NATURAL RIGHTS VERSUS HUMAN DIGNITY: TWO CONFLICTING TRADITIONS

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Introduction

“All human beings are born free and equal in dignity and rights”. In the famous first article of the Universal Declaration of Human Rights, human dignity is mentioned in the same breath as human rights. But what is exactly the relationship between dignity and rights? Are we to endow human beings with dignity because human beings possess certain inalienable rights or is it the other way round: are we to guarantee people their rights because of their inherent human dignity? The relation between the two remains close but obscure. Furthermore: what exactly are we asked to do? It seems that the reader is only presented with a certain state of affairs. Human dignity is presupposed to ‘exist’, and all we have to do is to ‘understand’, to ‘acknowledge’ and to ‘recognize’ it. But if so, we may ask, with Dylan: where do we find it? Isn’t it true that we can only hope to find dignity as a result of the way we treat people? Why are we admonished to begin with dignity as a starting-point? Why aren’t we simply told that human dignity is a desirable result; an aim to strive for? Aren’t we running in circles by pretending that something is there which should still be realized?

In order to shed some light on these perplexities, it is instructive to take a look at the developments that took place in 17th century natural law theories, which contributed to the vocabulary and style of the declaration. First I will shortly sketch the stage on which 17th century natural law thinkers had to play. In section 2 and 3 I will analyse the role of the notion of human nature in the theories of Hugo Grotius and John Locke and in section 4 its relation to the formulation of natural rights. It will be shown that the formulation of those rights is in no way dependent on the assumption of human dignity. Matters are, however, different for Samuel Pufendorf. In his theory, the notion of human dignity is central. As will be shown in section 5, that dignity is God-given and consists in the capacity to understand God’s will. But nature does not play a decisive and informative role here and a theory of natural rights is not developed. The conclusion can be drawn that in the 17th century the concepts of ‘dignity’ and of ‘rights’ seem to point in opposing directions.

1. The stage

In order to appreciate the theoretical innovations that were carried out by 17th century natural lawyers, it is important to know a bit more about the key assumptions shared by earlier natural

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law thinkers and the problems they faced. How did the stage look like when Grotius and Pufendorf entered the debate?

It is important to realise that underlying a host of differences and disagreements of the various thinkers who set out to develop a natural law theory, there is a set of assumptions, shared by all. The first of these concerns the aim of such a theory: natural law theory sets out to develop criteria for the moral evaluation of law and society. Natural law is not meant as a tool for the explanation of social institutions, but as a means to justify or to criticise existing arrangements. It is further assumed that these criteria can be found in nature. Thinkers may disagree about how nature should be seen and conceptualized, but they all share the view that nature is the hard and solid foundation on which our normative judgments rest. And finally, all natural law thinkers are committed to the view that it is possible for human beings to discover those principles by the use of reason. We have access to the fundamental moral distinctions, that distinguish good from bad society and that tell the difference between just and unjust law.

It is obvious that not just every concept of nature lends itself easily to the aims of natural law theory. Nature should be thought of as something that is a worthy moral foundation; as a model to be copied or imitated, or at least as a harmonious order. However, no one with eyes to see can fail to notice that treason, bloodshed and murder are frequent natural phenomena, far removed from a practice that we might want to copy in human society. So the problem all natural lawyers have to cope with is: how can we represent or conceptualize nature in such a way, that it can be used as a starting-point for the derivation of fundamental moral principles?

A well-known solution to this problem is to regard nature not as it actually exists, but as an order which is dynamic and which perpetually strives to realize ends. Aquinas’ famous teleological version of natural law theory starts from the inclinations of plants to preserve themselves, the inclinations of animals to procreate, and the inclinations of human beings to live sociably together and to gain knowledge about God. Empirical observations of people destroying rather than building social life, can then always be countered by saying that these people act against their true natural inclinations. What counts as ‘nature’ does not consist in ignoble actions but in noble ends. Nature is like a cathedral, designed by the divine Architect, in which every element has to fulfill a definite function.

For a number of reasons that I analysed elsewhere this teleological framework was gradually undermined. From the 16th century onwards, maybe even earlier, the concept of nature changed. It was no longer seen as something that was eternally striving towards the realisation of ends, but as something that simply and statically is. God was no longer conceived as the Architect who, by the very building he had designed, could be assumed to have indicated the functions of its elements. God was increasingly seen as Lawgiver who had to make explicit the do’s and don'ts that he had in mind for His creatures. Created nature had to be coupled with explicit legislation in order to inform us about the principles and criteria we should cherish.

The combination of creation and legislation generated two problems, that were both hard to tackle. The first seems to endanger the enterprise of natural law as such. For if nature needs to be supplemented by an explicit command, why then should we look into nature at all? If God’s

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3 See *The Disintegration of Natural Law Theory: Aquinas to Finnis*, Brill, Leiden, 1998, ch. III.
legislation is needed anyway, it seems more efficient to turn to God's word directly than by investigating God's creation.

This question is accompanied by a second one, which refers to the relation between creation and legislation. How does God's explicit command relate to nature? Is nature created as a result of God's will? Or is there an indwelling rational order to be found in nature, which is binding even God Himself? Is something good because He had willed it, or is something commanded because it is inherently good? The former solution risks to render natural law theory superfluous; whereas the latter option risks to turn God into a superfluous entity. The problem was fiercely debated by 'voluntarists' and 'intellectualists' and was never resolved.

2. A new starting point

This was the sorry state natural law theory was in, when people like Grotius, Locke and Pufendorf turned to natural law theory in order to find an answer to the questions that were put on the agenda by the increasing centralisation of power in the young Western European nation states of the 17th century: What is the scope and aim of governmental power? How can it be justified? And how to draw its boundaries?

That these thinkers turned to natural law theory is no small wonder and can only be accounted for by the strong appeal of natural law to provide for a truly universal conceptual framework. Natural law theory promised to overcome the pitfalls of theories, such as the droit divin in its many forms, which leaned too heavily on religious assumptions to be acceptable to the many religious denominations that had emerged in the previous era.

But, and this is important to realize, natural law could only live up to its universalistic claims, if it did not degenerate into endless disputes concerning God's free will, and the relation between God and nature. I think that this is at least one of the reasons why these thinkers emphasized the centrality of human nature as the basis of natural law. In 17th century natural law theory, not nature as a whole, but specifically human nature is the basis and the foundation of our moral principles and distinctions. As Grotius writes in his De Jure Belli ac Pacis:

The very nature of man, which even if we had no lack of anything would lead us into the mutual relations of society, is the mother of the law of nature 4.

Of course, even with human nature as a starting-point it is still possible to fight over the traditional question whether God was free to create human nature as he saw fit, or whether he was bound by some higher rule of reason. But it does not really matter anymore. This debate was not resolved but simply made irrelevant. That is why Grotius can write:

God was free not to create man. But man having been created, that is, a nature using reason and being eminently sociable, he necessarily approves of actions in harmony with such a nature and disapproves of the opposite 5.

And it is echoed by Locke, who 20 years later wrote in his Essays on the Law of Nature:

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4Hugo Grotius, De Jure Belli ac Pacis (JB) Prol. 16.

It seems to me that certain essential features of things are immutable, and that certain duties arise out of necessity and cannot be other than they are. And this is not because nature or God (as I should say more correctly) could not have created man differently. Rather, the cause is that, since man has been made such as he is, equipped with reason and his other faculties and destined for this mode of life, there necessarily result from his inborn constitution some definite duties for him, which cannot be other than they are.6

In order to change natural law, God should change human nature first. Since nobody would deny the possibility that God can change human nature as He sees fit, His freedom is not endangered. But this freedom does not turn natural law into an arbitrary affair, inaccessible to the human intellect. If He changes human nature, we human beings are the first to know. By turning human nature as a starting point, it seems that uncontested ground has been reached on which universal and timeless principles could be erected.

3. A bodyless figure

The emphasis on human nature may be applauded as a welcome break from the traditional debates concerning the relation between creation and legislation, but it did not solve the other problem with which 17th century natural lawyers had to cope: the problem that nature had to be considered as worthwhile copying. If man naturally 'approves of actions in harmony with this nature', and if we would like to treat this natural approval as the foundation of our moral distinctions we should not conceive of man as immoral, depraved, weak and selfish. Yet, this is exactly how human nature is conceived in Protestant circles. And Grotius, more than anyone else, was aware of the evil side of human nature.

The solution that is proposed by Grotius is to abstract from reality. In order to serve as a reliable standard, human nature should be presented in an idealised form. 'Essential' traits in human nature should be distinguished from 'accidental' or 'inessential' characteristics. Now, as we have seen, this solution was in fact also adopted by Aquinas, who also differentiated between 'true' nature and mere observable characteristics. But in Aquinas' case 'true' nature consisted in the ends that are pursued. This option was not open to Grotius. To 17th century writers nature, as well as human nature, is immutable and unchangeable.

So rather than focussing on ends, Grotius regards human nature as consisting of a set of eternal and immutable character traits. According to Grotius human nature is self-interested, sociable, reasonable and capable of speech. No further arguments are adduced, for they are taken to be self-evident. The traits of human nature are compared to the properties of a 'figure abstracted from a body'. Human nature serves as a self-evident starting-point from which several principles of natural law can be deduced. We see this view echoed in the works of Locke and countless more minor figures who assert that from human nature alone certain immutable principles can be deduced, in the same way that from the existence of a triangle alone the indubitable proposition can be deduced that its three angles are equal to two right angles. Such statements, although they are inspired by the ambition to create a science of morals with the same degree of

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certainty as mathematics, never led to full-scale deductions. But they do indicate the need for a concept of human nature that could adequately perform its function as the sole foundation of natural law. For indeed, a triangle is a triangle if and only if its three angles can be equated to two right angles. In a similar vein, man is human if and only if he is self-interested, social and rational.

However, a closer analysis of these character traits reveals that self-interest is dominant in the writings of Grotius and Locke. For why does man seek society? Because he is so weak that he cannot preserve himself without society. What does his rationality amount to? Reason tells him to seek his long term (self-) interest rather than immediate satisfaction. All characteristics can eventually be traced back to self-preservation alone. This is, however, not openly conceded. Time and again, Grotius scorns the scepticists for having maintained that man is only driven by considerations of expediency. Expediency is starkly contrasted with the immutable dictates of natural law, which are derived from man’s essential and dignified nature.8

4. Natural rights

Which are then the four natural principles that Grotius derives from man’s essential nature? These tell us a) to abstain from that which is another’s, b) to restore to another of anything of his which we may have, c) to make good of a loss incurred through our fault, to inflict penalties upon men according to their deserts9 and d) to fulfil promises. We may regard the first three laws as principles of what is commonly called ‘restorative justice’. Restorative justice consists of redressing the balance: the compensation for losses aims at the restoration of the original situation that was disturbed. Restorative justice does not answer the question whether the original situation was a just one but consists in undoing what was done.

The principles a, b and c are therefore dependent on an existing framework of social institutions. They can only be put into operation once private property is instituted. Whether that institution itself is justified is not a question that is addressed by these principles of natural law. They do not tell us whether private property is a justifiable human institution; they do not even tell us anything on how property should be distributed. They only tell us how to proceed in a society where property is instituted and organised.

The main question therefore, that is left unanswered by these natural laws is: do we think that a society should introduce private property? To Grotius, that question was entirely left to the consent of mankind. It is here that the last precept about the promises comes into play.10 And in Grotius theory, these promises may have drastic consequences. He who once consented to enslave himself, is bound to that consent.11 Whether that consent itself was a reasonable one, is no longer informed by a substantial account of natural law.

Matters are different in Locke’s account of natural law. Like Grotius, Locke conceived of human nature as a bodyless figure: man is only man if he preserves himself in a rational way; i.e. if he is guided by long term self-interest. But then he went on to develop his famous theory of property,

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8 See e.g. JBP Prol. 5-6. In his earlier De Jure Praedae, however, Grotius is even closer to the scepticist position.
9 JBP Prol. 8.
10 JBP, Prol 15-16.
11 JBP I, III, VIII, 1.
in order to justify the institution of private property itself. Man, as the master of his own life and limbs had to be the master of all that which was acquired by means of this life and limbs. This was exactly the link in the chain that had been missing in Grotius's account. It gave at least a reason why people should consent to a certain kind of society, (and at the same time a reason for no longer being bound by that consent). The legal formulas (a-c) were no longer dependent on an existing framework of human institutions. They could -and were- be turned into full-blown natural rights now they were erected on the overarching assumption that man has a right to property.

5. Depraved but dignified

Both Locke and Grotius took as their starting-point man’s essential character-trait: enlightened self-preservation. But what is the relation here to human dignity? The only occasion at which Grotius referred to dignity was when he advocated the right of burial. To be eaten by the wild beasts would be contrary to human dignity, Grotius remarks. That, however, is hardly the kind of dignity that is mentioned in the Universal Declaration of Human Rights.

In order to find references to dignity in 17th century natural law theory, we should turn to Samuel Pufendorf. Pufendorf is usually regarded as Grotius's successor, but he clearly and openly deviates from his famous predecessor on his view of human nature.

In the first place, Pufendorf did not conceive of man’s self-interest as enlightened and rational. To Pufendorf, man is even more wicked than animals:

A craving for luxuries, ambition, honours, and the desire to surpass others, envy, jealousy, rivalries of wit, superstition, anxiety about the future, curiosity, all these continually trouble his mind, none of which touch the senses of the brutes.

In the second place, Pufendorf could not see uniformity in human nature. He lacked the belief that ‘underneath’ appearances some ‘essential’ characteristics could be found. Man’s desires were manifold and unbounded:

Men are not all moved by one simple uniform desire, but by a multiplicity of desires variously combined. (...)

And finally, Pufendorf is impressed by the diversity of cultures. He devotes many pages to the variety of customs that can be found all over the world: “The Persians married their mothers, and the Egyptians their sisters.”

So whereas Grotius exerted himself in proving that ‘beneath’ or ‘beyond’ this multitude of customs and ways of life there is a universal hard core to be found in the essential nature of

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13 JBP II, XIX.
16 JNG II, III, 8.
man, Pufendorf seems to abandon this search for uniformity. If there is something ‘universal’ to be found, it is that human nature is universally passion-ridden, variable, diverse and multi-faced.

But this view implies that human nature by itself cannot be the foundation of natural laws or natural rights. The diversity of passions and desires points to the necessity of an external ordering principle. In this view natural law does not agree with man’s nature, but it should constrain and counterweigh man’s nature. This is the background of the metaphor in which Pufendorf sketches the human condition:

Now the more voices there are, the more dreadful and unpleasant the sound in the ear, unless they unite in harmony. In the same way the greatest confusion would have prevailed among men, were not their dissimilarity of customs and appetites reduced to a seemly order through laws. And yet this variety in another way yields man a remarkable grace and reward, since out of it, if properly guided, a marvellous orderliness and beauty may arise, which could not possibly have come from complete uniformity.\[17\\]

True harmony is polyphony; it arises out of differences and contrasts, not uniformity. Clearly, Pufendorf did not regard harmony as the outcome of an organic development. It should be ‘properly guided’. Harmony does not grow naturally and of itself; it should be brought about by an external ordering principle. This ordering principle cannot be positive law, for positive law is nothing but codified custom. It is therefore the law of God which should order our passions.

In view of Pufendorf’s realism and pessimism one might expect him to be even further removed from the image of human dignity than Locke and Grotius. Strangely enough, that is not the case. Pufendorf may view man as more wicked than other animals, but at the same time he emphasizes that man has been endowed by God with noble faculties, such as an immortal soul and dignity, by which mankind is elevated above the beasts.

The dignity of man’s nature, and that excellence of his in which he surpasses other creatures, required that his actions should be made to conform to a definite rule, without which there can be no recognition of order, seemliness, or beauty. And so man has that supreme dignity, the possession of an immortal soul, furnished with the light of intellect and the faculty of judgement and choice and most highly endowed for many an art.\[18\\]

These noble faculties should be developed, since God gave them ‘not for nothing’.\[19\\]

At first glance, Pufendorf seems to contradict himself. How can man’s nature at the same time be seen as corrupted and as noble and dignified? I think we should keep in mind here what I noted above: Pufendorf’s natural law is not derived from nature, but is meant to counterweigh nature. In itself, nature is uninformative. It is impossible to find harmony in nature. It is only by means of God’s intervention, as a conductor, that harmony can arise. But His instructions do not flow from nature. They flow from His free will alone. In other words: morality is not a natural phenomenon, but is imposed or superadded by God. It is clear, therefore, that the kind of dignity Pufendorf has in mind is not linked to self-preservation. Rationality is not reduced to the

\[17\\] JNG II, I, 7; my emphasis.

\[18\\] JNG II, I, 5

\[19\\] JNG II, I, 5.
capacity to know what is in one’s best—long term—interest as it is in Grotius's and Lockes’ theory. For Pufendorf rationality is the capacity to understand God's law and to discern good from evil. Nature in itself is no more than an aggregate of shrill voices, untempered by any ordering principle. Order, beauty and harmony can only be brought about by a divine conductor. But only man can understand His instructions. And that is the core of man’s dignity.

6. Conclusion

It seems then that the juxtaposition of human dignity and rights that can be found in the Universal Declaration of Human Rights is inspired by two different, even mutually exclusive kinds of theories. According to the theory held by Grotius and Locke, man is endowed with rights which directly flow from his unchanging nature. Here, man only distinguishes himself from other animals by the fact that he is better able to see how to ensure self-preservation: reason tells him to live in society and to prefer long-term interest over short term satisfaction. Man is bearer of natural rights but he is not a very dignified creature. Exactly the opposite is maintained by Pufendorf. In his theory man’s only salvation lies in making use of his Reason (with a capital R) to understand God's will and God's law. The dignity of man's nature lies in his capacity to follow God's law. Here human dignity is central, but man is denied to have certain natural rights. According to Pufendorf, rights and (more importantly) duties can only flow from a prior law issued by a divine legislator. A divine law that can be called 'natural', not because it is deduced from human nature, but because we can understand its contents by our natural rational judgement.

It seems then, that at least in the 17th century dignity and natural rights point in different directions. If we start from natural rights, we don’t find dignity. Since rights flow directly from enlightened self-interest, dignity is a superfluous notion. But if we start from dignity, we don’t find natural rights. All we can find then are rights and duties that flow from an external law issued by God.

20 JNG I, II, 6