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THE IMPORTANCE OF SAMUEL PUFENDORF'S NOTION OF *ENTIA MORALIA* IN NATURAL LAW PHILOSOPHY (HISTORICAL REVIEW)

Abstract: The aim of the article is to investigate the idea of moral entities (*entia moralia*), one of the two main original intellectual concepts contributed to natural law philosophy by the famous German thinker of the 17th century Samuel Pufendorf. The article clarifies the relevance of the idea in an interdisciplinary perspective, emphasizing the historical discourse of the philosophy of law. The article gives a precise classification and explanation of the forms of *entia moralia*, such as person, status, quality and quantity, distinguishing them from *entia physica*, and demonstrates the significance of this distinction for the philosophy of natural law.

Hopefully, the discussion will deepen our knowledge on some essential questions of early modern natural law philosophy and explore the traces Samuel Pufendorf left in this field; it will also increase interest in contemporary research on the moral issues involved in *new classical natural law theory*.

Keywords: natural law; moral entities (*entia moralia*); physical entities (*entia physica*); natural state; *apetitus socialitas*; moral person; moral qualities; moral quantities; authority; Pufendorf; Grotius; Hobbes.

Иракли Таборидзе – Значението на понятието на Самуел Пуфендорф за *Entia Moralia* във философията на естественото право.

Исторически преглед

Резюме: В статията се изследва идеята за нравствените образувания (*entia moralia*), която представлява един от основните оригинални приноси на известния немски мислител от 17ти век Самуел Пуфендорф към философията на естественото право. Показва се релевантността на тази идея в интердисциплинарна перспектива, като се набляга на историческия дискурс във философия на правото. Предлага се точна класификация и обяснение на *entia moralia*, и по-специално на елементите личност, статус, качество и количество, като се показва отликата им от *entia physica*, и се обосновава значението на тази отклика за философията на естественото право.

Надяваме се, че това изследване ще задълбочи познанията по някои съществени въпроси на ранната модерна философия на правото и ще покаже приноса на Пуфендорф към тази област, както и че ще засили интереса към съвременните изследвания върху нравствените проблеми в *новата класическа теория на естественото право*.

He who so interprets the supreme good as to disjoin it from virtue, and measures it by his own convenience, and not by the standard of right, — he, I say, if he be consistent with himself, and be not sometimes overcome by natural goodness, can cultivate neither friendship, nor justice, nor generosity.¹

Marcus Tullius Cicero *On Moral Duties*

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¹ <http://oll.libertyfund.org/titles/cicero-on-moral-duties-de-officiis>.

Introduction

Philosophy of Law directs fundamental questions of philosophy (*What exists? What ought I to do? What is Good? How is it possible to perceive the first two questions?*) towards the law itself, in its broadest sense: *What is Law? What ought to be done?* and *How do I perceive it?* Similarly to philosophy in general, philosophy of law proposes profound and systematic reflection on these fundamental questions, in this case regarding law issues; and it has normative, analytical and holistic dimensions, likewise (Alexy 2004: 156, 158).

Plato was the first of the natural law thinkers to develop the aforesaid natural law² issues on a large scale, namely: the idea of justice and the nature of law; the relationship between written and unwritten law; the necessity for the basic law principles to prevail over the current law policy concerns and expedience. He used the form of literary dialogue making it possible for each interlocutor to fully state his opinion on the debatable question. The author of dialectical debates is like a person playing chess against himself, who at the start lives chance to win for „both parts” of game party; whereas the reader gains the opportunity to analyze the issue from several and not only from stronger contradictory angles. Presumably, it's not only the contents of these universal and immortal texts, but the above-mentioned thought-provoking style that made English philosopher A.N. Whitehead say his famous words: “The safest general characterization of the European philosophical tradition is that it consists of a series of footnotes to Plato” (Gröschner, Dierksmeier, Henkel, Wiehart 2000: 11). If we divide the myriad of footnote creators into two nominal groups according to the philosophy of law discourse: philosophy-of-law thinkers (which include Plato himself) and the other more large group, among the first personalities of the former group we will see a figure of German, or to be more precise, of Saxon descent, whose name and achievements nowadays is known mainly to the narrow group of specialists and not to the wide circle of people with a philosophy interest, the unfortunate fact which was totally the opposite in his lifetime and the following years. It is the 17th century legal philosopher who held the first chair for “the law of nature and of nations” at Heidelberg University, the author of one of the first hand books on natural law, as well as the historian of two European monarchical states – Sweden and Brandenburg with the abundant written inheritance of their external relations – *Samuel Freiherr von Pufendorf* (1632–1694).

The purpose of the research

The purpose of our research is to clarify the importance of Samuel Pufendorfs concept of entia moralia for the philosophy of natural law.

Results

It should be noted at the beginning that Samuel Pufendorf despite his continuous debate with Aristotelian thinkers, false understanding of him or with Aristo-

² In this article the notion of natural law means establishing body idealistic phenomenon in initial law and differentiates from state or customary law and in this differentiation it essentially contradicts the positive law approach excluding very existence of such instance.

tle himself, is more of an Aristotelian rather than Platonic philosopher on a number of essential questions, the fact which is especially well observed in regard to the role small communities such as families, households and tribe play both in Aristotle's and Pufendorf's thought. The best state model for the two thinkers has to organize the abovementioned groups in such a way that they function in an optimal mode both for their own, as well as common interests, instead of being merged or replaced (Gröschner, Dierksmeier, Henkel, Wiehart 2000: 40–41). And state itself is for Pufendorf not some supernatural body but merely form of organized society where single person is able to develop his *telos* in cooperation within communities.

Pufendorf's eclectic doctrinal preferences (including elements of antique, critically reflected medieval and early modern natural law aspects) induce us to consider the significant part Roman stoicism plays in his beliefs, especially the moral philosophy of another eclectic thinker Cicero, in particular. Noteworthy is the similarity of the title that the abridged version of Puffendorf's main treatise bears, a short compendium *De officio hominis et civis juxta legem naturalem* (*On the Duty of Man and Citizen According to Natural Law*) to the title of the last philosophical work by Cicero *De officiis* (*On moral duties*).

The Stoics were the first to consider natural rights to be inherent proper part of the natural human community members, arising from the fact that they are humans and, consequently, have common nature³. Similarly to the Roman Stoics Pufendorf shapes duty ethics based on shared human nature and basic equality of all people. On this way proposes to make interests of others the source of one's own duty, the validity of which is conditioned by common human reason, thereupon leading to perceive the category of human rights.

What is so special in Samuel Pufendorf's thought that makes it necessary to mention him every time we observe the intellectual tradition of natural law, particularly the rational natural law of the early modern age?

To put it in simple words, it is a social system model best combining the human essentials of egoism and altruism which has place in a free society based on a comprehended and implemented inherent principle of mutual responsibility (Seelmann 2010: 140). As a result we observe in legal and state philosophy a constellation and establishment of concepts and institutions connected to the basic idea, as well as following from it, according to the specific standards of modern age, unprecedented either in the works of the Stoics and Cicero or in those of the inspirers related to Pufendorf in terms of spirit of time and age, namely Thomas Hobbes (1588-1679) with his influential work *Leviathan* (1651) and Hugo Grotius (1583-1645) with a treatise no less paradigmatic for political

³ Brad Inwood, Fred D. Miller, *Law in Roman Philosophy: A Treatise of Legal Philosophy and General Jurisprudence*, Enrico Pattaro Edit.-in-Chief, Vol. 6, *A History of the Philosophy of Law from the Ancient Greeks to the Scholastics*, Fred D. Miller, edit., by, Jr. Department of Philosophy, Bowling Green State University, USA in association with Carrie-Ann Biondi John Jay College of Criminal Justice, CUNY, USA, Dordrecht, The Netherlands: Springer, 2007, 161–162.

and legal thought of the modern age *On the Law of War and Peace (De jure belli ac pacis 1625)*.

To be more precise: Samuel Pufendorf binds the classical natural law idea of modern age (the unity of laws in a state ought to arise from and be built coherently upon a basic principle, in a deductive connection that makes it possible to descend from the top of the system to its initial element) (Scattola 2009: 22) to the principle of duty, a connection still relevant today. He achieves it by synthesizing the leading traits of human nature: that of *self-preservation*, accentuated by Hobbes, and the principles of the Stoics, reactualized by Grotius, concerning *apetitus socialitas – aspiration to community* (in difference with Grotius transforming it from inherent treat of man into duty).

What was his purpose of working in this direction and what tasks did he encounter in the process?

The objectives Samuel Pufendorf assigns to himself are of universal importance to philosophy of law: to attain independence of natural law from teleological supremacy without a life and death struggle against the latter, and to use all the benefits of the new trends of natural sciences and natural philosophy without total identification of science of law with it as a normative per se.

The mutual differentiation between natural and positive law should also be indicated, which, in turn, needs a new theoretical base on every stage of natural law development, especially if we consider the fact that forms of state, which play the main part in positive law, differ considerably in every era and transformation is seen in interpretations of nature of law as well. Achieving the first objective meant to successfully confront a deep-rooted authority of Catholic and Protestant university scholastics, which had not seen any significant opponent in Protestant Europe, except for Martin Luther and his successive adherent Samuel Pufendorf. He creates two main original concepts in the process that become crucial in achieving the above-mentioned objectives. The first one is the notion of '*entia moralia*', or moral entities potentially existing in every human being; the other one is the concept of natural duty. In this paper, we will discuss the former to identify the importance of the concept for idealistic understanding of law, i.e. natural law philosophy, as well as to point out the caliber of the author as a brilliant thinker.

entia moralia

The notion of moral entities is the most remarkable intellectual construct given by early Pufendorf (Kobusch 1996: 67–82) (first appeared in *The Elements of Universal Jurisprudence* which is his initial work in Natural Law) for ontological understanding of Law, which constitutes a philosophical background for his notion of duty (*officio*), because although his approach to morality is an interpersonal or public one, still he sees natural duties not as technical or compulsory instruments maintaining public order, but as a phenomenon of moral dimension.

The importance of the notion for Pufendorf himself can be seen from the fact that not only his early work but also his opus magnum: *On the Law of Nature and of Nations (De Jure Naturae et Gentium, Libri Octo, 1672)* begins with a chapter

titled *On the Origin and Variety of Moral Entities*, where he states his belief that moral entities (*entia moralia*) are neglected in comparison to the much-studied physical objects (*entia physica*), even though “it greatly behooves man to know the nature of such entities, which he has received the faculty to produce, and whose power deeply suffuses itself throughout his life” (Pufendorf 2009: 99).

By separating the concepts of *entia physica* and *entia moralia* Pufendorf manages to avoid the total domination of naturalism in natural law science, a threat arising from unconditional usage of Cartesian method by Hobbs and Spinoza (Denzer 1972: 70), without arguing against the natural sciences, whose method he valued against the syllogistic one of the scholastics.

Entia moralia originates as a supplement (*impositio*) through free act of a human being to its own self; unlike *entia physica*, which constitutes a creation (*creatio*).

The highest manifestation of human will for Pufendorf is freedom demonstrated in indifference and free self-determination. Indifference denotes the relation of the will to the possible actions wherein the choice can be made without any compulsion; whereas free self-determination signifies that the choice of an action derives from the will only, through its inner stimulus, acknowledging what he is doing, on the other hand (Welzel 1958: 23).

If human freedom embodies the correlation between will and reason, it turns out that natural law, which targets improvement of human life, should involve both of them in one form or another.

The law cannot force the will to act; it empowers the latter with a specific perception which leads it to judge its own action itself. At the same time it explains the reason why free will is the initial premise on which any act differentiated as a moral act is based (Ibid.: 23–25).

While in common language judgment of reasoning mind concerning the law on morality is referred to as conscience, Pufendorf divides it into ‘preceding’ and ‘subsequent’ conscience, according to whether it gives its judgment before a person acts or after it (Pufendorf 2009a: 110).

Moral Entities, which exist solely within a physical aspect, being a characteristics of the latter, when imposed to *entia physica* leave the physical structure intact but enrich it with a new moral feature. The differentiation of the two can only be the matter of methodical abstraction.

Since Pufendorf sees a correlation not only of *entia physica* with mental phenomena but with spatial-corporal one as well, it would be incorrect to interpret *entia moralia* as a mental experience. The moral forms of existence are as much physical as mental, though they are not identical to any of the two. Including or losing *ens morale* doesn’t make changes in physical or mental qualities. To illustrate the process, Pufendorf in a polemic collection *Eris Scandia (Scandinavian Quarrel)* gives an example of a student maintaining a thesis, showing that the student doesn’t change on a mental or physical level, although he acquires a „moral quality” (in sense of level of higher education), a doctor’s degree and enters a new state.

It must be borne in mind that *ens morale* is the part of subjective reality for the person possessing it. It is not an intellectual fiction of any kind; moreover, it is as real as *ens physica*, in relation to which it exists. Its substantiality is not identical to mental or physical reality, but it is a sensually indifferent phenomenon to physical or mental aspect while bearing moral essence. Cultural life is nothing more but organizing natural being according to a certain sense. Any physical or mental manifestation examined abstractedly from *entia moralia* is value-neutral, i.e. neither right nor wrong. In the same time the concept of *entia moralia* helps him to reflect about „natural values”, as it were, as when things are suited to produce certain outcomes.

Pufendorf differentiates **four kinds of *ens morale*** by analogy with categories of physical objects: **person** (*persona*), **state** (*status* – refers to a space of duties and rights determined by a normative framework, with the meaning of moral positioning in a society and time conditions), **qualities** (*qualitas* – affective/effective modes) and **quantities** (*quantitas* – estimative modes) (Ibid.: 116–118).

In spite of the fact that every *ens morale* lacks substantial existence and is conditioned on a free act of a person and is in no way guaranteed, one of its modes referred to as a **moral person** can be considered analogously to substance, inasmuch as the other modes of *entia moralia* are based on it, in a like manner as physical qualities do to physical substances (Ibid.: 101).

They are divided into simple and compound moral persons, both of which contain public and private, political and ecclesiastical, and similar parts. Moral persons should be separated from humans bearing certain mental and physical qualities. Thus, a single person can be a carrier of several different personas, as well as to be in several different statuses.

Similarly to physical substances creating the basis of existence in forms of time and space, moral persons are present in a **status (state)** which is analogically ordered to an intellectual system of physical variables; states define a certain moral-legal space in which persons operate as bodies (Stanford Encyclopedia of Philosophy 2016). In contrast to time and space, which belong to objective reality, status represents a system of relations which doesn't exist on its own without persons involved in it. State consists of multiple parts: that of space and time, out of which spatial is divided into general and specific; general, in its turn, is subdivided into natural and adventitious. We will observe the former state in more detail, whereas adventitious means specific conditions or institutions (such as commercial standing, marriage, civil status) created or added by particular sorts of persons. A specific *spatial status* is a state connected to a high or low respect of the persons involved. A *time status* is further subdivided into youth and old age, juvenile and adulthood, respectively. Personhood or moral substantiality refers to the various roles and activities that humans play or perform as individuals, or as *composites*, either on their own or with the help of others (e.g. ambassadors). Having depicted a typical multiple, overlapping moral personae, there is a possibility for a conflict to arise between these, not only in the case of individuals

but also collectives, like economic associations, religious groups, and political entities, like states, empires, or confederations. Therefore the respective obligations and rights of different kinds of persons need to be articulated, and to be ranked in terms of their relative moral priority. Such distinctions require the use of **moral qualities** and **quantities**, which are respectively affective and estimative modes.

Moral qualities have an effect on persons and are either formal or operative, with the latter subdivided into passive and active varieties. Formal qualities comprise title; operative qualities include authority, subjective right and obligation. Passive operative qualities let someone “rightly to have, suffer, admit, or receive something”, while active operative qualities give us the possibility to morally affect or move others. They are divided into the more familiar notions of power/authority (*potestas*), obligation (*obligatio*), and right (*ius*)—which constitute the moral dynamics of social life (*Ibid.*).

Pufendorf notices that the term ‘right’ (*ius*) is ambiguous and it sometimes means law (*lex*). Nevertheless, it may also be attributed to a passive moral quality (as in allowing someone rightly to receive things), whereas it is active while permitting us to command persons and possess things. In this regard it is similar to power or authority, which is subdivided into four types depending on whether it is applied to persons or things – either one's own or those of others.

Authority over human's own person and actions is understood as a freedom (*libertas*), but over others as a sovereignty (*imperium*); analogically: moral power over one's own things – ownership or dominion (*dominium*), and over those of others lordship (*servitus*).

All kind of power is possible to be acquired, lost, or held in certain ways: for example, the efficacy or strength of authority may be ‘perfect’ (exceptionless, enforceable) or ‘imperfect’ (flexible, merely hortatory), as may the force of rights.

Moral quantities include the valuation of persons, things, or actions according to their social status or esteem, their price (economic value), or their desert (as in punishment and reward). With respect to persons it is referred to as respect; regarding things it is called price; as to actions we don't have a specific term denoting it.

God relates to *entia moralia* not directly, but remotely, in the form of indirect cause (*causa remota*) (Lutterbeck 2009: 23), since the life granted to humans by God is not confined to physical existence solely, manifested in *entia physica*, but it has the potential of self-cultivation by means of morality and culture, which completes it with order and beauty. God in Pufendorf's basic voluntarist moral philosophy is thought to impose a basic normative dimension on the world (conjointly and compatibly with its creation), and where humans form further distinctions to coordinate their lives together—both in philosophizing about these and by enacting concrete practices and institutions to regulate them.⁴

⁴ Stanford Encyclopedia of Philosophy, *Pufendorf's Moral and Political Philosophy*, located at: <http://plato.stanford.edu/entries/pufendorf-moral/>.

According to De jure naturae et gentium, ens morale are instituted by human beings as rational creatures who impose some rule with twofold authorship on their freedom of acting: on the one hand the Creator who does not want that men reassembles beasts without moral law and on the other hand man the author is man himself acting according to his reasonable nature (Behme 1931).

Entia moralia depends on human free will, unlike the rest of nature, both inanimate and wildlife, which obey causality. If physical elements of the action are morally irrelevant, they bear neither positive nor negative quality; if we compare accidental killing while defending oneself or at war to murder, we will see that they do not differ from one another in physical aspect, while they contrast in value by the degree to which they bear a positive or negative moral essence by virtue of *entia moralia*.

According to Pufendorf, wildlife with its homogenous instincts displays uniformity of physical life as opposite to the diversity of morality and human life. On the one hand the variety of human beings with shared needs, weaknesses (*inbecilitas*), desires, aspirations is a necessary precondition for progress, but on the other hand, life needs to be ordered by laws to develop in harmony.

Summary and Conclusions

The idea of natural law in its rudimentary form can be traced back to ancient Greek philosophy, in a more defined form in Greek Stoicism during the antiquity, where it presents a central metaphysical category of a complex philosophical notion of law based on eternal natural order serving the theoretical legitimating purpose of the law (Welzel 1958). It shapes into a form relevant for modern philosophy especially in the thought of Roman Stoicism.

The second safe haven for natural law happened to be Christian philosophy, specifically Catholic Scholastics, which breaks the cyclic understanding characteristics of ancient thought and acquires the traits of linear manner found later in various forms not only in philosophy of natural law. As for secular and rationalistic natural law developed by Hugo Grotius and Thomas Hobbes and systemized by Pufendorf, it was created within the conflict of Catholicism and Protestant Scholastics predominated by the former on the one hand; and by virtue of European Renaissance Humanism on the other, which had fundamental knowledge and to some extent shared outlook on natural law model of the Stoics. The bridge with which Pufendorf connects different harbors of natural law is the concept of *entia moralia*.

We can differentiate the spheres of physical and moral realm with the help of three contrasting pairs: causation – freedom, value irrelevance – value relevance, uniformity – diversity.

This kind of differentiation found by Pufendorf and demonstrated in concept of moral entities has a crucial meaning for philosophizing about the very nature of law and moral because it is clear criteria to distinguish between worlds related to each other, which once again proves that Pufendorf's effort to establish duty ethics is based on strong logical basis.

As we have seen, the concept of moral entities specify basic notions, categories, differentiations and classifications in terms of speculative grammar and vocabulary, out of which moral discourse is constructed. On the other hand they define ontological correlates and referents of the discourse, which are based on common physical beings and systems, but differ from them at the same time. By separating moral and physical realms Pufendorf achieves a significant purpose – he draws natural law out of the sphere of natural philosophy more than it was thinkable in ancient or medieval periods, thus making it the domain of normative science underlining his belief that „the measure, which is based on value, acts only according to the sense induced by the will of either God or of a human being” and giving the man the possibility to reflect upon himself as a moral subject.

In this article we tried the examination of some aspects of Samuel Pufendorf's thinking with regard to its continued relevance for understanding of modern natural law and moral philosophy, namely giving the short presentation of his theory of moral entities, with an aim to emphasize a little bit forgotten trace left by the German Philosopher in a field of philosophical foundations of law, society an morality and rise an interest toward popular author of the century of religious war and peace.

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