

# Pufendorf On Civil Religion and the Church as a Mere Association

Samuel Pufendorf, *Of the Nature and Qualification of Religion in Reference to Civil Society*, Introduction & ed. Simone Zuberchen (Indianapolis: Liberty Fund)

Samuel Pufendorf published his treatise on the nature of the church and its relation to civil society in 1687, before John Locke's Letter Concerning Toleration in 1689. As Pufendorf is considered to be basically laying out a position in favor of religious freedom in the sense of toleration, he is one of the first major thinkers to make this a feature of this political theory. The background to this new emphasis of political theory was Louis XIV's revocation of the Edict of Nantes in 1685, so the motivation of opposition to France has to be taken into consideration. If these thinkers only had in view their domestic situation, perhaps they would not have been so motivated to enter this area. The editor of the Liberty Fund edition of this work points out the distinction between the traditional and modern ideas of toleration.

The former sees toleration as a "grant or privilege bestowed on individuals or groups by the ruler. Toleration is conceived not as a good in itself by rather as a temporary means to overcome religious dissent. ... The "modern" doctrine of toleration is marked by a shift to religious liberty or freedom of conscience. In this view, liberty is an entitlement that does not depend on an agency that grants privileges. The liberty-based approach to toleration amounts to a principled defense of religious dissent and implies the permanence and ineradicability of religious diversity. (p. ix)

Locke, then, is seen as the pioneer of this new type of toleration. A fundamental difference between Locke and Pufendorf is that, although Locke today is seen as *the* political theorist of the modern liberal state, he was at the time cooking up a new theory, while Pufendorf was a recognized authority in modern natural law, in a tradition going back to Hugo Grotius, and at various times worked as a university professor and as a government minister.

Most of the book is devoted to establishing the nature of the church as an entity that does not have sovereignty. He points out the systematic difference between the activity of Moses and of Jesus. Moses separated a people out of those dwelling in Egypt, and perceiving that he could not set up a state within the boundaries of Egypt, he led them out into the wilderness. (That Pufendorf puts it this way, shows his insensitivity to Biblical motifs, to say the least.) Moses, like Jesus, established his authority from God by miracles, but they were the opposite sort of miracles. Those of Moses were threatening, punishing miracles, just as state power manifests itself by threats, whereas those of Jesus never hurt anybody. Moses then acted as a judge over the people, led them in battle against their enemies, and when near death set up a successor to rule in his place. All this is the opposite of what Jesus did.

Pufendorf then examines the apostolic era to show that there was no exercise of sovereignty there, and that even in church matters the apostles acted collegially though

consensus and persuasion, rather than exercising the power to command. All this is to refute the Roman Catholic idea of church of authority, in the pope, being a sort of sovereignty. In addition Pufendorf brings out all the usual refutations of the pope's claim to special authority and succession from the apostles.

The purpose of all this is to refute the Roman Catholic idea of the church, as this was the most prominent and distinct rival to the position that Pufendorf seeks to establish. But one suspects a secondary motivation, in that, having come out in firm and systematic opposition to the *pestis pontificia*, he now stands in the position of solid spokesman for Protestantism, while in fact his real agenda is to subvert the Protestant view of the church. As Zuberchen puts it, "Against Catholicism Pufendorf argues that the Christian Church has to be understood as a kind of college or private society, subject to the jurisdiction of the secular ruler." (p. xv)

The conclusion of the first ninety pages of the book is that Pufendorf sees the ancient church acting independently of the Roman Empire. In particular he says of church discipline:

It is worth our Observation, that the Punishments inflicted by vertue of these Statutes were of such a nature, as might be put in execution without the least prejudice to the Civil Government; such were private Admonitions, public Reprimands, and Church Penances, the extream Remedy was Excommunication, by vertue of which, a Member of the Church was either for a time deprived from enjoying the benefit of the Public Worship, or entirely excluded from being a Member of the Church. This being the utmost, unto which any Colledge can pretend, viz. Entirely to exclude a Member of their Society. This Exclusion ... Nevertheless did not alter the Civil State or Condition of a Subject; But those that were thus excommunicated suffered no loss in their Dignities, Honour, Rights, or Fortunes. For, that the Church Censures should extend to the real Prejudice of the civil Condition of any Subject, is not any ways requisite for the obtaining the Ends for which the Church is Established; ... (p. 91)

But, with the conversion of the Empire, the situation altered. "The next thing which deserves our Consideration is, whether the Church is, and how far it received any Alteration from its former condition, after Princes, whole Kingdoms, and States did profess the Christian Religion." (p. 91) The obstacle in trying to demonstrate anything about this is that "there is not any express Command in the New Testament, directed to Sovereigns, which entitles them to any particular Prerogative in the Church.... From whence arises this conclusion, that, what right Sovereigns can claim in the Church and Church Affairs, must be deduced, either out of the natural condition of the civil Power, or out of the true Genius of the Christian Religion, or else must owe its off-spring to the free consent of the Church. (p. 92) This can be summed up succinctly, for "if a Prince, or a whole Commonwealth, do receive the Doctrine of Christ, the Church does thereby not receive any other Alteration, as to her natural Constitution, but that, whereas she was formerly to be considered only as a private Society or Colledge, yet such a one as being subordinate to the Law, and therefore to be cherished by the Higher Powers, who had no legal Right to disturb, prosecute or destroy it; She now being put under the particular Protection of her Sovereigns, enjoys a greater share of Security, and is beyond the reach of the Persecutions of the Infidels. Notwithstanding this, the Church is thereby not exalted from a Colledge to a State, since, by the receiving of the Christian Religion, the civil Government does not undergo any

Alteration of Diminution; On the contrary, Sovereigns loose nothing of their legal Rights... (p. 93)

Pufendorf then points out that by becoming a member of the church, the sovereign does not become minister or acquire teaching authority in the church. Nevertheless there are "Obligations, which owe their off-spring to the union of that Duty, which is incumbent to every Christian, with that of the Royal Office." The Sovereign 1) becomes the protector of the church, 2) he must "provide necessary Revenues for the exercise of the Christian Religion", he should 3) "take care of Church-Buildings", 4) should "erect and maintain Schools" to implant basic Christian teachings, (p. 96) and 5) should call general assemblies when differences on doctrine arise.

But because the church is a society, the Prince "legally claims a Right of having a general Inspection over this as well as all other Societies" to ensure that "nothing be transacted in these Colledges to his Prejudice." (p. 96) In addition, the ruler should have the right of review and veto over appointments to church offices, because, Pufendorf argues lamely, the Prince can do a better job of this than anyone else. Also the Prince should appoint his inspectors to reprove and punish clergy who get out of line, again, because the Prince can do it best, and because he is both a church member and a sovereign.

In this arrangement, the clergy benefit financially through salaries and state supported seminaries. While the state maintains church properties, the people pay for this through taxes, so they are not better off. The church organization becomes an extension of the state, as the sovereign maintains control and ensures that only that is taught which promotes the state interest, while the church itself still maintains its status as a private society, and does not have its own authority. In short, the great gainer is the state.

Having laid out this generally Erastian picture of the conditions under which the church was to be "tolerated", Pufendorf comes to his particular sectarian application. He wants to do away with church discipline.

For what Reasons the Primitive Christians did introduce Church Discipline, viz. To be distinguished from the Heathens by their holy Life and Conversation, and to supply the Defects of the civil Pagan Laws, which did not restrain them from such Vices as were abominable to the Christians, has been sufficiently explained before. This Reason takes no more place now, after the whole Commonwealths as well as their Sovereigns are entred into the Communion of the Christian Church; ... But, notwithstanding the general Conversion of the whole Commonwealths to the Christian Faith, care ought to be taken, that Holiness of Life be not laid aside among Christians; from when arises this Question: Whether it be better to make use of the antient Church Discipline now, in the same manner as it was practiced in the Primitive times? Or, whether it be not more expedient to admit of some Alterations, after Sovereigns are entred into the Communion of the Church? The last of these two seems to be most probable; because this antient Church Discipline which was introduced for a certain time, to supply the deficiency of the Pagan Laws, and to amend their vicious Lives and Conversation, and was thus left to the direction of certain People, is not an Essential part of Christianity; and, besides this carries this Inconveniency along with it, that it may easily degenerate into a kind of pretended Sovereignty, and prove prejudicial to the Civil Power. And, as Sovereigns have a Right to provide against every thing that may be the probable cause of Convulsions in the State; so may this defect be supplied by the Civil Laws, and Vices may be suppressed by Civil Punishments. Neither do I see any reason

to the contrary, why Vices should not be as easily corrected by Punishments prescribed by the Civil Laws, as by Church-Censures; .... (pp. 100-101)

He then suggests as a possibility a two-tier court system where people appear first before a civil magistrate who may elect, in lesser cases, to refer the matter to an ecclesiastical court for Church-Censure. "Concerning Excommunication, the same ought not to be put in Practice, but, with this caution, that it ought not to be left to the discretion of Priests, so as to be inflicted by them at pleasure; but this Power ought to be limited by certain Rules prescribed by those that have the Legislative Power in a State. For, in a Christian Commonwealth Excommunication alters the Civil Condition of a Subject, and renders him infamous and detestable among his fellow-Christians: And as it affects the Civil State of Subjects, Sovereigns, unless they will let others encroach upon their Prerogative, ought to determine concerning its Legality." (p. 102)

The discipline had been insisted upon by the Reformed churches. It had been energetically opposed in most places where it appeared. The political and economic establishment, on account of the discipline, tried to prevent the establishment of Reformed churches, or where they were established, prevent the effective operation of the discipline. Yet for the Reformed churches the discipline was fundamental.

The true church can be recognized if it has the following marks: The church engages in the pure preaching of the gospel; it makes use of the pure administration of the sacraments as Christ instituted them; it practices church discipline for correcting faults. In short, it governs itself according to the pure Word of God, rejecting all things contrary to it and holding Jesus Christ as the only Head. By these marks one can be assured of recognizing the true church—and no one ought to be separated from it. — Belgic Confession, Article 29.

The discipline was one of the necessary marks of the true church, so by banning the discipline, and having the regulation of the lives of Christians being taken over by civil law, Pufendorf was not willing to let the church be the church. He was calling for the abolition of Reformed ecclesiology. He had used the first part of his book to argue against the Roman Catholic church establishment; now in two pages he ruled out the Reformed concept. Pufendorf's real idea of an acceptable religion was in reality for it to be Lutheran only.

Pufendorf, however, puts his finger on the contentious issue about church establishment. Church discipline, if resisted, escalates to excommunication and "in a Christian Commonwealth Excommunication alters the Civil Condition of a Subject". Where Christianity is the established religion, those who are expelled from the church cannot hold civil office and they also suffer economic disabilities. Therefore the Reformed church consistory holds the veto, the power to depose, over political office. Pufendorf's whole idea of the relation of civil power and the church is that the civil power cannot allow itself to be under the power of the church in that way. But beyond that, the reason that the church would apply discipline, always assuming that it would not adventure into politics, is that a church member was conducting himself in an immoral manner. This, of course, was generally the case with the monarchs and other upper crust of society. So the Reformed discipline did not threaten merely a potential or theoretical change, but professed an intention to actually alter the way of life of the powerful.

England offers of useful example of a case where the discipline was successfully fought off. In the 1590s it was already perceived by the establishment as a threat. Richard Hooker was funded to write the ideological basis for opposition to it. He was given access to the state printer. An examination of his *Laws of Ecclesiastical Polity* shows the superiority of the paper and printing over what was available for other publishing projects at the time. Hooker came out vigorously against the discipline, and proceeded to create a theology and political theory to put the church and state on a basis where it could stand against the Puritan theology. There followed other political theories—of Hobbes, Selden, etc.—promoting a view of the church under a state sovereign, and not free to pursue its own agenda to discipline society.

Meanwhile the Reformed pastors continued to long for the discipline. They felt themselves lacking the means to discipline English society into a nation with a Christian character. And this is what they wanted: to be able to treat the nation as a church, and bring everyone under a standard of conduct befitting a Christian. Even with the triumph of Parliament in the Civil War this was not realized. The Presbyterians were influential in Parliament, but the army was under Independents, and the army itself had to look out for the considerable number of radicals of various sorts, who did not concur with the Presbyterian ideology (its theology, its royalism, etc.). There was no consensus for a discipline in England.

In places where the discipline was put in place there are lessons to learn. Presbyterianism was established in Scotland, yet I am unable to discover the extent to which the discipline was also applied there. The Stuarts were against it, along with Presbyterianism itself (although it was practiced for a time in some localities). There does not seem to have been an effort to bring the nobility under the discipline. As a general policy it does not seem to have been practicable.

In New England there was an additional problem. People were barred from church membership if they could not narrate an account of their conversion in which they were conscious of the phases of what New England Congregationalism thought were required by its theology. They might attend the preaching of the church for decades and never attain the necessary experience. Therefore there was a distinction between being a member of the church and a member of society that was imposed by the church. Still church attendance was mandatory, and the state undertook to strictly enforce morality. New England Congregationalism was somewhat more secular than other Reformed establishments, as it gave a larger role to the state, for example registering births, marriages and deaths in the town records. But the standards of the state in regulating conduct were much closer to that of the church than elsewhere. Because of the barrier to church membership many people could not join and were prevented from presenting their children for baptism. The solution that was worked out eventually was the half-way covenant, under which people who were not communing church members, but not living contrary to the discipline either, could have their children baptized. Theologically this did not make sense, but it was a solution to the problem of a society that wanted to govern itself as a church, and also maintain the church discipline.

The Reformed discipline, in short, was not workable as it was conceived of and attempted to be implemented by the Reformed. In America they eventually gave up. In 1788 the Presbyterian Synod of New York and Philadelphia made revisions to the Confession.

They removed the obligation of the civil magistrate to maintain the purity of the church, but retained the obligation of the magistrate to protect the ability of the clergy of all denominations to carry out their functions, to prevent disruption of church services, and not to interfere with the exercise of profession and belief by “voluntary members of any denomination of Christians.” The Presbyterians gave up the authority to discipline the nation to be a Christian people. But they went further than that. They gave up the claim to be the established, protected state church. Even more, they gave up the right to define what it is for a nation or a state to be Christian.

And yet, the Reformed had a unique advantage for solving the problem of how to be a church within a Christian state. For only the Reformed made the distinction between the Kingdom of God and the Church. For the Lutherans the two were the same thing, and Pufendorf, as a Lutheran, had no recourse to this distinction in creating his political theory. If he did not want the church to discipline the nation and especially the sovereign, he had to chain the church under the sovereign. The Reformed, on the other hand, did not have to treat the nation as a church. They could have moved ahead in terms of their distinction to define how a civil order can be Christian without treating all those under it as though they were the church and subjecting them to church discipline. But this option did not interest the Reformed. Their attempts to implement their preferred approach were, however, beaten back almost everywhere, and in fact, increased opposition to Reformed theology as such. In the end, they opted for considering themselves to be a voluntary society, and now are disturbed to find that the state is treating them as such.