

**The Dawn of the Age of Toleration:
Samuel Pufendorf and the Road not
Taken**

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It was the last gasp of the ancient regime of privileged tolerance. When Louis XIV revoked the Edict of Nantes in 1685, he did what generations of kings, emperors and princes had done for millennia before him—either grant or revoke the right of their subjects to freely practice and worship their religion. The French Huguenots had existed under the Edict’s parsimonious protections since 1598. But overnight, French protestant worship was banned, its churches ordered destroyed, its pastors exiled, and its members dispossessed or worse. Despite orders that Protestant lay people should not leave the country, about 200,000 fled France. The resulting diaspora enriched the labor and intellectual pools of Holland, England, Germany, Switzerland, as well as the American colonies.¹

But the revocation had significance beyond the immediate human interest story. Its implications echoed through church sanctuaries, government corridors, and university halls across Europe. The old world of monarchical privilege and absolutism was slowly passing into a world of republican consent and individual rights. These new theories were still very much in their infancy. But the tenuous 1648 peace of Westphalia, supported by a limited yet meaningful religious tolerance in much of the continent, meant that all of Europe had an interest in avoiding any abrupt changes to existing systems of religious tolerance, as minimal as they were.

If religious toleration was going to continue to be extended and revoked by royal whim and caprice, religious minorities nowhere were safe. The peace of Westphalia was in jeopardy, and Europe could well return to its destructive and fratricidal wars of religion. The revocation of the Edict of Nantes thus occasioned the writing of a number of treatises on the nature and importance of religious toleration in civil society. The

revocation was an act of the old system of privilege; the breadth and depth of the response to it showed that a new system of rights was emerging.

One of the primary authors at the intersection of these two systems was Samuel Pufendorf, Lutheran thinker, professor of natural law, and counselor to the King of Sweden.² Born in 1632 in Saxony, Pufendorf was most well known for his works on natural and international law, including the *The Law of Nature and Nations*. Published in 1672, this work was widely influential on the continent, in Scotland, and in the newly formed American colonies.³

When the Edict of Nantes was revoked, Pufendorf took the opportunity to write what has been described as an “appendix,” or “application of his natural law theory” to the question of church and state.⁴ Entitled *Of the Nature and Qualification of Religion in Reference to Civil Society* (“*Religion and Civil Society*”), Pufendorf’s work was published in 1687. It set out a principled basis for what is ultimately, and ironically, a pragmatic and rather anemic toleration of religious minorities. Pufendorf dedicated the book to the elector of Brandenburg-Prussia, and used the work to recommend himself for a post in the elector’s Berlin court, which he indeed received.⁵

The intended audience perhaps helped shape the work. Pufendorf sets out a high view of the state and its power and a rather limited and weak basis for religious toleration. As will be seen below, the work begins with apparently strong principles of separation between ecclesiastical and civil spheres as well as a commitment to individual rights. But the last third of the book returns spiritual powers and oversight to the Christian ruler that is denied to secular rulers in the first portions of the book.

One may like to justify Pufendorf's rather weak arguments for tolerance on the grounds of the newness of the enterprise. But there were two other works written at about the same time that set out far more robust systems of toleration. One was by John Locke, who's *A Letter Concerning Toleration* was published two years after Pufendorf's.⁶ The other was by Huguenot theologian and skeptical thinker Pierre Bayle, who authored a treatise discussing Christ's words "compel them to come in."⁷ The contrast among the three works reveals the variety of arguments already developed in the late seventeenth century regarding toleration. They also represent, in early form, different approaches to church/state relations that have influenced American church/state arrangements at different times in its history.

The American Puritans developed a Pufendorfian-like church/state arrangement in early New England, with a civil magistrate involved in enforcing ecclesiastical rules and discipline. But it was Locke's more strongly separatist views of church and state that carried the day in the founding of the American republic. In the late nineteenth and twentieth centuries, a skepticism-based toleration came into vogue that was similar to that proposed by Bayle. But now some with influence in the American political community are pushing for a return to a more Pufendorfian system. Now is a good time to re-examine this road not taken.

This essay will review Pufendorf's arguments for toleration and seek to understand why he comes out with a weak view of religious toleration, given his commitment to natural law and natural rights.⁸ It will contrast Pufendorf's arguments regarding toleration with those of Locke and Bayle, attempting to pinpoint the theological and philosophical points where Pufendorf seems to differ most from the other thinkers,

and which led him to his unique conclusions. It will close by briefly looking at some of the ways in which our society today is moving towards a Pufendorfian system.

I. Pufendorf, Natural Law, the State, and the Individual.

As will be seen, one cannot understand Pufendorf's conclusions regarding toleration by only reading his church/state work. Rather, his conclusions in that work flow in good part from his larger conceptual framework set out in *The Law of Nature*. Thus, it is necessary to start by looking at a few of the key points in that earlier work. There, Pufendorf elaborated a system of ethics that separated civil duties from religious hopes. Unlike many medieval Christian political thinkers, he did not base his natural law in conceptions of human holiness or virtue, but rather on the need for sociability or social peace. In this regard, he followed in the footsteps of Hobbes, who had re-formulated the role of natural law from that which prescribes social, moral and political flourishing, to that which merely provides a framework or expression of the fundamental human impulse of self-preservation—the will to live.⁹

Pufendorf did not fully accept Hobbes highly-individualist and highly negative account of human nature—he viewed it as possessing a greater natural sociability than did Hobbes—but his natural law starting point was distinctly modern and influenced by Hobbes.¹⁰ This was also true for Locke and Bayle. Despite their differences on other matters, all three thinkers followed Hobbes in regarding the natural law as a means to an end—that of civil peace that could be enforced by a secular government—rather than as a formula for obtaining intrinsic or internal virtue. But in Pufendorf's case, it was a view of society that still gave the state, rather than the individual, the most prominent place and role.¹¹

In *The Law of Nature*, Pufendorf begins with the individual and his desire for self preservation.¹² He quickly moves on, however, to the absolute necessity of society because of man's inherent weakness and inability to fend for himself, especially when young.¹³ This is complicated, however, by an inherent self-seeking and unsociability in man that must be curbed. From this he derives his "fundamental law of nature," which is that "EVERY MAN OUGHT, AS MUCH AS IN HIM LIES, TO PRESERVE AND PROMOTE SOCIETY: That is, the *Welfare of Mankind*."¹⁴

This same emphasis on society and the state is seen in Pufendorf's discussion of civil government. While he accepts that all governments must obtain the consent of the governed, they can obtain this consent in a variety of ways, including military force and conquest.¹⁵ Further, once a ruler obtains this consent, he or she is invested with "the supreme authority," the exercise of which remains "unaccountable to all the world."¹⁶ Indeed, as the promulgator of laws, the government is above its own laws, although as a prudential matter, a prince or king may voluntarily choose to obey them.¹⁷ The people owe absolute obedience, except when a law openly contradicts the law of God.¹⁸ In the face of even unjust persecution, subjects must submit, or at most flee.¹⁹

As noted above, Pufendorf later moves away from these requirements of almost utter submission by subjects. But the concept of the state's primary authority continues on into his later works. This statist, paternalistic emphasis can be explained, in part, by his view of the human capacity to understand the natural law. Pufendorf accepts that the natural law is understandable by every "man of a mature age, and entire sense," given sufficient care and consideration of the matter.²⁰ But in practice, few actually know the law.

In Pufendorf's view, people's consciences fall into three categories. There is "conscience rightly informed," when a person can give certain and undoubted reasons for his ethical opinions. There is "probable conscience," when a person cannot arrive at ethical truth through his own reasoning, but relies on his education, training, custom or authority of wiser persons. Finally, there is "doubting conscience," where a person's understanding is unsatisfied and cannot decide which is the ethical course.²¹ Pufendorf says that most people most of the time operate in the middle category of "probable conscience." This is because only a few are able to spend the time and effort to know the true cause of things. Thus, rulers need to pass laws to preserve the people's peace, and these laws should include those that promote the essentials of the Christian religion.²²

But Pufendorf says little else in *The Law of Nature* about how the state should promote religion, what the limits of the promotion should be, and how minority religions should be treated. That is the task he undertakes about twenty five years later in his *Religion and Civil Society*.

II. Pufendorf on Church and State: Separation and Cooperation.

Pufendorf was not a static thinker. His thought showed some development between the writing of his natural law treatise in 1672 and that of his church/state work fifteen years later in 1687. The most obvious change was his acceptance of a right of resistance against tyrannical rulers. In his *Law of Nature*, Pufendorf had argued that even when a sovereign transgresses the limits of his power and becomes a tyrant, that people had to obey him.²³ But in his new work on *Religion and Civil Society*, he argues that subjects have a right to defend themselves from a ruler that seeks to impose his religion on them by force of arms.²⁴

Pufendorf's work on church and state breaks down into two basic sections. In the first, larger, part, he examines the roles of the individual, the state, and the church, and explains why the realms of church and state are separate and distinct. In the second section, he examines the role of the Christian prince or ruler, and sets out a role for cooperation between church and state that stands in tension with the first part of the book. As one commentator has noted, "Pufendorf's seemingly paradoxical answer [to the question of church and state] was that the state was separate from religion, or from the church, but that the two nevertheless should be closely linked to each other."²⁵ Another has put the Pufendorf's ultimate approach to his apparently conflicting principles more bluntly: "He did bludgeon his way out of the dilemma, but it was at the cost of rational integrity."²⁶ This paradox, and Pufendorf's bludgeoning, will be examined below.

A. Duties of the Individual: Individual Worship, Truth Obtained by Reason or Grace, and Parental Duty to Guide Children.

Pufendorf starts his analysis with the individual and religion in the state of nature. His first principle of religion is that everyone is "obliged to worship God in his own person."²⁷ This duty is personal and non-delegable. Religion is between an individual and God, and worship involves a reverence of the heart. Thus, it cannot by definition be forced or compelled. Truth can only be attained in one of two ways, either by reason or by grace. Neither of these methods is subject to force. Here, Pufendorf's views seem to track closely those of Locke.²⁸

The one concession Pufendorf makes to the individual nature of religious duties and choices is in the case of parents and children. Because of the ignorance and inexperience of youth, parents must instruct and guide their children in religious matters.²⁹ But even with children, violence or compulsion should be avoided. Rather,

parents should be “assiduous in teaching, exhorting, praying, and announcing God’s wrath.”³⁰ Locke also allows for parental religious instruction of children. But for Pufendorf, this parental role is an important precedent for the paternal power of the state, which Locke rejects.

B. Limits of the State: Not erected for sake of religion, subjects not to submit religious opinions to it, but it may provide paternal support for natural religion.

Pufendorf then moves on to the institution of civil society. He notes that governments “were not erected for religions sake,” as religion can be practiced individually or by a few.³¹ Rather, the civil state was entered into to protect from violence and depredation, which had nothing to do with religion. Religion pre-existed the state, is not subordinate to the state, and is not a tool of the state to keep people in obedience. Because of this, in entering into society, people did not submit their religion to it as they did their lives and physical fortunes, as the end of the state is common security.

Submission of one’s religious loyalties to an earthly sovereign would place that ruler above God, and the Bible says clearly that “we ought to obey God rather than Man.”³² If a ruler issues religious commands, they “transgress their bounds.” If they inflict punishment on subjects for failing to carry out religious commands, such punishment is “illegal, unjust, and tyrannical.”³³ He notes the Bible characters, such as Daniel, whom God rewarded for their civil disobedience.³⁴ Here again, his thought is similar to that of Locke.

So what role is left for the civil ruler in religious affairs? Here is where Pufendorf begins to dramatically build on his earlier discussion of the parent/child relationship and

where he begins to diverge from Locke. The ruler has a paternal duty toward his subjects, Pufendorf argues, to promote public discipline. “As it is one of the Principal parts of Paternal Duty, to implant Piety into their children; so Sovereigns ought to take care, that Publick Discipline (of which the Reverence due to God Almighty, is one main Point) to be maintained among their Subjects.”³⁵ This discipline includes reverence to God and other aspects of natural religion, which is open to the understanding of all. This would include the belief in the existence of God, His providence, and His singularity. But Pufendorf is aggressive in his defining of natural religion. He asserts that a ruler could legitimately outlaw and punish idolatry, blasphemy, worship of the Devil, and promote Sabbath keeping.³⁶

Still, Pufendorf accepts, the regulation of religion should extend only to outward acts, and not inner beliefs. Further, the sovereign should not concern himself so much with forms and rites of worship, as these do not go the heart of religion.

C. Jurisdiction of the church: Jewish nation contrasted with Christ and the apostles, no earthly priestly authority, church as voluntary college.

Having addressed the limits and role of the generic civil society in matters of religion, Pufendorf next turns to the question of the earthly powers of the church. He notes the origin of the faith community in revealed religion, which gave to humanity the doctrines and rites of organized religion. He discusses the nature of church and state in the era of Hebrew revelation. During this period, he notes that there was a strict union between church and state, and that the Jewish state and the Jewish religion were inextricably intertwined.³⁷

But this was based on the fact of theocracy, as God himself had established both the Jewish religions and their laws. But the experience of the Jewish nation stands in

contrast to that of Christ, his disciples, and the early church. Pufendorf says that whereas Judaism was a national religion, Christianity was meant to be universal. Thus, Christ and his disciples intentionally did not connect it with any earthly state or power.³⁸ The question this raises, says Pufendorf, is whether the introduction of Christianity has altered either the nature of civil society or the rights of rulers. Or indeed does Christianity itself become a kind of state unto itself, with the right to employ force within its own ranks.

Pufendorf spends the next two-thirds of the book answering these questions. In short, he rejects the notion that the church has become a kind of supra-national state with civil prerogatives of its own. He notes that Christ healed and taught when he was here, and did not lay the foundation for a new state. Christ had no territories belonging to him, and exercised no sovereign power.³⁹ Rather, he played the role of doctor and teacher. His disciples taught only His doctrines, received their authority from God and not man, and never assumed the authority of commanding others.⁴⁰

Pufendorf then asks whether particular churchly acts, such as teaching, absolution, excommunication, or carrying out the gospel commission imply some kind of temporal authority. In each instance, he says no. These things have to do either with purely spiritual matters or with the exclusion of persons from fellowship in a voluntary association.⁴¹ He thus rejects the notion that the Christian church has any kind of civil sovereignty, whether within existing civil governments, or as a separate state unto itself.⁴²

The church, Pufendorf asserts, was rather a voluntary college that functioned within existing states.⁴³ This voluntary society existed without interference from the state, and it itself acted upon its members in ways that did not affect their civil status or standing.⁴⁴ The church collected offerings, but this was based on the consent and

liberality of the members, not upon coercion.⁴⁵ Likewise, the church could discipline its members, but the punishments were limited to admonitions, reprimands, and church penances.⁴⁶ The most extreme remedy was excommunication, or exclusion from the body, but this itself did not alter the civil status or condition of the subject.⁴⁷

Had Pufendorf ended his book here, there would be only small distinctions between his proposed church/state system and that of Locke. But he continues his analysis by asking the question of what, if anything, changes if rather than pagan rulers, as in the early church, one is blessed with a Christian leader or leaders. For Locke, this makes no real difference. But it considerably changes the analysis for Pufendorf.

D. Pufendorf and Christian Rulers.

Pufendorf begins by insisting that nothing fundamental changes in the analysis when there is a Christian ruler. Churches remain as voluntary colleges, even if those colleges may include the king and the whole of the people.⁴⁸ Further, the believing king is not given a special role or prerogative within the church. He becomes neither bishop nor teacher, and cannot alter ministry or doctrine.⁴⁹ But a Christian prince does have additional paternal duties laid on him in his role as a believing leader. First, he has an obligation to protect the church in its religious practices, against both internal and external foes.⁵⁰ Where necessary, this protection can take the form of physical force.

Further, part of protecting the church includes providing state funds for the support of the ministry and Christian education.⁵¹ This will help bring stability and respectability to the gospel ministry.⁵² Next, Pufendorf proposes that the prince retains a right of general oversight and inspection of the church to ensure that it is not harboring civil conspiracies against his state, or acting in other ways in violation of the law.⁵³ He

insists that this is a general right of all secular rulers, and that a Christian prince should not lose this prerogative by virtue of his communion.

Then Pufendorf touches on the issue of selection of ministers, and proposes that rulers do not have the right to appoint them. But they should continue to have their fair vote as a church member upon the issue. Other churches that he is not a member of should be free to choose their own minister, as a teacher should not be forced upon his listeners, “except there be some prevailing reasons” which require the prince to do so.⁵⁴

Pufendorf is master of the exception that seems to swallow the ostensible primary rule. Having given churches the “right,” most of the time, to select their own ministers, he adds that the sovereign retains the right to screen ministerial candidates for “approved life and doctrine.” Then he can monitor them once in office and reprove or punish those acts that lead to schism or scandal. He also invests the ruler with the right to call and administer a synod or church counsel should a doctrinal controversy arise⁵⁵

Now that the state itself is Christian, there is no need for a separate system of church discipline to punish vices. Rather, the public laws should take over the task of punishing vices and determining necessary church discipline, which can then be carried out by the church. As excommunication has civil consequences in a Christian state, it should not be left up to the clergy, but should be regulated by civil statute.⁵⁶

By this point, Pufendorf’s primary rule of individual and church autonomy seems to have been almost completely swallowed by his continuing and various exceptions for state involvement. But he is only warming up in investing the Christian ruler with ecclesiastical oversight. He next proposes that Christian rulers have the right to examine statutes and ecclesiastical canons, annul those found unnecessary or in conflict with the

civil power, and create laws that will help maintain the “good order and glory of the church.”⁵⁷ They can then give these rules the force of civil law. Rulers should be careful, however, to consult with church leaders on these matters. And they should avoid legislating on articles of faith or points of doctrine—except, of course, when the doctrine is well established by both revealed and natural religion, such as prohibitions against idolatry, blasphemy, and Sabbath breaking.⁵⁸

Now, Pufendorf asks, what additional rights regarding religion does the sovereign have in his role of protecting the public peace? Pufendorf initially rejects the notion that the ruler can use force and violence to “extirpate . . . differences in religion,” as Christ commanded the wheat and tares to grow together.⁵⁹ But having laid out the general rule, he immediately assures his readers that he is not a supporter of “heresies and licentiousness,” and that this rule does not apply to the maintenance of the one, true Biblical religion against those obvious perversions, such as Islam, Arians, Anabaptists, and the Roman Catholic faith.⁶⁰ Because of this, princes have a right to uphold basic, Biblical Christianity, i.e., Protestant, Lutheran Christianity, and silence those who will not comply with it. And if they will not be silenced, he may, at worst, banish them. Except if the offense is blasphemy, and then, apparently, worse can be inflicted.⁶¹

So, what remains of toleration? Pufendorf assures his reader that he has not forgotten this important topic. He says that, notwithstanding the general desirability of unity and peace which one religion usually brings, that there may be circumstances where a ruler may safely tolerate dissenters.⁶² This may be the case where dissenters are so numerous, that expelling them would be difficult and injurious to the commonwealth. In this situations, dissenters may be left in peace, as long as they do not teach doctrine that

is seditious or tending to public disorder. The ruler should observe carefully religious dissidents to be sure they do not break out into open disputes over religious differences.⁶³

The one time when the sovereign does have a special duty to tolerate, is where that toleration has been extended by contract, or by some fundamental law of the nation.⁶⁴ Here, Pufendorf is able to continue to criticize Louis XIV's revocation of the Edict of Nantes as breaking faith with a previous agreement. But it is clear, then, that toleration is not a right, or even desirable. Rather it is something to be endured when unity is impracticable, or where promises or covenants have been entered into to maintain religious diversity.

Pufendorf begins with many of the same starting points as Locke as regards the state of nature, the religious duties of the individual, and the separate spheres of church and state. But his conclusions regarding toleration are really much closer to the medieval model than they are to those of either Locke or Bayle. Why is this?

III. Pufendorf and His Peers: Diverging Paths of Toleration

Especially for Pufendorf and Locke, it is not evident why their conclusions regarding toleration are so different if one just reads their works on church and state. Rather, the conclusions in those works seem affected a great deal by their differing presuppositions regarding the relation of the individual to the state. For Bayle, the relation of the individual and truth is especially important in arriving at conclusions different from Pufendorf.

All three authors certainly came from religious communities with different doctrinal views on some major questions. Pufendorf had a Lutheran background; Bayle was a Calvinist Huguenot; Locke was a latitudinarian product of the English reformation.

They would appear to provide a cross-section of response from three primary strata of the Protestant community. But the truth of the matter is more interesting, and perhaps more illuminating to our modern world.

While ostensibly a Calvinist, Bayle was actually quite a radical thinker who based his view of toleration on broad epistemological skepticism. Bayle, who was accused by fellow Calvinist theologians of supporting atheism, was deprived of his professorship at his protestant university as a result.⁶⁵ Rather than an heir of Calvin and ancestor of the New England Puritans, Bayle was more an heir of Pyrrhonius and ancestor to Hume, Voltaire, Rousseau, and eventually Franklin and Jefferson.⁶⁶ The Anglican Locke was oracle and guide to many an American religious dissenter as well as Deist thinker, and is perhaps the leading philosophical influence on the formation of the country that rejected both his British Government and his Anglican church.

For America, Pufendorf represents the road of toleration not taken, or at least early abandoned. Despite his enormous influence in the area of natural law in both Scotland and the American colonies,⁶⁷ his form of church/state arrangement was explicitly rejected by the founders of the American republic. His ideas were most directly represented by the New England Puritans, who mirrored many of his approaches to church and state, with the magistrate taking an active role in enforcing church discipline. But at the time of the Revolution and the formation of the constitution, Pufendorf's model of toleration was limited to a few New England states, and within a few years vanished from even there.

Locke, with his view of the separate roles of church and state, was the ideological victor on the topic of tolerance in the early Republic. But by the late nineteenth century,

the rise of uncertainty in theology, science, and philosophy laid the groundwork for a toleration based on skepticism. John Stuart Mill's view of skeptical individualism increasingly became the prism through which Locke was understood, and the twentieth century saw a wholesale move to toleration based on epistemological uncertainty and moral relativism. But the cycle of ideas has continued to roll, and now an important part of the American community appears to reject the skepticism and relativism associated with our current system of tolerance. But rather than returning to a pre-Mill, Lockean view, there are many who appear ready to embrace a model more like that of Pufendorf.

Pufendorf had more in common with Locke than with Bayle. We will thus begin by comparing Pufendorf and Locke, and then move to comparing Pufendorf and Bayle. We will conclude with some reflections about the current move in certain American political circles to try a modified Pufendorf model of church state relations.

A. Pufendorf and Locke: Individualism versus Paternalism.

Both Pufendorf and Locke seem to start with the same analysis regarding the individual and religion in the state of nature. Both agree that individual belief, both as a matter of faith and reason, cannot be forced. As Locke puts it, "all the life and power of true religion consists in the inward and full persuasion of the mind; and faith is not faith without believing."⁶⁸ Because of this, the care of souls cannot belong to the civil magistrate, Locke asserts, because his power consists only of outward force.⁶⁹ Even if opinions could be changed through force, this could not save men, as conscience is not satisfied by an unreasoned opinion or act.⁷⁰

Another commonality between the two men is that, unlike Bayle, neither rests their tolerance primarily on religious doubt, religious skepticism, or epistemic

uncertainty. Locke is no defender of a relativistic or skeptical religious outlook. As a practical matter, the civil magistrate should not be expected to have the ability or knowledge to get spiritual truth right, and this for Locke becomes a supporting reason for insisting that civil rulers stick to civil concerns. But he believed that truth exists, and is strong enough to defend itself without imposition of force. “For truth certainly would do well enough, if she were left to shift for herself.”⁷¹

The two men also agree on the voluntary nature of the church organization. As Locke puts it, the church is a “voluntary society of men, joining themselves together of their own accord . . .”⁷² The church itself has a right to regulate and order itself, and even excommunicate members. But it has no right to pass laws of civil effect. It is not its own civil state, and should not impose civil disabilities for religious belief.⁷³ The civil magistrate, Locke believed, had no jurisdiction over “the care of souls” or spiritual matters, and should legislate only as to “men’s civil interests.”⁷⁴

Where the two men suddenly diverge is when the question of the Christian ruler is raised. Locke agrees with Pufendorf that a Christian ruler changes neither the voluntary nature of the church, nor the solely civil nature of the state. But where then Pufendorf launches into a long digression on the *paternal* duties of a Christian ruler to the church he is a member of, Locke explicitly rejects this argument. He writes that “whether the magistrate joins himself to any church, or separate from it, the church remains always as it was before, a free and voluntary society.”⁷⁵

Locke does agree with Pufendorf that a Christian civil ruler should not tolerate atheism, Islam, or Catholicism.⁷⁶ But he does so for different reasons. Rather than creating religious unity, Locke views the exclusion of Muslims and Catholics as being

based on purely civil reasons. Both of these groups answer to a higher earthly, civil authority than the rulers of their own country—the Catholics to the Pope, and Muslims to the Turkish Emperor.⁷⁷ Locke would exclude atheists because he believes their belief undermines the force of oaths and covenants, and thereby weakens the bands of society.⁷⁸ This is as far as Locke seems to go in joining Pufendorf on the need for the civil ruler to maintain some level of natural religion, and he does so for purely civil reasons.

This difference does not seem to flow from any obvious differences the explicit starting points of Locke's *Letter on Toleration* and Pufendorf's *Religion and Civil Society*. Rather, the difference seems to emerge from some larger, underlying assumptions that both set forward in earlier works. The key difference is the view both men have of the nature of civil power. Pufendorf, as discussed above, held a view of the “supreme authority” of the state that was accountable to no one but itself. For him, the king was above the law.⁷⁹ Thus, the paternalism inherent in the monarchy allows the Christian Prince to play a significant role in the regulation and support of Christianity.

But Locke rejects the idea of an unaccountable, supreme, paternalistic civil authority. Locke's entire first treatise of his two treatises on government is spent rejecting, Biblically and historically, the notion of descending paternal civil authority.⁸⁰ Undergraduates are routinely introduced to Locke's *Second Treatise on Government* as being a document with major influence in the American founding. His *First Treatise* is almost as universally overlooked as the *Second* is lauded. But it is the reasoning of Locke's *First Treatise*, which rejects any notion of lingering paternal authority in the civil state that truly distinguishes the Pufendorffian from the Lockean analysis of the state and its powers.

The *First Treatise* does not merely reject arguments for hereditary monarchy, but also arguments for any kind of paternalistic government—a government that attempts to expand beyond concerns of peace and safety to areas of individual rights and property, including conceptions of the virtuous and good religious life.⁸¹ Monarchy as a viable political institution is finished; paternalistic governments we will always have with us. Thus, the *First Treatise* continues to matter, as it presents the foundation of limited government from which the arguments in the *Second* flow. For Locke, the rejection of paternal authority means that in his *Second* treatise the government can only act regarding physical peace and safety.⁸² As people do not enter into the state for religious purposes, and indeed cannot alienate their duties towards God, the state never obtains the rights to deal with religious matters. Such matters are beyond its competence or jurisdiction.⁸³

It would seem to be primarily the differences over views of the state, its origin, role, and authority in relation to the individual, which causes the large divergence between Pufendorf and Locke over religious toleration. America's early commitment to limited, express government with an accountability built in through separation of powers and checks and balances, as well as a separation between church and state, well reflected Locke's model. But Locke's philosophy of natural rights began to give way in the late 19th century to a more skeptical philosophical outlook more consistent with Pierre Bayle's view of the world.

B. Pufendorf and Bayle: Toleration and the Erring Conscience.

To complicate the picture, it turns out that Bayle and Pufendorf had very similar views, in opposition to Locke, on the question of the authority of the state in relation to

the individual. Yet Bayle is largely with Locke on allowing for greater religious toleration than Pufendorf. How is this explained?

Bayle largely shared Pufendorf's view on the supremacy of the state over the individual. He rejected Locke's notion of a reciprocal contract between ruler and people, denied a right of rebellion, and upheld a strong duty of obedience to the ruler.⁸⁴ But unlike Pufendorf, Bayle had a skeptical view of the world and, especially in the area of speculative truths, including religious ones, as opposed to mathematical or empirical, he believed one could only attain a "reputed" truth, rather than actual truth.⁸⁵ This led Bayle to defend strongly the notion of individual conscience. While other thinkers of the day often spoke of the rights of conscience, it was generally understood that this did not apply to erroneous conscience, or acts against conscience. Bayle was one of the first to propose that rights of conscience should extend to consciences that were believed by others to be in error—the so-called "erroneous conscience."⁸⁶ Even if one could know that someone else was in error, argued Bayle, how could one know that that other person was convinced of that error himself or herself?⁸⁷

Bayle's strong defense of conscience, then, did not have so much to do with a strong view of the importance of the individual versus the state, as was Locke's position. Rather it was based on a weak view of truth, or at least human ability to know truth, and to know when others were convicted of truth. This led him to view individual conscience as strong, even though he more generally viewed the individual as weak compared to the state. Thus, he held a strong view of the duty of the state to tolerate religious differences.

It was Bayle's skeptically-based toleration that emerged in the late 19th and early 20th centuries, and became the primary legal influence in the second half of the 20th

century. Oliver Wendell Holmes, the great denier of the natural law and moral absolutes, became an early advocate of rights based on skepticism. His great free speech opinions were based on the uncertainty of the state to decide what was the correct opinion. “But when men have realized that time has upset many fighting faiths” they come to believe that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.”⁸⁸ The equality of ideas in the marketplace became the guiding metaphor for a generation of opinions regarding rights of speech and other freedoms. Rights were not so much substantive principles as they were recognitions of human uncertainty and frailty; the state should not regulate or rule where it is uncertain or unknowledgeable. As morality itself was perhaps non-existent, or at least largely unknowable, the state should not attempt to enforce it. Thus, rights in the last half of the twentieth century became to be based on a Balyean-like epistemology of uncertainty.

Comparing Pufendorf, Locke and Bayle

To help understand the differences between Pufendorf, Locke and Bayle, we will place them on a grid with the entities of state, individual, truth, and type of tolerance, measured relative to the other thinkers.

Views of Elements of Society: Strong or Weak

| Society Elements | Pufendorf | Locke | Bayle |
|----------------------------|------------------|-----------------|-----------------|
| Individual | Weak | Strong | Weak |
| State | Strong | Limited/Weaker | Strong |
| Truth | Strong/Knowable | Strong/Knowable | Weak/unknowable |
| Religious Tolerance | Weak | Strong | Strong |

The chart reflects that for Bayle, the individual is generally weaker compared to the state. But in the area of conscience, because of the weakness of truth, the individual is in a position of strength. The weakness and strength are relative to the others on the grid, and are not meant to make broader claims than this. For instance, Locke did not have a belief in weak government per se, rather, he believed in limited and accountable government. But he has a weaker view of the supremacy of government in relation to the individual than either Pufendorf or Bayle. The important point to notice is that one can purport to hold individual rights in high importance, but if one is unwilling to limit the power of government, individual rights soon become of lesser importance in the operation of the state. An active citizenry in holding the government accountable is worth far more than rhetoric about freedom, democracy and the rights of man.

C. Pufendorf Today: Reconsidering A Path Not Taken

Locke's view of toleration had its day, and Bayle's its turn, in the history of the United States. Now, in this post-9/11 world, significant segments of American society are simultaneously rejecting moral relativism as well as seeking for the security provided by a stronger government. This moves society from the right side of the tolerance chart generally leftward. It does not require a conscious repudiation of the importance of the individual to move over the Locke column into the Pufendorf column. The difference between Locke and Pufendorf was not over their ostensible commitment to the individual and freedom to worship. Rather, it was that a strong view of the supremacy of the state generally undercut and largely negated the generally positive view of the individual set out by Pufendorf.

The last few years has seen significant moves within our government that have diminished and undercut our traditional system of separation of powers and checks and balances—a system that lies at the heart of an accountable and limited government. Ideas such as the unitary executive, the growth of the power and oversight of unelected administrative agencies, the greater use of executive orders and agencies, the willingness of Congress to delegate the declaration of war to the executive, all these trends tend to diminish the role of the people in overseeing their government.

Rather than the people monitoring a government accountable to them, as Locke envisioned, the people are content, by in large, to let the government monitor itself. Unwittingly, they have adopted an attitude towards government more consonant with Pufendorf's view—that of the paternal state which can be trusted to look out for our best interests. The logic explored in this paper suggests that a paternalistic view of government power also accepts a role for government in religious matters. It comes as no surprise, then, that the current moves toward a diminishment of the separation of powers and an increase in centralized authority has been accompanied by an increase in the state's interest in and involvement with religion. Consider this summary of Pufendorf's points of church/state cooperation compared with events from the last few years:

1. The Sovereign Should Protect Christianity from internal and external threats – Creation of a number of federal agencies to monitor the state of religious freedom, including the Commission on International Religious Freedom⁸⁹ and a White House office on faith-based initiatives.⁹⁰

2. The Sovereign Should Fund Support for Christian Organizations – The President has sponsored legislation to send tax monies to religious groups and churches

to carry out social welfare programs.⁹¹ The administration has also supported school voucher programs aimed at supporting private religious schools.⁹²

3. The Sovereign Should Provide Oversight and Surveillance of Religious Groups – The Department of Justice has implemented new rules that allow it to monitor and infiltrate religious groups based on suspicions of illegal activity that fall short of probable cause.⁹³

4. The Sovereign Should Set Standards for Teachers in Religious Schools – Once schools accept state voucher funds, they generally are required to admit students and employ teachers regardless of religious affiliation or practices. This is also generally true for employees of religious organizations whose salaries are paid out of federal money given for faith-based social programs.

5. The Sovereign Should Use Religion for Civil Unity – While most Presidents have employed religious language in their speeches, the recent administration has taken this practice to new levels of pervasiveness, invoking faith and belief in God on a wide range of personal, domestic, and foreign policy matters. While ostensibly acknowledging American's religious diversity, he treats religious language and symbols as a kind of unifying theme in his public communications. Leaders of both parties have participated in this trend, as neither wants to be left out in the race for the support of religious America.

6. The Sovereign Should Church Standards and Discipline – Just prior to the last presidential campaign, the press reported efforts by the Bush campaign to influence the Catholic hierarchy in Rome to encourage American bishops to enforce conservative Catholic social teachings on topics such as gay marriage and abortion.⁹⁴ These topics

were an important point of contention between President Bush and his challenger John Kerry, who is a Catholic, in the last presidential race.

7. The Sovereign Should Promote “Consensus” Religious Beliefs and Should Oppose Atheists – Attempts by secularists to remove “under God” from the pledge of allegiance or the Ten Commandments from public spaces has resulted in a backlash against the beliefs of atheists and unbelievers. A sitting Supreme Court Justice recently wrote that because the “vast majority” of believers, Christian, Jewish and Islamic, believed in God and the validity of the ten commandments, that it there was nothing “unconstitutional in a State’s favoring religion generally, honoring God through public prayer and acknowledgment, or, in a non-proselytizing manner, venerating the Ten Commandments.”⁹⁵

For the most part, Pufendorf’s more negative descriptions of the state control of the church, such as disciplining clergy and church employees, changing or enforcing internal regulations of religious institutions, and overseeing standards of employment and membership, has not been widespread. But it could be that even these elements will common increasingly common as state funding of religious activities grows more widespread. The state has a general need, desire, and habit of first overseeing and then controlling that which it funds.

Conclusion

It is difficult for the Christian church to critically examine its newfound proximity to power. Sometimes history can give us a more detached perspective than we can achieve in the present. The church should look at the picture of church/state relations outlined by Pufendorf, and ask if this is really an arrangement that will be healthy for

either the church or the state in the long run. Some point with favor to the church/state arrangements in Europe, which have more of a Pufendorfian cast, including several nations with national churches, and most with state subsidies of religious education.

The irony is, however, that despite government support for religion in these countries, church attendance and growth lags far behind that in America, which has a far more vibrant religious community than that found in Europe. It would seem that it is, at least in part, the voluntary principle of church support that has caused American religion to thrive during a time when Europe has entered what has been termed a “post-Christian era.”⁹⁶ At times the more traveled path is only that—more traveled—and not a better path. There may be very good reasons to stay with the less traveled way, rather than to revisit the Pufendorfian road earlier abandoned.

Endnotes

¹ John C. Laursen, Cary J. Nederman, Eds., *Beyond the Persecuting Society: Religious Toleration Before the Enlightenment* (Philadelphia: University of Pennsylvania Press, 1998), 180.

² Samuel Pufendorf, *Of the Nature and Qualification of Religion in Reference to Civil Society* (Liberty Fund: Indianapolis, 2002), xii-xiii.

³ J.B. Schneewind, *The Invention of Autonomy* (Cambridge University Press, 1998), 118.

⁴ Pufendorf, *Religion in Reference to Civil Society*, xi.

⁵ Id. xiii.

⁶ John Locke, *The Two Treatises of Government and A Letter Concerning Toleration* (Yale University, 2003).

⁷ Pierre Bayle, *Philosophical Commentary on These Words of Jesus Christ, Compel Them to Come In* (Liberty Fund: Indianapolis, 2005).

⁸ While tremendously influential in his day as regards natural law and political thought on both the European continent and in the American colonies, Pufendorf virtually disappeared from view at the end of the 18th century. Recently, there has been some scholarly interest in exploring and re-discovering Pufendorf's impact on the formation of natural-law thought of the 17th and early 18th centuries. But these works have generally not dealt with his church/state thought in particular. An exception is a small section in the work of Leonard Krieger, *The Politics of Discretion: Pufendorf and the Acceptance of Natural Law* (Chicago: University of Chicago Press, 1965), 218-243. In a section entitled "Politics and Religion in Pufendorf," Krieger explores Pufendorf's church/state writing and sets it in the framework of his natural law thought. While insightful in showing the tensions and even contradictions of Pufendorf's church/state thought, Krieger does not attempt to explore Pufendorf's church/state thought in relation to other contemporary natural-law thinkers and why Pufendorf reached different results than they did. This is the task of this present paper. Other recent works regarding Pufendorf and the importance, impact, and content of his views on natural law generally include: Thomas Behme, *Samuel von Pufendorf: Naturrecht und Staat; Eine Analyse und Interpretation seiner Theorie ihrer Grundlagen und Probleme* (Gottingen: Vandenhoeck und Ruprecht, 1995); Horst Denzer, *Moralphilosophie und Naturrecht bei Samuel Pufendorf* (Munich: Verlag C.H. Beck, 1972); Simone Goyard-Fabre, *Pufendorf et le droit Naturel* (Paris: Presses universitaires de France, 1994); Kari Saastamoinen, *The Morality of the Fallen Man: Samuel Pufendorf on Natural Law* (Helsinki: Suomen Historialliset Seura, 1995). J.B. Schneewind gives a helpful overview and placement of Pufendorf in his chronicle of thinkers on natural law and modern moral philosophy, *The Invention of Autonomy* (Cambridge University Press, 1998), 118-128.

⁹ Krieger, *The Politics of Discretion*, 92-93.

¹⁰ Id. 93-94.

¹¹ Samuel Pufendorf, *The Whole Duty of Man, According to the Law of Nature* (Liberty Fund: Indianapolis, 2003), xii-xiii.

¹² Pufendorf, *The Law of Nature*, 52-53.

¹³ Id. 53-54.

¹⁴ Id. 56 (emphases in original).

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- ¹⁵ Id. 210-211.
¹⁶ Id. 208.
¹⁷ Id. 209.
¹⁸ Id. 224.
¹⁹ Id.
²⁰ Id. 28.
²¹ Id. 29.
²² Id. 216.
²³ Pufendorf, *The Law of Nature*, 208-209.
²⁴ Pufendorf, *Religion and Civil Society*, 114.
²⁵ *Beyond the Persecuting Society*, 184.
²⁶ Krieger, *The Politics of Discretion*, 234.
²⁷ Pufendorf, *Religion and the Civil Society*, Id. 13-15.
²⁸ Locke, 219.
²⁹ Pufendorf, *Religion and the Civil Society*, 15-16.
³⁰ Id. 16.
³¹ Id. 17.
³² Id. 18, citing, Acts 5:29.
³³ Id. 18.
³⁴ Id. 19.
³⁵ Id. 20.
³⁶ Id. 20-21, 103.
³⁷ Id. 22-23, 24.
³⁸ Id. 27.
³⁹ Id. 25-32.
⁴⁰ Id. 36-39.
⁴¹ Id. 39-54.
⁴² Id. 56-73.
⁴³ Id. 86-87.
⁴⁴ Id. 87-89.
⁴⁵ Id. 89.
⁴⁶ Id. 90.
⁴⁷ Id. 91.
⁴⁸ Id. 92-93.
⁴⁹ Id. 93-94.
⁵⁰ Id. 94-95.
⁵¹ Id. 95.
⁵² Id. 96.
⁵³ Id. 96-97.
⁵⁴ Id.
⁵⁵ Id. 99.
⁵⁶ Id. 102.
⁵⁷ Id.
⁵⁸ Id. 102-103.
⁵⁹ Id. 104-105.

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- ⁶⁰ Id. 106.
- ⁶¹ Id. 107.
- ⁶² Id.
- ⁶³ Id. 108.
- ⁶⁴ Id. 108-109.
- ⁶⁵ Perez Zagorin, *How the Idea of Religious Toleration Came to the West* (Princeton University Press, 2003), 285. For an extended discussion of the opposition to Bayle within French protestant circles see Guy H. Dodge, *The Political Theory of the Huguenots of the Dispersion* (New York: Columbia University Press, 1947).
- ⁶⁶ Pierre Bayle, *Political Writings*, Sally L. Jenkinson (ed.) (Cambridge University Press, 2000), back cover.
- ⁶⁷ Schneewind, *The Invention of Autonomy*, 118.
- ⁶⁸ Locke, 219.
- ⁶⁹ Id.
- ⁷⁰ Id.
- ⁷¹ Locke, 241.
- ⁷² Id.
- ⁷³ Id. 224.
- ⁷⁴ Id. 218-219.
- ⁷⁵ Id. 224.
- ⁷⁶ Id. 245-246.
- ⁷⁷ Id. 245-46.
- ⁷⁸ Id. 246.
- ⁷⁹ Pufendorf, *The Law of Nature*, 208-209.
- ⁸⁰ See especially the chapter XI entitled “Who Heir,” Locke, 66-99.
- ⁸¹ Id. 9-12.
- ⁸² Id. 158-161.
- ⁸³ Id. 218-219.
- ⁸⁴ Zagorin, *How the Idea of Religious Toleration Came to the West*, 270.
- ⁸⁵ Id. 282-283.
- ⁸⁶ Id. 280-281; Bayle, *A Philosophical Commentary*, 219-233.
- ⁸⁷ Bayle, *A Philosophical Commentary*, 145-149.
- ⁸⁸ *Abrahams v. United States*, 250 U.S. 616, 624-26 (1919, Holmes dissenting).
- ⁸⁹ <http://www.uscirf.gov> (all web pages viewed as of 5/8/2006).
- ⁹⁰ <http://www.whitehouse.gov/news/releases/2003/09/20030922-1.html>.
- ⁹¹ Id.
- ⁹² <http://www.cnn.com/2004/ALLPOLITICS/02/13/bush.vouchers.ap/>
- ⁹³ http://www.ncronline.org/NCR_Online/archives/090602/090602e.htm.
- ⁹⁴ http://www.boston.com/news/nation/articles/2004/06/14/report_says_bush_sought_vatican_help/
- ⁹⁵ *McCreary County v. ACLU*, 125 S. Ct. 2722, 2753; 162 L. Ed. 2d 729, 768 (2005), (Scalia, J. dissenting); *Van Orden v. Perry Thomas*, 125 S. Ct. 2854, 2864; 162 L. Ed. 2d 607, 620 (2005) (Scalia, J concurring).

⁹⁶ Including the Pope, who favorably compared the American religious situation to that in Europe and commented on the voluntaristic spirit of American religion.
http://www.catholic.org/printer_friendly.php?id=1962§ion=Featured+Today.