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Grotius

Courses in the history of modern philosophy generally focus on epistemology and metaphysics and begin with Descartes's engagement with skepticism in the *Meditations*. But where should a history of modern ethical thought begin? It has been widely believed, not least by early moderns themselves, that in the seventeenth century, ethical philosophy came to assume a self-consciously "modern" form, opposing itself to "ancient" Greek ideas and to medieval scholastic approaches that derived, at least in part, from Aristotle.

Many have thought that Hugo Grotius (1583–1645) helped initiate this modern form. In the mid-eighteenth century, Jean Barbeyrac's *Historical and Critical Account of the Science of Morality* praised Grotius as "the first who broke the ice" of "the *Scholastic Philosophy*; which [had] spread itself all over Europe" (Barbeyrac 1749: 66, 67). More recently, Knud Haakonssen has written that ethical philosophers of the time thought "that something decisively new happened with Grotius" (Haakonssen 1996: 15). To many thinkers of the early modern period, Grotius's *The Rights of War and Peace* (*RWP*), published in 1625, was not simply an original treatise on international law; it seemed to set a new agenda in ethical and political philosophy across the board.[1] A strong case can be made, indeed, that the very concepts to which "morality" and "science" in Barbeyrac's title referred were themselves substantially shaped by Grotius and his influence.[2]

So we begin our history of modern moral philosophy with Grotius, and in this chapter I shall attempt to say why.[3] This is a pressing question, since Irwin maintains that Barbeyrac "misunderstands Grotius in representing him as a pioneer" (Irwin 2008: 99). According to Irwin, Grotius follows the main lines of

[1] *De Jure Belli Ac Pacis* is also often translated as *On the Law of War and Peace*.

[2] For Barbeyrac, "morality" consists of a body of "rules" ("laws of morality") we are "obligat[ed]" to comply with just because we are "corporeal rational creature[s]" (Barbeyrac 1749: 2–3, 5). 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 plausibly took to be his bequest.

[3] I draw heavily on Darwall (2012a).

an "Aristotelian naturalism," which also characterized classical Thomist natural law, with which Grotius's early modern natural law is frequently contrasted. If Irwin is right, however, there was nothing fundamentally original in Grotius.

What *was* importantly new in Grotius that helped produce a distinctively "modern" ethical philosophy? Schneewind has argued that Grotius's originality consisted in his "confrontation" with skepticism, which "was simply not an issue for the classical natural law theorists" who preceded him (Schneewind 1998: 71). If so, Grotius might stand to modern ethical philosophy in something like the relation Descartes stands to modern epistemology. But although *RWP* virtually begins with the skeptical challenge that justice is a mere "Chimera" since "Nature prompts all men … to seek their own particular advantage," Irwin correctly notes that skeptical objections of this kind were well known to the ancients, as Grotius's putting it in the mouth of Carneades effectively acknowledges (Grotius 2005: I, 79, Irwin 2008: 94–96).[4] It is largely the same challenge that Glaucon and Adeimantus pose to Socrates in the *Republic*: Why should we be just when it is disadvantageous to be so? If, however, serious engagement with skepticism was not new with Grotius, what was?

In this chapter, I shall argue that what was novel in Grotius is a combination of three doctrines that will loom large throughout the modern period: (i) moral right (natural law) has a distinctively obligating normativity that cannot be reduced to normative reasons concerning the good that advise or "counsel" action rather than demand it; (ii) morality includes basic universal claim rights, what Grotius dubs "perfect rights" (thereby initiating the perfect/imperfect right and correlative perfect/imperfect duty distinctions); and (iii) morality would exist and obligate us "even if we were to suppose … that there is no God" (Grotius 2005: I, xxiv).[5] By affirming that morality has obligating authority but not deriving it from God's command, Grotius made himself liable to Anscombe's Challenge.

Classical Natural Law: Aquinas and Suárez

For Grotius, morality is embodied in what he calls "natural law." But there is nothing exclusively modern in the idea of natural law itself. It goes back to the Stoics and was, in Aquinas's classical natural law theory, part of scholastic orthodoxy. What, if anything, was different about Grotius's conception?

[4] Because it is more generally available, I will be using the 2005 LibertyClassics edition (Grotius 2005), edited by Richard Tuck. It was translated by John Morrice (Grotius 2005: I: xxxv). In at least some places, which I will note below, Morrice appears to have worked from Barbeyrac's French translation, which is not entirely faithful to Grotius's Latin text. (Grotius 1724). When appropriate, I will supplement with Francis Kelsey's translation (Grotius 1925).

[5] This passage occurred in the Prolegomena to the first edition of *De Jure Belli*.

For Aquinas, laws of nature are *teleological* standards inherent in our rational nature that concern our common good (Aquinas 1997: Q91–93). This is familiar Aristotelian naturalist doctrine. But what makes these standards *laws*? There is, of course, a general sense in which "law" can refer to any standard or norm, but that is insufficient to distinguish Anscombe's juridical notion. Not just any standard involves *obligation* in the sense of something for which we are answerable, where issues of culpability, guilt, and innocence are automatically involved. If I believe the opposite of what is entailed by things I know, I violate a standard of reason (so a standard inherent in my rational nature), but, so far anyway, nothing juridical need be involved. No issue of culpability, guilt, or innocence necessarily arises. From the fact that someone manifests some mistake or fault of reasoning or errs in failing to respond to normative reasons, it does not follow that they are to blame or that this is *their fault* in that distinctive sense (Pink 2007). But this is precisely what is involved in the modern "law conception" of morality Anscombe identifies. So the fact that an ethical conception like Aquinas's is advanced in legal terms is not enough to make it a "law conception" in Anscombe's sense.

Even before Grotius, Francisco Suárez (1548–1617) criticized Aquinas's theory precisely on the grounds that it could not explain why we would have any *obligation* to follow natural law. Suárez agreed with Aquinas that, for example, telling falsehoods is intrinsically "repugnant" to rational nature, but he pointed out that this is insufficient to create any *obligation* to tell the truth (Suárez 1944: 181–183). To understand natural law as genuinely obligating law, Suárez believed, it is necessary to see its dictates as *authoritatively addressed demands* with which we are accountable for compliance. And this, he thought, requires seeing natural law as issuing from God's authoritative command.[6] In effect, Suárez held that Aquinas's view was not subject to Anscombe's Challenge because it was not even a theory of obligating law.

Suárez crystallized his idea in a fundamental distinction he made between law and "counsel," the influence of which would be felt throughout the early modern period. According to Suárez, law has a conceptual connection to obligating demands and accountability that normative reasons recommending an action as good (advisable) do not.

> [C]ounsel is excluded from law. … The word promulgation implies an order for the purpose of creating an obligation and it is in this respect most of all that counsel differs from law [i.e., in not being "promulgated" and obligation creating] (Quoted in Schneewind 1990: I.74–75).[7]

[6] Here I draw on Darwall (2003).

[7] From *De Legibus*, first published in 1612. Jean Bodin made a related distinction between "command" and "counsel" in *The Six Books of the Republic*, published in 1577 (2004: 119). For discussion of Bodin's distinction and its role in early modern British thought, see Paul (2020).

It is difficult to overestimate the importance of Suárez's insight for the moral philosophy that followed him. The distinction between law (or command) and counsel is explicit in Grotius, Hobbes, and Kant. All these philosophers distinguish between normative reasons favoring or counseling an action, on the one hand, and the idea that the action is obligatory or demanded (commanded) through the moral law, on the other. And I shall be arguing that it is widely implicit elsewhere.

Several ideas are packed into Suárez's notion of obligating law. First, he says, "ordering pertains to the will," so obligating moral norms or laws must aim to *direct a will*; only thus can they have "binding force" (Suárez 1944: 66, 67). So, second, moral norms are God's will as *addressed to us*, hence to our rational wills second personally (Darwall 2006). But Suárez's idea is not that God seeks to determine our wills directly. If that were so, we could not fail to comply ("all these precepts would be executed"), since God is omnipotent (Suárez 1944: 55). Rather, God wills "to bind" his subjects by addressing legitimate demands *to* them through commands that they can then rationally choose to follow for what they can regard to be good reasons (55). Thus, third, the commands that create natural law must be addressed to human beings *as free and rational*. 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" (37). Finally, fourth, we are *accountable* for complying with moral obligations. If we do not "voluntarily observe the law," we are *culpable* ("legal culprits in the sight of God") (132).

In holding that the law of nature obligates because it is God's command, Suárez is implicitly accepting the premise of Anscombe's Challenge: any law such as morality purports to be can bind us only if it is divinely legislated. However, Suárez's theological voluntarism is not really essential to his conceptual distinction between law and counsel. Grotius, after all, invokes the distinction, as we shall see, but denies that moral obligation is grounded in divine command. The law, he says, would hold "even if we were to suppose … that there is no God" (Grotius 2005: I, xxiv). This is what makes him subject to Anscombe's Challenge (as a modern moral philosopher).

The crucial conceptual distinction is between (deontic) concepts like law, authority, command, and obligation, which are conceptually tied to accountability and culpability, on the one hand, and the idea of normative reasons weighing in favor of or counseling action, which is not, on the other. Consistently with the conceptual connection between law and accountability, we might be accountable for complying with the moral law even if the latter did not depend on divine command. We might be accountable to one another, and ourselves, as representative persons or members of the moral community.[8]

[8] This is the view I argue for in Darwall (2006). Indeed, I argue there and in the next chapter on Pufendorf, that features internal to the logic of accountability make theological voluntarism inherently unstable as an account of the moral law.

Again, Grotius invokes Suárez's distinction between law and counsel, but denies his theological voluntarism.[9] But if Suárez'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 show how despite his rejection of theological voluntarism, Grotius's conception of natural law is nonetheless juridical in Anscombe's sense. And in the section following, I shall argue that, as against both Aquinas and Suárez central aspects of Grotius's view commit him to accepting Sidgwick's mark of the modern, that morality (natural law) provides a source of normative reasons that are additional to those provided by the agent's good, however broadly construed. Finally, we will consider Grotius's response to Anscombe's Challenge that morality requires a foundation in divine command. Grotius claims that our rational *and sociable* nature is sufficient to ground morality. This, he says, is the "fountain of right."

But why, first, would *Suárez* not count as a modern by Anscombe's standards? The reason is that although Suárez holds obligation to be essential to law, he does not think it is necessary for standards of moral right and wrong, nor for there to be normative reasons to comply with these standards. As odd as it may sound to modern ears, Suárez holds that an act's being morally wrong does not *in itself* entail any obligation not to do it.

Like Aquinas, Suárez is in this respect an Aristotelian naturalist (Irwin 2008: 38–41). Although Suárez holds that it takes God's command to create laws that place us under obligation, this *adds* obligation to what it is already intrinsically right, and wrong not, to do.[10] As Irwin puts it, Suárez believes that "if we

[9] 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 Suárezian 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 this 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 depends not on divine legislation, but *vice versa*.

[10] "This will of God, prohibition or prescription, is not the whole character of the goodness and badness that is present in the observance or transgression of natural law, but it assumes in the actions themselves some necessary rightness or wrongness, and joins to them a special obligation of divine law" (Suárez 1944: ii.6.11, quoted in Irwin 2008: 38n).

abstract divine commands from the natural law, what is left is morality (*honestas*), not just natural goodness" (31). God's commands do not make what is wrong wrong; they add an obligation to avoid the wrong, so that wrongful actions end up being, as it were, doubly wrong: wrong in and of themselves, but also because they disobey and so wrong God.

> Therefore it is necessary that it add some obligation of avoiding the evil that is evil from itself and by its own nature. Further, there is no contradiction if a thing that is right from itself has added to it an obligation to do it, or if a thing that is wrong from itself has added an obligation to avoid it (Suárez 1944: ii.6.12, Irwin 2008: 29b).

As Irwin emphasizes, Suárez follows Aquinas in holding (i) that standards of right and wrong are inherent in the nature of rational human beings; (ii) that moral rightness, so understood, is an intrinsically beneficial good, the "*bonum honestum*," which is distinct from the pleasant and the useful; and (iii) that this good provides the ultimate normative reasons agents have to do what is morally right for its own sake (Irwin 2008: 31, 2007: 606). As *eudaimonists*, Aquinas and Suárez both hold that *any* reasons agents have to do what is morally right must be rooted in their own good, where this is the intrinsic good of *bonum honestum*.

This ends up making Suárez pre-modern by Anscombe's *and* by Sidgwick's standards. Both Aquinas and Suárez have a way of marking out "moral" goods within the class of intrinsic goods, since only these goods and virtues distinctively concern the *common good* (Irwin 2007: 615–619, 2008: 66–67). But neither holds that moral right (*honestas*) is essentially juridical nor that it involves a non-*eudaimonist* source of normative reasons.

Since there is nothing essentially juridical about *honestas*, "morality" as Aquinas and Suárez conceive it is in this respect unlike morality in Anscombe's (allegedly) modern sense. And a similar point holds for Sidgwick's contrast. A mark of "ancient" ethics, for Sidgwick, again, is that "Virtue or Right action is commonly regarded as only a species of the Good" (Sidgwick 1967: 105–106). Since Suárez and Aquinas both hold that *honestas* provides no non-*eudaimonist* ground for action, but is instead a distinctive kind of intrinsic benefit (*honestum bonum*) whose normative weight can be fully captured within a *eudaimonist* framework, both count as pre-moderns by Sidgwick's standard also. Neither brings an intrinsic connection to obligation into their conception of "morality," and neither has any reason to think that morality requires a kind of reason for action that differs from *eudaimonist* considerations of the agent's own good.

Grotius on "*ius*," Morality, and Obligation

Grotius disagrees with Aquinas and Suárez on both counts. To begin to understand Grotius's position on these issues, however, we need to examine a three-way distinction he draws at the beginning of *RWP* between things correctly

called *ius*.[11] First, Grotius says, "*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" (Grotius 2005: I, 136). So far, this seems thoroughly within the classical natural law and Aristotelian naturalist framework; no essentially juridical notions need be involved.

Grotius then quotes Florentinus's remark that "*Nature has founded a kind of* Relation between us," and Seneca's saying that human beings "are born for Society, which cannot subsist but by a mutual Love and Defence of the Parts" (I, 136). He next distinguishes 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."[12] 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, 137).

Grotius thus defines the human relations he is concerned with in terms of reciprocal recognition of relative *authority*. So understood, a relationship essentially includes the authority or standing those within it have to make claims on and demands of others to whom they are related by it; the relations are already conceived as inherently involving 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 sense.

It is often noted that Grotius seeks to ground natural law in a form of "sociability" that is distinctive of human beings (I, 79–87). It is easy to mistake the force of his idea, however, since it can seem an attempt to derive moral obligations from some form of benevolent concern or affinity with others or some desire to be with or in agreement with them. But no such attempt can succeed in grounding juridical moral notions, 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) involved.

Moreover, we have seen that the distinctive *kind* of social relations Grotius has in mind are themselves already conceived in terms of relative authority, that is, in terms of the standing that the related parties have to make claims on

[11] Grotius's translators alternately translate "ius" as "law" or "right."

[12] Kelsey translates these as "rectorial law" and "equatorial law," respectively (Grotius 1925: 37).

and demands of one another.[13] This gives a distinctive color to Florentinus's remark that "Nature has founded a kind of Relation between us"; it suggests that this fundamental social relation must be conceived in terms of authority also. And that affects how Grotius's concept of "sociability" might most charitably be understood.

I shall argue that when Grotius says that "sociability" is "the Fountain of Right" (I, 85–86), the most promising philosophical option is to 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. In other words, human beings share an equal authority over one other. Only such an interpretation of sociability can bring it into the conceptual space of law rather than "counsel."

To be clear, this interpretation goes well beyond what Grotius explicitly says. My point is that the idea of a standing to make claims on and demands of one another is implicit in aspects of his thought to which he is committed. And I maintain 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 that this second sense is different from the first, "yet aris[es] from it." In the second sense, "*Right* is a *moral Quality* annexed to the Person, *enabling him to have, or do, something justly*" (I, 138). Here Grotius introduces his famous distinction, which will reverberate throughout the modern period, between perfect and imperfect rights (generating the modern distinction between perfect and imperfect duties or obligations).[14] A perfect right is a "*Faculty*" of the person, a normative "power" over oneself or, in special cases, over others, as when a relation of "superiority" like parent/child, master/servant, or king/subject obtains. Perfect rights are also implicated in property relations and contracts.

It is clear that Grotius identifies perfect rights with what we now call claim rights, which generate correlative obligations. Barbeyrac's French translation (from which Morrice's English translation draws) makes this explicit by adding

[13] It is worth noting in this connection that Pufendorf understands sociability (*socialitas*) in similar terms: "By a sociable attitude, we mean an attitude of each man towards every other person, by which each is understood to be bound to the other by … a mutual obligation" (1934: 208). Pufendorf of course differs from Grotius in seeking to derive natural law from divine command (including God's "fundamental" command to have a "sociable attitude") rather than from sociability. Even so, he and Grotius apparently agree in understanding sociability itself as involving relations of mutual right, obligation, and hence, authority, albeit understood formally.

[14] First, in Pufendorf (e.g., 1934: 90). On the significance of Grotius's distinction, see Schneewind (1998, esp. pp. 78–79, 133–134).

that perfect rights involve (in Morrice's English) "*The Faculty of demanding what is due*, and to this *answers the Obligation of rendering what is owing*" (I, 139).[15] It follows that there can be perfect rights only if natural law includes genuine obligations to respect them.

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 that no one has standing to claim or demand (I, 141). "Prudent management in the gratuitous Distribution of Things" to which no individual 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). However, Grotius insists that "Ancients" like Aristotle, and even "Moderns" who follow him are mistaken if they think this a matter of right, though they may take considerations of these kinds to be included within what they call "justice" (it is what Aristotle and his followers include under "distributive justice").[16] "Right, properly speaking, has a quite different Nature," namely, "doing for [others] what in Strictness they may demand" (I, 88–89).[17]

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 here explicitly invokes Suárez's distinction between law and counsel. Even in "its largest Extent," *ius* is to be distinguished from counsel. It is of the nature of law and right to *obligate*; *ius* makes legitimate demands of us to which we are accountable for conforming. Normative reasons that simply weigh in favor of or "counsel" action lack this conceptual connection to the deontic; they do not obligate of themselves. This does not mean that there is not good reason to do what we are obligated to do. Far from it. It just means that being obligated to do something cannot itself be captured through the weight of reasons.

[15] In his notes, Barbeyrac defends this addition and argues that it should be read to apply not just to the case of contracts, as the Latin text might suggest, but to all perfect rights. Whether or not this is defensible as a translation, it seems clear that Barbeyrac is correct in thinking that if perfect rights are claim rights, then Grotius is committed to it.

[16] On the curious difference between this traditional notion and our conterporary notion of distributive justice, see Fleischacker (2004: 17–28).

[17] Kelsey translates this last passage from section 10 of the Prolegomena as "leaving to another that which belongs to him, or in fulfilling our obligations to him" (Grotius 1925: 13). Although it is clear from the text later that Grotius has Aristotle's distributive justice in mind, the language of "ancients" and "moderns" is Barbeyrac's. Kelsey has: "Long ago the view came to be held by many, that this discriminating allotment [distributive justice] is part of law" (1925: 13).

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

We shall return to how Grotius might hope to ground laws of nature in reasonable sociability in the final section. Since Grotius rejects Suárez's theological voluntarism, if he is to hold, like Suárez, that *ius* differs from counsel because of its distinctively obligating normativity, he needs some other way of accounting for this. Here, again, he faces Anscombe's Challenge.

Already, however, we can glimpse why Grotius might think that norms that can be justified in this way would have to be genuinely obligating. If, as we noted above, Grotius conceived of sociability as itself involving a *fundamental* standing to make claims and demands of one another, 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 nature might be.[18] 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 cannot.

We can also now see that Grotius, unlike Suárez, is in no position to hold that obligation, though necessary for law, is inessential to moral right and wrong. Grotius ties his third definition of right – which he follows with his definition of natural right as "Suitableness to a reasonable Nature" – to *obligation*. Although he agrees with Aristotelian naturalists like Aquinas and Suárez that natural law and right are grounded in rational (and sociable) nature, he nonetheless holds that they entail obligation and that the latter does not come into existence through God imposing it on us through command. Moral right and wrong as Grotius

[18] For the difference between "sociability" in Grotius's sense and "social" in our ordinary sense and its philosophical significance, see Darwall (2014c).

understands them are already essentially juridical in Anscombe's (and Sidgwick's) sense. Something can be morally wrong only if we are under a legitimate demand not to do it. "Counsel," however reasonable, is an insufficient ground.

For Grotius, therefore, there is no notion of moral right and wrong that is independent of moral obligation. Considerations of common good, taken by themselves, are simply insufficient to show that anything is morally right or wrong in the sense with which Grotius is distinctively concerned. The most they can provide is counsel, not authoritative demand.

Morality as a Distinctive Source of Reasons

We turn now to Grotius's relation to Sidgwick's claim that modern ethical philosophers came to recognize morality (natural law) as a source of normative reasons for acting that is independent of the agent's good, therefore, *eudaimonist*. The point is somewhat delicate since, as Irwin has shown, a good bit of what Grotius says can be accommodated within an Aristotelian naturalist, *eudaimonist* framework according to which virtue – justice in particular – is intrinsically beneficial (part of the *bonum honestum*), whether or not it benefits agents instrumentally or promotes their partial interests, say, by making it likelier that others will act justly towards them in the future (Irwin 2003: 351–352).

A crucial passage occurs right at the outset of *RWP* when Grotius poses a fundamental skeptical challenge to his ideas, one that will be echoed later by Hobbes's "foole" (Hobbes 1994a: XV.§4), Hume's "sensible knave" (Hume 1975b: 256), and Kant's worry that morality might be a "chimerical idea without any truth" (Kant 1996a: 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*" (Grotius 2005: I, 79).

> *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).[19]

[19] 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

According to Carneades, there is only one source of reasons for acting, the agent's own interest or good; therefore, there can be no reason to follow any law that might conflict with that.

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 seems no part of the concept of the law of any actual state or even 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 is not, however, the case with *natural* law, as that idea operated within both the classical theory deriving from Aquinas and the modern version I am claiming comes most clearly from Grotius. Something can be a natural law or right only if it entails normative reasons for agents to act. And if so, 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 and Suárez would certainly deny Carneades's claim that no law is such that there is necessarily reason to follow it, they nonetheless accept the *eudaimonist* assumption behind his claim, as Aristotelian naturalists do more generally. Aquinas and Suárez think there is necessarily reason to follow natural law because they believe that the agent's good necessarily coincides with it. In fact, for Aquinas, natural law and the agent's good turn out to provide 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 synthesis of Aristotelian teleology with 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, choosing to follow or flout it (Q91.3). What Aquinas calls "natural law" is simply the eternal law made accessible to and applicable by rational creatures in practice (Q91.2).

It follows that the content of natural law cannot differ from that of the eternal law for rational human beings *and* that, since what eternal law "requires"

> 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 1975b: 256).

for any being is simply its 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 properly understood, and *vice versa*.[20]

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. The moderns who follow Grotius, however, assume that there can be genuine conflicts of interest; or at any rate, they believe that it cannot be assumed that there cannot be. Individuals will rationally believe that some rational conflicts are likely, even if that is only because no one can rationally believe that everyone else will believe that there won't be.

For most of Grotius's followers, the natural laws that comprise Barbeyrac's "morality" purport to provide a source of reasons that is distinct from and potentially in conflict with self-interest.[21] 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 morality provides reasons for acting that trump considerations of self-interest in precisely those instances where the collective result of each individual's pursuing their own good, or their own conception of a good life for them would be worse for everyone.[22] As these Grotius-influenced moderns see it, the problem of social order is a *collective action problem* to which morality provides the solution.[23] Everyone does better if everyone follows the moral law than each would do were they to pursue their own good, or, at any rate, to pursue their own conception of their good.

From the perspective of his followers, then, the problem that Grotius appears to pose right at the outset of the modern period is how to show why individuals should respect such laws even when they would be better off individually (or, at least sensibly believe they would) by departing from them. In other words, since there cannot even *be* such a law unless it provides a source of reasons independent of self-interest, why suppose that such a law exists? The problem that Grotius thereby appears to set for the modern period is thus to show why collectively advantageous, putatively obligating laws are genuinely obligating

[20] At least, this equivalence holds with matters of common good.

[21] On this in relation to what Schneewind calls the "Grotian Problematic" (in Schneewind 1998: 119–129) see Darwall (1999a: 340–341).

[22] 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).

[23] For the classic discussion of collective action problems, see Olson (1971).

and reason-giving rather than chimerical, as Carneades claims, even though following them is individually disadvantageous.

Even so, it is possible also to interpret Grotius, as Irwin does, as not himself posing this modern problematic, however central it might become to later writers (Irwin 2003: 351–352). It is certainly true, moreover, that Carneades's original challenge, as well as the way it was understood by the Aristotelian naturalist tradition before Grotius, does not require the modern Sidgwickean 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 the *Republic* (359), namely, that they are no more than artificial conventions instituted for mutual *instrumental* advantage and that there is no intrinsic reason to follow them when it is contrary to one's (instrumental) interest to do so. And Grotius by and large just quotes Carneades's own challenge.[24]

Irwin notes that Aristotelian naturalists had a clear reply to Carneades's challenge that is fully consistent with *eudaimonism*. Moreover, some of what Grotius says certainly suggests that his own response to the skeptical challenge is simply that of Aristotelian (or as Irwin calls it elsewhere, "Stoic") naturalism, and hence that he accepts *eudaimonism* and so is not a modern by Sidgwick's lights (Irwin 2003). Grotius says that where Carneades goes wrong is in failing to appreciate that a "desire for society," or the "*Disposition the* Stoicks *termed* '*oikeiôsis*'," [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" (2003: 352). And they held also that justice's being expressive of our nature and thus "natural" makes just action intrinsically *beneficial* to the just agent, whether it is useful, that is, instrumentally beneficial to them 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*. 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. And so, Irwin argues, does Grotius.

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

[24] 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).

lack any conceptual connection to *obligation* and *legitimate demands*. 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 is 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 and Aristotelian naturalist reply is that it can provide no more than reasonable *counsel*, however weighty the reasons of the agent's good supporting the counsel might be. Therefore, even if it responds adequately to Carneades's challenge in the terms in which Carneades himself raised it, it is impotent to respond to a challenge to natural right and law, *as Grotius understands these*. However good it might be for us to comply with a standard or norm, that would not yet show that we lie under any *obligation* to comply with the standard or that that is something that can legitimately be *demanded* of us. The most the Aristotelian naturalist response can support is "reasonable counsel." It therefore cannot yet show that what we call natural law or right actually *is* a law or a right as Grotius understands these, since it would not yet have established its obligatory character.

Once we have the distinction between a mere "counsel," however well supported by reasons of extrinsic *or* of 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, so if Grotius's natural law and right are to exist, there must be another source of reasons for following them. And if there is not, then the ideas of natural law and right are only chimerical and "there is no justice at all," just as Grotius has Carneades say.

It might be replied, however, that even if the arguments of the last two paragraphs show that *eudaimonist* reasons cannot establish natural law and right as genuinely obligating, they do not show that *eudaimonism* cannot provide an adequate account of the reasons for complying with the law. After all, that was Suárez's position. Why could it not have been Grotius's also?

Part of the problem is that, unlike Suárez, Grotius has no way of separating the grounds of natural law from the reasons for compliance. Suárez was an externalist in the sense that he held that what grounds something as obligating law, God's command, is distinct from what provides reasons for compliance. Only considerations of the agent's own good can supply the latter, even if some are related to God's commands, for example, through the good of obedience and the avoidance of sanctions.

Unlike Suárez however, Grotius has no independent way of grounding natural law. To the contrary, he appeals to human beings' rational and sociable nature both to reply to Carneades's challenge *and* as the "Fountain of Right"

(79–81, 86). In this respect, Grotius is an internalist. What grounds natural law and right as genuinely obligating must simultaneously supply normative reasons for compliance.

Although this ups the ante, it nonetheless gives Grotius a significantly more satisfying position philosophically. The externalist must hold that the fact that an action is legitimately demanded of an agent, and that they would be blameworthy for failing to comply were they to lack some further justification or excuse, does not *itself* entail any normative reason for them to comply. Any reasons for compliance must come from elsewhere – from the agent's own good for a *eudaimonist* like Suárez. But however broadly we construe the agent's welfare, as including, for example, the *bonum honestum* or obedience to God as intrinsic goods, it seems nonetheless to supply a "reason of the wrong kind" for their compliance with moral obligations and legitimate demands (Prichard 2002, Strawson 1968, Darwall 2006).

When we hold someone to account for doing something through what P. F. Strawson calls "reactive attitudes" like moral blame, we *thereby* imply that there were conclusive reasons for the agent not to have done what they did (Williams 1995, Gibbard 1990: 42). We presuppose that there are reasons for acting consisting in or entailed by the legitimate demands or obligations themselves, whether or not it will benefit the agent to comply. If, for example, we owe something to someone as a matter of *right*, it seems beside the point to ask whether discharging our obligation to them will benefit *us*.

We can agree with Irwin that nothing just said entails that Grotius himself saw that his conception of natural law requires a defense going beyond Aristotelian naturalism or that he 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 1994a: XV.§4), Hume's reply to the "sensible knave" (Hume 1975b: 256), and Kant's response to the charge that morality might be a "chimerical idea without any truth" (Kant 1996a: 4:445). These all assume that acting against morality might sometimes coincide with the agent's own interest in fact.[25] Consequently, they all assume that morality can exist only if *eudaimonism* is false, only if, that is, there can be reasons for agents to act that do not derive from their own good. Whether or not Grotius considered himself a modern in Sidgwick's sense, therefore, his account of moral right as entailing obligation and legitimate demand, and thus as being distinct from counsel, might reasonably have

[25] It is consistent with this that philosophers like Hobbes can hold that self-interested *eudaimonist* considerations still come in at another level. Hobbes is frequently seen as some kind of "rule" or "indirect" egoist. The point is that they do not deny the Carneadean claim that the wrong or unjust act may be beneficial. Obviously, for Kant, *eudaimonist* considerations don't enter at any level.

been seen by his followers as committing himself to the "modern" outlook as Sidgwick conceived it.

Freedom, Self-Rule, and the Right to Punish

An important theme of Richard Tuck's writings is that the moral/political conceptual framework we have inherited from the early moderns, one that bases political authority on the rights and dignity of individuals, begins with Grotius.[26] Part of Grotius's purpose in writing both *RWP* and the earlier *On the Law of Prize and Booty*[27] was to argue that organized groups of individuals, like the Dutch trading companies with which he and his family were involved, were like states in having a right to *punish* wrongs that did not violate their own rights but where 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 passage, which brings out Tuck's analogy between the personal and the political:

> 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 *autexousion*, "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).

[26] "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, 1993); and, especially, Tuck (2001: 1–9, 83–89).

[27] Grotius wrote *On the Law of Prize and Booty* between 1604 and 1606.

The "well-known concept" of "natural liberty," is a reference to Fernando Vázquez de Menchaca; 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 further. In Vázquez de Menchaca'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, on the other.[28] With Grotius, however, the right to rule oneself evidently includes a Hohfeldian *claim* right and therefore entails a consequent obligation of others to allow one to do so.[29]

"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*' (2005: I, 138)], or in doing for them what in Strictness they may demand" (I, 88–89). 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 reparative responses are all "due" to others not just in the sense that it is fitting that they have them or even that they deserve them, 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 the last 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, 88–89n).[30]

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

[28] For an excellent discussion of Vázquez de Menchaca 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).

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

[30] 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 above that Grotius must hold derives from individuals' right to choose, he implicitly accepts the premise that that right would include a right to "demand Liberty." (However, he also claims that the Maccabees had lost their right to liberty by earlier conquest (I, 359).)

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.[31]

Grotius's doctrine of natural right thus 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 what will become a signal modern idea: that the dignity of individuals is at the center of the moral law. In discussing Grotius's views on natural rights, Tuck aptly compares 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, "constitut[e] a kind of sovereignty for the individual over parts of his life" (Hart 1955, Tuck 2001: 9, see also 84–85).[32]

In addition, Grotius holds a view about the standing of individuals to punish violations of natural law that connects the law of nature to the dignity of individuals in yet a further way.

> 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).

[31] This is quite different from a conception of natural liberty as a Hohfeldian liberty (arguably, as in Vázquez de Menchaca 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 of others to allow him to do so. It simply means that such an exercise of liberty by the agent themselves is "blameless." The term Hobbes uses in *The Elements of Law* is "blameless liberty.": "And that which is not against reason, men call RIGHT, or *jus*, or blameless liberty of using our own natural power and ability" (Hobbes 1994b: 79).

[32] An important additional aspect of Grotius's idea 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 demand* certain treatment. This goes beyond it 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 (Darwall 2006, 2013a). Better, our sharing these rights makes us *mutually* accountable.

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 of 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)) – namely, 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).[33]

According to Grotius, then, individuals have not only the authority to demand compliance with *their own* rights, and to demand restitution and reparation when these are violated, they also have the standing to demand that the moral law be complied with in respect of others' rights 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 in the mid-eighteenth century Barbeyrac referred to as "morality" were present already in Grotius (Barbeyrac 1749). Grotius holds that all individuals

[33] Grotius is not so explicit about individuals' right to punish in *RWP*. 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," 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).

are subject to universal laws just by virtue of being rational sociable persons, irrespective of their local, national, or religious differences; that these laws impose genuine obligations; and, therefore, that agents are *responsible* for complying with them (and so subject to punishment if they do not). Moreover, these obligations include respecting natural *rights* that any rational moral agent has, including a right of autonomy or self-rule. 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, especially if their existence does not derive from divine command. Grotius initiated the form of modern moral philosophy that provoked Anscombe's Challenge.

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 intended by it. By a "science of morality," Barbeyrac means a publicly accessible *formulation* of basic "Principles and Rules of Morality" together, perhaps, with some account of their power to obligate (2).[34] He says that discovering moral "principles and rules" requires no "inquiry into the impenetrable Secrets of Nature,"[35] and that it is available to everyone, including "Persons, of the lowest Rank" (3).

It can be argued that 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, 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 was to formulate "minimalist" principles of obligation. The point was to specify principles that people can readily agree they should hold one another and themselves accountable for complying with regardless of national, cultural, and religious differences.

It is, indeed, because laws of nature (moral laws) purport to provide a basis for holding one another *answerable*, regardless of these more specific

[34] In his view, again, theological voluntarism provides the latter.

[35] "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).

differences, 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 or be capable of noble conduct?

Once, however, we have a conception of a standard that people can be held accountable for complying with, it seems that we must assume that anyone subject to it has what it takes to comply, that compliance requires no esoteric knowledge or special talents or wisdom that ordinary people cannot be presumed to have. The very idea of a standard of mutual accountability seems to require that it be capable of some public "minimalist" formulation, in something like the golden rule, which Hobbes says is "intelligible, even to the meanest capacity" (Hobbes 1994a: xv, 35), or the Categorical Imperative, or Grotius's injunction that we not deprive others of what is theirs. Of course, these formulations are not self-interpreting; they require judgment, and there can be reasonable disagreements about what they require. But the point remains that they require no special skill or controverted religious or cultural tradition that anyone subject to them cannot reasonably be supposed to share.

Seen in this light, Grotius's *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" (Grotius 2005: I, 160–161), that it is part of a *consentium gentium*, 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 *and* morally) that others will 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 having the same publicity requirements as the rule of law ordinarily so called.[36]

Sociability as the "Fountain of Right"

How are we to understand 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 understand just what Grotius takes our "sociable" nature to be, such that it might be able to ground natural law, as he understands it, that is, as a genuinely obligating law.

[36] 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 as a good thing, but that is, by itself, insufficient to warrant the thought that we are *obligated* to bring this about, that it is something that can be legitimately *demanded* of us. Benevolence as such is focused on the good, not on the right, so it can only ground apparent counsel, not law.

Second, the very same form of collective action problem that arises with respect to individual good also arises with respect to the overall good. There are cases, notoriously those involving justice or fairness, where an agent could produce more overall good by violating a norm of justice as, for example, in Hume's famous example of restoring stolen property to a "seditious bigot."[37]

Neither can a desire to live among or in agreement with other human beings, or the Stoic idea that affiliation with other human beings is part of our common good, help to ground obligation and right. Like any consideration of good, the most such considerations can justify is some form of counsel, not obligating law.

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

> [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" (I, 85). And humans have also the related "Faculty of knowing and acting, according to some General Principles" (I, 85). Other animals 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 formulable, public "General Principles." Human beings thus have a capacity for and drive toward a distinctive *kind* of society, namely, "A Society of reasonable Creatures" (I, 136).

Recall the passages we considered earlier about the distinctive *relations* that define such a society, for example, Florentinus's remark that "*Nature has*

[37] "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).

founded a kind of Relation between us" (I, 136). The examples that Grotius gives of social relations are all, again, relations of relative authority, involving standings to make claims and demands and to hold accountable, whether the relations are 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 *RWP*. 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 sociable persons to recognize their common competence 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 does not tell us much about how such a rationale might work in any detail. But it does point us toward a way of thinking about the modern conception of natural law (morality) that appreciates its legal/juridical aspect and, consequently, the distinguishing form the Carneadean challenge must take once there is a commitment, as Sidgwick says, to a source of normative reasons that is independent of self-interest.[38]

To sum up this chapter, Grotius put forward a moral conception according to which morality or natural law: (i) has a distinctively obligating normativity that cannot be reduced to normative reasons concerning the good that advise or "counsel" action rather than demanding it; (ii) includes basic universal claim rights, what Grotius dubs "perfect rights" (thereby initiating the perfect/imperfect right and perfect/imperfect duty distinctions); and (iii) would exist and obligate us "even if we were to suppose … that there is no God" (I, xxiv). This conjunction of claims played a significant role in shaping "modern moral philosophy." (i) and (iii) together lead to Anscombe's Challenge.

Moral philosophers who followed were unquestionably influenced by Grotius's approach to the subject. Although Grotius's answer to Anscombe's Challenge – that sociability is the "Fountain of Right" – was not explicitly taken up by many who directly followed him, we shall nonetheless see in the next chapter how a similar conception of sociability entered into Pufendorf's thought, although not as a fundamental ground. Whether or not modern moral philosophers have accepted Grotius's answer, many have clearly accepted the combination of Grotian views that make them subject to Anscombe's Challenge. It is a challenge we have been grappling with ever since Grotius.

[38] This idea has clear affinities with Scanlon's contractualist ideal of the moral community as one of mutual justification (Scanlon 1998; see also Darwall 2006).