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Jeremy Seth Geddert

Assumption College, j.geddert@assumption.edu

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CHAPTER EIGHT

HUGO GROTIUS' MODERN CIVIL RELIGION: SOURCE OF EUROPE'S STOIC LIBERALISM?

JEREMY SETH GEDDERT

Classical Europe is often credited with originating political life. Five hundred years before Christ, Ancient Greece and Rome initiated the notion that citizens could govern themselves. Cleisthenes and Brutus fought for regimes in which no person would hold royal status or stand above the law. The Acropolis and the Forum remain among the world's most iconic sites: they draw tourists, inspire political reformers, and lend their names to modern arenas. These two classical examples are commended to schoolchildren as the birthplace of today's cherished liberties.

If classical Europe inaugurated political life, modern Europe bequeathed us its current form. The 1648 Peace of Westphalia not only concluded the Thirty Years' War, but is also said to have birthed the modern nation-state system. First, its treaties enshrined the principle of *cuius regio, eius religio*, which mandated religious noninterference by outside authorities. This international pluralism ultimately led to domestically tolerant regimes of individual liberty. Second, nation-states then wrote constitutions protecting freedoms of association, speech, religion, and a host of other claims. Third, among these other eventual claims was that of universal suffrage, extending political participation throughout entire linguistically-unified regions. If classical Europe was the great-grandmother of democracy, its modern descendant might be hailed as the mother of the nation-state.

Yet the modern nation-state is not simply a chip off the old block, or even a digitization of the Twelve Tables. First, the character of ancient liberty is decidedly different from the modern. Benjamin Constant famously argued that ancient liberty meant the ability to participate in government. But it did not mean tolerance or security of person. Ancient Athenian citizens were all entitled to vote in the assembly; a majority of

them famously – and illiberally – voted to execute Socrates. In contrast, modern polities bind their assemblies to act for liberty.¹ Second, the best thinkers of the ancient world were indirect critics of the rule of law, or at least of lawyers. Plato's Socrates repeatedly asserts that true justice is beyond definition, and Aristotle's *spoudaios* practices a prudence that varies by situation and avoids one-size-fits-all charters of rights.² By contrast, modern nation-states hold dear their written documents and mantras – all simple enough for democrats to comprehend. Third, the exercise of citizenship in ancient politics differs from the demands of today. Ancient democracies invited citizens to participate in their legislatures, and thus were limited in number by the physical size of their assembly. They granted citizenship only to male landowners. In contrast, modern democracies invite citizens only to choose representatives, which permits participation over a geographic scope that the ancients would have called an empire.³ Modern states thus extend citizenship to include all adults. In sum, modern democracies are distinguished from ancient by their individual rights, written documents, and mass participation. (One almost wonders if foreign DNA entered the lineage somewhere.)

If the blood of the Thirty Years' War brought forth the modern nation-state, one of the midwives attending this labour was surely the Dutch politician and intellectual polymath Hugo Grotius. Grotius is sometimes forgotten today as a crucial figure in this new birth, but he was well known to his contemporaries far and wide. Already learned by the age of fifteen, this prodigy was pronounced "the miracle of Holland" by King Henry IV. In his twenties, he published works of poetry, history, theology, jurisprudence, and international law. In his thirties, he rose to prominence as *de facto* Prime Minister Oldenbarnevelt's right-hand man, only to find his political stand bringing him a life sentence. He witnessed the outbreak of the Thirty Years' War in chains. After a daring prison break, he was exiled from his country, but immediately granted a royal pension in Paris by Louis XIII. In 1625 he published his magisterial *de Jure Belli ac Pacis*, a comprehensive treatise seeking a peaceful resolution to the War ravaging the continent. This work attained for Grotius such pan-European renown that in 1634 the Swedes named this Dutchman their ambassador to France. Shortly after Grotius' 1645 death, the University of Heidelberg installed Samuel von Pufendorf as its first chair in the Law of Nature and Nations, a field thought to have been established by Grotius. Twentieth-century scholars still recognized him as the father of international law, and organizers of a 1983 conference celebrating his quatercentenary chose a simple but apt title: "Hugo Grotius – A Great European".⁴

In the twenty-first century, scholars increasingly credit Grotius with not only historic but also philosophic import: inventing modern natural rights. Titans such as Richard Tuck paint a portrait in which Grotius advances each of the three distinctively modern elements of the state. First, Grotius rejects the classical teleology of Aristotle in favor of a modern deontological science of liberties. Gone is classical natural Right; taking its place are modern individual rights. Second, Grotius' justice no longer requires attaining internal virtues, but only declining to externally violate others' property and person.⁵ Hence, justice no longer resides in the soul of the wise ruler, but in formulations of law. Third, one of Grotius' individual rights is the necessity of consent to political subjection. Hence, all those governed by the state must be permitted to participate in its elections. In this story, Grotius makes modern Europe possible precisely by relegating virtue to the private sphere and thus liberating politics from questions of the soul.

In what follows, I argue that Grotius' philosophic legacy has a somewhat different character. He does indeed provide a foundation for a basic set of secular natural rights. Yet in addition to these natural rights, he frequently speaks of a "wider" virtue – often in curiously indirect fashion. This language complicates the standard portrait of a Grotius who lowers the political standard and eliminates virtue. Indeed, Grotius subtly insinuates that the maintenance of natural rights actually depends on this wider virtue.⁶ What is more, Grotius makes his case by copiously citing classical authors – in one instance translating verbatim three chapters of Aristotle in the midst of his own work.⁷ His modern natural rights seem not a moon eclipsing classical natural Right but a moon reflecting it.

This reading raises an obvious question: if Grotius does not introduce natural rights as a way to eclipse virtue, then why does he bother with them at all? Perhaps the answer has less to do with ontology and more with epistemology. Natural rights are a way of simplifying moral rules in a way that makes them comprehensible to many if not all. After all, few want to wrestle with the subtleties of Socratic discourses when trying to determine a case in small claims court. Yet Grotius also restricts this simplification of moral rules to matters of external property and person; it does not apply to internal virtue. This reveals his recognition that virtue is not so much a modern doctrine – comprehensive or otherwise – as it is a classical vision or intuition of the Good. Moreover, the highest realm of human virtue is now free from imposition by a political realm whose rules are typically formulated by the many (as Socrates knew all too well).

In sum, I will argue that Grotius develops individual rights in order to cultivate a minimum level of virtue in the mass populace now invited to

participate in modern politics, while simultaneously preserving the possibility of a nondogmatic wider virtue for those capable of it. These dual aims are grounded in a distinction he borrows from the Stoics, whose influences on Grotius have been the focus of recent scholarship. This ethical distinction separates the rules of the many and the virtue of the few. Through this distinction, Grotius employs his classical European heritage to shape a modern Europe true to its roots.

Dual Grotian Justice: Rights and Virtue

Grotius begins the body of his *De Jure Belli ac Pacis* (*The Right of War and Peace*) with a chapter entitled, "What is *jus* [or 'Right']?" In exploring the question, he concludes that justice has two parts. This follows Aristotle and his medieval heirs. Aristotle first outlines "arithmetic" justice (which Aquinas would later term "commutative"), which governs transactions between individuals. He then discusses "geometric" justice (or Aquinas' "distributive" justice), which considers how the state honours worthy individuals. In other words, commutative justice is private justice, and distributive justice is public justice.

Grotius likewise divides justice in two. Yet he proposes different category names: "strict" and "wider" justice. These new names correspond to a different criterion by which to delineate the two categories. The most basic division of justice is not, *pace* Aristotle, private vs public justice. Rather, the division concerns the "matter at hand".

Grotius states that the matter at hand in strict justice is "to give each his due". By defining the matter this way, Grotius keeps strict justice simple and intelligible. It is nothing but the familiar classical definition of justice. In fact, Aristotle and Aquinas had used this definition to encompass both sub-categories of justice: private *and* public.⁸

Grotius' strict justice is so called for several reasons. First, it is strictly concerned with external, visible acts. It need not examine the character of the person on whom the just duty or liberty falls. A bad person may exercise the same liberty as a good one. Strict justice is not a matter of changing one's character; it is a matter of fulfilling an act. For this reason, Grotius describes strict justice as "perfect"; it can be carried out perfectly, even by one whose character is far from ideal.⁹

Second, strict justice can be formulated in propositions that fully capture its essence. It mandates duties that are meticulous and provides liberties that are specific. In its exactitude, strict justice precisely determines whether a person's acts conform to its dictates or deviate from them. Moreover, strict justice is clear, allowing lawmakers to enshrine its

dictates in an authoritative code of law and thus to make them available to all. Indeed, strict justice is promulgated more as reminder than as education. Its hearers should already know its content, because that content is available to them in pure reason. Strict justice reveals itself to the unassisted human mind, regardless of time, place, and context. Experts and novices alike can attain to its truths, just as both adults and children can perform basic arithmetic. Strict justice needs no specific wisdom or expert interpretation, even by lawmakers; it only needs to be read.

The third element of strict justice follows from this accessibility: its provisions are mandatory for all. Strict justice does not simply govern experts in political thought; it imposes legitimate demands on all. None of its subjects can legitimately claim ignorance of its duties. Nor can its subjects quibble with the content, because its duties command restraint rather than action. As Grotius says, they are just “in a negative rather than a positive sense”.¹⁰ Hence, these duties cannot be accused of imposing a comprehensive doctrine on their subjects, or causing those subjects to actively violate their consciences. Finally, the duties of strict justice are few in number: five. One renders to others their due by respecting the life and property of others; returning unjustly-taken property; providing restitution; keeping promises; and punishing those who violate the above.¹¹

Yet if Grotius’ strict justice has included both the private and public realms, it has not necessarily included *all* private and public acts.¹² Indeed, some such acts are instead overseen by “wider” justice, which Grotius variously renders as “attributive”, “rectoral”, “governmental”, or “internal” justice. But what public or private acts could be part of justice if they are not already included in the aforementioned “matter at hand” of giving someone their due? What is the remaining matter of wider justice? What is (its) material?

Grotius declines to set out this matter in clear and perfect terms, such that its content has vexed some scholars and eluded scores more.¹³ Strangely enough, this murkiness seems appropriate. After all, if strict justice is defined by its clarity, wider justice could not partake of the same. Yet perhaps the answer to the matter is nonetheless hiding in plain sight. This wider justice – here styled “attributive” – attends to “those virtues that do good to others, such as liberality, mercy, and prudence in governing.”¹⁴ The term “virtue” is crucial. Perfect justice had required no special virtue: no expertise to interpret its provisions, no long list of duties whose fulfillment is intangible or ongoing, and no heroism to perform positive acts of virtue. Indeed, strict justice did not necessarily require any virtue of the will at all. One needed only to carry out an act – perhaps

grudgingly or even under compulsion. Grotius' seemingly casual mention of virtue in wider justice is in fact its essence.

Grotius both clarifies and expands on this answer when he says that the "largest extent" of *jus* "obliges us to that which is good and commendable." This goodness and commendableness again forms a contrast with strict justice.¹⁵ The mere absence of infractions may render one passively innocent of legal wrongdoing, but it does not qualify one as actively "good". For instance, if a Prime Minister chooses Cabinet ministers at random from his caucus, he is innocent of violating rights; each minister meets the criterion of being a Parliamentarian, and no individual member could claim a strict right to any Cabinet seat. But such a Cabinet-maker would fail to be commendable under attributive justice because of his unwise choices. What is more, wider justice does not simply give what is due; it may also give *more* than what is strictly due. For example, if a Prime Minister spends her weekends volunteering at a soup kitchen, she would be going above and beyond what her electors could demand by right. Wider justice calls for a sacrificial giving that demonstrates goodness. It does not simply render to others as a duty, but it gives to others as a gift. In doing so, it both demonstrates and cultivates virtue in the one who exercises it.

Dual Stoic Ethics: *Kathekon* and *Katorthoma*

This dual sense of justice calls into question the standard portrait of Grotius as a mere subjective rights theorist who burns his bridges with classical natural Right. True, Grotius' strict justice may blaze a trail for a modern concept of individual liberty. Yet his wider justice seems to leave intact the pathway to classical virtue. Nonetheless, if this wider justice builds on the classics, it does not tread exactly the path of Aristotle. When Grotius outlines justice, he cites thinkers Roman in equal measure to those Greek. These debts to Rome have been the focus of increased scholarly attention, particularly in the work of Benjamin Straumann. Straumann suggests that Grotius' treatment is heavily Stoic, and particularly explores Grotius' use of Cicero's dialogue *De Finibus*.

In *De Finibus*, Cicero's Cato sets out what Straumann calls the "entire ethical system of the Stoa".¹⁶ This system begins with *oikeiosis*: a recognition of oneself. This might appear a rather solid foundation for a modern science of individual duties and rights. Yet the reality is more complex. As Straumann himself outlines, this recognition of oneself as a person points toward a teleological philosophical anthropology that

contains two elements. These two facets of human nature will, in turn, point toward two elements of ethical practice: *kathekon* and *katorthoma*.

The first element of human nature is indeed the human animal impulse toward self-preservation. Here humans pursue tangible goods not valuable for their own sake, but only useful for their extrinsic benefit to self-preservation – that is, their instrumentality to private preferences. This corresponds to the ethical category of *kathekon*, sometimes translated as “appropriate action”. In *De Finibus*, Cicero states that *kathekon* does not correspond to what is truly good or what fully accords with human nature.¹⁷

A wider Stoic treatment of *kathekon* confirms this Ciceronian reading while also broadening it. For instance, Stobaeus and Diogenes Laertius extend *kathekon* (here rendered as “proper function”) to non-human animals.¹⁸ To them, *kathekon* is an external act carried out by a sentient being, but not necessarily a voluntary act. Acts of *kathekon* are reasonable in the sense that they actually do conduce to self-preservation. Yet this reasonable principle may manifest itself in the form of instinct or inclination rather than self-conscious logic. To take an obvious example, animals are capable of preserving themselves and their species without reason. However, many humans also merely follow a rule by habit (Plato’s *doxa*) rather than through determining for themselves its conformity to human ends (Plato’s *nous*). As Long and Sedley point out, *kathekon* does not refer...to the doer’s disposition or whole plan of life.”¹⁹ It is an act not carried out in conscious awareness of its role in a full human life.

However, Stoic philosophical anthropology does not end here. Its second component does point to what is highest in human nature: that which transcends animal instinct. This requires an ascent to *katorthoma*. *Katorthoma* is a special function of *kathekon* that is sometimes rendered as “perfect proper functions”. But *katorthoma* is not merely the complete performance of the aforementioned acts of self-preservation. Rather, its perfection is “illustrated by reference to virtues”. The virtue of *katorthoma* “evaluates the moral character of the agent.”²⁰ Hence, the perfection of *katorthoma* comes not from the act, but from the character of the human agent that carried it out. To be precise, a *katorthomatic* action is carried out not for its extrinsic benefits, but for intrinsic motives. In fact, the doer of *katorthoma* is agnostic about the consequences of the act; he carries out the act even if there is no extrinsic benefit. This befits its central place in a Stoic ethics that is ultimately concerned with “a transformation in one’s motivational orientation.”²¹

For this reason, the mere actions of *katorthoma*, “taken by themselves, provide no means of distinguishing two moral classes of men.”²² Stobaeus

illustrates this point by quoting Chrysippus: "the man who progresses to the furthest point performs all *kathekon* without exception and omits none." The undiscerning observer – perhaps one lacking *katorthoma* – may see the man of *katorthoma* as merely a man of *kathekon*. Yet there remains a crucial underlying difference. To continue Chrysippus' words, "happiness supervenes [in the same man's life] when these intermediate actions acquire the additional properties of firmness and tenor and their own particular fixity."²³ The man of *katorthoma* acts in ways that flow from his settled character. In Aristotle's terms, he is not merely continent but actively virtuous. In other words, the goodness of his action is not simply a matter of his acts. If he grudgingly gives away his goods upon pain of legal enforcement, his act is right but his will is not actively good. This would be mere *kathekon*. Hence, a disposition of *katorthoma* may sanctify even the most prosaic acts of *kathekon*. Even simple acts such as "talking, walking about, leaving town, and the like" may be *katorthomatic* if animated by internal virtues such as prudence.²⁴

Hence, while acts of *kathekon* are legitimate and even good, they are not the fullness of human existence. In the words of Cicero, "the former [*kathekon*] are means to the latter [*katorthoma*]."²⁵ The former are "nature's primary requirement, but not...the ultimate good, since [*katorthoma*] is not present in the first affiliations of nature."²⁶ *Katorthoma* may not be temporally first, but it is ontologically primary. The relation between these two Stoic categories highlights the nonpropositional character of the latter. Merely following a rule to complete a tangible duty is no guarantee of virtue. The act is immediately verifiable by the five senses, but the virtue that may have motivated the act is not. Virtue transcends rule-following.

This dual Stoic concept of human nature is almost exactly that of Grotius. Grotius begins his study of human nature by stating that it prompts men – like animals – to their own advantage: this is Stoic *oikeiosis*. Men are given a reason that deduces "general principles", in order for each to pursue this interest in peace with others. These general principles are the content of Grotius' strict justice, and they outline the rules by which interests may licitly compete. However, Grotius then states that humans are most clearly distinguished from animals not by such calculative reason, but by a moral judgment of good and bad and a prudent imagination of the future. Accordingly, natural Right also has a wider extent, which prudently considers persons and manages political affairs. It involves active judgment, rather than merely leaving others in quiet possession of their rights.²⁷ This grounds Grotius' wider justice, which involves *honestum*: that which is honourable or commendable.²⁸

Grotius later illustrates this implicit distinction between *kathekon* and *katorthoma* through two subsequent concepts. The first is his jurisprudential distinction between the “deed” and the “doer”. One may commit an unjust deed by coming into invalid possession of a title deed. A common example is the refusal of one contracted party to pay what the other party demands, due to a sincere misunderstanding of the ambiguous contract terms. The law demands that such a person satisfy the debt in civil court, and no more. Such redress effectively undoes the initial unjust act of possession. In contrast with the unjust deed, one becomes an unjust doer if one knowingly steals from another. Such a person is liable not simply to civil damages but to criminal sanction.²⁹ What is more, in such a case the law cannot stipulate a particular sentence in advance, because the punishment does not address the external act but the internal character of the offender. The distinction between civil redress and criminal punishment delineates external act from internal intent in much the same fashion as *kathekon* and *katorthoma*.

The second illustrative concept is Grotius’ extensive discussion of “external” and “internal” justice in regard to waging war. External justice permits a wide range of military acts, as long as the cause of the war is just. After all, the targets of the war have forfeited their rights through their prior injustice, and the just warriors are entitled to defend their own lives as they prosecute the campaign. Here self-preservation permits to the just warrior all manner of killing, despoiling, pillaging, and conquering. Yet internal justice nonetheless enjoins the warrior to fight according to the virtue of moderation or “humanity”, exercising equity and even mercy toward her opponents. For example, the *katorthomatic* warring party inflicts harm only to punish, rather than to satisfy animalistic desires of revenge – even if the physical harm itself appears identical in either case. Hence, the punisher is careful to connect the imposed suffering to the subject’s prior unjust act. She also refrains from imposing a death sentence that would prevent any future reformation of the subject. Again, such punitive war cannot be a one-size-fits-all punishment enshrined in legal codes that apply uniformly to all. External justice permits a wide range of licit acts of *kathekon*, but internal justice calls for both restraint and prudence out of a of *katorthomatic* intention.³⁰

Hence, Grotius’ concept of justice incorporates a public virtue that is broadly familiar both to Aristotle and the Stoics, and obsolete to their modern critics. However, his specific treatment of virtue in conjunction with justice appears to depart from Aristotle to join the Stoics. When Grotius introduces a strict justice that coheres with *kathekon*, he develops a modern-looking approach of propositional formulations and individual

rights. Yet by adding a wider justice that builds on *katorthoma*, he conserves the classical understanding of nonpropositional natural Right.

Grotius' overall treatment of Stoic ethics requires us to explore one further Stoic concept that he does not adopt so straightforwardly. It is easy to focus on the distinction between the lesser *kathekon* and the greater *katorthoma*. Yet for the Stoics, one who merely follows the rules of *kathekon* actually falls within the penumbra of human wisdom. While *kathekon* may not be intrinsically good, it nonetheless partakes of goodness, because it follows a rational principle despite its own ignorance of that source of reason (such as when an animal pursues the preservation of its species). Unlike animals, humans have the choice to reject reason – and many do. Those who actually do choose *kathekon* earn some association with wisdom because so many others fail to do even this much. Indeed, Stoic ethics divides “all mankind into two absolute categories, the wise and the foolish”, and considers the wise (including doers of *kathekon*) to be extremely rare throughout history.³¹ Even *kathekon* is a rarity. This Stoic attitude displays a classical elitism, perhaps one akin to a Platonic pessimism about the prevalence of true virtue, born of the obvious despondency of a city that condemned Socrates to death.

While the thrust of the present argument is to show Grotius' broad continuity with classical Greece and his specific continuity with Stoicism, we now reach a point where Grotius breaks with both. Grotius' strict justice aligns closely with the propositional Stoic concept of *kathekon*. Yet for Grotius, this very simple propositionality renders it comprehensible to all, much like the truths of basic arithmetic. Because everyone can understand it, everyone can be expected to follow it (and for that reason coerced to follow it).³² Grotius effectively argues that while the vast majority are not capable of *katorthoma*, they *are* yet capable of *kathekon*. While Grotius shares the classical view that the many are inadequate to the highest sense of internal virtue, he believes that they are nonetheless capable of following basic rules that are obvious to unassisted reason. Grotius' belief in the wide capacity to *kathekon* enables the third element of the modern nation-state: its extension of citizenship to all adults.

The Soul of Christianity: Not Dogma But Virtue

Grotius' extension of political participation to the masses finds a thick parallel in his Christian theology. Despite Grotius' common reputation as a secularist, he in fact wrote works of political theology, ecclesiology, Scriptural drama, Atonement doctrine, and Biblical exegesis. One such work is *de Imperio* (*On the Governing Authority of the Supreme Powers*

Concerning Sacred Things), an ostensible treatise of political theology that also contains his fullest account of political authority. Most immediately relevant are its insights into Grotius' concept of what we might call citizenship in Christianity, because they buttress his argument for mass participation in politics. In fact, Grotius' apparent modernity in this regard may have more to do with his Christianity than any supposed secularism.

In particular, when we examine Grotius' Christianity, we again see an implicit distinction between *kathekon* and *katorthoma*. Grotius' list of dogmatic essentials involves clear and immutable duties, such as those of *kathekon*. These essentials of Christianity – much like those of strict justice – are few in number.³³ Moreover, they are apparent to all Christians – including the early Christians who typically lacked access to higher learning. It is true that Grotius cites early Christian luminaries such as Lactantius and Augustine as frequently as he does their secular Roman counterparts like Cicero and Seneca. But Grotius' Renaissance outlook seeks to recover not simply the learning of Christian Rome but even moreso its virtue.

Hence, when Grotius turns his attention to the essence of Christianity, he emphasizes moral over intellectual virtues. The fullness of the faith is not reserved for theologians who refine the precision of doctrine. On the contrary, it is available to the unlearned, if they will only instantiate the Christian moral virtues in their being. Praying may be more helpful than reading.³⁴ Hence, the specific duties of Christianity are not complex. Rather, the challenge seems to arise in carrying these out full-heartedly rather than ritualistically – whether one is sophisticated or simple.

This explains why many Christian saints are people of humble station and meagre learning. They are not sanctified by their adherence to doctrine – a test that would only mark them as ordinary Christians. Indeed, experts in theology are surprisingly scarce in the Christian pantheon, and less than five per cent of second-millennium Popes have even made the cut. If sainthood is not defined by knowledge of Christian doctrine, what then are its criteria? To ask the question is perhaps to miss the point. Like classical virtue, sainthood is ultimately beyond definition. Like the *spoudaios*, one recognizes the saint by being in her presence. Once again, Grotius' Christianity reinforces his commitment to *katorthoma* – one that Socrates would surely endorse.

Hence, if one wants to find the “soul of the church”, one should look to times and places where the entirety of the church – from theologians to peasants – was in concord and unity. One such example cited by Grotius is that of the early church, admired throughout Christian history.³⁵ Conversely, in his apologetic work *De Veritate Religionis Christianae* (*On*

the Truth of the Christian Religion), he argues that the early church's eventual descent into doctrinal factionalism was the precondition for the rise of Islam. He especially indicts clerical speculation: "as of old, preferring the tree of knowledge to the tree of life,...nice inquiries were esteemed more than piety, and religion was made an art."³⁶

In other words, religious speculation is not simply an alternative to harmonious piety, one that redirects energy away from worship toward mental gymnastics. It may actually be an enemy of godliness, leading to controversy, internal strife, and even schism.³⁷ Hence, the Christian spirit is best served by refraining to define matters other than "those doctrines necessary or very profitable for salvation." For example, Grotius points out that the church overcame the Pelagian heresy without taking strict positions on free will and predestination.³⁸

There may be another reason for Grotius' discomfort with dogma. Christianity ultimately rests not in a dogmatic code, but in the second person of the Trinity, who demonstrates the heights of sacrificial charity. Inasmuch as Christ does issue commands, he says, "be ye perfect". If one must fully carry out this command, what person could ever meet the standard? No person can match Christ's condescension to earth and death on behalf of others who had wronged him. If only perfect rule-followers could be Christians, there would be none to be found.

Christ's death, of course, overcomes this universal human incapacity, and Grotius offers one attempt to work out the mechanics in his Atonement theology. In brief, Christ's substitutionary punishment permits God the governor to relax the law mandating eternal punishment of all sinful humans. Grotius describes God's pardon using the words of the ancients: it is "not according to the law, yet not against it; but rather, above the law, and instead of it."³⁹ He might well have described virtue – whether political or Christian – in the same words.

Politics and the Need for (Reasonable) Religion

Hence, Grotius' approach to the virtue of the few and the rules of the many is no less present in his theology than in his political philosophy. However, this commonality does not simply mean that religion and politics are on parallel tracks. Rather, in Grotius' account, they each interweave in ways that strengthen the other. Religious moral precepts and sanctions directly benefit the state. What is more, even its doctrines and ceremonies bring indirect benefit, as they focus their participants' minds on God and thus turn their souls toward the good. Grotius buttresses this argument by citing Plato's *Republic*, which further shows that his virtue is

existential and not merely intellectual. Hence, while the “prime and principal [human] end” of religion is intrinsically worthwhile, it also provides extrinsic benefits to politics. In particular, Christian citizens are “quiet, obedient, patriotic, and adherents of justice and equity.”⁴⁰

However, there is a further and deeper reason why Christianity benefits politics. As we know, Grotius believes that the many are capable of believing in the dogma of the state constitution. The same is true of them regarding the sacred analogue of religious doctrine. When they adhere to such *kathekon*, whether political or religious, they participate in a higher goodness. However, many do not fully understand the higher reality of which those rules are only a second-order derivation. They do not understand the intention behind the rules, and thus likely lack intrinsic motivation to follow them. For this reason, they must be given extrinsic motives to act according to the rational guidance of *kathekon*. Politics offers one set of extrinsic motives: the rewards and punishments of the state. Christianity offers another set of extrinsic motives: the divine rewards and punishments of eternity.

However, politics – unlike religion – encounters a problem: no state can ever perfectly enforce conformity to the law. Those that try are sometimes called “totalitarian”. Without the threat of divine punishment, can people truly be counted on even to keep their secular promises? This is the question posed by Glaucon in the Ring of Gyges fable. Socrates clinches his argument in the final book of the *Republic* by appealing to the immortality of the soul. Alexis de Tocqueville later answers this question in similar fashion: without religion, men would be overcome by the “innumerable temptations of fortune”, becoming “daring innovators” and “implacable disputants” who advance “the maxim that everything is permissible”.⁴¹ For this reason, conformity even to *kathekon* may require an all-seeing divine judge who is guaranteed to catch lawbreakers, including those who elude the arm of the state. Of course, this divine judge is also an executive whose eternal rewards and punishments exceed those of the state by a goodly margin.

For this reason, Grotius later adds at least two additional elements to the aforementioned five principles of strict justice. First, one must believe in a sovereign and good God who takes interest in the affairs of the world. Second, one must also believe that this God gives just rewards and punishments to immortal souls in the afterlife.⁴² Thus, according to Grotius, political justice cannot support itself without basic elements of theology. A mass politics requires religion.

But in Grotius’ eyes, politics does not require adherence to *Christian* religion. Grotius’ religious *mythos* is not a particularistic one appropriate

only to those who accept Christian revelation – or any other particular revelation. Rather, these two religious principles of strict justice are elements of *natural* religion. Any religion truly worthy of the name must include them. In other words, even in the absence of special divine revelation, reason dictates the necessity of religion and outlines its minimum content. The religious myth required for politics is in fact a rational myth. As a Christian, Grotius is particularly alert to this idea of rational myth, because his God is the Word (*logos*). Catholic Christianity has historically understood itself as permitting an understanding of religion through reason. For instance, Aquinas presents his five proofs of God's existence on the basis of reason rather than divine revelation.⁴³

What is more, natural religion is knowable to all through unassisted reason. As a result, it can be legitimately demanded of all, which is to say that it can be coerced by the state. Grotius then explores the implications for foreign military coercion. He emphatically denounces the injustice of wars for conversion to a particular religion, because no one can be coerced into believing a particular revelation that they have not seen. But Grotius is not a cultural relativist; people can still be held accountable to that which reason makes plain. Hence, he licenses wars undertaken to punish other nations for impiety toward God, known to reason as the eternal judge. What is more, Grotius does not simply condone punishment for sacrilege toward the Christian God. He also mandates punishment for the treason of other peoples toward the gods of their *own* religion, which by definition would have to include a righteous eternal judge.⁴⁴

Hence, Grotius offers a robust yet non-particularistic defense of natural public piety. Without it, even the most purely modern, secular, and procedural elements of justice cannot stand. Although the state comes about through the procedural method of consent, its members cannot be counted on to keep their promises without something beyond politics. In other words, the person cannot hope to attain their rational and political *telos* without something beyond secular reason and politics. As Long states, "‘living in agreement with nature’ is the standard Stoic definition of the ethical end."⁴⁵ But for all of Grotius' clear Stoic inspiration, we can now see why he says that "it is not enough simply to live in accordance with nature." Nature demands religion.⁴⁶ Hence, if Grotius is a modern liberal, he is not one who relegates religion to the private sphere. Virtues of religion are crucial to the maintenance of a liberal political order.⁴⁷

Religion and the Need for Political Oversight

Yet if Grotius advances the provocative thesis that politics depends on religion, he also advances an equally controversial belief that religious virtue requires politics. This is, in fact, the primary purpose of *De Imperio*. Grotius penned it in response to the Dutch religio-political controversy that would ultimately result in his own imprisonment. The orthodox Calvinist party had asked the state to convene a synod to define the “five points of Calvinism”. Grotius asked the state *not* to convene one. But both sides took for granted the Erastian role of the state in governing the church. (In a historical paradox, early seventeenth-century Holland was known as a beacon of religious tolerance in which many dissenters – such as Descartes – found refuge.)

In this work, Grotius asserts that a ruler cannot “neglect knowledge of church government” for the specific reason that “nothing is more excellent than this or more important to the integrity of the state.”⁴⁸ Why is he so comfortable entrusting church government to a lay supreme power? One might be tempted to argue that religious myth simply serves the state: the political ruler cynically manipulates religion for state purposes. But for Grotius, religious myth primarily serves religious practice, and only secondarily political promises. His citations come from Plato and Aristotle, not Averroes and Marsilius.

Rather, Grotius may be Erastian because of his emphasis on practice over doctrine. Christian doctrines are so few in number and so evident in content that the Christian governor can hardly fail to comprehend and defend them.⁴⁹ Indeed, this lay governor’s very lack of further theological learning will prevent him – in contrast to the theologians – from becoming attached to speculative doctrines on non-essential matters. This prepares the governor for his central function: to foster unity and prevent schism. The governor’s task is more practical than propositional. The governor’s political skill (not to mention monopoly on coercive force) makes him well-suited to this task. Grotius approvingly cites Constantine’s invocation of cloture on dogmatic debate, and exhorts the governors of his day to do likewise.⁵⁰

Grotius thus carefully separates the speculative function of theologians (or philosophers) from the unifying function of governors. The latter is more concerned to combat schism than heresy. Indeed, while Grotius hopes that the ruler will be a Christian, apostasy does not invalidate his rule, even in his function as church governor. As Grotius has said earlier, the ruler needs no detailed knowledge of the minutiae of Christian doctrine. Rather, he needs to know how to promote order. A nonbelieving

ruler may still be effective in this role, and – like a third-party judge – may be even less inclined to take sides in the dogmatic controversy.⁵¹

Indeed, one of the benefits of interweaving politics into religion is that the political ruler may even nudge religion into conversation with citizens of other religions. By doing so, the ruler may help adherents of any particular religion to frame their public arguments in ways that are intelligible to those of other religions. After all, Grotius' Christian arguments for God's existence and righteous judgment overlap with the arguments of all genuine religions for the same. This anticipates Tocqueville's praise of America, in which "each sect adores the Deity in its own peculiar manner, but all the sects preach the same moral law in the name of God." This moral law is based on the prospect of divine reward and punishment, and beyond that, "the peculiar tenets of that religion are of very little importance" to the governor.⁵²

What is more, political protection against overly-defined religious dogma helps to preserve space for those few who are capable of attaining *katorthoma*, or intrinsic virtue. On the most basic level, this protection preserves a liberty to disagree on higher matters, and thus an ability to speak out without fearing for one's life. These basic minimums protect the virtuous few from Socrates' fate at the hands of democracy. On a deeper level, however, religious liberty protects against the impression that Christianity (or philosophic wisdom) is reducible to rule-following. This enables the realization among those who have attained *kathekon* that a higher standard is still available. It also protects against the misperception that virtue can be finite. Beyond the basic rules of strict justice, the demands of virtue can never be perfectly fulfilled, and thus the state cannot (*pace* Aristotle) give rewards upon such completion. This retreat preserves greater space for the intrinsic motives of *katorthoma*. After all, if the state were to incentivize higher virtue, could we be certain that its honourees had acted for intrinsic reasons? Is there not some tension at the heart of Aristotle's distributive justice?⁵³

Hence, a liberal state that does not formally promote virtue might actually better preserve the preconditions for genuine virtue. Perhaps the modern liberal state is incapable of publicly taking seriously the highest aims of human existence. But perhaps all states are so limited – and perhaps the goodness of the modern state is that it does not try. Liberalism may be at its best when it pulls back from comprehensive doctrines precisely to allow them to re-emerge from a parallel source. Its limitation may be its strength. To say that the modern liberal state typically adopts this approach self-consciously and with full intention might be to ascribe to it a *katorthoma* that it does not deserve. But even if it does this

unconsciously, it at least partakes in the penumbra of goodness known as *kathekon*. That might be reason enough for its classical European grandparent not to disown it.

Classical Grotius and Modern Europe

Hugo Grotius is increasingly credited as the herald of modern Europe. His historical and personal situation places him at a sort of crossroads: a Christian with a Renaissance education, an intellectual with political instincts, a proud Dutch citizen with a European reputation, an advocate for peace and justice during a time of war. He was recognized by his contemporaries as having established the field of law among nations, providing a framework for the emerging modern nation-state order that is today one of Europe's gifts to the world.

Grotius' philosophic role in shaping modern Europe is perhaps even more crucial. In this regard, most observers see him as ushering in a rights-based order that liberates Europe from its teleological past. This permits a political pluralism and confines religion and philosophy to the private sphere. He also supposedly organizes and codifies morality around a set of tangible principles easily enshrined in state constitutions. These principles mandate a liberal non-interference rather than demanding positive action. Finally, in codifying justice, he makes possible an egalitarian politics of universal participation. In this reading, Grotius might be seen as a precursor to the rights-based pan-Europeanism of the European Union. If Hobbes claims to be the founder of a new modern political science, perhaps he is a usurper of Grotius' rightful title.

Yet if my argument is correct, Grotius is a great European for quite the opposite philosophical reasons. If Grotius prepares the way for a distinctively modern European nation-state, he does so (unlike Hobbes) by building on the classical inheritance of Europe. His apparent support for the modern liberal nation-state is in fact meant to safeguard virtue in a mass age. First, if his religious claims and understandings of virtue are mostly uncoercible by the state, this does not mean that they lack political import. Rather, his subjective rights are meant to protect the philosopher or religious believer, whose belief in a trans-political reality might otherwise threaten an illiberal sovereign. Indeed, religious virtue is central to maintaining a secular order based on consent, because only the rewards and punishments of God can truly guarantee promises. Second, if Grotius proposes a set of clear, distinct, and limited principles of political justice, it is not because those principles exhaust morality. Rather, it is because they safeguard those who – like Socrates – recognize a virtue “not

according to the law, but not against it." These propositional formulations govern only the lower realms of human existence precisely to point to higher realms that transcend such governance. In addition, Grotius is able to impose a set of binding negative proscriptions on the masses that will ensure their continence (if not exactly their virtue). This is fitting for a mass age in which deference to authority is minimal and governments must find a way to persuade a mass society of the truth of their pronouncements. Third and finally, if Grotius invites all to participate in citizenship, it is not because of a proto-Rousseauian belief in the inherent goodness of all people. Rather, his deviation from classical Greek and Roman pessimism about the masses is more likely due to a classical Christian conviction that even the best are limited by sin and even the masses can be touched by grace. And his Christian belief in God as *logos* allows him to outline his foundational religious principles in a nonparticularistic epistemology that makes them comprehensible to all. The Middle Eastern influence in the European lineage – that of Christianity – may actually bring out the best in Europe.

The assistance of the classical Grotius in the delivery room of modern Europe suggests that Europe's bloodlines are not new but old, and that its history is not simply a legacy but a living reality. Like a rebellious youngster, Europe may resemble her grandmother more than she realizes – and perhaps more than she wishes. But when crises arrive – and several seem to be on the horizon – she may be grateful to have somewhere to turn.

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Notes

¹ Benjamin Constant, "The Liberty of the Ancients Compared With That of the Moderns," in *Political Writings*, trans. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988), 308-28.

² They were also critics of democracy: Plato argued for the rule of the philosopher-kings, and Aristotle accepted mixed rule only if no appropriate monarch could be found.

³ On the subject of political forms, see Pierre Manent, *A World Beyond Politics? A Defense of the Nation-State*, trans. Marc LePain (Princeton, NJ: Princeton University Press, 2006), 44-47.

⁴ The National Committee for the Commemoration of Grotius' Birth, eds., *Hugo Grotius: A Great European, 1583-1645*, trans. P. J. E. Hyams (Delft: Meinema, 1983).

⁵ Richard Tuck, "Grotius and Selden," in *The Cambridge History of Political Thought 1450-1700*, ed. J. H. Burns (New York: Cambridge University Press, 1991), 506-07, 515-19. For a variation on this specific line of thought, see Michel Villey, *La Formation de la Pensee Juridique Moderne* (Paris: Montchretien, 1975); Richard Tuck, *Natural Rights Theories: Their Origin and Development*

(Cambridge: Cambridge University Press, 1979); John Finnis, *Natural Law and Natural Rights* (New York: Oxford University Press, 1980); Tuck, *Philosophy and Government 1572-1651* (Cambridge: Cambridge University Press, 1993); Peter Haggemacher, "Droits subjectifs et système juridique chez Grotius", in Luc Foïsneau, ed. *Politique, Loi, et Théologie Chez Bodin, Grotius et Hobbes* (Paris: Kimé, 1997); and Jerome Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (New York: Cambridge University Press, 1998).

⁶ See Jeremy Seth Geddert, *Hugo Grotius and the Modern Theory of Freedom: Transcending Natural Rights* (London: Routledge, 2017), 3-7, 154-56, 200-03, 216-20.

⁷ Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck, from the edition by Jean Barbeyrac (hereafter *DJB*) (Indianapolis: Liberty Fund, 2005), 3.11.2-8, 1425-31.

⁸ *Ibid.*, 1.1.8, 141-45.

⁹ *Ibid.*

¹⁰ *Ibid.*, 1.1.3, 136.

¹¹ *Ibid.*, Prolegomena.8, 85-86.

¹² *Ibid.*, 1.1.8.2, 146-47.

¹³ See note 5.

¹⁴ Grotius, *DJB* 1.1.8.1, 141-45.

¹⁵ *Ibid.*, 1.1.9, 147-50.

¹⁶ Benjamin Straumann, *Roman Law in the State of Nature: The Classical Foundations of Hugo Grotius' Natural Law*, trans. Belinda Cooper (Cambridge: Cambridge University Press, 2015), 98; see more generally 96-104.

¹⁷ Cicero, *De Finibus*, 3.17, 20-22, in A. A. Long and D. N. Sedley, *The Hellenistic Philosophers, Vol. 1: Translations of the Principal Sources, With Philosophical Commentary* (Cambridge: Cambridge University Press, 1987), 360-61; Straumann, 110.

¹⁸ Stobaeus, 2.85.13-86.4, in Long and Sedley, 360; Diogenes Laertius 7.107, in Long and Sedley, 360.

¹⁹ Long and Sedley, 365.

²⁰ *Ibid.*

²¹ Michael Gass, "Eudaimonism and Theology in Stoic Accounts of Virtue" *Journal of the History of Ideas*, Vol. 61, No. 1 (Jan., 2000), 22-24.

²² Long and Sedley, 366.

²³ *Ibid.*, 363.

²⁴ Stobaeus 2.96.18, in Long and Sedley, 363.

²⁵ Cicero, *De Finibus*, 3.17, 20-22, in Long and Sedley, 361.

²⁶ Long and Sedley, 361.

²⁷ Grotius, *DJB* Prol.5-10, 79-88; 1.1.10.1-5, 150-56. This echoes his philosophical anthropology in *Inleydinge (Jurisprudence of Holland)*, ed. R. W. Lee (Oxford: Oxford University Press, 1926), 1.2.6, 5-7.

²⁸ Straumann provides a detailed and rich portrait of Grotius' Stoic sources, as well as an insightful treatment of the Stoic distinction between *kathekon* and *katorthoma*. In exploring *kathekon*, he shows the deontological grounding of

Grotius' strict justice. However, in exploring *katorthoma*, he effectively reads Grotius as reducing it to *kathekon*. Accordingly, he sees Grotius as redefining *honestum* (*katorthoma*) as the mere nonviolation of the rights of others. For this reason, he deepens the standard reading of Grotius as "abandoning an ethics of virtue for an ethics of rules", without exploring how Grotius' wider justice (itself informed by his Christianity) might deepen Grotius' embrace of Stoic *katorthoma*. See Straumann, 113-19.

²⁹ Grotius, *DJB* 2.23.13.1-3, 1130-31; 3.11.2-8, 1425-31. In the latter, Grotius interrupts his own analysis to translate the entirety of Book 5, Chapter 8 of Aristotle's *Ethics*.

³⁰ See Grotius, *DJB* 3.10-16. Straumann 113-17 seems to argue that all wars (presuming they are undertaken in self-interest) are *kathekon*, and just wars are *katorthoma*. By contrast, the present argument presumes that only wars with just causes are *kathekon* and that unjust wars of self-interest do not qualify, and that the just waging of war (or the prudent giving up of one's right to wage war) is *katorthoma*. Grotius' strict justice (*kathekon*) permits self-preservation, but only inasmuch as it is consistent with the self-preservation of others; it is not Hobbes' "right to every thing, even to one another's body" (See Thomas Hobbes, *Leviathan*, ed. C. B. MacPherson (New York, Penguin, 1968), 190).

³¹ Long and Sedley, 427; Straumann, 109. However, Cicero seems to be a dissenter to this Stoic consensus, suggesting that both the wise and the foolish can have *kathekon*. See Cicero, *De Finibus* 3.58-59, in Long and Sedley, 362.

³² Grotius, *DJB*, 2.20.43.1, 1026-27.

³³ Hugo Grotius, *De Imperio Summarum Potestatum Circa Sacra (On the Power of Sovereigns Concerning Religious Affairs)* (hereafter *De Imperio*), critical edition with introduction, translation and commentary by Harm-Jan Van Dam (Boston: Brill, 2001), 5.9, 275; 6.9, 308-13.

³⁴ *Ibid.*, 5.9, 268-75.

³⁵ *Ibid.*, 6.9, 308-13.

³⁶ Hugo Grotius, *The Truth of the Christian Religion* (hereafter *De Veritate*), ed. and intro. Maria Rosa Antognazza, trans. John Clarke (Indianapolis: Liberty Fund, 2012), 6.1, 231-33.

³⁷ Grotius, *De Imperio*, 5.9, 268-75.

³⁸ *Ibid.*, 6.9, 308-13. Compare this with Hobbes' insistence in *Leviathan* that one can say nothing without the prior foundation of definitions: they are "but insignificant sounds." See Hobbes, *Leviathan*, 108.

³⁹ Hugo Grotius, *Defensio Fidei Catholicae de Satisfactione Christi (The Satisfaction of Christ)*, ed. and intro. Edwin Rabbie, trans. Hotze Mulder (Assen: Van Gorcum, 1990), 5.12, 180-81. See also Hugo Grotius, *Meletius*, trans. Guillaume H. M. Posthumus Meyjes (New York: Brill, 1988), 50, 119.

⁴⁰ Grotius, *De Imperio* 1.13, 175-79; 6.6, 299. Grotius later repeats these themes in *DJB* 2.20.44.3, 1028. For a more detailed treatment of this topic, see Geddert, *Hugo Grotius and the Modern Theory of Freedom*, 88-93, 106.

⁴¹ Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence, ed. J. P. Mayer (New York: Harper & Row, 1969), 1.2.9, 291-93.

⁴² Grotius, *DJB* 2.20.46.1, 1035. Grotius here abridges his list in *DJB* 2.20.45.1, 1032-33, where he had listed four principles of natural religion. This abridgement also echoes the two principles he outlines in *Meletius* 6-8, 105-06. In *De Veritate* 3.12, 48-49, he outlines several additional principles.

⁴³ Grotius considers himself to be catholic, as shown by the title of his Atonement treatise: “*A Defence of the Catholic Faith*”.

⁴⁴ Grotius, *DJB* 2.20.40-43, 1021-27; 2.20.50-51, 1050-52.

⁴⁵ Long and Sedley, 365.

⁴⁶ Grotius, *Meletius* 86, 132.

⁴⁷ One might point out that this discussion deals only with the masses, whether political or religious. Is the saint of *katorthoma* not exempt from the need for eternal judgment to motivate virtue? Does he not already do for intrinsic motives what the weak do for extrinsic motives? Without claiming a full answer for this question, one might at minimum point to the Book of Job – the religious reciprocal to the Ring of Gyges. Here Job is held up as a saint precisely because he is virtuous even when punishment is guaranteed.

⁴⁸ Grotius, *De Imperio* 6.6, 298-99.

⁴⁹ *Ibid.*, 5.9, 268-75. Grotius does admit the possibility that the governor may rule badly on these matters. However, all men are fallible; passing this role on to someone more expert is no guarantee of good government.

⁵⁰ *Ibid.*, 5.9, 268-75; 6.9, 308-13; 8.6, 380-83.

⁵¹ Grotius adds that Divine Providence is able to work through bad rulers as well as good ones. After citing Augustine, he says, “sometimes calm weather is more useful to the church, sometimes a storm.” (*Ibid.*, 8.2, 375-77.)

⁵² Tocqueville, 1.2.9, 290-91.

⁵³ See also Geddert, *Hugo Grotius and the Modern Theology of Freedom*, 210-13.