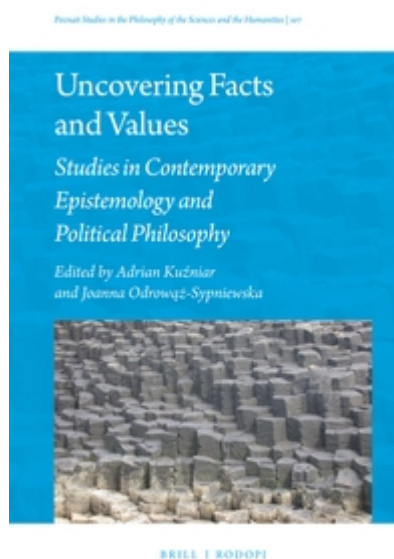


Final version now published by Brill:



- **Author:** [John Skorupski](#)
- **Source:** [Uncovering Facts and Values: Studies in Contemporary Epistemology and Political Philosophy](#), pp 280-292
- **Subjects:** [Philosophy](#)
- **Publication Year :** 2016

### The Grotian Concept of a Right

John Skorupski

#### I

According to Grotius, ‘Right, properly speaking ... consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness they may demand.’

Within the sphere of Right “properly speaking” – that which “in strictness” may be demanded – Grotius includes

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.

He thinks the “Fountain” of this notion is the “Social Faculty”: the faculty or ability to live peacefully together and engage in cooperative exchange. However,

From this Signification of Right arose another of larger Extent. For by reason that Man above all other Creatures is endued not only with this Social Faculty of which we have spoken, but likewise with Judgment to discern Things pleasant or hurtful, and those not only present but future, and such as may prove to be so in their Consequences; it must therefore be agreeable to human Nature, that according to the Measure of our Understanding we should in these Things follow the Dictates of a right and sound Judgment, and not be corrupted either by Fear, or the Allurements of

present Pleasure, nor be carried away violently by blind Passion. And whatsoever is contrary to such a Judgment is likewise understood to be contrary to Natural Right, that is, the Laws of our Nature.

... 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.*<sup>1</sup>

So Grotius allows that there is a wider sense of right, which takes account of pleasant or hurtful consequences: it is the object of "right and sound judgement" based on "Natural Right" in the broader sense of accordance with the "Laws of our Nature." However Right in this wider sense does not, unlike Right properly speaking, entail the notion of *legitimate demand*.

In an editorial note Barbeyrac gives some examples to explain the author's meaning: When we forbear striking, wounding, robbing, injuring or defaming any one, we only leave him in quiet Possession of what was his own; for the good Condition of his Limbs, his Goods, and Reputation, are actually his own, and no Man has a Right to dispossess him of them, while he has done nothing to deserve such Treatment. When we repair the Damage he has sustained in his Person, Goods, or Reputation, whether designedly or through Inadvertency, we restore what we had taken from him, and what was his own, which he had a strict Right to demand. When we keep our Word to him, when we perform our Promise, or make good an Engagement, we do not indeed restore, what he was once in actual Possession of; but we perform what he might strictly require at our Hands. All this relates to the Law of Nature, taken in the strict and proper Sense of that Term; not to mention the Punishment of the Guilty ... When [in contrast – JS] the Sovereign refuses to bestow an Employment on one of his Subjects, who is worthy of it, or prefers one less capable of discharging the Duty, or does not reward the Person according to his Merit, he does indeed offend against the Law of Nature, taken in an improper, and less [more? – JS] extensive Sense, according to our Author's Ideas; but he does that Subject no Wrong, properly speaking, because he had no full and rigorous Rights to demand the Employment, or the Reward. The same is to be said of those, who refuse Relief or Assistance to the poor and miserable, not in extreme Necessity; for in that Case they have a strict Right to demand what they want ...<sup>2</sup>

Some may question Barbeyrac's example of the Sovereign. A Sovereign is an entity acting in a public capacity, not a private person, so arguably it *does* wrong a person who should have been appointed on merit. It is not simply prudent, or beneficial, to appoint the best-qualified person to a public office, many would nowadays say – rather, to be assessed for the appointment solely on appropriate qualification is the person's right "properly so-called". But our difference with Barbeyrac here is not to do with the contrast itself. It arises from the stricter distinction we draw between public and private spheres: our conviction that

<sup>1</sup> Grotius, *The Rights of War and Peace*, edited by Richard Tuck, 3 vols, Indianapolis, IN: Liberty Fund, 2005, vol. I, pp. 87-9, my emphasis. (That one may legitimately demand to be left in quiet possession of one's own is understood.)

<sup>2</sup> Tuck, ed., note 7, pp.88-9. *The Rights of War and Peace* was first published in 1625. Barbeyrac's edition of the work appeared in Latin in 1720, in a French translation in 1724, and in an English translation (used in Richard Tuck's edition for the Liberty Fund) in 1738.

Sovereignty is a purely public role and our beliefs about what any person may legitimately demand in the public sphere.

The Grotian contrast itself is, I believe, sound. However important questions arise about the other side of it, the side that is not a matter of rights in the strict sense. We often distinguish between prudential and moral good, or again, particular and impartial good. These distinctions are noticeably not made in the passage from Grotius. For his purposes they may not have been needed. But they become significant if we wish to ask about the normative significance of rights, that is, about how they fit into the domain of practical reasons. One question here is how the category of rights fits with the category of the moral, another is how these categories fit into, or with, practical reasons in general. These questions lead us to ask what is meant by “may” in “what in Strictness they may demand.” It is this conceptual issue that I want to address in this essay. To introduce it, we should attend to some questions of definition.

When a person has a right, his possession of that right is constituted by positive or negative demands he may make on the actions of others. Having any particular right consists in the possibility of legitimate demands that others do or refrain from doing so-and-so (honour their promise, not take one’s computer without one’s permission, etc.). The right in question is constituted by the legitimacy of these possible demands. Further, it is definitive of “Right, properly speaking” that such demands may be enforced, and that when others flout them by their doing, omitting or refraining there is a presumptive though defeasible claim to compensation.

In light of these points, consider the following definition

(A) X has a right that Z Ys if and only if it is permissible (absent special circumstances) for X or X’s agent freely to demand that Z Ys, and (where appropriate/relevant) to demand compensation for X from Z in the event of damage resulting from Z’s non-compliance.<sup>3</sup>

The definition is ‘Grotian’ in appealing to the notion of a *permissible free demand*. Its *definiens* is normative, since it invokes a notion of permissibility. That is as it should be – certainly the notion of a right is a normative notion. (We are not concerned here with purely positive-legal rights.) But what notion of permissibility is in play? The obvious answer is that what is meant is moral permissibility, where an action is morally permissible if and only if it is not morally wrong.

Note then the requirement that the permissible demand should be *freely* made. The impermissible may become morally permissible under coercion. So for example it may be morally permissible to lie or break a promise under coercion. Thus (in an example put to me by Allan Gibbard) suppose a hostage-taker forces his hostage, at the point of a gun, to demand that the government releases some prisoners. It is morally permissible for the hostage to make that demand, but the hostage is acting under coercion, not freely. So it does not follow that it is the hostage’s *right* that the government should release the prisoners, nor that the government has a duty of right to the hostage to release the prisoners, that is (following Barbeyrac’s criterion), that it wrongs the hostage if it does not release them – whether or not it has a moral obligation to release them.

What about the notion of *demand*? A demand is more than a mere request. The notion is conceptually linked to the possibility or probability of some form of compulsion or exaction; where a demand is clearly not enforceable it can seem empty. Even so, a demand may be permissible even if it is not actually possible to enforce it; it is for example

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<sup>3</sup> I argued for a version of this definition in John Skorupski, ‘Human Rights’ in Samantha Besson and John Tasioulas, eds., *Philosophy of International Law*, Oxford University Press, 2010, pp 340 – 357, and *The Domain of Reasons*, Oxford: Oxford University Press, ch. 12.

permissible to demand the return of the hostage even if we have no power to enforce it. (And to say the demand is permissible is not to say it is wise.) Of course enforcement, compulsion, exaction, don't necessarily take the form of physical coercion. Even to say that you are demanding something is already to exercise a certain degree of exaction; demand is a form of command. You don't demand, as against request, things in polite company, even when you have a right to do so. To demand is to imply that enforcement would, if necessary be permissible; that given that the demand has been made, the other person has no option but to comply.

Permissible enforcement must be proportionate to the seriousness of a right-infringement. Hence, just because demanding is already a form of enforcement, when a right is sufficiently trivial it may be disproportionate even to make demands. Suppose that we have previously agreed to have lunch together – and you have not pressured me unacceptably into that agreement. Then you have a right to expect me to be there, a right to be told in advance (if possible) that I can't come, and a right to remonstrate if I fail to turn up without bothering to tell you and without any excusing reasons. But, as often with small rights, it might well be foolish or petty-minded to act on these rights, by actually remonstrating, let alone demanding compensation.

Nonetheless, where harm or damage is caused to the right-holder by an infringement it is permissible for the right-holder to demand and enforce compensation. As ever, such permissibility is subject to defeat by weightier moral grounds, and what is permissible is proportionate enforcement of proportionate compensation, taking into account the circumstances of the infringer. But the right-holder may not be capable of issuing demands: infants, people with certain kinds of mental illness, and animals are not able to do so. It seems specious to say that they are still permitted to issue demands, though incapable of doing so; yet we surely do not want to deny that they have rights solely in virtue of that point. Hence my definition allows that an agent acting for the right-holder may demand on the agent's behalf. More generally, if you have a right to demand others typically have a right to demand for you. You may demand that a thief returns what he has stolen from you; others too may demand that he returns it to you.

## II

I have agreed with Grotius that rights proper are demarcated by the criterion of what a person may demand, in the sense of demand just discussed. I also broadly agree with him about the *content* of rights proper, as indicated by his list of examples. However the substantive extent of rights is a question in its own right, and not our topic. Here our concern is with the conceptual relations between rights, morality and practical reasons. For this purpose we need to think about how to categorise normative considerations that lie *outside* the sphere of right strictly so-called.

In the passage I quoted Grotius presents a rather disparate list of these considerations as all falling under the "Dictates of a right and sound judgment." Right or sound judgement, he tells us, attends to pleasant and hurtful consequences, both present and future; also to "prudent Management in the gratuitous distribution of things", that is, distributions where no-one has pre-existing claims of right on that which is distributed. He emphasises that such judgement raises no issues of right strictly so called; but he also accepts that it too is regulated by practical-normative principles that arise from our nature. Natural law in this broader sense is simply the domain of practical-normative truths as such – of true propositions about practical reasons. This is a very broad sense. Effectively Grotius makes no

distinction other than that between practical norms in general and norms that determine strict rights in particular. Fair enough, given his aims. But if we seek an overall picture of practical normativity, and in particular the place of right proper within it, we have to inquire further.

It has seemed obvious to many that the most fundamental distinction in the sphere of practical normativity is between the moral and the non-moral (prudential, aesthetic). It is the most fundamental distinction, because morality is in a certain sense *supreme*. It is a moral question, something decided from the moral point of view, whether any particular choice raises moral issues, and it is likewise a moral question whether a given demand is legitimate, so that what rights there are is also determined from the moral point of view. Morality is, furthermore, supreme in the sense that it is categorical – if there is a moral obligation to do something there is uniquely sufficient reason to do that thing.

Kant articulates this picture when he divides morality, the sphere of categorical imperatives, into the doctrine of “virtue” (*Tugend*) and the doctrine of “right” (*Recht*). There is the overall sphere of moral obligation, and within that lies the specific domain of *duties of right* – where A has a duty of right to B to do something if and only if A has a right that B do that thing (and has not waived it).<sup>4</sup>

Then there are many dictates of right and sound judgment, whether trivial or important, that involve neither duties of right nor moral obligations.<sup>5</sup> A judgment about whether it is best to walk to the cinema or go by bus is one example among a myriad others. Right and sound judgment can be applied to that practical question as to any other. So we have a three-way division between non-moral judgments about practical reasons, dictates of moral obligation, and demands of strict right. But it is the moral point of view that determines where the lines between these should be drawn.

There is no sign of this three-way distinction in the passages from Grotius or the comment by Barbeyrac. However my definition of rights is compatible with it. Indeed it *presupposes* a distinct concept of the moral if, as I suggested above, we interpret the notion of permissibility that it deploys as moral permissibility. Yet how else should we interpret it? What does Grotius mean by ‘may’ when he speaks of “what in Strictness they *may* demand”?

Suppose we interpret the statement that it is permissible for X to demand Y as meaning that X has a *right* to demand Y. (A) then becomes:

(B) X has a right that Z Ys if and only if X or X’s agent has a right (absent special circumstances) freely to demand that Z Ys, and (where appropriate/relevant) to demand compensation for X from Z in the event of damage resulting from Z’s non-compliance.

This, I believe, is true. But obviously it cannot serve as a definition, since the word ‘right’ appears on the right hand side. In contrast, the issue of circularity does not arise if we interpret ‘permissible,’ in (A), as meaning ‘morally permissible. The claim that (A) is a definition can then stand. The definition, moreover, is consistent with the *truth* of (B). Plausibly, if (and only if) it is morally permissible to make a demand then it is morally permissible to demand that others should not interfere with one’s demanding. In which case (B) follows, given (A).

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<sup>4</sup> “What essentially distinguishes a duty of virtue from a duty of right is that external constraint to the latter kind of duty is morally possible, whereas the former is based only on free self-constraint.” Kant, *Metaphysics of Morals*, Academie edition, 6: 383. But as we shall see in section IV, it is not quite right to put these two kinds of ‘duty’ on a level, which is why I have distinguished between moral *obligations* and *duties* of right.

<sup>5</sup> Kant thought he could handle this point in terms of the contrast between categorical and hypothetical imperatives, wrongly in my view.

## III

So far, then, we have a comprehensive picture in which right strictly so-called is a sub-category of the moral, with moral obligation in turn divided from decision-making which is sensitive to practical reasons but raises no moral questions. It is a plausible picture. The distinctions between the moral and the non-moral, and between duties of right and moral obligations, are at least at one level readily comprehensible. Yet it is also true that the underlying idea, that of *the supremacy of the moral point of view* is not uncontroversial. The most influential critic in recent philosophy has been Bernard Williams. However I want to take account of two earlier, historically important discussions.

There is something plausible, or at least interesting, in the idea suggested in their different ways by Hegel and by Nietzsche, namely, (i) that the moral point of view is a modern development, perhaps out of Christianity, and (ii) that the concept of rights is somehow more primitive or more basic than morality, and not simply a division or constituent of it. For rights of some kind must be acknowledged, more or less, in any society which functions at all as a society. But on the face of it there could be societies in which the 'moral point of view' has no purchase. In such societies, if there are or have been any, the practical-normative landscape certainly encompasses rights, which define peaceful coexistence and exchange – the "fountain" of Grotius' social faculty – whose preservation where necessary by force is accepted as legitimate. Beyond these there is simply better or worse practical judgment, responding to heterogeneous collections of ends, ideals, customs, affiliations, personal commitments.

This totality, including rights, constitutes Hegel's *Sittlichkeit*, as he envisages it existing for example among the Homeric Greeks, or in the time of Oedipus as presented by Sophocles. That the moral point of view is, in contrast, a modern development is implied in Hegel's treatment of abstract right and morality (what he calls *Moralität*<sup>6</sup>) in the *Philosophy of Right*. There he treats the latter as a development from the former. He sees it as an aspect of the overall modern development of interiority, working in this case through reflection on the meaning of punishment, remorse and atonement.<sup>7</sup> The moral point of view marks out the difference between the modern reflective version of *Sittlichkeit* and its primitive, unreflective and customary form. Hegel sees this transition as a dialectically inevitable advance of the spirit, even though he has much to say about the possibilities of abstract and individualist distortion that it brings with it. Thus in Hegel's conception the emergence of a clear-cut three-way division between rights, morality, and the non-moral sphere of particularity is a product of that general dialectic of rational differentiation.

The Nietzschean view, by which Williams was influenced, also conceives of morality as a modern development, but, in short, a bad one. Despite this obvious difference in the way he and Hegel *evaluate* the development, what Nietzsche says about morality – the slave value-system – is in some aspects similar to what Hegel says about *Moralität*. Nietzsche too holds that the moral point of view is a development towards interiority, or subjectivity. He agrees that it is, in one way, progressive – it makes man a reflective, interesting animal. Even more strikingly, in *The Genealogy of Morals* (Essay 2) and elsewhere Nietzsche presents right, including the right to give one's word and accept responsibility, as intrinsic to value

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<sup>6</sup> There is some difficulty in translating this term. Hegel has in mind a certain *kind* of moral consciousness. I've used both 'moral point of view' and 'morality', as appropriate.

<sup>7</sup> See Hegel, *Philosophy of Right*, Parts I & II, especially §§102-102, 'Punishment and Revenge', and §104, 'Transition from Right to Morality.'

systems which predate that which emerges from Christianity and develops into modern morality. Legality come before morality.

Without in any way reading either Hegel or Nietzsche back into Grotius, we can say that the view of the relationship between rights and morality that we find in their different ways in Hegel and Nietzsche has elements in common with Grotius' picture of the practical-normative domain. This domain of norms arises from human beings' natural concerns: the pursuit of happiness, of natural ideals of desert, of equity, of honour, of deep agent-relative commitments, and so on. Within that domain, strict right, demandability, arises from the imperative need to live and exchange peacefully with others. In this picture there is no special role for a distinctive and dominant moral point of view. A present-day critic of morality could hold that this is a healthier picture, inasmuch as it consigns disciplinary functions solely to the enforcement of strict rights, and leaves the rest to the private domain of more or less personal preference. It fits with one kind of modern liberalism, which treats rights as socially enforceable, while treating practical judgement as a private matter, even it acknowledges that such judgement can be objectively better or worse.

Hegel and Nietzsche differ of course about whether the development of the moral point of view is, overall, good. Hegel sees it as a development towards freedom, Nietzsche sees it as the emergence of a kind of bondage. My own view follows Hegel. Incidentally, in many ways Williams' criticisms fit into the Hegelian critique of *Moralität* and of Kant. They overlap strongly with Hegel's criticisms of the moral point of view, while at the same time Williams does not really follow up very far the Nietzschean assault on post-Christian liberalism and democracy.

The Hegelian approach produces a conception of liberalism very different to that referred to in the last paragraph but one. However I want to return to the issue of priority: in Hegel's treatment the notion of rights is envisaged as existing *before* the development of the moral point of view. Moreover Hegel sees this as a conceptual as well as a historical priority (in his terms, a dialectical priority). Does this not lead to a difficulty for my definition? Even granting that the moral point of view is part of a fully developed and differentiated conception of normativity – as Hegel thinks – can it be intruded into the notion of a right? Since right comes before the moral point of view, to which such a notion as moral permissibility essentially belongs, surely the latter notion cannot be part of the notion of right. Having a right is not having a *moral* permission, but having a *right*, to demand – as stated in (B). And obviously on this view of right as a primitive normative concept my attempt to define it collapses.

#### IV

There is certainly something very distinctive about the *feel* of rights. It is partly a matter of felt stringency, recognized early on by children as well as by adults. I agree that it is also partly a matter of felt priority – as discussed in the last section, rights seem to belong to a more primitive stratum of practical normativity, so that defining them in terms of moral permissibility has an appearance of putting the cart before the horse.

An interesting difference between moral obligations and duties of right can seem to give credence to this thought. Rights and duties of right, unlike moral obligations, depend on what the facts are, not on what the agent is warranted in thinking the facts are.

Suppose a lost will instructs that an estate should be left to a particular person. The executors have no idea of its existence. The will has fallen down the back of a very heavy mahogany sideboard and the legitimate heir is languishing in some distant part of the world. Nonetheless, that particular person has a right to the estate, and hence – given how I have defined duties of right – the executors have a corresponding duty of right to make it over to

him or her. They have that duty of right even while they are ignorant of it. But since their ignorance is entirely innocent they transgress no moral obligation, do nothing that is morally wrong, in failing to carry it out. Nonetheless, if they find the will they then have a moral obligation to make good the situation by carrying out its terms.<sup>8</sup> Rights, and hence duties of right, are fact-dependent, not warrant-dependent.

Moral obligations, in contrast are warrant-dependent. What moral obligations I have depends on what I have warrant, sufficient reason, to believe to be the case. If I have warrant to believe that you urgently need medical attention, then I have a moral obligation to get it, even if in fact you don't need it. If you do need it, but I have no reason at all to believe that you do, I have no moral obligation to get it. In general the link between moral obligations and duties of right is that one has a *prima facie* moral obligation to fulfil duties of right that one has sufficient reason to believe that one has.

Why are moral obligations warrant-dependent? The point, I think, is that morality is for self-determiners (Hegel's 'moral subjects'), and *self*-determiners must be able to know, in a concrete situation, what moral obligations they have, if any. This question must be open to reflection, in just the way that the general question of what I have warrant to believe and do is open to reflection.<sup>9</sup> I must be able to determine for myself what my warrants are, and what my moral obligations are: reflection on moral obligation occupies the same role in first-person deliberation as reflection on warrant. This gives rise to what Hegel calls 'the right [or principle] of the subjective will'; a principle, as he emphasises, that is fundamental to the moral point of view. If one has a moral obligation one can in principle tell that one has.

What about duties of right, then, why are they *fact*-dependent? The key here, I believe (with Grotius), is that rights are the determinants of legitimate social interaction. They are the permissions and prohibitions whose complex constitutes the constantly changing structure of social relations, and this structure is grounded in the facts. What makes the heir the heir is the facts about what was written in the will, and the facts which make it a due and proper will. Given those facts, no-one else is the heir, whatever the executors may have reason to believe. Rights are locked to facts about what has *actually* happened, facts that exist independent of whether we are warranted in thinking that they do.

So does my definition put the cart before the horse?

The answer turns on the notion of permissibility which it deploys. Rights consist in the permissibility of demands, but while this notion of permissibility is clearly normative it seems tendentious to equate it straightforwardly with the notion of moral permissibility – for this seems to import moral notions into every society which recognizes some demands placed by people on other people as legitimate. (And what conceivable society would *not* do that?). But, on the Hegel/Nietzsche view, the horse of rights comes before the cart of morality. Or to move hastily to an apter metaphor, the foundation of rights is needed for any shared house, whereas the upper floor of morality may or may not come later.

'Permissible' must mean more than 'not against right and sound judgment.' That would be too weak. But perhaps full-blown *moral* permissibility is too strong? I think the notion of *blameworthiness* can help us. I have argued that we can characterize morality in terms of blameworthiness, where the core of blame is understood as an emotion or set of

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<sup>8</sup> Subject to moral obligations that may have arisen in the interim. (I used this example in *The Domain of Reasons*.) The discussion in this section follows the longer discussion in *Domain of Reasons*, with some minor changes.

<sup>9</sup> Which is not to say that the question of what there is sufficient reason to do is open to reflection. For further discussion of the relation between reasons and warrant, see *The Domain of Reasons*, ch. 5.



emotions, with a characteristic disposition.<sup>10</sup> The disposition is to exclude the person blamed, though not unconditionally – when the disposition is working properly, it inherently envisages reconciliation in the presence of remorse. This disposition, and its social ramifications, constitutes the core discipline of blame. Note then the difference between this discipline and the discipline that attends rights-violation. The latter may include violent enforcement, loss of freedom and the extraction of compensation, the former does not, though its recourse to withdrawal of recognition can in many ways be just as painful. Furthermore blame, at least when fully developed into the moral point of view, requires some form of *mens rea* on the part of the person blamed, whereas it's not clear that that applies to the discipline of rights. This is a tricky question, but at least it seems that compensation may sometimes legitimately be demanded even if the rights-violation was understandably unknown and therefore morally blameless.

Now I find it hard to believe that there are or could be societies in which the sentiment of blame, with its related sentiments and movements of withdrawal of recognition, remorse and reconciliation does not exist.<sup>11</sup> It seems too basic a human phenomenon. In that minimal sense the elements of the moral are omni-present. But that does not mean that moral obligation is articulated and differentiated into a distinct system – that is the work of modern morality, including modern moral philosophy.<sup>12</sup>

An action, one may say, is morally wrong just if (i) the agent has sufficient reason to believe that there are reasons not to do it, that is, he could warrantedly come to that conclusion if he thought through what he knows and (ii) those reasons not to do it are such that not to comply with them, when one has sufficient reason to believe that they obtain, is blameworthy. This account defines moral wrongness in terms of blameworthiness. It does not follow that one has the concept of the morally wrong, even if one has the concept of blame. Thus in the Grotian definition of rights one can take permissible demands to be demands which the demander is blameless in making. Elucidations and corrections to this definition are needed to get it right, because moral permissibility and blamelessness do not coincide.<sup>13</sup> Such corrections will move us closer to a clearly articulated conception of moral wrongness. Nonetheless, a society can have a conception of rights based on the core notion of blameless demands, without having a developed and differentiated notion of moral wrongness. In that sense at least, we can reject the accusation that the Grotian definition of rights puts the cart before the horse, while at the same time explaining its intuitive force.

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<sup>10</sup> *The Domain of Reasons*, chs 12 and 15

<sup>11</sup> Obviously this is an empirical question that could be investigated by anthropologists. Though empirical, it is also conceptually very elusive; but then anthropologists are trained to deal with such hermeneutic questions. However I haven't found a substantial body of recent literature dealing with it. There is an older discussion of 'shame' and 'blame' cultures. On the case of the Homeric Greeks Bernard Williams should be mentioned again: see his *Shame and Necessity*, Berkeley and Los Angeles, 1993

<sup>12</sup> This is not to deny the role of ancient and especially mediaeval ethics – see T. H. Irwin, *The Development of Ethics*, Oxford 2007-9. Nonetheless it seems to me that the modern period, with its work of rational differentiation (of the kind described by Max Weber) is crucial.

<sup>13</sup> *The Domain of Reasons*, ch. 12.