

# What we own Before Property: Hugo Grotius and the *Suum*

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## Abstract

At the basis of modern natural law theories, the concept of the *suum*, i.e. what belongs to the person (in Latin, *his, her, its, their own*), has received little scholarly attention despite its importance both in explaining and justifying not only the genealogy of property, but also that of morality and war. In this essay I focus on Grotius's account of the *suum* and examine what it is, what things it includes, what rights it gives rise to, and how it is extended in the transition from the state of nature to civil society. I then briefly suggest that reviving this concept could help to illuminate the current discussion on the foundations of basic human rights, and to re-evaluate cases where these seem to clash with property rights.

## Keywords

Hugo Grotius – *suum* – state of nature – property rights – right to subsistence – human rights



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*Imagine no possessions  
I wonder if you can  
No need for greed or hunger  
A brotherhood of man  
Imagine all the people sharing all the world*

JOHN LENNON

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If Hugo Grotius (1583–1645) had been a contemporary of John Lennon, he would probably have been a fan of his 1971's solo hit, *Imagine*. However unlikely it may seem to picture one of the classic authors of just war theory humming to himself a pacifist jingle, the truth is that Grotius did imagine a world very much like the one depicted by the Beatle... except that he thought that world was in a bygone era or in a transatlantic territory rather than a dreamed future. Moreover, for the sake of philosophical precision, the author of the three-volume *De iure belli ac pacis* (The Rights of War and Peace) would have probably modified the first line of the song to 'Imagine no property'. To have no possessions, he would have added, was unimaginable even in the most primitive state of communal peace and brotherhood. After all, he would have argued, each person had even in that state something that belonged to himself by nature, that is, his *suum*.

At the basis of modern natural law theories, the concept of the *suum*, or what belongs to the person (in Latin, *his, her, its, their own*), has received little scholarly attention despite its importance both in explaining and justifying not only the genealogy of property, but also that of morality and war.<sup>1</sup>

In this paper I examine what it is, what things it includes, what rights it gives rise to and how it is extended in the transition from the state of nature to civil society. I then briefly point out that bringing this concept back to the fore could

<sup>1</sup> An exception is the Swedish lawyer and legal philosopher Karl Olivecrona (1897–1980). See the second edition of his *Law as Fact* (London: Stevens, 1971), especially appendix 1, 'The Concept of a Right according to Grotius and Pufendorf'; and 'Die Zwei Schichten im Naturrechtliche Denken', *Archiv für Rechts-und Sozialphilosophie*, 1977 (translated as 'The Two Levels in Natural Law Thinking', *Jurisprudence*, 2 (2010), 197–224). See also Thomas Mautner, 'Introduction of Karl Olivecrona's "Two Levels in Natural Law Thinking"', *Jurisprudence*, 1 (2010), 197–208.

help to illuminate the current discussion on the foundations of basic human rights, and to evaluate cases where these seem to clash with property rights.

While other modern natural law theorists like Samuel Pufendorf (1632–1694) and John Locke (1632–1704) also use the *suum* as a working concept, here I focus on Grotius's account and make only passing references to them. This, insofar as their similarities and agreements largely outweigh their differences, and insofar as Grotius's account is arguably the most developed.<sup>2</sup>

## 1 The *Suum* in the State of Nature

Arguably, the ultimate goal of modern natural law thinkers is to give an account of human morality that can stand independently of religious revelation and motivation.<sup>3</sup> This is not surprising if we bear in mind the context in which they were writing: a time when sanguinary wars took place across Europe between those who professed different faiths, but also a time of nascent globalization, which made those engaging in this process both conscious of the profound cultural differences between societies around the world, and the need to look for some common moral basis that could appeal to all irrespectively. The answer they came up with was more or less the following: leaving aside divine revelation or religious belief, humans can come to know the natural law, which shows ‘the moral deformity or moral necessity there is in any act, according to its suitability or unsuitability to a reasonable nature.’<sup>4</sup> That is, through the use of reason the main precepts of this law can become evident to us. For Grotius (and for Pufendorf and Locke later) one of the fundamental precepts of natural law is not to interfere with what belongs to others.<sup>5</sup>

As Karl Olivecrona remarks, however, in order to comply with this precept we need to know what belongs to others in the first place, i.e., what their *suum*

2 Although Grotius also treats this subject in [Mare Liberum \(The Free Sea\)](#), here I focus on *The Rights of War and Peace* (*The Rights of War and Peace*, ed. by Richard Tuck, tr. by John Morrice et al. (Indianapolis: Liberty Fund, 2005), hereinafter, *Rights*).

3 This is the trait standardly used to distinguish modern natural law theorists from scholastic natural law theorists, of whom the paradigm is Thomas Aquinas. See Knud Haakonsen, *Natural Law and Moral Philosophy* (Cambridge: Cambridge University Press, 1996), p. 15.

4 Grotius *Rights*, 1.1.10, pp. 49–51. I quote the passages of *Rights* by book, chapter and section number.

5 See Samuel Pufendorf, *The Whole Duty of Man*, tr. by Andrew Tooke, ed. by Ian Hunter and David Saunders (Indianapolis: Liberty Fund, 2003; orig. edn: 1673) (*Whole duty*) 1.3.7, pp. 55–56, and Locke's Second Treatise of Government in Idem, *Two Treatises of Government*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1988; orig. edn: 1690) (*Treatise*) 2.6, p. 271. I quote these works by book, chapter and paragraph number, and chapter and paragraph number, respectively.

is – something that Grotius and the other authors seem to take for granted. In fact, instead of a definition, they provide the reader with a varied list of things that constitute the *suum*, but offer little elaboration as to why we should consider them as part of it.

Before going on to examine the *suum* in more detail, it is important to say something about the level at which Grotius is theorizing, and the more or less explicit assumptions that underlie his theory.

As part of a long tradition of contractualist thinking, Grotius's point of departure to explain and further justify the origins of morality, property and war (widely understood as a dispute by force, either between individuals or collectives) is to retreat to the state of nature, a pre civil state where human beings live together in the absence of any established laws. Two features make Grotius's account of the state of nature distinctive. On the one hand, instead of understanding it as a thought experiment or a hypothetical scenario, he takes it to be a real possibility – so much so that he thinks of it as still ongoing in some American tribes at the time of his writing. On the other hand, differently from Hobbes, the Grotian state of nature is not necessarily a state of conflict, so the decision to leave it is a matter of expediency rather than inevitability. In fact, if we were able to keep the primitive simplicity of living and friendly relationships among each other (in the way that some small religious and philosophical communities have purportedly done), we could remain in that state without ever entering into civil society.<sup>6</sup> This is not to say, however, that the Grotian state of nature is Lennon's utopia. Grotius does imagine 'all the people sharing all the world' – a state of negative community, common property or original communism, as it has been variously called. But, contra Lennon, as was said above, he does think that even in that state some things are truly our own. Even before the institution of private property comes into existence, thus, we already have a sphere that belongs to us. This constitutes the minimal *suum*, and it potentially gives rise to the right to use force against anyone who dares to (unjustly) encroach upon it. (Hereinafter, I refer to this minimal *suum* simply as the *suum*, and reserve the term *property* to refer to the extended *suum* that arises once the conventions of legal ownership are in place.)

There are three assumptions, I suggest, that need to be spelled out. First, the earth belongs to all humans equally. Grotius shares the view with many natural

6 'A confirmation of the first of these is the account we have of some people of America, who by the extraordinary simplicity of their manners, have without the least inconvenience observed the same method of living for many ages; and the latter appears by the example of the Essenes, of the primitive Christians at Jerusalem, and many who now live in religious societies.' *Rights* 11.2.2, pp. 421–22.

law theorists and theologians before him (including Aquinas) that God gave the earth to humankind in common for our use and disposal:

All things, as Justin has it, were at first common, and all the world had, as it were, but one patrimony. From hence it was, that every man converted what he would to his own use, and consumed whatever was to be consumed.<sup>7</sup>

In this original state, no one has a particular claim over a particular thing, but everything – that is to say, all ‘inferior’ creatures and all the natural resources available – are equally up for grabs by anyone.

Second, by seizing external things and/or occupying an external space we turn those things and that space into our own. The act of grabbing itself, and the act of occupying itself change the status of common things to things that belong to a particular person. The physical act of fetching the mango from the tree turns a communally owned mango into my mango; the physical act of snatching the lobster from the shore turns a communally owned lobster into my lobster; the physical act of lying down to sleep in a secluded cave turns that communally owned spot into my den... at least for the night. Even with no property regulations in place, then, we still have a minimal physical realm that through seizure and/or occupation becomes part of our *suum*. As can be seen, this is a very limited sphere and is very much focused on present, short-term consumption. While there is no explicit Grotian proviso (analogous to the famous Lockean proviso of ‘leaving enough and as good left in common for others’),<sup>8</sup> it is quite clear that at this level there is no space for the kind of accumulation that would preclude others from meeting their own basic needs.

Third, that something is our own means that we have a claim over it to the exclusion of others, so that we may defend it by force if anyone dares to encroach upon it, for ‘no man could justly take from another, what he [i.e. the latter] had thus first taken to himself.’<sup>9</sup> Justice and injustice thus arise in inextricable connection with the *suum*. An unjust act is one that violates another’s *suum*. Acting justly demands – negatively – respecting that individual sphere of others, and – positively – taking action to protect that individual sphere if it is violated. How much force may be legitimately used? Answering this question would take this essay in a different direction but, in short, as much force as to justify killing the attacker. Rather than rules, what Grotius offers here is a

<sup>7</sup> *Rights* II.2.2.1, pp. 420–421.

<sup>8</sup> *Treatise* 5,27, p. 288.

<sup>9</sup> *Rights* II.2.2.1, p. 421. Braces indicate that text has been added.

case-by-case evaluation that relies heavily on common sense, that is, on the spontaneous reactions that he thinks most people would have in a given situation. A useful theoretical tool to better understand Grotius's depiction of rights in the state of nature is Wesley Hohfeld's division of rights. According to their form, the American legal theorist divides rights into four categories: claims, privileges, powers and immunities. Very briefly put, A has a privilege to  $\phi$ , if and only if A does not have a duty not to  $\phi$ ; and A has a claim that B  $\phi$ , if and only if B has a duty to  $\phi$  (for the purposes of this discussion, I leave aside the other two types of right).<sup>10</sup>

Applying this division to Grotius' state of nature, the right of common use of the earth's resources can be described as a privilege: ~~simply~~ by virtue of being a human being, I may ~~or may not~~ grab mangos from trees and lobsters from the sea, and I may ~~or may not~~ lie on empty spots in well-secluded caves. That I have a privilege to do ~~or not to do~~ these things means ~~moreover that others have no claim against me doing or not doing them. That is why privileges are also called liberties; having them means I am free to act one way or another.~~

After the physical act of seizure and/or occupation, on the contrary, I acquire a claim against others over whatever I have seized and/or occupied.<sup>11</sup> That is, I may demand from them that they abstain from taking what is now mine. They have a duty to stay away from my individual realm and, if they fail in this duty, I may use force against them.

These two rights – the first in the form of a privilege to seize and/or occupy, and the second in the form of a claim against others not to interfere while we are exercising that privilege – are not argued for by Grotius, but taken for granted as the cornerstones over which the human moral edifice gets constructed.<sup>12</sup>

10 Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning', *The Yale Law Journal*, 23 (1913), 16–59, at pp. 32–33. Although Hohfeld applied this division to legal rights only, I join those who think that it may also be fruitfully applied to the moral realm.

11 Hohfeld designates these simply as rights, but to avoid confusion I use the term claim instead.

12 Elsewhere I discuss how Grotius's distinction between these two types of rights is not explicit in his account, but is what he seemed to have in mind and failed to distinguish more clearly. See Alejandra Mancilla, 'A Cosmopolitan Right of Necessity', (Dissertation. Australian National University, 2012). This is, of course, my interpretation of Grotius and, for that matter, contestable, especially regarding the question whether one can meaningfully talk about duties in the state of nature. See for example John Salter, 'Hugo Grotius: Property and Consent', *Political Theory* 29 (2001), 537–55, and Idem, 'Grotius and Pufendorf on the Right of Necessity', *History of Political Thought*, 26 (2005), 285–302.

Grotius uses Cicero's classic example of a public theatre where the spectators freely come in and take a vacant seat, as analogous to the original state of nature: although nobody owns a seat in particular, once they have sat down in one they can properly claim it as theirs. This claim, however, is limited to the use of the seat, for as long as they stay, but is extinguished once they stand up and leave. And it is clearly not a claim to get a seat, if they come late and all the places are already taken (this latter possibility seems to have been precluded by Grotius, based on the further assumption that the theatre has enough seats for everyone – just as the earth has plentiful resources to satisfy the basic, minimal needs of all humankind).<sup>13</sup>

## 2 The Elements of the *Suum*

So far, I have been writing about the *suum* without giving it a precise content. It is by virtue of a procedure – first seizure or first occupancy – that external things that belong in the common pool of resources become ours, so that nobody may justly take them from us. But these basic possessions are only one item in the *suum* list. The others, which appear scattered throughout Grotius's work, are life, body and limbs; one's actions and liberty (to get or secure things useful to life); honour and reputation, and chastity.<sup>14</sup>

These are the things to which we have a right 'merely from nature': 'A man's life is his own [*suum*] by nature (not indeed to destroy, but to preserve it) and so is his body, his limbs, his reputation, his honour, and his actions.'<sup>15</sup> These are the things in the defence or pursuit of which we may use force against others, the end of war being no other than 'the preservation of life or limbs, and either the securing or getting things useful to life.'<sup>16</sup> Moreover, 'that the same [i.e.

13 The game of Musical Chairs is a good exemplification of a state of nature scenario where there are not enough resources for everyone. At each round, all the players have a privilege to get a seat, but those who remain in the game are the ones who succeed in making one of the available seats their own. Their claim over that seat evaporates, however, as soon as they stand up and play again... until the last round, when the winner is the person who gets a claim over the last seat available.

14 Pufendorf offers a similar list in *Of the Law of Nature and Nations*, tr. by Basil Kennet. 4th edn, 8 vols (London: Printed for J. Walthoe, 1729; orig. edn: 1672), III.1.1; II.5.11, while Locke formulates it as 'life, health, liberty and possessions'; 'life, or what tends to the preservation of the life, the liberty, health, limb or goods'; and 'life, liberty and estate': *Treatise*, 2.6, p. 271 and *Treatise*, 7.87, p. 323.

15 *Rights* II.17.2, p. 885.

16 *Rights* I.2.1, pp. 182–83.

using force against others] may be done on account of chastity, can scarce be any matter of dispute; when not only the opinion of the world, but even the law of God, has made it equivalent to life itself.<sup>17</sup> These are the things that belong to us independently of the presence or absence of property laws: 'For our lives, limbs, and liberties had still been properly our own, and could not have been (without manifest injustice) invaded.'<sup>18</sup>

The way to fill the content of the *suum* is by carrying out, so to speak, a 'suum test':

...when we inquire into what belongs to the law of nature, we would know whether such or such a thing may be done without injustice; and by unjust we mean that which has a necessary repugnance to a reasonable and sociable creature.<sup>19</sup>

There is a kind of double confirmation here. On the one hand, Grotius's moral theory takes as a starting point the idea that human beings can come to know the natural law by virtue of reason. On the other hand, the list of things that belong in the *suum* (and which the natural law purportedly commends us to respect) is arrived at not only by virtue of reason, but also by virtue of the natural reactions that reasonable and sociable creatures would feel if any of them were attacked. As Thomas Mautner puts it, 'the real basis {to decide what our *suum* is} is emotional, not rational'. The only common trait between the variegated items on the list comprising the *suum* is that 'they indicate situations in which we feel justified in hitting back.'<sup>20</sup> If Grotius is serious about explaining and justifying the origins of morality, property and war independently of any religious beliefs – and, therefore, independently of any fears of eternal damnation – relying on this double test of reason and feeling seems like a good strategy. As reasonable and sociable creatures, we come to know (because we have felt it) what may not be done to us without the attacker earning for himself a forceful retaliation. Vice versa, we come to know (because we have felt it) what we cannot do to others without expecting them to strike back. This then gives rise to one of the most fundamental precepts of natural law: not to harm others in what is their own, i.e. their *suum*. And hereby also

17 *Rights* 1.1.7, pp. 401–02. See also *Rights* 1.2.5, p. 193.

18 *Rights* 1.2.1, p. 184.

19 *Rights* 1.2.1, p. 182.

20 Mautner, 'Introduction of Olivecrona', p. 206 (~~his italics~~). Mautner mentions van der Muelen's comments to *Rights*, where the latter says that the right to these things is, 'as it were, in our very bones': *Ibid*.

lies the motivational force of this minimal morality: because we do not want to be harmed, we quickly learn to respect the limits between our *suum* and that of others. Contra voluntarist theories that pose the motivational force in the authority of superior commands given from above, here it is our equals who remind us by their actions and reactions what we may or may not do to them. Contra rationalist theories that seek to derive the pull of morality from reason alone, here it is the most basic natural instinct that gives rise to the most basic moral rule.

Let us now have a closer look at the list of things that pass the 'suum test'; i.e., those in the protection of which we may employ force. Despite their diversity, they may be divided into two categories: the self, physical and social; and what is needed to preserve the self, be it actions or external things. It is from this latter category, I suggest, that both a basic right to subsistence and conventional property rights may be derived.

## 2.1 *Myself*

### 2.1.1 Life and body

In building his moral theory Grotius relies heavily on ancient sources, laws and customs, aligning himself with a long tradition of moral naturalism. Among these sources, the influence of Stoicism is perhaps the strongest, with quotes of Seneca and Cicero appearing at almost every turn of the page. This is especially evident in Grotius's repeated insistence that self-preservation is the strongest human instinct; an instinct that puts life and bodily integrity at the centre stage of the *suum* account.

All animals, and humans among them, are subject to the 'first impressions of nature'; namely, to desire life and avoid death. This is not something that we reason about or decide whether to follow or not, but a law 'born with us, in which we have not been instructed, but with which we are imbued', in Cicero's words.<sup>21</sup> Bearing in mind the importance that self-preservation has for all animals, the Stoics find it only natural that any attack on one's life may be responded to with force. Whoever dares to encroach upon our life and body becomes our enemy, and we may defend ourselves by whatever means are available. There is an even continuity here from how things are to how they ought to be. Given the universality of this feeling in all creatures and the unanimity with which we repel attacks on our lives and physical selves, the first rule of justice gets drawn: not to harm others in their life and bodies without

<sup>21</sup> Quoted in *Rights* 1.2.3, p. 187.

reason – that is, unless they have harmed us before. What lies at the core of this account, then, is the idea that self-preservation is a legitimate moral end.

What Grotius adds to the Stoic account is his explicit treatment of our life, body and limbs as our own. Insofar as we may protect them by force if necessary – i.e. insofar as they pass the ‘*suum* test’ – they belong to us to the exclusion of others. That is, we have a claim over our lives and bodies against others; and these others, correlatively, have a duty to refrain from trespassing on them.

This ownership of life and body is not, however, absolute enough to give us a right to commit suicide. No matter how charitable a reading we do, it still has to be admitted that there are certain passages where Grotius fails on his promise to keep religion out of the moral picture, and this is clearly one: owning our lives and bodies does not only give rise to claim rights against others, but also to a duty to stay alive: ‘A man’s life is his own [*suum*] by nature (not indeed to destroy, but to preserve it).’<sup>22</sup> While it is true that he does not explicitly mention respect for one’s life as God’s creation as the ultimate reason to refrain from putting an end to it (as Locke and Pufendorf later do), it is difficult to make sense of this requirement unless we assume a hidden premise based on this belief.<sup>23</sup>

### 2.2.2 Honour and Reputation

Our physical lives and bodily integrity are not, however, all there is to one’s self. Given that we are sociable animals who do not live in isolation but need others to subsist, Grotius gives as much importance to the social aspect of ourselves: what he considers under the labels of honour and reputation, and

<sup>22</sup> *Rights* 11.17.2, p. 885.

<sup>23</sup> See respectively *Treatise* 2.6, p.27, and *Whole duty* 1.5.11, p. 81. This shared rationale for banning suicide leads Grotius and Locke in opposite directions when it comes to the question of voluntary slavery in civil society. For the former, this kind of subjection is morally acceptable, especially if it is the only way to guarantee one’s subsistence: ‘...perfect and utter slavery is that which obliges a man to serve his master all his life long, for diet and other common necessities; which indeed, if it be thus understood, and confined within the bounds of nature, has nothing too hard and severe in it; for that perpetual obligation to service, is recompensed by the certainty of being always provided for; which those who let themselves out to daily labour, are often far from being assured of.’ *Rights* 11.5.27, p. 557. For Locke, on the contrary, voluntary slavery is an oxymoron: we cannot give more power to others than what we have ourselves and, because we have no ultimate power over our lives and bodies (which are God’s property), neither can we transfer it to others. Cf. *Treatise* 4.23, p. 284. For Pufendorf’s ambiguous position on this topic, cf. Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (New York: Clarendon Press, 1991), pp. 118 ff.

chastity. Granted, this sounds old-fashioned to contemporary ears, and images of gentlemanly duels and damsels in distress immediately pop into mind. If what Grotius is attempting to give is an account of a minimal individual sphere that is to be universally respected by all human beings, regardless of the context, then surely he should leave aside these culture-sensitive elements... shouldn't he?

To this challenge I would answer the following. It is true that the specific content of the social self will be very much dependent on the culture and time in question, and even within them highly debated. That what it takes to lose one's honour and reputation is not an obvious matter is clear from Grotius's lengthy discussion on whether giving a box on the ear or turning one's back to a gentleman are a just cause of war and reason enough to kill the offender.<sup>24</sup> In the case of chastity, although knowing who has it and who hasn't may be a less controversial matter to decide, it is not obvious that we may even kill in its defence<sup>25</sup>: while this may be a very valuable female asset in some societies, it is not clear that it is so universally.

Having said this, what Grotius correctly sees is that there are certain immaterial assets that humans need to be functioning members of society. Because belonging in the latter is not an option, but a need, it is crucial that we have these assets and that we protect them from others, just as we would protect our physical self. These are the things which give us a certain status in society and guarantee that we are treated with respect – i.e., as equals – by others. Unless individuals want to be cast out of the human community, then, they are bound to defend these things as their own.<sup>26</sup>

However culturally determined regarding its content, then, there will always be a social self to care for. And however heated the debate may be to determine that content, what matters is the acknowledgment that even the most minimal *suum* is not only about bare physical subsistence, but also about securing for ourselves a place among others.

## 2.2 *What is Needed to Preserve the Self*

Owning our physical and social selves would be of little or no use if we didn't own at the same time the actions and external things required to preserve them.

<sup>24</sup> *Rights* 11.1.10, p. 407.

<sup>25</sup> See *Rights* 11.1.12, p. 413.

<sup>26</sup> Arguably, other animals care for their social status as much as we do, and for the same reasons: because they need the group to subsist, but also because it is in their nature to behave socially.

### 2.2.1 Actions

Regarding actions, there are two kinds that may be said to belong to ourselves: those that we perform to retain what is already part of our *suum* – what I call **reactive** actions; and those whereby we acquire the things needed to maintain the *suum* now and in the future – what I call (for lack of a better name) **proactive** actions.

Reactive actions have been studied in detail by just war theorists, under the label of self-defence. In the chapter of **RWP** devoted to the just causes of war, the right to defend oneself appears in the first place, ‘arising directly and immediately from the care of our own preservation, which nature recommends to everyone.’<sup>27</sup> What triggers a just act of self-defence is the mere fact that my *suum* – as it is now – has become endangered. What matters is not who the attacker is and what his/her intentions are, but what I am about to suffer if I let him/her proceed. The full weight of the justification for self-defence is thus put on the potential effects that not taking action against the attack would have on me.

Actions done in self-defence are so fundamentally our own, according to Grotius, that we keep a right to perform them even after we have entered into civil society. In civil society we are supposed to stop being judges in our own cause and we transfer our basic right to defend our *suum* to a common magistrate, who judges according to a common law. When there is no magistrate around to appeal to and our *suum* is endangered, however, we recover that original right and may act as if we were back again in the state of nature, taking matters into our own hands. For example, if attacked by night robbers in the middle of a country road.

While reactive actions are present-looking, insofar as they are focused on what our *suum* is at a given time-slot and aim at its preservation as it is, proactive actions are present but also forward-looking: they are focused on maintaining the *suum* now and in the future. Moreover, while reactive actions may be labelled under self-defence, proactive actions may be labelled under what Grotius calls **self-preservation**, narrowly understood. These actions include first seizure and prior occupancy, the two main sources for the ‘original acquisition of things’,<sup>28</sup> and they include all those steps that we need to take in order to nourish ourselves, give ourselves rest, care for our well-being, etc. Owning these actions means that we must be let free to perform them, so long as in so doing we respect the freedom of others.<sup>29</sup>

<sup>27</sup> *Rights* 11.1.3, p. 397.

<sup>28</sup> See *Rights* 11.3, p.454 ff.

<sup>29</sup> Once civil society is constituted, as was mentioned above, one of these proactive actions may be to sell oneself as a slave if that is the only means to subsist. This applies equally to individuals and to whole nations: *Rights* 11.5.27, p. 557.

Just like, once we have entered into civil society, we always keep the right to defend ourselves when we have no institutional mechanisms to resort to, we also keep the basic right to get what we need to survive, if exceptional circumstances require it. Following a long standing tradition, Grotius calls this a **right of necessity**; i.e. a right to take and use someone else's property (or extended *suum*) when we are in dire need, without it constituting theft. The right to the minimal *suum*, thus, trumps the right to the extended, conventional *suum*: this is perhaps one of the most important lessons to be drawn from Grotius, but one that has been systematically overlooked.

### 2.2.2 Possessions

Through proactive actions we come to own external things – our possessions. As was said before, through first seizure we come to possess movable things, such as food, water and clothing. Through prior occupancy, we come to possess immovable things; i.e. land: a physical space to be and to make our living.

That these material objects are part of the *suum* as much as our very selves is a crucial feature of Grotius's account, but one that he unfortunately does not develop further. By acknowledging our need and dependence on external factors, Grotius's moral theory depicts the human individual not as a mind trapped in a body malgré lui, but rather as an embodied self in permanent and necessary interaction with his environment – so much so that this environment is transformed by his very actions into a constitutive part of him. Owning oneself only makes sense, then, if one can also own what is needed to support oneself.

## 3 Civil Society and the Extended *Suum*

As was said above, given the limited procedures that we have in the state of nature to appropriate things for ourselves, the *suum* in this scenario is really minimal. After all, we cannot have more than what we can seize with our hands and occupy with our bodies and actions, and we need moreover to keep a permanent vigilance over them... lest we lose them. Even if we join forces with others, our possessions cannot be much extended and remain limited to short-term consumption. In such a world, one has to be contented 'with what the earth produced of itself for {our} nourishment', and one is presumably going to 'dwell in caves (...) go naked or covered only with the barks of trees or the skins of wild beasts.'<sup>30</sup>

<sup>30</sup> *Rights* II.2.2, p. 426.

Because sooner than later we want to leave this state of 'primitive simplicity' and precarious ownership, we start adding more work and skill into the resources available for common use. Agriculture and cattle raising are according to Grotius the first arts that humans introduce to make their lives more commodious, and to secure their *suum* not only in the short, but also in the long term. It is through these activities that the minimal sphere of external possessions is first extended, and it is to safeguard this new extended sphere that we enter into explicit agreements with others and establish rules to regulate our conduct together. As a contractualist, Grotius firmly believes that the advantages of entering into civil society largely outweigh the disadvantages. Transferring to the relevant authorities our basic right to use force against others in defence of our *suum* is a fair price to pay when what one gets in return is the possibility to have not only a very basic minimal *suum*, but also the new extended *suum* – i.e. one's property – protected against others. This is how the human arts and industry start to flourish, the economic system starts rolling and everyone eventually gets to live more comfortably and safely. What one must never lose sight of, however, is that the individual never entirely relinquishes his right to defend (negatively) and to preserve (positively) his minimal *suum*, if it is ever endangered.<sup>31</sup>

#### 4 Concluding Remarks – Basic Human Rights and the *Suum*

A heated discussion in contemporary moral and political philosophy concerns the normative grounds of basic human rights: what they are, what their content is, what duties they impose on others and what they entitle their holders to do. The parties in the discussion could be lined up in two main camps: on the one hand, there are those who think of human rights as essentially negative prescriptions: rights not to be harmed in arbitrary ways. On the other hand, there are those who add to this list certain positive rights, like a right to food, shelter and basic health care – sometimes summed up as a right to subsistence.

Often, those in the first camp found ~~that~~ their arguments on ideas of self-ownership and negative liberties that resemble Grotius's claim that we own our self and also the actions to defend our self from others. Those in the second

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<sup>31</sup> To go into the details of how property is acquired once in civil society would be the topic of a different article, but let me note that the transition from the minimal to the extended *suum* is beset by conceptual difficulties, so much so that one wonders whether it would not be better to understand it not as a transition, but as a leap.

camp, on the contrary, understand – like Grotius also did – that owning our self and the actions to defend it is not enough to secure a minimal individual sphere. If self preservation is a legitimate moral end (a belief that modern natural law theories and human rights theories seem to share), then we also need to secure access to certain external things without which we simply cannot live. There is, however, an important difference between Grotius's approach and contemporary approaches to positive rights, and it is here where I suggest that bringing back the *suum* into the discussion would help.

While contemporary approaches to positive rights tend to be cashed out in terms of what every individual ought to be given by some external source like the state, 'society' or aid institutions, the concept of the *suum* emphasizes what the individual may do by himself to get what he needs as a matter of right. Instead of putting the right-holder in the position of a passive recipient, here he is the main actor and guarantor of his own life. To grant everyone a right to subsistence then means to grant everyone a space to pursue whatever actions are required in order to fulfil his basic needs – obviously while respecting others in the course of that pursuit.<sup>32</sup>

To attain this end, the rules of civil society – and, within them, especially those regarding private property – have to be designed so that each person can secure at least a minimal *suum* without interference. Because the institution of private property itself springs from the need to guarantee for everyone at least this minimally protected sphere, clashes between property rights and basic rights are obviously resolved in favour of the latter. Thus, for example, if the access to external goods is unevenly distributed in a society, to the point of preventing some from getting even the bare essentials for living, individuals may legitimately leave the rules aside and take and use someone else's extended *suum* in order to get out of their plight. That laws ought to be respected does not mean that they ought to be respected blindly, especially when they go against the very purpose for which they were established in the first place.

Starting from the concept of the minimal *suum* to ground basic human rights thus helps to remind us that the role of laws (and within them, private property laws) is subsidiary to some more fundamental moral ends. An obvious desideratum is therefore to design laws in such a way that cases of necessity (where our *suum* is endangered to the point that we may violate the property of others in order to get out of our plight) are exceptional. That would indeed be, to finish with Lennon, a society with 'no need for greed or hunger.'

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32 What about those who are unable to provide for themselves what they need? For them, other mechanisms based on other principles would be put in place; for example, based on human solidarity, or generosity, or charity.

**Author Query:**

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