

Introduction

There is no justice, or if there is, it is supreme folly, because attending to the advantage of others is violence to one's own.

– Grotius's "Carneades"¹

The seventeenth century is a watershed in the history of European ethics – a moment in which a eudaimonistic model rooted in ancient Greece began to give way to a distinctly modern, juridical model of morality. If the central question of Greek ethics was how one should live, the answer lay in the nature of the ultimate good. Aristotle observed that everyone agreed in calling the ultimate good of a human life *eudaimonia* or well-being; disagreement was over its constituents.² On the eudaimonistic view, an account of the good life and how to achieve it covers the whole of ethics, because all of one's practical reasons for action and affective reasons for desire or passion are rooted in one's own good: eudaimonism is an ultimately egoistic ethics.

The modern conception of ethics departed from this picture in two significant ways. First, if Greek ethics specified the dispositions of character needed to realize eudaimonia, modern ethics took the form of a juridical *code*, i.e., moral laws and obligations. Second, such obligations may in principle conflict with one's own good.³ True, the basis for this shift had been laid much earlier – by the Stoics and Cicero, who introduced the notion of natural law, and by Aquinas, who fused natural law with the Christian idea of a divine legislator. But the decisive break occurred in the seventeenth century: notwithstanding the earlier legalistic framework, seventeenth-century ethics is distinguished by the emergence, through the works of Francisco Suárez, Hugo Grotius, and Thomas Hobbes, of a *juridical* notion of obligation.

Suárez fired an opening salvo in this direction from the apex of late scholasticism in his 1612 *De Legibus ac Deo Legislatore*. He did so in the

¹ JBP Prolegomena.5. ² NE 1.4. ³ Sidgwick (1896); Anscombe (1958); Darwall (1995, 2012).

course of seeking middle ground between intellectualists, who thought natural laws merely *indicate* what is intrinsically good by nature, and voluntarists, who insisted that God's will *makes* things good. Suárez argued that some things are indeed good by nature, but that law in its proper sense does not consist in merely pointing out what is good. Natural law therefore has two aspects. As a dictate of reason, it indicates what is necessary for virtue or honourableness (*honestas*) and hence for *felicitas* (as eudaimonia was rendered into Latin). But it is properly law, and hence obligatory, only insofar as it is *prescribed* or commanded by God. It is true that classical natural-law theorists such as Aquinas had also previously claimed that natural laws obligate, and hence are morally due or *debitum*. But they worked with a wholly eudaimonistic notion of obligation. For Aquinas, "obligatory" just means *necessary* to felicity – whether in the loose sense of conducive (*utile, melius, expediens*) to supererogatory virtue (yielding an admonition of *counsel*), or strictly necessary because indispensable to virtue as such (yielding a true debt and precept of *obligation*).⁴

Suárez answered Aquinas's twofold distinction with a threefold one. First, what is due because supererogatory or optimum, but which is not strictly necessary to felicity, is a matter not of "moral obligation," but counsel. Second, a dictate of reason merely indicating what is indispensable for felicity does not impose obligation either: it indicates a natural debt to oneself.⁵ Obligation arises solely in virtue of a prescription binding on pain of guilt, and this requires not counsel, but the *command* of a superior to whom one is accountable for violations.⁶ God's command *superimposes* obligation on the "natural" *honestas* of what is necessary for felicity – it cannot be reduced to eudaimonistic necessity.⁷ Two points are noteworthy. First, obligation is inherently grounded for Suárez in God's will. Second, despite his juridical conception of obligation, Suárez retained an essentially eudaimonistic outlook: while the law's obligatory character renders one *accountable* to a superior, one's *reason* for abiding by the law is not that it is obligatory, but that it specifies the path to felicity, i.e., the reason is extrinsic to the obligation. Grotius broke with Suárez on both counts.

Grotius's response to the classical objection against justice is emblematic of this watershed. Grotius raised the objection in Carneades's voice (quoted in our epigraph) at the start of his prolegomena to *De Jure Belli ac Pacis* (1625, second edition 1631). Grotius had Carneades argue that there

⁴ ST I-II.99.1; 99.5; 100.2; 108.4; II-II.58.3; 88.3. ⁵ DLDL II.9.7; 7.11–12; 6.11; 9.1; 9.4.

⁶ DLDL I.1.7–2.9; 3.18–4.4; 12.4. ⁷ DLDL II.6.11–12.

is no *jus naturale*, no natural norms of justice: “men imposed laws [*jura*] upon themselves,” purely for reasons of mutual expedience (*utilitate*); these conventions consequently lose their normative purchase the moment they turn to one’s disadvantage. The classical eudaimonistic response to this sort of objection began by granting its basic premise: practical reasons are all ultimately rooted in one’s own good. But apart from Epicureans, the eudaimonists typically held that the virtues – including justice, which requires attending to a common good – are themselves intrinsic components of one’s own good. Cicero argued on this basis, for example, that because what is expedient or *utile* depends on what constitutes one’s good, no action is expedient unless it is *honestus*.⁸ Hence the classical response was that the *reason* one should care for others is that doing so is a constituent of – and not merely instrumental to – one’s own good. This assumption of an underlying natural harmony of interests is why classical natural-law theory remained eudaimonistic. To be sure, natural law, as Aquinas and Suárez defined it, is oriented to the *common* good, but it is *normative* for individuals because it intrinsically directs each to their own good: the common good is constitutive of each individual’s good.

Grotius’s response to Carneades in the prolegomena can be read as continuous with this eudaimonistic tradition.⁹ There he argued that justice is not folly because, although sometimes it requires forgoing what is expedient in a narrowly self-regarding sense (*sibi utilia*), we are also naturally *sociable* creatures who long for living peaceably together – and the point of justice or *jus naturale* is to secure this end. Justice is not merely *instrumental* to sociable, peaceable living; living justly is also a way of *expressing* our sociable nature: “Even if no *utilitas* were expected from observing *juris*, it would yet be wisdom, not folly, to obey the felt direction of our own nature.”¹⁰

But once Grotius carried his response past the prolegomena, he entered new territory. There he distinguished *jus* understood expansively to mean whatever is not unjust and hence repugnant to a society of reasonable creatures – i.e., what is consistent with right reason – from *jus* meaning a *lex* or law consisting in “a rule of moral actions imposing obligation to what is right.”¹¹ The break with eudaimonism occurs with this notion of obligation. Like Suárez, Grotius insisted it is an “abuse” to include under obligation supererogatory acts that are “by nature *honestum*” and praiseworthy, “but not truly due [*debitum*].”¹² To characterize natural law, “we

⁸ DO 2.10; 3.12; 3.116–17. ⁹ Irwin (2008). ¹⁰ JBP Prolegomena.6–18; 44. ¹¹ JBP I.1.9.
¹² JBP II.14.6; 5.9.

require obligation: for counsels and other such prescriptions, which are *honestas* but not obligatory, do not fall under the name *legis* or *juris*.¹³ He then distinguished a loose and a strict sense in which acts can be truly due or obligatory under *jus naturale*. The loose sense of obligation – which corresponds to Aquinas’s strict notion – is eudaimonistic: it “signifies what cannot be omitted without dishonour [*inhoneste*].”¹⁴ But the strict notion – “obligation imposed by expletive justice”¹⁵ – is a juridical one, which Grotius modelled on the Roman law of actions.¹⁶

To have an *actio* in Roman law was to have available a lawful procedure – either judicial or private – to vindicate violations of one’s claims.¹⁷ Similarly, the essence of being under an obligation in Grotius’s juridical sense is for someone to have the standing *to hold one accountable* to its terms: to demand its fulfilment and seek its enforcement and, in case of violation, to seek reparations and punishment for injury.¹⁸ This standing or *jus exigendi* is constitutive of what Grotius famously called a “perfect right.” To have an *imperfect* right is to merit something – to be worthy, apt, or fit for it. If you merit my gratitude (or charity or generosity), then my gratitude is due or obligatory in the loose sense that it is indispensable to my *honestas* – not only is it praiseworthy, but its omission would be blameworthy (*culpa*) and sinful (*peccatum*). But you have no standing to demand or enforce my gratitude – whether in court or by arms – and I am not bound to restitution.¹⁹ A *perfect* right, by contrast, is due strictly: the correlative obligations are a matter of justice in the strict, “expletive” or reparative sense, and the right-holder has standing to demand and seek to enforce it.²⁰ To have an obligation here means to be liable for reparations and punishment in case of guilt (*culpa*).²¹

Grotius thus departed from Suárez on two counts. First, juridical obligation does not depend on God’s will: the standing to hold accountable is grounded directly in humanity’s sociable nature. Second, juridical obligation not only consists in the perfect-right-holder’s standing to hold accountable; it is also intrinsically normative for the obligated person: natural sociability simultaneously grounds both the standing to hold

¹³ JBP I.1.9. ¹⁴ JBP II.7.2. ¹⁵ JBP II.7.2; 7.4; 13.1; 20.2. ¹⁶ JBP I.1.5; II.1.2; 14.6.

¹⁷ Metzger (1997).

¹⁸ In war, these correspond to the rights of self-defence, recuperation, and punishment. JBP II.1.2.

¹⁹ JBP II.11.3; 11.4; 13.17; 17.2; 17.9; 25.3; 22.6. ²⁰ JBP I.1.5; 1.8; II.7.9.

²¹ Aquinas also held a notion of “legal debt” – which he distinguished from (both supererogatory and indispensable) moral debt – for which one is liable for reparations and punishment. ST II-II.80.1; 108.2. But for Aquinas, reparations and punishment arise from a general imperative to restore balance in a cosmic order upset by sin, not from someone’s particular standing to hold one accountable. I-II.87.

accountable and the obligated person's reason to fulfil the obligation.²² This implies rational agents have two distinct types of practical reasons: reasons corresponding to eudaimonistic obligations grounded in one's own good; and reasons grounded in juridical obligation or *ius*. In principle these reasons could diverge, but in practice Grotius obviated this possibility: since sociability is not only constitutive of each individual's good but is also the grounds for juridical obligation, fulfilling one's obligations is constitutive of one's own good.

Like Grotius, Hobbes developed an intrinsically normative, juridical notion of obligation, even as he retained the traditional, eudaimonistic one. But he also took the radical step of severing juridical obligation from natural law and all obligation from natural sociability – thereby transforming the notions of obligation and natural law and their mutual relation. Unlike Grotius, Hobbes asserted that a person's juridical obligations, for which he is accountable to others, always arise “from some Act of his own,”²³ i.e., via conventions such as contract whereby a person signifies the intention to bind himself to others. Obligation in the proper, juridical sense is grounded neither in God's will (Suárez) nor in natural sociability (Grotius), but in the interpersonal meaning of voluntary acts. The pre-conventional laws of nature, by contrast, impose obligations only in the loose, eudaimonistic sense harking back to Aquinas: they prescribe the means to one's own good. Natural obligation is not obligation in the proper sense, just as natural law is not, according to Hobbes, law in the proper sense either – unless and until acknowledged conventionally as authoritative command.²⁴

The upshot is that Hobbes's ethics comprises two distinct dimensions of normativity. The first comprises *reasons of the good*: reasons we might consider when reasoning from a first-personal perspective, and which observers might take us to have from the third-personal perspective, but for which we are not accountable to anyone. When we have normative reasons of this first kind, we are responsible for the passions or actions for which they are reasons, responsible in the sense that the passions or actions are *attributable* to us: we may be correctly counselled or warned, and justifiably commended or criticized, in their light. The attribution, counsel, and appraisal presume the rational capacity reflectively to understand the advice and appraisal, respond to the reasons involved, be guided by them, and, indeed, justify our passions or actions in their light. But they do not presume anyone has any claim to such justificatory responses.

²² Darwall (2012). ²³ L II.7: 154. ²⁴ L 26.8: 418; 15.41: 242.

The second, distinct dimension comprises *reasons of the right*: reasons for which we are second-personably *accountable* to others. The reasons themselves and others' standing to hold us accountable for them are grounded in the interpersonally recognized signs of our will. Others have standing to demand our conformity and to react to failures to conform to such reasons in ways that reiterate and seek to vindicate the demand: to condemn and sanction failures by demanding excuses, justification, or acknowledgement of a wrong and hence apology, compensation, or redress. They have an auxiliary claim to our normative response, which claim presumes the capacity to recognize relationships with others and the demands that constitute them as normative. Failing to heed the first kind of reason renders us an appropriate target for criticism or *critical* blame, but failing to heed the second kind renders us an appropriate target for vindicatory or *reactive* blame.²⁵

There is, moreover, a fundamental chasm between the attributability and accountability dimensions of Hobbes's ethics: reasons of the right are neither reducible to nor wholly derivable from reasons of the good. The attributability dimension paradigmatically consists in the rational precepts of natural law, the most important type of which prescribe to each the social means of self-preservation; the accountability dimension paradigmatically comprises the obligations arising from contract, for which one is accountable to others. Hobbes signalled the chasm between these two dimensions in the English *Leviathan's* (1651) table of sciences, where he distinguished "ETHIQUES," which concerns "Consequences from the *Passions* of Men," from "The *Science* of JUST and UNJUST," which concerns "Consequences from *Speech*."²⁶ "Ethiques" is restricted to the traditional, eudaimonistic dimension of normativity grounded in an agent's own good; and "Moral Philosophy" – which "is nothing but the Science of what is *Good*, and *Evill*, in the conversation, and Society of man-kind"²⁷ – is that part of ethiques dealing specifically with social *relations*. But whereas the science of the good concerns *natural* laws and eudaimonistic obligations, the science of justice concerns *artificial* laws and juridical obligations. Fulfilling contractual obligations is also prescribed by natural law, of course, but this is because in Hobbes's view we have prudential reasons to heed reasons of the right – not because natural law furnishes or grounds reasons of the right.

That justice coincides with prudence in this way is precisely what the "Foole" in *Leviathan* denies. The Foole echoes the objection raised by

²⁵ On the attributability and accountability senses of responsibility, see Watson (1996).

²⁶ L 9: 131. ²⁷ L 15.40: 242.

Grotius's "Carneades,"²⁸ but the classical, eudaimonistic response canvassed by Grotius was unavailable to Hobbes. For in repudiating natural sociability,²⁹ Hobbes was denying not only that juridical obligations derive from or reduce to natural ones but also that the common good is constitutive of one's own good. If a law of nature prescribes what is in the common good, it does so only because it is an *instrument* to the individual's own good: the eudaimonistic obligations it imposes are not intrinsically oriented to the common good. Once the classical assumption of an underlying harmony of interests is repudiated, one faces a potentially fundamental conflict between one's own good and the good of others; and once eudaimonistic and juridical obligations are given distinct grounds, one faces a potential conflict between reasons of the good and of the right. Hobbes was pivotal amongst early modern thinkers for taking these two possibilities so seriously. As I hope to show, he fought the first danger via a common good – peace – constructed from the overlap between each individual's antecedent good; and he fought the second danger via his sign theory of consent, through which he built prudential constraints into the content of juridical obligations. He had to manage this potential gap, between reasons of the good and of the right, because on his account one can be moved only by what appears to be good.

The seventeenth century was pivotal in the history of not only normative ethics, but also metaethics. This is the century in which a mechanistic model of science began to displace the older, teleological model, and Hobbes was at the forefront of this development, alongside thinkers such as Isaac Newton, Galileo Galilei, Pierre Gassendi, Marin Mersenne, and René Descartes. Hobbes was especially concerned with the implications of the new model for ethics. Any comprehensive treatment of Hobbes's ethics therefore faces the challenge of how to reconcile his extensive normative-sounding language with his uncompromisingly mechanistic metaphysics and materialist account of language. On the one hand, Hobbes suggested that the only real entities are extended bodies in motion, all of whose real properties can be reductively analyzed and redescribed in terms of extension and motion;³⁰ he also claimed positive names are meaningful only if they are names of bodies, their properties, conceptions of them, or linguistic expressions.³¹ Hobbes even went so far as to produce a materialist account of mathematical objects, according to which a point, for example,

²⁸ Tuck (1987). ²⁹ DCv 1.2. ³⁰ LL 9: 125; AW 3.2.

³¹ L 4.14–20: 58–60; DC 5.2. "Negative" names (L 4.19: 60) and words that are not names, such as the copula 'is' (L 46.16: 1078), can also be meaningful.

is an extended body whose magnitude is simply not considered (or is considered to be zero) for purposes of demonstration.³² On the other hand, Hobbes deployed a vast array of normative vocabulary – ‘good’, ‘natural law’, ‘duty’, ‘obligation’, ‘ought’, ‘right’, ‘justice’, and ‘reasons’ – that seem to attribute properties to things and events not reducible to extension and motion.

There have been two broad approaches to this puzzle. One strategy, which takes Hobbes’s normative vocabulary as evidence for a rich and genuinely normative philosophy, has been to detach the normative branch of his philosophy from his natural philosophy, and to ground the former in God’s will.³³ This “theological” approach has the merit of taking Hobbes’s normative vocabulary seriously, but runs against his claim to have built a unified, scientific-philosophical system. The problem is not merely that these two branches of Hobbes’s science or philosophy³⁴ are detached from and rendered incompatible with each other, but that his ethics and political philosophy are rendered incompatible with the very conception of science upon which he insisted: science, for Hobbes, restricts itself to propositions conceivable to the human mind, and therefore excludes theology and appeal to God.³⁵

The second approach has sought to preserve the link between the two branches, and to honour Hobbes’s aspiration to develop a science of morals and politics, by attributing an ethical theory to him that deflates his normative claims. Thus Hobbes has frequently been read as a subjectivist about reasons and value³⁶ and, at the metaethical level, as an ethical-naturalist reductionist – according to whom all normative properties and facts reduce to non-normative natural properties and facts (concerning, for example, the means for fulfilling one’s own desires) – or as an error theorist or noncognitivist who simply denied the existence of normative properties. None of these readings, I shall argue, are plausible: Hobbes was committed to the view that some facts provide irreducibly normative reasons to believe, desire, or act, and he was not a subjectivist about reasons or value. Indeed, Hobbes posited two distinct dimensions of normativity. Hobbes’s implicit, broadly naturalist metaethics is best understood as denying that normative properties are *real* properties even while affirming

³² Jesseph (1999: 76–80).

³³ Taylor (1965); Warrender (1957). Strauss (1963) also detaches Hobbes’s normative from his natural philosophy.

³⁴ Seventeenth-century writers used these two terms synonymously.

³⁵ DC 1.8–9. On Hobbes’s conception of science, see Jesseph (1996, 2010).

³⁶ Nagel (1959); Gauthier (1969); Kemp (1970); Watkins (1973); Hampton (1986).

that irreducibly normative propositions are truth apt and indeed sometimes true.

These claims about Hobbes's ethics are significant for several reasons. First, the distinction between the two dimensions of normativity is essential to resolving an apparent inconsistency plaguing two of Hobbes's most central concepts: the right of nature and the law of nature. Hobbes asserted that in the state of nature, prior to any conventionally incurred obligations, rational agents each possess a right of nature comprising a liberty-right to do whatever they judge to be relevant means for self-preservation (where a liberty-right implies the absence of obligation to do or forbear).³⁷ He then subsequently claimed this is equivalent to a liberty to do anything at all.³⁸ One puzzle is how these two characterizations could be equivalent: the former seems conditional on the individual's subjective judgement; the latter does not.³⁹ A second puzzle arises from the fact that Hobbes also asserted that rational agents in the state of nature are already obliged by the laws of nature. Yet if rational agents are always already "obliged" by natural law, how can they also be entirely free from obligation, as the right of nature implies? The apparent contradiction lies right there on the surface; Hobbes explicitly announced it in *Leviathan*, asserting that "RIGHT, consisteth in liberty to do, or to forbear; Whereas LAW, determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation, and Liberty; which in one and the same matter are inconsistent."⁴⁰ The answer to both puzzles lies in the fact that the right of nature concerns the absence of obligations in Hobbes's proper, juridical sense for which one is *accountable* to others – reasons of the right – whereas the laws of nature intrinsically "oblige" only in the loose, eudaimonistic sense that they articulate reasons governing passions and actions that are *attributable* to one but for which one is not intrinsically accountable – reasons of the good.

Second, the attributability and accountability dimensions of normativity and responsibility are reflected in Hobbes's distinction between rational agency and personhood: while any rational agent may have, be attribution-responsible for, recognize, respond to, and be guided by reasons, only persons can be accountable to others. Hobbes's celebrated notion of

³⁷ I use 'claim-right', 'liberty-right', 'immunity-right', and 'power-right' in their Hohfeldian senses (Hohfeld 1964). Yates (2013) provides a defence of using the Hohfeldian apparatus for interpreting Hobbes.

³⁸ For the two formulations, see L 14.1: 198 and 14.4: 198; for liberty-right as the absence of obligation, see 14.3: 198.

³⁹ Kavka (1986: 300–302). ⁴⁰ L 14.3: 198.

personhood is, even in the case of “natural persons,” an intrinsically artificial construct whose full significance is appreciated only in light of this distinction; the potential for accountability is its distinctive normative feature.

Third, almost all interpretations of Hobbes on offer deny any fundamental chasm between these two dimensions. On the theological interpretation, the obligation to fulfil voluntary contracts is grounded in the prior obligation to obey God who, via the third law of nature, commands their fulfilment.⁴¹ On the “orthodox” interpretation, contracts “obligate” only in the sense that one has an instrumental or prudential reason to fulfil their terms.⁴² Still other interpreters, according to whom genuine obligations arise only with political society and positive law, argue that the normative force of positive law derives from natural law.⁴³ On all these interpretations, there is no genuine chasm between the laws of nature and conventionally incurred obligations: the obligation to fulfil contracts is entirely grounded in natural law.⁴⁴ Moreover, if, as the orthodox interpretation suggests, all reasons for action derive from reasons for taking the relevant means for fulfilling one’s own desires, then Hobbes’s philosophy seems inhospitable to genuinely *moral* reasons in any modern sense – a conclusion drawn by many of Hobbes’s readers.⁴⁵ Focussing on the accountability dimension of normativity helps clarify where these readings go wrong: insofar as they imply there are no genuine reasons of the right, they fail to account for an essential feature of Hobbes’s philosophy. Such a focus helps us discern not only Hobbes’s commitment to irreducibly normative facts but also the sense in which he provided what we would now recognize as a genuinely moral philosophy.

Fourth, clarifying Hobbes’s implicit metaethics forces us to rethink his role in the history of metaethical naturalism: far from being seen as a founder of reductionism, he must be recognized as a forerunner of those seeking to reconcile their metaphysical naturalism with irreducible normativity.

Finally, the present work exposes Hobbes’s pivotal role in setting the stage for a distinctly modern conception of morality. On the classical natural-law view, specifically *moral* reasons are those oriented to the

⁴¹ Warrender (1957).

⁴² Nagel (1959); Gauthier (1979: 557); Skinner (2002: chapter 9). Cf. Darwall (1995).

⁴³ Bobbio (1993).

⁴⁴ Hoekstra’s (2003: 113) assertion that “the duty to obey the sovereign one has covenanted to obey depends on a prior duty to obey the law of nature” is a commonplace of Hobbes scholarship.

⁴⁵ E.g. Nagel (1959). For Hobbes’s contemporaries, see Mintz (1969); Parkin (2007).