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Grotius on Natural Law and Supererogation

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ABSTRACT This article provides a novel interpretation of Grotius's conception of natural law. Prior interpretations have overlooked Grotius's doctrine of supererogation and have hence misrepresented, in varying ways, the content of his law of nature and its relation to justice and individual rights. Grotius, I contend, created logical space for supererogation by making natural obligation rather than natural morality determinative of natural law. Natural law regulates only those actions that are obligatory or illicit by their nature (i.e. without human or divine command). Acting in accordance with virtues other than justice is intrinsically morally good but not usually morally required. However, circumstances may fall out such that otherwise supererogatory actions cannot be omitted without committing a moral wrong: natural law is then rendering their performance mandatory.

KEYWORDS Hugo Grotius, Francisco Suárez, natural law, natural morality, individual rights, justice, charity, supererogation, history of ethics

HUGO GROTIUS (1583–1645) WAS LAVISHLY praised by his successors in the protestant natural law tradition for having been the first to make "any great Progress in the Knowledge of the true fundamental Principles of the Law of Nature, and the right Method of explaining that Science."[1] Wildly influential in his own time, historians of philosophy have found it difficult to determine what, if anything, is innovative in Grotius's moral theory.[2] Scholarly assessments of Grotius's place in the history of ethics have been hampered by pervasive disagreement about what his views on natural law actually are.

This article provides new ammunition to those who hold that Grotius was an innovative and systematic moral thinker in his own right. I highlight Grotius's highly original integration of a doctrine of supererogation into his natural law theory. Grotius's defense of supererogation has been all but overlooked—despite

[1] Jean Barbeyrac, *Historical and Critical Account*, 79.

[2] For two contrasting recent assessments, see Irwin, *Development, Vol. II*, 88–99; and Stephen Darwall, "Modern Moral Philosophy."

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Barbeyrac's withering criticisms.[3] This article shows that the Dutch philosopher created logical space for supererogation by conceptually distinguishing natural morality from natural law. Not every action that is morally good or bad by nature (i.e. without human or divine legislation) falls under natural law. "Those Things which our Reason declares to be honest, or comparatively good, tho' they are not enjoined us" are not part of natural law (*DJBP* 1.1.10.3). For natural law deals exclusively with actions that are "in themselves either Obligatory or Unlawful" (*DJBP* 1.1.10.2). Grotius primarily introduced his naturalistic conception of moral obligation to better distinguish natural law from divine positive law. But by explicating natural law in terms of natural obligation rather than natural morality, he also made room for supererogation: morally commendable actions that are not required and hence beyond natural law.

My analysis allows me to resolve a long-standing dispute in the literature about the content of Grotius's law of nature and its relation to justice and individual rights. Extant views can be roughly divided into three camps. On the predominant ultra-minimalist interpretation, all that Grotius's law of nature enjoins is abstaining from violating another's perfect rights. Perfect rights are essentially actionable claims, entitling right-holders to use force against others. On the rival minimalist interpretation, natural law in addition orders respect for imperfect rights. Imperfect rights are moral statuses declaring a person fit to receive a perfect right. Distributive justice, liberality, and mercy all attend to imperfect rights and are thus subsumed, on the minimalist interpretation, under natural law. On the maximalist interpretation, finally, Grotius's natural law captures the whole of other-regarding morality. It thus also includes virtues that do not implicate any kind of individual right, such as prudence and magnanimity.

This article proves that all three extant interpretations are mistaken. Each misconstrues, in varying ways, the relation between natural law, natural rights, justice, and morality in Grotius. The ultra-minimalist interpretation conflates natural law with what Grotius calls 'expletive justice'—the norm governing perfect rights. But Grotius was adamant that "*natural Right*, considered as a *Law*, does not only respect what we call *expletive* Justice, but comprehends the Acts of other Virtues, as of *Temperance*, *Fortitude*, and *Prudence*" (*DJBP* 2.1.9.1). This passage does not support the minimalist interpretation either. Temperance, fortitude, and prudence do not implicate imperfect rights. Unlike clemency and liberality, these virtues do not regulate the allocation of perfect rights to those who merit but cannot claim them. Proponents of the maximalist interpretation are therefore right to maintain that respect for perfect and imperfect rights does not exhaust the realm of natural law. Yet they wrongly hold that so-called 'non-dikaiological virtues' (moral virtues other than expletive justice) are *always* part of natural law. Acting charitably or mercifully is in most circumstances beyond the call of duty: "so that if one follows it, he does something commendable, and yet, without being guilty of any moral wrong, he may not follow it, or may even act quite otherwise"

[3]For Barbeyrac's critique, see Greg Conti, "Barbeyrac, Supererogation," and note 18 to *DJBP* 1.2.9. Citations to Grotius's *De Jure Belli ac Pacis* (*DJBP*) are according to book, chapter, section, and (where available) subsection number. Tobias Schaffner, "Eudaemonist Ethics," draws attention to supererogation in Grotius without analysing how it fits within his natural law theory.

(*DJBP* 1.2.1.3). Since natural law deals exclusively with natural obligations, these virtues are prescribed by natural law only in those exceptional circumstances in which they cannot be omitted without committing a moral wrong.

Besides superior textual support, the proposed reading has the advantage of making more philosophical sense than the predominant ultra-minimalist interpretation. It is uncontroversial that natural law prohibits as unjust actions that are "repugnant to the Nature of a Society of reasonable Creatures."[4] But why think only rights-violations are repugnant to human society? "Who does not see that the life of men would be wretched and miserable if it were only necessary for men to do what justice strictly speaking commands?"[5] The claim that other social virtues are *never* necessary for society's maintenance requires a bold argument (grounded, perhaps, in a peculiar theory of rights). To his credit, Grotius never tried to make that argument.

The paper unfolds as follows. Section 1 sets the stage by providing an overview of the various deontic terms employed in *De Jure Belli ac Pacis* (*DJBP*). Section 2 discusses existing interpretations of Grotius's conception of natural law and points out where they go awry. Section 3 analyzes the foundation of natural morality and natural law: human rational and sociable nature. Section 4 argues that Grotius followed Francisco Suárez in disentangling the intrinsic moral quality of an action (*honesta/turpitudine*) from its deontic force (*debita/illiciti*), while adding his own naturalistic conception of moral obligation. Section 5 conjectures that Grotius's innovative conception of natural law provided him with a criterion to distinguish morally required from morally optional actions. An action is required by natural law, I suggest, if and only if its non-performance is incompatible with a society of reasonable creatures. Finally, section 6 discusses two resulting puzzles about Grotius's moral theory.[6]

1. JUSTICE AND RIGHTS

Confusion abounds around Grotius's classification of rights and norms in *DJBP*. Small wonder. In the dense first chapter of Book I ("What War is, and what Right is"), the reader is presented with myriad definitions and distinctions: three senses of *ius*, two kinds of justice, several types of law, and two conceptions of injustice. Many distinctions have subdivisions; many terms synonyms or alternative senses. It does not help that the Prolegomena to *DJBP* and *DJBP* 1.2 offer rival discussions that do not evidently align with the classification offered in *DJBP* 1.1. This section provides a walkthrough to the various deontic concepts Grotius employed in *DJBP* and their interrelations.

Grotius's most detailed classification of deontic notions is found in *DJBP* 1.1. It distinguishes between three concepts of Right (*ius*). Each is subdivided further. We can schematize the result as follows.

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[4]*DJBP* 1.1.3.1; also, *DJBP* 1.2.1.3.

[5]Lambert van Velthuysen, *Letter*, 75.

[6]My reconstruction of Grotius's ethics focuses on *DJBP*. The philosophical differences between Grotius's various works are much greater, I believe, than is commonly recognized. I discuss other parts of his oeuvre only insofar as it elucidates his mature moral philosophy.

- R1: As attributed to actions: "*that which may be done without Injustice*" (*DJBP* 1.1.3.1)
    - R1.1: *Ius* between equals
    - R1.2: *Ius* between un-equals

- R2: As attributed to persons ('subjective rights'): "a *moral Quality* annexed to the Person, *enabling him to have, or do, something justly*" (*DJBP* 1.1.4)
    - R2.1: Perfect moral quality (*facultas*): "*Right properly, and strictly taken*" (*DJBP* 1.1.5)
        - R.2.1.1: Authority (*potestas*)
        - R.2.1.2: Property (*dominium*)
        - R.2.1.3: "the Faculty of demanding what is due" (*creditum*)
            - R2.1a: Inferior: as pertaining to private individuals
            - R2.1b: Superior: as pertaining to superiors
    - R2.2: Imperfect moral quality (*aptitudo*): worth, merit, fittingness

- R3: As law (*lex*): "*a Rule of Moral Actions, obliging us to that which is right*"[7]
    - R3.1: Natural law
    - R3.2: Positive law (*DJBP* 1.1.13)
        - R3.2.1: Human positive law (*DJBP* 1.1.14)
            - R3.2.1.1: The civil law
            - R3.2.1.2: The voluntary law of nations
            - R3.2.1.3: Sub-state rules (e.g. corporate, parental)
        - R3.2.2: Divine positive law (*DJBP* 1.1.15)

R1: As the marginalia explain, R1 is a property of actions.[8] *Ius*, so understood, signifies "*that which is just*, and that too rather in a negative than a positive Sense." To qualify as 'just'—we might prefer the label 'lawful'—actions need not have any positive moral value. They should merely be 'not unjust.' Think of the Roman law maxim: "Not everything which is lawful is honorable."[9] Actions are 'just' by dint of being not "repugnant to the Nature of a Society of reasonable Creatures" (*DJBP* 1.1.3.1). Just conduct is therefore not necessarily meritorious. Commentators sometimes refer to Adam Smith in this regard: "Mere justice is, upon most occasions, but a negative virtue, and only hinders us from hurting our neighbor. . . . We may often fulfill all the rules of justice by sitting still and doing nothing."[10] However, Grotius was not making a point about the nature of justice. R1 rather advances the conceptual claim that actions are called 'just' insofar as they do not violate any obligatory moral standard. The underlying normative supposition is: "nature also gives us the right to do everything that is not inherently bad."[11]

R2: In its second sense, *ius* denotes a moral quality of a person "*enabling him to have, or do, something justly*" (*DJBP* 1.1.4). In the literature, these moral qualities are commonly called 'subjective rights.' I shall retain this somewhat infelicitous

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[7]DJBP 1.1.9.1: "Est et tertia iuris significatio quae idem valet quod Lex; quoties vox legis largissime sumitur, ut sit Regula actuum moralium obligans ad id quod rectum est." I have occasionally deemed it necessary to emend translations; the original Latin is provided wherever my argument requires it.

[8]Grotius elsewhere distinguished between the justice of persons and of actions. The former is measured by blameworthiness (*DJBP* 2.23.13.3). In case of invincible ignorance, a person is said "to act justly [*juste*], whilst he acts not unjustly [*injuste*], tho' that which he acts be not just [*justum non*]" (*DJBP* 2.23.13.1). In other words, a person who does wrong non-culpably in some sense still acts justly.

[9]*The Digest of Justinian*, Book 50, Chapter 17, Section 144.

[10]Adam Smith, *TMS* 2.2.1.9. Also, Francisco Suárez, *DL* 2.10.1. Citations from both works are according to book, chapter, section, and (where available) subsection number.

[11]Hugo Grotius, *De Imperio* 7.2. Citations to *De Imperio* are by chapter and section number.

label for convenience.[12] Grotius recognized two kinds of subjective rights. The first he called 'Right properly, and strictly taken'; the latter 'aptitudes.' Call them 'perfect' and 'imperfect' rights for short.[13]

Perfect rights Grotius equated with 'faculties' (moral powers). There are three kinds of perfect rights: *potestas*, *dominium*, and *creditum*. *Potestas* includes both rights over ourselves (i.e. liberty) and rights over others. *Dominium* includes all sorts of property titles in things (*ius in rem*), including those that do not involve full ownership, such as tenancies and servitudes. *Creditum* is "the Faculty of demanding what is due" (*DJBP* 1.1.5). "For he to whom any Thing is due, hath a Right against him from whom it is due" (*DJBP* 2.20.2.2). The *Jurisprudence of Holland* equates *creditum* with personal rights: claims against other persons with respect to some resource or action (*ius in personam*). Personal rights are a type of property titles without being rights *in* things: "a personal right is a right of property which one man has against another entitling the first to receive from the second some thing or some act" (*Jurisprudence*, 2.1.59).[14]

Contrary to what is often claimed, rights to what we own do not exhaust Grotian perfect rights.[15] Grotius reinterpreted the traditional meaning of faculty: "Civilians call a *Faculty* that Right which a Man has to his *own*; but we shall hereafter call it a *Right properly, and strictly taken*" (*DJBP* 1.1.5).[16] For Suárez, every strict *ius* expresses some form of *dominium* (*DL* 1.2.5). For Grotius, by contrast, those rights are perfect whose invasion is incompatible with society (*DJBP* 1.2.1.5). While all perfect rights are subjective—'moral qualities annexed to the person'—not all of them refer to things we own and hence have moral discretion over. The right to punish, for instance, is a perfect right without being a property title. In the 1617 *De Satisfactione*, Grotius argued at length that the "right of punishment in the ruler is neither the right of absolute ownership nor a personal right."[17]

Perfect rights are regulated by expletive justice—"Justice properly and strictly taken" (*DJBP* 1.1.8.1). Expletive/strict justice is the moral norm prohibiting infractions of perfect/strict rights. Grotius associated expletive justice with Aristotelian commutative justice (which he deems a misnomer). Perfect rights thus resemble modern rights in two respects: they express what may not be done to persons and their violation is called 'unjust.'

Imperfect moral qualities are not rights in any recognizable modern sense. An imperfect right is really "an Aptitude or Merit, which doth not contain in it

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[12]'Subjective right' is a solecism in English. Unlike *Recht* in German, *droit* in French, and *ius* in Latin, the English noun 'right' never refers to the total body of law. Thomas Mautner, "How Rights Became 'Subjective.'"

[13]*DJBP* 1.1.4: "Qualitas autem moralis perfecta, Facultas nobis dicitur; minus perfecta, Aptitudo."

[14]The *Jurisprudence* (written in 1619–20; first published in 1631) is cited by book, chapter, and section number.

[15]E.g. Karl Olivecrona, "Concept."

[16]In 1615, Grotius still called *ius* a "moral faculty over a thing . . . , that is, I have ownership over it or use or something similar" (*Defense*, 107). Cf. *De Imperio*, 5.11.

[17]*De Satisfactione*, 2.16; also, *De Satisfactione*, 2.4 and 5.15. Citations to this work are according to chapter and section number. Grotius proffers two main reasons for this. First, one possesses the right to punish for the sake of the community, not for one's personal welfare (as is the case for *dominium* and *creditum*). Second, right-holders are hence not free to choose whether or not to exercise their *ius puniendi*. Individuals do have such moral discretion with respect to what is properly their own (*De Satisfactione*, 2.16 and 2.22; also, *DJBP* 2.20.23).

a Right strictly so called, but gives Occasion to it" (*DJBP* 2.20.2.2).[18] Aptitudes denote that a person is worthy to obtain a perfect right. Suppose that Hugo has an imperfect right to amnesty. This imperfect right expresses the fact that it is morally fitting to give him reprieve; he deserves it. While Hugo cannot claim amnesty as his due, the world would be morally better for him receiving it. Perfect rights are therefore said to stand to imperfect ones as actual stands to potential in natural things (*DJBP* 1.1.4). Quintessential to virtues corresponding to imperfect rights is that they entail no "Right to any other over us" (*DJBP* 2.11.3). Breaches of such virtues violate neither anyone's perfect rights nor the norm of expletive justice governing such rights. Grotius instead linked imperfect rights to distributive justice (or, as he prefers, 'attributive justice'): "*Attributive Justice*, stiled by *Aristotle Distributive*, respects Aptitude or *imperfect Right*, the attendant of those Virtues that are beneficial to others, as Liberality, Mercy, and prudent Administration of Government" (*DJBP* 1.1.8.1; also, *DJBP* 2.17.3.1).

Grotius introduced these two kinds of subjective rights in a book on the laws governing war and peace. The distinction plays a dual role in his just war theory. It explains, first, which kinds of moral faults justify coercive responses. Only violations of perfect rights constitute a just cause for war. Perfect rights are exactable—actionable in courts and on battlefields. Failure to properly respect aptitudes does not warrant punishment;[19] is unenforceable in court;[20] and damage done by their violation does not need to be repaid.[21] Imperfect rights do not give the 'right-holder' the distinctive standing to hold others accountable for the moral quality of their conduct.

Second, and conversely, the distinction helps establish what can never be permissibly done to a person. Perfect rights express a realm of inviolability. "Right Reason, and the Nature of Society . . . does not prohibit all Manner of Violence, but only that which is repugnant to Society, that is, which invades another's Right: For the Design of Society is, that every one should quietly enjoy his own" (*DJBP* 1.2.1.5). Imperfect rights are not similarly morally inviolable. Individuals are often morally allowed to contravene imperfect rights. For instance, donating found goods to the deserving poor is "a very commendable Action." Yet we are "not obliged by the Law of Nature" to do so since "none but the Proprietor can claim a Right" (*DJBP* 2.10.11). It would be a mistake, however, to think that it is always permissible to ignore imperfect rights. As I argue in section 5, virtues corresponding to imperfect rights sometimes generate moral duties—namely, in those circumstances when not performing the action positively harms society. Non-dikaiological virtues nevertheless retain their non-compulsory nature: other persons do not acquire an enforceable right to the performance of such duties. In short, perfect rights can never be infringed without committing a moral wrong, while infringing imperfect rights is only sometimes morally wrong.

R3: In its third sense, *ius* means law (*lex*). Grotius claimed that law is obligatory by definition: "I say, obliging: for Counsels, and such other Precepts, which, however

[18]Also, *DJBP* Prol.10; *DJBP* 1.1.7; and *DJBP* 2.7.10.1.

[19]E.g. *DJBP* 2.20.20.1.

[20]E.g. *DJBP* 2.22.16; and *DJBP* 2.25.3.4.

[21]E.g. *DJBP* 2.17.3.1; *DJBP* 2.17.9; and *DJBP* 2.17.13.

honest and reasonable they be, lay us under no Obligation, come not under this Notion of Law, or Right" (*DJBP* 1.1.9).[22] This stipulation shall prove essential for his doctrine of supererogation. There are two basic kinds of *ius* as *lex* (R3): natural and positive laws. The latter, in turn, can be either human or divine in origin. The divine positive law is revealed in Scripture (*DJBP* 1.1.15). The civil law, voluntary law of nations, and "the Commands of a Father to his Child" and "a Master to his Servant" are all instances of human positive law (*DJBP* 1.1.14). Natural law differs essentially from positive law by regulating actions that are "in themselves" (*per se*) obligatory or unlawful (*DJBP* 1.1.10.2).

Positive laws, whether human or divine, render obligatory what was before either: (1) morally indifferent; (2) merely morally commendable; or (3) morally blameworthy but not morally required. Prescribing the last may be justified as a lesser evil. Once positive law prohibits some action φ, it becomes morally wrong to φ. Yet the wrong is in that case not an intrinsic one (pertaining to features of the act itself), but rather extrinsic (imposed by law). I further analyze Grotius's innovative naturalistic conception of moral obligation in section 4. It is noteworthy, finally, that Grotius made no mention of eternal law, of which natural law is that part grasped by reason.[23]

2. *IUS NATURALE* IN THE PROLEGOMENA

How does Grotius's law of nature relate to justice and subjective rights? On the prevailing ultra-minimalist interpretation, all that natural law enjoins is refraining from violating another's perfect rights. As the IR-theorist Hedley Bull avers:

> Natural law for Grotius is not to be equated with the moral law or morality in general; it comprises only that part of morality that states the rational principles of conduct in society. The morality of love or charity, for example, on which Grotius draws in recommending humanity in warfare . . . lies beyond its scope.[24]

Likewise, Stephen Buckle writes, "Through his distinction between rights and imperfect moral qualities, Grotius thus limits the law of nature to the protection of the *suum* of each individual member of society, restraining it from requiring any positive acts of private benevolence."[25] Karl Olivecrona sums up "the main content" of Grotius's natural law as follows: "There must be no interference in that which belongs to another human being, and promises must be fulfilled."[26]

The ultra-minimalist position finds apparent support in the Prolegomena.

> This Sociability . . . or this Care of maintaining Society in a Manner conformable to the Light of human Understanding, is *the Fountain of Right, properly so called*; to which

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[22] "Obligatonem requirimus: nam consilia et si qua sunt alia praescripta, honesta quidem sed non obligantia, legis aut iuris nomine non veniunt."

[23] Cf. Aquinas, *Summa Theologica*, I–II. q.91 a.2–3 and q.93–94. The *Summa Theologica* is cited according to volume, question, and article. On the possible significance of this omission, see Meirav Jones, "Philo Judaeus."

[24] Hedley Bull, "The Importance of Grotius," 78.

[25] Stephen Buckle, *Natural Law*, 31–32. See also Michael Zuckert, *Natural Rights*, 142–43; Jacqueline Lagrée, "Grotius: Natural Law and Natural Religion," 20; Steven Forde, "Hugo Grotius on Ethics and War," 640; and Andreas Harald Aure, "Hugo Grotius," 83–88.

[26] Olivecrona, "Two Levels," 209.

> belongs the Abstaining from that which is another's, and the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men. (*DJBP* Prol.8)

The enumerated duties that "belong" to "Right, properly so called" all fall under expletive justice, and are indisputably part of natural law. The controverted question is whether expletive justice exhausts the domain of natural law.

The Prolegomena proceeds to contrast *ius* in a stricter and looser sense: "And even *naturale ius* itself, whether it be that which consists in the Maintenance of Society, or that which in a looser Sense is so called."[27] *Ius naturale* in its looser sense orders us to follow "the Dictates of a right and sound Judgment" with respect to those things which are truly understood to be "pleasant or hurtful" (*DJBP* Prol.9). Grotius emphasized that "whatsoever is contrary to such a Judgment is likewise understood to be contrary to Natural Right, that is, the Laws of our Nature" (*DJBP* Prol.9). Several instances of such judgments follow:

> And to this belongs a prudent Management in the gratuitous Distribution of Things that properly belong to each particular Person or Society, so as to prefer sometimes one of greater before one of less Merit, a Relation before a Stranger, a poor Man before one that is rich, and that according as each Man's Actions, and the Nature of the Thing require; which many both of the Ancients and Moderns take to be a part of Right properly and strictly so called; when notwithstanding that Right, properly speaking, has a quite different Nature, since it consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness they may demand. (*DJBP* Prol.10)

Which of the three senses of *ius* does '*ius naturale* in its looser sense' denote? And what is its relation to natural law?

Some commentators maintain that Grotius was here introducing two senses of natural *law* (R3)—one equivalent to expletive justice, the other regulating imperfect rights as well.[28] Proponents of the ultra-minimalist interpretation can accept this reading, pending the qualification that *ius naturale* in the loose sense is not *lex* properly speaking. Benjamin Straumann, for one, holds that natural law properly understood is identical to both expletive justice and *ius* in its proper signification: "Only corrective justice can be called justice or natural law in the narrow and proper sense. Distributive justice, the object of which is imperfect right or aptitude, is not part of this."[29]

Other interpreters equate the looser sense of *ius* with imperfect rights (R2).[30] That gloss chimes well with the minimalist interpretation, which states that natural law (R3) covers both expletive and attributive justice, commanding respect for

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[27]*DJBP* Prol.12: "Sed et illud ipsum de quo egimus naturale ius, sive illud sociale, sive quod laxius ita dicitur." Also, *DJBP* Prol.42.

[28]Hendrik van Eikema Hommes, "Grotius on Natural and International Law," 69–70. Van Eikema Hommes's "natural law in a narrow sense" governs perfect rights and seems conspicuously similar to expletive justice; "natural law in a broad sense" he links to aptitudes, here understood as "imperfect claim[s]."

[29]Benjamin Straumann, *Roman Law*, 126.

[30]E.g. Jeremy Seth Geddert, *Modern Theology of Freedom*, 47.

subjective rights in the proper and loose sense.[31] As Knud Haakonssen observes, "The honouring of rights, perfect and imperfect, is in itself good, and as a consequence we can consider such behaviour as being prescribed by the Author of our nature. Such prescription is *lex*, the third sense of *ius naturale*."[32] Haakonssen claims that natural right in the loose sense means *lex*. He distinguishes it from "*ius naturale* in the strict sense [that] is, then, every action which does not injure any other person's *suum*."[33]

What are we to make of these diverging interpretive suggestions? My contention is that focusing narrowly on the Prolegomena is unhelpful for reconstructing the content of Grotius's law of nature. The Prolegomena introduces two related distinctions: between expletive and attributive justice; and between perfect and imperfect rights. Both sources of right follow from principles of human nature and thus 'belong to' natural law in some sense. Yet, crucially, the Prolegomena contains no discussion at all of what it means for *ius naturale* to qualify as law (*lex*). That discussion figures first in *DJBP* 1.1.

Since the Prolegomena associates imperfect rights and attributive justice with *ius naturale* in the loose sense, supporters of the ultra-minimalist interpretation have simply assumed that natural law is equivalent to expletive justice (the norm governing perfect rights). Later passages prove this interpretive move untenable. Virtues other than expletive justice are explicitly declared part of *ius* as *lex*: "the Law obliges us to that which is *right*, not barely to that which is just: Because Right in this Sense does not belong to the Matter of Justice alone (such as I have before explained it) but also to that of other Virtues" (*DJBP* 1.1.9).[34] Expletive justice is thus a subset of *ius* as *lex* (R3). Elsewhere, we read that

> *natural Right*, considered as a *Law*, does not only respect what we call *expletive* Justice, but comprehends the Acts of other Virtues, as of *Temperance*, *Fortitude*, and *Prudence*; so that in certain Circumstances they are not only *honest*, but of an *indispensable Obligation*. (*DJBP* 2.1.9.1)[35]

Adherents to the maximalist interpretation rightly point out that Grotius was here subsuming under natural law various moral virtues that do not concern imperfect rights. J. B. Schneewind emphasizes Grotius's distinction between the law of justice and the law of love. The former merely orders agents to respect the rights of

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[31]Tuck interprets Grotius's *Jurisprudence* in line with the minimalist interpretation: "the law of nature is simply, respect another's rights . . . whether of property or merit." Tuck seems to think that Grotius turns to ultra-minimalism in *DJBP*. Grotius's growing doubts about the "truth" of distributive justice—the norm governing imperfect rights—supposedly explains this shift. Richard Tuck, *Natural Rights Theories*, 67, 72–75. Cf. Tuck, *Philosophy and Government*, 174–76, 197–200. Tuck's logically distinct thesis about the minimalist foundations of Grotius's natural law theory is discussed in Section 3.

[32]Knud Haakonssen, *Natural Law*, 29. See also, Henry Sidgwick, *Outlines*, 161. In a much-cited early article, Haakonssen defends the ultra-minimalist interpretation: "the socialitas to which we are bound by the law of nature is for Grotius simply the respecting of another's rights, subjectively conceived" ('subjective rights' here signifies "one's own, one's *suum*"). Haakonssen, "Hugo Grotius," 241–42.

[33]Haakonssen, *Natural Law*, 27.

[34]"Diximus autem, ad rectum obligans, non simpliciter ad iustum, quia ius hac notione non ad solius iustitiae, qualem exposuimus, sed et aliarum virtutum materiam pertinet."

[35]"Nam ius naturae quatenus legem significat non ea tantum respicit quae dictat iustitia quam explectricem diximus, sed aliarum quoque virtutum, ut temperantiae, fortitudinis, prudentiae actus in se continet, ut in certis circumstantiis, non honestos tantum sed et debitos."

others. The latter also prescribes unenforceable moral duties, such as generosity, compassion, and gratitude. "The laws of nature," Schneewind claims, "include the law of love."[36] Brian Tierney likewise maintains that, for Grotius, "natural law related not only to strict justice, but also to the practice of the traditional moral virtues."[37] In section 5, I show that the maximalist interpretation should nonetheless be discarded: non-dikaiological virtues are part of natural law only in those exceptional circumstances when their performance is obligatory.[38] To properly grasp Grotius's account of natural law, we must first attend to its basis: his account of human nature and natural morality.

3. HUMAN NATURE AND NATURAL LAW

In his juvenile works, Grotius equated natural law with the divine plan discovered in nature. According to *Mare Liberum*, the existence of a wide ocean, rendering the Earth "navigable on every side round about," and the uneven scattering of resources among nations jointly attest that rights of trade and free passage belong to natural law (*Mare Liberum*, 11). Geographical facts no longer form a basis of natural law in Grotius's mature works.[39] *DJBP* explicitly grounds natural law in principles of human nature alone (*DJBP* Prol.12). Which are these principles? This section suggests that Grotius broke new ground by basing natural law and natural morality on facts about human rationality *and* sociability.

It was a Stoic and scholastic commonplace that natural law is "consequent to human nature."[40] But what is the essence of human nature? Most writers on natural law prior to Grotius, including Aquinas, emphasized rationality, having in mind the Aristotelian adagio 'Man is a rational being.' Francisco Suárez, for instance, claimed that "rational nature is the foundation of the objective goodness of the moral actions" governed by natural law (*DL* 2.5.6). Suárez's interlocutor Gabriel Vásquez even claimed that rational human nature itself is natural law.[41] Grotius's early works endorsed the idea that natural law consists in conformity with rational nature. In *De Satisfactione*, Grotius stated, "In moral matters some things are properly natural," namely, those "which follow from the relation of the things themselves to rational natures" (*De Satisfactione*, 3.9).

Significantly, *DJBP* introduced a second ground for natural law besides rationality: human sociability. Earlier moral philosophers had, of course, not denied that humans are naturally sociable. Indeed, Aristotle had famously declared humans to be *zoon politikon*, a contention repeated by Seneca.[42] Both Aquinas and Suárez had emphasized that moral goodness consists in that part of

[36]J.B. Schneewind, *Invention of Autonomy*, 81.

[37]Brian Tierney, *Idea of Natural Rights*, 324; cf. 317–18.

[38]Proponents of the minimalist interpretation commit the same mistake. E.g. Haakonssen, *Natural Law*, 29.

[39]The suggestion that *Mare Liberum* contain substantially the same theory of natural law as *DJBP* should thus be rejected, pace Straumann, *Roman Law*, 25; Tuck, "Grotius, Carneades and Hobbes," 55; and Tuck, *Rights of War*, 100.

[40]Aquinas, *Summa Theologica*, I–II q.94 a.2.

[41]Cf. Suárez, *DL* 2.5.2; and Irwin, *Development, Vol. II*, 6.

[42]Aristotle, *Politics*, I.2, 1253a3; and Seneca, "On Mercy," Book 1, Section 3, Subsection 2.

the agent's good that is common to all human beings.[43] Yet *DJBP* was trailblazing, I contend, in emphasizing that natural law was grounded in "Sociability . . . or this Care of maintaining Society in a Manner conformable to the Light of human Understanding" (*DJBP* Prol.8, also Prol.12; cf. *De Imperio*, 7.2). Indeed, poetic illustrations of human sociability added to the 1631 edition were arguably intended to reinforce Grotius's novel account of the basis of natural law, rather than as strategic attempts to cloud putative proto-Hobbist leanings.[44]

Some proponents of the ultra-minimalist interpretation claim that "Grotius grounds natural law in sociableness" alone.[45] That is an exaggeration. The basis of natural law is human rational *and* sociable nature. Indeed, Grotius called "the Law of Nature . . . the Dictate of a reasonable and sociable Nature, considered as such" (*DJBP* 2.20.5.1).[46] The Prolegomena highlights two uniquely human natural dispositions. The capacity for speech attests to our sociable nature; that for following general rules to our rational nature (*DJBP* Prol.7–9). Both traits inform natural law and morality.

Confusingly, *DJBP* 1.2.1 introduces two further principles of human nature. The first principle pertains to humans qua animals. Like all other creatures, humans naturally desire their own preservation and avoid what is hurtful. The universality of these inclinations proves that it is proper and a "duty [*officium*] of every one to preserve himself in his natural State, to seek after those Things which are agreeable to Nature, and to avert those which are repugnant" (*DJBP* 1.2.1.1). The second principle, unique to humans, consists in right reason. The first natural principle may be called 'expediency' (*utile*); the second Grotius equated with 'moral goodness' or 'virtue' (*honestas*) (*DJBP* 1.2.1.2–3; *DJBP* 2.20.5.1).

As Christopher Brooke has shown, *DJBP* 1.2.1 draws heavily on the Stoic notion of *oikeiosis*, as developed by Cicero in *De finibus* III.16–23.[47] *Oikeiosis* is perhaps best translated as 'familiarization.' It expresses the process by which a person, through the force of nature, becomes familiarized with herself and with other beings of her kind.[48] For the Stoics, *oikeiosis* involves both the instinctive tendency to look after ourselves and the rational tendency to care about the good of the larger social structures of which we are a part (families, nations, ultimately the whole of humanity). Divine providence makes it rational for us to follow nature—human nature. Stoic ethics is eudaemonist. As rational creatures, the *bonum honestum* is part of each individual's good. While expediency and *honestas* can be at odds, true happiness requires virtue. We thus have reason to be virtuous grounded in our own good.[49]

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[43]Irwin, *Development, Vol. I*, 616–19; and Irwin, *Development, Vol. II*, 32–33.

[44]Cf. Tuck, "Introduction," xxiv–xxvii.

[45]Robert Shaver, "Grotius on Scepticism and Self-Interest," 28 and 47.

[46]Also, *DJBP* 1.2.1.3. A capacity to follow general rules is required for grasping obligation; consequently, only rational agents can be subject to natural law (*DJBP* 1.1.11).

[47]Cristopher Brooke, *Philosophic Pride*, 37–58. Also, Straumann, *Roman Law*, 88–119; and Jon Miller, "Stoics, Grotius," 122–24.

[48]Julia Annas, *The Morality of Happiness*, 262–63.

[49]On Stoic ethics, see Michael Frede, "On the Stoic Conception of the Good"; and Irwin, "Stoic Naturalism and Its Critics."

The place of these two natural principles in Grotius's moral philosophy has been misrepresented in the literature. Richard Tuck has argued that Grotius's natural law theory, like that of Hobbes, is "based on the principle of self-preservation."[50] In Tuck's narrative, Grotius developed a 'minimalist' natural law theory to counter a form of moral skepticism revived by Charron and Montaigne. "Fully conscious of the salience of the principle of self-preservation in the sceptics' account of how man should actually live," Grotius supposedly built a moral theory on the back of this principle to beat the sceptics at their own game.[51] Various critics have pointed out that Tuck's reading is contextually implausible. Grotius cited none of the modern sceptics.[52] The Carneades reference in the Prolegomena—Tuck's main direct evidence for a skeptical challenge—was more plausibly picked up from Alberico Gentili's *De armis Romanis* (1599). In that two-part work, Gentili reworked the so-called Carneadean dialogue from Book III of Cicero's *Republic*. Part One defends Roman imperialism on grounds of expediency; Part Two is a eulogy for justice in international affairs.[53]

Tuck's claim that, for Grotius, "self-preservation was . . . the basis for whatever universal morality there was" is untenable on purely textual grounds too.[54] Grotius stated explicitly that *honestas* is normatively prior to expediency, albeit ontologically secondary. (Humans are animals first and reasonable creatures second.) Not self-preservation, but *honestas* "ought to be the rule of our Actions" (*DJBP* 1.2.1.1). "Right Reason should still be dearer to us than that natural Instinct" (*DJBP* 1.2.1.2). This normative priority is reflected in the fact that right reason may require actions detrimental to self-preservation, including sacrificing one's life for the good of the community (e.g. *DJBP* 2.1.9.1; *DJBP* 2.25.3.3; *DJBP* 3.20.54–55).

In fact, the first principle of nature—expediency—is not a source of natural law at all.[55] Grotius warned throughout the text not to conflate expediency with right (*DJBP* Prol.6). Natural law is a dictate of right reason (*DJBP* 2.20.5.1). And right reason is equated exclusively with the second principle of nature, the love for *honestum* (*DJBP* 1.2.1.2). The two natural principles are rather invoked to determine what "belongs to the Law of Nature" (*DJBP* 1.2.1.3). This requires exploring both what right reason enjoins and what it permits. Natural law permits taking care of oneself (which is validated as natural by the first principle) only insofar as it does not harm human society (*DJBP* 1.2.1.6). The first principle of nature thus belongs to natural law only improperly, "by way of Reduction or Accommodation, that is, to which the Law of Nature is not repugnant" (*DJBP* 1.1.10.3).[56]

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[50]Tuck, "'Modern' Theory," 113.

[51]See especially Tuck, "'Modern' Theory," 109–13; "Grotius, Carneades and Hobbes," 52–61; *Philosophy and Government*, xv–xvi, 173–76, 196–99, 347–48; *Rights of War*, 5–6; and "Introduction," xviii–xxvii.

[52]Thomas Mautner, "Grotius and the Skeptics," 583. Also, Shaver, "Grotius on Scepticism and Self-Interest"; Perez Zagorin, "Hobbes without Grotius," 18–25; Brooke, *Philosophic Pride*, 37–41; and Straumann, *Roman Law*, 51–61, 97.

[53]Alberico Gentili, *The Wars of the Romans*. On Gentili's appropriation of Carneades, see David Lupher, "*De armis Romanis*."

[54]Tuck, *Rights of War*, 5.

[55]Pace Tuck, "'Modern' Theory," 112. Cf. Haakonssen's similar criticisms of Tuck in "Moral Conservatism," 31–32.

[56]Straumann, *Roman Law*, 114–15.

That it is proper (*officium*) for each to preserve themselves and to seek those things agreeable to nature does not make it a requirement of either right reason or natural law. Indeed, Grotius explicitly contrasted these promptings of "natural Desire" and "natural Instinct" with right reason, which targets moral goodness (*honestum*). The first principle of nature aims at natural goodness. In marked contrast with Hobbes, right reason, for Grotius, exclusively tracks moral goodness; moreover, the Dutchman made no attempt to reduce *honestas* to considerations of expediency.[57] While the natural desire to preserve oneself does not generate natural law duties, Grotius did maintain that Christians have a distinctly moral reason to preserve themselves. Revelation reveals that "the Right over our own Lives is not in ourselves, but in GOD" (*DJBP* 2.19.5.4). Consequently, the Stoics were mistaken to believe that "Man's Life is so entirely at his own Disposal, as that he may take it away himself, or authorize another so to do."[58]

In sum, *DJBP* singles out two uniquely human traits: natural sociability and rationality. As the law of human nature, natural law is based on both features. In the following sections, I argue that Grotius's two-pronged account of human nature generates a criterion of natural morality. Every action that 'of itself' promotes a society of reasonable creatures is morally good; conversely, every action that 'of itself' undermines such a society is morally bad. Yet Grotian natural law does not encompass the whole of natural morality on which it is based: it only deals with what is of itself obligatory or illicit.

4. NATURAL MORALITY AND NATURAL LAW

Natural law and natural morality are conceptually distinct, for Grotius. Natural morality captures what is intrinsically morally good or evil; natural law concerns what is intrinsically morally obligatory or forbidden. This section analyzes both concepts and shows how Grotius transformed Suárez's natural law theory. Grotius appears to have studied *De Legibus* (1612) and other works by Suárez carefully. Various scholars have emphasized resemblances between Grotius's account of natural law and that of the Spanish theologian.[59] The previous section revealed one significant difference: Grotius's inclusion of 'sociability.' This section highlights another consequential twist: his introduction of a naturalistic conception of moral obligation.

Suárez sought to develop a "middle course" between extreme voluntarists such as Ockham, for whom natural law consist entirely in divine commands and prohibitions; and radical naturalists like Gregory of Rimini, for whom natural law is completely independent of God's legislative will (*DL* 2.6.5). Crudely put, Suárez combined voluntarism about law, with naturalism about morality.[60] Natural law, Suárez claimed, has both indicative and preceptive aspects. It involves an

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[57]Cf. Hobbes, *On the Citizen*, 1.7 and 2.1. Citations to this work are according to chapter and section number.

[58]*DJBP* 2.21.11.2; also, *DJBP* 2.21.14.1–3; *DJBP* 3.2.6; *DJBP* 3.11.18.1.

[59]E.g. A. H. Chroust, "Hugo Grotius and the Scholastic Natural Law Tradition"; Edwards, "Law of Nature"; and Irwin, *Development, Vol. II*, 88–99.

[60]My interpretation of Súarez is indebted to Terence Irwin, *Development, Vol. II*, 1–69 and "Obligation, Rightness."

indicative judgment of reason, pointing out that certain actions are intrinsically morally good or bad, that is, in conformity or contrariety with rational nature (*DL* 2.5.5). Yet neither that judgment, nor the indicated rightness or wrongness, constitute natural law (either individually or jointly) (*DL* 2.5.8; *DL* 2.5.15). For natural law is not counsel; it is true law and hence binding (preceptive). "Law . . . is that sort of authority which can impose a binding obligation" (*DL* 2.6.6). According to Suárez, the relevant obligation can only be imposed by a superior (*DL* 2.6.22). God qua legislator "decrees that men shall be bound to obey that which right reason dictates" (*DL* 2.6.10). That decree need not be promulgated by revelation. The fact that we have been endowed with right reason "is of itself a sufficient sign of such divine volition" (*DL* 2.6.24). The obligation imposed by natural law is created by God's will. Yet divine commands or prohibitions do not create moral good and evil: "On the contrary, it necessarily presupposes the existence of a certain righteousness or turpitude in these actions, and attaches to them a special obligation derived from divine law."[61]

DJBP's definition of *ius naturale* adopted Suárez's separation of the divine legislative will from natural morality. The textual context proves Grotius meant natural *law*: the definition is introduced immediately after canvassing *ius* as *lex* (R3):

> Natural Law is the Rule and Dictate of Right Reason, shewing [A] the Moral Deformity or Moral Necessity there is in any Act, [B] according to its Suitableness or Unsuitableness to a reasonable Nature, and consequently, [C] that such an Act is either forbid or commanded by GOD, the Author of Nature. (*DJBP* 1.1.10.1)[62]

Like Suárez, Grotius distinguished (A) the moral quality of the action from (C) the inferred divine command or prohibition. What does it mean to say that 'moral wrongness' (*moralem turpitudinem*) or 'moral necessity' (*necessitatem moralem*) inheres or resides (*inesse*) in an action? The intrinsic property is a relational one: actions are morally good or evil compared to rational nature. "Now such is the Evil of some Actions, compared with a Nature guided by right Reason" (*DJBP* 1.1.10.5). More precisely, the right- and wrong-making features of these actions are their (in-)compatibility with rational nature, a consequence of how God has created us (*DJBP* Prol.12). We shall see, furthermore, that 'intrinsic' moral rightness and wrongness pertain to particular actions, not to classes of actions. Performing acts of charity, for example, is in some circumstances morally necessary and in others not.

Regarding (B), observe that the definition only mentions "reasonable Nature" (*natura rationali*). Grotius's commentator Barbeyrac inferred that *ac sociali* must be added to the definition, speculating that the words have accidentally been omitted by the transcriber or printer. Barbeyrac's move has been contested.[63] But only two paragraphs down Grotius declares that natural law can be proven a priori by

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[61] *DL* 2.6.11: "sed supponit in ipsis actibus necessariam quamdam honestatem vel turpitudinem, et illis adjungit specialem legis divinae obligationem." Also, e.g. *DL* 2.7.1; *DL* 2.9.4.

[62] "Ius naturale est dictatum rectae rationis indicans, actu alicui, ex eius convenientia aut disconvenientia cum ipsa natura rationali, inesse moralem turpitudinem aut necessitatem moralem, ac consequenter ab auctore naturae Deo talem actum aut vetari aut praecipe." The expression "convenientia aut disconvenientia" is reminiscent of Suárez (e.g. *DL* 2.6.13).

[63] Irwin, *Development, Vol. II*, 91 rejects the change, citing the "good reasons" given by Sidgwick, *Outlines*, 161n1.

exploring "the necessary Fitness or Unfitness of any Thing, with a reasonable and sociable Nature [*natura rationali ac sociali*]" (*DJBP* 1.1.12.1; also, *DJBP* 2.20.5.1). The reading advanced in the previous section, if correct, provides further support for Barbeyrac's emendation.

Whether Grotius's conception of moral obligation departs from Suárez is controversial. Disagreement exists over how to interpret the positions of both. Did Suárez believe that humans are morally required to do what is naturally right and wrong, independent of God's added obligation?[64] Or is it impossible for natural morality itself to generate duties (*debita*)? Whatever view we take, Grotius undoubtedly departed from the Jesuit by omitting his central point: that God's command is needed to create a "real prohibition or preceptive obligation . . . since such an effect cannot be conceived apart from volition" (*DL* 2.6.13).

For Grotius, natural law concerns actions that "are in themselves either Obligatory or Unlawful, and must, consequently, be understood to be either commanded or forbid by God himself."[65] Like Suárez, Grotius maintained that God cannot *not* command morally necessary actions and prohibit evil ones.[66] But, crucially, divine legislation is not needed to render the action obligatory to begin with. Grotius's conception of moral obligation thus renders "God in effect . . . dispensable."[67] Hence the significance of the *etiamsi daremus*.[68] My reading is bolstered by comparing Suárez's and Grotius's views on the difference between natural and positive law. Suárez cashed out the difference in terms of moral value. Positive law renders evil what it forbids, while natural law assumes the depravity of what it proscribes (*DL* 2.7.1, 6). Grotius, by contrast, explained the difference in terms of obligation. Positive law renders obligatory what was before morally optional, whereas natural law governs intrinsically obligatory actions (*DJBP* 1.1.10.2).[69]

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[64]As Irwin argues in "Obligation, Rightness" and *Development, Vol. II*, 29–30. Cf. John Finnis, *Natural Law and Natural Rights*, 46–49, 342; and Thomas Pink, "Reason and Obligation in Suárez." Pivotal in this dispute is *DL* 2.6.5: "Not only does the natural law indicate what is good or evil, but furthermore, it contains its own prohibition of evil and command of good." Given Suárez's ensuing discussion, I believe the relevant prohibitions and commands derive from God's legislative will.

[65]*DJBP* 1.1.10.2: "Actus de quibus tale exstat dictatum, debiti sunt aut illiciti per se, atque ideo a Deo necessario praecepti aut vetiti intelliguntur."

[66]Unlike Suárez (*DL* 2.6.20–24), Grotius does not explain why God cannot fail to do so. In a 1638 letter to his brother, he writes, "God was free not to create man. But man having been created, that is, a nature using reason and being adapted to the highest society, He necessarily approves actions as in harmony with such a nature and disapproves the opposite" (Grotius, "Less Known Works," 210).

[67]Haakonssen, "Moral Conservatism," 34.

[68]What role God plays in Grotius's conception of moral obligation has been debated at least since Barbeyrac's critical remarks on *DJBP* 1.1.10.2. For an alternative reading, see Finnis, *Natural Law and Natural Rights*, 43–44.

[69]Pufendorf contrasts these two views in *LNN* 2.3.4. Citations from this work are according to book, chapter, and section number. Darwall duly highlights Grotius's departure from Suárez on this point in "Modern Moral Philosophy," 309. Darwall proceeds to argue that the obligatory force of morality arises from the "standing to make *reasoned or reasonable claims and demands* of each other" ("Modern Moral Philosophy," 308; cf. 318–19, and 323). This standing allegedly follows from our status as rational and sociable creatures. The next section casts doubt on whether Darwall has accurately reconstructed the nature and normative source of Grotian moral obligations. We cannot demand others to fulfil duties of charity and gratitude, yet such non-dikaiological duties remain binding.

This naturalistic conception of moral obligation—actions can be morally obligatory of themselves, independent of human or divine legislative will—is new to *DJBP*. In the earlier *Jurisprudence*, Grotius still endorsed the Suárezian thesis that obligations to do what is naturally right are superimposed by God: "Natural law in man is an intuitive judgement, making known what things from their own nature are honourable or dishonourable, involving an obligation to follow the same imposed by God."[70] This definition leaves unmentioned that (in)compatibility with a reasonable and sociable nature makes actions morally right and wrong, obligatory and unlawful. Moreover, the set of actions humans 'intuitively' deem intrinsically right is vaster in the *Jurisprudence* than in *DJBP*. It includes seeking "the common good, and therefore its own, particularly its self-preservation." Right reason leads humans "to religion and to a rational communion with other men: the foundations whereof are, to do to others as you would they should do to you, to maintain faith; and, further, obedience, gratitude, and every moral virtue" (*Jurisprudence*, 1.2.6). The *Jurisprudence* contains no theory of supererogation. It suggests that whatever reason discovers is intrinsically morally good must be regarded as commanded by God.

DJBP, I have suggested, radicalized Suárez's decoupling of natural morality from moral obligation by adjoining a naturalistic conception of moral obligation. Certain actions are intrinsically obligatory or illicit, independent of God's command. For Grotius, natural morality and natural law are both conceptually distinct and extensionally non-equivalent: intrinsic moral goodness does not entail moral obligation.[71] Conversely, the moral badness of φ does not suffice to render φ-ing unlawful.

> But that we may the better understand this Law of Nature, we must observe, that [P] some Things are said to belong to it, not properly, but . . . by way of Reduction or Accommodation, that is, to which the Law of Nature is not repugnant; as some Things, we have now said, are called Just, because they have no Injustice in them; and [Q] sometimes by the wrong Use of the Word, those Things which our Reason declares to be honest, or comparatively good, *tho' they are not enjoined us*, are said to belong to this Natural Law. (*DJBP* 1.1.10.3, emphasis added)[72]

The passage makes two conceptual clarifications. (P) Anything that is not unjust is sometimes said to 'belong to' natural law in virtue of not contravening it. This corresponds to R1 (justice as a property of actions). More importantly, (Q) to treat everything that is morally good as part of natural law is to fundamentally misunderstand the meaning of 'law.' Natural law is a kind of *lex*—law, not counsel.

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[70] "Aengeboren wet in den mensche is het oordeel des verstands, te kennen ghevende wat zaeken uit haer eighen aerd zijn eerlick ofte oneerlick, met verbintenisse van Gods wegen om 't zelve te volgen" (*Jurisprudence*, 1.2.5). Cf. Suárez's definition: "the natural law, as it exists in man, does not merely indicate what is evil, but actually obliges us to avoid the same; and that it consequently does not merely point out the natural disharmony of a particular act or object, with rational nature, but is also a manifestation of the divine will prohibiting that act or object" (*DL* 2.6.13). Natural law in God must be described differently since its precepts are no law to Him.

[71] E.g. *DJBP* 1.1.9; *DJBP* 2.1.10.1.

[72] "Ad iuris autem naturalis intellectum, notandum est quaedam dici ejus iuris non proprie, sed ut scholae loqui amant, reductive, quibus ius naturale non repugnant, sicut iusta modo diximus appellari ea quae iniustitia carent. Interdum etiam per abusionem ea quae ratio honesta aut oppositis meliora esse indicat, etsi non debita, solent dici iuris naturalis."

"I say, obliging: for Counsels, and such other Precepts, which, however honest [*honesta*] and reasonable they be, lay us under no Obligation, come not under this Notion of Law, or Right" (*DJBP* 1.1.9; also *DJBP* 2.14.6.1). The distinction between natural morality and natural obligatoriness permitted Grotius to claim that not every action with intrinsic moral (dis)value is obligatory/unlawful. This prepared the ground for a key feature of Grotius's theory of natural law: its inclusion of a theory of supererogation.

5. SUPEREROGATION

Scholars have long pointed out that human and divine positive law may render obligatory what was before only morally commendable (*DJBP* 1.2.1.3).[73] It has hitherto escaped notice that natural law can do the same. Grotius, in other words, incorporates a doctrine of supererogation into his natural law theory.

Supererogatory acts are actions beyond the call of duty: morally good but not morally required.[74] Acting otherwise is therefore morally permitted. Grotius introduced this idea as follows:

> This last Principle, which we call *Honestum*, according to the Nature of the Things upon which it turns, sometimes consists (as I may say) in an indivisible Point; so that the least Deviation from it is a Vice: And sometimes it has a large Extent; so that if one follows it, he does something commendable [*laudabiliter*], and yet, without being guilty of any moral wrong [*sine turpitudine*], he may not follow it, or may even act quite otherwise. (*DJBP* 1.2.1.3)[75]

Expletive justice is a black-and-white issue. Violating perfect rights is always unjust and impermissible. All other virtues involve a degree of latitude. Although their performance is always praiseworthy, they can often be omitted without committing a moral wrong. For example, "to marry is lawful, but to abstain from Marriage with a pious Intent is more laudable" (*DJBP* 3.4.2.1, alluding to 1 Cor. 5:8–9). Many naturally right actions do not fall under natural law. Oftentimes, "the Law of Nature does not require" conduct that would be honest and commendable (*DJBP* 2.3.6.2). Indeed, the idea of supererogation plays a crucial role in *DJBP*'s just war theory: in war, a big chasm exists between what natural law requires and what would be the morally best thing to do.

Grotius certainly did not 'invent' supererogation. The idea can be traced back at least to Ambrose's comments on the parable of the Good Samaritan (Luke 10:35).[76] Yet the way in which Grotius integrated it into natural law was novel. Within the Christian tradition, supererogation was usually discussed within the context of the

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[73]E.g. Haakonssen, *Natural Law*, 28; and Tierney, *Law and Liberty*, 215–47.

[74]The classic treatment of supererogation is J. O. Urmson, "Saints and Heroes." For other helpful conceptual analyses, see David Heyd, *Supererogation*; Michael J. Zimmerman, *The Concept of Moral Obligation*, 232–53; and Paul McNamara, "Making Room."

[75]The metaphor recurs in *DJBP* 1.2.8.4; and *DJBP* 2.1.5.1.

[76]On the history of supererogation, see Heyd, *Supererogation*; Joachim Hruschka, "Supererogation and Meritorious Duties"; and Dimitrios Dentsoras, "The Birth of Supererogation." Supererogation became a controversial topic after the Reformation. Protestants disputed its existence to undermine a salient Catholic justification for selling indulgences: that the moral credit monks earn by performing morally praiseworthy but non-obligatory acts—such as praying and fasting—is transferable. Properly contextualizing Grotius's ideas within these theological debates would require a separate paper.

three Biblical counsels of perfection: chastity, poverty, and obedience. Aquinas had subsumed these precepts under natural law.[77] Suárez fiercely contested this: "we must absolutely deny that counsel is included within the field of law."[78] All actions with the "highest degree of moral excellence" are matters of counsel (*DL* 2.7.11). Such counsels of perfection are outside natural law since moral rectitude does not require them: they merely facilitate moral perfection by removing temptations. According to the Spanish theologian, "natural law embraces all precepts or moral principles which are plainly characterized by the goodness necessary to rectitude of conduct, just as the opposite precepts clearly involve moral irregularity or wickedness" (*DL* 2.7.4). A precept is part of natural law insofar as it is required for right conduct; yet counsels of perfection can be left unheeded without jeopardizing mandated moral ends. Suárez followed tradition in claiming that precepts such as liberality and clemency "ought to be practiced" only in the right place and time, as determined by "the mean of a virtue" (*DL* 2.7.12–13; also, *DL* 2.8.9). Yet unlike Grotius—who mocked the Peripatetic doctrine of the mean—the Jesuit regarded acts of charity and mercy morally valuable (*honestas*) only in the appropriate circumstances, when such conduct is obligatory. While Suárez has room for the supererogatory, supererogation is thus not integrated into his natural law theory: he does not appear to have held that natural law can, on certain occasions, render obligatory what is otherwise merely morally commendable.

Grotius recognized many "Acts of Humanity which we laudably exercise towards private Persons, tho' not bound to it in Rigour" (*DJBP* 3.15.1).[79] Yet in some circumstances, such acts of humanity *are* strictly obligatory. Acts of clemency and liberality are usually merely "honourable" in a conqueror. But "sometimes even necessary, by the Rules of Virtue, according as Circumstances shall require" (*DJBP* 3.20.50.1). Helping out friends in need is often commendable (*laudabile*) and sometimes "even a Duty" (*necessarium* [*DJBP* 2.7.9.1]). Precepts other than expletive justice do not obligate categorically but only in exceptional circumstances. Numerous passages prove so.

> Circumstances too may sometimes fall out so, that it may not only be laudable, but an Obligation in us to forbear claiming our Right, on account of that Charity which we owe to all Men, even tho' our Enemies; whether this Charity be considered in itself, or as it is what the sacred Rule of the Gospel requires at our Hands. (*DJBP* 2.24.2.3)[80]

Grotius here contrasted two sources of duties of charity: natural law and divine positive law. Moral theologians had traditionally distinguished between two kinds of charity: *dilectio* and *caritas*. *Dilectio* is a rational (i.e. non-sensual) love towards fellow-humans. *Caritas* is the rational love of God and of everything that belongs

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[77]Aquinas, *Summa Theologica*, I–II q.94 a.3, q.100 a.4, and II–II q.147 a.3. For discussion, see Dentsoras, "The Birth of Supererogation," 352–57; and Shawn Floyd, "Aquinas and the Obligations of Mercy."

[78]*DL* 1.1.8; also, *DL* 1.12.4; *DL* 2.9.7.

[79]Grotius uses various terms to capture what is morally commendable but not required: *laudabiliter*, *probatissime*, *pium*. Cf. *DJBP* 1.2.1.3; *DJBP* 1.2.8.4; *DJBP* 1.2.9.4; *DJBP* 2.1.8; *DJBP* 2.5.9.3; *DJBP* 2.10.11; and *DJBP* 2.12.9.2.

[80]"Interdum eae sunt rerum circumstantiae, ut iure suo abstinere non laudabile tantum sit, sed et debitum ratione eius quam hominibus etiam inimicis debemus dilectionis, sive in se spectatae, sive qualiter eam exigit sanctissima lex Evangelii." Also, *DJBP* 3.18.4.

to Him (including human beings). As a theological virtue, *caritas* requires divine grace. Grotius used *dilectio* and *caritas* interchangeably. Yet he did differentiate between charity as measured by divine positive law and the natural precept of charity knowable by reason. Indeed, Grotius stated explicitly that the content of *caritas* itself can be determined "abstractedly from all Human and Divine Laws" (*DJBP* 2.1.11; also, *DJBP* 2.1.10.1).

The Gospel obligates Christians to perform actions of charity which are 'in themselves' morally optional. It thus prescribes more demanding acts of love (*dilectio*) than the natural precept of charity (*DBJP* 1.2.8.10; 1.18.4; 2.24.2.3): "The Christian Religion commands, that we should lay down our Lives one for another; but who will pretend to say, that we are obliged to this by the Law of Nature?"[81] When divine positive law renders a previously morally optional action mandatory, the source of moral value and the source of moral obligation come apart. Charitable actions are by nature morally good. Yet the Biblical duty to perform them is externally imposed. God's revealed will is the source of moral obligation; it is not a feature of the action itself. What Suárez deemed necessary for moral obligation generally applies for Grotius only to divine positive law.

Natural law can also turn charity into a duty. Self-defense against unlawful aggression, for instance, is normally permissible by the law of nature—the first principle of nature suggests as much. But natural law prohibits regicide even in self-defense. If "the *Aggressor*'s Life is serviceable to *many*, it would be *criminal* to take it from him . . . also by the very Law of *Nature*" (*DJBP* 2.1.9.1). Generally, "to prefer the Advantage of many Persons to my own single Interest, is what *Charity* [caritas] often advises, sometimes commands" (*DJBP* 2.1.9.3; also, *DJBP* 2.25.3.3). This passage states explicitly that natural law at times obligates us to do what is otherwise merely morally commendable. Since Grotius stressed repeatedly that natural law properly understood includes virtues other than justice (e.g. *DJBP* 1.1.9; 2.1.9.1), it seems warranted to infer that the duties of charity, gratitude, fidelity etc., mentioned elsewhere ought to be performed on pain of violating natural law.

It is often asserted that virtues attending to imperfect rights never impose binding demands: "Nor, in Grotius's theory, are there positive duties of charity, which oblige us to assist others in distress."[82] In fact, moral duties other than justice are mentioned dozens of times throughout *DJBP*: "For there are many Duties, not of strict Justice but of Charity, which are not only very commendable . . . but which cannot be dispensed with without a Crime [*sine culpa*]."[83] About the filial obligation to act in a manner agreeable to their parents, he wrote, "this duty [*debitum*], not being by Vertue of a moral Faculty . . . but proceed[ing] from natural Affection, Respect, and Gratitude" (*DJBP* 2.5.3). Grotius employed various terms to express the 'ought' pertaining to such non-dikaiological duties: *debitum* and its cognates,[84]

[81] *DJBP* 1.2.6.2; also, *DJBP* 2.1.10.1; and *DJBP* 2.20.10. More generally, see e.g. *DJBP* Prol. 51; *DJBP* 1.1.17; *DJBP* 1.2.6.1; and *DJBP* 2.12.20.3.

[82] John Salter, "Hugo Grotius: Property and Consent," 551. Also, Buckle, *Natural Law*, 31.

[83] *DJBP* 2.25.3.3. Also, e.g. *DJBP* 2.22.10.1; *DJBP* 2.24.2.3; *DJBP* 2.25.3.4; *DJBP* 3.1.4.2; and *DJBP* 3.18.4.

[84] E.g. *DJBP* 2.11.3; and *DJBP* 2.22.16.

officium,[85] and *sub praecepto posuit*,[86] even *obligatio*. "It happens in many Cases, that we may lay ourselves under an Obligation, and at the same Time give no Right to any other over us, as appears in the Duties of Compassion and Gratitude" (*DJBP* 2.11.3).[87] Indeed, Grotius treated *obligatio* and *debitum* as interchangeable. The obligation corresponding to *creditum*, for instance, is called *debitum* (*DJBP* 1.1.5). *Debitum* is, however, an equivocal term:

> We ought to distinguish the word *Obligation*, which is sometimes taken strictly, for that which is founded on expletive Justice; sometimes in a larger sense, for that which cannot be omitted without offending against *honestas*, tho' this *honestas* proceeds from some other Source than rigorous Right, properly so called. (*DJBP* 2.7.4.1)[88]

When we speak of duties of charity and gratitude, we use 'obligation' in this larger sense: as actions we ought to perform on pain of acting wrongly, against *honestas*. For a failure to perform supererogatory actions is by definition not *inhoneste*. Positive law may grant individuals a perfect right "to those Things which are due by other Virtues." When that happens, "there arises a new Obligation which belongs to Justice" (*DJBP* 2.22.16). Distinctive of non-dikaiological duties is that others have no perfect right to their performance. But that does not make them any less truly obligatory.[89]

Grotius listed many instances of duties that lack corresponding perfect rights. Consider his distinction between perfect and imperfect promises. A complete promise confers "on another a real Right of demanding the Performance of our Promise" (*DJBP* 2.11.4). Complete promises are thus enforceable by other humans. Incomplete promises "give no Right, properly so called, to him to whom it is made." Although therefore not-exactable by others, an imperfect promise nonetheless "obliges either absolutely or conditionally" (*DJBP* 2.11.3). Concerning what "oblige[s] by the Law of Nature only," Grotius wrote:

> Authors sometimes abuse the Term of natural Obligation, by interpreting it to be what is naturally fair and honest, but not what is properly and strictly due. . . . But sometimes indeed they construe it more properly to be what does really oblige us, whether it transfer a Right to another, as in Contracts; or transfers none, as in an imperfect Promise. (*DJBP* 2.14.6.1)

In other words, *debitum* duly understood expresses whatever is "properly and strictly obligatory," regardless of whether the duty entails corresponding perfect rights in others. As *De Satisfactione* 2.17 explains, "the word *debere* does not always denote a relation between two people." Modern scholars make the opposite mistake of the "Civilians" attacked here: they fail to realize that duties that generate no perfect

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[85] E.g. *DJBP* 2.7.10.1.

[86] E.g. *DJBP* 2.15.10.1.

[87] "Multis enim casibus evenit, ut obligatio sit in nobis, et nullum ius in alio; sicut in debito misericordiae et gratiae reponendae apparet." See Hruschka, "Supererogation and Meritorious Duties," 100.

[88] "Nos omnino distinguendum arbitramur in voce debiti, quod stricte interdum sumitur pro ea obligatione, quam inducit ius expletorium; interdum laxius, ut significet id quod nisi inhoneste omitti non potest, etiamsi honestas illa non ex iustitia expletrice, sed ex alio fonte proficiscatur." Also, *DJBP* 3.20.49.2.

[89] Grotius speaks explicitly about the law (*lex*) and rules (*regula*, *norma*) of love. For *lex dilectionis*, see *DJBP* 1.2.8.10; *DJBP* 2.1.4.1. For *lex caritatis*, see *DJBP* 3.2.6; *DJBP* 3.11.2.1; and *DJBP* 3.21.24.2. For *regula/norma caritatis*, see *DJBP* 2.2.6.4; *DJBP* 2.12.9.2; *DJBP* 2.17.9; and *DJBP* 3.13.4.1.

rights can "really oblige us." Hence the common conflation of natural law with expletive justice.

I have argued that natural law sometimes commands individuals to perform acts of mercy, gratitude, and charity—acts that are ordinarily beyond the call of duty. Intriguingly, Grotius also had conceptual space for the 'suberogatory': what is morally bad to do but not morally forbidden.[90] An example is deceitful speech short of lying: "it may happen, that to use this kind of speaking may not only be discommendable, but wicked, as when either the Honour of GOD, or our Charity to our Neighbour . . . requires, that we should plainly declare the Truth" (*DJBP* 3.1.10.3; also, *DJBP* Prol.44). Likewise, in an allusion to Cicero:

> if a Man should know that there are several Ships coming laden with Corn, he is not obliged to tell you so; but, however, to reveal such a Thing is kind and commendable [*officiosum ac laudabile*], and in some Cases not to be omitted without Breach of Charity [*caritatis*]; yet I will not say it is unjust, that is, that it violates his Right with whom he is dealing. (*DJBP* 2.12.9.2)[91]

Why is announcing that more corn will arrive shortly sometimes morally required and at other times merely praiseworthy? What makes it the case that otherwise supererogatory actions become mandatory? My conjecture is that Grotius's innovative conception of natural law provided him with a criterion to determine this.

Recall that natural law differs from positive law in governing intrinsically obligatory and unlawful acts. An action is obligatory if and only if it cannot be omitted without committing a moral wrong. Grotius's criteria for moral right and wrong are suitability or unsuitability to human nature, that is, to rational and sociable nature. An action is intrinsically morally good insofar as it per se promotes "a society of reasonable creatures" (*DJBP* 1.1.3.1); bad insofar as it is detrimental to it. Natural law requires performance of those intrinsically morally good actions that are necessary for the maintenance of human society; it forbids those intrinsically evil actions that are outright incompatible with it. Suitability with human society is thus a criterion for both moral value and moral obligation. But being conducive to human society does not by itself suffice to render an action mandatory: its omission must be a positive moral wrong.

This suggests that an action is supererogatory if and only if it meets the following two conditions: (1) the action is by its nature suitable to human society; (2) *not*-performing the action is not unsuitable to human society. The first condition establishes that the action is morally good, the second that it is morally optional. Acting charitably, mercifully, gratefully etc. are always suitable to human society. (This is what makes them moral virtues.) But acting contrary-wise is not always unsuitable to human society.[92] Violations of perfect rights, by contrast, are always and by their nature contrary to human society. The least deviation from this standard is an evil.

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[90]Julia Driver, "The Suberogatory."

[91]Cf. Cicero, *De officiis*, 3.50; and Pufendorf, *LNN* 5.3.4.

[92]Or, to include the suberogatory: not *so* unsuitable that it is impermissible to perform the action.

We can now formulate a criterion to determine whether an action falls under natural law properly understood. Any action φ is governed by natural law if and only if not φ-ing is (either by its nature or due to present circumstances) contrary to a society of reasonable creatures. Thus, merchants are under a natural law duty to inform inhabitants about the expected arrival of shiploads of corn (rather than exploit their ignorance) when not doing so is incompatible with human sociability. Likewise, natural law forbids individuals to exercise rights of self-defense against sovereign aggression because this endangers social peace (*DJBP* 2.1.9.1). One would have wished that Grotius had spelled out criteria of application to determine which actions exactly are contrary to rational and sociable human nature. What features must actions have in order to count as (un)fitting to human society? Despite its indeterminacy, the concept of 'fittingness to human society' allows us to grasp the structure of Grotius's natural law theory as a placeholder-notion.

This section has presented a plethora of textual evidence attesting that Grotius recognized moral duties other than expletive justice. Moreover, I have mustered abundant textual support for my main contention: that supererogation is a central feature of Grotius's ethical theory, limiting the content of natural law. Additionally, I have suggested that natural law obligates agents to perform otherwise supererogatory actions whenever circumstances are such that not-performing the action is inconsistent with human society. *That* suggestion is not based on direct textual evidence; it rather follows from my reconstruction of the structure of Grotius's natural law theory.

6. TWO IMPLICATIONS

Natural law, I have argued, is not restricted to expletive justice. Many other moral virtues, including those that do not respond to imperfect rights, may at times come under its purview. In this section, I discuss two noteworthy implications of my analysis. First, if my reconstruction is right, then Grotius employed two distinct and incompatible conceptions of injustice. Second, contrary to what we may expect, not every transgression of natural law is punishable. I discuss each in turn.

What is injustice? For Grotius, the answer depends on whether injustice is defined as a violation of expletive justice or of natural law. On the former conception, injustice consists exclusively in infringing another's perfect rights: "the very Nature of Injustice consists in nothing, else, but in the Violation of another's Rights." Conversely, "Justice . . . consists wholly in abstaining from that which is another's."[93] Justice and injustice thus conceptually implicate individual rights. This definition of injustice, prevalent in the Prolegomena, is prominent in the literature. Haakonssen, for instance, writes that Grotius characterizes "ius, as that which is not unjust, meaning by this such actions as do not infringe upon the suum and dominium of others."[94]

Natural law informs a second conception of injustice. The law of nature prohibits as unjust any action that is intrinsically repugnant to human society: "Now that is unjust which is repugnant to the Nature of a Society of reasonable

[93] *DJBP* Prol.45; also, *DJBP* Prol.10; and *DJBP* 2.12.9.2.

[94] Haakonssen, "Hugo Grotius," 241. Also, e.g. Olivecrona, "Concept," 276.

Creatures" (*DJBP* 1.1.3.1). And elsewhere: "by *unjust* we mean that which has a necessary Repugnance to a reasonable and sociable Nature" (*DJBP* 1.2.1.3). This second definition does not explicate injustice in terms of individual rights. Rather, violations of perfect rights are only derivatively unjust, in virtue of being repugnant to human society. The measure of injustice, so understood, is incompatibility with a sociable and rational nature. Only on the ultra-minimalist interpretation are these two conceptions of injustice extensionally equivalent. On my reading and all other extant interpretations, Grotius employed two irreconcilable conceptions of injustice. The prevailing ultra-minimalist interpretation thus misconstrues, I contend, the relation between natural law and subjective rights.

The second tension concerns the right to punish. If, as I have argued, natural law sometimes mandates acts of mercy or charity, then why did Grotius regard failures to fulfil these virtues as inherently unpunishable? "Nor are Actions to be punished, that are done in opposition to Virtues, which by their very Nature are averse from all Compulsion, such as Mercy, Liberality and Gratitude" (*DJBP* 2.20.20.1). The duty is one of conscience only.[95] Why are such moral wrongs never liable to punishment? If the wrong-making feature of such vices is undermining human society, then it seems desirable to render them punishable.

Some commentators have simply stipulated that only violations of perfect rights are punishable.[96] Two considerations militate against this move. First, crimes that only "indirectly and consequentially" hurt others (such as suicide, bestiality, and atheism) are punishable (*DJBP* 2.20.44.2). 'Indirect' crimes do not violate anyone's rights. They are rather crimes against human society as such (*DJBP* 2.20.46.4). Unless we want to attribute to Grotius the claim that society itself has violable rights—infringed by self-murderers—then it follows that the class of punishable actions is not exhausted by violations of perfect rights. Second, this stipulation conflates the right to seek compensation with the right to punish. Rights-violations warrant reparation; a crime warrants punishment. Grotius explicitly distinguished wars waged to restore rights from punitive wars (e.g. *DJBP* 2.20.38). I conclude that Grotius has logical space for the idea of punishing non-rights-violating crimes.[97]

So why are violations of non-dikaiological duties unpunishable? Grotius himself suggested that if virtues like mercy and gratitude would ever be compulsory, they would "lose that which is most commendable" in them (*DJBP* 2.20.20.2). Influential though this suggestion was,[98] it is not very compelling. Mercy does not generally become less meritorious if its omission becomes punishable in those rare circumstances in which merciful conduct is morally required. A philosophically more interesting explanation is that Grotius had to render such moral wrongs unpunishable to rule out the possibility of conflicting rights.[99] Charity sometimes requires us to forgo (exercising) a perfect right: "every Thing that is conformable

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[95]On duties of conscience, see, e.g. *DJBP* 3.7.6.1; *DJBP* 3.10.5.2; and *DJBP* 3.20.25.

[96]E.g. Andrew Blom, "Owing Punishment," 25.

[97]Johan Olsthoorn, "Grotius and the Early Modern Tradition," 49–50.

[98]E.g. Van Velthuysen, *Letter*, 76; and Pufendorf, *LNN* 1.9.5. Observe that Pufendorf's argument for the noncompulsory nature of virtues—"it is meer Folly to apply a Remedy more grievous than the Disease"—is inapplicable in this case (*LNN* 1.7.7).

[99]Grotius rejects the possibility of true bilateral justice (e.g. *DJBP* 2.26.6.2).

to Right properly so called, is not always absolutely lawful; for sometimes our Charity to our Neighbour will not suffer us to use this rigorous Right" (*DJBP* 3.1.4.2; also, *DJBP* 3.2.6). For example, duties of charity sometimes mandate forgiving debtors—i.e. to give another what is yours. Such duties neither annul the creditor's right in the thing owed, nor grant the debtor enforceable rights against the creditor. Had failures to observe duties of charity been punishable, then individuals could sometimes be punished in contravention of their perfect rights (e.g. property titles).

CONCLUSION

This paper has argued that Grotius's conception of natural law has been widely misconstrued in the literature due to the neglect of a key component of it: supererogation. I have argued that, in Grotius's view, naturally morally good actions—such as acts of charity, clemency, and liberality—are outside natural law insofar as they are not morally required. For law is not counsel but command. Natural law exclusively concerns actions that are 'naturally' obligatory or illicit (i.e. without human or divine command); incompatibility with human rational and sociable nature renders actions naturally illicit. Performance of virtues other than justice, Grotius insisted, is sometimes morally obligatory. When? The logic of his argument suggests: when their omission is repugnant to a rational and sociable nature. These actions are then prescribed by natural law. Supererogation thus narrows the domain of Grotius's law of nature. But not by as much as the prevailing minimalist and ultra-minimalist interpretations would have it.

The analysis I have proffered has been primarily textual. It goes beyond the scope of this paper to consider what my reading implies for Grotius's place in the history of ethics. Let me close by hinting at one relevant implication. It has been argued that modern natural law theory is duty-based. Hence, "prima facie supererogatory acts were to be seen simply as special duties."[100] "After the Reformation," Hruschka writes, "The concept of supererogation is replaced by the concept of a meritorious duty."[101] My analysis of Grotius's ethical theory suggests that this claim needs qualification. That having said, supererogation has indeed no place in the natural law theories of Hobbes, Pufendorf, and Cumberland—three of Grotius's main successors. This may well be because each of them jettisoned, for diverging reasons, a natural morality independent of natural law. Grotius's naturalistic conception of moral obligation likewise found little uptake.[102] Future research must determine whether the rejection of natural morality and natural obligatoriness suffices to explain the disappearance of supererogation from modern natural law theory.[103]

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[100]Haakonssen, *Natural Law*, 26.

[101]Hruschka, "Supererogation and Meritorious Duties," 105.

[102]Cf. Pufendorf's scathing remarks in *LNN* 2.3.4: "it would remain a most perplexing Doubt what those Acts are which we thus suppose in themselves Unlawful, and by what distinguishing Token they may be clearly known from others." For further discussion, see Olsthoorn, "Grotius and Pufendorf."

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