

7.1 Introduction

The idea of sociability plays an important role in Hugo Grotius' system of natural law. As we shall see, Grotius adopted an account of moral knowledge and motivation for justice that he found in Cicero, an account that allowed him to connect arguments about self-interest with sociability and ideas concerning natural law. While ultimately Stoic in origin, this Romanised account Grotius used offered some advantages over the Greek Stoic view connected to the doctrine of *oikeiosis*. Unlike the Greek Stoic view, Grotius' Ciceronian account was not teleological or eudaemonist, but made room for a legalised, rule-based doctrine of natural law.

The second section of this chapter shows that, for Grotius, sociability is intended as a counter to Epicurean views of moral motivation, but it does not by itself provide the grounds of validity of natural law, nor does it alone ground the obligatory force of natural law. Rather, it represents an appeal to a basis in human nature for cooperation in the state of nature. This simply allows for the weak claim that human beings could possibly be motivated to cooperate and adhere to the rules of natural law, not that they necessarily are so motivated. But, more importantly, Grotius appreciated that sociability creates its own problems, which he thought could be solved by reason alone.

The third section explains that the basis of sociability in human nature is, for Grotius, not merely instinctual, but also rational; sociability is ultimately based on a respect for the rights to 'first things' such as private property, a respect that itself is motivated by right reason. But, this view of sociability makes Grotius shift from an original concern with our *motivation* for justice to a concern with how we can *know* what is just. By way of conclusion, it is argued that the notion of sociability was to have an important future in the works of later thinkers such as Thomas Hobbes (1588–1679), Samuel Pufendorf (1632–94), Anthony Ashley Cooper, Earl Shaftesbury (1671–1713), Bernard Mandeville (1670–1733), Francis

Hutcheson (1694–1746), David Hume (1711–76), Adam Smith (1723–90) and Immanuel Kant (1724–1804).

7.2 Countering Carneades' Scepticism

Grotius motivated his inquiry into natural law and the law of nations in the *Prolegomena* to his *De jure belli ac pacis* by reference to those who have doubted the very existence of such a law: 'And indeed this Work is the more necessary, since we find some, both in this and in former Ages, so far despising this Sort of Right, as if it were nothing but an empty Name' (DJBP Prol. 3). After giving examples of authors who voiced such doubt, Grotius goes on to say that

since it would be a vain Undertaking to treat of Right, if there is really no such thing; it will be necessary, in order to shew the Usefulness of our Work, and to establish it on solid Foundations, to confute here in a few Words so dangerous an Error. And that we may not engage with a Multitude at once, let us assign them an Advocate. (DJBP Prol. 5)

The advocate Grotius chooses is the ancient Greek sceptic, Carneades, who, Grotius knows, had argued against the very existence of justice and especially that kind of justice that is Grotius' subject in the *De jure belli ac pacis*. According to Grotius, Carneades' strongest argument was this:

Laws [*iura*] were instituted by Men for the sake of Interest; and hence it is that they are different, not only in different Countries, according to the Diversity of their Manners, but often in the same Country, according to the Times. As to that which is called Natural Right [*ius naturale*], it is a mere Chimera. Nature prompts all Men, and in general all Animals, to seek their own particular Advantage: So that either there is no Justice at all, or if there is any, it is extreme Folly, because it engages us to procure the Good of others, to our own Prejudice. (DJBP Prol. 5)¹

Carneades had argued that normative or legal orders (*jura*) merely reflected calculations of interest or utility (*utilitas*), not justice. This is why these calculations of utility result in legal arrangements that are parochial; they are merely local customs and do not reflect any universal propositions of justice. But, Carneades adds as a second claim that it is foolish to be just. At first, there seems to be a tension between the two claims: if the local legal

orders reflect calculations of interest, and if this is all there is to justice, how can it at the same time be foolish to be just? As Terence Irwin points out, however, this need not amount to an inconsistency. Carneades should simply be interpreted as saying that legal orders reflect the interest or advantage of the *societies* within which they hold, while it would be foolish from the point of view of any given *individual* to orient himself toward his society's interest, since doing so can be harmful to the individual.² Carneades bases his view on a certain anthropology – human beings are no different from other animals in being naturally self-interested. From this descriptive account, Carneades draws a strong normative conclusion: humans have reason to behave in a way consistent with this egoistic anthropology. Breaking the rules that ensure the advantage of a society can be entirely rational for the individual, and adhering to them is irrational, provided that punishment can be escaped. The sophistic views advanced by Glaucon in the second book of Plato's *Republic* loom large.

Grotius responds to Carneades by challenging his anthropological assumptions. Human beings, Grotius holds, unlike other animals, have a strong desire for society. They also have the ability to design peaceful cooperation in society according to reason and so to satisfy their desire for sociability in ways that are suitable to their rational nature. Grotius replies to Carneades thus:

Man is indeed an Animal, but one of a very high Order, and that excels all the other Species of Animals much more than they differ from one another; as the many Actions proper only to Mankind sufficiently demonstrate. Now amongst the Things peculiar to Man, is his Desire of Society [*appetitus societatis*], that is, a certain Inclination to live with those of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the best of his Understanding; which Disposition the Stoicks termed Oikei/wsin [*oikeiosis*]. Therefore the Saying, that every Creature is led by Nature to seek its own private Advantage [*ad suas utilitates*], expressed thus universally, must not be granted. (DJBP Prolog. 6)

Before we proceed, we should discuss a few of the issues this answer to Carneades raises. First of all, both Carneades and Grotius start from what they take to be natural human inclination. Why should this inclination have any normative implications; why, that is, should it be possible to draw from a descriptive account of inclinations any normative conclusions? It is clear from Grotius' allusion to the doctrine of *oikeiosis* that he is arguing here in a Stoic vein, and Carneades is putting forward a sceptical

doctrine that is compatible with sophist and maybe Epicurean views. Both start from ‘cradle-arguments’, where it is assumed that the end of human beings, their highest good, is revealed from uncorrupted inclinations.³

There are, of course, hidden normative assumptions at work here, but they are not as problematic as one might think, for, as we will see, both positions proceed to give reason as a natural human feature an exceedingly important role. Indeed, the dispute could be described as one between different views of practical rationality, resulting in differing outlooks regarding the motivation for justice and differing answers to the question whether we have reason to act morally. Is it rational to follow the rules of natural law, can we be motivated to follow it? Given reason’s essentially normative nature, the danger of falling into a form of the naturalistic fallacy – drawing normative inferences from purely factual premises – can be avoided. Carneades makes the normative point that we don’t just happen to be self-interested, we also have good reasons to seek our own advantage.⁴ Grotius replies that not only are we not as egoistically inclined, as an empirical matter, as Carneades maintains, but we also have good reason to find out and acknowledge the rules of natural law given our sociable natures. Neither Carneades’ nor Grotius’ moral psychology is, therefore, at bottom, sentimentalist.

Grotius claims that this desire for a rule-governed and peaceful society (*appetitus societatis*), an inclination to be sociable and to seek human fellowship, was what the Stoics had called *oikeiosis*.⁵ Grotius took his concept of sociability from Cicero’s description of the Stoic doctrine of *oikeiosis*, but while Cicero translated *oikeiosis* as *conciliatio*, Grotius chose the term *appetitus societatis*. This term, which Grotius might have taken from the works of Spanish jurist Fernando Vázquez de Menchaca (1512–69),⁶ is not frequent in *De jure belli ac pacis*. Grotius introduces it in the passage quoted above. The ‘appetite for society’ is characterised as a specifically human trait, underlining the fundamental difference between humans and all other living beings. Putting forward this essentially human desire as an anthropological premise serves to refute the Carneadean claim that all animals strive only for their own advantage (DJBP Prol. 6).⁷ A distinction between people and animals is, therefore, central to Grotius, as it was for the Stoics.⁸

The original Stoic doctrine of *oikeiosis* is difficult to reconstruct, but to the extent that we can do so, it seems to have assumed the following shape. The process of *oikeiosis*, which is often translated as ‘familiarisation’ or

'appropriation', designated for the Greek Stoics a natural human development. Humans, they thought, have immediately after birth certain primary desires, which they seek to satisfy in a bid for self-preservation. As they get older, there is a developmental shift from mere self-preservation to behaving virtuously, or other-regarding. This development toward a virtuous disposition goes hand in hand with, and is the result of, the acquisition of a fully rational point of view. The idea is that humans, as soon as they are born, familiarise themselves with themselves qua humans and show a concern with self-preservation; but, under the guidance of reason, they come with time to acquire a view of virtue as the highest, or ultimate, human goal (*summum bonum*). Virtue on this view is sufficient for happiness (*eudaimonia*) and displays an impartial concern for all humans. An important feature of this doctrine lies in its developmental, two-stage character. Newborn humans betray certain behavioural characteristics, which then, as part of natural human development and under the guidance of reason, eventually transform themselves into an exclusive concern with acting for the right reasons and behaving, therefore, virtuously. To what extent this view implies a radical shift from early self-concern to virtue and impartiality, and whether there are, in fact, in the Greek Stoic texts two different kinds of *oikeiosis*, one governing the rational development of self-concern (virtue) and the other that of other-concern (impartiality), those are difficult and much discussed questions that we cannot hope to disentangle here.⁹ What is important when it comes to Grotius' use of the doctrine is the fact that he relies almost exclusively on Cicero when putting his own views forward. For the purposes of this chapter, we will therefore have to keep in mind that Grotius, with regard to sociability, although he knew the Greek Stoic texts well himself, is mostly making use of the way Cicero framed Stoic ideas.

Cicero provided a good model for Grotius because he was equally concerned with certain characteristics of human nature on the one hand and natural law and natural justice as the remedy to conflict on the other. Cicero in his philosophical works had provided an answer to Carneades' scepticism that Grotius found convincing; indeed, Grotius could be described as working out the implications of Cicero's reply to Carneades relevant to his own undertaking of detailing a natural, pre-political legal and moral order. For both Cicero and Grotius, a convincing answer to Carneades had to depend on the characteristics of human nature. Was Grotius correct to suggest (DJBP Prol. 8) that human nature showed a

specific ‘concern for society’ (*societatis custodia*)? It is important to remember that Grotius’ doctrine of natural law was aimed against an opponent – Carneades – whose own formal doctrine of legal sources also relied on an account of human nature and rationality, an account – of course – at odds with Grotius’.

7.3 Grotius’ Argument from Sociability

Now let us look more closely at the various steps of Grotius’ argument from sociability. What is sociability supposed to achieve in the framework of Grotius’ argument for natural justice? Grotius begins his counterattack on Carneades by seeking to undermine Carneades’ claim about animal behaviour in general. Even some of the non-human animals, Grotius says, are not entirely self-interested and betray a concern for others, either their young or other members of the species. But, humans, once they grow up and develop the specifically human faculty of reason, are equipped in a specific way to satisfy their desire for society:

But it must be owned that a Man grown up, when he has come to learn to act in the same Manner with respect to Things that are alike, has, besides an elevated Desire of Society [*societatis appetitus*], for the Satisfaction of which he alone of all Animals has received from Nature a peculiar Instrument, viz., the Use of Speech; I say, that he has, besides that, a Faculty of knowing and acting, according to some general Principles [*generalia praecepta*]; so that what relates to this Faculty is not common to all Animals, but properly and peculiarly agrees to Mankind [*humanae naturae congruentia*]. (DJBP Prol. 7)¹⁰

Note that here the Stoic two-stage development required by *oikeiosis* is implied; the focus is here already on the second, fully rational stage of human development. In addition to the desire for society, which is particularly prominent in humans, adult humans have reason. It is when, or even because – the *cum* here is circumstantial or causal, – they have the ability to act in a rule-governed way (‘in the same manner with respect to things that are alike’) that human beings are able to satisfy properly their desire to live in society. The *appetitus societatis* is an instinct that is, as we have seen, not entirely exclusive to humans, but men as opposed to other animals have instruments to satisfy this desire that are peculiar to them, namely speech and reason.

We may observe that, at this point, the instinctual desire for society is no longer bearing the argumentative weight by itself. Grotius implies that, absent the specifically human features of reason and speech (*ratio et oratio*, or *logos*), the instinctual appetite for society would remain limited to offspring and maybe some other members of the species. In the human case, however, sociability is not simply brought in to solve the problem of how large and stable societies are possible – quite the contrary, Grotius betrays an acute awareness that human sociability is prone to conflict and sometimes war.¹¹ Indeed, this is what his *De jure belli ac pacis* is, on one level, all about. In short, Grotius seems to suggest that human sociability in and of itself may create as many problems as it, at first sight, might be thought to resolve.

This is a crucial point: sociability, our social nature, is sometimes conceived of as a device Grotius brings in to defeat his sceptical Carneadean opponents and solve the problem of moral motivation.¹² It does, however, not quite play this role; it merely changes the anthropological assumptions and creates the conditions of possibility for natural law. Sociability itself, although originally brought in to counter Carneades' anthropological claims, cannot do all the work associated with a rebuttal of Carneades' scepticism.¹³ Reason, and the means of communicating reason, have to be brought in for any normative dimension to open up. The appetite for society only goes as far as it naturally happens to go, and Grotius is not a naturalist in this sense. Grotius' theory is normative, and he is after bigger, normative claims about what we know and have reason to do, given our sociable nature. Sociability presupposes, rather than automatically creates, certain rules of natural law.¹⁴

This becomes clearer in the subsequent passage from the *Prolegomena*. It is here that Grotius specifies in what way sociability can be said to provide the framework for natural law. Sociability, or the safeguarding of society, is qualified along rationalist lines; not just any desire for society will do, it also has to live up to the requirements of reason. This latter qualification then brings about certain very specific features of the way in which society has to be upheld, if its institutions are to conform to the parameters of reason:

This Sociability, which we have now described in general, or this Care of maintaining Society [*societatis custodia*] in a Manner conformable to the Light of human Understanding, is the Fountain of Right, properly so called; to which belongs the Abstaining from that which is another's [*alieni abstinentia*], and the Restitution [*restitutio*] of what we have of another's, or of the Profit we have

made by it, the Obligation [*obligatio*] of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men. (DJBP Prol. 8)

If we are to maintain society in this specific way, and thus give in to our natural appetite for society ‘not in any Manner whatever, but peaceably, and in a community regulated according to the best of our understanding’, then we have to heed certain rules of natural law, which Grotius spells out for us with some specificity: abstaining from others’ property; giving back what we illegitimately acquired; living up to promises; making whole those we wrongfully damaged; and the punishment of crimes.¹⁵ These rules receive their validity and obligatory nature from the fact that they are required by right reason. The basis of sociability in human nature is, therefore, not merely instinctual, but also rational.

Grotius does not deny that human weakness stands in need of social cooperation, but he does point out, against Carneades, that human sociability requires, in addition to the need for cooperation and conceptually independent of it, a set of rules.¹⁶ This conceptual independence Grotius shows with a counterfactual: even if we did not stand in need of cooperation for mutual advantage and interest, our instinctual sociability, by itself, would require rules by which society can be governed. More importantly, Grotius now turns Carneades’ finding of the local and varied nature of legal systems against him: the obligation to abide by these parochial legal systems, their authority, cannot be explained by exclusive reference to interest, since mere self-interest would presumably recommend free-riding and the breaking of promises. The authority of the various civil legal systems must *itself* be explained by reference to an underlying natural law obligation to adhere by promises, otherwise these systems cannot get off the ground. Grotius here exploits Carneades’ oscillation between the interest or advantage of a society and the interest of the individual living in the society. But, this allows him to admit Carneades’ point that there are many different legal systems, without thereby having to admit the inexistence of natural law; rather, it is only by reference to natural law that the authority of these different legal systems can be explained in the first place. Here is Grotius, a little later in the *Prolegomena*, on the sources of natural and positive law:

Therefore the Saying, not of Carneades only, but of others, Interest [*utilitas*], that Spring of Just and Right [*iusti prope mater et aequi*], if we speak accurately, is not

true; for the Mother of Natural Law is human Nature itself, which, though even the Necessity of our Circumstances should not require it, would of itself create in us a mutual Desire of Society [*ad societatem mutuam appetendam ferret*]: And the Mother of Civil Law is that very Obligation which arises from Consent [*ex consensu obligatio*], which deriving its Force from the Law of Nature, Nature may be called as it were, the Great Grandmother of this Law also. (DJBP Prol. 16)

It is human nature that is the ‘mother’ of natural law, because human nature produces the desire for society, which in turn makes possible and necessary the concept of obligation and (natural) law. The human drive for society is the source of natural law, and not expediency or interest, because the obligation arising from consent cannot be explained in the absence of an underlying account of promise-giving, which itself cannot be contractarian – otherwise an infinite regress looms – but must be, Grotius claims, a natural law account.¹⁷

Here, however, we should pause and ask ourselves what it is exactly that Grotius puts forward against Carneades. Carneades had started out by claiming that the sheer variety of civil-law arrangements undermined any unitary account of universal natural law. The civil laws of individual societies simply reflect bargaining arrangements, the advantage of those societies. Grotius replies that this does nothing to undermine the existence of natural law: those bargaining arrangements need an account of underlying obligation, of promise-giving, and such an account cannot be given simply in terms of an interest-driven contractarian outlook.¹⁸ This is where Carneades’ second point kicks in: individuals would be stupid if they always adhered by their promises. In the absence of punishment or what Carneades would probably consider the brainwash propounded by Socrates against Glaucon’s arguments,¹⁹ it would for Carneades be irrational and foolish not to free-ride on society’s cooperative arrangements.²⁰ It is important to see that Carneades’ point about the foolishness of justice is a point about moral psychology, about *motivation*. Remember that Grotius quoted Carneades – from Cicero’s *Republic* – as saying that either there is no justice, or it consists in foolishness. That is to say that Carneades admits that we can specify the rules of justice, but there is still a motivational problem of giving people reasons to adhere by these rules.

In what follows, I will seek to show that Grotius, in his reply to Carneades, adopts the Stoic idea, as filtered through Cicero, of a transition from an impulse for self-preservation to the morally right

(*honestum*) as something superior to mere self-preservation – but that he does so in a particularly Ciceronian way, ending up with a knowable natural law that amounts to the condition of possibility for sociability. This is unlike the Greek Stoic view, which sees virtue, the disposition to act in morally correct ways, as the ultimate human goal (*telos*) and highest good, understood as happiness. The Greek Stoic view is called eudaemonist, because it justifies and motivates virtue by showing how virtue contributes to the agent's happiness (*eudaimonia*). Such a eudaemonist account of virtue as the highest good and ultimate human end is missing from Grotius; a more rule-oriented, or jural, account of what is morally right takes its place.²¹ Grotius took the idea of the transition from self-preservation impulse to the *honestum* from Cicero's exposition of Stoic doctrine in the third book of *On Ends* (*De finibus*), which he quoted extensively:

Cicero learnedly proves, both in the third Book of *De finibus*, and in other Places, from the Writings of the *Stoicks*, that there are two Sorts of *natural Principles*; some that go before, and are called by the *Greeks* τὰ πρῶτα κατὰ φύσιν, *The first Impressions of Nature* [*prima naturae*], and others that come after, but ought to be the Rule of our Actions, preferably to the former. (DJBP 1.2.1.1)²²

But Grotius also adopted Cicero's account of natural law, as influentially put forward in the *Republic*, the *Laws*, and *On Duties*, and connected it with the Stoic two-stage account of sociability.²³ The doctrine of *oikeiosis* was laid out by Cicero as part of his account of Stoic ethics, while Grotius consulted it and used it to justify his system of natural law. In the second chapter of the first book of *De jure belli ac pacis*, dealing with the lawfulness of war, Grotius returns to the question of the foundation of natural law. After discussing the first stage of the Stoic account of sociability, that of the primary things according to nature and self-preservation (DJBP 1.2.1.1),²⁴ Grotius turns to the morally right (*honestum*) as the second stage. He connects the two stages by using the *oikeiosis* model offered by Cicero. Reason plays the leading role, as it does in the original Stoic accounts as well as in Cicero's *On Ends*. But Grotius goes beyond the passage from Cicero by connecting the Stoic two-stage development with natural law:

After that follows, (*according to the same Author* [i.e. Cicero]) the Knowledge of the Conformity of Things with Reason [*convenientia rerum cum ipsa ratio*], which is a Faculty more excellent than the Body; and this Conformity, in

which virtue [*honestum*] consists, ought (*says he* [Cicero]) to be preferred to those Things, which mere natural Desire at first prompts us to; because, tho' the first Impressions of Nature [*prima naturae*] recommend us to Right Reason [*recta ratio*]; yet Right Reason should still be dearer to us than that natural Instinct. Since these Things are undoubtedly true, and easily allowed by Men of solid Judgment, without any farther Demonstration, we must then, in examining the Law of Nature, first consider whether the Point in Question be conformable to the first Impressions of Nature, and afterwards, whether it agrees with the other natural Principle, which, tho' posterior, is more excellent, and ought not only to be embraced when it presents itself, but also by all Means to be sought after. (DJPB 1.2.1.2)

This exposition is also very clearly based on the explanation the Stoic Cato provided in the third book of Cicero's *On Ends*. Cato there explains the shift in the object of *oikeiosis* away from the primary things in accordance with nature and from self-preservation and towards what the Stoics thought was the highest good or goal of life, namely virtue.²⁵ In Cato's account, the exercise of reason is also seen as the crucial element, leading from early, 'mere natural desire' of *prima naturae* to the appreciation of reason itself. Our rational capacity, then, helps us 'both to recognize [our] common humanity and to see it as the source from which our obligations to our fellow humans flow'.²⁶

Grotius bases his account on Cicero when he seeks to justify the steep hierarchy between mere self-preservation, on the one hand, and the superior quality of acting morally, according to natural law, on the other.²⁷ Acting morally was the product of normative human reason and of the insight derived from it. But Grotius deviates from Cicero's Cato in connecting the two stages of the Stoic doctrine of *oikeiosis* to his discussion of natural law. While, for Cato in *On Ends*, the purpose of reason was to recognise the *summum bonum*, Grotius leaves the Stoic theory of value as reported by Cato entirely out of his account. Instead, he integrates the idea of natural law as found in Cicero's *Laws* and grafts his fine-grained system of natural rights modelled on Praetorian remedies onto it. Grotius, that is, focuses on natural law as that which could be recognised and acknowledged as valid by reason.

Grotius could thus be seen as attempting to build an account of moral motivation on a theory of *oikeiosis*. More important might be the specifically Ciceronian provenance of this account, however. Ironically, by basing sociability on rational respect for the rights to *prima naturae* such as

private property, Grotius follows Cicero in giving these ‘first things according to nature’ the status of a criterion for justice. For the Greek Stoics, they had been merely so-called preferred indifferents, but, for Grotius, they come to occupy the central position that the *summum bonum* had had for the Greek Stoics.²⁸ As Christopher Brooke has convincingly argued, there is a ‘close fit between the general structure of a Ciceronian Stoic natural law theory and the argument that Grotius builds’ in *De jure belli ac pacis*, especially in view of ‘the organising role that *appetitus societatis/oikeiosis* plays in connecting the arguments about self-interest with the argument about sociability and the argument about property rights’.²⁹ But Grotius’ argument aims at an account of ‘natural laws concentrated around the rights of non-interference, especially with regard to property’,³⁰ rather than offering a Greek Stoic view focused on the human *telos* understood as happiness (*eudaimonia*). This should stop us from describing Grotius’ view as Stoic in any straightforward way. Grotius makes natural law and the morally right fundamental, and teleological considerations largely drop from view.³¹ But the loss of this eudaemonist concern with the happiness of agents as the ultimate end or goal (*summum bonum*) also accounts for a corresponding loss of motivational force and focus. Grotius does maintain, it is true, that both validity and obligatory nature of natural legal rules depend on their being recommended by *recta ratio*, but his adoption of a right to punish in the state of nature suggests that Grotius does worry about a lack of motivation for justice.³²

This worry may stem from a shift in Grotius’ account, where we have gone from an attempt to meet Carneades on the ground of moral *motivation* to an account of how we get to *know* the rules of natural law. Grotius, I think, ultimately gives us an *epistemic* view of the rationality of natural law – natural human rationality allows us knowledge of the rules of natural law – but somewhat neglects what gave rise to the dispute with Carneades in the first place – do we have reason to follow those rules, i.e. a motivational question about the normative pull of natural law. There is *some* motivational purchase in his Stoic claim that humans are naturally social, it is true, hinting as it does at an innate other-regarding inclination. But, this innate other-regarding instinct is merely an empirical fact, if it is one at all, and it reaches only as far as other-regarding instincts happen to be distributed among the population. So far, this does not imply anything in the way of why we should, as a normative matter, give other-regarding reasons their due. Grotius sometimes seems to sketch an additional

normative argument along the lines that, given the sociable instinct, there is a specifiable set of rules that applies universally to societies formed by that instinct, and that we should abide by those rules given our instinct. But, here too, the last part, moral motivation, remains underdeveloped and rationalist moral epistemology – our a priori knowledge of these rules via reason – takes over.³³

Grotius, therefore, starts out by seeking to meet Carneades' challenge on the terrain of moral motivation, but he then largely neglects moral psychology and moves on to epistemic concerns about our ability to successfully say what the rules of natural law are. These epistemic challenges he meets, maybe successfully, but whether or not he has given us reason to observe the dictates of natural law is less clear. The reason this is so, I would suggest, lies in what philosopher Henry Sidgwick has called the 'dualism of practical reason': Grotius acknowledges the force of Carneades' motivational objection, but it is unclear whether his answer goes beyond that suggested already by Cicero. Grotius' sociability does not simply solve the problems Carneades points out. For one thing, as Grotius was clearly aware, the appetite for society creates as many new problems of living peaceably together in society as it seeks to solve other problems of a motivational sort. A desire for society and the desire to free-ride are not only not mutually exclusive, but the latter thrives on the former. The two can also coexist in, say, a gregarious psychopath. Second, while Grotius' account of sociability might, again, be said to offer some motivational support to an anti-Carneadean view of natural law, the aim of Grotius' account is not to provide a view of the good life, but a system of rules – natural law – that human beings may be motivated to observe as rational beings. Grotius' aim, in short, is not eudaemonist.³⁴ What he puts forward is a 'jural' view of ethics as a rule-governed enterprise without any implications about the highest good or end of human beings.³⁵ These rules oblige by virtue of being just rather than motivate by an appeal to the agent's happiness. But this throws into sharp relief Sidgwick's observation about the dual nature of practical rationality, where reason may show us how to design rules that make possible our desire for society, on the one hand, but where reason is also ultimately sensitive to the individual agent herself, in a way that can make following those sociable rules, indeed, look foolish.³⁶

Grotius' outlook on sociability is, ultimately, at least as Ciceronian as it is Stoic, due to the specific shape that Stoicism received at the hands of

Cicero. As Jacob Klein explains, if ‘the eudaimonist framework of earlier Stoicism is neglected, it becomes easier to regard the prescriptions of natural law not simply as principles to which one must adhere in order to live a life that is happy because rational, but as a source of obligation in their own right’. Therefore, ‘Cicero’s treatment obscures our view of early Stoicism, but it helps to explain how the doctrine preserved in his accounts inspired later, diverse articulations of natural law theory’.³⁷ This is precisely what we have seen in Grotius’ use of Cicero’s account of *oikeiosis*. While *oikeiosis* still serves to counter the motivational implications of Epicurean – and later Hobbesian – anthropology, the aim of this doctrine is no longer, as it was for the Greek Stoics, to show what the good life of an agent consists in and to appeal to his *eudaimonia*. For Grotius as for Cicero, the obligatory force of the rules of natural law is based on the idea that these rules are commands of right reason (*recta ratio*).³⁸ One might say that Grotius is what, today, we call an externalist about moral motivation: Grotius may separate motivation as a contingent psychological or instinctual fact from the content of the natural law. The natural law can be true without anyone being necessarily motivated to act upon it.³⁹

But, there is a second, even more important, sense in which Grotius’ adaptation of Stoic *oikeiosis* is deeply Ciceronian. Cicero, in his *On Ends*, ultimately professes his own scepticism when it comes to ethical theory and the highest good. He upholds scepticism in the last book of *On Ends* against all the theories that are expounded in that work: Epicureanism, Stoicism and the mix of traditional Academic and Peripatetic theory put forward at the end. But, while Cicero sides, when it comes to theories of the *summum bonum*, with Carneades’ scepticism, he defends against Carneades’ academic scepticism a political philosophy based on natural law in the *Republic*, the *Laws* and *On Duties*. Cicero, that is, distinguishes between philosophical theories about the ultimate human end, which he regards with scepticism, on the one hand, and theories about what is just in human society, which he believes can be defended against scepticism as true, on the other.⁴⁰ In the absence of a convincing account of the *summum bonum* – and Grotius here is at one with Cicero’s scepticism as to the highest good – it is the rationality inherent in the natural law rules themselves that must govern society given our sociable appetite.⁴¹ This is why Grotius’, and before him Cicero’s, answer to Carneades is not eudaimonist, but ‘jural’. While we – all of humanity, not just the Stoic sage – can know the rules sociability presupposes, we cannot know the *summum*

bonum.⁴² This is the deepest sense, then, in which Grotius should be seen as a Ciceronian: a sceptic with regard to our knowledge of the end, Grotius no less than Cicero is convinced that knowledge of the rules that help satisfy peaceful sociability can be successfully insulated from Carneades' scepticism.

7.4 Outlook

Grotius' exploration of the concept of sociability, with its attendant complexities of moral knowledge, motivation, sentiment and reason, proved to be extraordinarily fruitful in the later history of political thought. Both Hobbes and Pufendorf discuss sociability in a way that is very much indebted to Grotius' framework. Hobbes assumes some of Carneades' commitments and insists on a natural unsociability; Pufendorf agrees with Hobbes on human weakness and neediness in the state of nature, but argues against Hobbes that commerce could create society, including some natural laws and obligations, in the absence of the state. Shaftesbury, Mandeville, the Scottish thinkers of the eighteenth century, as well as Kant, can be read as having drawn out various strands and implications from the argumentative mould presented by Cicero, Grotius, Hobbes and Pufendorf.⁴³

Translation of Grotius' Work Used

The Rights of War and Peace, ed. R. Tuck (Indianapolis, 2005).

Further Reading

Blom, H., 'Sociability and Hugo Grotius', *History of European Ideas* 41 (2015) 589–604.

Brooke, C., *Philosophic Pride* (Princeton, 2012).

Darwall, S., 'Grotius at the Creation of Modern Moral Philosophy', *Archiv für Geschichte der Philosophie* 94 (2012) 294–325.

Haggenmacher, P., *Grotius et la doctrine de la guerre juste* (Paris, 1983).

Hont, I., *Jealousy of Trade* (Cambridge, MA, 2005).

Irwin, T., *The Development of Ethics* (Oxford, 2008), vol. 2.

- Kingsbury, B. and B. Straumann, 'The state of nature and commercial sociability in early modern international legal thought', *Grotiana* N.S. 31 (2010) 22–43.
- Miller, J., 'Stoics, Grotius, and Spinoza on moral deliberation', in J. Miller and B. Inwood (eds.), *Hellenistic and Early Modern Philosophy* (Cambridge, 2003), 116–40.
- Piirimäe, E. and A. Schmidt, 'Introduction: between morality and anthropology – sociability in Enlightenment thought', *History of European Ideas* 41 (2015) 571–88.
- Sagar, P., *The Opinion of Mankind: Sociability and the Theory of the State from Hobbes to Smith* (Princeton, 2018).
- Schaffner, T., 'Societas Humana bei Hugo Grotius', in T. Altwicker, F. Cheneval and O. Diggelmann (eds.), *Völkerrechtsphilosophie der Frühaufklärung* (Tübingen, 2015), 103–16.
- Straumann, B., 'Appetitus societatis and oikeiois: Hugo Grotius' Ciceronian argument for natural law and just war', *Grotiana* N.S. 24/25 (2003/4) 41–66.
- Straumann, B., *Roman Law in the State of Nature. The Classical Foundations of Grotius' Natural Law* (Cambridge, 2015).
- Tuck, R., 'The 'modern' theory of natural law', in A. Pagden (ed.), *The Languages of Political Theory in Early-Modern Europe* (Cambridge, 1987), 99–119.
- Tuck, R., *The Rights of War and Peace. Political Thought and International Order from Grotius to Kant* (Oxford, 1999).
- Winkel, L., 'Les origines antiques de l'appetitus societatis de Grotius', *Legal History Review* 68 (2000) 393–403.

Notes

- 1 The passage is known via Lactant. *Div. inst.* 5.16.3 (= Cic. *Rep.* 3.21).
- 2 T. Irwin, *The Development of Ethics* (Oxford, 2008), vol. 2, 94. Alternatively, Carneades could be taken to claim that there are two kinds of justice. The first kind is one that can be unintentionally realised by a hidden-hand mechanism if all members of society simply look to their own self-interest. But, there is a second kind of justice that amounts to stupidity, the kind that is other-regarding and demands sacrifices, and it is this second kind that Carneades is concerned to attack. But, this would anachronistically ascribe to Carneades a 'private vice, public virtue' outlook, quite apart from the fact that it is not obvious that the first kind of justice can do entirely without elements of the second kind.
- 3 See for this kind of argument the classic article by J. Brunschwig, 'The cradle argument in Epicureanism and Stoicism', in M. Schofield and G. Striker (eds.), *The Norms of Nature: Studies in Hellenistic Ethics* (Cambridge, 1986), 113–44, at 115–16.

- 4 He is not arguing, therefore, that we cannot help but act egoistically and that since 'ought implies can' we are shielded from any altruistic duties. Rather, Carneades holds that we can and sometimes do act foolishly by being altruistic.
- 5 Grotius did not identify his *appetitus societatis* with the technical Stoic term *oikeiosis* until the 1631 edition of his *De jure belli ac pacis*, but there is to my mind no need to give too much weight to the differences between the original 1625 edition and the one from 1631. I cannot engage with *De jure praedae* here for lack of space. See B. Straumann, *Roman Law in the State of Nature. The Classical Foundations of Grotius' Natural Law* (Cambridge, 2015), 34f. See, for a different view, R. Tuck, *The Rights of War and Peace. Political Thought and International Order from Grotius Kant* (Oxford, 1999), 99ff. See also C. Brooke, *Philosophic Pride* (Princeton, 2012), 53–6.
- 6 Fernando Vázquez de Menchaca used the term *naturalis appetitus societatis* in his *Controversiarum illustrium usuque frequentium libri tres* (1564), with an Aristotelian connotation. The connection with Stoicism is not made until Grotius. This *pace* L. Winkel, 'Les origines antiques de l'appetitus societatis de Grotius', *Legal History Review* 68 (2000) 393–403, at 399ff., who situates the origin of the term in classical antiquity. Cf. also J. Miller, 'Stoics, Grotius, and Spinoza on moral deliberation', in J. Miller and B. Inwood (eds.), *Hellenistic and Early Modern Philosophy* (Cambridge, 2003), 116–40.
- 7 Cf. M. Pohlenz, *Die Stoa. Geschichte einer geistigen Bewegung* (4th edn., Göttingen, 1970), vol. 2, 229.
- 8 For the distinction see, e.g., Cic. *Fin.* 3.67, which Grotius knew (DJBP 2.2.2.1).
- 9 For an excellent recent treatment, offering a survey of the existing literature and an interesting solution to many of these puzzles by giving cognition and self-perception a key role in *oikeiosis*, see J. Klein, 'The Stoic argument from *oikeiōsis*', *Oxford Studies in Ancient Philosophy* 50 (2016), 143–200.
- 10 The translation has been adapted to reflect the developmental aspect of *cum circa similia similiter agere norit* as well as the fact that the desire for society is not simply 'exquisite', as the original translation has it, but it is actually elevated, or particularly prominent, in humans (*excellens*), according to Grotius.
- 11 Cf. P. Haggenmacher, *Grotius et la doctrine de la guerre juste* (Paris, 1983), 618, on the centrality of conflict for Grotius; J.B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge, 1998), 72f. goes even further.
- 12 Brooke, *Philosophic Pride*, ch. 2; Straumann, 'Appetitus societatis'; S. Darwall, 'Grotius at the creation of modern moral philosophy', *Archiv für Geschichte der Philosophie* 94 (2012) 294–325.
- 13 For a deflationary account of sociability in Grotius, interpreting it as the successor notion of *fides* and a mere 'afterthought' (while not denying its enormous historical impact), see H. Blom, 'Sociability and Hugo Grotius', *History of European Ideas* 41 (2015), 589–604.
- 14 Cf. Blom, 'Sociability', 602.

- 15 Grotius gets this specificity by using the procedural remedies that he knew from Roman law, taking them to affirm the basic rights required by natural law, especially property rights. These Roman remedies, then, are taken to be declarative of natural law and to hold – even in the absence of a praetor, far away from the Roman forum – in the state of nature. See Straumann, *Roman Law*, esp. chapters 2 and 7; id., ‘A reply to my critics: Adam Smith’s unfinished Grotius business, Grotius’s novel turn to ancient law, and the genealogical fallacy’, *Grotiana* N.S.D. 38 (2017) 211–28.
- 16 Interestingly, Hobbes and Grotius might be closer here than it first appears. Mutual advantage is prominent in Grotius, and Hobbes’ point later will be that ‘large and lasting’ society could not be stably based on advantage-seeking or honour-seeking alone, and in that there’s probably agreement with Grotius. See, on the later history of sociability after Grotius, P. Sagar, *The Opinion of Mankind: Sociability and the Theory of the State from Hobbes to Smith* (Princeton, 2018).
- 17 This Grotius also aims to show by means of a *reductio ad absurdum* – if justice were only aimed at because of its utility, inter-state dealings could not be assessed in terms of justice; but states even externally do need justice understood non-instrumentally as a value in its own right (DJBP Prol. 21).
- 18 Grotius agrees with Carneades on the role of utility for civil law. Cf. Blom, ‘Sociability’, 13. But, Grotius theorises already in a sense ‘natural’ society as opposed to the state, and in this regard anticipates Pufendorf; cf. B. Kingsbury and B. Straumann, ‘The state of nature and commercial sociability in early modern international legal thought’, *Grotiana* N.S. 31 (2010) 22–43.
- 19 In book 2 of Plato’s *Republic*, Glaucon tells the story of Gyges, a Lydian shepherd who discovers a ring that makes him invisible and proceeds to seduce the queen of Lydia, kill the king and take the throne himself. If one had the ring and the power to commit injustice unpunished, would there be any reason not to do it? Is justice, in other words, an intrinsic good, apart from its consequences, and beneficial to the agent in and of itself? Socrates answers yes, giving a famous account of the disharmony of the psyche of the unjust agent and the health of the just agent (*Rep.* 4.444d).
- 20 Carneades, in other words, is not convinced by the reasons Socrates offers to Gyges to reject injustice. Justice, for Carneades, is exclusively defined in terms of cooperative strategies. See, for an insightful account of Cicero’s reading of Plato and what is at stake in the tale of Gyges’ ring, R. Woolf, ‘Cicero and Gyges’, *Classical Quarterly* 63 (2013) 801–12.
- 21 For an argument that it is only missing from the natural law treatises, but present in the theological work, see T. Schaffner, ‘The eudaemonist ethics of Hugo Grotius (1583–1645). Pre-modern moral philosophy for the twenty-first century?’, *Jurisprudence* 7 (2016) 478–522.
- 22 Cf. Schneewind, *Invention*, 175: Grotius ‘sets aside . . . questions of the highest good’ and ‘says nothing about individual perfection’. Schneewind denies therefore that Grotius’ natural law deserves to be called Stoic in the sense of

- eudaemonist, but leaves open a Ciceronian background. Grotius must have known the formulation *ta prota kata phusin* from Aulus Gellius or from Stobaeus.
- 23 See Cic. *Rep.* 2.31; 3.34f.; *Leg.* 2.34; *Off.* 1.34ff.
- 24 This passage is taken straight from Cic. *Fin.* 3.16, 3.17, and 3.20. On Grotius' use of the passage, see Straumann, '*Appetitus societatis*'; Brooke, *Philosophic Pride*, 48–53.
- 25 Cic. *Fin.* 3.21.
- 26 R. Woolf, *Cicero: The Philosophy of a Roman Sceptic* (London/New York, 2015), 158.
- 27 For a view of Grotius that assimilates him to an Epicurean, or Carneadean, outlook centred on self-preservation and a Hobbesian vision of the good, see R. Tuck, 'The 'modern' theory of natural law', in A. Pagden (ed.), *The Languages of Political Theory in Early-Modern Europe* (Cambridge, 1987), 99–119. For counterarguments, see Straumann, '*Appetitus societatis*'; Brooke, *Philosophic Pride*, ch. 2. Hobbes' own view of what right reason requires is indeed indebted to Carneades (cf. *De cive* 2, § 1). This represents a combination of Cicero's natural law (*Leg.* 1.18, 23) with a Carneadean version of *oikeiosis*: see A.R. Dyck, *A Commentary on Cicero, De Legibus* (Ann Arbor, 2004), 35, n.123. For Carneades defending the *primae secundum naturam* as the highest good, see Cic. *Fin.* 5.20.
- 28 In a sense, then, both Cicero and Grotius design a system of natural justice that is built around a Carneadean account of the good (the *prima naturae*: Cic. *Fin.* 2.35, 42), but, like Carneades', is not conceived as a theory of the good, but subject to scepticism (see below).
- 29 Brooke, *Philosophic Pride*, 57.
- 30 Brooke, *Philosophic Pride*, 58.
- 31 See, for a different view, Schaffner, 'Eudaemonist ethics'.
- 32 For Grotius' natural right to punish and its influence, see Straumann, *Roman Law*, ch. 9. Fear of punishment and the enforcement of natural law are concessions to the motivational problems Grotius' non-eudaemonist account generates; someone like Gyges or Hobbes' Fool has to be deterred by punishment – by contrast, neither the Stoic nor the Epicurean sage do.
- 33 This leaves us with the 'puzzle', as Brooke has it, that 'Grotius seems to be fairly cavalier about the origins of justice, at least insofar as it manages to obtain any kind of grip on human psychology'. *Philosophic Pride*, 52.
- 34 For an argument that it is, see Irwin, *Development*, 93–6 and 98–9. For a view close to the one I offer, see Darwall, 'Grotius'.
- 35 It is in this sense that it is a recognisably modern, 'jural' outlook, in Henry Sidgwick's terminology: see on this Straumann, *Roman Law*, 84–8.
- 36 H. Sidgwick, *The Methods of Ethics* (7th edn, London, 1907), 498: 'It would be contrary to Common Sense to deny that the distinction between any one individual and any other is real and fundamental, and that consequently "I" am concerned with the quality of my existence as an individual in a sense,

fundamentally important, in which I am not concerned with the quality of the existence of other individuals: and this being so, I do not see how it can be proved that this distinction is not to be taken as fundamental in determining the ultimate end of rational action for an individual.' This dualism had been absent from Greek ethics, Sidgwick thought: 'In Platonism and Stoicism, and in Greek moral philosophy generally, but one regulative and governing faculty is recognized under the name of Reason – however the regulation of Reason may be understood; in the modern ethical view, when it has worked itself clear, there are found to be two – Universal Reason and Egoistic Reason, or Conscience and Self-love'. Sidgwick, *Outlines of the History of Ethics* (London, 1892), 197. Carneades' dialectical reasoning may be seen as a predecessor of the modern view.

- 37 J. Klein, 'Stoic eudaimonism and the natural law tradition', in J.A. Jacobs (ed.), *Reason, Religion, and Natural Law: From Plato to Spinoza* (Oxford, 2012), 57–80, at 80. This is why it may be prudent to let the history of the idea of a rule-based natural law, as opposed to natural justice, or virtue-based natural law, begin with Cicero rather than with the Greek Stoics. Cf. G. Striker, 'Origins of the concept of natural law', in idem, *Essays on Hellenistic Epistemology and Ethics* (Cambridge, 1996), 209–20; B. Inwood, 'Commentary on Striker', *Proceedings of the Boston Area Colloquium in Ancient Philosophy* 2 (1987), 95–101.
- 38 This account of obligation, then, comes to anticipate and resemble Hobbes', where the laws of nature are neither obligatory by virtue of being God's commands, nor simply advice, but based on the authority of reason. But, for Grotius, as opposed to Hobbes, right reason provides motivation beyond merely prudential considerations – this is what the account of *oikeiosis* is designed to achieve. The content of Grotius' commands of right reason differs of course markedly from the content of Hobbes'.
- 39 See Straumann, 'A reply', 218f., esp. n. 25. Jeffrey Edwards points out to me that this is plausible only insofar as Grotius is in a position to separate motivation from the content of moral judgments; he might also plausibly be said to be an internalist if he thinks that the dictates of right reason (DJBP Prol. 8ff.) are apprehended as *notiones certae*, which are known to us by taking account of the anthropological factors that figure in *oikeiosis*. This may well be true, but I doubt that Grotius is quite as orthodox a Stoic as that (in addition, this still would not solve the problem of Sidgwick's dualism of practical reason). Many thanks to Professor Edwards for the correspondence.
- 40 For a view that Cicero retains a measure of scepticism even with regard to his political theory, see J.W. Atkins, *Cicero on Politics and the Limits of Reason* (Cambridge, 2013), 176–85.
- 41 For a vigorous assertion of this scepticism regarding the *summum bonum*, see DJBP 1.3.8.2.
- 42 For this expansion of the scope of right reason beyond the Stoic sage to all of humanity, see Straumann, *Roman Law*, 107–13. For Grotius' concept of the

society of humankind (*societas humana*), see T. Schaffner, 'Societas Humana bei Hugo Grotius', in T. Altwicker, F. Cheneval and O. Diggelmann (eds.), *Völkerrechtsphilosophie der Frühaufklärung* (Tübingen, 2015), 103–16.

- 43 For a survey, see E. Piirimäe and A. Schmidt, 'Introduction: between morality and anthropology – sociability in Enlightenment thought', *History of European Ideas* 41 (2015) 571–88, as well as the other contributions to this issue of *History of European Ideas*. See also, e.g., F. Palladini, 'Pufendorf disciple of Hobbes: The nature of man and the state of nature: The doctrine of *socialitas*', *History of European Ideas* 34 (2008) 26–60; I. Hont, *Jealousy of Trade* (Cambridge, MA, 2005); Blom, 'Sociability'; Kingsbury and Straumann, 'State of nature'; Brooke, *Philosophic Pride*; Sagar, *Opinion*.