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"Sapienti os in corde, stulto cor in ore esse"[1] –

J. G. Heineccius on natural duties concerning free thought and free speech

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In his *Elementa Iuris Naturae et Gentium* Johann Gottlieb Heineccius presents a unique account of love as the principle of natural law, referring to the main concern of early modern protestant theories of natural law: the *importance of securing subjective rights by a law*. Heineccius accepts the universal character of subjective rights derived from human nature, claiming their protection as natural duties required by a law. This chapter provides an attempt to explain the specific ways in which Heineccius deals with the paradoxical situation that the *protection* of subjective rights by a natural law theory requires certain *limitations* of their use, in order to avoid the mutual collision of such rights. For this purpose it focuses on the rights to *free thought* and *free speech*, which are example for that. While the first part reconstructs the way in which Heineccius claims the specific concern of natural law and points out continuities and discontinuities with his predecessors, the second part focuses on the requirement of natural law for limitation of free thought and free speech in case of collision of subjective rights.

[1] Johann Gottlieb Heineccius, *A Methodical System of Universal Law, with Supplements and a Discourse by George Turnbull*, ed. Thomas Ahnert and Peter Schröder, Indianapolis 2008, p. 148.

1. The natural law theory of Heineccius in its historical context

Early modern natural law theories imply the central assumption that individuals are equipped with the power to self-governed rational behavior by their own nature. The significance of this assumption is that self-governance is thought not as a social privilege but as an essential part of human nature, and therefore every individual has the *natural right* to make use of this power and to secure it, while preserving and perfecting their own natural predispositions.[2] The assumption of such a natural right to self-governance[3] is essential for early modern theories, but since it could lead to a collision between the natural rights of different individuals and so to the impairment of social and political interactions, the idea of *natural rights* (which implies an internal *moral* concept of obligation) must be complemented by the idea of *natural law* (which implies an external *legal* concept of obligation) in order to coordinate the use of natural rights and to prevent collision of interests. The necessity of such complementarity leads (especially in the German debates on natural law) to an extended concept of *obligation in natural law*, where the traditional legal concept of obligation as a juridical bond (vinculum juris)[4] complements

[2] The idea that everyone is capable of, and has the power to, self-governance is developed in a long process of transformation of the *aristocratic* concept of dominion (in its ancient meaning of both: property and ruling authority) into the modern *liberal* concept of natural right (*ius naturale*) to self-governance and to property acquired by one's own skill, labor and industry. Brian Tierney shows how this transformation was enforced in the 14th century especially by Franciscan theologians (Brian Tierney, *The Idea of Natural Rights. Studies on Natural Rights, Natural Law, and Church Law 1150-1625*, Michigan/Cambridge 1997, pp. 145-148). In regard to this concept in early modern natural law, Knud Haakonssen refers for example to "four different categories of deontic powers" in Pufendorf, which are meant by right (*ius*) in the sense of subjective rights and where self-governance (termed *libertas*) is one of them (Knud Haakonssen, *Natural Law and Moral Philosophy. From Grotius to the Scottish Enlightenment*, Cambridge 1996, p. 40).

[3] Such assumption requires the consideration of a general part of moral philosophy previous to the natural law itself, in which the essential predispositions in human nature (including human understanding and free will) to self-governed rational behavior and to the possibility of moral responsibility and moral imputation are introduced and analyzed. A good example of such a general part in the early modern is the first book of Pufendorf's eight books on natural law (Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo*, Londini Scanorum 1672, pp. 1-131), but the model for such general part we find already in Thomas Aquinas (Thomas Aquinas, *Summa theologiae*, Ia-IIae q. 1-48).

[4] Justinian defines obligation as: "iuris vinculum, quo necessitate adstringimur alicuius solvendae rei, secundum nostrae civitatis iura" (Justinian, *Codex Justinianus* [*Corpus Iuris Civilis*], ed. Paulus Krueger, Berlin 1877, Institutiones III 13).

and does not replace the moral concept of obligation,[5] taking into account the responsibility which the acting person has for their own actions. In the following examination we first analyze the specific concept of obligation in early modern natural law theory, before focusing on the continuities and discontinuities of the reception of this concept in Heineccius and his natural law theory.

1.1. Obligation in the early moderns: from natural rights to natural law

One of the main problems concerning the liberal idea of the natural right to self-governance is that: if (1) there is a subjective right to use of one's own natural powers, and (2) in society there is a danger of collision between such merely subjective rights, then (3) there must be a rational way to coordinate them in order to prevent such a collision and to preserve peaceful interactions. On the one hand, early modern *natural law theories* (like in Grotius or Pufendorf) try to solve the problem in (3) by claiming rational standards in the form of natural duties deduced from a principle of preservation of peaceful social and political interactions. These duties should be assumed as a requirement of universal legislation with the purpose to secure subjective rights while preventing collision of such rights. On the other hand, *theories of social contract* (like the political theory of Thomas Hobbes) suggest an alternative solution for (3). They deduce the

[5] The conceptual difference between *legal* and *moral* obligation in the early moderns is linked with the two different ancient definitions of *duty*: (1) as conformity between *laws* and actions and (2) as conformity between *reasons* and actions. Therefore legal obligation is such obligation that follows from the binding power of *laws* and moral obligation is such obligation that follows from the binding power of *reasons*. In the early modern development of natural law there is a requirement of complementarity between them. Considering the Justinian definition of justice ("Iustitia est constans et perpetua voluntas ius suum cuique tribuendi", ibid., Digesta 1.1.10.), already in ancient jurisprudence legal obligation seems to require a moral dimension insofar as it refers to the virtue of the bonded person, but in the early modern development of natural law there is an extended definition of justice, which leads to a much more complex idea of the moral dimensions of obligation. Pufendorf makes the distinction between (a) *justice of a person*, for which he adapts the definition of Justinian and (b) *justice of actions*, which implies not only the *virtue* of the acting person, but also the moral requirement of *respect* towards other persons: "justitia autem praeterea involvat respectum ad eos; in quos action exercetur. Quo nomine etiam Justitia virtus adversus alium dicitur" (Samuel Pufendorf, *De officio hominis et civis iuxta legem naturalem libri duo*, 1673, I 2 §13).

legitimacy of positive law and of political orders from the necessity for such coordination, without sharing the problem of natural law theories being dependent on theological sources like the will of God as a principle of universal legislation, even if early modern natural law theories provide a rational foundation without necessarily to give up the consideration of the will of God. While natural law theories differ in the exact way of deducing a rational foundation in the form of a principle of natural law, there is at least a consensus on two issues. (1) An epistemological issue: There should be knowledge or an intuition of this principle that is possible to achieve for every individual. (2) A motivational issue: This principle is not sufficient to bind the free will merely by the internal force of *moral obligation* committed by *virtue*; rather, it is necessary, in regard to natural rights, to consider the external force of *legal obligation* provided by a *law* claiming the universal character of *natural duties* as requirement of an universal will (like the will of God).

In order to consider (1) and (2) Pufendorf draws a distinction between the *active* (and internal moral) obligation and the *passive* (and external legal) obligation. While *positive law* is considered as the consequence of the will and the commands of a superior legislative authority, and for that reason it implies *merely a passive obligation* (since the will of the legislator here is possibly, but not necessarily, considering the moral concern for preservation of subjective rights), the obligation of *natural law* has, since Pufendorf, necessarily both (moral and legal) aspects. This means that this extended concept of obligation implies, in the first place, the *accomplishments* of the bonded person,[6] such as (1) the accomplishment of human understanding in achieving *knowledge* about the principle of natural law, and (2) the accomplishment of the

[6] That is the reason why Pufendorf claims in the second edition of his eight books on natural law (Pufendorf, *De Jure Naturae et Gentium Libri Octo*, Francofurti ad Moenum 1784, I 6 §5) that his account of obligation is completely different from theologically grounded accounts, like this of Cumberland, which derives obligation directly from the will of God. Obligation is, according to Pufendorf "a Moral Operative Quality, by which a Man is bound to perform somewhat, or to suffer somewhat. In thus defining Obligation we consider it as it inheres in the Person obliged. Bishop Cumberland, Ch.V. 27 in his Definition proceeds another way, considering Obligation as it is an Act of the Legislator, by which he shews or declares, that Actions conformable to his Laws are ordain'd." (Samuel Pufendorf, *Of The Law of Nature and Nations. Eight Books*, London 1717, I 6 §5, p. 60).

human will in achieving *recognition* of this principle as an *essential* condition for the realization of the subjective rights. Then, in the second place, there is consideration of the legal aspect of obligation: the will of a Legislator as a bonding source. This is especially clear in the short version of Pufendorf's natural law theory from 1673 *De officio hominis et civis*, where he claims explicitly that his *general concept of obligation* includes, beside the merely legal aspect of obligation, also an accomplishment of the bonded person in the form of reverence (*reverentia*),[7] caused by the insight that the given (positive or natural) law is committed by *justice*, while *justice* is defined by respect for others (*justitia […] involvat respectum*) and therefore is a virtue toward others (*virtus adversus alium*).[8]

Besides this general conception of obligation, the natural law is comparable with the positive law insofar it is also given by the *will of a legislator*. However, unlike positive law, the natural law is given not by particular human will but by the universal will (the will of God), which *necessarily* aims at the *preservation of natural rights* required by justice.[9] In the German debate on natural law, most of the theorists adopt these ideas in Pufendorf and the extended theory of obligation, even if some of them, like Samuel von Cocceji or Adam Friedrich Glafey, stress the importance of passive obligation as essential for natural law theories, claiming the *will of God* as foundation and therefore as *the principle of natural law*.

Heineccius' account of natural law should be understood as a result, and as an advanced version, of this early modern development of natural law and of their concern to offer rational standards for protection and securing the subjective use of natural rights while coordinating

[7] Samuel Pufendorf, *De officio hominis et civis juxta legem naturalem libri duo*, Londini Scanorum 1673, I 2 § 5.
[8] Ibid., § 13. Therefore Pufendorf seems to suggest that only a piece of legislation which considers the moral necessity of securing subjective rights can really *oblige* persons and not merely *force* them.
[9] In regard to this aspect in Pufendorf, Knud Haakonssen claims a more voluntarist interpretation of Pufendorf's theory stressing the passive obligation implied by a law (Haakonssen, *Natural Law and Moral Philosophy*, p. 39), which seems to imply a "fundamental ambiguity" (ibid., p. 42). The legal aspect of obligation is indeed essential for Pufendorf's natural law theory, but it seems that Pufendorf doesn't give up the moral aspect of obligation in regard to the accomplishments of the bonded person, so that there is not ambiguity in the meaning of deficiency, since it seems that for Pufendorf the will of God implies the consideration of God as *a highest reason*, which suggests a rationalistic view about the universality of natural law.

their use in social and political interactions by an universal principle. In his theory of obligation Heineccius follows his predecessors, but his specific approach differs in his account of the principle of natural law and in the connected issues of his theory of value. In order to analyze the continuities and discontinuities, we shall start with Heineccius' idea of moral philosophy as foundation of natural law and analyze his theory of value, which makes clear how, for Heineccius, the moral concern of natural law is expressed by love as the principle of natural law.

1.2. Heineccius on moral philosophy as foundation of natural law

In regard to moral philosophy, Heineccius claims two essential faculties of the human mind: (1) *spontaneity*, as the individual power of "directing one's aim to a certain end";[10] and (2) *liberty*, as the individual power to have a preference between different possibilities ("the power of preferring one or other of two possibles, and by consequence of acting well or ill, is called *liberty*"), and he also claims the factual evidence of the later power ("this power we experience").[11] Because there are actions that lead to good and those that lead to bad ends, the will needs rational standards identifying the good ends, which is essential for self-governed behavior. According to Heineccius, the rational foundation of such standards (in the form of the *derivation of the principle of natural law*) is the main subject of *moral philosophy*, since the lack of rational guidance towards the good leads to corrupted use of the will.[12] The focus on the *highest good* (as the purpose of the principle of natural law) and on *true happiness* (as the result of self-governed behavior according to rational standards) makes moral philosophy (*ethics*) an necessary precondition for the other parts of practical philosophy (*natural law*, *politics* and *economics*), which (as natural law) examine the duties required by the good (*justum*, *honestum*

[10] Heineccius, *Methodical System*, p. 44-45 (I 2 § 53).
[11] Ibid., p. 13 (I 1 § 4), see also p. 45 (I 2 § 53).
[12] "Quemadmodum autem circa *verum* intellectus; circa *bonum* voluntas magis occupata est: ita facile patet, philosophiae moralis esse, voluntatem movere ac flectere ad bonum adpetendum." (Johann, Gottlieb Heineccius, *Elementa philosophiae rationalis et moralis ex principiis admodum evidentibus iusto ordine adornata*, Frankfurt 1738, p. 196, II 1 § 4)

and *decorum*) and which also (as politics and economics) examine the duties required by the use of the proper public or private means (*utile*) for achieving the good.[13]

This construction of practical philosophy in Heineccius makes clear what the relation is between moral philosophy (*ethics*) and natural law. (1) Moral philosophy has to establish (i) the rational standards for achieving the good (*the principle of natural law*) and (ii) self-governance (*virtue*) as the essential requirement of *moral* (active) obligation. (2) Natural law has to explore the extensions of *legal* (passive) obligation in regard to the rational standards of the principle (*absolute, perfect, imperfect and hypothetical duties*). In this point Heineccius doesn't differ too much from the distinction between moral philosophy and natural law made by Pufendorf, where moral philosophy has the purpose of foundation of natural law. But Heineccius presents a different concept of value (*the highest good*) and of the rational standards leading to the highest good (*the principle of natural law*).

The essential difference between Pufendorf and Heineccius concerns not only the definition of the good but also the relation between good and justice. Pufendorf defines the general concept of the *good* as conformity of actions to norms[14] and this implies the distinction between different norms (natural or positive).[15] This means that, according to Pufendorf the general concept of the good is not necessarily linked to observation of natural rights. Positive law can be in conflict with natural law, but, because the actions conform to the positive law, they have to be termed 'good'. Therefore, the concept of value in Pufendorf is morally indifferent, and it is his concept of *justice* that provides the link to morality, so that a *good* action could be *unjust*, if: (1) the person is acting in a way that is *good* (according to a law) but not *willingly* (not self-governed), or if (2) the action is motivated merely by the legal obligation in accordance with

[13] "Quandoquidem porro ethica viam munit ad summum bonum, & conjunctam cum eo veram felicitatem: (§ II.) nemo amplius disciplinam hanc cum IURE NATURAE, quod *bonum*, quatenus, *iustum*, *honestum*, *decorum* est, considerat, confundet. Nec minus facile erit, ab ethica discernere POLITICAM & OECONOMICAM, quae quid utile sit vel *publice* vel *privatim*, disquirunt." (Ibid., p. 198, II 1 §§ 6-7)

[14] Pufendorf defines the good as *accordance of action with a law* ("convenientiam cum lege"), Pufendorf, *De officio*, I 2 § 13.

[15] Ibid., I 2 § 11.

the law but not at the same time by the moral requirement of *respect for natural rights of others*.[16] On the other hand, Heineccius' concept of value is not morally indifferent insofar as there is a clear definition of the content of the good, which requires accordance with human nature: "Whatever tends to preserve and perfect man is called *good* with respect to man [*homini bonum*]".[17] In accordance with that, the concept of justice is claimed as a part of the good and as a necessarily – not contingently – required property of a norm: "By a rule [*norma*] here we understand an evident criterion by which good and ill may be certainly distinguished. And in order to answer that end [*officium*], a rule must be true, right or just, clear, certain and constant".[18] But like Pufendorf, Heineccius also considers the subjective accomplishment of the acting person. In Heineccius this accomplishment is the conscience of the individual as the "faculty by which we reason about the goodness or depravity of our actions".[19]

This theory of value in Heineccius leads to different implications about the concern of natural law. It is not merely the necessity for the *prevention of collision between natural rights*, securing in this way *peaceful social and political interactions* (as, in Grotius and Pufendorf, the principle of natural law prescribes); it is rather the necessity for the *acceptance of human nature as an absolute value* which requires to *secure natural rights as such* (including not only those regarding one's own self but also other persons). Such concern is based on the assumption of the equality of human nature in regard to every human being, which qualifies human nature to

[16] Ibid., I 2 §§ 12-13. Grotius does something similar when he criticizes (already in the first two pages of the prolegomena to his *De jure belli ac pacis*) the ancient understanding according to which *justice* could be understood as the *right of the strongest*. Grotius tries to clarify the fundamental difference between *justice* and the *right of the strongest* by explaining the difference between *justice* and *utility*: While utility always refers to an individual perspective which could possibly conflict with another individual perspective, justice should be considered as a universal norm with the purpose of regulating conflicting individual interests.

[17] Ibid. 11 (I 1 § 1). This definition of the good in Heineccius is similar to the concept of justice in Pufendorf, because it requires respect for humans and their natural rights. It is also very near to the way, in which Thomas Aquinas suggests that the realization of human nature is last end for human beings (Thomas, *Summa*, Ia-IIae q. 1. a. 7) and that the means for achieving this last end is the cognition of and love for God (ibid., a.8).

[18] Heineccius, *Methodical System*, p. 13 (I 1 § 5). The square brackets give the word in the Latin original text.

[19] Ibid., p. 34 (I 2 § 33).

be thought as an intention of universal will and justifies the claim of absolute value. For Heineccius, the reason for the necessity of natural law (which reason moral philosophy provides in the form of the principle of natural law) is not derived from the need to *prevent collision between subjective rights* in order to save society (like according to Grotius and Pufendorf), but direct from in the absolute value of human nature, in order to *promote the use of subjective rights*, which purpose also include the need to prevent collision of such rights.

1.3. Heineccius on the principle of natural law

The consequence of Heineccius claiming human nature as an absolute value is, as already discussed, the specific view on the moral foundation of the natural law: the *moral aim* of natural law is not to *secure* (like in Groius and Pufendorf), but to *promote* the use of subjective rights. As we shall now analyze, Heineccius also presents a different account of the content and the essential guidance of the principle of natural law in regard to the question about rationality in human behavior. Heineccius agrees with his predecessors in the claim that human behavior is not always rational. Most of the early modern natural law theories (like those in Hobbes, Grotius, Pufendorf or Wolff) seem to accept the premise that *human will is focused on one's own good* (seeking to preserve and to perfect one's own natural constitution). Heineccius agrees with this premise and he also agrees with the premise that this is the fundament of rational behavior, but he claims at the same time that human behavior is not initially directed by the human will (and therefore that human behavior is not initially focused on the good). We can find arguments for this claim in his moral philosophy.

In the moral part of his *Elementa philosophiae,* Heineccius differentiates two options, which could be identified as possible standards for the direction of human actions: (1) sensual guided desire (*appetitus sensitivus*) and (2) rational guided desire, which is the will (*voluntas*).[20]

[20] Heineccius, *Elementa philosophiae*, p. 203 (II 2 § 16).

In addition to that Heineccius adopts the Cartesian dualism between mind and body and claims the dignity of the mind in its supremacy over the body ("dignitas mentis prae corpore").[21] The essential premise of Heineccius here is that the domination of the mind over the body is *not a fact* but an *aim*.[22] Since this domination is the only way to achieve the good, rational behavior is the real source of true happiness. Heineccius provides a clear explanation for that. On the one hand, he considers that (1) there are sensual guided desires (*appetitus sensitivus*), which focus on objects given by perception (through the senses), where good and bad qualities are simultaneously represented, and therefore sensual desire can fail to identify the good as such.[23] On the other hand, Heineccius states that (2) the will (*voluntas*) is not dependent on perception and for that reason it can represent the good clearly and separated from the bad by the abstracting function of imagination, and so produce a *pure desire for the good*. Because for Heineccius the desire for the good is the definition of *love* (*amor*),[24] it follows for him that only love (as the pure desire for the good by the will) can be seen as the proper standard for self-governed human behavior, and respectively only love should be accepted by a rational acting person as the principle of natural law.[25]

From this explication it should be clear why according to Heineccius the *focus on the good*, which is for him the definition of virtue,[26] cannot be assumed as a fact,[27] but rather as a concern and a consequence of rational behavior: such focus requires the use of the rational

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[21] Ibid., p. 202 (II 2 § 14).

[22] In this point Heineccius seems to agree with Pufendorf who claims the rationality of human behavior not as matter of fact but as a project of moral philosophy using as instrument for this project the cultivation of the conscience (see Katerina Mihaylova, "Gewissen als Pflicht gegen sich selbst. Zur Entwicklung des *forum internum* von Pufendorf bis Kant", in: ed. By Simon Bunke and Katerina Mihaylova, *Gewissen. Interdisziplinäre Perspectiven auf das 18. Jahrhundert*, Würzburg 2015, p. 53-70). But, as we already saw, Heineccius disagrees with Pufendorf on his concept of the good.

[23] Heineccius, *Elementa philosophiae*, p. 208 (II 2 § 29). Heineccius is in regard to the sensual representation of the good as well as his theory of affects in the following paragraphs very close to Christian Thomasius.

[24] Ibid., p. 211 (II 2 § 37).

[25] "But since we can only enjoy good by love, hence […] love is the principle of natural law" (Heineccius, *Methodological System*, p. 63, I 3 § 79).

[26] Heineccius, *Elementa philosophiae*, p. 225 (II 3 § 70).

[27] According to Heineccius, the focus on the good (virtue) is not initially given and therefore he answers the question whether it is innate to human nature with a clear negation (ibid., § 71).

faculties of human nature. Therefore love is a consequence of *virtue* (which is the essence of *moral obligation*), but since Heineccius presupposes the equality of human nature ("that man is by nature equal to man"[28]), which qualifies the claim of the *absolute* value of human nature to be an intention of universal will (the will of God), love as a principle of *natural law* can oblige every person to accept human nature as the absolute value and to act according to this (highest) good in regard to one's own self and others (which is *legal obligation*). Heineccius adopts for these two aspects of the bonding force of love the distinction between two meanings of principle. (1) In the meaning of *principium cognoscendi* love as "the principle of natural law" is binding because of being a "truth or proposition from which the *concern of our obligation* to any action appears or may be deduced" and therefore binding *internally* by virtue. (2) In the meaning of *principium essendi* the principle of natural law refers to the absolute value of human nature as the intention of a universal will (the will of God) and therefore it is binding *also externally* as a given "rule for human, free, moral actions" which includes legal and moral obligation at the same time (it "ha[s] external as well as internal obligation").[29]

The distinction between *principium cognoscendi* and *principium essendi* is an attempt to systematize the different meanings of the Latin term *jus* made in the early modern natural law tradition by Suarez, Grotius or Pufendorf: (1) *jus* as an object of justice, and therefore conferring moral obligation in regard to the moral faculty of an acting person (*jus* as an object of virtue) and (2) *jus* in the meaning of *lex* (law), conferring legal obligation (*jus* as the command/will of a legislator).[30] Adopting this distinction Heineccius can stress as well the *moral content* of love as a principle of natural law, which is the (*internally* accomplished by virtue) focus on the good, as well its *essential guidance*, which is to bind everyone (including those

[28] Heineccius, *Methodological System*, p. 131, (I 7 § 172).
[29] Ibid., p. 51. (I 3 § 60).
[30] For the two different etymologies of *jus* (from *iubendo* and from *justitia*) in Suarez see Tierney, *Natural Rights*, pp. 302-304.

who are not acting rationally) *externally* by the universality of this principle (as the intention of universal will, which is the will of God).

2. Heineccius on natural duties concerning free thought and free speech

In the first part of the paper we discussed (1) early modern aspects of obligation in regard to *natural rights* and the requirement of *natural law* theories. We also discussed (2) the way in which Heineccius fits in this historical context and the way in which according to him *moral philosophy* (ethics) has to be considered as a foundation for natural law. (a) Moral philosophy has to establish the *principle of natural law* as a rational standard for self-governed behavior, which requires (i) accepting human nature as an absolute value; and (ii) promoting the observation of natural rights with internal (by virtue) *and* external (by a law) obligation. (b) Natural law has to accept the principle of love by deriving from it certain natural duties, which have the function to guide human behavior according to the standards of natural law. In this second part of the paper we will analyze some conflicts in the relation between *natural rights* and *natural duties* appearing in the consideration of the faculties of *thought* and *speech*. On the one hand these are faculties grounded in human nature and (considering human nature as having absolute value) the free use of these faculties should be part of the natural rights of human beings, the observation of which the natural law has to secure and promote. On the other hand, Heineccius states the possibility of wrong use of the subjective rights, such as the right to free use of the faculties of thought and speech: "A person may be wronged even by internal actions; i.e. by *thoughts* intended to one's prejudice, as well as by external actions, as *gestures*, *words*, and *deeds*".[31] This leads to the paradoxical situation that the faculties, which could potentially be *subject to harm*, could at the same time potentially be *means* or *instruments for harm* and for that reason the natural law has the function to guide the use of the own faculties. In the following

[31] Heineccius, *Methodological System*, p. 143, (I 7 § 193).

part of this paper, after we reconstruct the concern of the natural duties required by love in regard to prevention of harm, we will analyze how, according to Heineccius, the problem of individual powers (being threatened by harm as well as being capable of inflicting harm) has to be solved and how the solution, which Heineccius gives, differs from the considerations of his predecessors.

2.1. The natural duties required by love

The claim of *love* as the principle of natural law leads to specific consequences concerning the concept of *duty*. Heineccius rejects the Stoic concepts of duty, which is defined as a connection between *reasons* and actions, and defines duty as the connection between *laws* and actions ("action conformable to the laws"[32]). *Natural duties* are therefore actions not according to *natural rights* (which only give reasons for a virtuous person to act according to them) but according to the *principle of natural law*, which in Heineccius is love and is defined by *two aspects* (a rational one and an affective one): (1) love is a "desire for the good", where the good is the *reason* for the desire of the will, but (2) love is at the same time related to a certain *affective state*, since the desire for the good is "joined with delight in its perfection and happiness".[33] The dual implication of love as the principle of natural law has an important consequence for the derivation of duties required by love: Even if we have a *reason* compatible with love, this reason should not be claimed as duty if it is not joined by the required *affective state*.[34] We find this implication in analyzing hatred. Heineccius doesn't define *hatred* in direct opposition to love as "desire for the evil" but rather (1) as an "aversion from evil" (*aversatio mali*), (2) which

[32] Ibid., p. 94, (I 5 § 120).
[33] Ibid., p. 63, (I 3 § 80).
[34] This is because of the fact that, while the first aspect of the definition of love as principle of natural law claims the good (and in this way the absolute value of human nature) as the content of the principle, the second aspect expresses the universality of the demand of the principle insofar as the reason, which the good (the absolute value of human nature) gives, has to bind the acting person causing an affective state, which expresses the actual affirmation of the demand.

is "joined with satisfaction in its unhappiness".[35] In this way Heineccius seems to claim that (1) a reason to hate would be compatible with love as desire for the good, insofar it is directed against the opposite of the good (against evil), but that (2) hatred is in contradiction with love, insofar as the affective state to which it is related (satisfaction caused by unhappiness) is in direct contradiction with the affective state related to love (delight caused by happiness). Therefore, as a *reason against the cause of harm* and against the cause of unhappiness[36] (which cause is evil) hatred cannot be claimed to be a duty without leading to the consequence that the connected satisfaction caused by unhappiness implies an *aim to harm*, which is inconsequent and not compatible with the requirement for affective affirmation of the demand of love while being delighted by happiness: "it is inconsistent or impossible at the same time to love one and to hurt him; or to bear his being hurted by another without disturbance and pain."[37]

With this example we see that according to Heineccius the *duty* required by love has by all means to *avoid harm*, so that it implies universal binding demand and for that reason such duty should be thought as a consequence of legal obligation. The demand to avoid harm is claimed by Heineccius as the "lowest degree of love"[38] and is defined as the "love of justice", from which we derive "duties of justice, which are of *perfect* obligation".[39] In its full degree love "consists in endeavouring, to the utmost of our ability, to increase and promote another's perfection and happiness, and in rendering to him even what we do not owe to him by strict and perfect obligation", so that from "the duties we owe to others, some are duties of justice, which are of *perfect* obligation, and others are duties of humanity and beneficence, which are of *imperfect* obligation."[40] Both kinds of duties – those of *justice* and those of *humanity and beneficence* – are duties owned to others and are grounded on the absolute value of human nature,

[35] Heineccius, *Methodological System*, p. 63, (I 3 § 80).
[36] Heineccius defines harm as "seeing to do something which conduces to render one more unhappy than he is" (ibid., p. 64, I 3 § 82).
[37] Ibid., § 81.
[38] Ibid., § 82.
[39] Ibid., p.131 (I 7 § 173).
[40] Ibid.

according to which everyone has to treat others (even if they have evil intentions) as they would treat themselves while respecting and supporting the essence of human nature and the natural rights grounded by human nature. The strong obligation to avoidance of harm implies two aspects of a person and his or her state of happiness: (1) the state in which "he is by nature" and (2) the state, which one has "justly acquired". In the first case, the duties are natural and are called *absolute*, and in the second case they are acquired and are called *hypothetical*.[41] The duties with the strongest obligation are therefore the *perfect and absolute duties*, since the failing of the perfect duty (to general avoidance of any harm) and of the absolute duty (to avoidance of harm in particular to happiness given by nature) are in direct conflict with the principle of love and with the absolute value of human nature implied by love.

In book I chapter VII "concerning our absolute and perfect duties toward others (in general), and of not hurting or injuring others (in particular)"[42] Heineccius has two concerns: (1) to present all the cases in which a violation of absolute and perfect duties is possible, and (2) to analyze the means, which make such violation possible. As to the first concern, he states three general areas, in which such violation is possible: (i) in regard to the *body*; (ii) in regard to the *mind*, which includes the human understanding and the human will; and (iii) in regard to the *social condition* of a person, such as their reputation. In regard to the mind, the harm which violates the perfect and absolute duties is (a) the *misleading* of human thought, so that it is harmed in reaching its natural purpose (which is knowledge about the truth), and (b) the *corruption* of the human will, so that it is harmed in reaching its natural purpose (which is virtue). In both cases there is harm to the liberty to self-guided behavior or to the education to such behavior (including the education to free thought and to virtue). As to the second concern, Heineccius states two possible kinds of means which could cause violation of the perfect and absolute duties: (iv) internal actions like "*thoughts* intended to one's prejudice" and (v) external

[41] Ibid., p. 132, (I 7 §175).
[42] Ibid., p. 131, (I 7).

actions like "*gestures*, *words*, and *deeds*".[43] Since Heineccius points out free speech as one of the most dangerous of those possible means aiming to harm the mind, this chapter includes a large discussion on how the absolute and perfect duties require a limitation of the use of free speech. Nevertheless, this discussion implies a certain *controversy in regard to the truth* required by free thought and provided by free speech: While truth is an essential requirement for the use of the natural right to free thought (since the harm to human understanding includes both possibilities: a limitation of truth with the intention to misguide and an inappropriate education leading to aversion to truth), it seems to imply the requirement of duty to unrestricted communication of the truth. But Heineccius also stresses the fact that unrestricted communication of truth can also cause very serious harm to the human mind, which seems to imply the requirement for duty to thoughtful and discreet communication of the truth. This paradoxical situation in regard to the truth leads to a reconsideration of the usual concept of moral truth through its further internal distinction between *truth* indifferent to natural duty and *veracity*, which is truth according to natural duty. In the following chapter we shall analyze the context and the reasons for this distinction and will reconstruct the way in which Heineccius solves this problem in his discussion of perfect and absolute duties in regard to free thought and free speech.

2.2. Natural duties concerning free thought and free speech

The general conceptual difference between *truth* and *veracity*, which Heineccius makes in his discussion of the perfect and absolute duties to others in regard to the required limitation of free speech, is very specific for Heineccius, but it refers to a large tradition of distinctions between different meanings of truth. A typical example can be found in the philosophical lexicon of

[43] Ibid., p. 143, (I 7 § 193).

Micraelius from 1653, where we can find the definitions: "(1) *Moral truth* is the term for veracity, which expresses the language of the heart. […] (2) To the *moral truth* and to the *logical truth* is opposed falseness, but to *metaphysical truth* is opposed ignorance."[44] Heneccius offers in his *Elementa philosophiae* a very similar distinction when he states that the truth is either *metaphysical*, or *moral*, or *logical*.[45] According to his explanation, (1) *metaphysical truth* is the accordance with some essence, while (2) *moral truth* is the accordance of the words or other signs with the internal states of the mind, and (3) *logical truth* is the accordance of the content of our ideas with objects.

These definitions are only implicitly included in the discussion on perfect and absolute duties to others from *Elementa iuris naturae et gentium* since the aim of the distinction made here is not to stress the conceptual difference between the different terms but to provide a good argument for the necessity of the limitation of free speech, in order to avoid using speech to hurt the natural rights of others. In fact, Heineccius speaks in this chapter only about truth in general, but from the way in which he describes it we are instructed that he means *moral* truth (in the meaning of the definition he gives for it in *Elementa philosophiae*), without considering the concepts of *metaphysical* and *logical* truth. As we will see, for Heineccius there is a good reason not to use the term 'moral truth' in the context of his natural law theory, since he makes there an *internal distinction* in the general concept of moral truth between (1) (moral) truth *without* consideration of perfect and absolute natural duties; and (2) (moral) truth *being limited* by the requirements of natural law, which implies a richer connotation of the term 'moral' than in the general concept of moral truth. As a result, Heineccius uses for (1) merely the term 'truth' and for (2) the usual term for moral truth, namely the term 'veracity'. Before analyzing these

[44] "*Veritas (1.) Ethicis* sumitur pro veracitate, qua lingua cordi consonant […] (2.) *Logicis veritas* dicitur Conformitas orationis cum Re de qua dicitur. […] *Veritati Ethica & Logica* opponitur Falsifitas; sed *Veritati Meatphysica* opponitur ignorantia" (Johann Micraelius, *Lexicon philosophicum*, Jena 1653, p. 1092-3).
[45] "Veritas est vel *metaphysica*, vel *moralis*, vel *logica*. *Metaphysicis* verum dicitur, quidquid habet essentiam sibi convenientem. […] *Ethicis* veritas est convenientia verborum signorumque externorum cum cogitationibus mentis. […] A nos jam hic de veritate *logica* loquimur. *Ea est convenientia idearum nostrarum cum objectis*." (Heineccius, *Elementa philosophiae*, p. 111-112, I 3 § 94-95).

conceptual distinctions we shall focus on the general concept of language and the natural purpose of language, as well as on the possibility of abuse of language while violating the requirements of natural law.

According to Heineccius, language or the faculty of speech is given to human beings by nature so that (1) it has the *function to express* internal states to others (and this is the meaning of *moral truth* made in *Elementa philosophiae*): "distinctly signifying his thoughts by words, and thus making his mind certainly known to each other";[46] (2) it is *part of the essential faculties*, which was given by nature: "the kind author of nature […] hath not only given us minds to perceive, judge and reason, and to pursue good, but likewise the faculty of communicating our sentiments to others, that they know our thoughts and inclinations";[47] and (3) the *purpose* of the faculty of speech is to be a *means for the observation of the natural duties required by love*: "we should communicate our thoughts to others agreeably to the [principle of] love" and not violating it: "we should not injure any one by our discourse".[48] These aspects of the concept of language imply that language has a natural purpose (to ask for support from others and to give support to others) and therefore it should not be used against this purpose by causing harm to others.[49] The observation of this natural purpose requires the observation of two absolute and perfect duties.[50] (1) The first duty is that we should use words in their received significance: "we ought not to affix any meaning to words but what they are intended and used to signify in

[46] Heineccius, *Methodological System*, p. 144, (I 7 § 194).
[47] Ibid., p. 143, (I 7 § 194). This view on language differs from the view in Grotius and Pufendorf where language is not considered as given by nature but as a product of implicit contract made by persons in society. This is why, according to Pufendorf, the natural duties concerning free speech are hypothetical duties like the duties concerning contracts and not absolute duties.
[48] Ibid., p. 145, (I 7 § 196).
[49] With the idea of natural purpose of language Heineccius leans on other philosophers like Cicero, who understands language together with reason as the natural bond of society, which is more primary than the bond of the law. With the idea that language implicate the natural duty to follow the requirements of natural law, Heineccius also leans in a certain way on Grotius and Pufendorf, who claim a contractualistic theory of language, according to which it is mutual agreement between humans that supports cooperation in pursuing their natural rights.
[50] We find these two limitations already in Pufendorf who claims them as the assumption which everyone has to make while making use of language in order to secure the general possibility of using language at all. (Pufendorf, *De officio*, I 10 § 2)

common discours",[51] in order to prevent misguidedness in the reaching the natural purpose of language. (2) The second one is that we should admit the natural right of others to demand certain and true information from us and not hurt this natural right by dissimulation, lying or deception.[52]

This requirements in regard of the use of language state that the truth should not include any limitations (neither dissimulation, nor lying, nor deception), since its purpose is to respect the natural right to truth required for the free use of the faculty of thought and will. But Heineccius argues that the use of language can lead to violation of the duties required by love even if there is no limitation of the truth in the form of dissimulation, lying, or deception. To prevent such violations it is necessary to allow *three exceptions* from the requirement in (2). The first exception which the natural law allows, concerns (i) the case of *collision between perfect and imperfect duties* by telling the truth: "it is lawful to be silent, if our speaking, instead of being advantageous to any person, would be detrimental to ourselves or to others: and that it is not unlawful to speak falsely[53] or ambiguously, if another has no right to exact the truth from us".[54] The second exception concerns (ii) the case where the limitation of speech would prevent *hurting of perfect duties without to hurt imperfect duties*: "or if by open discourse to him, whom, in decency, we cannot but answer, no advantage would redound to him, and great disadvantage would accrue from it to ourselves or others".[55] The third exception concerns (iii) the case where the limitation of speech would *support imperfect duties*: "or when, by such discourse with one, he himself not only suffers no hurt, but receives great advantage."[56]

The initial problem in regard to the question whether the truth should be limited or not, was that on the one hand the use of the natural faculty to speech *requires no limitation of truth*

[51] Heineccius, *Methodological System*, p. 145, (I 7 § 197).
[52] Ibid., p. 146, (I 7 § 199).
[53] Falsely speech is, according to Heineccius, not the same as lying, which is defined as a specific falsely speech which aims to hurt (ibid).
[54] Ibid., p. 147, (I 7 § 200).
[55] Ibid.
[56] Ibid.

in order to satisfy the requirement of *natural rights* to free thought, but on the other hand love as the principle of natural law *requires limitation of truth* in order to satisfy the *perfect and absolute duties* in their both concerns: (A) securing the natural right to free thought from harm, and (B) avoiding possible collision of natural rights. Heineccius' solution was to suggest three exceptions to the requirements of the duties to free thought, which take into account the requirements of love as the natural law and limit free speech. The result of this solution is the modification of the definition of moral truth given by Heineccius in *Elementa philosophiae*. While in *Elementa philosophiae* Heineccius suggests that the general correspondence between internal states of mind (like thoughts) and the external signs (like words or gestures) should be designated by the notion of moral truth or veracity, here in his natural law theory he admits the necessity for modifying this general concept of moral truth not only in regard to natural rights requiring no limitation of truth but also in regard to natural duties, which (in order to secure natural rights and to avoid their collision) require limitation of truth. This modification states the internal difference within the general concept of correspondance between internal states and external signs between (1) being indifferent to natural duties or (2) being limited by the natural duties required by love. While in the first case such correspondence is in accordance with the concern of natural law, but not sufficient to answer the further concern also to avoid collision of the use of natural rights, it loses the predicate 'moral' and Heineccius speaks only about truth, although it fits the definition for moral truth given in *Elementa philosophiae*. So only in the second case such correspondence is truth claimed as moral and can be termed with the notion 'veracity'. For this modification Heineccius finds expression by the formulation of Syracides: *Sapienti os in corde, stulto cor in ore esse* ("a wise man's mouth is in his heart, and a fool's heart is in his mouth"). Only a wise man will respect the natural law and would limit his free speech, while a fool will use his natural right to free speech, ignoring any hurt that love would try to avoid.