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NATURAE ET GENTIUM*

Janne Nijman

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Grotius' *imago Dei* anthropology: grounding *Ius naturae et gentium*

Janne E. Nijman*

And God said, Let us make man in our image, after our likeness ...
So God created man in his own image, in the image of God created he him;
male and female created he them.
And God blessed them, and God said unto them, Be fruitful, and multiply,
and replenish the earth, and subdue it:
and have dominion over the fish of the sea, and over the fowl of the air,
and over every living thing that moveth upon the earth.

Genesis I, 26-28¹

1. Introduction

Etiam si daremus ... non esse Deum,² with these words Grotius is said to have broken the bond between God and the law of nations. Part of the standard account of the history of international legal thought is the idea that Grotius secularised natural law and therewith international law.³ Such out of political necessity, as only a secular international law would be able to end the religious wars waging at the time. Motivated by a pacific agenda, Grotius would have provided the law of nations with a foundation independent from religion and theology, given it a particularly 'modern' status, and put it on its course to 'autonomy' and/or 'self-sufficient normativity.'⁴ Traditional historiographical claims of Hugo de Groot as

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1 King James Bible, "Authorized Version", Cambridge Edition.

2 *De Jure Belli ac Pacis, Prolegomena*, para 11: "What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him." Hugo Grotius, *De Jure Belli ac Pacis Libri Tres* (1646 edition), The Classics of International Law, edited by James Scott, translated by Francis Kelsey (Oxford: Oxford at the Clarendon Press, 1925), p. 13. Hereinafter *DJBP*.

3 Cf. e.g. Jules Basdevant, 'Hugo Grotius', in *Les Fondateurs du Droit International* (Paris: V. Giard & E. Brière, 1904), p. 233; Arthur Nussbaum, *A Concise History of the Law of Nations* (New York: Macmillan, 1947), p. 105; Joseph Kunz, 'Natural-Law Thinking in the Modern Science of International Law', *American Journal of International Law* 55 (1961): p. 951; Lassa Oppenheim, *International Law: A Treatise*, 8th ed., edited by Hersch Lauterpacht (London: Longman, 1955), p. 93; Hersch Lauterpacht, 'The Grotian Tradition in International Law', *British Yearbook of International Law* 23, no.1 (1946), p. 24; Peter Malanczuk, *Akehurst's Modern Introduction to International Law* 7th ed. (New York: Routledge, 1997), pp. 15-16; Malcolm Shaw, *International Law* (Cambridge: CUP, 2008), p. 24.

4 See Editorial note.

the father of ‘modern’ international law and ‘the great Emancipator’⁵ or seculariser of international law have bred, however, a disregard for Grotius’ theological writings in relation to his ideas on the law of nature and nations.⁶ Grotius the scholar of moral, political, and legal philosophy is inseparable from Grotius the theologian.⁷

This chapter claims we should not stop at the standard account that Grotius secularised international law by grounding it on human nature, but that we rather need to dig deeper and examine the theological anthropology grounding Grotius’ ideas on the law of nature and nations. With some attention for the influence of both (neo-)scepticism⁸ and (neo)stoicism⁹ in analyses of Grotius’ understanding of human nature and natural law, this chapter examines Grotius’ ideas through the lens of the Christian theological notion of *imago Dei* – the idea that human beings are different from other animals in that they are created in ‘the image and likeness of God’.

For Grotius and his contemporaries – whether scholastic or humanist scholars - the *imago Dei* doctrine provided the inevitable starting point for thinking about humanity and human nature.¹⁰ That said, the *imago Dei* doctrine played a significant role in the background of many theological and moral philosophical controversies at the time of the Reformations. It was at the heart of debates on the moral freedom of the human will, predestination, and human participation in salvation – issues at stake at the time. Section 2 relates the concept of the *imago Dei* briefly to these early seventeenth-century theological

5 James Leger, *The “Etiamsi Daremus” of Hugo Grotius. A Study in the Origins of International Law* (Rome: Pontificium Athenaeum Internationale, 1962), pp. 28-36, 35.

6 Exceptions are Peter Haggemacher, *Grotius et la doctrine de la Guerre Juste* (Paris: PUF 1983), Oliver O’Donovan, ‘The Justice of Assignment and Subjective Rights in Grotius’, in *Bonds of Imperfection: Christian politics, past and present*, edited by Olivier O’Donovan and Joan Lockwood O’Donovan (Cambridge: WB. Eerdmans 2004); Christoph Stumpf, *The Grotian Theology of International Law. Hugo Grotius and the Moral Foundations of International Relations* (Berlin: Walter de Gruyter, 2006).

7 While the standard account reserves too prominent a role for Grotius as the seculariser of international legal thought, I do not mean to argue that Grotius did not contribute to the process of European secularisation at all. Cf. Mark Somos, *Secularisation and the Leiden Circle* (Leiden: Brill, 2011), pp. 5, 7-8, and 43. Even when one finds Somos’ conclusions exaggerating (e.g. at 435, 384, 388, and 392), Grotius’ historicising approach to biblical texts contributed undoubtedly to Western secularisation.

8 E.g. Richard Tuck, *The Rights of War and Peace* (Oxford: OUP, 1999).

9 E.g. Benjamin Straumann, *Oikeiosis and Appetitus Societatis. Hugo Grotius’ Ciceronian Argument for Natural Law and Just War*, *Grotiana* 24/25 (2003/2004), pp. 41-42; also, Hans Blom and Laurens Winkel, ‘Grotius and the Stoa’, Special issue of *Grotiana* 22-23 (2001-2002) (Assen: Van Gorcum, 2004).

10 E.g. Charles Trinkaus, *“In Our Image and Likeness”, Humanity and Divinity in Italian Humanist Thought*, pp. 1-2 (Chicago: University Press, 1970); David Cairns, *The Image of God in Man* (London: SCM Press 1953).

and political debates in the Dutch Republic. It moreover discusses the Arminian interpretation of the *imago Dei* along the lines of three dimensions generally set apart : ontological, teleological (the *telos* being to reach God, also through others in society), and functional (linked to the function of *dominium*).¹¹

This chapter claims that the Arminian *imago Dei* anthropology is foundational to Grotius' theory of the law of nature and nations in (at least) three ways, along the lines of the three dimensions just mentioned (section 3). Sub-sections 3.1., 3.2 and 3.3. thus elaborate on the implications of *imago Dei* for the legal framework set out by Grotius. He saw God's image reflected in the natural human capacities of reason and free will, thanks to which humans are able to know natural law and justice, are able to reason, judge, and to make free choices on the basis of this knowledge. As such, they bear individual moral responsibility for their actions and the *imago Dei* underpins their natural legal personality (3.1). This is a – rather optimistic – conception of post-lapsarian human nature, in which the *imago Dei* has human beings live in a society and care for others (*appetitus societatis*). Grotius' conception of human nature was well-suited as a foundation for a theory of (universal) society and the law of nature and nations (3.2). Finally, from its creation in the image of God follows that humanity is called to represent God on earth and entrusted with the function of *dominium* (3.3). The chapter concludes with a few remarks on how a post-skeptical reading of Grotius, through the lens of his *imago Dei* anthropology, is relevant for the future of international law thinking (section 4).

2. *Imago Dei* at the heart of the Calvinist-Arminian theological and political disputes

2.1. Grotius' Arminianism in political context

Grotius developed his law of nature and nations in the early seventeenth-century, time of the Calvinist and Lutheran Reformations and the Catholic Counter-Reformation. The Dutch Republic revolted against Catholic Spain (c. 1560s-1648), consolidated itself gradually as a new and independent European state, with religious conflict however dividing society and penetrating government structures. Heated theological debates waged among Reformed

¹¹ This distinction between ontological or substantive, teleological or relational, and functional dimensions or interpretations draws on examination of *imago Dei* conceptions in twentieth century theological literature, see e.g. Richard Middleton, *The Liberating Image: The Imago Dei in Genesis I* (Grand Rapids: Brazos Press 2005); Noreen L. Herzfeld, *In Our Image. Artificial Intelligence and the Human Spirit* (Minneapolis: Fortress Press 2002); also, Cairns, *supra* note 10.

Protestants on the course of the Dutch Reformed Church and the Dutch Reformation. The dispute between the Calvinist and Arminian fractions became inextricably linked with Dutch politics.¹² Ultimately, it was as much a fight for the control of the Republic, which was ultimately won by the orthodox Calvinists, supported by Stadholder Maurits.

While Grotius tried to defer taking sides, he was unmistakably an Arminian,¹³ both theologically and politically, standing in the Erasmian humanist tradition.¹⁴ In those years of mounting tensions, Grotius wrote the *Meletius* (1611)¹⁵ in which he aimed to 'transcend [religious] controversy' and to (re-)unite the fighting Christians on a reduced or minimalist version of Christianity.¹⁶ The doctrine of *imago Dei* plays a fundamental role as, what may be called, a conciliatory doctrine. Until his arrest in 1618, Grotius was among the key players of Dutch political and intellectual life.¹⁷ He would remain faithful to the Erasmian-Arminian irenic agenda,¹⁸ both in religious and political affairs, throughout his life. He aimed to define common ground, to stimulate toleration in case of religious diversity and disagreement and to foster fellowship as the general tissue of society, both domestic and international.¹⁹

12 Jonathan Israel, *The Dutch Republic* (Oxford: OUP 1995), p. 421 et seq. Also, Aza Goudriaan, 'The Synod of Dordt on Arminian Anthropology', in *Revisiting the Synod of Dordt (1618-1619)*, edited by Aza Goudriaan and Fred van Lieburg (Leiden, Boston: Brill, 2011), pp. 84 et seq.

13 Grotius' relation with Arminian theologians was most intense and regular in his contacts with his life-long friend Uytenbogaert, in whose house he lived while studying in Leiden. Grotius' friendship with Arminius was not intense in a personal way, but from the Eulogy he wrote we learn how much Grotius appreciated Arminius' theology, his message of toleration and the limits of human knowledge, so that peace could prevail over theological shrewdness. Henk Nellen, *Hugo de Groot. Een leven in strijd om de vrede 1583-1645* (Amsterdam: Balans, 2007), pp. 113-118.

14 See e.g. for Grotius as Arminian theologian, Posthumus Meyjes in his introduction to the *Meletius* (see note 15); A.H. Haentjens, *Hugo de Groot als godsdienstig denker* (Amsterdam: Ploegsma 1946), pp. 10-11; *Hugo Grotius, theologian: essays in honour of G.H.M. Posthumus Meyjes*, edited by Henk J.M. Nellen and Edwin Rabbie (Leiden: Brill, 1994).

15 Guillaume Posthumus Meyjes, ed., *Hugo Grotius. Meletius, sive de iis quae inter Christianos conveniunt Epistola*. Critical edition with translation, commentary and introduction (Leiden/New York: Brill, 1988). Hereinafter: *Meletius*.

16 *Meletius*, para. 1 and 6. Grotius aimed to do the same many years later in *De Veritate*. See Henk Nellen, 'Minimal Religion, Deism and Socinianism: On Grotius's Motives for Writing *De Veritate*', *Grotiana* 33 (2012) pp. 47-53.

17 Israel, supra note 12. Nellen (2007).

18 See eg Arminius on principles of religious liberty, 'On Reconciling Religious Dissensions among Christians (1606)', in *The works of James Arminius*, translated first and second volume by James Nichols, and third volume by W.R. Bagnall (Auburn/Buffalo: Orton, 1853), vol 1, p. 343; the twenty-five Public Disputations are included in volume 1 and the seventy-nine Private Disputations in volume 2 of the 1853 edition. Cf. also Grotius in *Meletius* and *De Veritate*. See e.g. *The Truth of the Christian Religion*, pp. 17-18.

19 Henk Nellen, *Hugo de Groot. Een leven in strijd om de vrede 1583-1645* (Amsterdam: Balans, 2007). Or, in the words of an irenic adagium that fits Arminius' and Grotius' agenda so well:

2.2. *The imago Dei doctrine in the Orthodox Calvinist-Arminian theological dispute*

Protestant reformers, such as Calvin and Luther, had lashed out against the Thomistic vision of human nature as taught by the Roman Catholic Church for centuries and still upheld by late-scholastics, such as Francisco de Vitoria.²⁰ In their view, the Thomist interpretation of *imago Dei* doctrine – the image of God consists in the capacities of reason and free will undamaged by the Fall present in human *nature*²¹ – was too positive a view on human beings. Lutherans and Calvinists shared a pessimistic outlook on humanity premised predominantly on Augustinian doctrine of original sin.²² In their view, the impact of the Fall on *imago Dei* in humanity is complete. After the Fall, human beings were ‘deprived’ of ‘original righteousness’ and their natural capacities ‘totally corrupted’.²³ Their intellect and will are no longer free and oriented towards the good and just, but ruled by Satan and ‘bound in slavery to sin’.²⁴

Erasmus, while in many respects a Reformer, argued that they ‘immensely exaggerate[d]’ the impact of original sin.²⁵ Erasmus defended the power of human reason (thanks to God’s forgiveness), the moral freedom of the will, and human responsibility.²⁶ The influence of his undogmatic Christian humanist legacy diminished however in the early

‘*Necessariis Unitas, in Non Necessariis Libertas, in Utrisque Caritas*’. See a 1634 Letter by Des Cordes to Grotius in which he refers to the adagium in De Dominis’ ‘*De republica ecclesiastica*’. Henk Nellen, ‘De Zinspreuk “in Necessariis Unitas, in Non Necessariis Libertas, in Utrisque Caritas”’, *Nederlands Archief voor Kerkgeschiedenis* 79 (1999), pp. 99-106. (Transl. ‘unity in necessary things; liberty in uncertain things; charity in all things.’)

²⁰ Francisco de Vitoria, ‘On the American Indians’, in *Vitoria Political Writings*, edited and introduced by Anthony Pagden and Jeremy Lawrance (Cambridge: CUP, 1991), pp. 241-43, 247-49.

²¹ Thomas Aquinas, *ST* I.95.1; I.96.1-4; IIa.100. 2.

²² Cf. William Bouwsma ‘The Two Faces of Humanism. Stoicism and Augustinianism in Renaissance Thought’, in *Itinerarium Italicum. The profile of the Italian Renaissance in the Mirror of its European Transformations*, edited by Paul Oskar Kristeller et al. (Leiden: Brill 1975).

²³ See John Calvin, *Institutes of the Christian Religion* Vol. 1, A new translation by Henry Beveridge (Edinburgh, Calvin Translation Society, 1845), Book II Ch. II.12, pp. 313-315; Martin Luther, Sermon on the ‘Two Kinds of Righteousness’, para 3: ‘original righteousness lost in Adam’, in *Martin Luther: Selection from his Writings*, edited and introduced by John Dillenberger (New York: Anchor Books, 1961), p. 88; Luther’s ‘Disputation concerning man’ (1536), para 25, in Luther’s Works, vol. 34, edited by Lewis W. Spitz (Philadelphia: Muhlenberg Press, 1960), p. 139; Martin Luther, *The Bondage of Will*, in *Discourse of Free Will*, edited and translated by Ernst Winter (New York: Continuum, 2002), pp. 112-113.

²⁴ Luther’s *The Bondage of Will*, p. 124; Calvin’s *Institutes of the Christian Religion* Book II Ch.II is entitled ‘man now deprived of freedom of will, and miserably enslaved.’ See supra note 23, p. 297.

²⁵ Erasmus, *On Free Will*, in *Discourse of Free Will*, *op cit.* note 23, p. 63.

²⁶ Erasmus’ *On Free Will*, p. 4.

Seventeenth Century with the rise of orthodox Calvinism.²⁷ Erasmus' influence on Arminius is undisputed, even though it remains largely implicit in Arminius' own work.²⁸ One of Erasmus' views 'echo[ed]'²⁹ in Arminius' work is the view on the human person: 'a creature born to peace and good will.'³⁰ In their turn against the pessimistic outlook of Calvinist orthodoxy on human nature,³¹ the Erasmian outlook served as an inspiration to the Arminians.³²

The Calvinist-Arminian theological controversies deeply marked Grotius' life and thought.³³ The controversies culminated in a dispute between two Leiden theology professors, Jacob Arminius (1560-1609) and Franciscus Gomarus (1563-1641) on the doctrine of predestination. The latter, who came to lead the movement against Arminius and his followers, buoyed the Calvinist Reformation in general and the doctrine of unconditional predestination in particular.

The opposition of the Heidelberg Catechisms on the points of predestination and salvation required Arminius and his followers to engage with the *imago Dei* doctrine: who is the post-lapsarian human being? In the context of the current chapter I will highlight three dimensions of the Arminian interpretation.

27 Israel, p. 392. See also, Keith Stanglin and Thomas McCall, *Jacob Arminius: Theologian of Grace* (Oxford: OUP, 2012), p. 44.

28 Stanglin & McCall, pp. 43-44. Erasmus is most-well-represented Roman Catholic in Arminius' library. But due to the controversy around Erasmus not a name to use if one has an irenic agenda. Arminius opponents recognized the obvious influence and referred to it in their accusations.

29 Stanglin & McCall, p. 44.

30 Erasmus, *The Education of a Christian Prince*, edited by Lisa Jardine (Cambridge: CUP, 1997), p. 103. Arminius *infra* note 36.

31 Israel, p. 392; P.H. Winkelman, *Remonstranten en katholieken in de eeuw van Hugo de Groot*, (Nijmegen: De Koepel, 1945), p. 43;

32 Leave aside here Arminius' view on the relation between God's Grace and the human person shows his Reformed background. See, Gerrit Jan Hoenderdaal, Erasmus en Arminius Over de Vrede in de Kerk, in *Geschiedenis godsdienst letterkunde*, edited by Eddy Grootes and Hans den Haan (Roden: Nehalennia, 1989), pp. 63-69; Also, Israels, Winkelman, and Jozef IJsewijn, 'The Coming of Humanism to the Low Countries', in *Itinerarium Italicum. The Profile of the Italian Renaissance in the Mirror of Its European Transformations*, edited by Paul Oskar Kristeller/Thomas Brady/Heiko Oberman, (Leiden: Brill 1975).

33 See, Stanglin & McCall, pp. 104-105; see on Grotius' involvement in the controversy e.g. Nellen 2007, pp. 112 *et seq.* The Arminian-Calvinist controversies draw also on the theological debate between Pelagius and Augustine. Mathijs Lamberigts, 'Pelagius and Pelagians', in *Oxford Handbook on Early Christian Studies*, edited by Susan Ashbrook and David Hunter (Oxford: OUP, 2010), pp. 264-266. See also on accusations by Calvinists of Arminians to be Socinians and Grotius' defence of Arminians, Sarah Mortimer, 'Human and Divine Justice in the Works of Grotius and the Socinians', in *The Intellectual Consequences of Religious Heterodoxy, 1600-1750*, edited by Sarah Mortimer and John Robertson (Leiden: Brill 2012), pp. 75-94.

First, Arminius followed the Thomist line in his ontological definition of the *imago Dei* as the essential 'faculties' or intrinsic capacities of 'Understanding' (*intellectus*) or reason and 'Will' (*voluntas*), imprinted by God in human nature.³⁴ In the pre-lapsarian state of nature, 'holiness' and 'original righteousness' ensured human capacities of reason, love and will were directed at God, i.e. the realisation of the *summum bonum*.

In the post-lapsarian world, the natural capacities of reason, love and will may no longer be 'rightly ordered', that is, aligned automatically and completely with divine knowledge and justice.³⁵ This does not mean however that the *imago Dei* is lost completely, nor that the post-lapsarian human being is doomed to do evil and that sin has 'dominion' over humanity.³⁶ Echoing Erasmus, Arminius wrote 'the will [*propendet*] has an inclination to do good.' That is not only to do good to himself, but also 'according to the mode of its nature, to universal good and to that which is the chief good ; or, according to the mode of liberty, to all other [kinds of] good.'³⁷ For Arminius even after the Fall 'sparks of primeval wisdom remained in the intellect'.³⁸

Secondly, the Arminian interpretation of the *imago Dei* has a teleological dimension.³⁹ The objective or *telos* of the existence of human beings, created in God's image, consists in the 'union in God' through faith and by following Christ as mediator,⁴⁰ and in the social union with other human beings, equally bearing God's image.⁴¹

34 Arminius, *Disp. Priv.* XXVI 'On the Creation of man after the image of God', pp. 60-64.

35 Arminius, *Disp. Priv.* XXX, p. 72, and *Disp. Priv.* XXXI, pp. 77-78.

36 Unconditional (double) predestination was, according to Arminius, 'contrary to the nature of man, in regard to his having been created after the Divine image in the knowledge of God and righteousness - in regard to his having been created with freedom of will, and in regard to his having been created with a disposition and aptitude for the enjoyment of life eternal.' See, 'Declaration of Sentiments', *The works of James Arminius, vol 1*, pp. 223-224. If humans are not free to sin but bound to sin, God created the Evil in this world and created humans for reprobation. That is cruel and therewith contrary to God's nature as supreme goodness and to human nature as the carrier of God's image. Cf. Grotius in *The Truth of the Christian Religion*, pp. 41-42.

37 Arminius, *Disp. Priv.* XXVI.v, p. 61.

38 Keith Stanglin, *Arminius on the Assurance of Salvation: The Context, Roots, and Shape of the Leiden Debate 1603-1609* (Leiden: Brill 2007), p. 101.

39 Stanglin & McCall, pp. 118-119: The Calvinist doctrine of predestination would mean that the greater part of humanity would be created wilfully by God for reprobation and thus condemnation. Arminius rejected this view for its implications for God's nature (evil), for the *telos* of creation ('eternal perdition'), and for the *telos* of so many human beings (conformation to 'the image of Satan').

40 Arminius, *Disp. Priv.* XXXI, p. 82: 'the renewal or sanctification of sinful man after the image of God, in which is contained his adoption into a son of God. ...'

41 Arminius, *Disp. Priv.* XX, p. 45. Being created as *rational* beings by nature, humans are endowed with love as 'an affection of union in God, whose objects are not only God himself and the good of justice, but also the creature, [*referens Deum*,] imitating or related to God either according to [*imagine*] likeness, or only according to [*vestigium*] impress, and the felicity of the creature.' See

Third, drawing on a long tradition of Christian thought the Arminian interpretation of the *imago Dei* has a functional dimension. God ‘conferred’ the function of *dominium* over creation upon humanity.⁴² Human dominion or majesty is founded on humanity’s creation in God’s image, which means that in human nature resides what distinguishes humans from animals. Dominion belongs to the universal *natural* (legal) order, accordingly: Arminius ‘do[es] not mean to deny that a legitimate magistracy exists among other nations than those which are Christian.’⁴³

The Arminian *imago Dei* anthropology as touched upon in the context of the predestination debate thus shows ‘a more optimistic view’ of post-lapsarian human nature.⁴⁴ This is central to the development also of Grotius the lawyer. God has created humans not as ‘tragically fated actors in a cosmic drama,’⁴⁵ but as rational, social, (morally) free and responsible agents. Crucially, the human capacities of intellect or reason, love, and free will after the Fall have remained intact.

3. *Imago Dei* as the foundation of Grotius’ theory of *ius naturae et gentium*

Who is the post-lapsarian human being on whom Hugo Grotius grounds his *ius naturae et gentium*? As early as 1601, Grotius has Adam - just struck down in the Fall – ask: “Who am I?”. The answer is structured by the *imago Dei* doctrine.⁴⁶ Throughout his oeuvre, Grotius writes about humans in terms of beings created in *imagine Dei*. The doctrine appears in many of his books, whether theological, political, legal or theatrical. In *DJP* and *DJBP*, *imago Dei* provides the groundwork for an anthropology of the capable, free, social and responsible human being, which is claimed to be universally valid (3.1). As such, it serves Grotius in his quest for a normative foundation for his theory of (universal) society and *ius naturae et gentium*. Individual human nature can be the starting point of Grotius’ system of universal law in both *DJP* and *DJBP*, because it carries God’s image. (3.2). Last but not least, the creation of human beings in *imagine Dei* for Grotius also grounds the functioning of

also, *Disp. Pub.* XXV, p. 667: humans are ‘sociable animals;’ also, *Disp. Priv.* XX, p. 45; *Disp. Priv.* XXIX, p. 71; *Disp. Priv.* LXXIV, p. 177;

42 Arminius, *Disp. Priv.* XXVI, pp. 64-65.

43 Arminius, *Disp. Pub.* XXV, On Magistracy, p. 669.

44 Not totally depraved of reason as the Calvinists argued. Also, Goudriaan, supra note 12, p. 104.

45 Stanglin & McCall, p. 208.

46 Hugo Grotius, *Adamus Exul*, line 1590: ‘*Quis sum?*’, in *The Celestial Cycle*, edited by Watson Kirkconnell (Toronto: University of Toronto Press, 1952), pp. 192-193.

humans as keepers, the establishment of human's *dominium* (3.3.). Against the background of the Arminian anthropology sketched in the previous section, the present section shows that Grotius' outlook on human nature, more than being Stoic⁴⁷ or Sceptic,⁴⁸ stands in the Erasmian and Arminian tradition.

3.1. *The ontological dimension of Grotius' imago Dei conception: the capable, free, social and responsible person*

With the 'glorious image of [God]', the 'use of reason' and 'the liberty of will' are stamped 'deep within the human mind'.⁴⁹ Grotius, as all Christian writers from Church Father Irenaeus up to Aquinas⁵⁰ and later also Erasmus and Arminius, starts out by defining creation in the image of God in ontological terms as 'endow[ing] with a mind ['intellectual faculty' or 'faculty of reason'] and free-will.'⁵¹ The capacity of reason or judgement distinguishes humans from animals and manifests that the human being is 'a being derived from God Himself, who imprinted upon man the image of His own mind.'⁵² To support this claim in *De Jure Praedae*, Grotius refers to Christian sources, such as, Genesis and Aquinas), as well as Ancient authors such as Cicero, Seneca, and Epicharmus.⁵³ Grotius cites the latter, drawing on early Christian writer Clement of Alexandria, to support the universality of the claim that human reason has a divine origin: 'Man's reason from God's reason takes its being.'⁵⁴ In *DJBP*, the claim that divine reason is 'instilled in the [human] soul... by [Gods] breath' is again supported by early Christian authors, such as Origen and Tertullian and Chrysostom, and Ancient – mostly Stoic - sources.⁵⁵ Humans are capable of moral reasoning, *because* their natural capacity to reason springs from Divine reason.

47 Grotius' use of the many Stoic sources is not to take up himself a purely Stoic position on human nature, Stoic doctrines of fate or human passions would prevent that altogether. See *Meletius* para 7 and 31. Rather, they are used to sustain the universality of Grotius' conception of human nature.

48 Tuck, *supra* note 8.

49 Grotius, *Adamus Exul*, pp. 103, 117, 109; *Meletius*, para 18: 'our intellectual faculty lies in the soul, the image of God'; see also, *DJBP* II.II.II.1 note 3, p. 187.

50 Cairns, p. 110.

51 Grotius, *Defensio fidei Catholicae de satisfactione Christi*, para 35; *Meletius*, para 23.

52 *DJP*, p. 24.

53 Grotius' use of Stoic conceptions of nature, reason, or *oikeiosis* resembled the way Early Christian writers adopted these concepts into their own Christian thinking and writings.

54 *DJP*, p. 25. Many years later, Grotius cites this line of Epicharmus again in *De Veritate* (1627-1647). *The Truth of the Christian Religion*, p. 56.

55 *DJBP*, p. 187, Grotius quotes here from Tertullian's *On the Soul*; Cf. *The Truth of the Christian Religion*, pp. 55-56.

For his defence of the moral freedom of human will, Grotius, like Arminius and Erasmus, draws on early Christian authors, such as, Irenaeus, Clement of Alexandria, Origen, and Tertullian, who defended human liberty and responsibility against gnostic predestinationism of their age.⁵⁶ Grotius discusses the gift of free will as a prerequisite for human virtuous conduct and divine reward.⁵⁷ Only thanks to the God-given ‘deliberative power and free choice between good and bad’⁵⁸ – between receiving or resisting Grace, between justice and sin, good and evil – can one be rewarded for doing good or punished for bringing evil into this world. *DJP* refers to ‘the *sovereign* attribute of reason’⁵⁹ to emphasise its liberty. With his adherence to human liberty, Grotius refuted the deterministic opposition of free will by the Stoic doctrine of fate and by the Calvinist doctrine of predestination and the post-lapsarian dominion of sin.⁶⁰

Grotius followed indeed the Erasmian-Arminian line on the impact of the Fall on the *imago Dei*. Since divine knowledge and original righteousness are lost as punishment for the first sin, post-lapsarian humans are no longer ‘in utter servitude to virtues’.⁶¹ However, neither are they ‘slaves of their vices’; their natural capacities ‘are just as susceptible to the lure of sin as inclined toward virtue.’⁶² Reason and free will are not destroyed yet largely intact after the first sin.⁶³ And so, post-lapsarian human beings are ‘by nature’ able to ‘be or become good.’⁶⁴ With the human intellect comes ‘some disposition to do good’, as already visible in children.⁶⁵ By nature the human person is ‘gentle’ and not ‘brutelike’, he may become a brute by developing ‘the habit of doing wrong’,⁶⁶ but he is by nature also at liberty to develop the habit of doing good. Like Erasmus and Arminius, Grotius holds that ‘it

56 See Erasmus, Arminius, Stanglin. Unsurprisingly, Arminians were also accused of heretic ideas similar to Pelagianism and Socinianism by their Calvinist opponents. See *supra* note 16 and 33.

57 Cf. *Meletius*.

58 *Meletius*, para 29; *The Truth of the Christian Religion*, p. 42.

59 *DJP*, p. 24. Emphasis added.

60 *Meletius*, para 29.

61 *Adamus Exul*, p. 109, also, p. 115; Cf. *Meletius*, para 35.

62 *Meletius*, para 35-36.

63 In *Adamus Exul*, Grotius has God comment on the remaining *imago Dei* in post-lapsarian human beings: ‘In human minds I’ll cherish sparks of former light, Forerunners of salvation, cover’d by no ashes.’ *Adamus Exul*, p. 123.

64 *Meletius*, para 29 and 30. Like Erasmus, Grotius underscores that God is Good, he knows evil but ‘he actually neither wills nor does it.’ Evil does ‘not originat[e] in God,’ that would make God less than the ‘perfect goodness’ He is. God’s presence in us, makes us ‘aim at being good ourselves.’ His piety makes us seek piety, Grotius argues. Evil comes not from God, but from free choice. Without free choice, there could be neither punishment nor reward.

65 *DJBP*, prol. 7.

66 *DJBP*, I.I.xii.2, p. 43.

is impossible for [God] who is best to create evil, ... man is in a way the image of God, namely created after the likeness of God, and indeed ... [with] an aptitude for approaching this likeness more and more closely by making an effort'.⁶⁷

This ontological understanding carries an important epistemological implication: the image of God, consisting in the *natural* capacities of reason, free will, and sociability, and thus universally imprinted in humanity, assures that natural justice and law – that body of morality and law that is universally, eternally and unchangeably true and valid – is cognizable to everyone.⁶⁸ Christian or non-Christian, God has provided every human person with the capacity to gain knowledge of God and the laws of the natural order He created.⁶⁹

Consequently, being capable of knowing natural law and justice, judging right from wrong, and free to choose one's actions accordingly, post-lapsarian human beings are truly 'responsible for their deeds.'⁷⁰ The individual (moral) responsibility – crucial for law– is thus firmly established.

Grotius thus establishes his interpretation of the *imago Dei* as the basis of an anthropology of the capable, free, social and responsible human being on which he claims to exist '*consensus gentium*.'⁷¹ The *imago Dei* in human nature then provides the basis for natural legal personality. Whether verbalised in Christian or natural theological terms, the imprint of the divine image in human nature means to dignify, empower and elevate the status of the post-lapsarian human being. It advances the *persona* that has natural rights and duties, it institutes the moral and legal person. In this way the natural *legal* person is constituted by, and participates in, the formation of the universal legal order.⁷²

67 *Meletius*, para 30.

68 *Meletius*, para 55. At the same time, both Arminius and Grotius were cautious about human epistemological capacities, justice and (theological) truth are so hard to find that the possibility of error has to be taken into account. Cf. Grotius' observation that 'there was no one sect that had discovered all truth, nor any but what held something that was true.' *DJBP* Prol. 43. The issue of knowledge is very much related to the problems of the interpretation of Revelation, hence the agenda of Arminians and surely of Grotius to discuss revealed religious truth in terms of reasonableness. For Grotius the relationship between rationality and revelation was however largely harmonious. Thanks to his rational nature, the human person is able to understand the revealed truth. Or, the revealed truth provides 'certainty' when reason is inconclusive. *Meletius*, para 44.

69 *Meletius*, para 55.

70 *Meletius*, para 41. Emphasis added. In *DJBP*, Grotius formulates a general responsibility for the good of society of sovereign rulers.

71 This (in origin Stoic) concept of universal agreement features in the *Meletius* para 6; *DJP*, p. 25; *DJBP* II.XX.VL (pp. 516-518); *The Truth of the Christian Religion* Book I Sect. 16, pp. 49-83.

72 See for legal personality as rights to political participation, Janne E. Nijman, *The Concept of International Legal Personality* (The Hague: TMC Asser Press, 2004).

3.2. *Teleological dimension: imago Dei as foundation of (universal) society and lus naturae et gentium.*

The ontological dimension of Grotius' interpretation of the *imago Dei* is the basis for the teleological dimension of his *imago Dei* conception. By nature, humans are directed towards God and their fellow human beings.⁷³ The natural capacities fleshed out at the ontological level of *imago Dei* interpretation – human reason, freedom, and sociability – define Grotius' conception of human nature, which then can be the foundation of his teleological theory of (universal) society and *lus naturae et gentium*.

Approaching God, both in this life and after, is the natural *telos* of humanity and the human individual created in God's image. A true love of God entails moreover a true love of our neighbour equal bearer of God's image.⁷⁴ The social appetite is a natural capacity crucial to the teleological dimension of Grotius' *imago Dei* conception, since it directs humans to associate and to care for their fellows.⁷⁵

Also the notion of social impulse, famously crucial for Grotius' theory of (universal) society and *lus naturae et gentium*, thus has a clear theological basis. The ultimate *telos* is a return to God, but this runs for a significant part through relations with one's fellow human beings.

Throughout his oeuvre, Grotius instructs that with creation in God's image comes a natural love for one's fellow-human.⁷⁶ It is within this *rational* creature, the human being, that 'love for others ... known as ... "friendliness" ... burns most brightly.'⁷⁷ The social impulse is related explicitly to the creation of human nature in the image of God. Grotius defends a Christian appreciation of human passions. Without them humans would be 'unfeeling and uncharitable'⁷⁸ and thus incapable of loving God and caring for one another. Sharing God's image as part of their nature sets humans in a legal relationship with one another. The *imago Dei* in human beings thus underpins the natural duties of humans towards each other: 'to humanity [one] owes [natural duties of] friendship on the ground of

73 In *Adamus Exul*, for example, Eve trusts fully in God's salvation and God indeed assures salvation. After the Fall, human nature still carries the image of God and through faith (ie union with God through Christ) divine likeness can be sought and the *imago Dei* fully restored.

74 Meletius, para 68; *The Truth of the Christian Religion*, p. 115-116.

75 Meletius, para 35.

76 Meletius, para 35, 9.

77 *The Truth of the Christian Religion*, pp. 87, 41-42.

78 Meletius, para 31;

natural kinship in the image of God.⁷⁹ God's image in humans directs them to a life in society, including the universal society. In other words, God's image is not only constitutive of the natural legal personality of human beings but also of society. It is a natural law for humans created in God's image to seek society.

From the universality of the *imago Dei* in humans and their consanguinity, Grotius derives a common humanity and natural human equality. Here, he draws on a Christian version of cosmopolitan ethics, also visible with Erasmus,⁸⁰ which propagates respect for every member of humanity as equal carrier of *imago Dei*. On this basis, Grotius conceives of a universal natural ethics which amounts to the golden rule.⁸¹ Humanity is created for society. The anthropology outlined in the previous section thus serves the development of the law of nature and nations on the basis of human nature. Thanks to the natural capacities of rationality, liberty and sociability humans are inclined to understand what is right and good as what protects and perfects (universal) society. Right reasoning stipulates what is good for society and thus what natural law and justice prescribe.

In both *DJP* and *DJBP*, Grotius develops his theory of *Ius naturae et gentium* on the basis of an *imago Dei* anthropology. Grotius' Arminian conception of *imago Dei* provides a conception of human nature that grounds primary natural law and unlocks both the primary and secondary law of nations. It underpins his theory of the *sources* of the law of nature and nations. The primary law of nature is found through right reasoning, the secondary law of nature - also called the primary law of nations - is established by universal consensus, and the secondary law of nations springs from consent to be bound to pacts (*pacta sunt servanda*). All three categories hinge on the presumption that human nature consists in reason, love and free will.

In *DJP*, Grotius starts from what is 'truly universal' to find the normative constraints applicable to relations among nations. Its first source, the primary law of nature, comes from the Will of God: '*What God has shown to be His Will, that is law.*'⁸² 'The Will of God is

79 Meletius, para 68; also, *The Truth of the Christian Religion*, pp. 150, 125, 115-6, 117. This section is entitled 'Concerning those duties of humanity, which we owe to our Neighbour, though he has injured us.'

80 April Carter, *Political Theory of Global Citizenship* (London: Routledge, 2001), pp. 19 et seq. Grotius' universal natural ethics is aimed at the (rational) realization of the human *telos* universally inherent in human nature as *imago Dei*.

81 *DJP*, p. 58; Meletius, para 68; *The Truth of the Christian Religion*, p. 125. In Grotius' view, 'discrimination between people' is 'an insult to nature'. Meletius, para 3 and 69: Grotius reckons for 'the special bond' between co-religionists, 'citizens of *one* community [*unius ... civitatis*]', but underscores that the Christian 'excludes nobody from his love.'

82 *DJP*, p. 19.

revealed ... above all in the very design of the Creator' – that is, for Grotius not merely in Revelation. The primary law of nature may be inferred from the Creator's design of Nature. The natural order expresses God's Will.⁸³ Since He willed the existence of all living beings, he created them with 'certain natural properties whereby that existence may be preserved and each part may be guided for its own good, in conformity ... with the fundamental law inherent in its origin.'⁸⁴ The principles of law inherent in the universal origin of human nature may be deduced from self-love or self-interest, which is law for all living creatures, and love of others, thanks to the natural capacities of *ratio* and *appetitus societatis* imprinted in the human mind. In the next section we will explore the substance of these natural law principles further, here it suffices to conclude that the primary law of nature is accessible through right reasoning thanks to the natural capacities of reason and love.

The secondary law of nature, or primary law of nations, builds on Grotius' *imago Dei* anthropology too. His Arminian understanding of post-lapsarian human nature comes through in *DJP*: 'this rational faculty has been darkly beclouded by human vice; yet not to such a degree but that rays of the divine light are still clearly visible, manifesting themselves especially in the mutual accord of nations'.⁸⁵ In other words, thanks to the natural faculties of reason, freedom, and sociability being intact, 'universal concord' (*'consensus gentium'*) among nations may arise and thus natural law and justice ascertained. While not yet phrased as in *DJBP*, Grotius seems to suggest *universal agreement only* emerges from *right* reasoning.⁸⁶ That is, humans are free to choose evil over good, but 'universal accord can exist only in relation to that which is good and true.'⁸⁷ Universal concord is possible only because of human *sociability* –the inclination to care for the welfare of one's fellow beings imprinted in human nature –relates humanity to the ultimate *telos*, that is the ultimate good of unity in God. That very accord is called the secondary law of nature or primary law of nations: '*What the common consent of mankind has shown to be the will of all, that is law.*'⁸⁸

83 *DJP*, p. 20.

84 *DJP*, pp. 20-21.

85 *DJP*, p. 25.

86 Grotius is here indebted to Thomas Aquinas who stipulated that for law to be law, it has to partake of right reason and thus of eternal law. Grotius draws on Aquinas' *ST* I-II, Q 93.3.

87 *DJP*, p. 25; also, *DJBP* I.I.XII.2., pp. 42-43.

88 *DJP*, p. 25.

Finally, the secondary law of nations also builds on Grotius' imago Dei anthropology. With the creation of humanity in the image of God (also called '*Logos*' or 'Word'⁸⁹), the human person is endowed with free will and the capacity of language – the 'sacred' instrument of speech.⁹⁰ 'God has given speech to man in order that human society should be more closely knit by people sharing their very thoughts. And once the licence to lie has been given it is bound to overstep all limits and to remove that which is the most important in human relations, namely mutual trust.'⁹¹ The sacred capacity of speech is given to humans 'alone among animals', to serve 'the gratification of' reason and of the 'impelling desire for society'.⁹² Without language, the rational, free and social nature of the human person could actually not exist. Language is humanity's sacred instrument of socialisation – hence, its teleological dimension. Stemming from God, the sacredness of the word is then the source of the sanctity – ie binding force – of pacts.⁹³ It is a *sine qua non* for the creation of obligations through the expression of one's will by a promise⁹⁴ and for nurturing a culture of truth and good faith.⁹⁵ 'From the association of reason and speech arises that binding force of a promise with which we are dealing. ... [A] promise in itself confers a new right.'⁹⁶ Language being a universal gift to humanity ensures the 'sacredness of good faith'⁹⁷ sustaining the 'great society of states.'⁹⁸ '[T]he rule of good faith is derived [from the human

89 *Meletius*, para 22; *Adamus Exul*, para 379. The capacity of speech is also essential to Ancients philosophers - Aristotle, Stoics - when they distinguish between humans and other animals.

90 *DJP*, p. 34.

91 *Meletius*, para 83.

92 *DJBP*, prol. 7. Also, *DJBP* I.I.XII.3, p. 43, where Grotius draws on Chrysostom and Philo.

93 Similar to his words on speech, promises and trust in *De jure praedae*, Grotius states the natural command that 'promises must be kept [stringently]. [Even] to a political enemy ... a robber or a tyrant ...' *Ibidem*, para 84. See also, on *pacta sunt servanda*, eg *DJBP* Prol. 8 and 15 and Book II Ch. XI. Harm-Jan van Dam, *Hugo Grotius. De Imperio Summarum Potestatum Circa Sacra*. Critical edition with introduction, English translation and commentary (Leiden: Brill, 2001), pp. 693 and 249, *De imperio* 4.6.5.: 'Grotius is the first to argue at length that the rule "pacta sunt servanda" belongs to natural law.'

94 *Meletius*, para 84: there is a natural duty to 'stick faithfully to all his covenants, unless you happen to have promised something forbidden by God, which was not within your power even before you gave the promise'.

95 See for the function of *fides* in Grotius' system of the law of nature and nations, Hans Blom, 'The Meaning of Trust: *Fides* between Self-Interest and *Appetitus Societatis*', in *The Roots of International Law. Les Fondements du Droit International*, edited by Pierre-Marie Dupuy and Vincent Chetail, (Leiden/Boston: Martinus Nijhoff, 2014).

96 *DJBP* III.XIX.I.3., p. 793; III.XXV.I., p. 860: the 'greater society of states' is 'sustained by good faith'; to destroy good faith is an 'impious' act.

97 *DJBP* III.XXV.VII., p. 862.

98 *DJBP* III.XXV.I., p. 860.

liberty to will and act]: ‘What each individual has indicated to be his will, that is law with respect to him.’

‘[Such] express indication [of will], [is given] by the means which God granted to man alone for this very purpose, namely, *the medium of speech*. This gift is regarded as so sacred and inviolable an instrument for the interchange of blessings and the reciprocal intimation of human will that, in the eyes of all men, there is no more grievous disgrace than that attached to lying. *Herein lies the origin of pacts*’.⁹⁹

Thanks to the capacities of reason, free will, sociability, and speech, humans can find and create law. They have a natural law-making capacity as well as a natural capacity to be bound by law. These universal natural capacities and the natural equality of all peoples, Christian or non-Christian, advance the conclusion that treaties are binding by virtue of the natural law principle (and duty) to honour promises. The principle of *pacta sunt servanda* is a principle of universal natural law, ie the law of universal human nature, premised on human’s relationship with a God handing out punishments and rewards, a bond forged by the *imago Dei*.¹⁰⁰ It is the basis for human volitional law, including the secondary law of nations, in both *DJP* and *DJBP*.

While in *DJP*, Grotius took a largely voluntarist approach,¹⁰¹ we find more of an intellectualist stance in *DJBP*.¹⁰² The distinction between the two should however not be exaggerated. His *imago Dei* anthropology provides the groundwork in both works.¹⁰³ In *DJBP* however Grotius argues clearly that divine volitional law and the law of nations in *stricto sensu* are subordinate to natural law. He can do this because of his *imago Dei* anthropology.

In *DJBP*, immediately after the famous words *etiamsi daremus* Grotius affirms that since human reason comes from God, it establishes and maintains the human relationship with God and his providence of this world. Hence, ‘it follows that we must without exception render obedience to God as our Creator, *to Whom we owe all that we are and have*’.¹⁰⁴ The divine origin of rationality, liberty and sociability explains why Grotius can put

99 *DJP*, p. 34. Footnotes omitted emphasis added. Grotius refers to Aristotle, the Digest, and Aquinas here. Since good faith is the foundation for justice, as Grotius paraphrases Cicero, language is a prerequisite for justice and peace to exist. Similarly, in *DJBP* III.XIX on ‘Good faith between enemies’, Grotius emphasises that promises even to enemies cannot be broken.

100 *DJBP* Prol. 15-16, pp. 14-15.

101 *Supra* text to note 82.

102 *DJBP* Prol. 16, pp. 15.

103 *DJBP* Prol. 6. Grotius’ reference here is to Chrysostom.

104 *DJBP* Prol. 11; also, *Meletius* para. 84-86; *The Truth of the Christian Religion*, pp. 115-116.

divine voluntary law at a distance in *DJBP*.¹⁰⁵ Natural law is laid down in Creation. It is not derived from nature as such, but from *rational* nature. Human nature as created by God in the image of God. Hence, natural law is not part of revealed but of natural truth – it is universally cognizable by human (rational and social) nature and as such its ascertainment avoids the controversies arising from the interpretation of God’s Revelation.¹⁰⁶

XII. ... the law of nature of which we have spoken, comprising alike that which relates to the social life of man and that which is so called in a larger sense, proceeding as it does from *the essential traits implanted in man, can nevertheless rightly be attributed to God, because of His having willed that such traits exist in us.*¹⁰⁷

Natural law proceeds from ‘the essential traits implanted in man.’ Thanks to God’s implant, human nature is rational, free, and sociable and thus ‘right’ reasoning is possible and natural law ascertainable. In other words, Grotius’ famous words ‘[t]he law of nature is a dictate of right reason’¹⁰⁸ are premised on the understanding of the human person created in God’s image, that is, with reason, free will, and sociability. The law that is thus dictated doesn’t spring from expediency but from a divinely imprinted nature. In *DJBP*, the primary law of nature and nations derives its normativity no longer directly from the Will of God, as handed down by revelation, but from universal human nature.¹⁰⁹ The secondary law of nations finds its origin in the will of free, sociable and rational nations – analogue to human beings. The positive law of nations is binding thanks to the natural law principle of *pacta sunt servanda*.¹¹⁰

In short, Grotius’ *imago Dei* anthropology enables him to make the move from ‘[l]aw [a]s the unerring mind of God’ to law as derived from the human mind, which reflects the mind of God and thus is capable of knowing natural law and judging just from unjust. The normativity of the law of nature and nations draws on the divine origin of the reason God has imprinted universally in human nature, it underpins his theory of the sources and universal scope of *Ius Naturae et gentium*.¹¹¹

105 *DJBP* Prol. 37, Book I.I.X.2 and I.I.XV.

106 *Supra* note 68 and section 2.

107 *DJBP* Prol. 12; emphasis added.

108 *DJBP* I.I.X.1., p. 38.

109 *DJBP* Prol. 16: ‘For the very nature of man, which even if we had no lack of anything would lead us into the mutual relations of society, is the mother of the law of nature.’

110 See *supra* text to note 99.

111 *DJBP* II.XX.XLIV.

3.3. Functional dimension: *Imago Dei* to found and delimit dominium

For Grotius, the creation of humanity in God's image purports to the conferral of the function of *dominium* over creation to humanity. Endowed with rationality, the human being is 'master over his own actions, i.e. he who has free choice, can control other things'.¹¹² In *Adamus Exul*, Adam is referred to frequently as the Master or Ruler. In *DJBP*, while referring to Genesis I, Grotius states: 'Soon after the creation of the world, and a second time after the Flood, God conferred upon the human race a general right over things of a lower nature.'¹¹³ In the natural state of integrity, public *dominium* (public authority/jurisdiction/rulership) and private *dominium* (ownership or property) were not yet clearly set apart. Creation was given to humanity as a whole, for all to share: '[i]n consequence, each man could at once take whatever he wished for his own needs, and could consume whatever was capable of being consumed. The enjoyment of this universal right then served the purpose of private ownership.'¹¹⁴ Since dominium is grounded on human's rational nature, dominion was not annulled by the first sin.¹¹⁵ With the loss of original justice, however, dominium was no longer inherently just. With a few exceptions, 'community of property' was lost.¹¹⁶ In the fallen state of nature, *dominium* - purporting to the natural order of Creation – is to be protected and guided to socially responsible use. To this Grotius' treatment of natural law and justice is geared.

In *DJP*, which aims 'to ascertain how much is owed to others and how much to oneself',¹¹⁷ Grotius starts out to examine the law that governs *dominium*, that is, the law of nature and nations. Here, the *imago Dei* doctrine surfaces both to found and to delimit *dominium*.

Grotius draws the first two applicable laws from the primary law of nature: '*It shall be permissible to defend [one's own] life and to shun that which threatens to prove injurious; secondly, that It shall be permissible to acquire for oneself, and to retain, those things which are useful for life.*' These laws are based on 'the first principle of the whole natural order,' which consists in 'a true and divinely inspired self-love' (the natural impulse

¹¹² *DJP*, p. 24; see also, *Meletius*, para 27-28 and 30; *Adamus Exul*, pp. 103, 107, 117, 119, 139, and 148-149; *The Truth of the Christian Religion*, p. 42.

¹¹³ *DJBP* II.II.II.1., p. 186.

¹¹⁴ *DJBP* II.II.II.1., p. 186.

¹¹⁵ *Adamus Exul*, p. 153.

¹¹⁶ *DJBP* II.II.II.1, p. 187.

¹¹⁷ *DJP*, pp. 13-14, 22.

of self-preservation).¹¹⁸ These natural laws are the basis for the natural rights to defend oneself and to acquire useful things, ie to seize possession of things, and to consume and defend them. Hence, self-defence, the acquisition of property and the defence of ownership have a legal basis in the natural law principle of self-love and self-preservation. Immediately, however, Grotius brings up the question as to when self-love is 'just' – in his view 'excess[ive]' self-love is vicious. Here, when Grotius looks for 'just limits' on the two first laws, the *imago Dei* is introduced and taken to its full legal use. For self-love to remain within the limits of justice, it needs to be kept in check. Being created in God's image, humans have a sense of moderation thanks to their rational nature that enables them to be virtuous in their self-love and pursuit of self-interest.

Being created in God's image, the human person is endowed with the natural capacity as well as the natural obligation to 'care for the welfare of others.'¹¹⁹ In Grotius' view, this 'social impulse'¹²⁰ can be seen to 'burn [...] most brightly' in the human being 'who is peculiarly endowed ... with the sovereign attribute of reason: that is to say, as in a being derived from God Himself, who imprinted upon man the image of His own mind.'¹²¹ This imprint provides a profoundly social conception of human nature and a certain trust in humans to behave virtuously. The concept of a divine imprint of reason and love in human nature provides Grotius with a starting-point for his definition of natural justice.¹²²

To support his refutation of natural justice as 'personal advantage' (or expediency) – a definition based fully on self-preservation or self-interest – and to argue a conception based on the care for the good of others (that is, based on the natural capacities of reason and love as fellowship) Grotius draws heavily on Lactantius. In the *Divine Institutes*, Lactantius rejects Carneades' denial of natural justice as expediency (anything else is 'folly'). Lactantius opposes Carneades with a notion of justice that has its source in knowledge of God and God's law, which humans may acquire since they are created in *imagine Dei*: thanks to the natural capacities of reason and fellowship, the human person has judgement

118 *DJP*, p. 21 (emphasis in text).

119 *DJP*, pp. 24-28, p. 26: 'the acceptance of this obligation might almost be termed a distinguishing characteristic of man.'

120 *DJP*, p. 28.

121 *DJP*, p. 24.

122 The *imago Dei* offers a profoundly social vision on human nature: one cares naturally for the good of others and may expect others to care for one's own good in return. In *DJP* mostly with the help of Seneca and Cicero, while in the *Meletius* more emphasis is put on the Christian appreciation of human (mutual) affections.

of right and wrong.¹²³ Justice finds its source in human nature as rational, sociable, and generous – the *imago Dei* directs humans to seek Wisdom, God, and supreme goodness. What one is due to God, one is due to one’s fellow-human because he or she is the image of God, Lactantius explains.¹²⁴ For Grotius, care for the ‘good of others’ is the distinctive aspect of natural justice.¹²⁵ Natural justice instructs humans to respect the body and property of others.¹²⁶

Consequently, Grotius may draw from the law of nature two precepts that ‘complemen[t] and confin[e]’ the first two laws: ‘*Let no one inflict injury upon his fellow.* The other is the precept: *Let no one seize possession of that which has been taken into the possession of another.*’ These are the so-called ‘law of inoffensiveness’ (to render life secure) and ‘the law of abstinence’ (to render respect for others property).¹²⁷ Rather than to establish a law of nature and nations along humanist lines based on the universal right of self-preservation and the pursuit of self-interest,¹²⁸ Grotius grounds natural justice and law both on self-love and on the care or love of others. The latter prescribes the limits to the former. As such, the *imago Dei* in humans is for Grotius the basis of a natural law conception that both grounds ownership of property as well as its acquisition and use, but not without defining ‘just limits’ right away.¹²⁹

The shared conceptual origin of ownership and liberty in the notion of *dominium* becomes visible where Grotius equates ownership of property with the God-given natural liberty of choice, or the free will:

For God created man *αὐτεκούσιον*, “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

123 Thanks to reason, the human person can see beyond self-interest and self-preservation, his intellect and wisdom prevent him from taking what belongs to others. Lactantius concludes section 17 to which Grotius a.o. refers with the words: ‘No wise man ever aims at gain, because he has a contempt for the goods of this world; nor does he let anyone be deceived, because it is the duty of a good man to put people right when they are wrong and to bring them back in line; it is human nature to be sociable and generous. That is the unique basis for man’s kinship with God.’ Lactantius attributes much wisdom to Cicero and reads him as precursor to Christian wisdom yet to come. He conjoins Christian and Greek literature on man’s creation which are unanimous on the distinguishing feature of reason derived from God.

124 Anthony Bowen and Peter Garnsey, transl. and ed., *Lactantius Divine Institutes* (Liverpool: Liverpool University Press, 2003), Book 6, section 10.1, p. 349.

125 *DJP*, p. 27.

126 *DJP*, p. 21.

127 *DJP*, p. 27.

128 Tuck supra note 8.

129 Subsequently, Grotius discerns natural laws on the enforcement of (compensatory) justice and punishment to protect the rights of life and property. *DJP*, p. 29: ‘first, *Evil deeds must be corrected*; secondly, *Good deeds must be recompensed*’.

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.¹³⁰

Grounded on the free will, Grotius’ theory of *dominium* builds on the late scholastics and their Thomist account of creation, human nature, and natural law.¹³¹

As a Thomist, Vitoria understood *dominium* to be founded on nature, not grace. In the Thomist tradition, God-given human freedom was translated into ownership over one’s actions. Vitoria defined natural *dominium* as a natural right (to own or to rule), ‘[n]atural dominion belonged to man as a creature made in the image of God ... the likeness to God inhered in man’s power of reason and this was not lost by sin.’¹³² Hence, created in God’s image one was capable of holding natural rights. Every human being is created in God’s image - including infidels, sinners or barbarians; therefore all peoples, whether European or indigenous to the America’s or the East Indies, could hold rights to own property and to rule authoritatively.¹³³ After all, *dominium* is established and ruled by the law of natural reason, and not divine law (of revelation). Thus all who possess natural reason hold natural rights.

Grotius the Arminian was rather comfortable with the Thomist doctrine of creation and *dominium* and the underlying conception of humanity created in *imagine Dei*. He continued Vitoria’s Thomist approach to self-dominion (*dominium sui*) of the human person as the foundation of personal liberty and dominion over things.¹³⁴ Only beings created in God’s image can rule creation: reason and free will enable the human person to control herself – after the Fall, Eve is composed. More than Adam to whom she calls ‘control thy senses! ... tame thy spirit, ... calm thy soul thyself! ... Grant thyself time to gain self-mastery back And shed this untamed violence by using Reason’¹³⁵ – and therewith to control creation.¹³⁶ The conception of dominion as control of the self and the world has profoundly affected the conceptualisation of human liberty: liberty starts with having dominion over

130 *DJP*, p. 33.

131 Cf. Arminius, *supra* section 2.

132 Brian Tierney, *The Idea of Natural Rights* (Grand Rapids: WB Eerdmans 1997), p. 267; Tierney discusses Vitoria, ‘On the American Indians’, 1.3, pp. 243-246.

133 Vitoria, ‘On the American Indians’, 1.3 and 1. Conclusion, pp. 250-51.

134 Text to note 130.

135 *Adamus Exul*, pp. 193-195.

136 Cf. *Meletius* para 28: ‘only he who is master of his own actions, i.e. he who has a free choice, can control other things. And of all creation only man and those beings we call rational spirits [angels] have this free choice.’

oneself and becomes defined in terms of natural rights of ownership: 'liberty in regard to actions is equivalent to ownership in regard to property'¹³⁷

An Arminian conception of free will underlies Grotius' conception of 'natural liberty': '[f]or what is that well-known concept ... other than the power of the individual to act in accordance with his own will?'¹³⁸ The analogy between individual liberty and sovereignty can be drawn legitimately, but would need to include the notion of 'just limits' rooted in the *imago Dei* doctrine of human nature.

In *DJBP* too, the natural capacity of freedom – that is power one has over oneself – is identified with the power an owner has over her property. Personal liberty, given to human beings by creation, is identified with subjective rights (*facultates*) of ownership.¹³⁹ In other words, the human person has these *facultates* by the natural design of Creation. The theological notion of the human person being created with moral liberty is conceptualised in legal terms of a person with innate legal rights which others have the duty to respect. In the post-lapsarian world, sovereignty and property rights are no longer exercised automatically in line with divine justice. Yet human beings are capable of exercising these rights legitimately and justly -- that is, in conformity with natural law and justice. But the uncorrupted promotion of *summum bonum* then is a requirement.¹⁴⁰

The natural subjective rights are correlated to natural duties thanks to the body of natural law and justice that founds and defines both. This delimitation is based on the (obligation to) care for the good of others,¹⁴¹ which human beings have by virtue of their creation in God's image. As such, there is a sacredness to dominion, both in the form of sovereignty and in the form of ownership; it comes with 'a general *responsibility* for human society.'¹⁴²

137 *DJP*, p. 34.

138 *DJP*, pp. 33-34.

139 *DJBP* Book I Ch. I.

140 *DJBP* Book II Ch. II.

141 Martti Koskenniemi, 'International Law and the Emergence of Mercantile Capitalism: Grotius to Smith', in *The Roots of International Law. Les Fondements du Droit International*, edited by Pierre-Marie Dupuy and Vincent Chetail, (Leiden/Boston: Martinus Nijhoff, 2014), p. 6: 'There is no doubt that the natural love of human companionship and life in organised society of which Grotius speaks in *De jure belli ac pacis* was intended to counterbalance the potentially egoistic implications of his strong view on subjective rights.'

142 *DJBP* II.XX.XLIV.i, p. 508. See also, Stumpf, supra note 6, p. 2.

Thus, thanks to God's image imprinted in humanity, nature and natural law are two different things. Nature may not be against war, but right reason as the source that dictates natural law may very well be.¹⁴³

4. Conclusion: *Imago Dei* today - a jurisprudence of care and responsibility

This chapter argues that his *imago Dei* anthropology provided Grotius with a conception of human nature crucial to the move he made to what is often understood as a modern, secular conception of the law of nature and nations. Grotius' famous *etiamsi daremus* experiment, however, never meant to disconnect humanity and human nature from the work of God in this world. Rather, Grotius depends on the relationship between God and human beings for his theory of *Ius Naturae et Gentium*. The principles of natural religion as well as natural law may be known through right reason, as human beings are created as *imagines Dei*, which in Grotius' interpretation means capable, free, and responsible beings. In conclusion, the ontological aspect of *imago Dei* (3.1) may be said to serve as an underpinning for the natural legal personality and responsibility of humans; the teleological aspect (3.2) for the sources of law doctrine; and the functional aspect of *dominium* (3.3) for the legal notions property and sovereignty.

This chapter moreover has described an alternative, post-sceptic account of Grotius in that it shows how Grotius conceptualized the human impulse of self-preservation and pursuit of self-interest as delimited by a sense of natural justice not defined by utility but by care for others and the good of society. Grotius builds his legal order on human nature; and not on one defined by an immoderate, overindulgent drive of self-preservation,¹⁴⁴ but rather on a much richer conception that includes rationality, liberty and sociability and from which in turn the laws of nature and nations are derived. Thus this chapter seeks to complement the current historiography with a reading of Grotius' international legal ideas in the light of his (natural) theological anthropology of *imago Dei* and the foundational role this plays in his theory of *Ius Naturae et Gentium*.¹⁴⁵ It aims to open up our international law language to a richer and more diverse set of ideas and hopes to give some ideas for an

143 *DJBP* I.II.I.5.

144 Richard Tuck, 'Grotius and Selden' in *Cambridge History of Political Thought 1450-1700*, edited by J.H. Burns & Mark Goldie, (Cambridge: CUP, 1991), pp. 499 et seq.

145 It is not commerce and trade, capitalism, that is sacred for Grotius, both are 'introduced' by God' Providence to have men seek 'the Assistance of one another, [to] maintain and cultivate society,' which is indeed sacred. Book II. Ch. II § XIII ; see Editors' abstract.

alternative future of (the philosophy of) international law.¹⁴⁶ In the context of human rights theory, the *imago Dei* doctrine has indeed been discussed as a possible foundation for dignity and fundamental rights inherent to all human beings.¹⁴⁷

Since Grotius, legal theory has secularised further and human rights have become a dominant discourse. Grotius became reputed as one of the precursors of individualist liberalism. In this article I have pointed out to the account of *imago Dei* as a starting point for Grotius' anthropological foundation of the law of nature and nations. This may invite us to reconnect to a jurisprudence of care, respect, and responsibility.¹⁴⁸ A post-sceptical reading of Grotius' theory brings out that the *imago Dei* doctrine gave as much ground to natural duties (to respect and protect the other) as to natural rights. In Grotius' reading trade and commerce were not an end in themselves, but as a means given by God's Providence to materialise human sociability.¹⁴⁹ Humanity had received the right of *dominium* (whether ownership or rulership) together with the responsibility to care (for society, national and international) and preserve.

An examination of Grotius's theory through the prism of *imago Dei* invites us to recognise the Other as similar and of a common origin, and to reflect on the natural capacity of care and responsibility for the Other and society at large.¹⁵⁰ This chapter is not so much an argument for a theological foundation of international law; Grotius himself explicitly held his views on humanity – and ultimately on law - to be based on a universal natural truth rather than a Christian truth. Rather, this chapter proposes that reconnecting to the natural human capacity of care for the Other and society at large could redefine the international legal order to be founded in and constituted through mutual recognition, respect and responsibility.

146 Cf. Stephen Toulmin, *Cosmopolis. The Hidden Agenda of Modernity*, (Chicago: University of Chicago Press, 1990), p. 2.

147 Jeremy Waldron, 'The Image of God: Rights, Reason, and Order'. *New York University Public Law and Legal Theory Working Papers*. Paper 10-85 (2010); see also the work of Paul Ricoeur (infra n 150).

148 Anthony Carty, 'Doctrine versus state practice', in *The Oxford Handbook of the History of International Law*, edited by Bardo Fassbender and Anne Peters (Oxford: OUP 2012); Anthony Carty, 'New Philosophical Foundations for International Law: From an Order of Fear to One of Respect', *Cambridge Review of International Affairs* 19, no. 2 (2006), pp. 311-330.

149 Providence introduced Trade to foster Society, see *DJBP* II.II.XIII.

150 Paul Ricoeur, 'The Image of God and the Epic of Man', in Paul Ricoeur, *History and Truth*, translated by Charles Kelbley (Evanston: Northwestern University Press, 1965 and 2007) pp. 110-128.

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