside from these primarily systematic or didactic works, Pufendorf also produced a number of apologetic and polemic writings, which throw a good deal of light on the true scholarly qualifications and temperament of their author. The first of these apologetic works is the *Apologia* which was published in 1674. It is directed against an open denunciation of Pufendorf, the *Index Novitatum*, an indictment issued at Giessen (Hessia) in 1673 by the Protestant faculty of theology at the University of Lund. This faculty, which still held to the thomistic or scholastic natural law tradition, was seriously upset by Pufendorf's unorthodox views on the origin, foundation, nature, and function of natural law. The *Apologia*, which in its polemic

8. Beginning with this work the majority of the many subsequent authors on natural law used the stereotyped title of "ius naturae et gentium."

9. See C. Kaltenborn, *Die Vorläufer des Hugo Grotius* (1848), p. 54.

spirit hardly deserves this title, marks the opening of a protracted and bitterly fought controversy between Pufendorf, who essentially espoused a nominalistic standpoint, and these Protestant defenders of the old scholastic-aristotelian natural law tradition. During this controversy, which lasted without interruption or let-up for over fifteen years, the faculty of theology at Lund was abetted by a large number of the most outstanding continental philosophers and jurists, who took issue with Pufendorf's notion of the nature of natural law. Among these were Leibniz, Valentin Alberti of Leipzig, Valentin Velt hem of Jena, and Johann Zentgrav of Strasbourg. From Sweden Pufendorf countered their arguments quite vehemently and tactlessly in several pamphlets which were later collated in the *Eris scandica, qua adversus libros de iure naturae et gentium dicuntur*, which was published in 1688 in Frankfurt on the Main. In 1735 this *Eris scandica* saw a second edition which contains the *Apologia* of 1674, the *Specimen controversiarum* of 1678, the *Spicilegium controversiarum* of 1680, and several polemic letters addressed to Scherzer, the famous jurist and philosopher, and to some of Scherzer's friends.

In all these polemic or apologetic writings Pufendorf displays a spirit of haughtiness, intolerance, and self-aggrandizement which is never shaken, even by the most telling counter-arguments of his adversaries. But at the same time these "apologies" are the best examples of Pufendorf's scholarly ineptitude and lack of real understanding of philosophical problems; and they also betray his real ignorance of historical facts. For in these writings he was pressed to divulge more of the details of the philosophical foundations underlying his legal theory, and also he was forced to confess the true motives which prompted him to write his systematic works. It seems that these motives were largely inspired by a tremendous capacity for petty animosities.

Another aspect of Pufendorf's character is to be seen in his historical works. All of these are distinguished chiefly for their servility, for Pufendorf was always a worshipper of princes and dynasties. Beginning with the dedication of his *Elementa iurisprudentiae universalis* to Charles Louis, Prince-Elector of the Palatinate, he later transferred his affections to the Swedish House of Vasa, in repayment for his appointment to the University of Lund. In Sweden, under the patronage of King Charles XI, he produced two glorifications of the Swedish dynasty, the *Commentaria de rebus Suecicis ab expeditione Gustavi Adolphi neque ad abdictionem Christinae* (Utrecht, 1686), and the *De rebus gestis Caroli Gustaphi Sueciae regis* (Nurnberg, 1695). Years later, upon his return to the Prussian Court at Berlin, he performed a similar service for the Hohenzollerns, with the publication of the *De rebus gestis Friderici III, Electoris Brandenburgici* (Berlin, 1684), and with the *De rebus gestis Friderici Wilhelmi Magni Electoris Brandenburgici* (posthumously published, Berlin, 1695). All these historical works of Pufendorf were

written in a spirit of blind adoration and abject flattery for the princely personages involved—an adoration which always paid off very handsomely. Nevertheless, it must be admitted that as a historian he did more creditable work than as a philosopher and jurist, a fact for which we have the testimony of Leibniz.¹⁰

Pufendorf did not confine his activities outside the field of philosophy and jurisprudence to history alone. He also was active as a political pamphleteer and as an opponent of the political ambitions of Rome. In the realm of politics he produced in his earlier years a polemic attack on the House of Hapsburg and its German Empire, the *De statu Imperii Germanici* (Paris, 1667). This work caused great consternation in the chancelleries of the various German principalities by its outspoken criticism of Hapsburg diplomacy and the Hapsburg rule in general. Prudently, Pufendorf had published the book in Paris under the pseudonym of Severinus a Monzambano da Verona. Twenty years later, after he had entered the service of the Prussian Court, he produced his famous *De habitu religionis Christinae ad rem publicam* (Bremen, 1687). Not content with all this, in his spare time he also wrote two significant anti-papal tracts, the *Historische und politische Beschreibung der geistigen Monarchie des Papstes* (Hamburg, 1679), and the *Politische Betrachtungen der geistigen Monarchie des Stuhls zu Rom* (Halle, 1714).¹¹

This vast output was certainly responsible for at least some of the influence and reverence which Pufendorf enjoyed among the majority of his own contemporaries. This influence and reverence also carried over to affect many writers of the eighteenth century, presumably the age of reason and enlightenment. Thus Johann Schmauss, professor at the University of Göttingen in the middle of the eighteenth century, informs us that “at the time of my earlier student days, namely in 1704 and 1705, when I began to study natural law, the *De officio hominis et civis*, a work of the illustrious Pufendorf, was the great vogue in nearly all the colleges and universities. With the exception of a few theologians who still clung to the scholastic teachings, there were few Protestants who doubted that his legal system contained the last truths as to the real nature of natural law.”¹² Thus Schmauss comes to the conclusion that “in essence everyone so far has done nothing more than merely plagiarize these two authors [Pufendorf and Christian Thomasius] without further investigation.”¹³ And Adolf F. Glafey, in his *Vollstaendige Geschichte vom*

10. In: *Leibnitii epistolae ad diversos*, edit. Kortholtus, vol. IV, part 22, p. 4.

11. We should also mention here some of the minor works of Pufendorf, such as his *Einleitung zur Geschichte der vornehmsten europaeischen Staaten* (Frankfurt, 1682); the *Gregorii Castriotae Scanderbeg historia* (Stade, 1684); the *Dissertatio de foederibus inter Sueciam et Galliam* (Hague, 1708); and the *Epistolae amoebeae Pufendorfi et Groningii de commercii peccatorum et belligerantes*, in: *Bibliotheca universalis librorum iuridicorum Groningiae* (Hamburg, 1703).

12. Johann Schmauss, *Neues Systema des Rechts der Natur* (1754), prooem.

13. Johann Schmauss, *op. cit.*, p. 274.

Recht der Vernunft, informs us that Pufendorf's *De officio hominis et civis* "was written and organized so perfectly that so far most of the German universities have limited the teaching and study of natural law to the expounding and memorizing of said book."¹⁴ Franciscus Buddeus (Budde), professor at the University of Jena, in his *Historia iuris naturalis* calls Pufendorf a "*virum perspicatissimum*" who in his achievements surpasses even the illustrious Hugo Grotius.¹⁵ And Christian Thomasius, himself a man of no mean ability, claims outright that Pufendorf had given natural law its proper and final form, something which even the famous Hugo Grotius had failed to achieve.¹⁶

However, the verdict of the somewhat more qualified and better informed philosophers contemporary to Pufendorf as to his scholarly abilities and qualifications is much less favorable. Leibniz, who was on the whole an extremely tolerant and conciliatory person, calls him "a fair jurist, but a very poor philosopher—*parum iuriconsultus et minime philosophus*."¹⁷ Johann Böcler, professor at the University of Strasbourg and one of the outstanding historians of philosophy of his time, openly accuses Pufendorf of knowing neither ancient nor mediaeval nor modern philosophy.¹⁸ Irritated by Pufendorf's insistence that the philosopher could gain nothing from reading the ancient authors, the same Böcler states that anyone who, like Pufendorf, treats Aristotle with contempt is merely a cheap "philosophaster," who displays nothing but "arrogant ineptitude and extreme stupidity."¹⁹ Hermann Conring, professor of philosophy at the University of Helmstedt, likewise points out that Pufendorf is quite unfamiliar with the problems of philosophy and with their history, and that the little he knows about this subject is of a most superficial nature: "As regards the history of ancient philosophy, I have always realized that Pufendorf knows practically nothing. As a matter of fact, carried away

14. P. 213. We have already mentioned that as late as 1820 the University of Paris insisted that Pufendorf's *De officio hominis et civis* should be used as the official textbook underlying all lectures on natural law.

15. Franciscus Buddeus, *Historia iuris naturalis*, p. 33.

16. *Historia iuris naturalis paulo plenior*, Halle 1719, chap. 6; proem.

17. In: *Leibnitii opera omnia*, edit. Dudens, vol. IV, part 3, p. 261.

18. In: Letter of January 26, 1663, addressed to Boyneburg. This letter can be found in the appendix of Christ. Thomasius' *Historia iuris naturalis paulo plenior*, p. 182: "Quid mihi de antiqua philosophia venditet, quid Graeca cum Pufendorffio perunctorie attigit, qui Aristotelem, Platonem et alios non nisi alieno ore loquentes intelligit, qui interpretes ipsorum Graecos infinita doctrina plenos, qui Poetas cum doctissimis Scholasticis graecis, omni denique scriptorum Graecorum genus ne a limine quidem salutaverit." Böcler then continues: "In veteribus tamen certum est, non tam versatus est Pufendorffius quam iactitat. Constat mihi ea de re invictis argumentis. Omnibus votis ego optarem tantum Pufendorffium eum veteribus graecis latinisque contraxisse familiaritatem, quantam ille vult videri iam consecutum esse. Nemo me facile hic deceperit, nimis diu hoc saxum volvi. Et longe alia iam vestigia talis peritiae extarent in opere Pufendorffii, si compos esset huius facultatis, quum ne in Grotio quid satis intellegere eum aut aestimare persuasissimum habeo."

19. In: Letter of February 3, 1663, addressed to Boyneburg, in: Christ. Thomasius, *Historia iuris naturalis paulo plenior*, appendix pp. 213 ff.

by too much confidence in his own ability, he seems to treat ancient philosophy with open contempt. Nevertheless I am quite sure that he could do creditable work if he would only assert his talents in the right manner. He could do even better work if he would condescend to read the works of the ancient and modern philosophers with greater solicitude, and if he would learn how to constrain the fiery impulses of his mind by using some measure of circumspect moderation.”²⁰

In order to counteract all these criticisms which were directed against the philosophical shortcomings of his first major writing, the *Elementa iurisprudentiae universalis* of 1660, Pufendorf, as has already been mentioned, published in 1672 his main work, the *Ius naturae et gentium*. While the *Elementa* lacked almost completely any references to ancient authorities, this new work was vulgarly overcrowded with a host of quotations taken at random from ancient authors. This method of answering his critics was typical of Pufendorf, and it fully bore out the contention of Böcler and Conring that Pufendorf knew nothing of the history of philosophy and jurisprudence. For in his eagerness to impress his critics with his learning and knowledge, when citing from other sources, he failed to use either discretion or discrimination. As a matter of fact, his rather pathetic mania for quoting any and every ancient author of whom he had gained a mere passing acquaintance is convincing proof that he never fully understood what he was actually citing. Certainly the famous passage from *I Timothy* 1:7 can *mutatis mutandis*, appropriately be applied to Pufendorf: “Desiring to be teachers of the law; understanding neither what they say nor whereof they affirm.” Nevertheless, Christian Thomasius, then a great admirer of Pufendorf’s “genius,” was so overwhelmed by this display of superficial learnedness that he exclaimed jubilantly: “Pufendorf in his new work has now completely refuted all those slanderous critics who accuse him of not knowing any history of philosophy.”²¹ Nothing, however, could be wider of the truth than this sycophantic statement of Thomasius. For in all matters pertaining to the history not only of ancient philosophy, but of all philosophy in general, the *Ius naturae et gentium* is actually one of the truly classic examples of abysmal ignorance and incompetence. The reaction against this display of scholarly incompetence came only too soon. Valentin Velthem, professor of philosophy at the University of Jena, in his *De Quaestione, nam actus dentur per se honesti aut turpes, quiqui adeo in sua natura sint debiti et illiciti* (Jena, 1674); Johann Zentgrav, professor of philosophy at the University of Strasbourg, in his *De origine et veritate iuris nat-*

20. In: Letter of February 20, 1663, addressed to Boyneburg, in: Christ. Thomasius, *Historia iuris naturalis paulo plenior*, appendix pp. 191 ff. From the dates of these letters it is quite obvious that all these criticisms are directed against Pufendorf’s *Elementa iurisprudentiae universalis*, published in 1660.

21. Christ. Thomasius, *Historia iuris naturalis paulo plenior*, p. 92. Compare also Christ. Thomasius, *Fundamenta iuris naturae et gentium* (1705), preface, par. 3.

uralis (Strasbourg, 1674); and Samuel Strimesius of Frankfurt, in his *Praxologia apodictica* (Frankfurt, 1673), to mention only a few, soon began a series of pitiless and well-founded attacks on Pufendorf.

These attacks finally forced Pufendorf, in his "apologetic" or polemic writings, not only to defend himself and his philosophy, but also to show a more serious concern for philosophical problems and their history. But in doing this he displayed to an even greater degree his complete ignorance and ineptitude in the field of philosophy. Once again he revealed the same sort of haughtiness and loquaciousness which had been characteristic of his earlier writings. We find him admitting proudly that he had never studied seriously the philosophical systems of either Plato or Aristotle, and that the little he knew about them had only confirmed his conviction that they did not contain anything of importance.²² Metaphysics he denounced as a "barbarous science."²³ Plato's doctrines concerning the nature of the Ideas he simply called "*splendidae nugae*—resplendent clouds."²⁴ They were created by the Platonists, according to Pufendorf, in order to mislead people, and were merely the products of sophistic minds.²⁵ In the same breath he conceded that his own system of natural law was not so much the result of his quest for an objective foundation of positive law, but solely the outgrowth of his deep resentment against the scholastic or Aristotelian tradition.²⁶ For to him Plato and Aristotle spread only absurd and erroneous political doctrines, some of which he thought definitely pernicious and apt to cause serious political upheavals.²⁷ Hence he asserted that Platonic or Aristotelian philosophy was not adapted to become the scientific foundation for a rational and practically workable system of natural law.²⁸ As a matter of fact, he denounced the Aristotelian notion of natural law as sheer "politics,"²⁹ thus confounding Aristotle's practical application of natural law to a concrete situation with Aristotle's philosophical theory of natural law. In addition, he had nothing but contempt

22. *Eris scandica*, p. 351.

23. *Eris scandica*, p. 261. Compare also *ibid.* p. 319; *Apologia*, prooem.

24. *Spicilegium controversiarum*, chap. 1, par. 8; see also *ibid.*, chap. 1, par. 7; chap. 1, par. 3.

25. *Spicilegium controversiarum*, chap. 1, par. 3.

26. *Eris scandica*, p. 102: "Circa qua excolenda laborem a me susceptum profiteor eo fine, ut quantum in me quibusdam Protestantium scholis exturbarem ieiunam illam Aristotelis Ethicam, circa evolvenda undecim virtutum vocabula satagentem; et politicam eiusdem inutilem, ac quaedam dogmata reipublicae perniciosam continentem integritati et sanitati restituerim: utique nostrates ex sana ratione, quam lacunis Moralistarum, quod iustum et iniustum sit eruere mallent. Quem meum laborem et scopum rei literariae et publicae salutarem existere, vel hoc argumento non parum confirmor, quod sentiam Satanam, per primum suum satellitem tantum furorem in me effundere; utpote cui dolet regnum tenebrarum detrimenti quid capere."

27. *Ius naturae et gentium* (2d edit.), prooem.

28. *Spicilegium controversiarum*, chap. 1, par. 18; Compare also *Eris scandica*, p. 343.

29. *Spicilegium controversiarum*, chap. 1, par. 4; see also *Ius naturae et gentium* (2d edit.), prooem.

for Aristotle's teachings concerning moral virtues, a contempt which was more the result of ignorance than of scholarly analysis.³⁰

After making these rather rash statements concerning the philosophies of Plato and Aristotle, Pufendorf proceeds to prove that Stoic philosophy and Stoic natural law in particular were much superior to anything Plato and Aristotle ever produced: "What is there more perfect and more sublime than the moral precepts which have come down to us in the books of such Stoic philosophers as Seneca, Epictetus, and Marcus Aurelius?"³¹ Turning to his own notions, he maintained that his views and theories were very similar to the "*Stoicorum sanae doctrinae*."³² For his basic principle of all natural law—the *socialitas* or social nature of man—was, he felt, very much like the fundamental Stoic viewpoint.³³ How little he actually knew about the historical aspects of this particular problem can be gathered from the *Spicilegium controversiarum* in which he states that the notion of the *socialitas* was not only familiar to Plato, Aristotle, and the early Stoics, but that it also constituted the rational basis of all Platonic, Aristotelian, and Stoic natural law theories.³⁴

Aside from his rejection of Platonic and Aristotelian philosophy, Pufendorf also displayed great animosity and resentment against mediaeval philosophy—of which he was apparently even more ignorant than of ancient philosophy. Without any qualifications whatsoever he called the Middle Ages a "*regnum tenebrarum*,"³⁵ an age which never had any proper notions about natural law.³⁶ In this he merely followed the example of the quite worthless work of Adam Tribbechovius on the history of mediaeval philosophy, a work, published in 1665, which carried the rather significant title, *De doctoribus*

30. See, for instance, C. Varrentrap, "Briefe von Pufendorf," in: *Historische Zeitschrift* vol. 70 (1893), p. 31. E. Gigas, *Briefe Samuel Pufendorfs an Christian Thomasius* (1893), p. 23.

31. *Ius naturae et gentium* (2d edit.), prooem.

32. *Spicilegium controversiarum*, p. 103: "Ego enim Stoicorum sanae doctrinae proxime accedo."—Compare also *ibid.*, p. 102.

33. *Eris scandica*, p. 74.—About Pufendorf's notion of the "socialitas," see, among others, *Ius naturae et gentium* (1st edit.), prooem. *Ibid.* book II, chap. 2, par. 4; book I, chap. 4, par. 6; book I, chap. 2, par. 5.

34. *Spicilegium controversiarum*, p. 74. Had Pufendorf really wanted some accurate information concerning the particular aspects of Stoic philosophy, he could easily have consulted the following contemporary works on the Stoics: Heinrich Uffelmann, *Exercitatio philosophica de Platonis, Aristotelis, Stoicorum et Epicuri philosophi morum doctrinaeque Aristoteleae praerogativa*, Helmstedt 1668; C. Scioppius (Schoppe), *Elementa Stoicae philosophiae moralis*, Mainz 1606; D. Barleanus, *Ethica secundum Stoicos composita*, in: Heinrich Oanisius, *Lectiones antiquae* (1604), vol. IV; Joachim Camerarius, *Ethicae Aristotelis Nicomachiae explicatio*, Leipzig 1570; The revival of Stoic philosophy during the sixteenth and seventeenth centuries in Germany actually goes back to Justus Lipsius (1547-1606), who wrote the following works on the Stoics: *Manuductio ad Stoicam Philosophiam* (1604); and *Physiologia Stoicorum* (1604). See also Johann Johnston, *Enchiridium ethicum ex sententiosissimum dictis concinnatum*, Breslau 1658.

35. *Eris scandica*, p. 102.

36. *Spicilegium controversiarum*, chap. 1, par. 1; see also *ibid.* chap. 1, par. 5.

*scholasticis corrupta per eos divinarum atque humanarum rerum scientia.*³⁷ Pufendorf then proceeded to condemn St. Thomas Aquinas, Francisco Suarez, and a good many other scholastic philosophers and theologians for having spread only confusion.³⁸ These mediaeval philosophical writers, according to Pufendorf, by using barbaric terms and frivolously subtle but futile distinctions, committed only intellectual fraud and deception, without contributing anything to human civilization and the proper conduct of human life.³⁹ Hence, he concluded, it is better not to know anything than to know scholastic philosophy.⁴⁰

In Pufendorf's opinion the worst crime the scholastic thinkers committed was to rely completely (so he thought) on the dangerous authority of the "decrepit" Aristotle, whose legal and political writings he considered not only absurd and full of errors, but also scandalous and conducive to political unrest.⁴¹ This reliance upon Aristotle was the more regrettable, Pufendorf insisted, since the moral and legal teachings of the Stoics were as easily accessible to the scholastic philosophers as they were superior to the works of the Stagi-

37. Also under the influence of Adam Tribbechovius is Jakob Brucker's *Historia critica philosophiae*, published in 1742, which became Immanuel Kant's main source of information concerning ancient and mediaeval philosophy.

38. *Spicilegium controversiarum*, p. 174: "Vos venerandi mei Praeceptores Theologi, vos inquam rogo, vos obtestor, eloquamini, per Deum eloquamini; an Moralistarum Princeps Thomas, Metaphysicarum Papa Suarez, Molina, Vasquez, Valentia, Conimbricenses, Sanchietz, . . . scriptores determinate dignissimi, nugas duntaxat vendidaverint." Valentia is Gregory of Valencia in Spain.

39. *Spicilegium controversiarum*, pp. 174 ff.: "Scilicet quia agere ferunt illi, qui omnem aetatem in Scholasticorum lacunis contriverunt, in votis mihi esse, ab orthodoxa iuventute limpidos Doctrinae moralis fontes adiri. Quid enim in hoc genere praestabilius a me posse effici? De caetero, quo minus elogiis Scholasticorum oppido quam frigidis immoriatur Velthemius, ego quidem minime omnium invideo. Habet ille secum suas delicias, servetque sepulchro; gaudeant similibus labra lactucis, consenescat in nugis, denique vel vivo ob propagatum barbariei regnum in Beatorum classem transcribatur. Maiorem saepe mihi adplausum apud solide eruditos polliceor, si Scholasticos dixerim tractare Doctrinam barbaris vocabulis, frivolae subtilitatis speculationibus adornatam, scientiae proficuae inanem, astutissimo consilio nutritam ad otiosa ingenia vanis disputationibus destinanda, ut a scrutendis divinis literis, solidaque eruditione, simulque per se nihil ad culturam aut decus vitae confert; sed et pestilentissima est, dum bonas et utiles literas suffocat, ingenia vana scientiae persuasionem distendit, veraeque sapientiae incapacia reddit. . . . Quin observatum est, eorum, qui unice istis nugis immersi sunt, ingenio vel consideratione afflari, ut circa tractanda solida et serio longe ineptiores, et in conversatione actuque communis vitae longe sint intractabiliores, quam illi, qui sole nativi ingenii bonitate subnixi numquam literas attigerunt."

40. *Spicilegium controversiarum*, p. 174: "Sicut et revera praestet omnes literas nescire, quam nihil praeter Scholasticos nosse."

41. *Ius naturae et gentium* (2d edit.), prooem.: "Sic & multos ante annos meditari Commentarium de *Politica Graecanica*, sed quem alia necessaria magis hactenus intercepere. In eo recensere institueram dogmata Politica a Graecis scriptoribus, comprimis Platone et Aristotele, tradita, quae deinceps sese in Auctores Romanos ac huius quoque seculi scholas scriptoresque diffudere: e quibus non pauca absurda et erronea, alia turpas ac concusiones civitates parere apta inveniuntur. Quale opus in os ingeri cumprimis expediebat illis, qui adhuc pro tuenda decrepiti Aristotelis auctoritate coniurationes inire narrantur Catilinae similes." See also *Eris scandica*, p. 102: ". . . illam Aristotelis Ethicam . . . et Politicam eius inutilem, ac quaedam dogmata reipublicae perniciose continentem, . . ."

rite.⁴² With a few minor improvements, made of course by himself, Stoic moral philosophy and Stoic natural law, in the opinion of Pufendorf, furnish the only solid foundation for a truly scientific system of natural law.⁴³ Pufendorf's avowed resentment against Aristotle and, by implication, against the scholastic natural law tradition in general is, therefore, not merely prompted by his complete lack of any understanding or knowledge of Aristotelian philosophy. It is also caused by political and confessional prejudices.⁴⁴

As a matter of fact, Pufendorf's aversion to Aristotle and the mediaeval Aristotelians was so outspoken that he soon became known as one of the leading "anti-Aristotelians" of his time, a man who was expected to deal the death blow to Aristotelian philosophy.⁴⁵ After having denied that neither Plato nor Aristotle, nor the mediaeval philosophers had any sensible notions about natural law, Pufendorf demanded that all future legal theories revert to the teachings of the Stoics. One may seriously doubt, however, whether he actually knew enough philosophy to be in a position to distinguish Stoic philosophy from other philosophies current in the Ancient World. For what he took for Stoic philosophy was in all probability a form of "Epicurean nominalism" which, through the works of Thomas Hobbes, had become exceedingly popular throughout Europe in the seventeenth century.⁴⁶ In any event, Pufendorf's treatment of certain basic issues of jurisprudence and natural law definitely betrayed a nominalistic tendency common to all sixteenth and seventeenth century authors on legal philosophy who wrote under the influence of the revised Epicurean thought. While it is quite obvious that his method is "Epicurean nominalism" rather than Stoic "realism" or "ontologism," it should be noted that he went definitely against the very spirit of Stoic philosophy (but not against the spirit of Epicurean philosophy) in conceiving natural law as a body

42. *Specimen controversiarum*, chap. 1, par. 4: "Cum enim inter diversas veterum Philosophorum sectas Stoicorum placita, nonnullis emendatis, in solidum iuris naturalis corpus facillime videantur potuisse componi; istis neglectis sola Aristotelis dogmata in scholis rerum posita sunt."

43. *Specimen controversiarum*, chap. 1, par. 4.

44. See here, for instance, *Apologia*, par. 37: "Hobbesium autem et Grotium, qui tam multa a religione nostra abeuntia suis operibus immiserent, ne amplius iuventuti praelegere cogerer, librum meum praecipere edidisse me professus sum." Compare also *ibid.*, par. 6; *Ius naturae et gentium*, book II, part 4, par. 4.

45. See Johann Elswich, *De varia Aristotelis in scholis Protestantium fortuna*, Wittenberg 1720, pp. 86 ff.; 93 ff.

46. Epicurean philosophy experienced a sudden renaissance during the 15th, 16th, and 17th centuries in Europe. The first man who revived Epicureanism was the Italian Laurentius Valla (1407-1457), who in his famous dialogue *De voluptate*, published in 1431, praises Epicurus' philosophy as being far superior to that of Aristotle. Pierre Gassendi (1592-1655) published in 1647 his *De vita et moribus Epicuri*, and in 1649 his *Syntagma philosophiae Epicuri*. George Buchanan (1506-1582) gave an analysis of Epicurean philosophy of law and state in his *Deiure regni apud Scotos*, published in 1579. Through these authors Thomas Hobbes (1588-1679) became acquainted with Epicurean philosophy and Epicurean "nominalism." Through Hobbes, who also had a decisive influence on Pufendorf, this type of philosophical nominalism contributed heavily to the shaping of certain political and legal theories prevailing during the 17th and early 18th centuries in continental Europe.

of legal duties independent of moral or ethical considerations. And this Pufendorf tried to do in the preface of his *De officio hominis et civis secundum legem naturalem*.⁴⁷ Thus we can hardly take Pufendorf seriously when he exhorts us to abandon Plato, Aristotle, and the mediaeval thinkers, and to return to the natural law teachings of the Stoics. For there is every reason to suspect him of not knowing for what Stoic philosophy and Stoic natural law actually stand.

This, then, is the record of Pufendorf as scholar and thinker. As a juristic philosopher Pufendorf was not able to withstand the assaults of many of his contemporaries, although through some incomprehensible process of academism, eventually he came to be regarded as almost the last word in juristic thinking. And as a historian of philosophy, examination at once reveals that his work was completely incompetent, especially in his attitude of contemptuous disregard for all established philosophical authority.

In the light of all this, it is difficult to understand how Pufendorf's statement that the history of natural law began with Hugo Grotius and himself has gone for so many generations unchallenged. For it is a statement which cannot stand up to the scrutiny of competent scholarship. What Pufendorf has said is that seventeenth century legal philosophy constituted a definite and complete breach in a long and continuous tradition of Western legal philosophy. However, contrary to Pufendorf's ill-advised notions, this tradition, which began with the Pre-Socratics in the first half of the fifth century before Christ, is one which has maintained itself uninterruptedly throughout the history of Western thought and, in fact, is still with us. It could hardly be otherwise, for the problem of natural law, the eternal quest for absolute justice and for ultimate moral and legal values above and beyond the chaos and relativity of the positive law, is the true philosophy of law, the true *jurisprudentia perennis*. It is indeed regrettable that the eighteenth and nineteenth centuries failed to challenge this fundamentally absurd and highly misleading contention of Pufendorf.

47. For this Pufendorf was heavily censored by Leibniz. See *Leibnitii opera omnia*, edit. Dudens, vol. IV, part 3, pp. 275-283.