### THE DIVINE FEUDAL LAW

# NATURAL LAW AND ENLIGHTENMENT CLASSICS

Knud Haakonssen General Editor



Samuel Pufendorf

# NATURAL LAW AND ENLIGHTENMENT CLASSICS

# The Divine Feudal Law: Or, Covenants with Mankind, Represented Samuel Pufendorf

Translated by Theophilus Dorrington

Edited and with an Introduction by

Simone Zurbuchen

The Works of Samuel Pufendorf

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The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word "freedom" (*amagi*), or "liberty." It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

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Frontispiece portrait of Samuel Pufendorf is to be found at the University of Lund, Sweden, and is based on a photoreproduction by Leopoldo Iorizzo.

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### INTRODUCTION

The present work is a translation of Samuel Pufendorf's *Jus feciale* divinum sive de consensu et dissensu protestantium,1 a treatise on the reunification of Protestants in Europe. The fact that Pufendorf considered himself a layman in theology helps to explain why the work was first published posthumously in 1695. By then Pufendorf was already renowned in Europe as one of the founding fathers of the modern theory of natural law. His main works in that field are The Law of Nature and Nations (1672) and its abridgment, The Whole Duty of Man According to Natural Law (1673). In addition, Pufendorf published important political writings as well as a number of historical works that he wrote as court historiographer in the service of King Charles XI of Sweden and later of Frederick William I and Frederick III of Brandenburg-Prussia. From his student days at the University of Leipzig, questions of religion and theology continued to interest Pufendorf. Despite his efforts to separate natural law from moral theology, which put him in opposition to Lutheran orthodoxy, he remained faithful to the Lutheran creed up to the end of his life. This is clearest in his late writings that deal with problems of religion and toleration. The first of these appeared in 1687 under the title De habitu religionis christianae ad vitam civilem (literally, "On the Relation of Christian Religion to Civil Life").<sup>2</sup> This treatise was composed in reaction to the revocation of the Edict of Nantes in 1685. With this measure the French king,

<sup>1.</sup> Concerning the difficulties of translating this title, see section V of the Introduction.

<sup>2.</sup> This was translated as *Of the Nature and Qualification of Religion in Reference to Civil Society* (1698), ed. Simone Zurbuchen (Indianapolis: Liberty Fund, 2002).

Louis XIV, renounced the laws that had granted toleration to the Huguenots, or Calvinists, in France. On the basis of his theory of natural law, Pufendorf denounces the revocation as an illegitimate and tyrannical act and advocates toleration.<sup>3</sup> *The Divine Feudal Law* can be seen as a complement to the treatise on toleration. In the former work, Pufendorf clarifies that toleration is just one means of dealing with religious dissent. It should be applied only when the reuniting of religions or denominations proves impossible. Pufendorf attempts to demonstrate in *The Divine Feudal Law* that union of Lutherans and Calvinists is possible on the basis of a theological system containing the fundamental articles necessary for salvation. In contrast, reconciliation between Protestants and Catholics is declared to be impossible.

II

In the introductory sections of The Divine Feudal Law, Pufendorf approaches the problem of religious dissent from a general perspective. He first insists that differences in religion should never be settled in such a way that concern for truth is laid aside. For that reason it is neither desirable that all religious parties join into one body nor that they should be held in the same esteem. The aim is not to eliminate disagreements in religion but to take away the evils that arise from those disagreements. Pufendorf proposes two methods that can be used for this purpose: toleration and reconciliation (p. 15). Toleration is held to be twofold, either "political" or "ecclesiastical" (p. 16). The Divine Feudal Law is concerned mainly with the latter, though it contains important conceptual clarifications of the former, dispelling some of its ambiguities. Concerning political toleration, Pufendorf argues, on one hand, that respect for religious freedom is one of the duties of the sovereign; on the other hand, he expounds the opinion that, depending on time and circumstances, sovereigns may either banish dissenters or tolerate subjects who do not adhere to the established reli-

<sup>3.</sup> Cf. the introduction to my edition of this work.

gion. For this reason, it has been questioned whether Pufendorf in fact developed a principled defense of toleration.

The opening sections of *The Divine Feudal Law* are especially pertinent with regard to that question. In section 4 Pufendorf distinguishes two ways of enjoying liberty of religion: subjects have their liberty "either in their own Right, or by the Concession and Favour of those who have Possession of the Government" (p. 16). The former applies wherever liberty of religion is granted by contract. Pufendorf points to the examples of the Lutheran, Calvinist, and Catholic communities in the German Empire, whose rights were guaranteed by the Peace of Westphalia. He also points out that when in any state a prince departs from the publicly received religion, both he and the people enjoy liberty of religion in their own right. The Huguenots in France, whose liberty of conscience had been granted by the Edict of Nantes, provide another example. Commenting on these cases, Pufendorf states, "Those who in this manner enjoy the Liberty of their Religion, cannot properly be said to be tolerated" (p. 17 f.).

Toleration in the proper sense of the term applies only to those communities that have their liberty granted "by the Concession of the Government" (p. 18), as, for example, when foreigners of a different religion are admitted into a state or when a minority of people departs from an ancient religion. In more general terms, Pufendorf explains that toleration should be taken not as a good in itself but rather as a temporary means of overcoming religious diversity. It is "of the Nature of a Truce in War, which suspends the Effects of it, and the actual Hostilities, while the State and Cause of the War do remain" (p. 15). While controversies about the articles of faith persist and continue, they are no longer accompanied by hatred and persecution. Where toleration applies, religious parties "live together as if there were no Dissention among them" (p. 15); that is, they do not hinder each other "from the publick Profession of their different Opinion" (p. 15). Depending on time and circumstances, toleration may be either universal or limited (p. 18). It is universal when all religious parties have equal liberty to the public exercise of their religions and enjoy all the rights and privileges of subjects of the state. It is limited when the exercise of religion is restricted to private realms or when religious minorities are excluded from some benefits of the state, such as the right to bear offices of honor and profit.

### Ш

As Pufendorf goes on to explain, toleration has yet another aspect that leads into the domain of theology. Under the title of "ecclesiastical" toleration, Pufendorf examines the possibility that different religious parties may consider each other members of the same particular church and come together to the Lord's Supper (sec. 7). Pufendorf first insists that reconcilement of differences in religion should always be based on truth. It is of no help to declare that all religions are equally useful for the salvation of men. For this "were to make the Christian Religion altogether Irrational" (p. 22). In theology as elsewhere, where there is a contradiction between two propositions, one or the other must be false. To bring about reconciliation, "one Opinion must of necessity be declar'd and approv'd for Truth, and the other be rejected as false" (p. 21). Pufendorf is convinced that the truths of Christianity can be established on the basis of the Holy Scriptures. However, because of the obstinacy of prejudices and of "the Pride of Humane Nature, which disdains that others should seem wiser than ourselves" (p. 22), reconciliation cannot be obtained on all points of dispute. Thus he proposes, "a Reconcilement mixed with a Toleration" (p. 23). In the first place, agreement has to be established upon those articles of faith that are necessary to salvation. In the second place, toleration should be granted with regard to those opinions that do not belong to the foundations of faith.

This leads to the "grand Question" whether a disputed religious article belongs to the essentials of the faith or not (sec. 16). As Pufendorf observes, some religious parties extend the fundamentals further, while others bring them within stricter bounds. Moreover, not all parties view them in the same manner. Given such disagreement, Pufendorf proposes to take those principles on which both sides agree and "to compose of them a full and compleat System of Theology, which...should

hold together, in a well connected Series of those Principles, from End to End" (p. 59). This "System, or Body of Divinity" (p. 59), has to contain everything that a complete Christian should know, and it must therefore "include all the Articles which would make up the whole due Chain of the Faith" (p. 59). As Pufendorf explained in a letter to his brother Esaias in 1681, he wished to develop theology according to the mathematical method that he had already applied in the domain of natural law.<sup>4</sup>

The bulk of *The Divine Feudal Law* contains the theological system on which Pufendorf wished to base reconciliation of the Lutheran and Calvinist Churches. In the first place, "a rude Draught" (p. 127) of the required system of theology is established. It consists of a series of covenants between God and men that Pufendorf uncovers in the Holy Scriptures: The first covenant, concluded with Adam in the state of Paradise, was broken with the Fall. Out of goodness, God established a new covenant with man by the interposition of a mediator. From this a new religion arose that consisted "in the observance of the Law of Nature, both towards God, and towards Man" (p. 78). Because of man's corruption after the Fall, faith and hope in the savior were added. This new covenant was announced by a number of particular covenants (one with Abraham, one with Moses), which testify to God's concern that the knowledge of a savior to come into the world might be lost among dispersed nations. According to Pufendorf, the new covenant consists of a double agreement: "the one of God the Father with the Son, the other of the Son, as Mediator, and Saviour with Men" (p. 87). Its proper understanding depends on explication of the Trinity and the double nature of Christ as God and as man.

The draft of the theological system is followed by a series of paragraphs devoted to the main points of controversy between Lutherans and Calvinists. The most important issues concern the questions of

<sup>4.</sup> Letter to his brother Esaias Pufendorf, Feb. 17, 1681. A revised version of the same letter dates from Feb. 24, 1681. Both of them are printed in Samuel Pufendorf, *Gesammelte Werke*, vol. 1: *Briefwechsel*, ed. Detlef Döring (Berlin: Akademie Verlag, 1996), 122–27.

grace and predestination. They are treated separately because they cannot be integrated into the proposed system. In Pufendorf's judgment, it is "to imply a Contradiction that a Covenant should be made by God with Men, and yet that they should be sav'd or damn'd by virtue of a certain absolute Decree," by which God decides beforehand about the salvation of men (p. 127). If theology is taken to be a "Moral Discipline," at least a minimum of freedom of will has to be admitted: "this at least must be left to our Will, that it can resist and refuse the offer'd Grace of God [by the covenants]; since without this all Morality would be utterly extinguish'd, and Men must be drawn to their End after the manner of working of Engines" (p. 145).

The main part of the work concludes with a detailed examination of a proposal to reunite the Protestants that was launched from the Calvinist side. In 1687 Pierre Jurieu (1637–1713)<sup>5</sup> published his *De Pace inter Protestantes ineunda* (Consultation about Making Peace among Protestants). As Pufendorf observes, the work fell into his hands while he was composing *The Divine Feudal Law*. In fact, he takes Jurieu's paper as an opportunity to explain in greater detail why "the Opinion of the *Reform'd* upon the Article of Grace and Predestination" (p. 157) seems unacceptable to him (secs. 70–89), as well as to discuss the four ways of reconciling and uniting divided parties that Jurieu proposed (secs. 90–94).

### IV

As noted above, Pufendorf's proposal for reconciling different religious parties is restricted to the union of just two parties; namely, the Lutherans and the Calvinists. We thus have to ask why Pufendorf did not propose a more comprehensive system of theology that might have served also to unite Protestants with Roman Catholics. This question is of special interest, because Pufendorf witnessed in his own time

<sup>5.</sup> Jurieu was a French Calvinist theologian who became pastor of the Walloon Church in Rotterdam after he had to leave France. He is well known for his controversial writings in defense of the Huguenots.

important attempts to reunite Protestants and Catholics in the German empire.<sup>6</sup> From the early 1670s on, the Spanish Franciscan Cristoforo Rojas y Spinola, Bishop of Tina in Croatia and later of Wiener-Neustadt, acted as an agent of Emperor Leopold. As the emperor's diplomat, Spinola toured various Protestant courts, where he expounded upon church unity and endeavored to stimulate discussion of ways to bring about a reunion between Protestants and the Catholic Church. His negotiation efforts were also supported by Pope Innocent XI. In Hanover, as early as 1679, Spinola negotiated secretly for four months with the Lutheran theologian Gerard Wolter Molanus (1633–1722), Abbot of Loccum. Like Spinola, Molanus was to play a crucial role in a second round of negotiations in 1683. A church "union conference" was convened with a number of Protestant theologians, to whom Spinola submitted his plan of reunion, a work entitled Regulae circa christianorum omnium ecclesiasticam reunionem (Rules concerning the Ecclesiastical Reunion of All Christians). On the instruction of Duke Ernst August of Hanover, Molanus drafted Methodus reducendae unionis ecclesiasticae inter Romanenses et Protestantes (Method to Restore an Ecclesiastical Union between the Romanists and the Protestants). in which he laid out the Protestant proposals for reunion. These were then examined in comparison with Spinola's plan. Although a second conference round was convened in the same year, no agreement was reached. Later attempts to overcome the Roman Catholic and Protestant division proved equally abortive.

Another participant in the union conference was the philosopher Gottfried Wilhelm Leibniz, who repeatedly raised the issue of the reunification of Protestants and Catholics in his works and extensive correspondence. In the early 1690s Leibniz entered into correspondence on the subject with the leading French theologian Jacques Bénigne

<sup>6.</sup> For details about attempts to reunite the churches in the late seventeenth and early eighteenth centuries, see *Union–Konversion–Toleranz. Dimensionen der Annäherung zwischen den christlichen Konfessionen im 17. und 18. Jahrhundert*, ed. Heinz Duchhardt and Gerhard May (Mainz: Philipp von Zabern, 2000). *Die Reunionsgespräche im Niedersachsen des 17. Jahrhunderts. Rojas y Spinola–Molan–Leibniz* (Göttingen: Vandenhoeck & Ruprecht, 1999).

Bossuet, Bishop of Meaux and privy councillor to Louis XIV, but he soon became disappointed with the discussion. Leibniz wrote a commentary to *The Divine Feudal Law*,<sup>7</sup> and his sharp criticism of the work was a result of the contrasting philosophical and political perspectives of the two authors.<sup>8</sup>

With a view to *The Divine Feudal Law*, the "union conference" at Hanover is of particular significance insofar as Pufendorf takes a critical view of Molanus's *Methodus*, which he cites in full in the preliminary sections of the work. Before discussing the text itself, Pufendorf explains in general terms the reasons why union between Protestants and Catholics is impossible. The main reason is that the controversies are concerned not with "principles" or "opinions" but rather with "the Establishment and Support of the Authority, Power and Revenues" (p. 28) of the Roman Catholic Church, which Pufendorf also calls the "Empire of the Pope" and the "Pontifical Monarchy." Controversies about "emoluments" cannot be determined, because demonstration of the falsehood of the "Popish principles" would only confirm those of the Protestant party. As the pope will never renounce his pretense of dominion over others, reconciliation would require that Protestants return to subordination "under their former Yoke" (p. 29).

In his critical commentary on Molanus's proposal, Pufendorf repeats the same arguments regarding reconciliation with Catholics in more

- 7. Leibniz's "Epistola ad Amicum super exercitationes posthumas Samuelis Puffendorfii De consensu et dissensu protestantium" is printed in Detlef Döring, Pufendorf-Studien: Beiträge zur Biographie Samuel von Pufendorfs und zu seiner Entwicklung als Historiker und theologischer Schriftsteller (Berlin: Duncker and Humblot, 1992), 205–10. See also Detlef Döring, "Leibniz als Verfasser der 'Epistola ad amicum super exercitationes posthumas Samuelis Puffendorfii de consensu et dissensu protestantium," in Zeitschrift für Kirchengeschichte 104/2 (1993), 176–97. Leibniz's and other commentaries on The Divine Feudal Law are discussed by Döring in Pufendorf-Studien, 130–42.
- 8. The contrasting aspects of the two philosophies are analyzed in Ian Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001).
- 9. This part of the work has recently been analyzed by Martin Ohst, "Gerard Wolter Molan und seine Stellung zum Projekt einer kirchlichen Union," in *Union–Konversion–Toleranz*, ed. H. Duchhardt and G. May, 194–97.

polemical terms. Thus he expresses his conviction that "the far greater Part of the Protestants do believe the Papal Empire to be that Apocalyptical Beast, whose Tiranny by the great Favour of God they have thrown off" (p. 38). He also observes that the Catholic Church "is degenerated from its Primitive Purity . . . into a most pestilent Sink of Superstitions" (p. 39). Moreover, the proposed union with the Catholics is held to be "an empty Fiction" (p. 40) because Protestants could never accept the infallibility of the pope, the principle on which the Church of Rome is founded.

### V

Despite the limited scope of Pufendorf's project of reconciliation, it was later used in the attempted reunion of Protestants in England and on the continent, as shown by the English translations of the work. Neither the title of this nor of the second English edition of 1714<sup>10</sup> is faithful to the Latin original. The Latin title is in fact difficult to understand. In Roman law, jus feciale (literally, "fecial law") is the law of negotiation and diplomacy. It remains unclear how the reunion of Protestants is related to this particular law. This may explain why the English translator, Theophilus Dorrington, 11 did not follow the original. The title of his first edition ("The Divine Feudal Law") refers to the specific nature of the covenants between God and man. As Pufendorf explains in section 25, the original covenant between God and Adam was of the nature of "feudal" covenants among men, in which no proportion is observed between the matter of the crime and the severity of the punishment; rather, the right to benefit from the contract depends on a condition insignificant in itself. Thus the great condition

<sup>10.</sup> The second edition, also published by Dorrington, bears the title A View of the Principles of the Lutheran Churches; shewing how far they agree with the Church of England: Being a Seasonable Essay towards the Uniting of Protestants upon the Accession of His Majesty King George to the Throne of these Kingdoms.

<sup>11.</sup> The son of nonconformist parents, Dorrington turned against the Dissenters and became a member of the Church of England. In 1710 he obtained his M.A. at Magdalen College, Oxford. He died in 1715.

of the original covenant between God and man was placed in abstinence from the fruit of the tree of knowledge. This explains the severity of the sanction annexed to the prohibition of eating the fruit.

As Dorrington observes in the "Advertisement" to The Divine Feudal Law, his translation is intended to serve two purposes. In his view, Pufendorf wrote the treatise to promote peace and union among the Protestant churches in Germany. Finding the state of the church in England much the same, Dorrington suggests that the book may be of similar use in his own country as well. What Dorrington must have in mind here is the much-disputed relationship between the Church of England and the Dissenters. As the so-called Toleration Act of 1689 had lifted the penalties of only some of the laws on which the former discrimination of dissent had been based, "orthodox" Protestant Dissenters (Presbyterians, Independents, Baptists) remained in a politically inferior position, while no other "sects" benefited from the act. In Pufendorf's terms, Dissenters in Great Britain were at best granted "limited" toleration. While some authors advocated full toleration of religious dissent, others pleaded for "comprehension"; that is, they proposed to receive Dissenters as members of the established church.

In the second place, Dorrington recommends Pufendorf's treatise as a means of better understanding the principles and practices of the Lutheran Church. In Dorrington's view, the latter was usually depicted falsely and injuriously by its adversaries. The reasons a proper understanding of the principles of the Lutheran Church seemed important to him are spelled out more clearly in the second edition of 1714. Dorrington there introduces the work as a demonstration of the extent to which the principles of the Lutheran Church "agree with the Church of England." He considers it "a Seasonable Essay towards the Uniting of Protestants upon the accession of His Majesty King George to the throne of these Kingdoms." What made this so "Seasonable" was the fact that only with the death of Queen Anne and the accession of George I did the succession to the British throne switch from the Stuarts to the Hanovers, as provided for at the Glorious Revolution. What is more, George I had been brought up a Lutheran.

Although Dorrington wished to further strengthen the Protestant

alliance by uniting the Church of England with the Protestants on the Continent, some of the Anglican divines still persisted in their opposition to the Protestant succession. Among them was Thomas Brett (1667–1743), an eminent divine who took the accession of George I as an opportunity to join in communion with the "non-jurors." That was the name given to the Anglican churchmen who in 1689 refused to take the oath of allegiance to William and Mary and their successors under the Protestant Act of Succession of that year. Their leaders on the episcopal bench who persisted in their refusal were suspended.

At the time of his ordination, in 1690, Brett had complied with the oath. However, when upon the accession of George I an act of Parliament was passed obliging all divines to refresh their oaths, Brett refused. This helps explain why Brett responded to Dorrington's translation with *A Review of the Lutheran Principles*, in which he attempted to show "that Baron Puffendorf's essay for uniting of Protestants, was not design'd to procure an union between the Lutherans and the Church of England." The *Review* was published in two editions in 1714. <sup>12</sup> In the same year appeared *A Second Review of the Lutheran Principles*, composed by "a Lover of King George" in answer "to Dr Bret's late insolent libel against the Lutheran Churches. <sup>313</sup> The publication of these pamphlets suggests that the influence of Pufendorf's treatise was not restricted to debates on reunification in the German empire. Despite its limited scope, it could also be employed as a model for reconciling Protestants in Europe.

<sup>12.</sup> Thomas Brett, A Review of the Lutheran Principles; shewing, how they differ from the Church of England, and that Baron Puffendorf's essay for uniting of Protestants, was not design'd to procure an union between the Lutherans and the Church of England, as is insinuated in the title of the late edition of that book. In a letter to a friend (London, 1714). The second edition with a postscript containing remarks on a pamphlet titled Two letters to . . . Viscount Townsend (London, 1714).

<sup>13.</sup> A Second Review of the Lutheran Principles: or, an Answer to Dr Bret's late insolent libel against the Lutheran Churches: shewing that there is no essential difference between them and the Church of England (London, 1714). Anonymously published by John Lewis (1675–1747).

### THE

Divine Feudal Law:

OR,

Covenants with Mankind, REPRESENTED.

Together with MEANS

FOR THE

Uniting of Protestants.

In which also

The Principles of the *Lutheran* Churches are Stated and Defended.

By SAMUEL Baron PUFENDORF.

Translated from the Latin by *Theophilus Dorrington*, Rector of Wittresham in *Kent*.

LONDON:

Printed for *John Wyat*, at the *Rose* in St. *Paul's* Church-yard, 1703.

### Advertisement

The Works of this Excellent Author need no Man's Recommendation, nor can I think fit to pretend to give them any Advantage by mine. It shall suffice therefore barely to advertise concerning this, That it is the last Work of this Famous and Great Man, and so may be reckon'd the Product and Fruit of his utmost Improvements in Wisdom, Piety and Learning. He had consider'd it, as he thought, sufficiently, and was about to make it publick when he was prevented by a sudden Sickness; the Issue of which, at first, was doubtful, but which, in a little time, prov'd fatal. When this was expected, he left it in Charge with his Friends to publish this Work after his Death, who fulfill'd his Will in doing so. He wrote it with the Blessed Design to serve and promote Peace and Union among the Protestant Churches in Germany, and thought it might be of some Use towards this happy Effect. And then the State of the Church being much the same with us in *England*, as it is with them, we may reckon upon it as his Opinion or Judgment, that such an Essay or Endeavour to Reconcile and Unite Protestants, is very seasonable and proper, and may be useful to us. I thought also that it might be of Use to us in *England*, to understand and know the Principles and Practices of the *Lutheran* Churches (which are the true Protestant Churches beyond the Seas) better than for ought I can find we commonly do: And these are represented here fairly and distinctly in their true and genuine Lustre, and freed from the false and injurious Representations which are commonly made of them by their Adversaries. We may also I think see by this Book, that if any sober and judicious Persons in the *Lutheran* Churches have any Disesteem of the Church of *England*, or Prejudice against it, this comes to pass by their not knowing it exactly. Which may well be, inasmuch as it has been the Fortune of our Church to be more industriously, and more represented abroad by its Enemies than by its Friends. And I believe it

may be of great Use to us to know this. For these Reasons I thought it worth my Time and Labour, and agreeable enough with my Duty, and the earnest Desire I have, according to it, to serve Truth, and Piety, and Peace, among us, or, which includes all that in one Word, the Church of *England*, to turn this Book into our common Language; by which Means I judge it will become more known, and so be more useful among us than it was likely to be while it remain'd in the Original Latin. Now this is done, I pray God it may be serviceable to all those good Purposes mention'd, to whom be Glory for ever.

Amen.