

GROTIUS AT THE CREATION OF MODERN MORAL PHILOSOPHY

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It is widely if not universally believed that ethical philosophy began in the seventeenth century to assume a distinctively “modern” form, opposing itself to “ancient” Greek ideas and to more recent scholastic approaches that derived in part, at least, from Aristotle. Hugo Grotius was central in shaping this modern form. Grotius’s *Rights of War and Peace*, published in 1625, is best known as the first systematic treatise on international law, but to thinkers of the seventeenth and eighteenth centuries, it seemed to set a new agenda in moral and political philosophy across the board. Jean Barbeyrac’s *Historical and Critical Account of the Science of Morality*, attached to his translation of Pufendorf’s *Law of Nature and Nations* in 1706, praised Grotius as “the first who broke the ice” of “the *Scholastic Philosophy*; which [had] spread itself all over Europe” (1749: 67, 66).¹ Indeed, a strong case can be made that the very concepts to which Barbeyrac used ‘morality’ and ‘science’ to refer (in his “critical account” of “morality”’s “science”) were themselves substantially shaped by Grotius and his influence.

THREE CHARACTERIZATIONS OF MODERN VERSUS ANCIENT ETHICS

In what follows, I seek to sketch the outlines of such a case and to understand just what was so distinctively modern about Grotius. Before I begin, however, it will be useful to have before us three more recent characterizations of the main contrasts between modern and ancient ethics.² The most well known these days is Elizabeth Anscombe’s in “Modern Moral Philosophy,” first published in 1958, which sought to overthrow orthodox “modern” moral theories and which helped pave the way for the flowering of virtue ethics that began in the 1980s (Anscombe 1998). Anscombe argued that the “concepts of obligation, and duty—*moral* obligation and *moral* duty, that is to say—and of what is *morally* right and wrong, and of the *moral* sense of ‘ought’” found in modern ethical theorizing, “ought to be jettisoned if that is psychologically possible” in favor of virtue-ethical concepts of the sort found in Aristotle, like those of virtue and the good life (26). These two kinds of concept differ fundamentally. As Anscombe put it picturesquely: “If someone professes to be expounding Aristotle and talks in a modern fashion about ‘moral’ such-and-such, he must be very imperceptive if he does not constantly feel like someone whose jaw has somehow got out of alignment: the teeth don’t come together in a proper bite” (27).

At the core of modern ethics, Anscombe said, is a “law conception” that includes companion “juridical” notions of obligation, culpability, and guilt (30-31).³ The idea is not

¹ Cf. Haakonssen: “Yet it seemed to moral philosophers of these [the seventeenth and eighteenth] centuries . . . that something decisively new happened with Grotius.” (Haakonssen 1996: 15)

² As I mentioned, not everyone agrees that modern and ancient ethics differ fundamentally. For an argument that we can find in the Greeks characterizations of morality in something like the same sense the moderns are putatively after, see Annas 1993: 120-134.

³ Note also in this connection, Sidgwick’s remark that “Their [the ancient Greeks’] speculations can scarcely be understood by us unless with a certain effort we throw the quasi-jural notions of modern ethics aside, and ask (as they did) not “What is Duty and what is its ground?” but “Which of the objects that men think good is truly Good or the Highest Good?” or, in the more specialised form of the question which the moral intuition introduces, “What is the relation of the kind of Good we call Virtue, the qualities of conduct and character which men commend and admire, to other good things?” (Sidgwick 1967: 106).

that the modern view makes no distinction between the legal and the moral. Rather it putatively identifies a peculiar kind of law—what Barbeyrac calls “morality”—that differs conceptually from local, national, or even from international law, and to which we are subject, not by inhabiting any earthly jurisdiction, but just by virtue of being moral agents. Morality nonetheless purports to be a kind of law—Kant will later call it the “moral law.” To be a coherent conception, therefore, it requires whatever any legal or juridical conception must presuppose. Anscombe argued that the very idea of law entails also that of a legislator, which in this case could only be God. It follows, she argued, that once morality is thought to have force independently of God’s legislation, which Grotius and most moral philosophers since have wanted to maintain, the concept comes apart in our hands.⁴

Anscombe is clear that her problem with the moderns is not with the notion that certain kinds of acts are simply not to be done. Aristotle held that idea also; some actions are base or shameful in themselves (and others are intrinsically noble or fine) (Aristotle 2000 1104b28-30; Anscombe 1998 31).⁵ Where she takes issue is the moderns’ idea that an act can be “illicit,” therefore subject to “moral blame” and its agent found guilty, and all this without any actual legislation, which could only come from God.⁶

For our purposes, we need not consider whether Anscombe’s criticism of modern ethical thought is correct. Our interest is her criticism’s putative target, her claim that modern ethical, more properly, *moral* philosophy employs a law conception centered on the concept of moral *obligation*. It is irrelevant also whether or not modern moral philosophers concerned themselves in addition with more classical issues of virtue and the good life. What matters is whether the modern period was (and has continued to be) characterized even in part by a new kind of ethical philosophy, “moral philosophy,” whose object is essentially conceived in legal or juridical terms. Barbeyrac’s *Historical Account* is testimony that on this point Anscombe is correct. For a modern like Barbeyrac, “morality” consists of a body of “rules” with which we are “obligat[ed]” to comply just because we are moral agents, “laws of morality,” as Barbeyrac calls them, to which we are subject as “corporeal rational creature[s]” (2-3, 5).⁷ The modern project Barbeyrac terms the “science of morality” is the task of articulating and defending these “rules,” including by providing some philosophical account of their distinctively *obligatory* character. This, I shall argue, is the problematic that Grotius bequeathed to early modern ethical philosophy, or at least, that many early moderns took to be his bequest.

The second characterization of the contrast between modern and ancient ethics comes from Sidgwick.

⁴ Of course, some modern moral philosophers like Pufendorf and Locke, or more recently, Philip Quinn and Robert Adams, have been theological voluntarists and so accepted the conceptual burden that Anscombe claims modern moral philosophy must assume in general.

⁵ “There are three objects of choice—the noble, the useful, and the pleasant—and three of avoidance—their contraries, the shameful, the harmful, and the painful” (Aristotle 2000 1104b28-30). Note also Anscombe’s complaint that modern theories are actually too frequently “consequentialist.” (This familiar term was actually coined by Anscombe in this article.)

⁶ Anscombe rejects the Kantian idea of self-legislation as “absurd.” (39)

⁷ As it happens, Barbeyrac, following Pufendorf, accepts Anscombe’s claim that a moral law with a legislator would be absurd. (13)

[I]n Platonism and Stoicism, and in Greek moral philosophy generally, but one regulative and governing faculty is recognised under the name of Reason—however the regulation of Reason may be understood; in the modern ethical view, when it has worked itself clear, there are found to be two,—Universal Reason and Egoistic Reason, or Conscience and Self-love (Sidgwick 1964: 198).⁸

Sidgwick's own philosophical views raise interesting issues about how to interpret the relation between "Universal Reason" and "Conscience." According to his famous dualism of practical reason, there are two fundamentally independent rational dictates: Rational Prudence, "one ought to aim at one's own good," and Rational Benevolence, "as a rational being I am bound to aim at good generally," so "the good of any other individual as much as [my] own" (Sidgwick 1967: 381-382).

Now Sidgwick does indeed think only of the latter as a distinctively moral obligation. Only with the latter does he say that one is "morally bound." (382) Nevertheless, so far as his dualism goes, what makes this ought moral is not, as for Anscombe, anything legal or juridical, but the ought's grounds or content, or the perspective from which we recognize its validity, that is, the impartial, better impersonal, "point of view . . . of the Universe," in Sidgwick's famous phrase, rather than the agent's own perspective.⁹ Conscience, for Sidgwick, seems simply to be an awareness of a rational dictate to bring about the good of all (as seen from this point of view). It need involve no thought of a distinctively moral *obligation* in anything like Anscombe's juridical or legal sense.

We should ignore this feature of Sidgwick's diagnosis. No doubt it fits some modern thinkers.¹⁰ But I think Anscombe is right that a distinctive aspect of modern ethics, of moral philosophy in the modern sense, has been its concern with moral obligation, and so with moral responsibility, blameworthiness, and guilt.¹¹ In any case, the critical feature of Sidgwick's historical analysis is that many thinkers of the modern period came to believe that there exists a source of normative reasons for acting—moral right and wrong—that is distinct from and that potentially conflicts with prudence or rational self-interest. Whereas ancient Greek philosophy and thought deriving from it (including, as we shall see, classical natural law theories) were *eudaimonist*, taking the agent's own good as the only source of normative reasons, much of modern moral philosophy holds the morality provides an additional, independent source of reasons for acting.

⁸ For an excellent discussion of this passage, see Frankena 1992.

⁹ In Darwall forthcoming, I argue that there are, however, places where Sidgwick seems to recognize a distinctively moral sense of ought. For example, when Sidgwick notes the "quasi-jural" character of modern ethics, he says that ancient "ideals" are "attractive" rather than "imperative" (like the modern notion of duty or obligation) (Sidgwick 1967: 105). For a very insightful discussion of the differences between ancient and modern ethics that draws on all three of the aspects distinguished here and that has a very useful discussion of Sidgwick in this connection, see Rawls 2000: 1-14. Rawls has an especially helpful discussion of the socio-historical background of modern ethical thought in comparison with that of the ancient Greeks.

¹⁰ Sidgwick mentions Butler, but Hutcheson and Cumberland might be better examples. On this point, see Darwall 1995: 98, 235.

¹¹ I do not mean of course, that a concern with moral obligation characterizes all ethical philosophers of the modern period. Shaftesbury would be example to the contrary, and some philosophers, most notably Nietzsche (and Shaftesbury also, actually), were sharply critical of this aspect long before Anscombe. My point is simply that Anscombean one that this concern marked ethical philosophizing in the modern period in a way it had not before.

We can see how this thought connects up with the idea of moral obligation as follows. What distinguishes morality from law ordinarily so called is that morality binds *internally*, through conscience, rather than through externally imposed sanctions. This point was stressed by both Pufendorf and Ralph Cudworth, two seventeenth-century thinkers who followed Grotius. Nonmoral evils of the sort that might be imposed as legal sanctions, Pufendorf says, “bear down the will as by some natural weight” (1934: 91). Moral obligation, however, “affects the will morally,” so that the agent or his “will, “is forced of itself to weigh its own actions, and to judge itself worthy of some censure, unless it conforms to a prescribed rule” (1934: 91). Obligation thus “differs in a special way from coercion.”¹² Although both “point out some object of terror, the latter only shakes the will with an external force,” since what moves the will is only “the sense of the impending evil.” “An obligation,” however, “forces a man to acknowledge of himself that the evil, which has been pointed out to the person who deviates from an announced rule, falls upon him justly” (191). When we are under a moral obligation, we think not just that we will be subject to some evil or sanction if we fail to comply, but that we would be *to blame* if we did not comply (without adequate excuse), and therefore that there is reason to comply that is independent of any nonmoral evils we might suffer or nonmoral goods we might enjoy. Under obligation, the will must be conceived to have “a special internal sense that compels it to censure its own actions and deem itself blameworthy if it has not conformed itself to the prescribed norm.”¹³

This thought is implicit also in Mill’s distinction between the “internal sanction” of conscience and “external sanctions” consisting in others’ disapproval or God’s.¹⁴ The idea is not that conscience is simply our own disapproval and so more difficult to escape than others’. The pain of being disapproved of is equally “natural” an evil in Pufendorf’s sense whether it is we ourselves or others who are doing the disapproving. The point is that in judging conscientiously that something would be wrong and so worthy of blame if one were to do it without excuse, one appreciates a reason for not doing it that is independent of this natural evil.

Along similar lines, Cudworth maintained that although a being with the ability critically to revise desires and pursue long-term self-interest would be able to conform to laws imposed through external sanctions, agency of this sort would not yet be sufficient for genuine moral obligation (Cudworth ~1670). The latter requires in addition “moral free will,” namely, the capacity to recognize moral obligations as intrinsically reason-giving independently of self-interest. Were agents to have only the former capacity, “laws could no otherwise operate or seize upon them than by taking hold of their animal selfish passions . . . and that . . . utterly destroys all morality” (Cudworth ~1670: 4980, 9).

Elsewhere I have argued that Pufendorf’s formulation brings out a deep conceptual connection between the modern ideas of moral obligation and moral *responsibility* (Darwall 2006a). Moral obligations are not simply standards of whatever stringency, even requirements. They are requirements we can be *held* to, that is, standards we appropriately

¹² This corresponds to Hart’s famous distinction between being obligated and being obliged, which he makes in the course of criticizing the nineteenth-century positivist John Austin. (Hart 1961: 6-8)

¹³ I.6.5, the passage is discussed in Postema 2001.

¹⁴ J. S. Mill 1998 Ch 3.

hold ourselves to through conscience and that we hold one another to through distinctive attitudes, “reactive” attitudes, as Strawson termed them, like moral indignation and “moral blame,” as Anscombe herself says (Strawson 1968; Anscombe 1998: 27). Pufendorf’s point is that it is part of the very notion of moral obligation that we can be subject to it only if we are capable of holding ourselves to it internally through conscience. And this can be so only on the distinctively modern assumption Sidgwick identifies, namely, only if we take moral obligation to provide us with a source of reasons that is independent of self-interest (and, indeed, that can override or defeat it in rational deliberation). This sets up what may justly be called the *fundamental problem of modern moral philosophy*: What assures us that morality so conceived actually holds and that it is not, as Kant put the worry, “a chimerical idea without any truth”? (Kant 1998: 4:445) As we shall see, Grotius could be read by his followers as having posed and sought to answer this fundamental challenge from the outset.

The final characterization of the ancient/modern contrast is Hegel’s remark that “the right of *subjective freedom* is the pivotal and focal point in the difference between *antiquity* and the *modern age*” (Hegel 1991: 151). The notion that there is a special value in individuals expressing their own, perhaps “arbitrary” wills, and that they have a *right* to do so, “is,” Hegel says, “historically later than the Greek world” (Hegel 1991: 223). The ancients could certainly hold, with Aristotle, that the value of objectively valuable activities is enhanced when individuals enjoy them freely of their own choice and preference.¹⁵ But they did not, nor did their philosophical framework permit them to, hold that there is a value to self-chosen activities just because they are self-chosen, or that individuals have any *authority* or legitimate *claim* or *right* to live their lives as they choose.

In the modern period, by contrast, what Hegel alternately calls the “right” or “principle of subjective freedom” manifests itself in a whole host of related ideas, from those just mentioned, *autonomy as good* or *autonomy as claim (or right or authority)*, as we might call them,¹⁶ to the thought that genuine moral virtue is realized only when conduct authentically expresses the agent’s own moral convictions, to the notion that it is a violation of integrity to go contrary to one’s own values, whether these are sound or not. It has sometimes been argued that natural rights in some form can be found in Greek philosophy,¹⁷ but whether that is so or not, it seems clear enough, as John Cooper has pointed out in this connection, that the ancients lacked what Hegel terms the “modern” idea of a “right of subjective freedom.”¹⁸

¹⁵ Here I have in mind Aristotle’s idea that the human good is virtuous activity, that is activities chosen, for their own sake as noble. (*Nicomachean Ethics*, II.4)

¹⁶ Darwall 2006b.

¹⁷ See Miller 1995 for an argument that Aristotle had the idea of natural rights. The more orthodox view is expressed by Richard Tuck: “Ancient politics lacked the idea of rights, insisting instead on the power of the citizen body, acting collectively, to determine all aspects of people’s lives,” (Tuck 2001: 1) Tuck there credits the original observation to Condorcet.

¹⁸ Here I am indebted to Cooper 1996. Note also in this connection, Benjamin Constant’s famous distinction between the liberty of the ancients and the liberty of the moderns (2003: 351-365), especially his remark: “[F]reedom cannot be the same among the moderns as it was among the ancients. The freedom of ancient times was everything that assured the citizens the biggest share in the exercise of political power. The freedom of modern times is everything which guarantees the citizens independence from the government” (2003: 361).

GROTIUS AS A MODERN: MORALITY AS NATURAL LAW

It is centrally important aspect of the picture that Grotius bequeaths the modern period that moral obligations must include respect for certain basic rights, including something like a Hegelian right of subjective freedom. What's more, I shall argue, the idea that every person has standing to make claims and, Grotius adds, "demands," of one another, plays a fundamental, and I believe hitherto unappreciated, role in his theory in grounding the law of nature itself. First, however, I want to bring out how Grotius's approach typifies the two other elements of modern ethics referred to by Anscombe and Sidgwick, respectively, beginning with Anscombe's focus on its legal/juridical character.

Since Grotius is generally considered the originator of the modern theory of natural law, it might seem that it should be obvious that he employs the kind of legal conception that Anscombe claims is the mark of modern moral philosophy. But this is actually less obvious than it might seem it should be. To see why matters are not so straightforward, consider, first, why the classical doctrine of natural law as developed by Thomas Aquinas does not fall within Anscombe's critical net, that is, why, by her lights, Aquinas is closer to the ancients than to the moderns.

For Aquinas (as indeed later for Grotius) laws of nature are standards of conduct that are inherent in our nature as rational beings (Aquinas 1997: Q91-93). But what makes such standards *laws*? There is, of course, a general sense in which 'law' can refer to any standard, requirement, norm, or rule, but that is insufficient to distinguish the juridical notion that Anscombe had in mind. Not just any standard or rule involves *obligation* in the sense of something for which we are responsible or answerable, where issues of culpability, guilt, and innocence are automatically involved. If I believe the contrary of something that is entailed by things I know, I violate a requirement of reason (and so go against a standard inherent in my rational nature), but, so far anyway, nothing Anscombe pointed to need be involved. No issue of guilt or innocence *necessarily* arises. In objecting to a law conception of morality, Anscombe obviously was not objecting to the idea of (unlegislated) requirements, norms, standards, or rules more generally, say, the idea that there exist norms of rational thought or action.

In fact, Aquinas's theory was criticized by the late sixteenth-/early seventeenth-century natural lawyer, Francisco Suarez, precisely on the grounds that it cannot explain why we would have any *obligation* to follow natural law. Suarez agrees with Aquinas, for example, that telling falsehoods is intrinsically "repugnant" in itself to rational nature, but he points out that this repugnancy does not, in itself, lay us under an *obligation* to tell the truth (Suarez 1944: 181-183).

To understand natural law as genuinely obligating law, Suarez believed, it is necessary to see its dictates as *authoritatively addressed demands*. And this requires, he thought, that we see it as issuing from God's command.¹⁹ Several ideas are packed into this. First, "ordering pertains to the will," so moral norms or laws must aim to *direct a will*; only thus can they have "binding force" (1944: 66, 67). So, second, moral norms are God's will as addressed to us. But it is important to see that Suarez's idea is not that God simply wills us to act in certain

¹⁹ Here I draw on Darwall 2003.

ways, that is, that he seeks to directly determine our will. If that were so, we could not fail to comply (“all these precepts would be executed”) since God is omnipotent (1944: 55). Rather God wills “to bind” his subjects by addressing legitimate demands to them by commanding them (1944: 55). Moreover, third, the commands that create natural law are addressed to human beings *as free and rational*.²⁰ Laws of nature can exist “only in view of some rational creature; for law is imposed only upon a nature that is free, and has for its subject-matter free acts alone” (1944: 37). Finally, fourth, we are *accountable* for complying with moral obligations. If we do not “voluntarily observe the law,” therefore, we are *culpable* (“legal culprits in the sight of God”) (1944: 132).

Now obviously, in holding that the law of nature obligates us because it is God’s command, Suarez is implicitly accepting the very point Anscombe is trying to make: any law such as morality purports to be could bind us only if it were divinely legislated. A central feature of Grotius’s theory of natural law, however, one that, as Richard Tuck has emphasized, was notorious with Grotius’s contemporaries, is Grotius’s denial of the Suarezian voluntarist thesis that natural law depends on God’s will.²¹ But if Suarez’s objection has force against Aquinas, then why would it not also against Grotius? If Grotius rejects theological voluntarism as an explanation of the obligatory force of natural law, then what separates his view from Aquinas’s? In the next section, I shall argue that one thing that makes Grotius’s theory thoroughly modern, different from that of both Aquinas *and* Suarez, is that he seems committed to accepting Sidgwick’s mark of the modern, namely, that morality (natural law) provides a source of normative reasons that is independent of self-interest. But that doesn’t yet explain what warrants Grotius in speaking of natural *ius*, that is, right or law.

To understand that we must examine a three-way distinction Grotius draws at the beginning of *The Rights of War and Peace* between things correctly termed *ius*. First, ‘*ius*’ can “signif[y] merely *that which is just*” or at least not unjust, where “that is unjust which is repugnant to the Nature of a Society of Reasonable Creatures” (I, 136). So far, this doesn’t seem to help with our problem, since it is not clear how being in conflict with nature, even the nature of a society of reasonable creatures, requires distinctively legal, obligation-entailing concepts. Grotius then quotes Florentinus’s remark that “*Nature has founded a kind of Relation between us,*” and Seneca’s that human beings “are born for Society, which cannot subsist but by a mutual Love and Defence of the Parts” (I, 136). We shall inquire into what

²⁰ On these second and third points, see also Postema 2001.

²¹ Tuck points out that in the Prolegomena to the first edition, Grotius says that the law of nature “necessarily derives from intrinsic principles of a human being” and that the law would hold “even if we were to suppose . . . that there is no God, or that human affairs are of no concern to him” (Grotius 2005: I, xxiv; III, 1748-1749). Tuck notes that Grotius is less direct on this point in later editions. There Grotius says that “Natural Right [the Law of Nature] is the Rule and Dictate of Right Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its Suitableness or Unsuitableness to a reasonable Nature, and *consequently*, that such an Act is either forbid or commanded by GOD, the Author of Nature” (I, 150-151, emphasis added). This might encourage the Suarezian thought that genuinely obligating natural laws require an authoritative divine direction that is consequent upon any intrinsic reasonableness or unreasonableness and that the latter is impotent to provide all by itself. However, Grotius then adds that actions that are thus suitable or unsuitable to a reasonable nature are “in themselves either Obligatory or Unlawful, and must, *consequently*, be understood to be either commanded or forbid by God himself” (I, 151-152, emphasis added). This means that the obligatory character of natural law depend not on divine legislation, but *vice versa*.

kind of “relation” Grotius has in mind presently. Note first, however, a distinction he next makes between two different kinds of “relations” that are found in societies. Some are relations of “unequals,” such as “Parents and Children, Masters and Servants, King and Subject,” where one individual has authority over and the standing to govern another. Other relations are of “equal[s],” such as “Brothers, Citizens, Friends and Allies,” where each party is conceived to be self-governing, at least so far as their relations to one another are concerned (I, 136). In the former instance, superiors have a “Right of Superiority;” in the latter, each has a “Right of Equality.” Grotius summarizes: “So that which is *just* takes place either among Equals, or amongst People whereof some are Governors and others governed, considered as such (I, 136).”

The kinds of relation Grotius is here concerned with are relations of *authority*, which Grotius explicitly characterizes through their respective “rights.” So understood, a relationship essentially includes the authority or standing that those within it have to make claims and demands of others to whom they are related by it; that is, the relations are already conceived in such a way that they inherently involve rights (*ius*) of this distinctive kind. Since relations of these sorts are essentially conceived in terms of *ius*, it follows straightway that anything that is contrary to the nature of people who are related in these defined ways will also be contrary to *ius* in a legal/juridical, that is in Anscombe’s, sense.

It is an oft-remarked feature of Grotius’s theory of natural law, one we will examine in the final section, that Grotius seeks to ground natural law in a form of “sociability” that is distinctive of human beings (I, 79-87). It is easy, however, to mistake the force of his idea, since it can seem an attempt to derive moral obligations from some form of concern for or some desire to be with or in agreement with others. It seems obvious that no such attempt can succeed, however, especially since, as we shall see, Grotius himself distinguishes between what we owe to others and what we might properly be moved by love or by some sense of merit or desert to provide for them. Only in the former case, he holds, are genuine obligations (with associated rights) genuinely involved.

But we have seen already that the distinctive *kind* of social relations Grotius has in mind are themselves essentially conceived in terms of relative *authority*, that is, in terms of the standing that the related parties have to make claims and demands of one another. This gives a distinctive color to Florentinus’s remark that “Nature has founded a kind of Relation between us;” it suggests an interpretation of this fundamental social relation in terms of authority also. And this affects as well how Grotius’s concept of “sociability” should be understood. I shall argue that when Grotius says that “sociability” can be seen as “the Fountain of Right” (I, 85-86), we might best interpret him as holding that it is our *standing to make reasoned claims and demands of one another at all* that underlies the more specific rights and obligations that are contained in the law and right of nature.

I am not claiming, I should make clear, that Grotius himself either identified, or even necessarily would have accepted, this interpretation. I am saying rather that the idea of a standing to make claims and demands of one another is implicit in the ways I have just pointed out in aspects of his thought to which he seems committed. And I shall argue that it has a fundamental and distinctive importance for claims of moral obligation and rights that he, and after him so many philosophers of the modern period, wished to defend.

The second meaning of *ius* that Grotius mentions brings out the idea of authoritative standing even more clearly. Grotius says this second sense is different from the first, “yet aris[es] from it.” In this sense, “*Right is a moral Quality annexed to the Person, enabling him to have, or do, something justly*” (I, 138). And here Grotius introduces his famous distinction, which will reverberate throughout the modern period, between perfect and imperfect rights (which generates the modern distinction between perfect and imperfect duties or obligations).²² A perfect right is a “*Faculty*” of the person, which includes the standing or authority to “*deman[d] what is due*” to him, including, Grotius says, “*Liberty*,” or “power over ourselves” (or over others who are under his authority) and property (I, 138-139). Grotius adds that such a faculty “*answers the Obligation of rendering what is owing*” (I, 139). There can be natural rights, therefore, only if natural law includes genuine obligations to respect them. And among our natural rights is Hegelian subjective freedom, that is, autonomy or our “power over ourselves.”

An imperfect right, on the other hand, is not a “*Faculty*” but an “*Aptitude*.” Under this heading, Grotius includes considerations of “*Worth*” and “*Merit*” that can recommend actions as more or less worthy or meritorious, but which no one has standing to demand (I, 141). “Prudent management in the gratuitous Distribution of Things” to which no individuals or society has a valid claim may nonetheless recommend giving preference to “one of greater before one of less Merit, a Relation before a Stranger, a poor Man before one that is rich” (I, 88). But while “Ancients” like Aristotle, and even “Moderns” who follow him, may take considerations of the latter to be included within justice and so right (it is what Aristotle and his followers include under “distributive justice,”)²³ nonetheless “Right, properly speaking, has a quite different Nature,” namely, “doing for [others] what in Strictness they may demand” (I, 88-89). The strictly proper, modern sense of right as a quality “annexed to the Person,” according to Grotius, is the one he here identifies: respecting persons’ authoritative demands and, we might add, their “Faculty” or authority to demand it.

In its final sense, ‘*ius*’ or “Right” signifies the same Thing as *Law* when taken in its largest Extent, as being a *Rule of Moral Actions, obliging us* I say *obliging*: for Counsels, and such other Precepts, which however honest and reasonable they be, lay us under no Obligation, come not under this Notion of *Law*, or Right (I, 147-148).

Grotius follows this with his definition of the “law” or “right” of nature:

NATURAL RIGHT is the Rule and Dictate of Right, Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its Suitableness or to a reasonable Nature (I, 150-151).

Barbeyrac notes that other editions interpolated “*and Sociable*” between “*reasonable*” and “*Nature*” and says there is some reason to believe that these were simply left out by a printer or transcriber (I, 151, note 2). As he points out, when Grotius distinguishes between *a priori* and *a posteriori* proofs of laws of nature, he brings in sociability explicitly. *A posteriori* proofs appeal to a *consentium gentium*, that is, to something being “generally believed to be” natural law “by all, or at least, the most civilized Nations” (I, 159). An *a priori* proof, by contrast,

²² On this point, see Schneewind 1998, esp. pp. 78-79, 133-134.

²³ On the curious difference between this traditional and our contemporary notion of distributive justice, see Fleischacker 2004: 17-28.

proceeds by “shewing the necessary Fitness or Unfitness of any Thing, with a reasonable and sociable Nature” (I, 159).

We shall return to the way in which Grotius hopes to ground laws of nature in reasonable sociability in the final section. Already, however, we can glimpse why Grotius might think that norms that are able to be justified in this way are genuinely obligating. If, as we noted above, Grotius conceived of sociability as itself involving a fundamental standing to make any claims and demands of one another at all, then being contrary to our *reasonable and sociable* character would mean being at odds with our standing to make *reasoned or reasonable claims and demands* of each other, not simply being contrary to standards of rational thought and action in general, even standards rooted in our rational nature however social that might itself be. Only if it can be justified in some such way, indeed, would a “law of nature” be a genuine *ius*. Only if it can be grounded in an authority to issue demands would it be able to “lay us under” a genuine obligation in a way that a mere counsel of prudence cannot.²⁴

GROTIUS AS A MODERN: MORALITY AS A DISTINCTIVE SOURCE OF REASONS

The second way in which Grotius’s natural law theory is peculiarly modern is his apparent acceptance of Sidgwick’s mark of the modern, namely, that morality (natural law) is a source of normative reasons for acting that is independent of self-interest. The point is somewhat delicate since, as T. H. Irwin has argued, much of what Grotius says can be accommodated within an ancient “Stoic naturalist” tradition according to which all reasons for acting derive from the agent’s good, although virtuous action in general, and justice in particular, is intrinsically beneficial to agents whether or not it benefits them instrumentally or promotes their partial interests, say, by making it likelier that others will act justly towards them in the future (Irwin 1998: 351-352).²⁵

A crucial passage occurs right at the outset of *The Rights of War and Peace* when Grotius poses a fundamental skeptical challenge to his ideas that will be echoed later by Hobbes’s “foole,” Hume’s “sensible knave,” and the worry Kant considers, quoted above, that morality might be a “chimerical idea without any truth” (Kant 1998: 4:445). Who better to pose this challenge, Grotius says, than the ancient skeptic Carneades, who held that “*Laws . . . were instituted by Men for the sake of Interest?*” (79)

²⁴ Of course, were Grotius to accept Suarez’s theological voluntarism, he might try to connect natural law to authoritative demands in that way. But Grotius refuses to take this path, and, since he wants to connect the moral obligations of the law of nature to natural *rights*, it seems wise for him to do so. The reason is that, as we have seen, it is central to perfect rights that right-holders (and not just God) have the standing to demand compliance.

Grotius’s distinction between genuinely obligating laws and mere “Counsels” and “other Precepts,” anticipates Hobbes’s later famous contrast between “command” and “counsel” (Hobbes 1994: I.xxv). Hobbes follows Suarez in defining law in terms of command, which he explicitly distinguishes from counsel (Hobbes 1994: I.xxvi). See also Hobbes’s claim that laws of nature, as he defines them, are only improperly called laws so long as they are considered independently of authoritative command (Hobbes 1994: xv).

²⁵ As Irwin understands it, Stoic naturalism combines (eudaimonism (that the agent’s good is the only source of reasons for her to act)), moralism (that moral considerations of virtue and rightness are intrinsically reason-giving (since intrinsically virtuous conduct is intrinsically beneficial), and naturalism (that virtuous conduct conforms to the nature of a rational agent). As Irwin reads them, both Aquinas and Grotius accept these central contentions of Stoic naturalism.

As to that which is called NATURAL RIGHT, it is a mere Chimera. Nature prompts all Men . . . to seek their own particular Advantage: So that either there is no Justice at all, or if there is any it is extreme Folly, because it engages us to procure the Good of others, to our own Prejudice (I, 79).²⁶

Carneades holds that there is only one source of reasons for acting, the agent's own interest, and hence that there could not be any reason for anyone to follow any law that might conflict with it.

But what precisely is the challenge? If we were talking about law ordinarily so called—the laws of actual societies or even international law—egoism of this sort might pose no fundamental obstacle, since it may be no part of the concept of the law of any actual state or of international law that such a law exists only if those subject to it have reason to respect it just because it applies to them. Laws of these kinds can exist even if the only motives for following them are self-interested desires to avoid sanctions. This does, however, seem to be part of the idea of *natural law*, at least as that idea operated within both the classical theory deriving from Aquinas and the modern version that emanates from Grotius. Something can be a natural law or right, only if it entails normative reasons for agents to act. And if so, then Carneades's challenge is that "natural right" so understood is a "mere chimera." The only source of normative reasons is the agent's own interest.

Now it is important to see that although Aquinas certainly denies Carneades's claim that no law is such that there is necessarily reason to follow it, he actually accepts the assumption behind Carneades's claim, namely, that the agent's good is the only source of reasons for acting, and so too, Irwin points out, did philosophers writing within Stoic naturalism more generally.²⁷ It is just that Aquinas and Stoic writers think there is necessarily reason to follow natural law, since the agent's good necessarily coincides with it. In fact, it turns out that, for Aquinas, natural law and the agent's good are the very same normative standard.

According to Aquinas, natural law is simply a formulation of "eternal law," God's ideal or archetype for all of nature—"the exemplar of divine wisdom . . . moving all things to their due end"—as it applies to rational human beings (Aquinas 1997: Q93.1). This is Thomas's distinctive synthesis of Aristotelian teleology and the idea of divine rule. Eternal law specifies the perfection or ideal state of every natural being, and so "rule[s] and measure[s]" them. Rational beings, however, are subject to eternal law in a special way since, having "a share of the eternal reason," they can act in the light of their awareness of eternal law (Aquinas 1997: Q91.3). So Aquinas says they are subject to "natural law." Since they

²⁶ Cf. Hobbes: "The fool hath said in his heart, there is no such thing as justice; and sometimes also with his tongue; seriously alleging, that every man's conservation, and contentment, being committed to his own care, there could be no reason, why every man might not do what he thought conduced thereunto: and therefore also to make, or not make; keep, or not keep covenants, was not against reason, when it conduced to one's benefit" (Hobbes 1994a: XV.¶4) And Hume: "[T]hough it is allowed, that, without a regard to property, no society could subsist; yet, according to the imperfect way in which human affairs are conducted, a sensible knave, in particular incidents, may think, that an act of iniquity or infidelity will make a considerable addition to his fortune, without causing any considerable breach in the social union and confederacy. That *honesty is the best policy*, may be a good general rule; but is liable to many exceptions: And he, it may, perhaps, be thought, conducts himself with most wisdom, who observes the general rule, and takes advantage of all the exceptions" (Hume 1985: 256).

²⁷ Irwin also claims that Grotius shares this assumption (Irwin 1998: 152).

can know the law of their nature, human beings are unlike other nonrational beings in being subject to a law they can follow or flout. Natural law is simply the eternal law made accessible to and applicable by rational creatures in practice (Q91.2).

It follows that, for Aquinas, the content of natural law cannot differ from that of the eternal law for rational human beings *and* that, since what eternal law “requires” for any being is simply it good and perfection, natural law and the agent’s own good are the very same normative standard. To follow natural law just is to pursue one’s own good, and *vice versa*.

It is also worth noting that on Aquinas’s picture, since individual human beings realize their respective goods only within the overall teleological scheme specified by eternal law, any fundamental conflict between individuals’ interests, properly understood, is ruled out—harmony is guaranteed by perfectionist-teleological metaphysics. On the view of things that will dominate the moderns who follow Grotius, however, it is assumed that there can be genuine conflicts of interest; or at any rate, it is assumed that it can’t be assumed that there won’t be. Individuals will rationally believe that some conflicts are likely, even if that is only because no one can rationally believe that everyone else will believe that there won’t be. Moreover, even if no conflict were to exist in fact, even if, for example, everyone would do objectively better by realizing some common perfectionist scheme, we also find the Hegelian idea of subjective freedom gaining a foothold. There is a value in individuals charting their own course, that is, what they themselves believe to be the best course for them. What’s more, individuals have a right to do so, whether they thereby realize the objectively best life for themselves or not.

For the majority of Grotius’s followers, therefore, that laws that comprise what Barbeyrac will call “morality” are meant to provide a source of reasons that is distinct from and potentially in conflict with self-interest.²⁸ That is what makes Carneades’s challenge genuine for them and explains why it compels the attention of thinkers as different as Hobbes, Hume, and Kant. For modern natural lawyers like Hobbes and Locke, moreover, it is central to their conception of the natural (moral) law that it provides reasons for acting that trump considerations of self-interest in precisely those instances where the collective result of every individual’s pursuing his own good, or his own conception of a good life for him, would be worse for each.²⁹ As these Grotius-influenced moderns see it, the problem of social order is a *collective action problem* to which morality provides the solution.³⁰ Everyone does better if everyone follows the moral law than she would do were each to pursue her own good, or, at any rate, to pursue her own conception of a good life for her. So the problem that Grotius appears to pose right at the outset is to show why individuals should respect such laws even when they would be better off individually (or, at least believe they would) by departing from them. Since there could not even *be* such a law unless it were to provide a source of reasons independent of self-interest, why suppose that such a law exists. The problem that Grotius thereby sets for the modern period, what I earlier called the fundamental problem of modern moral philosophy, is to show why collectively

²⁸ I discuss this in relation to what Schneewind calls the “Grotian Problematic” (in Schneewind 1998: 119-129) in Darwall 1999: 340-341.

²⁹ Although both of them believe that this is ultimately only because of sanctions (secular, for Hobbes, and divine, for Locke). See my discussions of Hobbes and Locke on this point in Darwall 1995: 36-44, 74-79

³⁰ For the classic discussion of collective action problems, see Olson 1971.

advantageous, putatively obligating laws are genuinely obligating and reason-giving, rather than chimerical, as Carneades claims.³¹

As I said earlier, however, it is possible to interpret Grotius, as Terence Irwin does, as not himself posing this modern problematic, however central it might become to later writers (Irwin 1998: 151-152). And it is certainly true that Carneades's original challenge, as well as the way it was understood by what Irwin calls the Stoic naturalist tradition before Grotius, does not require the modern Sidgwickian assumption that morality provides a source of reasons that is additional to the agent's own interest properly understood. Carneades himself challenged law and justice on roughly the same grounds that Glaucon and Adeimantus do in Plato's *Republic*. (359), namely, that they are no more than artificial conventions instituted for mutual advantage and that there is no intrinsic reason to follow them when it is contrary to one's interest to do us. Indeed, Grotius by and large simply quotes Carneades's own challenge (as it is reported in Lactantius's *Divine Institutes*): "*Nature prompts all Men . . . to seek their own particular Advantage: So that either there is no Justice at all, or if there is any it is extreme Folly, because it engages us to procure the Good of others, to our own Prejudice* (I, 79; see also Long 1986: 104)

Irwin points out that Stoic naturalism had a clear reply to Carneades's challenge that is fully consistent with its ancient eudaimonism (and hence with rejecting what Sidgwick identifies as the modern assumption that morality provides a source of reasons distinct from the agent's good). Moreover, Grotius suggests that his own response to the skeptical challenge as he understands it is identical with that of Stoic naturalism (and hence that he accepts eudaimonism and so is not a modern by Sidgwick's lights). Grotius says that where the skeptical challenge goes wrong is in failing to appreciate that a "desire for society," or the "*Disposition the Stoicks termed 'οικειωσις,' [sociability],*" is an essential aspect of human nature. The Stoics held that actions can be, as Irwin puts it, "morally right (*honestum*) because they are appropriate for human nature," given our natural sociability and therefore that there is "a natural basis for justice, apart from the usefulness of justice in maintaining society" (Irwin 1998: 352) And they held also that justice's being expressive of our nature and thus "natural" makes just action is intrinsically *beneficial* to the just agent whether it is useful, that is, instrumentally beneficial to him or not.

So understood, Grotius's reply to Carneadean skepticism is a response of the same general kind as Socrates's reply to Glaucon and Adeimantus in Plato's *Republic*.³² Plato and the Stoics might disagree about *why* justice is intrinsically beneficial to the just agent, and perhaps also about what justice is. But they agree that the fundamental reason to be just derives from the agent's own good. They agree that just action benefits the just agent intrinsically, whether it does so or not instrumentally. And so, Irwin argues, does Grotius.

³¹ It is worth stressing that Kant raises the challenge in these same terms in the *Groundwork* when he asks whether morality might be "a chimerical idea without any truth" (Kant 1998: 4:445). And note, again, the same trope in Hobbes's "foole" and Hume's "sensible knave." (See footnote 15.)

³² It is, moreover, thoroughly within the general tradition that Irwin calls "Aristotelian naturalism" in *The Development of Ethics* (Irwin 2006: v. i). "Naturalism," as Irwin understands it, whether Aristotelian or Stoic, is the idea that ethical conduct is expressive of or appropriate to a rational agent's *nature*. It thus differs "naturalism" as the term is understood in contemporary metaethics.

However, this ancient reply to Carneadean skepticism will not do as a response to a skeptical challenge to the existence of natural law as *Grotius* understands it, and therefore as he must seek to defend it. The reason is, as Grotius himself explicitly points out, that “ancient” conceptions of right and law lack any conceptual connection to *obligation* and *legitimate demand*. Thus Grotius contrasts the Aristotelian conception of distributive justice that “ancients” and even some “moderns” include under the concept of right with right “properly speaking,” since the latter includes doing for others “what in Strictness they may demand” (88-89). And he ties the broadest sense of right he will be concerned with (the third sense of *ius* distinguished above) to *obligation* in the juridical Anscombean sense. Unlike “Counsels” and other “reasonable” “Precepts, law and right “lay us under . . . Obligation” (148).

The problem with the classical Stoic naturalist reply is that it can provide no more than reasonable counsel. Even if it responds adequately to Carneades’s challenge in the terms in which Carneades himself raised it, even if being just or complying with something we might *call* natural right or natural law is appropriate to our nature as rational beings and therefore intrinsically beneficial, it would not yet show that we lie under any *obligation* to be just or that justice is anything anyone can legitimately demand of us. And if so, it follows that it would not yet show that what we call natural law or right actually *is* a law or a right, since it would not yet have established any obligatory character.

Once we have the distinction between a mere “counsel,” however well supported by reasons of extrinsic or intrinsic value, on the one hand, and an obligating demand, on the other, we are committed to the idea that there must a source of reasons for acting other than the agent’s own good. The most the latter can provide is counsel, however overwhelmingly reasonable it might be, or unreasonable to go against it. If, consequently, there natural law and right as Grotius understands these are to exist, then there must be a source of reasons for acting that is distinct from the agent’s own good. And if there isn’t, then the ideas of natural law and right are no more than chimerical and “there is no justice at all,” just as Grotius has Carneades say.

We can agree with Irwin that nothing we have just said entails that Grotius himself saw that his conception of natural law requires a defense the goes beyond Stoic naturalism and rejects its eudaimonism. But there is no doubt that many of his followers saw this, as we can see from the way in which Grotius’s Carneadean trope is repeated in Hobbes’s reply to “the foole” (Hobbes 1994: XV.§4) , Hume’s reply to his “sensible knave” Hume 1985: 256), and Kant’s response to the charge that morality might be a “chimerical idea without any truth” (Kant 1998: 4:445). Such a thing as morality can exist only if eudaimonism is false, only if, that is, there can be reasons for agents to act that do not have a source in their own good. Whether or not Grotius considered himself a modern in Sidgwick’s terms, therefore, there seems little doubt that this is the way the problematic he posed was viewed by those who followed him.

GROTIUS AS A MODERN: INDIVIDUAL FREEDOM AND SELF-RULE

An important theme of Richard Tuck’s writings is that the moral/political conceptual framework we have inherited from the moderns, one that models the dignity and

sovereignty of individuals on that of states, begins with Grotius.³³ Part of Grotius's purpose in writing both *The Rights of War and Peace* and his earlier *On the Law of Prize and Booty* was to argue that organized groups of individuals, like the Dutch trading companies with which he and his family were involved, had rights of their own that they had standing to protect, but also, that they were like states in having a right to *punish* wrongs that did not involve violations of their own rights but for which the perpetrators might not otherwise be held responsible. Implicit throughout is a conception of individual persons as having the authority to rule themselves as well as the standing to hold one another responsible for respecting natural rights and law.

Consider first the following from *The Rights of War and Peace*, which brings out both the Hegelian idea of a right of subjective freedom as well as the analogy between the personal and the political to which Tuck refers:

But as there are several Ways of Living . . . and every one may chuse which he pleases of all those Sorts; so a People may chuse what Form of Government they please: Neither is the Right which the Sovereign has over his Subjects to be measured . . . but by the Extent of the Will of those who conferred it upon Him (Grotius 2005: I, 262).

Or the following, often cited by Tuck, from *On the Law of Prize and Booty*:

God created man ἀὐτεξουσιον, 'free and *sui iuris*', so that the actions of each individual and the use of his possessions were made subject not to another's will but to his own. Moreover, this view is sanctioned by the common consent of all nations. For what is that well-known concept, 'natural liberty', other than the power of the individual to act in accordance with his own will? And liberty in regard to actions is equivalent to ownership in regard to property. Hence the saying: 'every man is the governor and arbiter of affairs relative to his own property (Grotius 1950: 18).

The "well-known concept" of "natural liberty," is a reference to Fernando Vasquez, but however well established the idea of self-rule was in some form or other, it seems clear that Grotius took the idea of a natural *right* to govern oneself significantly farther. In Vasquez's hands, for example, 'natural liberty' seems to refer alternately to a psychic faculty for free choice shared by rational agents, on the one hand, and to a Hohfeldian liberty, that is, to a range of permitted choices that violate no law or obligation.³⁴ With Grotius, however, the right to rule oneself evidently includes a Hohfeldian claim right; it entails a consequent obligation of others to allow one to do so.³⁵

³³"We take for granted that the language in which we still describe this autonomous, right-bearing individual is in fact a language to describe states or rulers. When Hart in his famous 1955 essay 'Are There Any Natural Rights' said about promising that 'the promisee has a temporary authority or sovereignty in relation to some specific matter over another's will', he was drawing on precisely this tradition which we find articulated for the first time in [Grotius's] *De Indis* [Grotius's favored title for *On the Law of Prize and Booty*]" (Tuck 2001: 84-85). See also Tuck 1981, Tuck 1993, and, especially, Tuck 2001: 1-9, 83-89.

³⁴ For an excellent discussion of Vasquez on natural liberty, see Brett 1997: 165-204. Brett argues that Hobbes uses 'natural liberty' to refer to these two things also. (Brett 1997: 205-235) For Hohfeld's classification of rights, see Hohfeld 1923.

³⁵ Or, at least, it was taken to include such a claim right, as is shown by Barbeyrac's remarks quoted in the next paragraph.

“Right properly and strictly so called,” Grotius says, “consists in leaving others in quiet Possession of what is already their own [including the “Power . . . over ourselves, which is term’d *Liberty*” (I, 138)], or in doing for them what in Strictness they may demand” (I, 89). When we fail to abstain from what belongs to others (including, again, by interfering with their liberty), their right gives them standing to demand “Restitution” of what we have taken, insofar as this is possible, and “Reparation” of any “Damage done through our own Default” (I, 86). These are all “due” to others not just in the sense that it is fitting that they have it or even that they deserve it, but also that these others have “the Faculty of demanding what is due,” and that we consequently have “the Obligation of rendering what is owing” (I, 139). As Barbeyrac remarks in a footnote to the passage quoted at the beginning of this paragraph, “When we Repair the Damage he has sustained in his Person, Goods, or Reputation, whether designedly or through Inadvertency, we restore what we had taken from him, and what was his own, *which he had a strict Right to demand*” (I, 88n).

Similarly, when Grotius considers an argument on behalf of the Maccabees that “they acted by Vertue of the Right which their Nation had to demand Liberty, or the Power of governing themselves,” which right we know from the first passage quoted in this section Grotius must hold to derive from individuals’ right to choose, he implicitly accepts the premise that that right would include a right to “demand Liberty” (I, 359).³⁶

It follows that natural right, as Grotius understands it, includes obligation-entailing claim rights of individuals to demand that others conduct themselves toward them in various ways: “the Abstaining from that which is another’s, the Restitution of what we have of another’s, or of the Profit we have made by it, the Obligation of fulfilling Promises, [and] the Reparation of a Damage done through our own Default” (I, 86). And this shapes how the law of nature must itself be understood; it must include respect for these claim rights. This is quite different from a conception of natural liberty as a Hohfeldian liberty (arguably, as in Vasquez and later in Hobbes), which simply entails permissions without any accompanying obligations. Hobbes’s “right of nature,” for example, of each “to use his own power, as he will himself, for the preservation of his own nature” (Hobbes 1994a: xiv, §4), entails no obligations on others to allow him to do so. It simply means that such an exercise of liberty by the agent himself is “blameless.”³⁷

An important first point, then, is that Grotius’s doctrine of natural right shapes his theory of natural law in the direction of a conception of morality as requiring protections of certain basic interests of individuals. But there is also a second way in which Grotius points toward the modern idea that dignity of individuals is at the center of the moral law. In discussing Grotius’s views on natural rights, Tuck has aptly compared them to H. L. A. Hart’s characterization of rights in his landmark paper, “Are There Any Natural Rights.” In Tuck’s words, rights, for Grotius and Hart, “constitute[e] a kind of sovereignty for the individual over parts of his life” (Hart 1955; Tuck 2001: 9, see also 84-85). But there is an important additional aspect of Grotius’s idea that is best brought out by reference to another classic paper on rights, namely, Joel Feinberg’s “The Nature and Value of Rights” (Feinberg 1980). This is the thought that claim rights involve the *authority* of the right holder *to claim or*

³⁶ However, he also claims that the Maccabees had lost their right to liberty by earlier conquest“ (I, 359).

³⁷ The term Hobbes uses in *The Elements of Law*: “And that which is not against reason, mean call RIGHT, or *ius*, or blameless liberty of using our own natural power and ability“ (Hobbes 1994b: 79)

demand certain treatment. This goes beyond its simply being the case that others should treat us in certain ways. It is the additional idea that right holders have the authority to demand that they be so treated and to demand restitution or reparation should they not be. As Feinberg puts it, “it is claiming that gives rights their special moral significance.” (Feinberg 1980: 155) Without rights, although others might accept norms that require them to treat us in certain ways, we could not claim this is as our right. We would have, as Feinberg says, no place to “stand, . . . look others in the eye” and make claims on one another. (Feinberg 1980: 151) This gives us a dignity; as Feinberg stresses; it makes others accountable or answerable to us.³⁸ Better, since we share these rights, it makes us *mutually* accountable.

Moreover, Grotius holds a further view about the standing of individuals to punish violations of natural law, which connects the law of nature to the dignity of individuals in a further way. This was actually crucial to Grotius’s practical agenda, since he wanted to be able to argue that organized groups of individuals, like the Dutch trading companies, had an authority, not unlike that of states, to bring rights violators to justice even when the rights that were violated were not their own. This, again, is a point that Tuck has stressed, pointing to the following passage from *On the Law of Prize and Booty* (Tuck 2001: 82; see also Tuck’s introduction to Grotius 2005: I, xx):

Is the power to punish essentially a power that pertains to the state [*respublica*]? Not at all? On the contrary, just as every right of the magistrate comes to him from the state, so has the right come to the state from private individuals; and similarly, the power of the state is the result of collective agreement Therefore, since no one is able to transfer a thing that he never possessed, it is evident that the right of chastisement was held by private persons before it was held by the state (Grotius 1950: 91)

As further evidence, Grotius adds an argument that will later be picked up by Locke in *The Second Treatise of Government* in support of his view that individuals in the state nature have a right to punish that is additional to their right to seek reparation for violation of their own rights (Locke 1988: 272 (II.9)). The argument is that states normally claim the right to punish wrongs against not only their own citizens, but also against foreigners, “yet it derives no power over the latter from civil law, which is binding upon citizens only because they have given their own consent” (Grotius 1950: 91-92).

Grotius is not so explicit about individuals’ right to punish in *The Rights of War and Peace*. There he says that the “Person to whom the Right of Punishing belongs, is not determined by the Law of Nature” (II, 955). All “natural Reason” tells us for sure is that “a Malefactor may be punished, but not who ought to punish him” (II, 955). Though it “suggests . . . it is fittest to be done by a Superior,” yet it does not show that “to be absolutely necessary” (II, 955). Even if this seems weaker, there is no reason to think that Grotius has gone back on his earlier view. Indeed, in the passage where he proclaims sociability the “Fountain of Right,” he adds that that this Right includes not just “Abstaining from that which is another’s,” “Restitution,” “Reparation,” and “the Obligation of fulfilling promises,” as I mentioned before, but also “the Merit of Punishment among Men” (I, 86).

The thrust of these remarks is that individual persons have not only the authority to demand compliance with their own rights, and demand restitution and reparation when

³⁸ I stress this aspect in Darwall 2006.

these are violated, they also have the standing to demand that the moral law be complied with in respect of others also. In effect, they have an authority of membership in an assumed moral community of mutually accountable equals.

This adds a distinctive element to the moral law. Since the law requires respect for each person's rights, it involves obligations that are, in the first instance at least, *to patients*, that is, those whom we affect by our actions. But patients are not the only ones who have the standing to demand compliance with these rights, and hence the law; all others do as well, since they have the standing to punish and not just to secure restitution or reparation on behalf of the victim. And since that is so, moral obligations involve, in the second instance, responsibilities *to* all persons and not just to patients. Here we have at least a strong suggestion, perhaps the first, of a conception of *moral community as mutual accountability*. Morality imposes genuine obligations that we are accountable for complying with, where this accountability involves being answerable to one another.

PUBLICLY ARTICULABLE GENERAL PRINCIPLES: A "SCIENCE" OF MORALITY

It should now be evident that the central elements of the conception of natural law that Barbeyrac refers to as "morality" were present already in Grotius. Grotius holds that all individuals are subject to universal laws just by virtue of being rational persons, irrespective of their local, national, or religious differences, that these laws impose genuine obligations on all persons even when it is contrary to a person's interest comply with them, and, therefore, that agents are *responsible* for doing such compliance (and so subject to punishment if they do not). Moreover, these obligations include respecting natural *rights* that any rational moral agent has. The classic problem Grotius bequeathed to the modern period was how to establish that such universal genuinely *obligating* laws actually exist and are not merely chimerical.

I said at the beginning that Grotius was also an important source for what Barbeyrac called the "science of morality." This terminology is not Grotius's, nor is it familiar today, so we should ask what Barbeyrac meant by it. By a "science of morality," Barbeyrac just means a publicly accessible *formulation* of basic "Principles and Rules of Morality" together, perhaps, with some account of their power to obligate (1749: 2).³⁹ Barbeyrac says that discovering moral "principles and rules" requires no "inquiry into the impenetrable Secrets of Nature,"⁴⁰ and that it is available to everyone, including "Persons, of the lowest Rank" (1749: 3).

A "science" of morality in this sense is precisely what Grotius was attempting himself to provide. It is worth quoting at length an excellent observation Tuck makes on this point in his introduction to *The Rights of War and Peace*:

The Indian Ocean and the China Sea were an arena in which actors had to deal with one another without the overarching frameworks of common laws, customs, or religions; it was a proving ground for modern politics in general,

³⁹ In his view, again, theological voluntarism provides the latter.

⁴⁰ "When we say, *That Man is subject to Law*; we mean nothing by *Man*, but a corporeal rational Creature: What the real Essence, or other Qualities of that Creature are, in this Case, is no Way consider'd" (1749: 4) Compare this to Locke's claim that 'Person' is a "forensic term" (i.e., competent to be held accountable) that does not refer to a real essence (Locke 1975: 346).

as the states of Western Europe themselves came to terms with religious and cultural diversity. The principles that were to govern dealings of this kind had to be appropriately stripped down: there was no point in asserting to a king in Sumatra that Aristotelian moral philosophy was universally true (Grotius 2005: I, xviii)

Grotius's project is to formulate "minimalist" principles of obligation, as Tuck terms them. The point is to specify principles to which people can readily agree they should hold themselves answerable for complying with regardless of national, cultural, and religious differences.

It is because laws of nature (moral laws) purport to provide a basis for holding one another *responsible*, regardless of these more specific differences, indeed, that they must be presumed to be publicly formulable and generally accessible without assuming any specific cultural or religious doctrine. Aristotle can intelligibly hold that someone of perfect virtue has a kind of practical wisdom that requires years of cultivation and experience and that may not even be possible for many people. Why think that everyone should be able to attain excellence of any kind? Once we have a conception of a standard that people can be held accountable for complying with, however, it seems we must assume that they have what it takes to comply with it, that this requires no esoteric knowledge or special talents that ordinary people cannot be presumed to have. The very idea of such a standard seems to require that it be capable of some public "minimalist" formulation, as something like the golden rule, which Hobbes says is "intelligible, even to the meanest capacity" (Hobbes 1994: xv, 35), or the Categorical Imperative, or Grotius's injunction that we not deprive others of what is theirs. Now, of course, these formulations are not self-applying; they require judgment and there can be reasonable disagreements about what they require. But the point remains that they don't require any special skill or controverted religious or cultural tradition.

Seen in this light, Grotius's famous *a posteriori* arguments for putative laws of nature take on a new significance. A showing that a putative law, say, the obligation to keep promises, has "the Consent of all Nations" (I, 160-161) is not just evidence that there are good reasons to keep promises. It is an argument that this is something we can reasonably demand of one another because we can reasonably expect (epistemically, as well as morally) that others would reasonably accept it also. So viewed, a "science" of morality is a distinctively modern project; it is an essential element of a mutually accountable social order that is continuous with the rule of law ordinarily so called.⁴¹

SOCIABILITY AS THE "FOUNTAIN OF RIGHT"

In this final section, I wish to inquire further into Grotius's claims that "Sociability" is "the Fountain of Right" (I, 85-86), and that what makes something in accord with or contrary to natural law is its "Fitness or Unfitness . . . with a reasonable and sociable Nature" (I, 159). The first statement of these ideas comes just after Carneades's challenge, to which Grotius replies by saying that human beings have a "Desire of Society" (I, 79). It is, however, important to be clear about just what Grotius takes our "sociable" nature to be, such that it is able to ground natural law as he understands it, that is, as a genuinely obligating law.

⁴¹ For further elaboration of this point see Chapter 12 of Darwall 2006, especially the discussion of Bentham.

It seems clear, first, that sociability cannot be anything like benevolence, or the desire for the good of others or even of all, for at least two different reasons. First, even if such a desire were universal in the human species, it would be unable, by itself, to ground the idea that we are under any *obligation* to promote human welfare, that is, that we are responsible or accountable for doing so. In being benevolent, we see the flourishing of human beings generally as a good thing, but that is, by itself, insufficient to warrant the thought that we are *obligated* to bring it about. Second, the very same form of collective action problem that arises with respect to individual good, arise also with respect to the common good. There are cases, notably those involving justice or fairness, where an agent could produce more good for all by violating a norm of justice. Hume's famous example of restoring stolen property to a seditious bigot is an excellent example.⁴² Neither can a desire to live among other human beings or for what is necessary for a flourishing society, for similar reasons.

Grotius is actually quite specific in defining the precise kind of "Desire of Society" that he has in mind.

That is a certain Inclination to live with others of his own Kind, not in any Manner whatsoever, but peaceably, and in a Community regulated according to the best of His Understanding (I, 80-81).

To this he adds that mature human beings develop a "*peculiar Instrument*" that is necessary for such a "Community," namely, "*the Use of Speech*" (85). And humans have also the related "*Faculty of knowing and acting, according to some General Principles*" (I, 85). Other animals certainly live together, and many seem capable of acting out of something like affection or concern for at least some others of their kind. What is distinctive about human beings in this regard is their capacity for and disposition towards a particular kind of social order, namely, one mediated by the common acceptance of "General Principles." What is distinctive of human beings is the capacity for and the drive toward a distinctive kind of society, namely, "A Society of reasonable Creatures" (I, 136).

Recall now the passages we discussed briefly above concerning the distinctive *relations* that define such a society, for example, Seneca's remark that "*Nature has founded a kind of Relation between us*" (136). The examples that Grotius gives of social relations are all relations of authority, involving standings to make claims and demands and to hold accountable, whether the relations is reciprocal ("*Right of Equality*") or not ("*Right of Superiority*") (I, 136-137). If we put these passages together with those quoted in the last paragraph concerning the "Social Faculty" (I, 87), what we get is a conception of sociability as the human capacity for and disposition toward a distinctive *kind* of social order, namely, the very kind of order that Grotius is himself trying to found in *The Rights of War and Peace*. So understood, sociability is the fountain of an order involving all persons that is mediated by universal "General Principles" enshrining rights with which individual members take themselves to have standing to demand compliance.

This suggests that we might best understand Grotius as holding that the law and right of nature are grounded in the capacity of rational persons to recognize their common capacity and authority to make reasoned claims and demands against one another and to live with one another on terms that respect this common standing. Of course, this doesn't tell

⁴² "When a man of merit, of a beneficent disposition, restores a great fortune to a miser, or a seditious bigot, he has acted justly and laudably; but the public is a real sufferer" (Hume 1978: 497).

us much about how such a rationale might work in any detail.⁴³ But it does point us toward a way of thinking about the modern conception of natural law (morality) that appreciates the legal/judicial element that Anscombe properly recognizes, and appreciates the issue she raises as well as the Carnedean challenge that arises once there is a commitment, as Sidgwick says, to a source of normative reasons that is independent of self-interest.

As I see it, Grotius set this problem for the modern period, and it is one we have been grappling with it ever since. I have argued here that his way of attempting to deal with that problem is one that interpreters have failed properly to appreciate. And if what I have argued elsewhere is correct, Grotius's approach, as I interpret it, is a promising line of solution to the problem he set for us (Darwall 2006).

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⁴³ I attempt to work out such a line of thought in Darwall 2006.