

Renée
Jeffery



Hugo Grotius in International Thought

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List of Abbreviations

Works by Hugo Grotius

DJB De Jure Belli ac Pacis Libri Tres (The Rights of War and Peace in Three Books)

DJP De Jure Praedae Commentarius (Commentary on the Law of Prize and Booty)

DA De Antiquitate Reipublicae Batavae (The Antiquity of the Batavian Republic)

RE De Republica Emendanda (An Emendation of the Republic)

CiT Commentarius in Theses XI (Commentary on Eleven Theses)

Works by Other Authors

EJU Elementorum Jurisprudentiae Universalis Libri Duo (Elements of Universal Jurisprudence in Two Books) by Samuel Pufendorf

DJN De Jure Naturae et Gentium Libri Octo (The Law of Nature and Nations in Eight Books) by Samuel Pufendorf

OHC De Officio Hominis et Civis juxta Legem naturalem (On the Duty of Man and Citizen) by Samuel Pufendorf

JGM Jus Gentium Methodo Scientifica Pertractatum (The Law of Nations Treated According to a Scientific Method) by Christian von Wolff

LDG Le Droit des Gens, ou Principes de la Loi Naturelle appliqués à la Conduite et aux Affaires des Nations et des Souverains (The Law of Nations or the Principles of the Law of Nature Applied to the Conduct and to the Affairs of Nations and of Sovereigns) by Emerich de Vattel

TGS Transactions of the Grotius Society

CHAPTER 1

The Grotius Story

Not only is there no consensus over the nature of the man, his work, and how it is to be used, these divisions have often obscured the fact that there is no agreement over what it actually means to be “Grotian.” Self-confessed members see themselves, and their tradition, in markedly distinct ways whilst claiming their often contradictory values to be quintessentially “Grotian.” These contradictions were perhaps a consequence of the Grotian predilection for inconclusiveness.¹

In contemporary international thought Hugo Grotius stands alongside Thomas Hobbes and Immanuel Kant in something of a “holy trinity” of classical theorists. His 1625 work *De Jure Belli ac Pacis* (*The Rights of War and Peace*) is rightly counted alongside Hobbes’ *Leviathan* and Kant’s *Perpetual Peace* as one of the most important “classics” of international thought.² The exemplar of the so-called “rationalist” tradition of international theory, Grotius is often viewed as mediating the contending claims of the “realist” and “revolutionist” traditions represented by Hobbes and Kant respectively.³ Unlike his esteemed counterparts however, the historical figure of Grotius remains something of an unknown quantity in much contemporary scholarship. Undoubtedly a writer more cited than read, Grotius has become a thinker perhaps more mythologized than understood in all his color and complexity.⁴ As a result, his contribution to the history of ideas in international thought is more often viewed in terms of his subsequent, and often anachronistic, placement within one or more retrospectively constructed intellectual traditions, than in terms of his own writings.

In large part, blame for the reluctance with which contemporary scholars have given serious consideration to Grotius’ life and works can be laid

squarely at his own feet. Amongst the great Latin scholars of the sixteenth and seventeenth centuries his works are some of the least accessible. As Hedley Bull once complained, Grotius' writings are "difficult to read, even in English translation, encumbered as they are with the biblical and classical learning with which in Grotius' generation it was thought helpful to buttress theoretical arguments."⁵ More eloquently, Martin Wight once confessed that he too often found it difficult to grasp precisely what Grotius was arguing and wrote that "[t]rying to pick a path through the baroque thickets of Grotius' work, where profound and potent principles lurk in the shade of forgotten arguments and obsolete examples like violets beneath overgrown gigantic rhododendrons, I find that he does not say what I thought he said."⁶ Indeed, Grotius' works are both eccentric and eclectic, his referencing is idiosyncratic to say the least, and his narrative seems to alternate between legal argument, biblical exegesis and obscure commentaries on matters as diverse as moral conduct in war, contracts and oaths, and even circumcision. As Voltaire once famously remarked of Grotius, "he is very learned . . . but what has circumcision to do with the laws of war and peace?"⁷

It is thus not altogether surprising that Grotius' real importance has become somewhat obscured in the history of international thought. With this in mind, this work seeks to introduce the historical and intellectual figure of Hugo Grotius and assess his impact on subsequent international thought. It does so by not only considering his most famous "international legal" works, but his prolific writings on the history of the Dutch republic and, in particular, on matters of what might be termed "practical" or "applied" theology. In doing so this work provides not so much a "new" reading of Grotius' most important ideas but the recovery and illumination of ideas that, though once deemed central to "Grotian" thought, have been hidden in the dark recesses of international scholarship for some time. What emerges not only from this reconsideration of Grotius' writings but those of his most ardent followers is a picture of both Grotius and a tradition of thought perpetuated in his name that was fundamentally concerned with the relationship between law and morality in international relations. This, as we will see, takes both Grotius and the so-called "Grotian tradition" of international thought some distance from their more recent incarnations in contemporary scholarship.

The remainder of this chapter is thus devoted to three central tasks. First, it seeks to provide a relatively detailed account of Grotius' life and works. Although it by no means constitutes a comprehensive intellectual biography, it builds upon what has become the conventional "Grotius story" by highlighting those aspects of his life and works that have often been neglected. The next section then turns to the reception of Grotius in contemporary scholarship, in particular his characterization as the namesake of a range of

contending intellectual traditions, and briefly surveys the small body of critical literature that has emerged in response to these developments. Finally, and following from this, the chapter also considers what it might mean to designate a particular set of thinkers or ideas as a “tradition” of thought. For, as the final section contends and as will become increasingly apparent as the remainder of this work unfolds, the development of the “Grotian tradition” is, at least in part, predicated on what the term “tradition” is thought to entail.

The Life and Works of Hugo Grotius

As it is conventionally told in International Relations scholarship, the story of Hugo Grotius’ (1583–1645) life and works centers around the publication of his two most famous international legal texts; *De Jure Praedae Commentarius* (*Commentary on the Law of Prize and Booty*) and *De Jure Belli ac Pacis*.⁸ However, this is something of an anomaly for, despite his fame in the history of jurisprudence Grotius was, first and foremost, a politico-religious thinker whose most prolific works appeared in the field of theology.⁹ Not only are these theological works almost all marked by a set of interrelated themes; religious toleration, theological consensus, and doctrinal unity in a time of religious dissent and discord, but they formed the basis of the moral and legal scheme that Grotius proposed as the means according to which the effects of international conflict might be mitigated in *De Jure Belli ac Pacis*.

With this in mind, the following account of Grotius’ life and works seeks to highlight the centrality of religious concerns to his wider thought. Before doing so however, it recounts the pertinent details of his early years and introduces another often neglected aspect of his thought; his early works that sought to address questions of sovereignty, the relative merits of various forms of republican rule, and the central precepts of the just war tradition.

Grotius’ Childhood and Education

Better known by his Latin eponym, Huig de Groot was born in the Dutch town of Delft on Easter Sunday in 1583, a fact with which he was so impressed that for much of his life he insisted on celebrating his birthday on Easter Sunday rather than the actual anniversary of his birth, April 10.¹⁰ By all accounts a precocious child, he began his studies at the University of Leiden in 1594 at the age of eleven and soon became the protégé of many of the leading Dutch intellectuals of the day including, most notably, the renowned French scholar J.J. Scaliger, the Dutch historian Justus Lipsius, and the mathematician, Simon Stevin.¹¹ Although many biographies of Grotius make a great deal of the age at which he entered university, supposing that he

was a genius or prodigy of some kind, this is not necessarily the case. Despite his undoubted talents, it was indeed customary for students to enter university at what is, by contemporary standards, a relatively young age.¹² As Charles Edwards notes, contrary to another popular assumption, there is no evidence to suggest that Grotius focused his studies on law but rather “saturated his mind with a broad choice of courses representative of the scholarly offerings of the university.”¹³ Educated in the humanist tradition, Grotius soon made his name as a Latin poet and historian,¹⁴ his edition of Martianus Capella’s encyclopaedic work appearing before his sixteenth birthday.

Grotius’ university career was completed at the end of 1597 and shortly after his graduation he joined Admiral Count Justin van Nassau and Johan van Oldenbarnevelt, the Grand Pensionary, on a diplomatic mission to the court of Henry IV of France. The aim of the mission was to prevent France from concluding peace with Spain, with whom the Netherlands had been bitterly engaged in their fight for independence. Indeed, although the United Netherlands had claimed independence from Philip II some years earlier, they were yet to appoint a new prince and continued to rely on French support.¹⁵ However, Grotius did not play an official role in the diplomatic negotiations but rather accompanied the party as Oldenbarnevelt’s protégé and the traveling companion of his son.¹⁶ The mission was a failure but before the party returned to the Netherlands Grotius was presented to the King who hailed him as “the miracle of Holland,” a title according to which he has often since been referred. What is more, on May 5, 1598 Grotius was awarded an honorary doctorate of law from the University of Orléans, an event that has no doubt contributed to his status in the history of international law.

Grotius the Historiographer

In 1601 Grotius was employed as the official historiographer of Holland and during the period of his employment composed a number of works that sought to address the legitimacy of the Dutch Revolt from Spanish rule.¹⁷ In 1610 he published *De Antiquitate Reipublicae Batavicae* (*The Antiquity of the Batavian Republic*), a work commissioned by the States of Holland and West-Friesland for which he was paid 300 pounds. *De Antiquitate* sought to justify the Dutch revolt by demonstrating that sovereignty rested with Holland, as it had done since the time of the Batavians. This brought into question the legitimacy of the Spanish occupation and paved the way for Grotius to argue that the Dutch were pursuing a just war in order to retain their sovereign integrity.¹⁸ Loosely basing it on François Hotman’s *Francogallia*, Grotius at least partially directed *De Antiquitate* at a French audience in an attempt to

preserve Henry IV's support. As Cornelius Roelofsen has noted, in a conversation with the English ambassador Carew in 1609, the French monarch had "called the Dutch provinces '*libres mais non pas souverain*,'" a claim that the Dutch rulers would certainly have sought to refute.¹⁹

De Antiquitate was not, however, Grotius' first work to address the question of sovereignty in the Dutch Republic. Thought to have been composed sometime between 1598 and 1600, *De Republica Emendanda* explicitly set out to compare the early form of the Dutch republic with the Hebrew republican model and, in doing so, addressed a range of questions concerned with the internal sovereignty of Holland.²⁰ Similarly, in *Parallellon Rerumpublicarum*, a text which was in circulation in 1602 but of which only one book has survived, he compared the republics of the United Provinces, Rome and Athens. Critically however, these very early works are of little real value, presenting fairly juvenile iterations of Grotius' thoughts that, with later revisions, he came to directly refute.

Grotius' most focused and succinct treatment of the Dutch Revolt appeared in *Commentarius in Theses XI* composed sometime between 1603 and 1604 and unpublished during his lifetime.²¹ What is most significant about *Commentarius in Theses* is the sustained discussion of the concept of sovereignty and, in particular, Jean Bodin's understanding of the term it includes. Defined as "that absolute and perpetual power vested in a commonwealth which in Latin is termed *majestas*," Bodin's notion of *souveraineté* formed the basis of Grotius' own definition of the term: the "supreme right to govern the state which recognizes no superior authority among humans, such that no person(s) may, through any rights of his (their) own, rescind what has been enacted thereby."²² The sovereign is identified, in Grotius' conceptualization, according to the "*actus summae potestatis*" (marks of sovereignty) which had appeared in Bodin's work as the *marques de la souveraineté* and were also known in Latin editions of the Frenchman's work as *iura maiestatis*. The "marks of sovereignty" were, according to Grotius, "those that no-one may receive by virtue of any higher right" and included the "supreme right to introduce legislation and to withdraw it, the right to pass judgement and to grant pardon, the right to appoint magistrates and to relieve them of their office, the right to impose taxes upon the people" and so on.²³

Where Grotius deviated from Bodin most significantly was in his claim that sovereignty can be divisible. Thus, while Bodin pursued a royal absolutist line, maintaining that sovereignty is absolute and indivisible, Grotius asserted that "[t]he marks of sovereignty may be divided among several parties."²⁴ A similar argument is found in the later work *De Imperio Summarum Potestatum circa Sacra*, the first sentence of which states that *summum imperium* may either be held by an individual person or a group of persons.²⁵ Critically, this

understanding of divisible sovereignty allowed Grotius to argue that the Dutch revolt was justified on the grounds that it was fought in defense of a legitimate mark of sovereignty that had been impugned by the Spanish representative in Holland, the Duke of Alva; namely, the right to raise taxes.

Grotius the Lawyer

In 1604 Grotius was twenty-one years old, an established legal practitioner, and could boast the Dutch East India Company among his clients. In what was a time of rapid colonial and mercantile expansion marked by the continuing ramifications of the Dutch Revolt, Grotius became involved in a legal case surrounding the seizure of a Portuguese carrack in the Malacca Straights.²⁶ Captured by Admiral Jacob van Heemskerck in 1602, the “Catherina” was laden with a considerable cargo of copper, silk, porcelain and bullion from Japan, China, Peru and Mexico. In the case that followed to resolve the question of who could rightfully take possession of the prize and booty seized, Grotius was employed by the Dutch East India Company to defend its claim. The result was *De Jure Praedae* which, although not finished in time for the hearing, outlined Grotius’ defense of the Company’s actions. However, for reasons that remain unknown, Grotius did not publish *De Jure Praedae* during his lifetime, the manuscript of the work only being discovered at an auction in 1864. What did enter circulation during Grotius’ lifetime was a smaller, distilled version of the twelfth chapter of *De Jure Praedae* entitled *Mare Liberum* (*The Free Sea*) which, published anonymously, sought to defend the Dutch East India Company’s trading rights in the negotiation of the Twelve Years’ Truce between Spain and the Netherlands in 1609.²⁷ Explaining his position in a letter to a friend some years later Grotius wrote:

Some years ago, when I saw how important the East India trade was to the security of [Holland], and how everyone agreed that the trade could not be carried on without force of arms, because of the power and untrustworthiness of the Portuguese, I set to work to persuade us to hang on bravely to the commerce we had so auspiciously begun . . . So I outlined the rights of war and booty, the history of the cruel and savage dealings of the Portuguese with ourselves, and many other relevant matters, in a fairly comprehensive treatise which I have so far refrained from publishing . . . [I published *Mare Liberum* at the time of the Peace Treaty] with the intention both of dissuading our side from renouncing any of our obvious rights, and of seeing whether the Spaniards would modify their claims somewhat in the light not only of compelling arguments but also of the opinion of their own authorities.²⁸

Mare Liberum elicited a number of direct responses in subsequent scholarship. In 1612 it was placed on the Index of forbidden books by the Spanish Inquisition and in 1625 a Portuguese scholar at the University of Valladolid by the name of Serafim de Freitas published a reply under the title of *De justo imperio Lusitanorum Asiatico*. More famously, in 1636 the English writer John Selden published his *Mare Clausum* which, although considered by many to be a “deeply Grotian work,” devoted an entire chapter to refuting Grotius’ argument.²⁹

Having outlined Grotius’ involvement in the Dutch East India Company case, conventional accounts of his life generally continue by leaping forward almost an entire decade to his fanciful escape from imprisonment in Loevestein Castle, flight to exile in Paris, and publication of his most famous work in the history of international thought, *De Jure Belli ac Pacis*. However, in doing so, such accounts neglect what was arguably the most important formative period in the development of Grotius’ ideas about the relationship between law and morality.

Grotius the Theologian

In 1607 Grotius was appointed Advocate-Fiscal to the Court of Holland, a position that, despite his initial attempts to remain neutral, would see him embroiled in the politico-religious controversies of the following decade. Indeed, in the period immediately following the publication of *Mare Liberum* Grotius’ writings were more or less confined to issues of politics and religion.

At the beginning of the seventeenth century, the newly formed Dutch republic became internally divided in a politico-religious dispute that threatened to thrust it into civil war.³⁰ In theological terms, the dispute centered around opposing views on questions of religious tolerance, the doctrine of predestination, and the relationship between church and state, although it soon took on political overtones. On one side, orthodox Calvinists, led by Franciscus Gomarus, endorsed a strict notion of predestination, argued that the church ought not to be subject to the authority of the state, and advocated a “‘pure’ Calvinist church as a state church.” In political terms they also favored the centralization of political power with the States General of the United Netherlands, and called for the “resumption of hostilities against Spain under the leadership of the House of Orange.”³¹ However, much of the Dutch population opposed these views for there seemed little point in simply replacing the “tyranny of Spain” with “the tyranny of an organized and intolerant Calvinist Church.”³² Initially led by Jacobus Arminius and known as the “Remonstrants” after the Remonstrance of 1610, this side “advocated

religious toleration, a decentralization of national power in favour of provincial sovereignty, and efforts for promoting peace with the Spanish.”³³ With the intrusion of contending views on sovereignty and conflict with Spain, what had begun as a predominantly theological dispute led to the division of the United Provinces, Holland and Utrecht supporting the Remonstrants and the remaining five states supporting the Calvinists or “Contra-Remonstrants” as they were known.

Although Grotius stood firmly on the Arminian side and advocated religious toleration throughout his life, it was only as the Advocate-Fiscal of Holland that he became officially drawn into the controversy. In particular, as the Advocate-Fiscal, Grotius was responsible for defending the States of Holland against the charge of being “*participes criminis*” for endorsing the appointment of a professor widely viewed as a heretic at the University of Leiden. The 1613 work *Ordinum Hollandiae ac Westfriesiae Pietas* (*The Religiousness of the States of Holland and West-Friesland*) was the result. It is here that Grotius’ commitment to principles of religious toleration became clear:

“He disagrees with me on predestination, I cannot tolerate him, he is heterodox, he is a heretic, he is Pelagian, he is a Socinian” should be given up as quickly as possible; today it is all too popular with many, but it is in itself harmful both to the Church and to the State, and a much more serious danger ensues from it . . . if those who disagree on a not very serious point cannot live in one Church, then the Reformed will travel the same road as that paved by the excessive harshness of the Romanists, which caused the schism of the Protestants, who in their turn split up into Lutherans and Reformed as a result of the fatal hatred of the theologians; the Reformed will again split up into other sects and those sects will at last divide into new parties and thus nothing will be left by shattered limbs, and nowhere the form of a real body.³⁴

Shortly after the publication of *Ordinum Pietas*, Grotius was sent on a mission to King James I of England. The aims of the mission were two-fold, its primary objective being to discuss freedom of navigation with regard to the eastern seas. Here the English had argued in favor of complete freedom of the seas while the Dutch insisted that “[i]t was not fair that the English should claim to share in the benefits of the Eastern trade unless they were prepared to undertake their share of the burdens, which they had shown no disposition to do.”³⁵ However, Grotius had previously argued in *Mare Liberum* that “[e]very nation is free to travel to every other nation, and to trade with it,”³⁶ a position that certainly did not suit Dutch interests in this situation. In what was not the first and certainly would not be the last

instance, it thus seems that he altered his views to better suit the broader political goals he was sent to represent.

The second objective of the mission was to garner support from King James for Holland's position in the ecclesiastical situation unfolding at home. In particular, Grotius petitioned the King to support his plan for the reunification of the Christian churches under James' headship, a matter he had been discussing with Isaac Casaubon in their frequent letters since 1610. As W.S.M. Knight writes, "when Grotius did come to England he was already well known by the King . . . his main interests and activities in England were devoted to theological and ecclesiastical affairs, and not to commercial or juridical and, as to persons, were almost exclusively centred in Casaubon and the very few English friends, including the King, of that most amiable but troubled soul."³⁷ However, both missions failed, the latter most probably as the direct result of Archbishop Abbot's opposition to both Grotius' character and views. In a letter to Sir Ralph Winwood, James' ambassador in the Netherlands, dated June 1, 1613, Abbot wrote:

You must take heed how you trust *Doctor Grotius* too far, for I perceive him *so addicted to some Partialities in those Parts, that he feareth not to last so it may serve a turn*. At his first coming to the King, by reason of his good *Latine* Tongue, he was *so tedious* and full of *tittle tattle*, that the King's Judgement was of him, *that he was some Pedant, full of Words and of no great Judgement* . . . At the same time that Sir Noel Caron was together with *Grotius*, being now to take his leave of the King, *it was desired of his Majesty that he would not hastily give his Judgement concerning Points of Religion now in Difference in Holland, for that his Majesty had Information but of one side; and that his Ambassador did deal partially, making all Reports in Favour of the one side, and saying nothing at all for the other*.³⁸

Upon his return to Holland Grotius accepted the position of pensionary of Rotterdam offered to him by Johan van Oldenbarnevelt prior to his departure and, with his ascension to this position, was wholly thrust into the political sphere.³⁹

In 1617 Grotius published his *Defensio Fidei Catholicae de Satisfactione (A Defence of the Catholic Faith Concerning the Satisfaction of Christ, Against Faustus Socinus)*⁴⁰ thus further engaging him in the religious controversies of the time. It was to be the last work he published before his arrest and imprisonment in 1618. Although it was only published in 1647, *De Imperio Summarum Potestatum circa Sacra (The Power of the Sovereign Concerning Religious Affairs)* was completed in 1618 immediately prior to Grotius' trial. As Harm Jan van Dam writes, in composing this work Grotius had "cherished

hopes that [its] publication . . . would turn the tide and bring back peace to church and state.”⁴¹ The central argument of the work maintained that “the authorities should scrutinize God’s word so thoroughly as to be certain to impose nothing which is against it; if they act in this Way, they shall in good conscience have control of the public churches and public worship—but *without persecuting those who err from the right way*.”⁴² This tract again revealed the position of prominence afforded religious tolerance in Grotius’ works.

However, it was in the 1611 work *Meletius sive de iis quae inter Christianos conveniunt epistola* (*Meletius or Letter on the Points of Agreement between Christians*) that Grotius first began to develop his ideas about Christian unification.⁴³ The *Meletius* was motivated by the observation that “in our age and in that of our fathers . . . not only indifference or rivalry, but also implacable hatred and anger, indeed—something almost unprecedented—wars are started under no other pretext than that of the very religion [i.e. Christianity] whose purpose is peace.”⁴⁴ Although with a slightly different emphasis, this sentiment was echoed later in the famous tract of *De Jure Belli ac Pacis* admonishing the “Licentiousness” with which nations ran to arms for “frivolous” reasons.⁴⁵ The central aim of the *Meletius* was thus to provide “an account of Christianity that would be recognized as valid by diverse religious confessions, and at the same time radically transform how these confessions conceived of religious diversity.”⁴⁶ As Timothy Shah writes, “[i]n the *Meletius* Grotius not only identifies the points of agreement between Christians of all sects and denominations but, more importantly and radically, argues that what Christians share *is far more important from the theological point of view* than what they do not.”⁴⁷ As Grotius wrote:

Many controversies over dogmas are merely due to words which must be avoided for *consensus* to appear. With any further quarrels we have to check whether they concern matters which it is necessary to know. At this point we have, first of all, to correct the error that generally more dogmas are formulated than ethics require.⁴⁸

The result of this was the construction of a minimal Christianity in which the central precepts of faith, those on which all Christians necessarily agree, take precedence over dogmatic differences and religion is, to a great extent, reduced to ethics. In particular, Grotius emphasized the moral principles of “charity, along with respect for matrimony, temperance, as well as the duties to God taught by all religions” and, as we will see in chapter 2, these also feature highly in *De Jure Belli ac Pacis*.⁴⁹

Although the *Meletius* remained unpublished during Grotius’ lifetime, it provided the foundation of Grotius’ most popular work *De Veritate Religionis*

Christianiae (The Truth of the Christian Religion). Indeed, contrary to the common assumption, Grotius' most famous work in international legal scholarship, *De Jure Belli ac Pacis*, is not his most frequently published work. Rather, *De Veritate*, first published in 1627 takes the honor, having been reprinted and translated five times during Grotius' lifetime (once in English and twice each in French and German) and 144 times in Latin and other languages since then.⁵⁰ In a similar fashion to the *Meletius*, this work was "devoted to the defence of a creed which was accepted by all the combatants in the suicidal wars of the sects"⁵¹ and had the added aim of enabling "the Dutch, who travel into the Indies, to promote the conversion of the infidels."⁵² Similarly, *De Veritate* presented a minimal form of Christianity, its central precepts reduced to the "existence of a Deity; his unity, his infinite perfection, his eternity, his attributes of unbounded power, and wisdom and goodness."⁵³ The influence of *De Veritate* was immense in the seventeenth century and is thought to have been of interest to John Locke whose *Letter Concerning Toleration* echoed many of its central themes.⁵⁴ However, it also garnered strong criticism for failing to even mention the doctrine of the Trinity as Grotius believed that attempts to prove its existence had "done more harm than good to Christianity."⁵⁵

In the period after the publication of *De Jure Belli ac Pacis* Grotius published a number of works, which were broadly theological in nature and reflected his "earnest desire to promote peace and union amongst the Christian Churches."⁵⁶ In the 1638 tract *De coena*, published in secret in Amsterdam, Grotius argued that "the early Christian church offered a blueprint for a religious community that could accept all Christians."⁵⁷ Similarly, in *An semper comminandum*, also published in 1638 he argued that "[a]s sects flourished, so faith declined; whoever stood outside the community and was not accepted anywhere as a member, should bear his faith with equanimity until such time as intolerance had passed over."⁵⁸ However, with his "*Annotata ad Consultationem Cassandri*, which appeared in autumn 1641 and was reprinted shortly afterwards in *Via ad pacem ecclesiasticum [The Way to Religious Peace]*, Grotius threw all caution to the winds: it was to be made clear to the whole world how he thought unity might be achieved," that is, by "reducing the chasm between Roman Catholicism and the Reformation."⁵⁹ Finally, and exerting a significant impact on subsequent scholarship, Grotius also produced a series of *Annotations* to the Old and New Testaments that were published in installments between 1641 and 1650.⁶⁰

Grotius the Exile

Grotius and his associate Johan van Oldenbarnevelt were arrested by representatives of their political opponents on August 29, 1618. Both were found

guilty of an unspecified crime, Oldenbarnevelt facing execution and Grotius life imprisonment in Loevestein Castle. While in Loevestein, Grotius took advantage of “the leisure providentially accorded” and composed a number of works.⁶¹ The first was a pamphlet in his own defense that aimed to “demonstrate the illegality of his conviction.”⁶² Published in 1621, the *Verantwoordingh van de Wettelijke Regieringh van Hollandt ende West-Vrieslandt* was banned as “seditious and libelous” by the States General on November 24, 1622. During his imprisonment, Grotius also began work on early versions of *De Veritate Religionis Christianiae* and composed *Inleiding tot de Hollandsche Rechtsgeleertheyd* (*Introduction to the Jurisprudence of Holland*). As Lee notes in the preface to its English translation, the latter work “was not intended for publication, but for the instruction of his sons in the laws of their country.”⁶³ In a note composed by Grotius’ brother William included at the beginning of the work, it is revealed that although Grotius had intended to “bequeath it to his children for their instruction . . . without his knowledge various copies were in circulation, all imperfect and full of mistakes,” thus compelling him to publish an authorized version.⁶⁴ The *Jurisprudence of Holland* has exerted a surprisingly significant influence on subsequent jurisprudential theory, standing as a foundational text in the establishment of the Dutch and South African legal systems.

With the help of his ever-resourceful wife, Maria von Reigersberg, Grotius managed to escape Loevestein hidden in a book chest and fled to Paris. After taking up residency there, he was received at the Court of King Louis XIII and granted an annuity of 3000 livres, a sum he was never to receive. As such, Grotius’ time in Paris with a wife and children to support was one of abject poverty.⁶⁵ Accordingly, Grotius’ time was consumed by two inter-related projects. The first was the writing of his masterpiece, *De Jure Belli ac Pacis* that he began in 1622 and published in 1625, while the second aimed to facilitate his return to his homeland.

Grotius’ motivation in writing *De Jure Belli ac Pacis* is generally ascribed to the tumultuous times in which he lived and, in particular, the ravages of the Thirty Years’ War.⁶⁶ As the most often quoted tract of his work reads:

I had many and weighty Reasons inducing me to write a Treatise upon it. I observed throughout the Christian World a Licentiousness in regard to War, which even barbarous Nations ought to be ashamed of: a Running to Arms upon very frivolous or rather no Occasions; which being once taken up, there remained no longer any Reverence for Right, either Divine or Human, just as if from that Time Men were authorized and firmly resolved to commit all manner of Crimes without Restraint.⁶⁷

Interestingly however, Grotius' further claims regarding the impact of such events on his writing later in the *Prolegomena* are conspicuously ignored:

He will do me wrong whoever shall think that I had Regard to any Controversies of the present Age, either already risen, or that can be foreseen to arise. For I profess truly, that as Mathematicians consider Figures abstracted from Bodies, so I, in treating of Right, have withdrawn my Mind from all particular Facts.⁶⁸

In intellectual terms Grotius is commonly understood to have been concerned with finding a viable position between thinkers such as Johannes Ferus and Erasmus, "great Lovers of Peace both Ecclesiastical and Civil," who argued that nothing is lawful in war, and those who thought that everything was lawful in war.⁶⁹ The remedy to this was to be found, Grotius believed, in the production of a systematic treatise on the law of nations.⁷⁰

A substantial work, *De Jure Belli ac Pacis* is divided into three lengthy books. The first is concerned with the "Origin of Right," the question of "whether any War is just," and with notions of sovereignty and sovereign authority.⁷¹ In the second book Grotius considers the causes of war before moving on to discuss oaths, contracts, and the "Interpretation of Treaties and Alliances." Significantly, this book also includes a lengthy discussion of punishment, the focal point of his understanding of the just war tradition. Finally, the third book discusses "what is lawful in War" and seeks, in particular, to distinguish between "that which is done with bare Impunity . . . from that which is really blameless."⁷² As we will see in chapter 2, it is thus in the third book of *De Jure Belli ac Pacis* that the real crux of Grotius' moral scheme appears. In discussing this wide range of issues, the details of which will be discussed in subsequent chapters, Grotius hoped to reduce the complexities of law into a systematic treatise, an endeavor he believed his predecessors had not managed to accomplish.

In addition to further advancing his previously documented political, theological and financial goals, Grotius published the second edition of *De Jure Belli ac Pacis* with the aim of convincing the Dutch government that he should be allowed to return to Holland. As Richard Tuck has pointed out, evidence of this motivation is revealed by comparing the original version of the work published in 1625 with the second edition, which appeared in 1631. In particular, the opening tract of the 1631 edition of the work shows signs of revisions that would certainly have appeared more satisfactory to the Aristotelian, Calvinist leaders to whom Grotius was attempting to appeal.⁷³ However, Grotius failed utterly in this endeavor, H.J.M. Nellen writing that

the “tragedy was that he never realised, or realised to late, that complete rehabilitation” with Holland was impossible.⁷⁴ On numerous occasions Grotius returned to his homeland incognito, but on each was uncovered by his enemies who threatened him with incarceration and execution.

In 1634, following a chance meeting with Salvius, the vice-chancellor of Sweden, Grotius entered employment as Queen Christina of Sweden’s ambassador in Paris. In subsequent scholarship, a significant number of writers have assumed that, as Sweden’s representative in the years immediately preceding the Treaty of Osnabrück, Grotius somehow directed the Peace of Westphalia.⁷⁵ However, as Edward Keene has recently demonstrated, this “extraordinarily persistent misconception” has its origins, at least in part, in an intellectual dispute that took place sometime later between adherents of G.F. von Martens and A.H.L. Heeren’s contending accounts of the emergence of the states system.⁷⁶ What is more, as his mission to the court of James I demonstrated, Grotius was a particularly poorly skilled diplomat who did not care much for the profession. In particular, as Hamilton Vreeland has suggested, not only did Grotius have a somewhat strained relationship with Cardinal Richelieu, but also a number of attempts were made by members of the French Court and visiting diplomats to have him recalled from service.⁷⁷ Grotius was apparently aware of such moves and wrote, in a letter to his brother in November 1641:

The loss of my embassy, if I am threatened with it, leaves me undisturbed. It is not [a] source of wealth, and, as to honours, I have had enough of them. Old age steals on, and, sooner or later, will entitle me to rest. I shall not seek to withdraw them from affairs, while I am equal to them, nor run after them, if they go away from me.⁷⁸

In 1645 Grotius requested to be recalled from his position as ambassador. His wish was granted and he was released from service shortly before his death. At approximately midnight on August 28, 1645, Grotius died of exhaustion near Rostock having been shipwrecked on the Pomeranian coast. He was sixty-two and had published more than sixty volumes, texts and pamphlets during his lifetime.

Hugo Grotius and International Thought

The preceding biographical details aside, in contemporary international thought, Grotius is a man of multiple reputations. On one hand, his characterization centers around a raft of paternity claims made on his behalf. Wedged between the arguably more innovative and coherent works of

Francisco Suárez and Samuel Pufendorf respectively, *De Jure Belli ac Pacis* is persistently and erroneously viewed as having ushered forth the modern era of secular natural law scholarship. In this vein Grotius is often heralded the “father of modern natural law” although, as we will see, this claim remains a contentious one. In international legal scholarship, Grotius is traditionally hailed the “father of modern international law,” this despite the claims other thinkers, most notably Francisco de Vitoria and Alberico Gentili, have on the title.⁷⁹ Simultaneously, and as mentioned above, Grotius is also considered the “intellectual father” of the Peace of Westphalia.⁸⁰ Claims that Grotius can count the concept of “international society” among his intellectual progeny also abound, having emanated from the work of Hedley Bull, in particular his famous assertion that Grotius was one of the “midwives” present at its birth.⁸¹ Finally, and perhaps most absurdly of all, the notion that Grotius can be considered the “father of humanitarian intervention” also seems to have resurfaced in recent scholarship.⁸²

At the same time, proponents of a range of well-established intellectual traditions have also attempted to appropriate Grotius to their cause. In accordance with his supposed status as the “father of modern natural law,” in the history of political thought Grotius is most commonly characterized as a member of the natural law tradition, extending in one direction through the Scottish Enlightenment and in the other through a range of continental thinkers including Samuel von Cocceji and Johann Gottlieb Heineccius.⁸³ However, drawing on the position of prominence afforded the discussion of the just and unjust causes of war in *De Jure Belli ac Pacis*, many writers have also characterized him as a member of the just war tradition while openly acknowledging that his actual contribution to its development was minimal.⁸⁴ For political theorists such as Richard Tuck and Anthony Pagden, Grotius is a member of the humanist tradition, whilst others, including Hedley Bull, maintain that he was not simply a member of the scholastic tradition but ought to be viewed as “a link in the chain of the history of ideas in international law that begins with Vitoria and Suárez.”⁸⁵ In much international legal scholarship, Grotius is, implicitly at least, associated with a tradition that simply exists as a taxonomic device according to which the history of international law is schematized. In this vein, what is known as the “Grotian tradition” is conceived as an intermediary category of international thought standing between the dominant positive and natural legal traditions.⁸⁶ What is particularly curious about this “Grotian tradition” is the fact that although he is heralded the “father of international law” who inspired it, Grotius is not considered a member of the tradition of thought that bears his name.⁸⁷

Continuing the schematic trend, the term “Grotian” has also been used to refer to certain variants of regime theory,⁸⁸ “moments” in international history,⁸⁹

particular conceptions of world order,⁹⁰ and even a tradition of war.⁹¹ In twentieth century scholarship however, what is known as the “Grotian tradition” has been most commonly associated with the works of the so-called “English School” of international relations, in particular those of two of its most prominent members, Martin Wight and Hedley Bull.⁹² The “chief champions of the ‘Grotian’ approach in the modern academy,”⁹³ in the scholarship of the English School the “Grotian tradition” has come to be viewed as a set of ideas vaguely centered on “a commitment to the idea of international society.”⁹⁴ Following in this vein, contemporary members of the “English School” have sought to develop what Tim Dunne has called the “radical potentiality” of the Grotian tradition with increasing numbers of scholars coming to identify themselves as “Grotians” despite entertaining distinctly different understandings of what the label actually entails.⁹⁵

In response to the abundance of “Grotian” traditions on offer, contemporary scholarship has also seen the recent emergence of a number of critical reappraisals of both the “Grotian tradition” in its various incarnations, and its relationship to the figure of Hugo Grotius. Highlighting the extent to which Grotius and the Grotian tradition have often become conflated in international relations scholarship, A. Claire Cutler has argued that “there is a need to distinguish between Grotius and the Grotian tradition, evident in the work of Grotius, and the neo-Grotian tradition, evident in the work of Wight, Bull and certain regime analysts.”⁹⁶ Alternatively, Benedict Kingsbury and Adam Roberts have noted that “[t]he claim that there is a ‘Grotian tradition’ of thought about international relations has often been made rather loosely, with little discussion of what is meant by a ‘tradition’ or why a particular tradition is held to be ‘Grotian’.”⁹⁷ Focusing on that variant of the “Grotian tradition” commonly associated with the concept of international society and relying on a stringent notion of “tradition” derived from the work of Alasdair MacIntyre, Kingsbury and Roberts conclude that the “Grotian tradition” thus conceived does not exist. That is, when conceived as a tradition of thought about international society, the “literature and practice spanning almost four hundred years’ understood to constitute ‘Grotian’ thought is not ‘sufficiently unified to constitute a Grotian tradition’.”⁹⁸ Of course, what is central to this claim is not simply an understanding of the term “Grotian” in terms of “international society” but of the term “tradition” as being a self-conscious pattern of transmission between intervening generations. Indeed, where Kingsbury and Roberts’ assessment of the Grotian tradition differs most significantly from the range of others on offer is in its consideration of what it might mean to designate a set of thinkers and ideas as a tradition.⁹⁹

In a similar fashion, this work also examines the development of the “Grotian tradition” both in terms of what it means to be “Grotian” and what

constitutes a “tradition.” However, unlike Kingsbury and Roberts’ work, it is not confined to those particular variants of the “Grotian tradition” promulgated by members of the English School. Furthermore, and as we will see in the following section, it also entertains a distinctly different understanding of what it means to be a member of a tradition to that of Kingsbury and Roberts.

Tradition and the History of Ideas in International Relations

As a tradition, or set of traditions of international political thought, the construction of the “Grotian tradition” is, at least in part, determined by the sense in which the term “tradition” has itself been employed. Indeed, that the “Grotian tradition” is considered a *tradition*, as opposed to a paradigm or some other form of classification device, is of particular significance to both the manner of its construction and, more importantly, the interpretation of its contents. As Conal Condren writes, “[t]o designate something a tradition . . . is to make a putatively historical claim about socialized processes of transmission or communal activity,” whether this is done intentionally or otherwise.¹⁰⁰ However, the precise nature and types of historical claims a given tradition both deliberately and inadvertently makes depends first and foremost on what that particular tradition is, in a definitional sense, thought to entail.

Tradition as Invention

In a conventional sense, the term “tradition” simply refers to “an indefinite series of repetitions of an action, which on each occasion is performed on the assumption that it has been performed before.”¹⁰¹ Beyond this general definition however, precisely what the substantive contents of a “tradition” entail remains a matter of some contention. For Martin Krygier, a tradition, defined in terms of inheritance, is comprised of three central elements:

pastness: the contents of every tradition have or are believed by its participants to have originated some considerable time in the past. Second is authoritative presence: though derived from a real or believed-to-be-real past, a traditional practice, doctrine or belief has not, as it were, stayed there. Its traditionality consists in its *present* authority and significance for the lives, thoughts or activities of participants in the tradition. Third, a tradition is not merely the past made present. It must have been, or be thought to have been, passed down over intervening generations,

deliberately or otherwise; not merely unearthed from a past discontinuous with the present.¹⁰²

Significantly then, according to this conceptualization, a tradition need only be *believed* to be “an ancient and continuously practiced inheritance,” rather than actually having been practiced for some substantial period of time.¹⁰³ As Krygier wrote in an earlier article, “[t]raditions depend on real or imagined *continuities* between past and present” and draw on elements “from the real or imagined past.”¹⁰⁴ However, these elements of imagination and invention are particularly contentious.

For instance, in Eric Hobsbawm’s view, the fact that “[t]raditions’ which appear or claim to be old are often quite recent in origin and sometimes invented” is not an impediment to their classification as such.¹⁰⁵ On the contrary, Hobsbawm defines “invented traditions” as sets of “practices, normally governed by overtly or tacitly accepted rules and of a ritual nature, which seeks to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past.”¹⁰⁶ Critically however, in characterizing “invented” traditions as such, Hobsbawm is not suggesting that all traditions are “invented” but merely that those that are remain defined as “traditions” despite their invented status. This is made particularly apparent with his continual references to traditions and “invented traditions” as separate entities. It is also important to note here that Hobsbawm uses the term “invented” to mean “fabricated,” for this is not the only sense in which the term “invented” may be conceived.

In opposition to the “invented tradition” however, Alasdair MacIntyre, the theorist Kingsbury and Roberts rely on in their analysis of the “Grotian tradition,” defines a “tradition of enquiry” as being “more than a coherent movement of thought. It is such a movement in the course of which those engaging in that movement become aware of it and of its direction and in self-aware fashion attempt to engage in its debates and to carry its enquiries forward.”¹⁰⁷ According to this perspective, traditions are not retrospectively constructed “inventions” but self-conscious patterns of thought. As MacIntyre writes, a tradition necessarily has a “contingent historical starting point in some situation in which a set of established beliefs and belief-pre-supposing practices, perhaps relatively recently established, perhaps of long-standing, were put into question” and, from the moment of establishment, moves through a series of stages of formal institution.¹⁰⁸ As with Krygier’s definition, MacIntyre contends that traditions are marked, not only by a pattern of “reference from the present to the past,” but are also necessarily constituted by “a certain continuity of directness.”¹⁰⁹ However, unlike Krygier’s definition, in which traditions are granted authority in accordance

with their present status, for MacIntyre the authority of tradition is derived from the past. What this ultimately precludes is the possibility of calling a retrospectively constructed pattern of thought a “tradition” and this, in turn—unlike Krygier’s definition—omits from consideration a great number of traditions that operate in international thought. Although these contending definitions are helpful in coming to terms with precisely what the term “tradition” might mean, they are not immune to the range of criticisms leveled at the use of traditions in general in political, historical and philosophical scholarship.

Tradition in International Thought

International Relations has long relied on the concept of “tradition” as one of the central sources of its self-image.¹¹⁰ Although the reasons for this are wide and varied and, I suspect, more accidental than consciously planned, the attraction of tradition is easy to see. Traditions are a “practical convenience.”¹¹¹ Drawing together a range of at times disparate concepts, they constitute “a way of imposing order upon” what often appears to be “a complex and protean reality.”¹¹² As James Der Derian writes: “The power of tradition lies in its ability to condense and simplify . . . complexity into uniform, comprehensive and teachable expressions, like idealism and realism, classicalism and behaviouralism, or neo-realism and international political economy, landmark traditions all.”¹¹³ Thus the history of International Relations in the twentieth century is conventionally told as a chronological series of “great debates” waged between the contending theoretical traditions and paradigms into which the discipline is alleged to be divided. Indeed, this propensity, both for dividing the discipline into “often conflicting traditions” and for the subsequent taxonomic classification of its component theories, has become one of the “hallmarks” of contemporary International Relations scholarship.¹¹⁴

However, this “traditions tradition,” as it might be instructively titled, has recently attracted a significant amount of critical attention, not least of which has transpired from many of the most prominent proponents of the approach themselves. In particular, Ian Clark has identified three specific sets of criticisms leveled at the employment of traditions, both as categorical devices and in a canonical sense, in International Relations. The first was most famously articulated by Martin Wight and focuses on the sense in which “the quest for traditions inculcates a fetish for categorisation for its own sake” and, in particular, the manner in which the “history of thought becomes subordinate to discovering the pigeon-hole in which any particular writer appropriately belongs.”¹¹⁵ As Wight wrote, and as will be discussed in more

detail in chapter 5:

In all political and historical studies the purpose of building pigeon-holes is to reassure oneself that the raw material does *not* fit into them. Classification becomes valuable, in humane studies, only at the point where it breaks down.¹¹⁶

In a similar vein to Wight, R.J. Vincent warned of what he characterized as the dangers inherent in the “whole enterprise of treating great thinkers like parcels at the post office” that seems to have afflicted the discipline.¹¹⁷

Second, the division of International Relations into theoretical traditions has been “condemned” by theorists such as Rob Walker “for encouraging intellectual conservatism and for closing down the agenda.”¹¹⁸ As Walker argues, terms such as “rationalism” and “reflectivism” and their predecessors, realism and idealism, “have served primarily to close off serious discussion in a manner that has helped to insulate the discipline of international debate ever since.”¹¹⁹ Such categories, he argues, “should be understood as the primary forms in which the basic assumptions governing the study of world politics have been left to congeal, requiring little further explanation.”¹²⁰ This is particularly the case in scholarship concerned with the “great thinkers” of International Relations, Walker arguing that:

Within their stylized horizons it is possible to honor all those who, for some reason, are revered as contributors to the distilled wisdom of tradition. Thucydides, Machiavelli [sic], Hobbes, Rousseau and the rest may then commune with more common masters like E.H. Carr, Hans J. Morgenthau and their even more modern disciples.¹²¹

As will be seen shortly, when transposed to the realm of the “Grotian tradition,” the “common masters” of Hersch Lauterpacht, Martin Wight and Hedley Bull, among others, are often seen to “commune” with the honored and revered figure of Hugo Grotius, despite bearing little relation to him in reality.

Finally, the third set of criticisms fundamentally claims that the very “construction of traditions of thought is itself an illegitimate scholarly procedure because it makes untenable assumptions about the nature of political language.”¹²² These views have resonated most prominently from a number of historians of ideas such as Quentin Skinner, J.G.A. Pocock, James Tully, and Richard Tuck who, despite presenting distinctly different variants of the approach are all broadly identified as “contextualists.” As John Patrick Diggins writes, “[t]he ultimate aim of the contextualist” in interpreting an historical text “is to establish what the author had in mind by its production, and in this exercise the text itself is not a sufficient resource for understanding

its author's intentions."¹²³ Thus, the contextualist approach "insists that it is the *context* 'of religious, social, political and economic factors' which determine the meaning of any given text, and so must provide the 'ultimate framework' for any attempt to understand it."¹²⁴

Although, as mentioned above, a range of different contextualist approaches exist, in contemporary scholarship contextualism is most commonly associated with a writer sometimes referred to as a "linguistic contextualist," Quentin Skinner. In outlining his approach to historical understanding, Skinner both criticizes and endorses the notion of tradition and in doing so presents three explicit arguments against its use as an historical device. First, citing the work of R.G. Collingwood, he argues that "there are no perennial problems in philosophy: there are only individual answers to individual questions and as many questions as there are questioners."¹²⁵ Thus, the notion of continuity through time that is central to most understandings of the term "tradition" is, in Skinner's view, prone to anachronism. Rather, Skinner asserts that political language is embedded in the context of its time hence eliminating the possibility of the transhistorical languages and timeless ideas that facilitate the supposed continuity of traditions. Skinner's second and related complaint about the use of traditions in the history of ideas is what he terms the "mythology of coherence," a procedure which "gives the thought of various classical writers a coherence and an air generally of a closed system, which they may never have attained or even been meant to attain."¹²⁶ Finally, Skinner also attacks the "myth of doctrines," precipitated by "the danger of converting some scattered or quite incidental remarks by a classical theorist into his 'doctrine' on one of the mandatory themes."¹²⁷ Considered together, these three problems invite the possibility of "crediting a writer with a meaning he could not have intended to convey, since that meaning was not available to him."¹²⁸

However, Skinner's approach has garnered significant criticism from both within and outside the broadly conceived realm of contextualist scholarship. In particular, writers have not only argued that "*some* problems are perennial," but questioned the extent to which Skinner's approach similarly enforces myths of doctrine and coherence.¹²⁹ At the same time, others have argued that Skinner does not seem to apply his contextualist methodology to himself as an interpreter of historical texts and events. For example, Preston King has argued that the "trouble is that it is logically and physically impossible for any individual endlessly to contextualize the context of the context . . . of the context." A "context" is thus "nothing more," in King's mind, "than a text which, by virtue of being last in place, has not yet been and cannot itself yet be contextualized."¹³⁰

However, perhaps the most stringent set of criticisms leveled at both the works of Quentin Skinner and the use of "tradition" as an historical device

appear in the works of John G. Gunnell. Criticizing both “textual” and “contextual” approaches to the history of ideas Gunnell writes:

The recovery of meaning is not simply the result of an encounter with an autonomous text, but neither is it primarily the consequence of successfully closing a historical and linguistic context. Rather, it is a matter of advancing and defending theoretically informed and evidentially supported arguments about the form and content of a text and about the external evidence for its meaning.¹³¹

Interpretation is thus the process by which the meaning of a text is “negotiated” by considering both the contents of the work itself and other evidence that has direct bearing on it.

Gunnell’s criticisms of Skinner do not stand alone but rather exist as part of his wider interest in the historiography of political science and, in particular, its “historical self-image.”¹³² Gunnell specifically attacks what he terms the “myth of the tradition,” the notion that a grand tradition of political thought definitive of the history of the field can be identified. For him, this “so-called tradition” is actually “an image conjured up in academic discourse and projected backwards to create a virtual history.”¹³³ The “tradition is,” as Gunnell writes:

a retrospective analytical construction which produces a rationalized version of the past. It is virtual tradition calculated to evoke a particular image of our collective public psyche and the political condition of our age, if not the human condition itself. It professes to tell us who we are and how we have arrived at our present situation.¹³⁴

Within this tradition, Gunnell argues, texts are interpreted, not as independent entities, but in terms of the overall meaning ascribed to the tradition. Thus, what is conceived as “*the* tradition of political thought” is actually a mythical invention, the central organizing feature of which assumes that texts “from Plato and Marx, that have been awarded classic status by historians of political theory represent an actual (or self-constituted) historical tradition or inherited pattern of thought that in some significant respect explains contemporary politics.”¹³⁵ Gunnell’s criticisms of “the myth of the tradition” in political science are explicitly applied to the field of International Relations in the work of Brian Schmidt.

Schmidt’s disciplinary history of International Relations begins from the premise that “most conventional accounts of the development of the field of international relations contain two historiographical assumptions that have

lead to a serious misrepresentation of the actual history of the field.”¹³⁶ The first of these pertains to the general assumption that the history of International Relations can be “explained in terms of a classical tradition of which modern academic practitioners are the heirs.”¹³⁷ Both the field of International Relations and its constituent theoretical traditions are assumed to be “epic” in proportions, beginning with the “classic” works of the ancient Greeks and extending in a more or less unbroken pattern of thought to the present. In particular, as Alastair Murray has pointed out, the realist tradition has suffered from continual attempts to “construct a ‘realist’ grand narrative in which historical figures with some affiliation to this mode of thought are lined up in a surreal identity parade of ‘the usual suspects’.”¹³⁸ In order to overcome this problem, Murray suggests that the ideas of Machiavelli and Hobbes are “better conceived of as distinct traditions of thought in their own right,” the label “realist” being reserved for its twentieth century proponents.¹³⁹ However, this leaves the problem of how to approach those traditions that have, until now, been retrospectively and sometimes anachronistically constructed and it is here that Michael Oakeshott’s philosophy of history is particularly instructive.

In his philosophy of history, Oakeshott distinguished between what he termed the “practical” and the “historical” past. The “practical past” is “composed of artifacts and utterances, alleged to have survived from the past and recognised in terms of their worth to us in our current practical engagement.”¹⁴⁰ “The practical man,” he wrote, “reads the past backwards. He is interested in and recognizes only those past events which he can relate to the present activities.”¹⁴¹ Further elucidating what is meant by the “practical past” then, Oakeshott wrote:

Wherever the past is merely that which preceded the present, that from which the present has grown, wherever the significance of the past lies in the fact that it has been influential in deciding the present and future fortunes of man, whenever the present is sought in the past, and whenever the past is regarded as merely a refuge from the present—the past involved is a practical, and not an historical past.¹⁴²

In contrast to the “practical past” however, the “historical past” “is a past which has not survived”; it is a past that can only be inferred by piecing together fragments of evidence.¹⁴³ In contrast to the “practical man,” the historical man is concerned exclusively with the “past for the sake of the past.”¹⁴⁴

Just as Oakeshott conceived of the past as either “practical” or “historical,” Schmidt classifies traditions as either “analytical” or “historical.” What Schmidt terms an historical tradition exists as “a pre-constituted and self-constituted

pattern of conventional practice through which ideas are conveyed within a recognizably established and specified discursive framework.”¹⁴⁵ In a similar manner to the “historical past” then, historical traditions utilize the past for the sake of the past rather than for the purposes of the present. Conversely, analytical traditions are “retrospectively created construct[s] determined by present criteria and concerns.”¹⁴⁶ In a similar manner to Hobsbawm’s understanding of an “invented tradition,” analytical traditions may be either deliberately or inadvertently constructed for presentist purposes rather than with the intention of actually reconstructing the past.

In criticizing the use of traditions in the disciplinary history of International Relations, Schmidt argues that the “distinguishing feature” of the “traditions approach” has been the “tendency to view an *analytical* tradition as an actual *historical* one.”¹⁴⁷ Explicitly deriving his argument from Gunnell’s notion of the “myth of the tradition,” he contends that at the core of the tradition of International Relations “is the reification of an analytical construct. It is the representation of what is in fact a retrospectively and externally demarcated tradition as an actual or self-constituted tradition.”¹⁴⁸ As we will see in chapter 5, this has certainly been the case with regard to the development of the “Grotian tradition” in twentieth-century scholarship.

Gunnell and Schmidt’s second criticism of the conventional disciplinary history of International Relations, although less related to the subject of “tradition,” is its propensity for employing “contextual” methods of interpretation. “Proponents of contextualism,” Gunnell writes, “have argued that their approach to disciplinary history, and intellectual history in general, avoids the vices of presentism by locating authors and texts in their proper historical context.”¹⁴⁹ Schmidt’s argument rests on the claim that “proponents of the contextual approach frequently misconstrue the relationship between external events and the internal disciplinary response manifested in conceptual, methodological, or theoretical change.”¹⁵⁰ Although Schmidt’s argument that the impact of context upon theory has not always been demonstrated but rather assumed is well founded, it seems that his dismissal of context in its entirety has been somewhat hasty.

In particular, Gerard Holden argues that much of Schmidt’s history of the development of International Relations, in particular the role played by German scholars such as Hans J. Morgenthau emigrating to the United States, the American Civil War, and the colonial movement, “looks suspiciously contextual.”¹⁵¹ Thus, while Schmidt is correct to advise against the citing of contexts without providing demonstrable evidence for their impact upon subsequent discourse, his own discursive history demonstrates that this does not necessarily equate to the absolute omission of contexts in the writing of intellectual history. On the contrary, as Gunnell argues above, the interpretation

of historical texts and the presentation of intellectual history involves both “defending theoretically informed and evidentially supported arguments about the form and content of a text” *and* considering “external evidence for its meaning.”¹⁵²

Schmidt’s “critical internal discursive history” consequently attempts to overcome the apparent limitations of the conventional and contextual approaches to the history of International Relations by “reconstruct[ing] as accurately as possible the history of the conversation that has been constitutive of academic international relations.”¹⁵³ In doing so, he intends to “provide an account of the conversations pursued by scholars who self-consciously understood themselves to be participating in the formal study of international relations.”¹⁵⁴ Associated with this endeavor is the reconstruction of “tradition” as constituted by a “lineage of scholars who self-consciously and institutionally understood themselves” as being part of a particular recurring pattern of thought.¹⁵⁵ This certainly seems a useful way of interpreting the “Grotian tradition” as being constituted by a group of scholars who self-consciously understood themselves to either be “Grotian” or to be contributing to the development of ideas identified as “Grotian.” With these issues in mind, the remainder of this work proceeds from a recognition of the fact that where the “conversation” constitutive of the development of the “Grotian tradition” has included explicit responses to “external events” context ought to be taken into consideration.

Conclusion

Three important points can be derived from the preceding discussion. First is the recognition that the “Grotian tradition” is, in all its varied forms, an invented tradition. Like all traditions, it is a tradition constructed by the retrospective association of antecedent ideas and, like many traditions, incorporates both historical and analytical components. For this reason, the manner in which the various incarnations of the Grotian tradition have been constructed remains critical to their analysis and, in this, Schmidt’s distinction between historical and analytical traditions is particularly informative.

Second, in order to overcome the range of criticisms leveled at the propensity with which contextualist methodologies lead to the relationship between external events and scholarly responses being misconstrued, this work proceeds by limiting the consideration of context to those that can be demonstrated as exerting an *explicitly identifiable* influence on Grotius’ thought. This too also provides the basis for deciding which of the manifold number of “contexts” on offer will be considered as relevant to the interpretation of Grotius’ works. The place of the Thirty Years’ War in the interpretation of *De Jure Belli ac Pacis*

provides a good example of how contexts ought to be considered in this sense. Although Grotius made it clear that he sought to address the general climate of conflict that prevailed in early seventeenth-century Europe, he did not specifically refer to the Thirty Years' War; on the contrary, he specifically stated that he did not have any particular conflict in mind. As such, it appears that the common assumption that *De Jure Belli ac Pacis* ought to be read in light of the Thirty Years' War is a prime example of the misappropriation of texts and contexts discussed above. What is more, when the contents of *De Jure Belli ac Pacis* are considered alongside those of the earlier *De Jure Praedae* it becomes clear that many of the later work's central ideas were formulated prior to the outbreak of the Thirty Years' War thereby further removing the work from its conventional context. What is also particularly interesting about this common and erroneous assumption is the fact that despite the centrality of religious thought to the Thirty Years' War, the religious context in which Grotius wrote is not generally considered important in interpreting this facet of his thought.

The third important point to flow from this is that by focusing on the context of the Thirty Years' War and, to a lesser extent, the role played by the Dutch East India Company in influencing Grotius' thought, most International Relations scholarship has overlooked some of the most important aspects of his work. Contrary to his traditional characterization, Hugo Grotius was a figure not primarily concerned with the construction of a comprehensive treatise on the law of nations. Rather, as discussed above, concern for both religious toleration and the reunification of the Christian churches drove the Grotian moral and legal scheme. This is not to discount the role played by other contexts in the composition of Grotius' works, for example that played by the Dutch East India Company case in the initial formulation of his natural law theory, or of the Dutch revolt in his conceptualization of sovereignty, but rather is to suggest that the generally overlooked theological context of his works must be considered of primary importance alongside them. It thus seems that the failure of many International Relations scholars to recognize the essential essence of the "Grotian tradition" can, at least in part, be attributed to an unwillingness, not only to consider Grotius' religious works, but to conceive Grotius as a religious thinker who, in almost all of his works, sought to address a range of theological questions pertinent to contemporary thought.

CHAPTER 2

Hugo Grotius on the Rights of War and Peace

Hugo Grotius, who was born in the latter part of the same century, and flourished in the beginning of the seventeenth. That age was particularly fruitful in great men, but produced no one more remarkable for genius and for variety of talents and knowledge, or for the important influence of his labors upon the subsequent opinions and conduct of mankind. Almost equally distinguished as a scholar and a man of business, he was at the same time an eloquent advocate, a scientific lawyer, classical historian, patriotic statesman, and learned theologian. His was one of those powerful minds which have paid tribute of their assent to the truth of Christianity.¹

Contrary to his conventional characterization(s), this chapter builds on the claim that foremost among Grotius' aims was the construction of a legal and moral order capable of promoting religious toleration, reuniting the Christian churches, and mitigating the horrors of war. What is particularly significant about this order is that it is a single order in which morality and legality are fused in accordance with what David Kennedy has somewhat disingenuously described as "primitive legal scholarship." "Primitive legal scholarship," he writes, is fundamentally marked by an inability to "distinguish between legal and moral authority, national and international law, or the public and private capacities of sovereigns."² Foremost among those "primitive" legal scholars Kennedy cites are the Spanish scholastics, Francisco de Vitoria and Francisco Suárez, and the Italian Oxford professor, Alberico Gentili. Vitoria earns his status as a "primitive legal scholar" for his

inability to conceive of any “rule which is morally but not legally binding” and, by extension, for failing to “differentiate norms which bind morally from those which bind legally.”³ Similarly, although at first sight his pedantic legal taxonomy appears to achieve a “traditional separation” of the legally constituted laws of nature and nations from the morally derived divine law, Suárez was also unable to separate the “binding power of the moral or divine and the legal order.”⁴ Thus, although writers such as Vitoria and Suárez “develop[ed] elaborate distinctions between various types of law—civil, natural, divine, etc.,” the differences they identified between them were simply “differences of form or concreteness” and not, significantly, “of binding power.”⁵

Although Grotius’ work marks the end of this form of scholarship and, in some ways, veers close to the modern “traditional” form that was to supersede the primitive approach, Kennedy also conceives Grotius in this frame. In doing so, Kennedy brings to the fore two of the most long-standing debates concerning the characterization of Grotius in international scholarship. The first concerns the widely held view that Grotius was the first truly modern thinker to consider the law of nations in its entirety. A view most prominent in the nineteenth century, writers as eminent as “Droysen, Dilthey, Windelband, Lamprecht, Troeltsche [and] Meinecke” conceived “Grotius as marking the beginning of a new period in the development of European thought, proclaiming him as the great pioneer of ‘modern’ thinking.”⁶ In contemporary scholarship, this view has been perpetuated by those who insist on heralding Grotius the “father of modern international law” or as the figure responsible for “secularizing” the law of nature. On the other hand however, scholars have long sought to associate Grotius with the medieval scholarship of the Spanish scholastics, in particular Vitoria and Suárez. In this vein, Bull was led to argue that Grotius was “seldom strikingly original” but that it was the “vast range of his knowledge, together with his capacity to synthesize this knowledge and focus it upon the issues at hand” that ought to command our attention.⁷ Indeed, Bull was, at least in part, correct. As Wilhelm Grewe writes:

Grotius was not a radical innovator who marked a fundamental turning point in the history of European thought. He was a thinker who stood at an intersection of different periods and ideas, who was rooted completely in the tradition of Occidental thought, and who summarized the ideas of many of his predecessors.⁸

Despite adhering to the fundamental principles of primitive legal scholarship, in particular the fusion of legal and moral order central to its structure however,

Grotius must also be viewed as having sought to distinguish himself from the Spanish scholastics whom he regularly drew upon. In particular, as Richard Tuck demonstrates, fragments of Grotius' working papers for *De Jure Praedae* "show that he was interested in contrasting his own views with those of Vitoria," this despite the fact that Vitoria's highly influential works feature throughout *De Jure Praedae* and *De Jure Belli ac Pacis*.⁹ What is more, he contends that "as late as March 1618 [Grotius] would write to G.J. Vossius asking for a loan of works by Suárez and Báñez . . . remarking that 'I have read scarcely any of the Dominicans'."¹⁰ As such it seems clear that the opportunist he was, Grotius utilized elements of his predecessors' thought when it suited him, distinguishing himself when he thought their ideas undesirable.

In a manner typical of primitive legal scholarship, Grotius offered multiple definitions of what is meant by the term *jus* and did not fully distinguish between moral and legal order. However, whereas Suárez divided *jus* into two forms, *facultas moralis* and *lex*, Grotius identified three types of right. The first was minimalist in nature and "signifies merely *that which is just*"; that is, it is that which is not "repugnant to the Nature of a Society of reasonable Creatures."¹¹ As Grotius wrote in the legal work *The Jurisprudence of Holland*, "Law is a product of reason ordaining for the common good what is honourable, established and published by one who has authority over a community of men."¹² However, corresponding to Suárez's *facultas moralis*, law may also be understood as constituting a body of rights whereby a right is "a *moral Quality*" and is necessarily "*annexed to the Person*."¹³ As Grotius explained, typically dividing and subdividing his categories, "[t]his moral Quality when perfect, is called by us a *Faculty*; when imperfect, an *Aptitude*."¹⁴ Perfect rights are thus those that can be enforced by a superior authority and, as such, *facultas* is similarly divided into *potestas* (power)—which is internally divided into *libertas* (power over oneself or freedom), *potestas patria* (power over others) and *potestas dominica* (power over slaves)—*dominium* (ownership), and *eminens* (superior) law, the latter designation being appropriate when power is "exercised by the community over its members and their property for the common good."¹⁵

The third meaning of the term Grotius offered states that "it signifies the same Thing as *Law*, when taken in its largest Extent, as being a *Rule of Moral Actions, obliging us to that which is good and commendable*."¹⁶ It too was therefore based on the fundamental fusion of law and morality. This form of law was also divided into two main types, natural and volitional law. As we will see shortly, natural law was subdivided into *jus naturae primum* and *jus naturae secundarium*, the primary and secondary laws of nature, while volitional law has human and divine variants. Divine volitional law, in Grotius' estimation, was derived directly from the will of God and was communicated

to humankind on three occasions: immediately after creation, after the Flood, and through the person and teachings of Christ. Unlike Hebraic law which is applicable only to those of Jewish birth, “[t]hese three Laws do certainly oblige all Mankind, as soon as they are sufficiently made known to them.”¹⁷ As we will see shortly, the relationship between natural law and divine volitional law constituted a central component of Grotius’ moral scheme. Finally, human volitional law also exists in three main forms, municipal law (*jus civile*), law narrower than municipal law, and the law of nations (*jus gentium*). The dual sources of the *jus gentium* in human volitional law and the law of nature have become central to what is understood to be quintessentially “Grotian” in international legal scholarship.

However, what is of central importance in this somewhat pedantic taxonomy is the idea that although humans are capable of making laws, those that are not in accordance with the law of nature and, by extension, divine law, are not considered law at all. What this implies is that the structure of Grotius’ legal and moral order was hierarchical: that is, natural law is of a higher status than human volitional law and both are superseded by divine volitional law. In employing this hierarchical structure, Grotius here again drew upon a well-established pattern of medieval thought. Indeed, in the scholarship of writers such as Bartolus of Sassoferrato and Thomas Aquinas, law was conceived in terms of a graduated structure that placed the *jus divinum* or *lex aeterna* at the apex of its hierarchy. Divine reason was, as Wilhelm Grewe explains, “the supreme eternal law which governed the world and was ‘written into the heart’ of man as a rational being.”¹⁸ Thus, connecting this higher order with the next subordinate tier, the *jus naturae*, is the idea that the *jus divinum* is reflected in the *jus naturae*. The law of nature, evident to all rational beings therefore represents the manifestation of the *jus divinum* and thus cannot contravene it. Sitting on the lowest tier of this hierarchical structure is the *lex humana*, conceived as human volitional law or, more commonly, as positive law.¹⁹ Critically, for writers such as Thomas Aquinas, such human law is “only binding in so far as . . . ‘it is derived from natural law. If it differs from natural law, it is no longer a law but a corruption of law’.”²⁰

As we will see in this chapter, Grotius similarly presented a hierarchical understanding of law according to which the *jus naturae* was presented as the intermediary tier mediating between the higher *jus divinum* and the lower *lex humana*. In Grotius’ scheme the *jus gentium* straddled the *jus naturae* and the *lex humana*, finding two sources in natural and positive law. With this in mind, this chapter outlines the central tenets of Grotius’ legal and moral scheme focusing first on the law of nature, followed by the law of nations and, finally, the principles of *caritas* and *temperamenta* derived from the *jus divinum*.

Jus Naturae

The first explicit expression of Grotius' natural law theory is found in *De Jure Praedae*, composed in defense of the Dutch East India Company. However, as M.J. van Ittersum has recently demonstrated, it is important to note that in this early work Grotius' conceptualization of the law of nature was explicitly derived from Admiral Jacob van Heemskerck's justification of privateering. As she writes, it seems that the Admiral's "own justification of the ship's seizure laid the groundwork for the verdict" which the Amsterdam Admiralty Court originally delivered in September 1604.²¹ This verdict, she continues, "jumble[d] together natural law, *ius gentium*, and the concept of the just war, without clarifying what, if any, connections there might be between these legal principles on a theoretical and practical level."²² As a result, although this was not the basis of its commission, *De Jure Praedae* represents, in many ways, "Grotius' attempt to disentangle the various strands of law heaped together in the verdict."²³

The *Prolegomena* of the work begins by outlining "nine rules and thirteen laws" central to Grotius' understanding of the law of nature. The first rule and primary law states that "*What God has shown to be His Will, that is law.*"²⁴ In a fundamental sense then, natural law is derived from divine creation for the purpose of preserving its divinely inspired order. In recent scholarship, this association has raised the question of whether or not Grotius adhered to a "theonomist" position in his explication of the law of nature. Theonomy, defined literally as "God's law" but associated with the "attempt to equate natural law with revealed or divine law," was perhaps most prominently adhered to by Isidore of Seville, a writer who features relatively highly in Grotius' works.²⁵ Despite adopting the view that the law of nature is the law of God in the sense that God created nature however, Grotius went to some lengths to maintain a certain degree of distinction between them. In particular, in the *Prolegomena* to *De Jure Belli ac Pacis* he argued that those "who urge the Old Law for the very Law of Nature" are "undoubtedly in the wrong: For many Things in it proceed from the Free Will of God."²⁶ That is, they are aspects of divine volitional law. However, he continued with the seemingly contradictory claim that although they are distinct, the free will of God "is never repugnant to the Law of Nature itself."²⁷ As such, the Old Testament can be used as a source of the law of nature, "provided we carefully distinguish the Rights of God, which God sometimes exercises by the Ministry of Men, from the Rights of Men among themselves."²⁸ Similarly, in differentiating between the law of nature and the divine law of the New Testament, Grotius wrote that he distinguished these two sources of law on the grounds that "in that most holy law a greater Sanctity is enjoined us, than the meer

Law of Nature in itself requires.”²⁹ As we will see later in this chapter, it is on this basis that the third tier of Grotius’ moral scheme—that derived explicitly from the precepts of Christian morality—stands over and above the universal morality of the law of nature and the law of nations. However, before we get to that we must return to the fundamental principles of Grotius’ natural law theory presented in *De Jure Praedae*.

In Grotius’ view, the first principle of the natural order is “love,” the “primary force” of which is “directed to self-interest.”³⁰ From this, the first two precepts of the law of nature emerge:

First, that It shall be permissible to defend [one’s own] life and to shun that which threatens to prove injurious; and secondly, that It shall be permissible to acquire for oneself, and to retain, those things which are useful for life.³¹

In addition to the innate desire for self-preservation indicated by self-love “to which we are impelled by nature” however, Grotius also bestowed upon the individual the characteristic of innate sociability.³² He explained that “God judged that there would be insufficient provision for the preservation of His works, if He commended to each individual’s care only the safety of that particular individual, without also willing that one created being should have regard for the welfare of his fellow beings, in such a way that all might be linked in mutual harmony as if by an everlasting covenant.”³³ Thus love, in this sense, must actually be conceived as two-fold, incorporating both “love for oneself and love for others.”³⁴ With this, the two fundamental premises of Grotius’ natural law theory are introduced: humankind’s instinctual desire for self-preservation and the innate sociability of individuals in God’s creation.

Deriving a minimal form of morality from these foundational precepts of the law of nature, Grotius introduced the two most fundamental laws of his moral code: “*Let no one inflict injury upon his fellow . . . [and] Let no one seize possession of that which has been taken into the possession of another.*”³⁵ These laws of “inoffensiveness” and “abstinence” are distinctly minimal in nature, not requiring the individual to actively *do* something, but rather imploring them to avoid certain behavior. Considered together, these two laws form the basis of human society by relying on what Grotius terms humankind’s “social impulse,” the “intermingling of one’s own goods and sentiments with the goods and ills of others.”³⁶ In order to maintain this society however, a further two common or minimal laws are required: first, that “*Evil deeds must be corrected*” and second, that “*Good deeds must be recompensed.*”³⁷ It is this notion that, in the “absence of an independent judge, a private individual like van Heemskerck could punish transgressors of the natural law” that van Ittersum argues was derived from Heemskerck’s “reasoned decision to assault

the *Santa Catherina* in revenge for Portuguese mistreatment of Dutch merchants in the East Indies.”³⁸ Connected to this then, was Grotius’ understanding of sovereignty, discussed in chapter 1, as “divided” according to which individuals could claim some marks of sovereignty and “exercise them in person under certain circumstances, notably on the high seas, in the state of nature and during civil wars.”³⁹ Considered together however, these laws and rules constitute the most minimal form of morality evident in Grotius’ work. What is more, as they are derived from the assumed innate qualities of human existence they were, in Grotius’ view, universal. As will be seen shortly, the universality of these fundamental moral principles is of particular importance to the aims of his later work, *De Jure Belli ac Pacis*.

However, Grotius recognized that in civil society these laws are not sufficient for the maintenance of order and therefore added two additional laws:

Individual citizens should not only refrain from injuring other citizens, but should furthermore protect them, both as a whole and as individuals; secondly, Citizens should not only refrain from seizing one another’s possessions, whether these be held privately or in common, but should furthermore contribute individually both that which is necessary to other individuals and that which is necessary to the whole.⁴⁰

Although similarly derived from the fundamental laws of nature discussed above, as they require action on the part of the individual, these laws are of a slightly higher morality. Grotius explained that although according to a minimal common morality it is reasonable to suppose that “one’s own good takes precedence over the good of another person,” a more “general” law pertaining to the common good ought to “take precedence on the ground that it includes the good of individuals as well.”⁴¹ Herein lies one of the most important features of Grotius’ concept of morality.⁴²

The Sceptical Challenge

Although the central precepts of the law of nature introduced in *De Jure Praedae* also form the foundations of *De Jure Belli ac Pacis*, a number of critical differences can be discerned between the two works. In particular, foremost among Grotius’ aims in composing *De Jure Belli ac Pacis* was to devise a set of moral standards according to which the incidence and conduct of war might be regulated. However, in doing so, Grotius necessarily had to address the sceptics’ claim that universal morality cannot possibly exist and, derived from this, that “there are no laws of nature.”⁴³ As such, he sought to “fortify” his works against “this very serious error,” selecting Carneades, as

Cicero had done before him, as the “advocate” he was to refute:

But since it would be a vain Undertaking to treat of Right, if there is really no such thing; it will be necessary, in order to shew the Usefulness of our Work, and to establish it on solid Foundations, to confute here in a few Words so dangerous an Error. And that we may not engage with a Multitude at once, let us assign them an Advocate. And who more proper for this Purpose than Carneades, who arrived to such a Degree of Perfection, (the utmost his Sect aimed at,) that he could argue for or against Truth, with the same Force of Eloquence? This Man having undertaken to dispute against Justice, that kind of it, especially, which is the Subject of this Treatise, found no Argument stronger than this. Laws (says he) were instituted by Men for the sake of Interest; and hence it is that they are different, not only in different Countries, according to the Times. As to that which is called NATURAL RIGHT, it is a mere Chimera. Nature prompts all Men, and in general all Animals, to seek their own particular Advantage: So that either there is no Justice at all, or if there is any, it is extreme Folly, because it engages us to procure the Good of others, to our own Prejudice.⁴⁴

According to Richard Tuck however, Grotius’ intention to refute Carneades cannot be simply viewed as an attack on “a long-dead classical philosopher.”⁴⁵ Rather, he interprets it as both the “main intention” of the *Prolegomena* to *De Jure Belli ac Pacis* and as an attack on the modern sceptics Michel de Montaigne and Pierre Charron. However, a range of writers have argued that there is “no real evidence that [Grotius] ever perceived scepticism as a serious challenge or made it, as has been erroneously claimed, the target of his moral philosophy.”⁴⁶ Rather, Tuck’s argument must be viewed as part of his larger attempt to present Grotius as a “Hobbit before Hobbes.” In particular Tuck’s claim that “Hobbes need not be seen as differing from Grotius over ethical matters, strictly understood, *at all*”⁴⁷ is based on a reading of the *Prolegomena* to *De Jure Belli ac Pacis* that emphasizes the position of self-preservation and ignores the primacy of sociability in his understanding of the law of nature.

However, this does not mean that Grotius wholly discounted the position of self-interest in the law of nature. On the contrary, he maintained that “to the Law of Nature Profit is annexed,” thus indicating that it incorporates some form of self-interested judgment.⁴⁸ Referring to the first law of nature in *De Jure Praedae*, Grotius wrote that “the order of presentation of the first set of laws and of those following immediately thereafter has indicated that one’s own good takes precedence over the good of another person—or, let us

say, it indicated that by nature's ordinance each individual should be desirous of his own good fortune in preference to that of another."⁴⁹ When considered in isolation, this statement seems to afford self-preservation a position of prominence in the natural law theory. However, as this passage continues, "in questions involving a comparison between the good of single individuals and the good of all (both of which can be correctly described as 'one's own', since the term 'all' does in fact refer to a species of unit), the more general conception should take precedence on the ground that it includes the good of individuals as well."⁵⁰ At heart, this claim is derived from Grotius' understanding of human nature as innately sociable. In a similar manner, in *De Jure Belli ac Pacis* Grotius argued that "[i]t is not then against the Nature of Human Society, for every one to provide for, and take Care of himself, so it be not to the Prejudice of another's Right."⁵¹

Grotius therefore responded to Carneades' argument by asserting that due to the "Inclination" of humans "to live with those of his own Kind, not in any Manner whatever, but peaceably, and in a Community," the assertion that "every Creature is led by Nature to seek its own private Advantage, expressed thus universally, must not be granted."⁵² Following from this, he continued that "this Care of maintaining Society . . . is the Fountain of Right, properly so called," thereby refuting the sceptical claim that law is purely promulgated for purposes of self-interest.⁵³ "To this sphere of law," he wrote, belongs:

the Abstaining from that which is another's, and the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men.⁵⁴

As we will see shortly, these principles equate almost exactly to the central precepts of the just war tradition as Grotius conceived it. In refuting Carneades then, Grotius combined a notion of the inherent sociability of individuals with an emphasis on natural rights to argue that the essence of law, "properly speaking," "consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness they may demand."⁵⁵ In doing so, he established the solid connection between law and morality that marks his works.

As we will see in the following chapter, Grotius' association with moral scepticism can, in large part, be viewed as the result of the interpretation of his works by members of the Great Tew Circle in the 1630s in England. Indeed, it was during this time that one of their most prominent associates, Thomas Hobbes, began his association with the Mersenne Circle in Paris, a group of intellectuals, the most famous of which was Descartes, who were

“reacting to the French sceptics of the previous generation such as Montaigne and Charron.”⁵⁶ Among the most prominent defining features of the scholarship of the Great Tew Circle were, as we will see in the following chapter, an explicit devotion to Grotius coupled with a sceptical moral outlook. What is more, as Hugh Trevor-Roper seems to suggest, not only did these two features stand side by side as the central concerns of the Great Tew Circle’s members but fusing them they interpreted Grotius as contributing to moral sceptic scholarship.⁵⁷

The “secularization” of Natural Law

Although the fundamental precepts of Grotius’ law of nature are quite clearly derived from an understanding of God as the divine creator of all existence in *De Jure Praedae*, in *De Jure Belli ac Pacis* natural law is defined not as “what ever God has shown to be His will” but as “*the Rule and Dictate of Right Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its Suitableness or Unsuitableness to a reasonable Nature*, and consequently, that such an Act is either forbid or commanded by GOD, the Author of Nature.”⁵⁸ As such, Grotius here seems to be “insisting strongly that such true principles of natural law possess an intrinsic validity” and can perhaps be understood as an attempt to devise a truly universal moral order in a time of religious division.⁵⁹ Of course this is reminiscent of his paring down of Christian dogma and principles to a set of primary precepts upon which a degree of consensus can be said to exist in the *Meletius*. Indeed, Grotius continued to write in *De Jure Belli ac Pacis* that “*all we have now said would take place, though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God, or that he takes no Care of human Affairs.*”⁶⁰ This passage of Grotius’ work has been particularly seized upon in subsequent scholarship and, in many spheres, has become definitive of the manner in which his works are portrayed.

Known as the *etiamsi daremus*, or impious hypothesis, a vast array of scholars possibly starting with Jean Barbeyrac have interpreted this sentence as constituting the secularization of natural law.⁶¹ However, not only are Grotian scholars divided over whether or not Grotius did, in fact, intend his hypothesis to be “impious” but, among those who answer in the affirmative, precisely where he got the idea from remains a point of contention. Thus, a range of writers including Francisco Suárez, the Augustinian writer Gregory of Rimini and, most plausibly, Gabriel Vazquez have been viewed as Grotius’ source.⁶² Contrary to impiety however, the hypothesis is a common scholastic device that contends that if sin is effectively “behaviour which is in opposition to divine reason, not insofar as it is divine, but rather inasmuch as it is right,” then

it stands to reason that “if by some impossible means divine reason or God Himself did not exist,” actions in contravention of right reason remain sinful.⁶³

Debate surrounding whether or not Grotius intended his version of the hypothesis to be impious is dominated by two perspectives. As Mary Clare Segers writes, the “‘standard’ or ‘orthodox’ interpretation of Grotius’ natural law stresses his emancipation of jurisprudence, and especially international law, from theology and from the denominational interpretations of churchmen and theologians.”⁶⁴ Conversely, the “‘revisionist’ argument is that Grotian natural law theory is not secular because Grotius retains theological premises in his doctrine.”⁶⁵ In accordance with the “revisionist” account it seems clear from the preceding discussion that far from constituting the secularization of natural law, Grotius retained the position of God in its establishment. In particular, his further argument that “*God, as being our Creator, and to whom we owe our Being, and all that we have, ought to be obeyed by us in all Things without Exception, especially since he has so many Ways shewn his infinite Goodness and Almighty Power*” indicates that the “impious hypothesis” was simply a hypothetical tool used to link moral conduct derived from Christian faith with human reason.⁶⁶

By establishing that the fundamental principles of the law of nature would hold true even in the absence of God, Grotius ensured that those of different denominations, as well as those who are not of the Christian faith, could adhere to the laws of war and peace he advocated. According to Ernest Troeltsch’s interpretation of this passage, Grotius “explicitly severed the connection between these theories and Calvinism, [and] strove to replace the Calvinistic State Church system which dominated the politico-religious strife that divided Holland at the time, by a policy of toleration based on rationalistic and political motives.”⁶⁷ This interpretation of the impious hypothesis certainly fits with the broader politico-religious concerns of Grotius’ other works, in particular the *Meletius* and *De Veritate*. As Vermeulen and Van Der Wal argue, the impious hypothesis therefore had “nothing to do with a secularisation of natural law . . . [but] expresses that the content of this law is not contingent, that it does not depend on arbitrary will—not even on Divine Will—but consists of an immutable system of rules with autonomous validity.”⁶⁸ Indeed, this point is confirmed with Grotius’ argument that not even God can change the law of nature,⁶⁹ a contention that, as we will see in chapter 3, particularly concerned Samuel Pufendorf’s moral voluntarist sentiments.

Jus Gentium

Taking the maintenance of order to an international level, Grotius devised an *jus gentium primarium* (primary law of nations) that was explicitly derived

from the second rule of nature: “*What the common consent of mankind has shown to be the will of all, that is law.*”⁷⁰ Grotius was here referring to a notion of the *jus gentium* that had been derived from the late medieval and early modern European idea that it was that form of customary law common to all or nearly all states. It was, in this sense, simply the law of nature applied to states or other political associations that was manifested as a form of civil law. At the same time however, a second type of *jus gentium*, also known as *jus inter gentes*, a term later coined by Richard Zouche, was identified as existing *between* states.⁷¹ Recognizing the problems inherent in this dual conceptualization, Francisco Suárez not only distinguished between the two but also argued that only *jus gentium* defined as “the law which all the various peoples and nations ought to observe in their relations with one another” is *jus gentium* proper.⁷² However, as Suárez’s *De Legibus, ac Deo Legislatore* was only published in 1612, it was only by the time he composed *De Jure Belli ac Pacis* that Grotius could possibly have read the work.⁷³

In the *Prolegomena* to *De Jure Belli ac Pacis* Grotius acknowledged the dual foundation of the law of nations, in custom and consent, and in nature: that is, in both positive and natural law.⁷⁴ Despite distinguishing the natural and positive legal origins of the *jus gentium* however, Grotius maintained that varieties of positive law are themselves derived from the law of nature. This natural law foundation is found in the principles of obligation and mutual consent that implore individuals to abide by pacts as the primary means according to which individuals obligate themselves to one another.⁷⁵ In Grotius’ estimation, the law of nature is thus the “Great Grandmother” of municipal law and, by extension, other forms of positive law.⁷⁶ However, this is not to suggest, as Samuel Pufendorf did later, that the law of nations *is* the law of nature applied to states but rather; first, that the law of nature is an independent source of the law of nations; and second, that the pervasiveness of the law of nature sees it undergirding central elements of all forms of law. This, of course, marks a progression in Grotius’ thought from *De Jure Praedae* in which the law of nations is more firmly wedded to the law of nature.

In Grotius’ later thought then, the law of nature and the law of nations can be distinguished as follows:

But as the Laws of each State respect the Benefit of that State; so amongst all or most States there might be, and in Fact there are, some Laws agreed on by common Consent, which respect the Advantage not of one Body in particular, but of all in general. And this is what is called the Law of Nations, when used in Distinction to the Law of Nature.⁷⁷

Highlighting their moral and legal equivalence, Grotius added that the law of nations is applicable to states in the same way that law is applicable to

individuals. Thus, those who “*require Justice in private Citizens, [but] make no Account of it in a whole Nation or its Ruler*” are in error.⁷⁸ As we will see in chapter 4, this notion of moral equivalence was particularly attractive to proponents of the Grotian tradition of international law in the early twentieth century.

However, foremost among those laws of nations that Grotius discussed in *De Jure Belli ac Pacis* were those pertaining to the regulation and limitation of war, in particular those associated with the just war tradition.

The Just Causes of War

The just war tradition appears in three of Grotius’ works: *Commentarius in Theses*, *De Jure Praedae* and *De Jure Belli ac Pacis*. In *De Jure Praedae* Grotius’ treatment of the just war is confined to the just causes of war and begins from the premise that war is not necessarily “repugnant to the law of nature” or the law of the Gospel.⁷⁹ Drawing on his understanding of the law of nature and its relationship to divine law to explain this argument he wrote that:

God wills that we should protect ourselves, retain our hold on the necessities of life, obtain that which is our due, punish transgressors, and at the same time defend the state, executing its orders as well as the commands of its magistrates . . . Thus it is God’s Will that certain wars should be waged; that is to say (in the phraseology of the theologians), certain wars are waged in accordance with God’s good pleasure. Yet no one will deny that whatsoever God wills, is just. Therefore, some wars are just; or, in other words, it is permissible to wage war.⁸⁰

What follows is that if just cause be found, all action necessary to achieve the ends that deemed the action legitimate in the first place is also permitted. For this reason, Grotius was not initially concerned with the just conduct of parties in war although, as we will see in the final section of this chapter, this license was later tempered by calls for moderation in conflict.

Having established that, in accordance with the law of nature, some wars are lawful, Grotius then set about specifying who has the authority to declare war. Herein lies a significant point of divergence in the arguments presented in *De Jure Praedae* and *De Jure Belli ac Pacis*. In the earlier work, Grotius argued against Aquinas’ claim that a just war requires “the authority of the ruler, by whose commands the war is to be waged”⁸¹ and thus defended the actions of the Dutch East India Company by contending that “*private wars are justly waged by any persons whatsoever*.”⁸² This enabled him to argue both that as a private individual pursuing a private war and, as a private individual acting as the “agent of a sovereign state” in pursuing a public war, van Heemskerck’s

actions were just.⁸³ However, in *De Jure Belli ac Pacis*, the right to make war and peace is specified as a mark of sovereignty although Grotius does retain the category of “private war” nonetheless.

In *De Jure Praedae*, the four just causes of war are explicitly derived from the nine rules and thirteen laws of nature introduced in the *Prolegomena* to the work. “The first of these,” Grotius wrote, is based on the first law of nature and “is self-defence” (*defensio sui*).⁸⁴ In accordance with the second law of nature, that “[i]t shall be permissible to acquire for oneself, and to retain, those things which are useful for life,” the second just cause of war is defense or recovery of one’s property rights (*recuperatio juris ac rerum ablatarum*).⁸⁵ The third cause, Grotius argued, is “one that a great many authorities neglect to mention [and] turns upon debts arising from a contract or from some similar source” (*damnorum et impensarum quae ex bello oriuntur repetitio*).⁸⁶ This just cause of war is amalgamated with the second in *De Jure Belli ac Pacis* to constitute “Reparation” for “what is or was properly *our own* . . . or to what is properly *our due*, either by *Contract*, by *Default*, or by *Law*.”⁸⁷ Finally, “[t]he fourth cause arises from wrongdoing, and from every injury—whether word or deed—inflicted with unjust intent” and is derived from the individual’s right to inflict punishment on their enemies (*punitio hostium*) for breaches of the law of nature established above.⁸⁸ Both *De Jure Praedae* and *De Jure Belli ac Pacis* focus heavily on punishment as a just cause of war, the latter work devoting an entire lengthy chapter to its elaboration, much of which is derived from the works of Augustine, “that supreme authority on piety and morals.”⁸⁹ Critically, despite the extent to which he relied on Cicero, his “favourite classical author,” *raison d’état*, along with wars for glory and empire are absent from Grotius’ treatment of the just causes of war.⁹⁰

War on Behalf of Others

De Jure Belli ac Pacis concludes its discussion of the just causes of war by elaborating upon whether or not war on behalf of others can be considered just. At heart this discussion is derived from Grotius’ assertion that the “right of resistance” is not a just cause of war. According to Grotius, although men have a natural right of resistance “to secure themselves from Injuries” in the state of nature, in the interests of order and “the Preservation of Peace,” the state has the “Power to prohibit the unlimited Use of that Right towards every other Person.”⁹¹ This argument is further solidified with demonstrations that rebellion and resistance were not permitted in Hebraic law, the Law of the Gospel or in the practices of the primitive Christians.⁹² Grotius even went so far as to consider the question of “whether the Law of Non-resistance obliges us in the most extreme and inevitable Danger” and, in doing so,

tentatively argued that God has “a full Right to oblige us to do or not to do some Things, even though we should be thereby exposed to certain Death.”⁹³ Among the justifications he provided for his extreme position was the argument that “He who . . . loses his life is declared by Christ truly to have gained it” and, as such, he tied obedience to the law of non-resistance to salvation, at least in some sort of minimal sense.

Of course, this argument seems somewhat absurd when considered in light of Grotius’ defence of the Dutch Revolt. He thus presented ten instances in which resistance against a tyrant may be justified. These include circumstances such as those in which the king “*has abdicated his Kingdom,*” “*would alienate his Crown,*” “*evidently declares himself his Subjects Enemy,*” “*breaks the Condition upon which he was admitted*” or, “*having but one Part of the sovereign Power, invades the other.*”⁹⁴ However, as Yasuaki Onuma points out, these causes are not really exceptions to the law of non-resistance for they refer to cases in which the “supreme ruler is not a true ruler or has abdicated the supreme power” and thus stand outside what Grotius understands as resistance.⁹⁵ Thus, despite his somewhat reluctant concessions, it is more accurate to say that Grotius did, in large part, adhere to the view that, in accordance with the functioning of civil society, individuals do not possess a right of resistance.

In order to justify this seemingly unreasonable point of view, Grotius included a critical caveat that permitted war to be conducted on behalf of others. It is in the context of the following discussion of the circumstances in which it is permissible to undertake war on behalf of others that the tract from which contemporary theorists have drawn a doctrine of “humanitarian intervention” appears. The particular passage of *De Jure Belli ac Pacis* reads:

But if the Injustice be visible, as if a *Busiris*, a *Phalaris*, or a *Thracian Diomedes* exercise such Tyrannies over Subjects, as no good Man living can approve of, the Right of human Society shall not be therefore excluded . . . And indeed tho’ it were granted that Subjects ought not, even in the most pressing Necessity, to take up Arms against their Prince (which is what those very Gentlemen who are such Advocates for the Power and Prerogatives of the Crown, are, as we shewed you, in suspense about) we should not yet be able to conclude from thence, that others might not do it for them.⁹⁶

Thus, although it is usually omitted from discussions of this passage, Grotius was here concerned with justifying his previous and more central claim that subjects are not entitled to resist the commands of their rulers. Furthermore, citing Seneca, Grotius reasoned that “I may make War upon a Man tho’ he

and I are of different Nations, if he disturbs and molests his own Country,” for the “Defence of innocent Subjects” is not primarily concerned with justifying “humanitarian” action but is simply a function of the right of states to inflict punishment upon others according to the precepts of natural law.⁹⁷ However, Grotius tempered this with the further caveat that “Wars which are undertaken for the exacting of Punishment, are suspected to be unjust, unless the Crimes be very heinous and manifest.”⁹⁸ Critically then, although Grotius recognized instances in which it may be permissible to intervene in the affairs of another sovereign state, the central subject of both the action and his writing is the state or ruler to be punished and not the people who will as a result, be protected.

The other passage of Grotius’ work often held to illustrate his understanding of the concept of humanitarian intervention is found in *De Jure Praedae* and argues that “not only is it universally admitted that the protection of infidels from injury (even from injury by Christians) is never unjust, but it is furthermore maintained, by authorities who have examined this particular point, that alliances and treaties with infidels may in many cases be justly contracted for the purpose of defending one’s own rights.”⁹⁹ As Grotius reasoned, as the King of Johore, the ruler of a “sovereign principality” (*supremus principatus*) had asked van Heemskerck “for help in warfare,” the “Admiral had been under a moral obligation to assist him” derived from the binding force of promises specified in the law of nature.¹⁰⁰ Of course, in order to argue this Grotius needed to demonstrate the legitimacy of concluding pacts and forming alliances with infidels. He undertook this task in the short and relatively unknown treatise, *De Societate cum Infidelibus* composed at around the same time as *De Jure Praedae*. As van Ittersum writes, this little treatise argued that “the New Testament taught Christians to regard unbelievers as fellow men and to treat them well,” an argument also presented in *De Jure Praedae*.¹⁰¹

Considered in isolation it is certainly possible to infer from this a notion of intervention that has at least some degree of humanitarian concern as its driving force. However, when considered in light of the following passage, Grotius’ true intentions become clear: “In any case, it is certain that the cause of the King of Johore was exceedingly just. For what could be more inequitable than a prohibition imposed by a mercantile people upon a free king to prevent him from carrying on trade with another people?”¹⁰² Thus Grotius justified the actions of the Dutch East India Company in seizing the Portuguese ship by inferring that, in doing so, they were both punishing the Portuguese for preventing the King of Johore from trading with the Dutch—a right Grotius considered inalienable according to the law of nations¹⁰³—and defending the East Indian king’s rights. Claims that this

passage constituted a defense of the right of humanitarian intervention also appear to be derived from Grotius' further claim that "[b]oth the King of Johore and the [East Indian] nations elsewhere mentioned by us, are being ravaged by the Portuguese with slaughter and rapine on no other pretext than this, that the said ruler and nations granted admittance to the Dutch."¹⁰⁴ However, although Grotius turned to a humanitarian pretext here, the actions he described were not an instance of humanitarian intervention but the workings of an alliance between Holland and the Kingdom of Johore. Indeed, at no point in the ensuing discussion is there mention of humanitarian atrocities committed by the King of Johore against his own people. With this in mind, Grotius' argument must be seen purely as looking to ensure both the continued right of the Dutch East India Company to trade with the Kingdom of Johore, and its right to retain the booty seized from the Portuguese vessel in question, in accordance with the right of punishment specified by the just war tradition.

Similarly, and on a separate front, Grotius' argument here can also be viewed in the context of what he understood to be the truth of the Christian religion. As was the central focus of his later work *De Veritate*, Grotius maintained that the "conversion of indigenous peoples to Christianity was contingent, first, upon their safety and welfare, and second, upon examples of virtuous behaviour by the Dutch."¹⁰⁵ As he wrote in *De Jure Praedae*:

Let those peoples look upon religion stripped of false symbols, commerce devoid of fraud, arms unattended by injuries. Let them marvel at the faith which forbids even that infidels should be neglected. In achieving these ends, we shall be preparing men for God.¹⁰⁶

As we will see in the following section, it is with specific regard to the law of love (charity) derived from the law of the Gospel that Grotius' most humanitarian sentiments appear.

Jus caritas

Despite expending a significant amount of time and energy constructing a moral code based on a minimal morality specified by the law of nature and presented in the form of the just war tradition, the law of love (charity) often trumps more conventionally conceived notions of justice and morality in Grotius' work.¹⁰⁷ As Tadashi Tanaka points out, throughout *De Jure Belli ac Pacis*, Grotius refers to love (*caritas*, *delectio*), the law of love (*lex caritas*, *lex dilectionis*) and the rules of love (*caritatis regulae*), using the terms *caritas* and *delectio* interchangeably. Although he "does not provide a general explanation

of their sources or contents,” a number of instructive facets of Grotius’ understanding of the law of love (*lex caritas*) can be gleaned from passages of his work.¹⁰⁸ In particular, his most lucid exposition of the subject states that “the Rules of Charity reach farther than those of Right” and equates failure to adhere to the law of love with having a hard heart.¹⁰⁹

The law of love (*caritas*) is fundamentally dictated by the law of the Gospel, the *jus evangelicum*, and enjoins individuals to put “our Neighbour upon a level with our Selves.”¹¹⁰ As such, it is an expression of the well-known teaching to “do unto others as you would have them do unto you.” Taking the evangelical foundations of charity one step further, Grotius continued to argue that “CHRIST’s Precepts then of loving and promoting the Good of every one, are to be *obeyed*, unless a greater and juster Love interpose.”¹¹¹ By this, Grotius meant that the law of love (*caritas*) enjoined by Christ ought to be applied to all areas of conduct and, given his earlier contention that states and individuals are morally and legally equivalent, it stands to reason that he was also referring to states in this sense. Indeed, that states are included in the law of love is made clear with the argument that warring parties ought to love their enemies, on the grounds that it “may not only be laudable, but an Obligation in us to forbear claiming our Right, on account of that Charity which we owe to all Men, even tho’ our enemies.”¹¹²

However, the logical extension of Grotius’ reliance on the law of the Gospel as the basis for the law of love presented him with two serious problems. First, by applying Christ’s teachings to the conduct of war, he was faced with the problem of how to reconcile notions of Christian pacifism with the reality that Christians engage in wars. On this Grotius conceded that the “the *Gospel* does expressly forbid . . . diverting such an Injury from my own Person . . . for CHRIST commanded his Apostles rather to receive a Blow than to hurt their Adversary.”¹¹³ Although a Christian should “turn the other cheek,” he maintained that “it is out of Love to the Innocent,” also derived from the Gospel, that some crimes may be equitably punished with death, thereby providing grounds on which Christians can pursue “pious Wars.”¹¹⁴ This, of course, was an explicitly Augustinian answer to this problem that echoed Augustine’s claim that it is possible to “kill without sinning” if, and only if, the action is “motivated by love.”¹¹⁵ However, this still left the question of how to reconcile his earlier claim that, according to the just war’s natural law underpinnings, all force necessary to achieve a just cause is permitted, with this Christian teaching. Still more problematic for the central aim of his work, the realization of a universal moral order, is the question of how to make the law of love applicable to all of humanity. For, although Grotius certainly believed that the law of the Gospel was applicable to all mankind, he must surely have recognized that those outside the Christian faith would not concur with his view.

Rather than face these problems head on, Grotius simply fudged the issue. In particular, as Tanaka points out, the “law of love,” as conceived above, was used interchangeably with the “rules of humanity” (*regulae humanitatis*), “natural equity” (*aequitas naturalis*), the “duty of Christians” (*officium Christiani hominis*) and a notion of “internal justice” (*interna justitia*), in an attempt to appeal to a higher notion of humanity. He writes that “these concepts in part overlap with law, but they are more extensive; by appealing to them, Grotius extends the scope of law to vast peripheral domains.”¹¹⁶ Indeed, as Grotius wrote, “For what Charity recommends in such a Case to be done, may, I doubt not, be prescribed by a human Law.”¹¹⁷ Critical to this attempt to infuse strict human law with the law of love (*caritas*) however, is the further notion of “internal justice” mentioned above.

Although it appears on numerous occasions in his work, particularly Book III of *De Jure Belli ac Pacis*, Grotius did not clearly or consistently define precisely what “internal justice” entailed. As one of the few writers to address this aspect of his work explains, “[t]he things which are permissible according to internal justice in a just war” are identical to the three just causes of war discussed above.¹¹⁸ As Grotius himself explained along these lines, “when it is just to kill . . . in a just War,” it is also just “according to internal Justice.”¹¹⁹ What is also clear is that internal justice is, in one instance at least, derived directly from a notion of conscience and is used interchangeably with a notion of moral justice.¹²⁰ Thus, although his prior theorization of the just war authorized the use of all necessary force, Grotius appealed to the individual conscience understood in terms of internal justice and co-extensive with the law of love.

Temperamenta

Having spent most of *De Jure Belli ac Pacis* elaborating upon the just causes of war, Grotius then spent sixteen chapters of the third book renouncing almost all of the sanctions previously permitted:

I must now reflect, and take away from those that make War almost all the Rights, which I may seem to have granted them; which yet in Reality I have not. For when I first undertook to explain this Part of the Law of Nations, I then declared, that many Things are said to be of Right and lawful, because they escape Punishment, and partly because Courts of Justice have given them their Authority, tho’ they are contrary to the Rules, either of Justice properly so called, or of other Vertues, or at least those, who abstain from such Things, act in a manner more honest and more commendable in the Opinion of good Men.¹²¹

With regard to the destruction of property, Grotius prohibited the despoiling of both sacred and consecrated things on the grounds that “these cannot be violated without Breach of Common humanity.”¹²² However, his greatest problem was with the right to kill others. In particular, Grotius’ pronouncements about the right to kill were tempered by a particular regard for human life. Thus, referring to the law of love, he argued that individuals ought not to be killed for the sake of property:

Yet it may happen, that Subjects may be killed, tho’ not designedly, but accidentally; namely, while they attempt by Force to hinder the execution of this Right. But if such a Thing may be foreseen, we are obliged by the Law of Charity to forbear the Prosecution of our Right, since by that Law we Christians especially should set a greater Value upon the Life of a Man, than upon our Goods, as he has been also shewed elsewhere.¹²³

In a similar vein, Grotius argued in a later passage that “to kill a Man on account of our Estates, which are frail and perishable Goods, is not repugnant to Justice strictly taken, yet is it far wide from the Law of Charity.”¹²⁴ In those instances in which it is both legally and morally justified, killing must be done with humanity and in accordance with moral or internal justice. In practical terms, this entails sparing women, children and old men, priests, ministers and scholars, farmers, merchants, and prisoners of war.¹²⁵ Furthermore, Grotius also argued that in those instances where a very great number of people deserve death as the punishment for their actions, it is right “to mitigate the Severity of the Punishment” and thereby grant them the same clemency afforded individuals by God.¹²⁶ Such is the value of human life that Grotius believed it preferable to be captured and enslaved than to fight to the death. In this vein, slavery is considered a form of charity, a “lesser cruelty,” when proposed as an alternative to “the killing of unhappy Persons.”¹²⁷

In accordance with his desire to preserve human life and limit the horrors of war, Grotius introduced the notion of *temperamenta*, or moderation, and applied it to the conduct of war. In doing so, he devoted several chapters of Book III of *De Jure Belli ac Pacis* to arguments in favor of moderation in “regard to spoiling the Country of our Enemies,” “Things taken in War,” “concerning Captives,” and “in obtaining Empire,” Chapter XI going so far as to argue the “Right of killing Men in a just War” ought to be tempered with moderation.¹²⁸ In doing so, Grotius was particularly concerned to avoid the “unnecessary shedding of Blood”:

all *Combats*, which are not of Use for the obtaining of Right, or concluding a War, but merely for vain Ostentation of Strength, that is, as the *Greeks*

call it, *Rather a show of Strength, than a warlike Action*, are wholly repugnant to the Duty of a Christian, and Humanity itself. Therefore all Magistrates ought strictly to forbid these Things, for they must render an account for the unnecessary shedding of Blood to him, whose vicegerents they are; *Sallust*, tho' a Pagan, commends those Generals, who purchase Victory with the least Blood.¹²⁹

As James Turner Johnson writes then, “both proportionality . . . and good wishes (deriving from charity and historically revealed in Christian thought and practice) limit the fully justified right of self-defence.”¹³⁰ However, a pertinent caveat applies to the application of *temperamenta* and *caritas* that highlights the fundamental distinction between the highest tier of Grotian morality and the lower two. Here Grotius maintained that “only *Christians* are bound by the latter restriction, while *all peoples* are bound by the former.”¹³¹ As Johnson explains, this is fundamentally due to the fact that Grotius thought that *caritas* formed part of “a higher morality accessible only through the gift of divine grace.”¹³² That this is the case is made particularly apparent with Grotius’ claim that the law of the Gospel commands a greater degree of love than human law does. However, as seen above, by equating it with internal justice and hence the individual conscience, Grotius nonetheless managed to argue that the law of love is an essential element of humanity that ought to be reflected in the functioning of human law.

Conclusion

The life and works of Hugo Grotius are marked by a number of significant tensions that in many ways informed the very construction of his particular moral scheme. In the first instance, his work is marked by a tension between a self-professed hatred of war and the recognition that its limitation requires, to some extent at least, an acceptance of its reality. In a similar vein, he was also torn between the attractiveness of the just war tradition, derived from a history of scholarship he held in high esteem, and his aversion to war at all. Thus, although early proponents of the just war tradition sought to reconcile Christian pacifism with the need for Christians to fight wars, Grotius remained uncomfortable with aspects of its application. This tension was played out in Grotius’ thought with his simultaneous endorsement of the fundamental principles that specify the just causes of war and his attempt to limit even just wars via the application of the principles of *caritas* and *temperamenta*. As made evident in the biographical discussion of his life in chapter 1, Grotius’ work is also marked by the contending desire to identify a universal morality according to which all international relations can be

regulated and his profound devotion to Christianity. In this then, Grotius is seen to play a delicate balancing act between the desire for universalism and respect for Christianity. Finally, and as seen in the final section of this chapter, a tension is also apparent in Grotius' overwhelming desire to apply "strict" law to the conduct of war and his equally strong aspiration for the promotion of the law of love (*caritas*).

Although it does not satisfactorily resolve all, or even any of these tensions, the solution to Grotius' contending beliefs and aspirations is found in his three-tiered moral scheme. As demonstrated in this chapter, a multilayered system of legal morality is evident in Grotius' work that, despite being based on a platform of secular and common principles is, in its highest form, ecclesiastically inspired and yet is driven by a notion of common humanity. It is a scheme that accords well with both the central precepts of "primitive scholarship" and the medieval hierarchical structure of law. What is more, Grotius' scheme is also one that is able to resolve the tension between the relative authorities of natural and divine law that were so central to his thought.

Grotius achieved a reconciliation of natural and divine authority by suggesting that the different tiers of his moral scheme have different spheres of application. The law of nature, he supposed, is applicable to all possessed of the faculty of reason. It is universal in the true sense of the word and thus applied to European Christians and infidels alike. On these grounds, Grotius was clear in his view that infidels may be punished for breaching the law of nature. *Jus divinum*, as discussed above, despite providing precepts of internal justice applicable to all of humankind and underpinning the *jus naturae* was, in its most direct form, applicable only to believers. That said, it was certainly Grotius' view that if all were to convert to the minimal form of Christianity he advocated in the *Meletius* and *De Veritate* the result would be the resolution of most forms of conflict. Finally, in accordance with its dual origins, the *jus gentium* possessed two spheres of authority. When derived from the *jus naturae* the *jus gentium* was simply conceived as those rules common to all nations and was thus also applicable to all. However, the positive elements of the law of nations derived from customs and treaties were, in Grotius' view, not derived from all states but rather a "great many states" generally understood to be the civilized Christian states of Europe.

It is thus from this division of the natural and volitional laws of nations and, in particular, the claim that the latter "had in view the advantage, not of particular states, but of the great society of states"¹³³ that many contemporary writers have derived the idea that Grotius entertained something approximating a modern idea of international society. However, as will be seen in the following chapters, it is his three-tiered moral scheme that has cemented Grotius' longevity in international political and legal thought and formed the

ultimate foundations of the “Grotian tradition.” In particular, as made evident in chapter 3, following the decline of *De Jure Belli ac Pacis* at the hands of Vattel’s *Le Droit des Gens*, James Kent and Henry Wheaton turned to Grotius on account of the manner in which his law of nations was infused with an explicitly Christian morality. Similarly, as discussed in chapter 4, in the early twentieth-century writers such as Cornelius van Vollenhoven and J.L. Brierly drew upon a notion of “Grotian morality” derived from the law of love and the law of nature respectively. Most significant of all however, is the most comprehensive expression of the “Grotian tradition” in the work of Hersch Lauterpacht that, despite rejecting the outwardly Christian foundations of the third layer of Grotius’ moral scheme, was explicitly conceived as a tradition of moral thought.

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CHAPTER 3

Grotian Morality in Europe and Beyond

he arose like a splendid luminary dispelling darkness and confusion, and imparting light and security to the intercourse of nations.¹

In the second half of the seventeenth century Hugo Grotius was revered as one of the most highly esteemed intellectuals and scholars in Europe. As Noel Malcolm writes, his “intellectual and theological respectability . . . was so great that he achieved an almost talismanic status” among proponents of the law of nature.² In particular, not only was *De Jure Belli ac Pacis* “reprinted or translated fifty times between 1625 and 1758”³ but, as Lord Blanesburgh remarked in a speech given at a banquet held to commemorate the tercentenary of its first edition, “[o]n publication it received all the honour that was possible.”⁴ That this was the case is certainly hinted at in a letter to Grotius from magistrate M. Bignon dated March 5, 1632:

I had almost forgot to thank you for your treatise “De Jure Belli” which is as well printed as the subject deserves it. I have been told, that a great king had it always in his hand; and I believe it is true, because a very great advantage must needs accrue from it, since that book shows, that there is reason and justice in a subject which is thought to consist only in confusion and injustice. Those who read it will learn the true maxims of the Christian policy, which are the solid foundations of all government. I have read it again with a wonderful pleasure.⁵

Of course, the “great king” who always had a copy of *De Jure Belli ac Pacis* at hand was King Gustavus Adolphus of Sweden who, as legend has it, slept with a copy of the work under his pillow.

However, much of Grotius’ immediate influence and indeed, many initial responses to his thought were concerned with his theological writings. In particular, his most important immediate influence was among the members of the Great Tew Circle. Established in England during the 1630s, the Great Tew Circle was a “group of young men who lived together in a kind of continuing seminar or reading party at the Oxfordshire house of Lucius Cary, 2nd Viscount of Falkland” and whose membership included a range of scholars including George Morley, Bishop of Winchester, Edward Clarendon, Henry Hammond, the esteemed “father of English biblical criticism,” and the philosopher William Chillingworth.⁶ Most importantly for our discussion, we also “know that Hobbes visited Great Tew” and, more than that, that Falkland was “his great friend and admirer.”⁷ Although its members all held Erasmus in high esteem, it was Grotius who was the “greatest of all influences on the Great Tew group.”⁸ This was, as Hugh Trevor-Roper writes:

not only an intellectual influence, communicated through books: it was also—since Grotius was their contemporary, and engaged in the same struggle, though in a different theatre—direct, even personal. For Grotius was the Erasmus of the seventeenth century: in him, Erasmus lived again.⁹

On the intellectual front, Grotius’ popularity among the group was fueled by the publication in English translation of *De Veritate* in 1632 and *Defensio Fidei Catholicae* in 1636. The moral philosophy of the Great Tew Circle certainly reflects much of Grotius’ thought evident in these works, in particular their emphases on religious tolerance and the reunion of Christendom.¹⁰ Continuing this interest in his theological thought, the second major surge in Grotius’ popularity occurred shortly after his death among the surviving members of the Great Tew Circle and, in particular, Henry Hammond. As mentioned in chapter 1, among Grotius’ final projects were his *Annotations of the Old and New Testament* published in installments between 1641 and 1650. As Trevor-Roper writes, the Great Tew Circle all “eagerly read” Grotius’ *Annotations* and they exerted a significant influence on Hammond’s *The Reasonableness of Christianity* and his own biblical annotations published in 1653.¹¹ At around the same time, a series of publications by Clement Barksdale including “three poems by Grotius, a short life of Grotius, and an account of a religious ‘disputation’ between himself and a group of local puritan gentry” in which he cited Grotius and Hammond, also helped to elevate Grotius’ status.¹² Among those works published by Barksdale was Grotius’

De Imperio Summarum Potestatum circa Sacra which appeared in English translation in 1655.¹³

More important still however, is the place of Thomas Hobbes in the development of Grotian scholarship. Indeed, it is Hobbes who stands as perhaps the greatest direct challenger to both Grotius' ideas and those of his followers and defenders in subsequent thought. With this in mind, this chapter begins by considering Hobbes' contribution to the development of natural law theory and, by extension, his ongoing influence on Grotius' followers. It then continues by considering the development of "Grotian" ideas in the works of a number of prominent "Grotian" natural law theorists such as Samuel Pufendorf and Jean Barbeyrac, along with a theorist less commonly associated with Grotius, Gottfried Wilhelm von Leibniz. The second part of the chapter then considers the developments of the two eighteenth-century theorists most often identified as the most prominent members of the "Grotian tradition," Christian Wolff and Emerich Vattel before detailing the final demise of natural law at the hands of Immanuel Kant and Jeremy Bentham. The final section outlines a number of arguments that emerged in response to John Austin's development of Bentham's division of law and morality and that utilized notions of "Grotian morality" in doing so. Focusing in particular on the early international legal works of the American scholars James Kent and Henry Wheaton, it argues that although much has been made of the perpetuation of the concepts of divisible sovereignty and private property in Grotius' work in later scholarship, subsequent thinkers were actually far more interested in the fusion of law and morality that was central to his thought.

Natural Law

This section traces the development of Grotian scholarship during what has been termed the "natural law era" from Grotius to Leibniz. As introduced in chapter 2, whether responsible for its emergence or simply one who contributed to its development, Grotius stands as a prominent figure on the cusp of the modern natural law era. Indeed, as we will see in this section, following Jean Barbeyrac's translation of Pufendorf's *De Jure Naturae et Gentium*, Grotius was to be erroneously heralded the "father of modern natural law" and attributed paternity over a pattern of thought comprising progeny as varied as Pufendorf, Christian Thomasius, Francis Hutcheson, Jean-Jacques Burlamaqui and Barbeyrac himself. However, as Remec makes clear, "one must recognise that nothing like a uniform 'school of natural law' " existed.¹⁴ Indeed, as will become evident in this section, a range of at times incommensurable conceptualizations reside concurrently within the broader umbrella of natural law. Furthermore, although the works of Christian Wolff

are discussed in the following section, it would be erroneous to suggest that natural law ended prior to him. Indeed, elements of natural law remained in Wolff's works and, as will be seen in the third section of this chapter, were picked up once again as a foil for the overt positivism of modern international law in the nineteenth century.

Thomas Hobbes

Almost an exact contemporary of Grotius—born in 1588 the Englishman was the younger by five years—Hobbes stands alongside the Dutchman as one of the most important political thinkers of the seventeenth century. Although both men spent time in Paris in the 1630s, available evidence does not suggest that they were personally acquainted with one another. However, it is clear that Grotius and Hobbes were at least reasonably familiar with one another's works. The Hardwick library catalogue compiled by Hobbes indicates that "his reading in the 1620s and 1630s" included Grotius along with writers such as Machiavelli, Bodin, and Montaigne.¹⁵ Similarly, evidence exists to suggest that Grotius did not look favorably upon Hobbes' 1642 work *De Cive*. In fact in the earliest recorded response to the work Grotius described Hobbes' ideas as "bold" and "of a sort that I should not wish to defend."¹⁶ In a letter to his brother in 1643 Grotius further wrote of *De Cive*:

I like what he says in favour of kings, but I cannot approve of the foundation on which he builds his opinion. He thinks that all men are naturally at war with one another, and has some other principles which differ from my own. For example, he thinks it is the duty of each private individual to follow the official religion of his country—if not with internal assent, then at least with outward obedience.¹⁷

However, I do not want to suggest that Grotius and Hobbes ought to be seen in diametric opposition to one another as they have been traditionally viewed in much International Relations scholarship. Rather, for our purposes Grotius and Hobbes ought to be seen as both contributing to the development of natural law theory and as having influenced the subsequent development of the law of nations. Of course, this flies in the face of much recent scholarship that seeks to associate Hobbes with realism which is in turn famous for its denunciation of the role of international law in international relations. On the other hand however, I similarly do not want to suggest that Hobbes ought to be too closely aligned with Grotius. Thus, while Tuck is certainly correct to argue that the "intellectual relationship between [Hobbes] and Grotius was much closer than many eighteenth-century writers were willing to admit" it

is going too far to characterize Grotius as a “Hobbes before Hobbes.”¹⁸ Indeed, although both Grotius and Hobbes addressed the sceptical challenge by reasserting the universal validity of natural law—Hobbes formulating an answer to the moral scepticism of writers such as Montaigne and Charron whose work he came into contact with through his association with the Mersenne Circle in Paris in the 1630s¹⁹—and may be viewed as contributing to the same general pattern of thought, their points of divergence are of much greater significance than their areas of agreement.

The most obvious point of disagreement between Hobbes and Grotius is, as Grotius’ critique of *De Cive* indicates, centered around their contending views of the state of nature and, in particular, human nature. Although both Hobbes and Grotius took the right of self-preservation as the starting point of their theories, the foundations of this idea were distinctly divergent. Although Hobbes’ *The Elements of Law* and *Leviathan* both begin with lengthy discussions of the fundamental precepts of human nature, *De Cive* proceeds from a single derivative assumption. This assumption is, in Hobbes’ words, “a Principle well known to all men by experience and which everyone admits, that men’s natural Disposition is such that if they are not restrained by fear of a common power, they will distrust and fear each other, and rightly may, and necessarily will, look out for himself from his own resources.”²⁰ Upon this basis, Hobbes constructed his argument that, due to incomplete knowledge and distrust between human beings, the state of nature—that is, the absence of civil government—is one of discord marked by the mutual aggression of all humans toward each other.

Thus, contrary to Grotius who believed that the state of nature was one of order, Hobbes wrote that “men’s natural state, before they came together into society, was War; not simply war, but a war of every man against every man.”²¹ In this state of discord, natural rights, and in particular the right to self-preservation are, according to reason, best maintained by leaving the state of nature and entering into a contract constitutive of civil society. According to the terms of such a contract, individuals transfer all of their rights to the sovereign in order to achieve order and peace. The union thus formed in this manner is called a “*commonwealth [civitas]* or *civil society (societas civilis)*” within which “the *Man* or *Assembly* to whose will individuals have subjected their will . . . is said to hold Sovereign Authority [*Summum Imperium*] or Dominion [*Dominium*].”²² Because this civil society is necessary, Hobbes argued that it follows that sovereignty must be held absolutely.²³ This, of course, is in marked contrast to Grotius who, as we saw in chapter 1, argued that sovereignty could, in fact, be divided. As Hobbes continued, “This Authority [*Potestas*], this *Right to give Commands [Jus imperandi]*, consists in the fact that each of the citizens has transferred all his own force and power

[*potentia*] to that *man* or *Assembly*.”²⁴ The most important implication of this for our discussion concerns the understanding of law it infers. Indeed, as Charles Covell argues, the connection “between the rule of law and the principles of sovereignty” was, in Hobbes’ view, fundamental.²⁵

Law, as Hobbes made clear in *De Cive*, is thus “*a command of that person (whether man or council) whose instruction is the reason for obedience.*”²⁶ Critically, “law” is distinct from “right” as he explained:

RIGHT, consisteth in liberty to do, or to forebear; Whereas LAW, determineth, and bindeth to one of them; so that Law, and Right, differ as much, as Obligation and Liberty; which in one and the same matter are inconsistent.²⁷

Civil law was thus presented as law instituted by the “commands issued by the sovereign power” and is binding upon the members of the commonwealth.²⁸ It was defined as “*those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make us of, for the distinction of right, and wrong; that is to say, of what is contrary, and what is not contrary to the rule.*”²⁹

In the absence of an authority to give commands at the international level however, states were assumed to behave like individuals in the state of nature; that is, “the state of commonwealths towards each other is a *natural* state, i.e. a state of hostility.”³⁰ Law operating in this sphere, the law of nations, is therefore nothing more than the law of nature applied to states. Indeed, having just spent a considerable amount of energy outlining the duties of the sovereign in procuring the safety of the people, Hobbes then gave the subject of law between states relatively short shrift:

Concerning the offices of one sovereign to another, which are comprehended in that law, which is commonly called the *law of nations*, I need not say anything in this place; because the law of nations, and the law of nature, is the same thing. And every sovereign hath the same right, in procuring the safety of his people, that any particular man can have, in procuring his own safety. And the same law, that dictateth to men that have no civil government, what they ought to do, and what to avoid in regard of one another, dictateth the same to commonwealths, that is, to the consciences of sovereign princes and sovereign assemblies; there being no court of natural justice but the conscience only; where not man, but God reigneth; whose laws, (such of them as oblige all mankind) in respect of God, as he is the author of nature, are *natural*; and in respect of the same God, as he is King of kings, are *laws*.³¹

This, of course, constitutes the most important point of divergence between Grotius and Hobbes for, unlike Hobbes, Grotius understood the law of nations to be constituted, at least in part, by human volitional law. As this form of positive law presupposed the existence of a sovereign law-maker in Hobbes' view, it could not be applied to the international sphere.

The final major point of divergence between Grotius and Hobbes focused upon in contemporary International Relations scholarship concerns the relationship between law and morality. The "fixed view of Hobbes," as Noel Malcolm points out, assumes that "there are no objective principles of morality" in his thought.³² Morality is simply conceived as something determined by the will of the sovereign, Hans Morgenthau arguing that "Hobbes's extreme dictum" was that "the state creates morality as well as law and that there is neither morality nor law outside the state."³³ Contrary to this however, Malcolm argues that Hobbes' thought is not devoid of all morality but that they retain some sort of association in his work. The laws of nature are the rules of morality and, what is more, they "remain the same both inside and outside the civil state, being neither subjective nor determined by the sovereign's will."³⁴ They are, in Hobbes' words, "Immutable and Eternal" and constitute the "true and onely Moral Philosophy."³⁵ Furthermore, Malcolm also argues that although the sovereign "has the right to legislate for its subjects" and, as such, their "laws can never be described as 'unjust' . . . they can be called 'iniquitous' if they go against the laws of nature."³⁶ "It is true," Hobbes wrote, "that they have Sovereigne power, may commit Iniquity; but not Injustice, or Injury in the proper signification."³⁷ Alternatively, George Shelton identifies a moral element in Hobbes' work that is conceived in terms of reciprocity. The "morality of reciprocity" is, for him, the means according to which Hobbes reconciles individuals' competing desires for self-preservation.³⁸

These arguments aside however, it is worth noting two important points here. First, although it is possible to identify moral principles in the writings of Thomas Hobbes, the relationship between law and morality found within them is of an entirely different nature to that evident in Grotius' works. Indeed, being able to locate some minimal form of morality in the treatment of the law of nature and being able to say that central to it is a fundamental fusion of law and morality, are two distinctly different things. Second, and as we will see in the following discussion of Samuel Pufendorf, it was Hobbes' notion of "law as command," along with his ideas about the state of nature and sovereignty, that had the greatest lasting influence upon subsequent Grotian scholarship.

Samuel Pufendorf

Foremost amongst Grotius' direct intellectual descendants in the late seventeenth century was Samuel Pufendorf (1632–1694). As the preface of his

most famous work *De Jure Naturae et Gentium* makes clear, Pufendorf not only conceived Grotius as “the first to call his generation to the consideration of” the law of nature as the central component of the law of nations, but accorded himself the “special designation of his ‘Son’.”³⁹ However, this is not to say that Pufendorf “followed” Grotius in word and letter. On the contrary, despite expressing almost overwhelming adoration for his intellectual father, Pufendorf acknowledged that he “entirely omitted not a few matters,” proving that “he was only a man” after all.⁴⁰ Foremost among those omissions and limitations Pufendorf identified in Grotius’ works were his inability to satisfactorily reconcile the dual human instincts of self-preservation and sociability, his moral rationalism and, derived from this, his failure to include a strong notion of obligation in his theory of the law of nature.

In seeking to rectify these problems and, in doing so develop the Grotian theory of natural law, Pufendorf ultimately attempted to reconcile Grotius’ ideas with those of Thomas Hobbes, to whom he admitted owing “no small debt.”⁴¹ In particular, he sought to fuse Hobbesian views of sovereign authority, legal obligation and the primacy of self-preservation with Grotius’ scheme. In doing so, he made three significant contributions to the development of Grotian scholarship. First, in opposition to Grotius’ moral rationalism; that is, the claim that morality is innate and, as such, a range of actions pertaining to it can be designated as intrinsically moral or intrinsically immoral, Pufendorf transformed Grotian morality along voluntarist lines. Second, and following from this, in attempting to incorporate a strong notion of obligation in his theorization of the law of nature, Pufendorf was led to conceive of sovereignty as the basis of legal order. Finally, drawing these ideas together and moving away from Grotius’ primitive legal thought, Pufendorf also separated law from moral theology and thereby attempted to establish the law of nature as a discipline independent from moral consideration.

The starting point of Pufendorf’s theory of the law of nature was the claim that humans are endowed with two faculties that set them apart from the rest of the animal kingdom, understanding [*intellectus*] and will, from which action is derived. However, as “the wills of different men tend in different directions,” it is necessary to institute rules according “to which these wills might conform” in order to achieve “order and decency.”⁴² Contrary to Grotius’ conceptualization however, these rules are strictly a human imposition and not, as it were, derived from some sort of innate, universally apparent body of law. Two points critical to Pufendorf’s natural law theory follow from this. The first is the assertion that “human society is almost entirely a human artifact” constructed, not in a supernatural or innately determined manner, but through the choices and agreements that humans make with one another.⁴³

Despite diverging significantly from Grotius' understanding of the establishment of civil society, Pufendorf retained the idea that its formation is the result of two innate features of human nature: the impelling desire for self-preservation and the human proclivity for sociability. With both Grotius and Hobbes, he maintained that "[i]n common with all living things which have a sense of themselves, man holds nothing more dear than himself, he studies every way to preserve himself, he strives to acquire what seems good to him and to repel what seems bad to him."⁴⁴ However, given the "immoral soul," "depth of human depravity" and ease with which humans injure one another, Pufendorf argued that "a society of men cannot be constituted nor maintained in a peaceful and firm state without law."⁴⁵

Thus, the second important feature of Pufendorf's natural law theory is his understanding of law, not as a moral determination but, in accordance with Hobbes' conceptualization, in terms of authority and obligation. For Pufendorf, law [*lex*] was defined as "a decree by which a superior obliges one who is subject to him to conform his actions to the superior's prescript [*praescriptum*]."⁴⁶ This notion of law was, of course, directly derived from Hobbes' notion of law as command. Also in accordance with the Hobbesian conceptualization, a notion of obligation, defined as "a bond of right by which we are constrained by the necessity of making some performance . . . a kind of bridle on our liberty," is also critical to Pufendorf's understanding of law.⁴⁷ Two important moves follow from this understanding of law as the prescription of a superior: the first, also reminiscent of Hobbes' theory, is the idea that sovereignty stands at the center of law, while the second is the division of the legal and moral orders. As Andrew Linklater writes, sovereignty, for Pufendorf, "is the indispensable foundation of social life since it transforms unenforceable obligations (morality) into enforceable ones (law)."⁴⁸ Propelled by the "concern for individual protection" necessitated by the "infinite miseries of the state of nature," individuals "seek refuge in sovereignty" as the instrument capable of ensuring their preservation.⁴⁹ For this reason, the state "is considered the most perfect society, and is that wherein is contained the greatest safety for mankind, now that it has grown so numerous."⁵⁰

As Linklater argues however, "[t]he fact that the state and its rights are established by a contract restricted to only part of the human race indicates most clearly the way in which Pufendorf compromises the Grotian foundations of his thought."⁵¹ Indeed, at least two elements of Pufendorf's understanding of the role of sovereignty in the maintenance of order contravened the central principles of Grotius' scheme. The first follows Pufendorf's claim that, in instituting the social contract, individuals agree that they are "desirous of entering into a single and perpetual group, and of administering the considerations for their safety and security by common council and

leadership” and is the argument that the “sovereign derived legitimacy from citizens alone and is conferred with those rights which citizens have chosen to surrender.”⁵² For Grotius sovereignty did not ultimately rest with the people who had voluntarily given up some of their rights but was, in accordance with his endorsement of aristocratic republicanism, a term used to refer to someone who holds a right.

Second, by endorsing a strong notion of sovereignty as the means according to which the protection of individuals within a state can be achieved, Pufendorf appears to “jeopardise the possibility of observing principles of natural law in relation to outsiders.”⁵³ However, this is not quite the case, for he attempted to reconcile the obligations individuals have toward their state with a notion of the obligations they have toward a wider society of humankind. He wrote:

definite individuals unite to form a definite kind of society . . . either in consequence of a special harmony of dispositions or of other qualities, or else because they imagine that they can obtain some special end with these persons than with those. Now it is by no means necessary for all men to coalesce into one society in which all are equal to one another; but it is sufficient if the same persons get together in several and distinct groups, which are, nevertheless, by no means altogether mutually unsociable, but refrain from unjust injuries towards one another and, as far as they are permitted by closer obligations, share with one another their advantages and blessing.⁵⁴

Thus, Pufendorf retained a “[b]elief in the existence of obligations to humanity” which manifest themselves in the law of nations.⁵⁵ Contrary to Grotius’ claim that the law of nations exists in both natural and volitional forms however, Pufendorf followed Hobbes in arguing that the law of nations *is* the law of nature applied to nations:

There is, finally, one more question to be considered here, namely, whether there be a peculiar and positive law of nations, distinct from natural law; for on this point scholars are not entirely agreed. It is held by many that the law of nature and the law of nations are one and the same thing, differing only in their external denomination. Hence Hobbes’ *De Cive* . . . divides natural law “into the natural law of men and the natural law of states, which is commonly called the law of nations. The injunctions of both” he adds, “are the same; but because states, upon being constituted, take on the personal properties of men, on being applied to whole states and nations or people, is called the law of nations”. To this

statement we also fully subscribe. Nor do we feel that there is any other voluntary or positive law of nations which has the force of a law, properly so called, such as binds nations as if it proceeded from a superior.⁵⁶

Similarly, in *Elementorum Jurisprudentiae Universalis* he wrote:

on the subject of the *Law of Nations*, which, in the eyes of some men, is nothing other than the law of nature, in so far as different nations, not united with one another by a supreme command, observe it, who must render one another the same duties in their fashion, as are prescribed for individuals by the law of nature. On this point there is no reason for our conducting any special discussion here, since what we recount on the subject of the law of nature and of the duties of individuals, can be readily applied to whole states and nations which have also coalesced into one moral person. Aside from this law, we are of the opinion that there is no law of nations, at least none of which can be properly designated by such a name.⁵⁷

Bringing these ideas together, Pufendorf's *De officio hominis et civis juxta legem naturalem libri duo* aimed to "expound to beginners the principle topics of natural law," specifically constituted as a "new *discipline*."⁵⁸ Central to this new system was the demarcation of the boundaries separating natural law from civil law associated with the position of prominence afforded sovereignty in the maintenance of order and, those separating moral theology from both civil and natural law. The "discipline of natural law," Pufendorf argued, is derived from "the common duties of man, particularly those which render him capable of society [*sociabilis*] with other men."⁵⁹ Alternatively, what he called the "discipline of civil law" is the law of individual states and specifies "the duties of a man as a citizen living in a particular and definite state [*civitas*]."⁶⁰ Finally, Pufendorf distinguished moral theology from that "part of theology which explains the articles of our faith" and conceives it as making explicit the "duties of a Christian."⁶¹ With this, Pufendorf achieved a division of natural law and morality and, in doing so, divorced himself from Grotius' primitive style of legal scholarship. As we will see in the following discussion however, both this division of natural law and moral theology and other aspects of Pufendorf's work faced stringent criticism in subsequent scholarship, most notably that of Gottfried Wilhelm von Leibniz.

Gottfried Wilhelm von Leibniz

Although he is rarely discussed with reference to Grotian scholarship, Leibniz is also a figure who exerted a significant influence on its development.

Indeed, not only did Leibniz share Grotius' "lifelong passion" for the reunification of Christendom,⁶² but his "Opinion on the Principles of Pufendorf" constituted the most important critique of Pufendorf's work immediately following its reception. A devotee of both Grotius and, to a lesser extent Hobbes himself, Leibniz came to view Pufendorf as something of "an inferior German version of Hobbes."⁶³ His "Opinion" on Pufendorf's *De Officio Hominis et Civis* argued, with characteristic sarcasm that "since the great part of the thoughts expounded in the course of the work are not consistent with the principles, and are not logically deduced from them, but rather are borrowed elsewhere, from good authors, nothing keeps this little book from containing many good things, and from serving usefully as a compendium of natural law for those who are satisfied with a superficial smattering (as are the majority of readers), without looking for sound learning."⁶⁴ Substantively however, it was Pufendorf's demarcation of natural law that most concerned Leibniz and, in particular, its division from moral philosophy. Thus, Leibniz argued that "[i]t should not be admitted, therefore, as our author urges, that that which remains hidden in the soul, and does not appear externally, is not pertinent to natural law."⁶⁵ With this, Leibniz endorsed a return to the primitive fusion of law and morality evident in the works of Grotius and those who preceded him.

At heart, Pufendorf's failure to recognize the place of moral philosophy in natural law was derived from his more fundamental failure to correctly establish the foundations of the law of nature:

He, indeed, does not find it in the nature of things and in the precepts of right reason which conform to it, which emanate from the divine understanding, but (what will appear to be strange and contradictory) in the command of a superior . . . If we admit this, no one will do his duty spontaneously; also, there will be no duty when there is no superior to compel its observance; nor will there be any duties for those who do not have a superior. And since, according to the author, duty and acts prescribed by justice coincide (because his whole natural jurisprudence is contained in the doctrine of duty), it follows that all law is prescribed by a superior. This paradox, brought about by Hobbes above all, who seemed to deny to the state of nature, that is [a condition] in which there are no superiors, all binding justice whatsoever (although even he is inconsistent), is a view to which I am astonished that anyone could have adhered.⁶⁶

In order to resolve this issue, Leibniz sided with Grotius' claim that "there would be a natural obligation even on the hypothesis—which is impossible—that God does not exist, or if one but left the divine existence out of

consideration.”⁶⁷ This, he argued, is because “care for one’s own preservation and well-being certainly lays on men many requirements about taking care of others, as even Hobbes perceived in part.”⁶⁸

With this in mind, Leibniz set about formulating his own alternative to Pufendorf’s theory of the law of nature, what he preferred to call “universal jurisprudence.” According to Gregory Brown, foremost among Leibniz’s aims in doing so was the desire to “reconcile the view of Grotius that human society was founded upon the faculty of sociability inherent in the nature of man, and the view of Hobbes that ‘all society . . . is either for gain, or for glory; that is, not so much for love of our fellows, as for the love of ourselves.’”⁶⁹ Although there is certainly a sense in which Leibniz sought to incorporate elements of Hobbesian natural law in his own universal jurisprudence however, his “broad attack” on Hobbes’ and Pufendorf’s understandings of sovereignty was, as we will see shortly, perhaps more significant.⁷⁰ Nonetheless, central to this reconciliation was the notion of “disinterested love,” a concept according to which Leibniz was able to ‘reconcile egoism with the possibility of altruism and . . . develop a theory of obligation which did not make obligation dependent . . . on threat of punishment or the command of a superior.’⁷¹ “Disinterested love” was fundamentally derived from Leibniz’s understanding of justice as “the charity of the wise man, that is, charity which follows the dictates of wisdom.”⁷² Charity was, in turn, defined as “a universal benevolence, which the wise man carried into execution in conformity with the measures of reason, to the end of obtaining the greatest good.”⁷³

A number of important points flow from this. The first corresponds to Leibniz’s criticism of the manner in which Hobbes’ allowed “will [to] take the place of reason” and entails the reconciliation of moral voluntarism or rationalism.⁷⁴ Thus Leibniz argued that “[r]eason, or thought, or knowledge alone, is not enough for a moral action; if it were, intellectual error would be equal to moral evil. The will must be *conformed* to reason, must choose the best.”⁷⁵ The second and perhaps most important implication of this view of the law of nature is the idea that “if charity is the essence of justice, then mere power or mere command cannot be.”⁷⁶ This, of course, is in direct contradiction of both Hobbes and Spinoza who sought to locate the bases of morality in power and accords well with the prominent position of charity in Grotius’ thought. Thus, although Leibniz agreed with Hobbes that the fundamental purpose of the state is to ensure the security of its citizens, his understanding of universal justice in terms of charity also lead to “an extreme downgrading of the concept of sovereignty.”⁷⁷ Sovereignty, for Leibniz, was not a legal concept as it was for Hobbes and Pufendorf but merely a descriptive and comparative term used to denote “he who is master of a territory” and who is “powerful enough to make himself considerable in Europe in time

of peace and in time of war, by treaties, arms and alliances.”⁷⁸ In order to establish the sovereignty of the minor German princes in *Caesarinus Fürstenerius* (1677), Leibniz argued not only that sovereignty need not be absolute, as it had been for Bodin and Hobbes, but that “it did not matter whether the sovereign ‘holds his lands as a fief, nor whether he recognizes the majesty of a chief, provided that he be master at home and cannot be disturbed except by arms.’”⁷⁹ What also followed from this is that for Leibniz law was not understood to be the command of a superior.

One of the most important reasons why Leibniz sought to undermine the Hobbesian notion of sovereignty was that it brought into serious question his hopes for the reestablishment of the *respublica Christiana*. He wrote:

I know that these thoughts of mine on the nature of the state cannot be reconciled with the opinions of the sharp-witted Englishman Thomas Hobbes. But I also know that no people in civilized Europe is ruled by the laws that he has proposed; wherefore, if we listen to Hobbes, there will be nothing in our land but out-and-out anarchy. He says that by nature men have the right to do whatever seems to them to be useful; that from this their rights extend over all things. But from this, he goes on, arise internecine wars, causing the destruction of individuals, and therefore peace is necessary and this right of all men over all things must be taken away, as must be the individual judgement from which it flows.⁸⁰

In particular, Leibniz believed that the *respublica Christiana* could bring an end to the denominational and doctrinal schisms that marked contemporary Europe, in particular that which existed between Protestants and the Catholic Church. In a similar manner to Grotius, Leibniz believed that “fanaticism and bloodshed could be ended throughout Europe if charity replaced theological hair-splitting” although, unlike Grotius’ plan for a universal ecumenical church under the headship of the Church of England, Leibniz viewed the Catholic Church as the universal church.⁸¹ “The essence of Catholicism,” he wrote, “is not external communion with Rome . . . [but] the true and essential communion, which makes us part of the body of Jesus Christ, is charity.”⁸² As such, those people who “maintain the schism by their fault, by creating obstacles to reconciliation, contrary to charity, are truly schismatics.”⁸³ In Leibniz’s view, the Pope and Emperor were the rightful heads of this *respublica Christiana*. As he wrote in the Preface to *Caesarinus Fürstenerius*:

The position of the [Holy Roman] Emperor is a little more elevated than one commonly thinks; Caesar is the defender, or rather the chief, or if one

prefers the secular arm of the universal Church. All Christendom forms a species of republic, in which Caesar now has some authority—from which comes the name, Holy Empire, which should somehow extend as far as the Catholic Church. Caesar is the commander [*Imperator*], that is, the born leader of Christians against the infidels: it is mainly for him to destroy schisms, to bring about the meeting of [ecumenical] Councils, to maintain good order, in short to act through the authority of his position so that the Church and the Republic of Christendom suffer no harm.⁸⁴

As we will see shortly however, despite the undoubted influence of Leibniz on the work of Christian Wolff, this notion of the *respublica Christiana* was rapidly replaced by the *civitas maxima* in his works. Before we get to Wolff however, it is worth discussing briefly the contribution of Jean Barbeyrac, the figure who, by publishing it as an appendix to his translation of Pufendorf's *De Officio Hominis*, is responsible for making Leibniz's "Opinion on the Principles of Pufendorf" relatively widely known.

Jean Barbeyrac

Jean Barbeyrac (1674–1744) is best known for his French annotated translations of Pufendorf's *De Jure Naturae et Gentium* and *De Officio Hominis et Civis*, Grotius' *De Jure Belli ac Pacis*, and Richard Cumberland's *De Legibus Naturae*. Although his reputation has generally centered around "his role as interpreter and annotator of Pufendorf," Tim Hochstrasser argues that he "provided an original contribution in his own right to the development of eighteenth-century natural-law theory that cannot be fully extrapolated from his edition of Pufendorf."⁸⁵ In particular, Barbeyrac sought, albeit unsuccessfully, to address Leibniz's criticisms of Pufendorf outlined in his *Opinions of the Principles of Pufendorf* and defend Pufendorf's alterations to Grotius' natural law theory. In particular, as the annotations to the *Prolegomena* of *De Jure Belli ac Pacis* reveal, Barbeyrac certainly sided with Pufendorf in the question of whether or not the law of nations was anything more than the law of nature: "The Author here means what he calls *the Law of Nations* which he distinguishes from the *Law of Nature* as making a separate class. But in this he is mistaken."⁸⁶ In large part however, the limited success of Barbeyrac's defence of Pufendorf's natural law theory can be attributed to the extent to which he ended up concurring with Leibniz's opinion. Thus, "[i]nstead of sweeping aside Leibniz's objections to modern natural law with a declaration of omnipotence of human reason in moral matters, Barbeyrac concedes Leibniz's judgement that a natural law which takes man as its starting point must finish by deriving obligation from the will of a superior, and the will of

God in particular.”⁸⁷ Indeed, his discussion of the “*etiamsi daremus*” of Grotius concluded that “the Will of GOD is the Source of all Duties.”⁸⁸

However, in the context of the Grotian scholarship Barbeyrac’s real significance concerns the controversial claim that Grotius was the “father of modern natural law.” In the preface to the French translation of *De Jure Belli ac Pacis* he wrote:

One cannot refuse my Author the glory of being original in his class. It is the peculiar characteristic of this Treatise, the first of its kind, that it reduced to a System the most beautiful and useful of the human sciences, and unfortunately the most neglected one.⁸⁹

Further developing this point, Barbeyrac continued to add that it was Grotius who “introduced the methodic study of Natural Law” and was the first to attempt to systematize it.⁹⁰

However, claims that Grotius was the “father of modern natural law” have precipitated much controversy and debate in subsequent scholarship. As Anton-Hermann Chroust has written, “[s]ince Pufendorf it has become a totally unwarranted academic tradition to consider Hugo Grotius the true and unique ‘Father of Natural Law’.”⁹¹ This trend, he argues, was instigated by Pufendorf’s assertion that “it was Grotius who divorced Natural Law from theology (and religion) by grounding it solely in the ‘social nature’ and natural reason of man,” thereby rendering it “modern.”⁹² In a similar fashion, A.P. D’Entrevies also attributes the emergence of this claim to Pufendorf’s praise of Grotius as the “*vir incomparabilis* who dared to go beyond what had been taught in the schools, and to draw the theory out of the darkness in which it had lain for centuries.”⁹³ However, both Leonard Krieger and Charles Edwards attribute the claim not to Pufendorf himself but to Barbeyrac’s translation of Barbeyrac’s own theory of the law of nature on his translation of *De Jure Naturae et Gentium*. While Krieger notes the influence of Barbeyrac’s own theory of the law of nature on his translation of Pufendorf, Edwards goes so far as to say that “[a]n exhaustive examination of Pufendorf’s political writings shows that in none of them does he state directly that Grotius was the ‘Father of Natural Law’.”⁹⁴ However, this seems to be an excessively pedantic argument for, as discussed above, Pufendorf writes that he is an intellectual “Son” of Grotius, following in a tradition of scholarship begun by him. Of further interest here is Barbeyrac’s own annotation of Prolegomena XI of *De Jure Belli ac Pacis*, the passage in which the supposed “secularization” occurred. It reads:

This Assertion is to be admitted only in the following Sense: That the Maxims of the Law of Nature are not merely arbitrary Rules, but are

founded on the very Nature of Things; on the very Constitution of Man, from which certain Relations result, between such and such Actions and the State of a reasonable and sociable Creature.⁹⁵

With this, even the extent to which Barbeyrac attributed the “secularization” of natural law to Grotius is brought into serious question.

The interpretation of this passage aside however, Barbeyrac certainly exerted a significant influence upon subsequent Grotian scholars. As Haakonssen suggests, “more than anyone” else, it was Barbeyrac “who streamlined the natural jurisprudential debate from Grotius onwards and delivered it to the eighteenth century as a coherently developing tradition.”⁹⁶ In particular, Barbeyrac along with the German thinkers Johann Gottlieb Heineccius and Samuel von Cocceji were among the most significant influences upon the Scottish natural law theorists Gershom Carmichael and Francis Hutcheson.⁹⁷ However, we are not going to head in the direction of the Scottish Enlightenment here. Rather, we return to Leibniz and, in particular, Christian Wolff’s adaptation of certain elements of his thought.

The European Law of Nations

Although Leibniz was the figure responsible for coining the term “Christian Europe” with regard to the law of nations, in writings subsequent to him it became associated with what might be called “classical” legal scholarship and, as we will see, finally rid itself of those residual elements of “primitive legal scholarship” that remained in his work. As Martti Koskenniemi writes, “classical” law was marked by a move away from the outward reliance on faith that had informed much previous legal scholarship. In particular, “[r]eliance on faith was now understood as utopianism” and, as such, scholars of the law of nations sought (although not always successfully) to achieve a firm distinction between law and morality.⁹⁸ Thus legal scholarship of the classical era focused on “State behaviour, on history and power instead of moral or religious generalities” and sought to establish itself as a “scientific” discipline.⁹⁹ Its primary task was thus the legal justification of an international order that was based on the principle of sovereignty which was gaining momentum as the fundamental ordering principle of the international system in the post-Westphalian era. In this, the earlier scholarship of writers such as Grotius was deemed unacceptable because it could not demonstrate why its ordering principles or norms were in fact correct.¹⁰⁰ In this vein Rousseau directly criticized Grotius’ naturalist rhetoric as simply offering “fact as proof of right” and argued that “[i]t is possible to imagine a more logical method, but not one more favourable to tyrants.”¹⁰¹ Indeed, it was particularly feared that the

moral schemes of writers such as Grotius could be bent to suit the aims of a tyrant. This is not to suggest, however, that classical scholarship denied “the existence of divine or natural law.”¹⁰² Rather, it simply doubted their applicability to the relations of states in the contemporary world and, as such, attempted to purge the law of nations of its Christian moral underpinnings. The two most important legal theorists of this era were Christian Wolff and Emerich Vattel.

Christian Wolff

Despite the demonstrable influence of Leibniz’s works on both Christian Wolff (1679–1754) and Emerich Vattel (1714–1767),¹⁰³ with Wolff emerged a new form of Grotian scholarship that was not explicitly concerned with moral philosophy. In particular, Wolff introduced two ideas that have been critical to the development of subsequent Grotian scholarship. The first concerned the relationship between the *jus naturae* and the *jus gentium* and explicitly sought to redress Grotius’ problematic understanding of the voluntary law of nations, while the second introduced the notion of the *civitas maxima* or supreme state. However, as both these ideas were embedded in Wolff’s understanding of the law of nations derived from the law of nature, it is necessary to first introduce the central tenets of this relationship.

According to Wolff’s conception, the law of nature is the “science of that law which nations or people use in their relations with each other and the obligations corresponding thereto.”¹⁰⁴ As nations are fundamentally comprised of “a multitude of men united into a state,” in its most basic sense, the law of nations is “nothing except the law of nature applied to nations.”¹⁰⁵ However, where Wolff differed significantly from Pufendorf and Hobbes, who also argued that the law of nations is the law of nature, was in his claim that in the absence of a political superior, the nature of obligation necessarily differs between individuals and states. For this reason, Wolff distinguished between what he termed the “necessary law of nations” and its “voluntary,” “stipulative” and “customary” forms. Considered together, the voluntary, stipulative, and customary laws of nations were fused in Vattel’s “popularization” of Wolff’s work to be discussed in the following section and, in modern international legal works are considered to be facets of the positive law of nations determined by customs, treaties and the tacit agreements of states. The necessary law of nations is however, “the law of nature applied to nations” and, in accordance with the “immutability of natural law,” is “absolutely immutable”.¹⁰⁶ The necessary law of nations therefore “rules the acts of nations” by obligations that are themselves also necessary and

immutable. Thus, Wolff wrote:

Nature herself has established society among all nations and binds them to preserve society. For nature herself has established society among men and binds them to preserve it. Therefore, since obligation, as coming from the law of nature, is necessary and immutable, it cannot be changed for the reason that nations have united into a state.¹⁰⁷

Wolff further established what he terms the *civitas maxima*, or supreme state, defined as the “state, into which nations are understood to have combined and of which they are members or citizens.”¹⁰⁸ Indeed, it is this notion of the *civitas maxima* which replaced Leibniz’s *respublica Christiana* for which Wolff is most famous. Interestingly Wolff contended that the *civitas maxima* was a concept that “was not unknown to Grotius, nor was he ignorant of the fact that the law of nations was based on it.”¹⁰⁹ However, as we saw in chapter 2, Grotius did not conceive of a super-state comparable to Wolff’s *civitas maxima* but rather something approximating a *mutuum illium societas* or mutual society of nations. Despite his admiration of Grotius’ works, Wolff seemed to acknowledge this in part, conceding that his predecessor’s understanding of the *civitas maxima* was limited by his failure to take the distinction between the necessary law of nations (the natural law of nations) and the voluntary law of nations far enough. He thus argued, summing up the central points of his conception of the law of nations:

Since nature herself has united nations into a supreme state in the same manner as individuals have united into particular states, the manner also in which the voluntary law of nations ought to be fashioned out of natural law, is exactly the same as that by which civil laws in a state ought to be fashioned out of natural laws. For that reason the law of nations, which we call voluntary, is not, as Grotius thought, to be determined from the acts of nations, as though from their acts their general consent is to be assumed, but from the purpose of the supreme state which nature herself established, just as she established society among all men, so that nations are bound to agree to that law, and it is not left to their caprice as to whether they should prefer to agree or not.¹¹⁰

Nonetheless, within the *civitas maxima* “[e]very nation owes to every other nation that which it owes for itself, in so far as the other does not have that in its own power.”¹¹¹ In particular, applying Leibniz’s philosophy of the role of happiness in the purpose of the individual to the relations of nations,

Wolff listed mutual love, consideration for the happiness of others, charity, contributing to the preservation and perfection of others, contributing to barbarous and uncultivated nations, friendship, forbidding injury and the obligation to engage in commerce among the most prominent rights and duties owed to nations.¹¹² Thus although Wolff was wholly unconcerned with the relationship between law and morality that had marked much subsequent Grotian scholarship, he retained an interest in the individual moral principles that were central to it. What is more, and as we will see shortly, it was Wolff's combination of the necessary and voluntary laws of nations that became understood to constitute the central feature of the "Grotian" approach to international law in subsequent scholarship.

Emerich Vattel

The influence of Leibniz and Wolff on the works of Emerich de Vattel is marked and, in many ways, Vattel's *opus magnum*, *Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la Conduite et aux Affaires des Nations et des Souverains* (*The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and Sovereigns*), can be seen as representing a more thorough fusion of these two writers' ideas than was achieved by Wolff himself. Indeed, Vattel's first work, although rarely referred to today, was a *Défense du système leibnitzien* published in 1741. As Alfred de Lapradelle notes, it was Vattel's "reading of Leibniz" that had, in the first instance, "determined his vocation."¹¹³ Thus, with Wolff, Vattel applied a Leibnizian philosophy of the purpose of the individual and the nation to preserve and protect itself and cultivate happiness in the relations of nations.

Following the pattern of argument evident in the natural legal thought of the time, Vattel maintained, with Wolff, that the "*Law of Nations* is in its origin merely the *Law of Nature applied to Nations*."¹¹⁴ Within the bounds of the necessary law of nature, Vattel posited the existence of a "universal society of the human race," instituted in response to the natural fact that, according to man's nature, "he is not sufficient unto himself and necessarily stands in need of the assistance and intercourse of his fellows, whether to preserve his life or to perfect himself and live as befits a rational animal."¹¹⁵ Contrary to Wolff's conception therefore, "man is not drawn to society by natural inclination" but "[c]ivil society arises from the need of men to protect themselves and secure wealth and other desirabilities."¹¹⁶ Thus, incorporating Leibniz's notion of the purpose of society, Vattel wrote that "[t]he end of the natural society established among men in general is that they should mutually assist one another to advance their own perfection and that of their condition."¹¹⁷ Contrary to both Grotius and Hobbes however, Vattel asserted that "natural

law was originally intended to be applicable between individuals and cannot, therefore, be applied as such between States.”¹¹⁸ Like Wolff therefore, Vattel also distinguished between the necessary and voluntary law of nations arguing that they were both essentially “established by nature . . . the former as a sacred law which nations and sovereigns are bound to respect and follow in all their actions; the latter, as a rule which the general welfare and safety oblige them to admit in their transactions with each other.”¹¹⁹

Refuting Wolff however, Vattel was also at pains to demonstrate that the voluntary law of nations did not emerge from a naturally occurring *civitas maxima* but via the agreement of nations on principles that are bound to advance society. Indeed, Vattel argued that the “fiction” of the *civitas maxima* was “neither reasonable nor well enough founded to deduce there from the rules of the Law of Nations at once universal in character, and necessarily adopted by Sovereign states.”¹²⁰ Rather, he contended that in accordance with their “liberty and independence,” each nation retains the exclusive right to decide for itself “what it is proper or improper to do.”¹²¹ For Vattel then, *la société des nations* was fundamentally pluralist in orientation and, as such, was formed on an entirely different basis to Wolff’s *civitas maxima*. In accordance with his emphasis on liberty and plurality, Vattel’s international society was founded on the mutual recognition of the sovereignty and legal equality of states. As Andrew Hurrell notes, it was thus Vattel who was the “first writer on international law to elucidate clearly the principle of sovereign equality, that all states possess equal rights—or an equal capacity for rights.”¹²² Indeed, as Vattel famously wrote: “A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom.”¹²³ Of course, in this we see the beginning of the emergence of the notion of the international system of sovereign states that was formally articulated shortly thereafter by the Göttingen School theorist A.H.L. Heeren.

For Vattel, the international system was, in accordance with the admitted absence of a political superior, a self-help system within which the principle of self-preservation could be said to provide the overwhelming impetus for action. War, in Vattel’s view was simply an extension of politics, the means according to which states secure their rights. In this system, a “balance of power” was the necessary means according to which conflict may be avoided. Indeed, it is in his explication of the concept of the balance of power that Vattel’s understanding of European international society—and it was just that, exclusively European—is made most apparent:

Europe forms a political system in which the Nations inhabiting this part of the world are bound together by their relations and various interests into a single body. It is no longer, as in former times, a confused heap of

detached parts, each of which has but little concern for the lot of the others, and rarely troubled itself over what did not immediately affect it. The constant attention of sovereigns to all that goes on, the custom of resident ministers, the continual negotiations that take place, make of modern Europe a sort of Republic, whose members—each independent, but all bound together by a common interest—unite for the maintenance of order and the preservation of liberty. This is what has given rise to the well-known principle of the balance of power, by which is meant an arrangement of affairs so that no State shall be in a position to have absolute mastery and dominate over the others.¹²⁴

Despite his pluralism and emphasis on the self-preservation of the sovereign state and although his future critics certainly did not see it in that way however, it is possible to identify a residual moral impetus in Vattel's work. Known as the *offices of humanity* and discussed in the opening chapter of Book II, "Nations Considered in their Relation with Other Nations," these offices entailed the "duty of mutual assistance which men owe to one another because they are men, that is to say, because they are made to live together in society and are of necessity dependent upon one another's aid for their preservation and happiness."¹²⁵ In this vein, Vattel introduced the common duties of nations whilst maintaining, contrary to Wolff, that "it is enough that Nations conform to the demands made upon them by the natural and world-wide society established among all men."¹²⁶

Vattel's theory of the law of nations marked one of the most significant turning points in both the history of international law and the development of Grotian scholarship. In the first instance, Vattel introduced the concept of the international system of sovereign states and its relationship to a notion of international society that featured so highly in Hedley Bull's treatment of the Grotian tradition. Second, although Vattel did not achieve a complete separation of law and morality, retaining a minimal moral sense with his *offices of humanity*, his pluralist outlook viewed the possibility of a universal moral order with immense scepticism. When considered alongside the central precepts of legal positivism, to be discussed shortly, Vattel may be seen as facilitating the final divorce of law and morality that followed in international legal scholarship. For this reason, his work is widely viewed among "strict" Grotians of the twentieth century, most prominently Cornelius van Vollenhoven, as a "perversion of the Gospel."¹²⁷ Indeed, as Koskenniemi writes, "[g]rowing directly out of the ideological environment of the Enlightenment, Vattel's work was purged of Christian morality and theological authorities."¹²⁸ Finally, although Vattel retained the fundamental principles of the law of nature as the foundations of his law of nations, by favoring the

authority of the voluntary, or positive, law of nations he paved the way for legal positivism to really take hold in the late eighteenth and early nineteenth centuries. As such, Vattel's work marked the effective end of the dominance of natural legal thought in scholarship concerned with the law of nations.

The Science of International Law

In the period immediately following Vattel, international legal scholars sought to establish their subject as a professional field of study, "an academic discipline taught separately from, on the one hand, theology, philosophy and natural law and, on the other hand, civil law."¹²⁹ This "professional discourse" built on the works of Vattel who soon superseded Grotius as providing the most comprehensive treatment of the law of nations to date. Foremost among the most prominent writers of this period were G.F. von Martens (1756–1821) and J.L. Klüber (1762–1836) whose *Droit des gens moderne de l'Europe* sought not only to establish states as the role subjects of international law but to outline the set of "rights which form[ed] the corpus of the law between (European) States."¹³⁰ For Martens, like most of his contemporaries, the positive law of nations "had its foundation in the solidarity and cohesion of the Western Christian nations."¹³¹ In his 1788 *Précis du droit gens moderne de L'Europe fondés sur les traits et Passage* he wrote:

The interest with which each of the European powers shows in the affairs of all others, as well as the maintenance of the balance of power and the similarity of morals in Christian Europe, together with bonds linking several of them—be it by the personality of the same monarch, be it by a system of federation, be it by common political or religious interest—all this together permits one to look at Europe as a whole as different from all other parts of the world; to wit, not only with respect to geography, but as a special union of states, which—without having at any time contractually founded a general and positive society—has her own laws, morals and customs, and which in some respects is similar to a nation having not yet agreed on constitution.¹³²

As Wilhelm Grewe notes, "[i]t is this concept of 'Europe' with its link to 'Christendom', a secularized cultural community founded on Christian heritage but to a certain degree still rooted in religious soil, which is reflected in the new designation for the law of nations of this age: 'Droit public de l'Europe'."¹³³

Following the Congress of Vienna with its concerted effort to submit the actions of independent sovereigns to the law of nations, the Göttingen

School emerged as the center of counter-revolutionary thought in Europe. Although the historiographer Leopold von Ranke is probably the “school’s” most famous member, the works of A.H.L. Heeren are of greater significance here. In particular, although writers before him, such as Friedrich von Gentz, had discussed the idea of a states-system, Heeren particularly developed the idea of a *Staaten-system*: “the union of several contiguous states resembling each other in their manners, religion and degree of social improvement, and cemented together by a reciprocity of interests.”¹³⁴ According to Heeren, the most “essential property” of the European states-system was “its *internal freedom*; that is, the stability and mutual independence of its members,”¹³⁵ thereby developing those principles that had previously appeared in Vattel’s treatise. Although this union was based on principles that had previously been central to natural legal and moral conceptions of international society, the law which united the states of Europe was, first and foremost, positive in orientation.

The Positivists

Following the appearance of *Le Droit des Gens*, two factors can be attributed with responsibility bringing an end to the golden era of Grotius. The first is the immensely influential Immanuel Kant while the second is the rise to prominence of positive law as the fundamental basis of the law of nations. Indeed, despite the overwhelming popularity of *De Jure Belli ac Pacis* in the late seventeenth century, before long Grotius would be called an “*enfant de maucaise foi*” (dishonest child) by Jean-Jacques Rousseau and lined up with Pufendorf and Vattel as one of Kant’s “sorry comforters.”¹³⁶ For Kant, as with Hobbes, “the state of peace” was something that did not occur naturally but had to be “*established*.”¹³⁷ Contrary to both Hobbes and Grotius’ understandings of its establishment via the mechanism of the social contract, Kant argued that peace would be established by ensuring that the “civil constitution of every nation . . . [was] republican,” by basing the “right of nations . . . on a federation of free states,” and limiting “cosmopolitan right . . . to conditions of universal *hospitality*.”¹³⁸ Thus, in direct criticism of the Grotian scheme, he wrote that “while Hugo Grotius, Pufendorf, Vattel and others whose philosophically and diplomatically formulated codes do not and cannot have the slightest legal force (since nations do not stand under any common external constraints), are always piously cited in justification of a war of aggression (and who therefore provide only cold comfort), no example can be given of a nation having forgone its intention [of going to war] based on the arguments provided by such important men.”¹³⁹ However, as Tuck writes with reference to this passage, “Kant was accepting here the conventional account in Germany of Grotius’s theory.”¹⁴⁰ What is more,

further damaging Grotius' standing, "in his lectures [Kant] recommended Vattel as the best book on international law."¹⁴¹

However, the biggest challenge to the natural law of nations came with the rise to prominence of positive law. This is not to say that positive law had not existed until now for, as we will see, that is patently untrue. Not only had positive law been in existence for some time but proponents of the natural law of nations, such as Grotius, often recognized its validity within limited bounds. Contrary to natural law, in its most general form, positive law contends that the law of nations is derived exclusively from the tacit agreements, conventions and treaties established between nations. However, as Terry Nardin points out, three main forms of positive law can be discerned in the history of the law of nations. The first maintains that positive law, otherwise known as "law properly so-called," "is a set of rules distinguishable from revealed divine law, from rational morality (natural law), and from the moral conventions of any actual society."¹⁴² As Richard Zouche, one of the foremost proponents of this understanding of positive law, wrote:

Law between Nations is the law which is recognized in the community of different princes or peoples who hold sovereign power—that is to say, the law which has been accepted among most nations by customs in harmony with reason, and that upon which single nations agree with one another, and which is observed by single nations at peace and by those at war.¹⁴³

As discussed previously, this law of nations has a two-fold meaning. "In the first place," Zouche wrote, "it is the common element in the law which peoples of single nations use among themselves"¹⁴⁴ and thus equates to a common form of civil law. In the second sense however, "it is the law which is observed in common between princes or people of different nations; since [with] this law, as a jurist also says, nations are separated, kingdoms founded, commerce instituted, and lastly, wars introduced."¹⁴⁵ Not unlike Suárez distinction between the two forms of *jus gentium*, Zouche titled this latter form the *jus inter gentes*, what was known in Roman law as *jus feciale*. The *jus inter gentes* "besides common customs," included "anything upon which single nations agree with other single nations, for example by compacts, conventions and treaties . . . since the solemn promise of a state establishes law, and whole people, no less than single persons, are bound by their own consent."¹⁴⁶

The second definition of positive law that Nardin offers is far more restrictive in nature and contends that "authentic law is law declared or 'posited' (Latin *positum*, decreed) by a superior but this-worldly authority, a sovereign lawmaker."¹⁴⁷ The most prominent proponent of this conceptualization of positive law was undoubtedly John Austin. As H.L.A. Hart wrote, John Austin (1790–1859) was

a close associate and neighbor of Jeremy Bentham, the figure responsible for coining the term “international law”¹⁴⁸ and who was, as Charles Covell writes, particularly opposed to “the established tradition of natural law theorizing.”¹⁴⁹ In particular, Bentham was concerned about the inherent association of law and morals central to the natural legal approach, arguing that they must necessarily be viewed as separate realms of consideration. Law was to be formally analyzed in terms of jurisprudence and in isolation from moral concerns.

A fellow utilitarian, although self-avowedly less radical than Bentham, Austin shared with him a number of precepts critical to his theory of jurisprudence. First is the notion of command, that is “an expression of desire by a person who has the purpose, and some power, to inflict an evil in case the desire be disregarded.”¹⁵⁰ Thus, Austin wrote that “[a] command . . . is a signification of desire . . . [that] is distinguished from other significations of desire by this peculiarity: that the party to whom it is directed is liable to evil from the other, in case he comply not with the desire.”¹⁵¹ As such, the recipient of a command is “bound” or “obliged” to obey it and thus “[c]ommand and duty are . . . correlative terms.”¹⁵² This notion of “law as command” is, unsurprisingly, often viewed as having originated with Hobbes. The second precept of Austin’s theory of jurisprudence pertains to what he terms the “habit of obedience.” Laws “properly so-called,” Austin wrote, “are commands” and can be divided into four types; divine laws, positive laws, positive morality and laws metaphorical or figurative.¹⁵³ The subject matter of that area of legal theory with which he is concerned, jurisprudence, “is positive law: law, simply and strictly so called: or law set by political superiors to political inferiors.”¹⁵⁴ In particular, Austin argued that in the absence of a political superior in international society, international law is not positive law but rather a form of international morality. He wrote that “the law obtaining between nations is not a positive law: for every positive law is set by a given sovereign to a person or persons in a state of subjection to its author.”¹⁵⁵ Austin also said the following of Grotius:

Grotius, Puffendorf, and the other writers of the so-called law of nations, have fallen into a similar confusion of ideas: they have confounded positive international morality, or the rules which actually obtain among civilized nations in their mutual intercourse, with their own vague conceptions of international morality as it *ought to be*, with that indeterminable something which they conceive it would be, if it conformed to that indeterminate thing they call the law of nature.¹⁵⁶

Finally, the third notion of positive law Nardin discusses seeks to “defend international law against the view that law is an expression of sovereign will.”¹⁵⁷ As

will be seen in chapter 4, this task was undertaken most prominently by Hans Kelsen and H.L.A. Hart who, despite following Austin to a great extent, omitted the requirement of a sovereign superior from their understandings of law, thereby enabling international law to be viewed as a weak form of law.

Austin's conception of international law elicited a wide range of responses from writers as diverse as Sir Thomas Erskine Holland who "allocated international law a place between law (in the strict sense of national legislation) and morals,"¹⁵⁸ James Lorimer, who not only argued that international law is "particularly dependent on natural law" but "relied fundamentally on God as the source of natural law,"¹⁵⁹ and Robert Phillimore, who included divine law and the "revealed will of God" among the four sources of international law.¹⁶⁰ At the same time, writers such as John Westlake and Henry Sumner Maine conceived international law as having two main sources, "custom and reason."¹⁶¹ This, of course, became the standard view of international law as combining elements of natural and positive law that had previously appeared in the works of Wolff, Vattel, and Wheaton and later became known as the "Grotian tradition of international law." Despite these contributions however, the most pivotal steps in the revival of Grotius' works in the nineteenth century took place in American international legal scholarship and, in particular, the works of James Kent and Henry Wheaton.

American International Law

Although it is rarely discussed, the influence of Grotius' works in the early years of the American Republic was considerable. Not only were his concepts of divisible sovereignty and the acquisition of unoccupied lands employed to justify the act of colonization and the practices that went with it but, as both Bernard Bailyn and Philip A. Hamburger argue, the central precepts of his law of nature featured in the drafting of the American Constitution.¹⁶² What is more, the leading political figures of the time Benjamin Franklin, Thomas Jefferson, Alexander Hamilton, and John Adams all highly endorsed and recommended the reading of Grotius' works.¹⁶³ For example, in his "Proposals Relating to the Education of Youth in Pennsylvania" Benjamin Franklin argued that in "Questions of Right and Wrong, Justice and Injustice" youth ought to be acquainted with the works of Grotius and Pufendorf in order to resolve disputes.¹⁶⁴ Similarly, a young Alexander Hamilton, then a student at King's College New York, wrote in response to a letter from A.W. Farmer concerning the controversy between Great Britain and its American colonies:

I shall, henceforth, begin to make some allowance for that enmity, you have discovered to the *natural rights* of mankind. For, though ignorance of

them in this enlightened age cannot be admitted, as a sufficient excuse for you; yet it ought, in some measure to extenuate your guilt. If you will follow my advice, there still may be hopes of your reformation. Apply yourself, without delay, to the study of the law of nature. I would recommend for your perusal, Grotius, Puffendorf, Locke, Montesquieu, and Burlamaqui.¹⁶⁵

Indeed, the works of Grotius were consulted by such prominent figures on a range of issues both scholastic and practical in nature. Thomas Jefferson drew on his writings, along with those of Pufendorf and Wolff, in his public paper on the French Treaties, not to mention at numerous other places in his work.¹⁶⁶ Indeed, this particular discussion of Grotius in Jefferson's work was also picked up and commented upon by Alexander Hamilton as he sought to apply it to the question of obligation in the interpretation of treaties.¹⁶⁷ Similarly, Hamilton also drew upon Grotius in a letter to George Washington regarding the right of passage,¹⁶⁸ while John Adams and Thomas Jefferson were engaged in a long-running debate over the translation of certain Greek tracts in Grotius' works.¹⁶⁹ However, although these figures all contributed to the elevated profile of Grotius in American scholarship and, in many instances, came to associate his works with questions of justice and morality, as in Franklin's proposal, it was not until the works of James Kent and Henry Wheaton that a fully fledged notion of "Grotian morality" emerged.

James Kent

James Kent (1763–1847) is best known as the Chancellor of the State of New York, Professor of Law at Columbia University and the author of the "first great American law treatise," the four volume *Commentaries on American Law* (1826–1830).¹⁷⁰ Although not a work of international law, Kent's *Commentaries* begins with a 200-page exposition on the law of nations that made a two-fold contribution to the development of "Grotian" scholarship and the later Grotian tradition. In the first instance, in Kent's history of the law of nations we see the same tripartite division of international law into its constituent natural, positive and mixed (later "Grotian") forms that emerged in the late eighteenth century and continued to inform the Grotian tradition in the twentieth century. Endorsing the middle road, Kent wrote:

The most useful and practical part of the law of nations is, no doubt, instituted as positive law, founded on usage, consent, and agreement. But it would be improper to separate this law entirely from natural jurisprudence, and not to consider it as deriving much of its force, and dignity, and

sanction, from the same principles of right reason, and the same view of the nature and constitution of man, from which the science of morality is deduced.¹⁷¹

Although elements included in his further exposition of the “mixed” form of international law were certainly compatible with Grotius’ ideas, for example the claim that “[s]tates, or bodies politic, are to be considered as moral persons, having a public will, capable and free to do right and wrong, inasmuch as they are collections of individuals,”¹⁷² the category was at no time identified as “Grotian.” Rather, as will be seen, the term “Grotian” was used to designate a form of ethics that combined Christian values of brotherly love and charity with the law of nations.

In Kent’s *Commentaries* therefore, the term “Grotian” was defined in direct association with the historical figure of Hugo Grotius despite diverging from Grotius’ ideas in one critical area. Heaping praise upon him, Kent viewed Grotius as a moral crusader, writing that he has “justly been considered as the father of the law of nations; and he arose like a splendid luminary dispelling darkness and confusion, and imparting light and security to the intercourse of nations.”¹⁷³ As Mark Weston Janis argues, “Grotius was attractive to Kent . . . because Grotius recognized that there was an inevitable conflict between the awful reality of war and the Christian ideal of universal love and brotherhood.”¹⁷⁴ Indeed, Kent described the “Grotian ethic” as standing “in favour of the natural law of morality” and arguing that “justice was of perpetual obligation, and essential to the well being of every society, and that the great commonwealth of nations stood in need of law, and the observance of faith, and the practice of justice.”¹⁷⁵

According to Kent, the “object of Grotius” was to correct the false doctrines of war that he saw prevailing about him:

by showing a community of sentiment among the wise and learned of all nations and ages in favour of the natural law of morality. He likewise undertook to show that justice was of perpetual obligation, and essential to the well being of every society, and that the great commonwealth of nations stood in need of law, and the observance of faith, and the practice of justice.¹⁷⁶

The sense of “Grotian morality” Kent promulgated is explained as follows:

We ought not, therefore, to separate the science of public law from that of ethics, not encourage the dangerous suggestion, that governments are not so strictly bound by the obligations of truth, justice, and humanity, in

relation to other powers, as they are in the management of their own local concerns. States, or bodies politic, are to be considered as moral persons, having a public will, capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carries with him into the service of the community the same binding law of morality and religion which ought to control his conduct in private life.

The law of nations is a complex system, composed of various ingredients. It consists of general principles of right and justice, equally suitable to the government of individuals in a state of natural equality, and to the relation and conduct of nations; of a collection of usages and customs, the growth of civilization and commerce; and of a code of conventional or positive law. In the absence of these latter regulations, the intercourse and conduct of nations are to be governed by principles fairly to be deduced from the rights and duties of nations, and the nature of moral obligation; and we have the authority of the lawyers of antiquity, and of some of the first masters in the modern school of public law, for placing the moral obligation of nations and of individuals on similar grounds, and for considering individual and national morality as parts of one and the same science.¹⁷⁷

Critically however, despite naming it “Grotian,” Kent did not consider this morality, or indeed international law that is derived from it, as universal. Rather, contrary to Grotius’ desire for universality, he argued that “the Christian nations of Europe, and their descendants on this side of the Atlantic, by the vast superiority of their attainments in arts, and science, and commerce, as well as in policy and government; and above all, the brighter light, the more certain truths, and the more definite sanction, which Christianity has communicated to the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves.”¹⁷⁸ Together, he wrote, these Christian nations of Europe and America form a Christian “community of nations.”

By arguing against the universality of the law of nations and making Christian ethics one of its central components, Kent attempted to achieve the inclusion of the United States within what was known to be the “civilised world.” By doing so, he reasoned that the new republic’s precarious sovereignty might be recognized by the nations of Europe.¹⁷⁹ Furthermore, as Janis argues, “Kent was employing Christianity generally and the Grotian ethic particularly to grapple with one of international law’s most troublesome open questions, its efficacy.”¹⁸⁰ Again, by describing the law of nations in terms of Christianity, Kent was able to explain that the “positive substantive rules of international law” are based upon “a moral procedural foundation.”¹⁸¹

However, this response did not bring the debate to a close and when Henry Wheaton published his most famous work some years later it had intensified significantly.

Henry Wheaton

When Henry Wheaton (1785–1848) published his *Elements of International Law* in 1836, John Austin's *The Province of Jurisprudence Determined* was exerting a significant influence on the perceived efficacy of international law. Unlike many of his contemporaries however, Wheaton did not respond to Austin's criticisms of international law by "sheltering" "in the observation that the 'sanction' of international law is war or the State's own protection of its self-interest"¹⁸² but agreed, to some extent at least, that international law was "positive morality." Thus he wrote that:

There can be no law where there is no legislation, and there is no legislation where there is no superior; between nations there is nothing but moral obligation resulting from reason which teaches that a certain conduct in their mutual relations contributes the most effectively to the general happiness. It is only in the metaphorical sense that international law may be called law. The laws properly speaking are the commands which emanate from a superior, to which are annexed as a sanction an eventual punishment.¹⁸³

As with Kent, Christianity was afforded a position of primacy in Wheaton's work and, as such, "the practical observance of the rules of justice among states" was indicative of the existence and efficacy of international law.¹⁸⁴ In particular however, it was Hugo Grotius who was attributed with bringing about "a most salutary change in the practical intercourse of nations in favour of humanity and justice."¹⁸⁵ As Wheaton continued, this "salutary change" has created within the "international intercourse of Europe, and the nations of European descent . . . superior humanity, justice and liberality."¹⁸⁶ However, what is critical here is that this "humanity, justice and liberality" was indeed, "superior" because it applied only to Europe and other civilized nations. Indeed, Wheaton went so far as to limit the scope of his work to the "general principles which may fairly be considered to have received the assent of most civilized and Christian nations."¹⁸⁷ Thus, in a similar, although more strictly applied manner to Kent, Wheaton also maintained that the law of nations was not truly universal but only applied to "civilized" nations. He asserted that public international law "has always been, and still is, limited to the civilised and Christian people of Europe or to those of European origin."¹⁸⁸

Making his point even more firmly he wrote:

There is then, according to these writers, no universal, immutable law of nations binding upon the whole human race—which all mankind in all ages and countries ancient and modern, savage and civilised, Christian and pagan, have recognised in theory or in practice, have professed to obey, or have in fact obeyed.¹⁸⁹

Thus, for Wheaton, to be “Grotian” meant adhering to an understanding of the law of nations that was based on a form of vague Christian ethics that promoted notions of justice and humanity.

Conclusion

Among the great natural law thinkers of the late seventeenth and early eighteenth centuries, Grotius was widely revered as the field’s greatest proponent. For Pufendorf and Barbeyrac, not to mention many others, Grotius could be considered the “father of modern natural law,” the figure who wrested the law of nature from its ecclesiastical foundations, his “impious hypothesis” replacing God with human reason. However, for Pufendorf at least, the assumption that Grotius was the “father of modern natural law” represented something of a logical contradiction. Indeed, as we have seen in this chapter, among Pufendorf’s aims in revising Grotius’ theory of the law of nature was its very dissection from its association with notions of religious morality. In focusing on this aspect of Grotius’ thought Pufendorf at least implicitly acknowledged that Grotian natural law was not fully modern but retained a pre-modern connection to its ecclesiastical roots.

With this in mind, despite following his intellectual father to a great extent, Pufendorf made a number of important amendments to Grotius’ thought. In particular and as a function of his desire to reconcile the contending views of Grotius and Hobbes, Pufendorf sought to achieve a more satisfactory accommodation of the human desires for self-preservation and sociability, and include a strong notion of obligation in his understanding of natural law. However, his success in achieving these aims, particularly the latter endeavor, is somewhat questionable. Indeed, regardless of his intentions, Pufendorf’s most significant contributions to the development of Grotian scholarship are undoubtedly his claim that the law of nations *is* the law of nature applied to nations, and the distinction he drew between moral theology and natural and civil law. In doing so, Pufendorf not only challenged the fusion of the moral and legal order that stood at the center of Grotius’ thought, but its hierarchical structure.

Significantly however, despite these modifications, as one of Grotius' earliest intellectual descendents, for Pufendorf the term "Grotian" referred directly to the thought of Grotius himself. For Leibniz however, Pufendorf's attachment to Grotius was not strong enough. Rather the separation of natural law and moral theology he proposed amounted to an unjustified perversion of the legal and moral order Grotius had endorsed. In this, and in his desire to see the end of religious conflict in Europe and the re-establishment of the *respublica Christiana*, Leibniz remains perhaps the most thoroughly "Grotian" thinker to appear after Grotius himself.

Despite the extent to which they drew on the writings of Pufendorf, Leibniz and Grotius himself, the works of Wolff and Vattel brought with them a number of significant shifts in Grotian scholarship. In the first instance, their works represent the final disassociation of the law of nature from theologically derived moral principles. With this, Grotius became relegated to the annals of history, an antiquated thinker who stood on the cusp of the modern era of the law of nations but held steadfastly to his belief that the legal and moral orders must ultimately be reconciled to one another. Second, in distinguishing between the "necessary" and "voluntary" law of nations Wolff, and following him Vattel, provided the foundations of the analytically constituted "mixed" tradition of international law that became known in later scholarship as the "Grotian tradition." From the works of Vattel onward, the term "Grotian" was thus used to refer to either an historically constituted pattern of thought centered around the relationship between law and Christian morality and derived explicitly from Grotius' works, or an analytical tradition that combined elements of the "necessary" and "voluntary" laws of nations.

Indeed, in the work of Henry Wheaton we see not only references to an historically constituted "Grotian" moral tradition, but the further development of the intermediary category of international legal thought. Significantly however, the epistemological implications of schematizing international law in this manner appear not to have been afforded any consideration at all. In particular, the sense in which the positive, natural and mixed traditions of international law were in fact "traditions" was not addressed. Rather, the idea that international legal thought could be divided into three traditions appears to have emerged from Wolff and Vattel's distinction between the "necessary" and "voluntary" laws of nations, otherwise known as natural and positive law, and developed in an organic fashion in the subsequent writings of the early nineteenth-century international lawyers. As we will see in chapter 4, this pattern of scholarship was perpetuated in later international legal thought and had reached the status of conventional wisdom by the twentieth-century works of writers such as Lassa Oppenheim and Arthur Nussbaum. Thus, it

was only with the much later work of Hersch Lauterpacht that the implications of dividing the history of international law in this manner were considered although, as we will see chapter 4, Lauterpacht's discussion of this matter was hardly comprehensive.

However, of equal or greater significance to the substantive contents of the twentieth-century Grotian traditions, in particular Lauterpacht's seminal construction, is the emphasis on Grotian morality that was revived in the works of Kent and Wheaton. As we will see in chapter 4, by refocusing the attention of Grotian scholarship on Grotius' understanding of morality, Wheaton and Kent foreshadowed the more substantial revival of Grotius' works that began at the turn of the twentieth century.

CHAPTER 4

The Grotian Tradition in International Thought

In Europe, Grotius's work was not esteemed in the latter part of the eighteenth and former part of the nineteenth century, when "state sovereignty" was the watchword, and international law a garment which the nations tore and threw off whenever it suited their interested to do so. But its importance increased when the peace movement became stronger (1871), and when the Hague Peace Conference and the League of Nations meetings came near.¹

In Hedley Bull's estimation two figures can be held responsible for the Grotian revival that took place at the beginning of the twentieth century. The first is the Dutch scholar Cornelius van Vollenhoven whose 1918 *The Three Stages in the Evolution of the Law of Nations* sought to defend Grotius' work against the "misshapen conglomeration of hypocrisy and cynicism" that was, in his view, Vattel's *Le Droit des Gens*.² The second figure is Hersch Lauterpacht whose 1946 work "The Grotian Tradition in International Law" constitutes the most comprehensive expression of the "Grotian tradition" to date. It is thus his contribution that is the central focus of this chapter. However, alongside Lauterpacht, the works of van Vollenhoven and a range of other scholars who contributed to the development of the Grotian tradition in the early twentieth century, including Alfred Verdross, James Brierly and Georg Schwarzenberger will also be discussed.

The chapter begins by discussing the resurgent interest in Grotius' works that accompanied the Hague Conventions of 1899 and 1907 and the formation of the Grotius Society, and renewed interest in the law of nature that fuelled

the return of the Grotian tradition. In particular, it documents the return of “Grotian morality,” complete with the principles of *caritas* and *temperamenta* in the works of Cornelius van Vollenhoven. The chapter then continues by introducing the figure of Hersch Lauterpacht and demonstrating that his variant of the “Grotian tradition” emerged in response to challenges posed to international law by positivist legal theory and, in international relations, the primacy of realist thought. The final section then outlines the central precepts of Lauterpacht’s Grotian tradition. In doing so, it demonstrates that Lauterpacht entertained two distinct understandings of the term “Grotian,” neither of which was self-consciously conceived in terms of a specific notion of “tradition.” The first resembles an “analytical tradition” in its constitution and is derived from that mode of scholarship evident in the works of Wheaton and Oppenheim in which the term “Grotian” simply refers to the intermediary category of international legal thought that stands between the natural and positive law traditions. However, this is juxtaposed with an alternative understanding of the term “Grotian” that is derived explicitly from the works of Hugo Grotius himself and is primarily concerned with the position of morality in international law. As will be seen in chapter 5, that Lauterpacht entertained two visions of what it means to be “Grotian” is of particular importance to its subsequent incarnations in the works of Martin Wight and Hedley Bull.

The Grotian Revival

The revival of Grotius’ popularity in the fields of International Relations and International Law was heralded by the proceedings of the First Hague Convention held in 1899. Although the representatives in attendance, convened at the personal initiative of Tsar Nicholas II, “failed to reach any general agreement on arms limitation,”³ they agreed to establish a Permanent Court of Arbitration. Here, for the first time, Grotius came to be associated with the concept of international arbitration, although the connection is a spurious one derived from a brief tract of the tome that is *De Jure Belli ac Pacis*. Here Grotius suggested a number of means according to which “independent nations may settle their disputed rights without coming to the decision of the sword,” the first of which is arbitration, the convening of a conference between the contending parties.⁴ Despite this fairly obscure reference, little evidence exists to suggest that Grotius was anything more than a figure-head for the Hague conference, a great classical theorist whose desire to limit the incidence and severity of war was particularly cogent to the aspirations of the delegates in attendance. That said, his status was significant enough to warrant Pope Leo XIII being denied attendance at the conference on account of the fact that *De Jure Belli ac Pacis* remained on the Papal Index.

Grotius' association with the Hague Conventions was marked by a wreath-laying ceremony at his tomb in Delft:

the ceremony of place [sic] the wreath upon the tomb of Grotius took place on the 4th of July, in the Nieuwe Kerk, in the city of Delft. Representatives from the various delegations in the conferences were present. Outside, the winds raged and the rain beat furiously, as if nature were trying to remind the assemblage of the storm and stress in which the life of the honoured dead was passed. Within, the great organ poured out its wonderous tones, and at eleven o'clock the ceremony began.⁵

In the twenty years that followed, Grotius' profile continued to rise. In 1901 A.C. Campbell published a much needed English translation of *De Jure Belli ac Pacis* under the title of *The Rights of War and Peace*, the translation that Martin Wight was later to rely on.⁶ Prior to Campbell, the most popular English translation of the work was a highly unsatisfactory abridged version derived from Jean Barbeyrac's French translation and published by William Whewell.⁷ In 1910 the Carnegie Endowment for International Peace commissioned a further translation by Francis W. Kelsey, the 1964 edition of which remained the most readily available English translation of Grotius' most famous work until the recent publication of Richard Tuck's edition.⁸ However, the biggest boost to Grotian scholarship during this period was heralded by the establishment of the "Grotius Society" and the publication of Cornelius van Vollenhoven's *The Three Stages in the Evolution of the Law of Nations*.

The "Grotius Society"

The "Grotius Society" was established in 1914 in response to the outbreak of World War I and the realization that the International Law Association included a number of "enemy aliens" in its ranks. As the first vice-president of the Society, Regius Professor of Civil Law at the University of Oxford, Henry Goudy, remarked in his opening address to the Society's inaugural meeting in 1915, "[t]he object of founding the Society has been to afford an opportunity to those interested in International Law or discussing from a cosmopolitan point of view the acts of belligerent and neutral States in the present war, and the problems to which it is almost daily giving birth."⁹ Beyond this general statement of purpose, the Grotius Society did not seek to promulgate any one specific perspective on international law in international relations but rather sought to facilitate dialogue and debate between a range of views.

The position of Grotius within the Grotius Society was a somewhat precarious one. The name the "Grotius Society" was settled on in recognition of

the fact that a large number of international lawyers viewed Grotius as the “founder of public International Law . . . the first . . . to envisage and expound it as a system and base it on solid foundations.”¹⁰ As Goudy continued, “[t]hough much of ‘*De Jure Belli ac Pacis*’ is antiquated, and many of its notions about natural law and *jus gentium* can no longer be accepted, that great work must ever be regarded as the *matrix* of our science, and must be resorted to for the statement of fundamental truths.”¹¹ However, as he remarked in the introduction to the second edition of the Society’s journal, *Transactions of the Grotius Society*, “no attempt” had been made to “estimate the character of Grotius’s writings nor the Grotian system as a whole” and, although the first of these omissions received some degree of attention in subsequent volumes of the journal, any attempt to discuss the “Grotian system” as a whole is conspicuously absent from its publications.¹² Thus, articles and papers referring to Grotius were generally concerned with biographical details.¹³ In the main however, the Grotius Society publications were concerned with questions of international law and paid relatively little attention to the namesake of their association.

The Grotius Society boasted an illustrious membership during its period of operation. Among its founding members were T.J. Lawrence, whose works particularly influenced the later Grotian writings of Martin Wight and Hedley Bull, and G.G. Phillimore whose “Phillimore Committee,” appointed by British Prime Minister Lloyd George in 1917 to draft a proposal for the establishment of the League of Nations, produced the “Cecil Draft” which was presented at the negotiations in Paris. In 1916 J.A. Hobson became a member of the Society and was joined shortly after by Coleman Phillipson. In 1919 four particularly significant honorary memberships were granted to President Woodrow Wilson, James Brown Scott, the international lawyer responsible for many of the Carnegie Endowment’s publications in the history of international law, General Jan Smuts, and American Senator Elihu Root. In subsequent years membership was extended to James L. Brierly, Arnold D. McNair, Gilbert Murray, Hersch Lauterpacht, Ellery Stowell, David Davies, Alfred Zimmermann, Wilfred Jenks, Georg Schwarzenberger, and Elihu Lauterpacht. Rather than attempting to form the multifarious ideas presented within the scope of the Grotius Society meetings and publications in a single coherent doctrine, more is to be gained by looking at its members both individually and within the context of the wider international legal debates in which they themselves were engaged.

Cornelius van Vollenhoven

Although his nationality precluded van Vollenhoven from membership, the Grotius Society records indicate that he attended a number of its meetings in

an unofficial capacity. As the scholar who exerted the most significant impact on the revival of Grotian scholarship in the twentieth century prior to Lauterpacht it is not surprising that he was granted some sort of guest status. Van Vollenhoven's admiration of Grotius was clear in his argument that:

Grotius's Law of Nations stands at the door, and it knocks. For three hundred years we have let it knock. Now it is getting too strong for us, we have not yet turned the key, but the bolts have been drawn.¹⁴

Van Vollenhoven's *The Three Stages in the Evolution of the Law of Nations* was "an incredible success: it was twice reprinted in its Dutch version and was translated into French, German and English."¹⁵ As mentioned earlier, the work essentially attempted to restore the status of Hugo Grotius' work in the face of its demise at the hands of Emerich de Vattel. As van Vollenhoven would write of *De Jure Belli ac Pacis* some years later, "[n]o book on international law written since Grotius radiates so much love, inspires so much confidence and restfulness to the soul as his book does."¹⁶ He explained his attraction to Grotius as follows:

States should not be at liberty to do good or evil, but their actions should be judged by strict rules of what is just and unjust; hostile engagements between states may no longer be a game of war, but a crime crying out for punishment; such is Grotius' most earnest conviction. This is what his whole book, entitled: "on the rights of war and peace" aims at.¹⁷

From Grotius' work then, van Vollenhoven derived what he called "Grotius' theorem" consisting of four doctrines.¹⁸ The first was the "doctrine of duties" which states, in a manner identical to Grotius, that in matters of justice, states and individuals are morally equivalent. The second doctrine centered around the manner in which "Grotius advocated a worldwide rule of law" in his attempt to bring an end to the lawlessness he witnessed around him.¹⁹ Unlike nineteenth-century "Grotians" such as James Kent and Henry Wheaton, the third Grotian doctrine did not conceive the law of nations as only being applicable to "civilized" Christian or European states. Rather, following Grotius, it is a universally applicable set of rights and obligations. Finally, and in accordance with Grotius' notions of *caritas* and *temperamenta*, "Grotius' theorem" also advocated "the duty of altruism and charity among nations."²⁰ Considered together then, van Vollenhoven's "Grotian theorem" maintained that war is only justified as an instrument of punishment.²¹

However, van Vollenhoven's use of Grotius has faced stringent criticism, most notably in Johanna Oudendijk's "Van Vollenhoven's 'The Three Stages

in the Evolution of the Law of Nations: A Case of Wishful Thinking.” Here Oudendijk argues that “instead of erecting on Grotius’ foundations a superstructure of his own he, *instilled* his own ideas into the existing argument and then presented the whole as Grotius’ work.”²² Although, Oudendijk is correct in her observation here, it is a method to which van Vollenhoven freely admitted. In particular, Kooijmans points out the opening tract of a lecture delivered at Columbia University in the mid-1920s entitled “Grotius and Geneva,” which makes this method explicit:²³

The following pages do not purpose to deal with Hugo Grotius and his book of 1625 “On the law of war and peace” in the light of the past. They purpose to deal with them in the light of the present. When a book of three centuries ago comes to the fore again in several countries, as by common consent, yet without any previous mutual understanding; when again it obtains a firm hold on the thoughts of mankind; and when, as was the case six years ago, [here van Vollenhoven was referring to a meeting of the Grotius Society in 1920] it is predicted that its influence “may even grow”—it must carry some message for the world of to-day. It is this message which solicits our interest and out [sic] attention.²⁴

Thus van Vollenhoven found no fault in the wholesale and outwardly anachronistic supplanting of Grotius’ ideas into the problems of the twentieth century. Significantly however, his doing so did not detract from the extent to which critical elements of Grotius’ conceptualization of morality, including *caritas* and *temperamenta*, featured in his work. Thus, alongside Lauterpacht, van Vollenhoven can be attributed with reviving the status of Grotius’ works in international scholarship and, in particular, refocusing it once more upon elements of his moral scheme.

The Law of Nature

Although Bull accurately identified van Vollenhoven and Lauterpacht as the two most important sources of the Grotian revival of the early twentieth century, a third somewhat unlikely figure, Alfred Verdross, should possibly be added to the lineup. I say “unlikely” here because, of course, Verdross was a student of Hans Kelsen and, more importantly, a prominent positivist of the Vienna School. These facts aside however, it was actually Verdross who “initiated a consideration of the natural law-based construction” of international law that had been “prefigured” by a number of classical scholars including Suárez

and Grotius.²⁵ As he admitted in his 1937 textbook, *Völkerrecht*:

The author of this book originally started—like the majority of jurists in the pre-War period—from legal positivism. However, on the basis of his various research activities he became more and more convinced that legal positivism, although it pretends to provide a realistic theory of law, is in truth based on an arbitrarily constricted view of law, because contrary to State practice it excludes from the sphere of law all legal principles which cannot be covered by its dogma concerning the will of States.²⁶

For Verdross then, as he wrote in his 1923 work on the *Verfassung der Völkerrechtsgemeinschaft* (Constitution of the International Legal Community), the binding force of international law was based upon “the existence of . . . a supra-positive ‘fundamental norm’ (*Grundnorm*) anchored in the law of nature.”²⁷ This, as Hersch Lauterpacht noted, sparked the “renaissance” and “revival” of natural law in international legal scholarship.²⁸ Alongside Lauterpacht and Verdross, James Brierly also stood as one of the most prominent international legal theorists to join the revival.

As Lauterpacht writes in his memorial essay, “Brierly’s Contribution to International Law,” Brierly “had no hesitation in pointing to the beneficent potentialities of a revived law of nature—for, on final analysis, he saw no other basis for it.”²⁹ In this vein, the central argument of Brierly’s inaugural lecture as the Chichele Professor of International Law and Diplomacy at the University of Oxford, “The Shortcomings of International Law,” contended that “international law lost the most faithful seed of development that it has ever had when, far too early for the health of the system, though doubtless inevitably, its foundation in natural law was undermined.”³⁰ This Brierly attributed to the “triumph of the positive school” and, in particular, the manner in which it undermined the efficacy of international law by bringing into question its ability to enforce its own rules.³¹

Most importantly however, Brierly maintained that the most significant “shortcoming” of international law was the hard distinction made between law and morality that was symptomatic of the dominance of positivist thought. On this he wrote:

We are too often tempted to forget the link between law and morals is much more fundamental than the difference between them and that the ultimate basis of the obligation to obey the law can only be a moral one. The problem of the binding nature of international law is only one aspect of the binding character of law in general, in the same way as the latter is

no more than an aspect of the wider problem of obligation in general. And this is a problem of ethics.³²

Drawing a connection between natural law and morality then, Brierly argued that “the law of nature stands for the existence of *purpose* in law, reminding us that law is not a meaningless set of arbitrary principles to be mechanically applied by courts, but that it exists for certain ends.”³³ Of course these ends were, in Brierly’s view, of a fundamentally ethical or moral determination.

Despite writing an essay commemorating Brierly’s contribution to international legal scholarship and editing a collection of Brierly’s essays in *The Basis of Obligation in International Law* (1958), it seems that Lauterpacht did so with some reluctance. Indeed, it appears that the two thinkers had something of a variable relationship. On the one hand, their mutual respect for one another is clear, Lauterpacht highlighting Brierly’s “intellectual integrity” and “impressive” contributions to international law, and Brierly noting Lauterpacht’s “brilliant examination” of Article 38 of the Statute of the Permanent Court of International Justice in his *Private Law Sources and Analogies of International Law*.³⁴ On the other hand however, it seems that Brierly, along with many others including E.H. Carr, viewed Lauterpacht’s ideas as being too utopian. In light of this, it is perhaps reasonable to suggest that while Brierly and Lauterpacht both sought the revival of the law of nature and the principles of morality embedded in it in international law, they were not in agreement about how this project was to be executed. As we will see in the following section, although he did not abide by the label, referring to himself as a “liberal,” Lauterpacht’s suggestions were certainly the more “utopian” of the two.

Hersch Lauterpacht

During his lifetime, Lauterpacht (1897–1960) published six major works in international relations and international law: *Private Sources and Analogies of International Law* (1927), *The Function of Law in the International Community* (1933), *An International Bill of Rights* (1945), *The Development of International Law by the International Court* (1946), *Recognition in International Law* (1947) and *International Law and Human Rights* (1950). He also served as the editor of the *British Yearbook of International Law* and edited four editions of *Oppenheim’s International Law*. An edited collection of Lauterpacht’s own papers was published in four volumes by his son Elihu in the 1970s. Of these works, *The Function of Law in the International Community* is perhaps Lauterpacht’s most important. In particular, it is in this work that Lauterpacht argued not only that international law be viewed

as a complete system of law, but that problems of international politics could ultimately be solved by reference to international law.³⁵ As such, underlying this work is an implicit marginalization of international politics in the face of international law, an idea that, as we will see shortly, international relations theorists such as E.H. Carr found particularly problematic.

Published in 1946, "The Grotian Tradition in International Law" was, in Lauterpacht's words, "probably the most important [article] that he ever wrote."³⁶ At heart, this work sought to devise a set of fundamental principles according to which the frequency and conduct of war might be regulated, thereby finding "a place for law in a dangerous time."³⁷ As he had made clear in a paper delivered to the Royal Institute of International Affairs at Chatham House five years earlier, he considered the "decade preceding the Second World War as one of a period of retrogression."³⁸ Even with the peace of 1945 however, this deterioration had not been satisfactorily redressed as international law remained "unable to impose its authority over the essentials of the new international system."³⁹ Thus, Lauterpacht sought to contribute to the solution of this problem by proposing a set of means according to which the status of international law in the international community might be revived.

However, the position of law, and indeed, the moral principles Lauterpacht desired to promote within it, was not simply made dangerous by the tumultuous political climate of the time but, in intellectual terms, by the overwhelming predominance of realist thought in International Relations and, in international law, lingering challenges posed by positivist thought. In particular, the realist challenge of the interwar period, marked by the "defiant skepticism" of realist thinkers who questioned whether "international law could ever play more than an epiphenomenal role in the ordering of international life" showed no signs of abatement.⁴⁰ At the same time, both realist and positivist thought brought into serious question the position of morality in international law. In light of this, much of Lauterpacht's contribution to International Relations scholarship was framed as a response to the challenges posed by both legal positivist and realist thought. In particular, although they are seldom referred to in International Relations scholarship, Lauterpacht wrote a number of papers addressing what he believed to be the fundamental problems of realist thought, both in general in "On Realism, Especially in International Relations" presented to the Carlyle Club in 1953 and, in particular, that variant of it espoused by E.H. Carr in "Professor Carr on International Morality."⁴¹ At the same time, Lauterpacht also confronted not only legal positivism's general criticisms of the efficacy of international law but the specific merits and problems inherent in the work of Hans Kelsen. Interestingly, it was Kelsen who had supervised Lauterpacht's first doctoral dissertation at the University of Vienna and remained an object of admiration

throughout his life.⁴² As it is famously told, for much of his academic life, Lauterpacht adorned the wall of his study with three pictures, a photo each of Kelsen and Arnold McNair, his mentor and friend at the London School of Economics, and an engraving of Hugo Grotius.

As discussed in chapter 3, when John Austin set about devising his understanding of positive law he concluded that in the absence of a political superior in international society, international law could not be viewed as positive law but rather as a form of “international morality.” Following from this, the notion of positive law that Kelsen promulgated sought to “defend international law against the view that law is an expression of sovereign will.”⁴³ According to Kelsen’s “pure theory of law,” understood to be “pure” “because it seeks to preclude from the cognition of positive law all elements foreign thereto,”⁴⁴ law is defined as “the specific technique of a coercive order.”⁴⁵ Thus, Kelsen omitted two elements of Austin’s understanding of law from his definition; the claim that law is a “command” and the requirement that the “command” be made by a “sovereign.” By doing so, Kelsen highlighted the possibility of international law existing as law rather than simply as “positive international morality.” However, positive law remained fundamentally defined as “an order of coercion . . . derived from the arbitrary will of human authority” and had little concern for principles of morality.⁴⁶ As Kelsen wrote:

The fundamental difference between law and morals is: law is a coercive order, that is, a normative order that attempts to bring about a certain behaviour by attaching to the opposite behaviour a socially organized coercive act; whereas morals is [sic] a social order without sanctions.⁴⁷

Thus, for Kelsen, law may amount to the expression of moral principles but, crucially, remains distinct in its provision of coercive sanctions. By extension, although international law is actual law, its limited efficacy, particularly with regard to sanctions, make it a weaker form of positive law than civil law presided over by an established coercive order.

Despite displaying both affection and almost overwhelming respect for Kelsen, Lauterpacht’s early works specifically set out to demonstrate that international law is no less a system of law than civil law is. In particular, Lauterpacht argued against the treatment of “fundamental questions of international law apart from the corresponding phenomena in other fields of law” that marked both the legal positivist approach in general, and Kelsen’s writings in particular.⁴⁸ By viewing international law not in explicitly positivist terms but as “the body of rules of conduct, enforceable by external sanction which confer rights and impose obligations primarily, although not exclusively,

upon sovereign States and which owe their validity both to the consent of States as expressed in custom and treaties and to the fact of the existence of an international community of States and individuals”⁴⁹ Lauterpacht was able to place it on the same footing as civil law.

In particular, Lauterpacht ascribed to the notion that international law is an element of international society and, in doing so, provided an alternative basis from which external sanctions could be derived. Refuting those who doubted the existence of an international community or international society, he argued in an unpublished paper that “reality shows a picture of the modern world as one of common solidarity and community of interests in the field of economic endeavour and of scientific pursuit of humanitarian assistance—a unity transcending the borders of the sovereign State in a manner which has led many to believe that the exclusive and self-sufficing sovereign State is a challenge to a higher and ever present reality, and that interdependence and not independence is the primary and fundamental fact with which we are inescapably confronted.”⁵⁰ More publicly however, he presented a similar argument in a Royal Institute of International Affairs paper:

This essential and manifold solidarity, coupled with the necessity of securing the rule of law and the elimination of war, constitutes a harmony of interest which has a basis more real and tangible than the illusions of the sentimentalist or the hypocrisy of those satisfied with the existing *status quo*.⁵¹

For Lauterpacht, this solidarity was expressed in the Covenant of the League of Nations, the “fundamental charter of the international society.”⁵² However, with its failure to fulfil its “principal objective” of collective security following the Japanese invasion of Manchuria and Italy’s incursions into Abyssinia, Lauterpacht’s vision of the structure of international law was in serious trouble.⁵³ Indeed, in what Koskenniemi quite rightly calls an “uncharacteristic jump into informality and engagement,” Lauterpacht revealed his anxiety to his colleagues at Chatham House with the following stream of questions:⁵⁴

But what have we to do in the meantime? Ought we to abandon the League and start afresh as soon as the obstacles disappear? Ought we to maintain it and to adapt it to the needs of a retrogressive period? Ought we to pursue the ideal of universality by reforming the League so as to make it acceptable for everyone? Ought we to admit that if peace cannot be achieved by collective effort, there are other good things that can be achieved through it?⁵⁵

It appears that with this in mind, Lauterpacht dedicated much of his subsequent writing to establishing a more resolute theoretical basis for the regulation of conflict by the instrument of international law within international society. As we will see shortly, it was to the nineteenth century and, in particular, the writings of John Westlake that Lauterpacht turned in this endeavor.

However, Lauterpacht also attacked positivism in substantial terms, arguing that it failed to adhere to the universal principles of science, namely, “logical consistency and correspondence with the facts.”⁵⁶ In particular, he questioned the positivist claim that the mere existence of law instituted by states is fundamentally based on the principle of *pacta sunt servanda*, a norm not explicitly derived from the will of states. The rule of *pacta sunt servanda* in international law is explained in the *Vienna Convention on the Law of Treaties* as signifying the idea that “every treaty in force is binding upon the parties to it and must be performed by the parties in good faith.”⁵⁷ As the notion of “good faith” is not a positivist one but owes its origins to the law of nature, Lauterpacht attacked “positivism on its own terrain of scientific factuality” by highlighting the position of moral judgment even within its apparent amorality.⁵⁸

Although the revival of the law of nature as an independent source of international law was foremost among Lauterpacht’s aims however, his actual position was not that of a pure natural lawyer but someone who stood between the extremes of natural and positive law. In order to validate his intermediary position, Lauterpacht turned to the writings of John Westlake who, along with Henry Wheaton and T.J. Lawrence stood as the most prominent proponents of the intermediary approach in the nineteenth century. The first article that Lauterpacht ever published, “Westlake and Present Day International Law,” argued that Westlake’s dual notion of international law founded in both natural and positive law could provide not only a more stable basis for its functioning in the twentieth century, but could also facilitate the resuscitation of the liberal rationalism that had marked late nineteenth-century legal scholarship.⁵⁹ As will be seen shortly, these dual foundations formed the basis of the “Grotian tradition” and provided Lauterpacht with the means according to which international law could be infused with a moral sense.

The Realist Challenge

The second major challenge to international law in the inter-war period came with the rise of realist thought in international relations scholarship, particularly that promulgated by E.H. Carr. In particular, Carr’s identification of the “realist” and “utopian” positions gave rise to what has routinely been referred to as the “first great debate” of International Relations. However, unlike the debate between proponents of the natural and positive legal traditions that

was waged in some form or another for the best part of 200 years, serious doubt has been cast on the very existence of a corresponding debate in International Relations. Most prominently, Peter Wilson has argued that the “first great debate never actually occurred” for the primary reason that “in the sense of a cohesive, and certainly self-conscious school of thought, an ‘idealist’ or ‘utopian’ paradigm never actually existed.”⁶⁰ Idealism, like realism, Wilson writes, is an “extremely elastic term” that has been employed to designate a wide range of at times contending views and was actually Carr’s “clever device for discrediting a whole range of things that he happened to disagree with.”⁶¹ Thus although disparate versions of “idealist” or “utopian” thought are generally united by a fundamental belief in progress that is coupled with the claim that states have moral personalities and, by extension, moral rights and duties comparable to those imposed upon individuals, “idealism” is actually “a realist category of abuse.”⁶² In a similar vein, Lauterpacht argued that the terms “realism” and “utopianism” are value-laden from the outset. Realism, he argued, “is an assertion of victory even before the argument has started. It is an attempt to reduce the opponent at the very outset, to a lower intellectual status and to gain the confidence of others.”⁶³ As Carr himself wrote:

The antithesis of utopia and reality can in some aspects be identified with the antithesis of Free Will and Determinism. The utopian is necessarily voluntarist: he believes in the possibility of more or less radically rejecting reality, and substituting his utopia for it by an act of will. The realist analysis is a predetermined course of development which he is powerless to change.⁶⁴

“Utopianism,” as Lauterpacht argued, is thus a term Carr used to vilify “practically everyone who disagree[d]” with him.⁶⁵ Indeed, Lauterpacht was himself a specific target of Carr’s attack, Carr viewing him as a particularly and, of course, unduly optimistic utopian.⁶⁶ However, before we get to Carr’s specific criticisms of Lauterpacht’s work it is perhaps helpful to outline some of his more general criticisms of what he viewed as “utopian” thought.

Carr’s specific criticisms of the idealist vision of morality in international relations begins with the observations that writers such as Zimmern, Angell and Toynbee concentrated their interests “on the question of what morality ought ideally to be,” rather than on the actual “moral behaviour of states except to pass hasty and sweeping condemnation on it in the light of this ideal morality.”⁶⁷ Actual “international morality,” he argued, is not a “lofty ideal” of desirable behavior but actually “*is* the morality of states.”⁶⁸ However, the affirmed existence of the “morality of states” did not infer that states have moral rights and duties comparable to those of individuals as it had for the

idealists. The fundamental reason Carr gave for this point of disjuncture is that states are not capable of displaying emotions such as “love, hate, jealousy and other intimate emotions which play a large part in individual morality.”⁶⁹ According to this reasoning, the rights and obligations of states and individuals must therefore be determined on distinctly different bases.

However, what is immediately problematic about this set of arguments is that the so-called idealists were not really interested in morality at all. Ironically, given their apparent moral nihilism, it was realist thinkers such as Carr who brought the question of morality to the fore in inter-war International Relations. The “idealists” were rather more interested in the formation and functioning of the League of Nations, the pacific settlement of disputes, questions of progress and the prevention of war. While “idealist” approaches to such issues certainly drew on embedded notions of moral conduct in international relations, this was not the specific focus of this area of discourse. Perhaps coming closest to discussing international morality, Lord Robert Cecil famously argued in this vein that “the League of Nations must have a moral basis.”⁷⁰ However, rather than explaining precisely what this moral basis ought to entail, Cecil simply asserted that this must be the case as the League of Nations stood for “peace as opposed to war, [and] cooperation between nations as opposed to hostility.”⁷¹ A more developed understanding of the relationship between law and morality was evident in the works of the moderate idealist Alfred Zimmermann who argued that the problem of conflict in international relations:

is incapable of solution till men have come to regard States as moral personalities with duties as well as rights: till all the leading States, through the public opinion of their free citizens, have come to regard their duty to humanity as prior to the safe-guarding of their selfish purposes: and until there is a far closer agreement among the civilized peoples than seems possible to-day as to the principles which should underlie the ultimate organisation of the world on the basis of morality and justice.⁷²

Again, precisely what this morality entailed remained unspecified. Thus, when Reinhold Niebuhr accused idealists of occasioning “considerable moral and political confusion”⁷³ he was not far from the truth. Although a number of specific principles emerge from the fog of idealist thought with some degree of clarity, precisely what the “morality” they purported to apply to states entailed remained both vague and imprecise.

As one of Carr’s selected exemplars of the utopian position, Lauterpacht was afforded direct treatment. First, in arguing against the claim that the inter-war period had been “a transient period of retrogression,” Carr characterized

Lauterpacht as being overly optimistic. He wrote:

It is a meaningless evasion to pretend that we have witnessed, not the failure of the League of Nations, but only the failure of those who refused to make it work. The breakdown of the nineteen-thirties was too overwhelming to be explained merely in terms of individual action or inaction. Its downfall involved the bankruptcy of the postulates on which it was based. The foundations of nineteenth-century belief are themselves under suspicion. It may be not that men stupidly or wickedly failed to apply right principles, but that the principles themselves were false of inapplicable.⁷⁴

Thus, Carr questioned Lauterpacht's hope that the moral and legal values that underpinned nineteenth-century liberal rationalism could be revived. The crisis of the 1920s and 1930s was not, in Carr's view, an aberration, but indicated a more fundamental weakening of the moral and political fabric of international society than Lauterpacht was willing to admit.

Second, Carr also criticized the emphasis on *pacta sunt servanda* in Lauterpacht's work, a rule which, as we will see shortly Lauterpacht believed, "constitutes the highest, irreducible, final criterion" in international society.⁷⁵ As discussed earlier, *pacta sunt servanda* maintains that treaties are binding and must be followed by those party to them "in good faith."⁷⁶ However, for Lauterpacht, the contemporary interpretation of this rule contained "two incongruous elements," namely, "[i]t pays homage both to the will of States as the fountain of law and to the heteronomous command of the rule of law."⁷⁷ That is, as discussed earlier, it relies on both a positive legal notion of command manifested in this instance in the will of the state, and on the notion of "good faith," the origins of which are found in natural law. For Lauterpacht, it is not possible to synthesize these elements such that they will then "be one of substance."⁷⁸ Rather, the way to reconcile these apparently incongruous elements of the principle of *pacta sunt servanda*, he suggested, is to "courageously" break "with the traditions of a past period" that emphasize the will of states and focus instead on those ethical principles that are gradually producing "an international community of interests and functions."⁷⁹ While acknowledging that the principle of *pacta sunt servanda* is universally recognized among states, Carr emphasized the will of states within it by arguing that "a state whose interests were adversely affected by a treaty commonly repudiated it as soon as it could do so with impunity."⁸⁰ "Even Great Britain which," he argued, "as the strongest Power in the world, had most interest in upholding the validity of treaties, was manifestly disinclined to accept the view that treaty obligations were unconditionally binding."⁸¹ As such, he maintained that despite the

existence of moral principles in notions such as *pacta sunt servanda*, the will of states will ultimately override ethical considerations.

Most significantly however, Carr also responded to Lauterpacht's claim, made in *The Function of Law in the International Community* that political problems facing international society could ultimately be resolved by reference to international law. In particular, refuting claims questioning the efficacy of judicial resolutions of international disputes, Lauterpacht had argued that "[i]t is not the nature of an individual dispute which makes it unfit for judicial settlement but the unwillingness of a state to have it settled by the application of law."⁸² However, this gave rise in Carr's mind to the question of why states are "willing to submit only certain kinds of dispute to judicial settlement, and why . . . they find it so difficult to define in clear terms what kinds of dispute they are willing to submit."⁸³ The answers to these questions, Carr argued, was to be found in the "necessary relation of law to politics." In particular, he argued that while "[t]he judicial settlement of disputes presupposes the existence of law and the recognition that it is binding . . . the agreement which makes the law and which treats it as binding is a *political* fact."⁸⁴ Of course the same applies to the functioning of *pacta sunt servanda* and herein lies the crux of Carr's complaint with Lauterpacht. Despite acknowledging that writers such as Lauterpacht "recognize the fallacy . . . that an international legal order based on the recognition, interpretation and enforcement of existing rights is an adequate provision for the peaceful settlement of international disputes . . . in avoiding this fallacy, they fall into a still graver one."⁸⁵ This far "graver" fallacy is that they are "[u]nwilling to recognize the political basis of every legal system" and, as such, "they dissolve politics into law."⁸⁶ By extension then, Carr later noted that Lauterpacht overlooked the role of power in political change, itself the "compromise between power and morality."⁸⁷ Of course, this does not indicate that Carr found a position for morality in international politics that was ultimately akin to Lauterpacht's reconciliation of certain aspects of positive and natural law, for contrary to Lauterpacht he maintained that within this "blend of morality and power . . . the role of power is greater and morality less."⁸⁸

This, along with a range of other aspects of Carr's work inspired very strong reactions, particularly from those he had singled out for criticism. For example, Norman Angell "was particularly disturbed by Carr's apparent 'moral nihilism'," a position he believed "led to a policy of 'donothingism and over-caution'."⁸⁹ Similarly, although he was not directly attacked in Carr's work, Leonard Woolf saw many of Carr's more general criticisms as attacking his position and condemned it as " 'superficial', 'vulgar', and 'absurd'."⁹⁰ In a similar vein, Lauterpacht launched a two-pronged attack on both realist

thought in general and, in particular, what he viewed as the morally deficient version of it presented in Chapter Nine of *The Twenty Years' Crisis*. Although the second of these, "Professor Carr on International Morality" is largely polemical in tone and remained unpublished during Lauterpacht's lifetime, it provides an interesting insight into his thought about realism. Indeed, Lauterpacht did not mince words with either realism or Carr's variant of it, writing in "On Realism, Especially in International Relations":

realism is an inducement to facile and complacent thinking; that, as a method of argument and discussions it may often be, in effect, open to the charge of being intellectually dishonest; that it is a convenient and much abused cloak for opportunism or worse; and that it has tended to treat with contempt long-range principle as a standard of human action and to deny the value of human will as an agency shaping the destiny of men.⁹¹

In particular, Lauterpacht was especially concerned with both the extent to which realists magnify the apparent immorality of states and the "double standard of morality" they propose to apply to states and individuals.⁹² On the first of these issues, he wrote that there "has been an almost fatalistic tendency to assume that modern States do habitually act in a manner offending against the generally accepted conceptions of morality."⁹³ In accordance with his defence of the efficacy of international law discussed above, Lauterpacht questioned the extent to which states actually act in contravention of conventionally accepted principles of morality, adding that although war certainly represents "an imperfection of international law" it does not indicate an imperfection of international morality.⁹⁴ On the second of these issues, the relationship between state and individual morality, Lauterpacht argued that realists cannot conceive of a level of synonymy here because they are blinkered by a vision of the state as an immoral entity. Thus, he wrote that while Carr was right to point out that the "personification of the State is one of the central aspects of the problem of international morality," he was not correct "in assuming that the problem *began* with the personification of the State."⁹⁵ Indeed, by denying that "the same standards are applicable to the morality of States and individuals . . . Professor Carr's general thesis—though adroitly dissociated from that of the realist—amounts in fact to a denial of international morality" in its claim that it can be simply equated with the good of the state.⁹⁶ As will be seen in the following section, in this matter at least, Lauterpacht strayed very close to the "utopian" position Carr had mapped out, placing the moral equivalence of individuals and states, as Grotius, Wheaton and van Vollenhoven had done before him, at the center of his understanding of the Grotian tradition of international law.

“The Grotian Tradition in International Law”

Two distinct, yet inter-related variants of the “Grotian tradition” are evident in Lauterpacht’s work and, although he did not include a discussion of the concept of “tradition” itself within their explication, a number of related ideas can be discerned from his other works. In a general sense, Lauterpacht implored his undergraduate students to “distrust labels,” highlighting the manner in which titles attached to particular persons and sets of ideas bring with them expectations of content.⁹⁷ The second clue as to Lauterpacht’s understanding of tradition is found in his characterization of the natural law tradition. The tradition of thought to which he referred was not, he made clear, “the old law of nature” but was “rather the modern ‘natural law with changing contents’ ” that sought to promulgate a “sense of right,” “the social solidarity,” and the idea that law could be “engineered” to promote “the ends of the international society.”⁹⁸ That Lauterpacht seemed to equate natural law directly with tradition, understanding it to be *the* traditional approach to the subject of international law, would seem to indicate that his vision of “tradition” is a particularly fluid one in which traditions are capable of withstanding significant shifts in their contents.

The third indication of Lauterpacht’s understanding of the term “tradition” is couched in the particular details of the first notion of the “Grotian tradition” he discussed. Here Lauterpacht simply employed a notion of the “Grotian tradition” that had previously appeared in the works of James Kent, Henry Wheaton and John Westlake, and with its current title in Lassa Oppenheim’s *International Law*. This notion of tradition was distinctly “analytical” in form and was employed as a taxonomic device according to which contending perspectives on international law might be classified. Utilizing the term “Grotian” to designate what had previously appeared as the “mixed” tradition, Oppenheim wrote that “‘Grotians’ stand midway between the Naturalists and the Positivists.”⁹⁹ As he explained, they maintain a distinction between the natural and voluntary law of nations but “consider the positive or voluntary of equal importance to the natural, and they devote, therefore, their interest to both alike.”¹⁰⁰ As it had been for Kent and Wheaton, the position of Grotius in the three categories was again unclear. On the one hand, Oppenheim wrote that “Grotius’ influence was so enormous that the majority of authors of the seventeenth and eighteenth century were Grotians,” thereby implying that Grotius was, in fact, a “Grotian.” However, he also recognized that the equal focus of “Grotians” on positive and natural law directly contradicts Grotius who, despite recognizing the existence of both forms of law, viewed natural law as being inherently more important.¹⁰¹ Thus, as Kent and Wheaton had done before him, Oppenheim

also entertained two notions of what it meant to be “Grotian,” one that referred directly to the thought of Grotius himself and the other of which was simply a classification device. Among the most prominent “Grotians” Oppenheim named Christian Wolff, Emerich Vattel, Henry Wheaton and William Manning, all of whom he conceived in the second, “analytical” sense of the term.

In a conventional sense then, Lauterpacht also conceived the Grotian tradition as an intermediary pattern of thought standing between the contending natural and positive legal traditions and thereby achieving a “synthesis of natural law and State practice.”¹⁰² Also in accordance with convention, Lauterpacht wrote that Grotius was himself “impossible to classify . . . as belonging to any of the accepted schools of thought”:

He is not a pure positivist—a mere chronicler of events laboriously woven into a purely formal pattern of a legal system. Neither is he a naturalist pure and simple for whom an irresistible law of nature is the overriding—or the only—rule of conduct. We cannot even consider him what is usually described as a “Grotian.”¹⁰³

As will be seen shortly however, Lauterpacht directly contradicted this claim later with the assertion that Grotius viewed both consent and natural law as the dual foundations of international law.¹⁰⁴ However, what is important here is the fact that with regard to this particular variant of the “Grotian tradition,” Lauterpacht understood the term “tradition” in particularly vague and imprecise terms. Thus, in his later work, *Human Rights and International Law* he wrote:

When, in 1758, Vattel was calling his treatise *Le Droit des Gens, ou Principes de la Loi Naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains*, he was giving expression to one of the salient features of modern international law. In this respect—the recourse to natural law—there was only a difference of emphasis between the so-called naturalists, Grotians and positivists. The rigid distinction between these three schools of thought was an afterthought of the positivist period in the twentieth century—a period which was but of short duration.¹⁰⁵

As such, this variant of the Grotian tradition was an analytical one that retained no necessary connection to Grotius. It was simply a classification device although, as made apparent in the discussion above, its epistemological boundaries were not absolute.

Despite the pervasiveness of the “analytical” version of the Grotian tradition in twentieth-century accounts of the history of international law, it is the second variant that has been of greater significance for subsequent “Grotian” scholarship. In particular, although both traditions sought to mediate the contending claims of positive and natural legal thought, the second variant of the Grotian tradition also attempted to argue simultaneously against realist and extreme idealist thought and, in doing so, presented *De Jure Belli ac Pacis* as the universal *via media*. As will be seen in chapter 5, this interpretation of Grotius’ work continues to influence the manner in which his thought is understood in International Relations.

The second variant of the “Grotian tradition” evident in Lauterpacht’s work is derived directly from the works of Hugo Grotius and has as its central focus the primacy of international law in international relations. Although Lauterpacht’s reasons for choosing Grotius as the namesake of his crusade were manifold and included, for example, the assertion that he is the “acknowledged greatest exponent of the Law of Nations” and the fact that he had long been viewed as the founder or even “father” of international law, it is his characterization as a moral figurehead that is of greatest significance.¹⁰⁶ In this vein, Lauterpacht wrote that *De Jure Belli ac Pacis* has about it “an atmosphere of strong conviction, of reforming zeal, of moral fervour.”¹⁰⁷ Two pages on he continued that “[w]hat Grotius did was to endow international law with unprecedented dignity and authority by making it part not only of a general system of jurisprudence but also of a universal moral code.”¹⁰⁸ The adulation concludes with the claim that *De Jure Belli ac Pacis* “satisfied the craving, in jurist and layman alike, for a moral content in the law.”¹⁰⁹

In substantive terms, Lauterpacht highlighted the frequency with which “the law of war the law of charity, of Christian duty, of honour, of goodness, and to the injunctions of divine law and the Gospel” were made in *De Jure Belli ac Pacis* and concluded that “the appeal to morality [is], without interfering with the legal character of the exposition, a constant theme of the treatise.”¹¹⁰ This moral endowment and associated optimism regarding both human nature—which he believed, with Grotius, to be inherently sociable—and the associated law of nations was, Lauterpacht supposed, one of the fundamental reasons for the continued popularity of the Grotian tradition in the international sphere. In this he was certainly correct for, as made clear in chapter 3 and earlier in this chapter, the Grotian tradition has been most often resuscitated from the constant threat of intellectual exile when the need and/or desire has arisen for a moral approach to international law. Thus, Lauterpacht wrote in this vein that “much of the appeal and potentialities of the Grotian tradition lies in the lessons which can be drawn from this conception of the social nature and constitution of man as a rational being in whom the

element of moral obligation and foresight asserts itself triumphantly over unbridled selfishness and passion, both within the State and in the relations of States.”¹¹¹

The “Grotian tradition” of Lauterpacht’s incarnation was comprised of eleven principles:

the subjection of the totality of international relations to the rule of law; the acceptance of the law of nature as an independent source of international law; the affirmation of the social nature of man as the basis of the law of nature; the recognition of the essential identity of States and individuals; the rejection of “reason of State”; the distinction between just and unjust war; the doctrine of qualified neutrality; the binding force of promises; the fundamental rights and freedoms of the individual; the idea of peace; and the tradition of idealism and progress.¹¹²

In this we see the coming together of a number of elements of previous incarnations of the “Grotian tradition” and, particularly with regard to the last three principles, Lauterpacht’s own somewhat anachronistic take on what it means to be “Grotian.”

In large part, the reiteration of the first five principles of Lauterpacht’s “Grotian tradition” can be conceived in opposition to the realist and positivist emphases on state sovereignty. State sovereignty, it was thought, could be held largely responsible for the horrors of both the World Wars with its assumption that sovereign states held the right to wage war. Contrary to the realist, and indeed positivist views, Lauterpacht argued that even in the pursuit of self-preservation, the actions of states are bound by the constraints of the law, thereby denying them the “absolute faculty of action in self-preservation.”¹¹³ Of course what followed from this was the related claim that “[i]nternational law is much more than the will of States.”¹¹⁴ Grotius, Lauterpacht claimed, “accepted as self-evident the proposition that the sovereign—the State—is bound by the law of Nations and the law of Nature.”¹¹⁵ What is most significant about the discussion of this element of the “Grotian tradition” is Lauterpacht’s argument that the law of nature supplied Grotius with a means of “supplementing the voluntary Law of Nations . . . in the light of ethics and reason.”¹¹⁶ With regard to the place of reason in the subsequent development of international law, Lauterpacht contended that this infusion of reason is evident even in the works of staunch positivists such as W.E. Hall and Hans Kelsen. What is more, as discussed earlier, he also argued that despite attempts to remain wholly divorced from moral principles, even Kelsen permitted the principle of *pacta sunt servanda*, evident in Grotius’ law of nations, to creep into his own work.¹¹⁷ Lauterpacht provided the following

explanation for the inability of international law to wholly divorce itself from the law of nature:

The fact that while within the State it is not essential to give to the ideas of a higher law—of natural law—a function superior to that of providing the inarticulate ethical premises underlying judicial decisions or, in the last resort, of the philosophical and political justification of the right of resistance, in the international society the position is radically different. There—in a society deprived of normal legislative and judicial organs—the function of natural law, whatever may be its form, must approximate more closely to that of a direct source of law.¹¹⁸

The principles of natural law evident in the law of nations are also universally recognized and universally applicable. In affirming this position, Lauterpacht cited the judgment of Justice Story in *La Jeune Eugénie*, “one of the most lucid and most uncompromising assertions of this aspect of the Grotian tradition,” when he stated that “[i]t may be unequivocally affirmed . . . that every doctrine, that may be fairly deduced by correct reasoning from the rights and duties of nations, and the nature of moral obligations, may theoretically be said to exist in the Law of Nations.”¹¹⁹ Thus, although Lauterpacht conceded that natural law has rightly been charged with “vagueness and arbitrariness,” its moral force was deemed preferable to the “arbitrariness and insolence of naked force.”¹²⁰

Also following Grotius closely, although drawing the idea explicitly from the works of John Westlake, Lauterpacht also conceived states and individuals as being morally equivalent. This common moral identity was not derived from the notion that “States are *like* individuals” but was “due to the fact that States are *composed of* individual human beings.”¹²¹ This idea is pervasive in almost all of Lauterpacht’s writings, as a tract from his obituary makes clear:

His belief that the State exists for man and not man for the State, that the moral law applies in the same manner to public as to private conduct, that the use of force for the protection of private interests is alien to, whereas the judicial process is an expression of the moral nature of man that right is ultimately the only might, and that the protection of human freedom and human dignity are the only legitimate purposes of law and government, was not an academic conviction but a consuming fire—a fire which has consumed.¹²²

In particular, in order to maintain that states are capable of moral action equivalent to individuals’ rights and duties, Lauterpacht presented an argument

reminiscent of that used to refute Carr's claim that groups are incapable of morality, and wrote that "[t]he modern State is not a disorderly crowd given to uncontrollable eruptions of passion oblivious to moral scruples."¹²³

In accordance with the "subjection of the totality of international relations to the rule of law" and the moral personality of states, it follows ineluctably that in Lauterpacht's scheme *raison d'état* is not a justifiable cause of war. This rejection of the "reason of State" was necessary if both he and Grotius were to avoid creating a double-standard of morality, one pertaining to individuals and the other to states. In this Lauterpacht was quintessentially Grotian. However, where Lauterpacht began to get himself into trouble is in his explanation of this principle's intellectual origins. In particular, he went to some lengths to demonstrate that in rejecting the *raison d'état* Grotius was refuting Machiavelli. What is more, he somewhat absurdly attributed the complete absence of any reference to Machiavelli in Grotius' works to a deliberate decision to ignore him. However, as extensive surveys of Grotius' works and notes reveal, no evidence exists to suggest that he had either read or even heard of Machiavelli. This aside however, the reason Lauterpacht provides for rejecting the reason of state still stands; allowing it would necessarily deprive other states of their right to the "benefit of judicial determination of disputed legal rights."¹²⁴ Despite this anomaly, Lauterpacht's "Grotian tradition" thus far resembles Grotius' ideas about international relations fairly closely.

Where Lauterpacht ran into fairly serious trouble was when he attempted to iron-out those aspects of Grotius' thought he disagreed with. For example, in his discussion of the "fundamental rights and freedoms of the individual" he wrote that "[t]here is one perplexing aspect of the work of Grotius which appears to be alien to the spirit of his teaching as outlined so far, and which calls for careful examination, namely, his attitude to the question of the freedom of the individual in his relation to constituted authority."¹²⁵ Among those apparently anomalous aspects of Grotius' work were the justification of slavery, rejection of the idea that sovereignty rests with the people, denial of the right of resistance, and designation as "unjust" wars fought by oppressed people to reestablish their liberty.¹²⁶ Rather than dismiss these aspects of Grotius' work as inapplicable to the contemporary Grotian tradition, Lauterpacht sought to explain and hence incorporate them by justifying Grotius' illiberal stance. On the question of slavery, for example, he presented Grotius' argument that as "reason prefers life to freedom . . . to yield to fate rather than to engage in a suicidal fight for liberty" as the preferable course of action.¹²⁷ Furthermore, Lauterpacht pointed out that the justification of the institution of slavery in Grotius' work was buttressed throughout by a "spirit of charity and mercy."¹²⁸ In neither of these justifications was Lauterpacht technically incorrect; Grotius certainly did believe that slavery was preferable

to death and that it ought to be administered with charity and mercy. However, what this discussion reveals is that Lauterpacht was unwilling to concede that for all his liberal moral principles, Grotius retained a number of ideas that were antithetical to twentieth-century “Grotian” morality. Instead, Lauterpacht was at pains to enforce a form of conceptual coherence upon him, the reasons for which became apparent shortly thereafter.

As Koskenniemi notes, one of Lauterpacht’s over-riding desires throughout his career was to witness the establishment of an international society based on a fundamental respect for human rights.¹²⁹ What is more, these rights would ideally be “enforced,” thereby requiring a further doctrine of humanitarian intervention. In this, Lauterpacht was faced with a particularly tricky problem; that is, the only discussion of the doctrine in Grotius’ work occurred in the illiberal context described above. Thus, Lauterpacht was forced to provide a sanitized version of those less acceptable aspects of Grotius’ thinking in order to maintain the integrity of his larger project. In doing so he went so far as to suppose, not altogether accurately, that *De Jure Belli ac Pacis* included “the first authoritative statement of the principle of humanitarian intervention.”¹³⁰ As demonstrated in chapter 2 however, Grotius certainly did not entertain a modern understanding of humanitarian intervention.

Similarly, Lauterpacht’s discussion of the “idea of peace” is equally dubious. Here again, he can be seen to outwardly interpret Grotius’ writings in terms of his own aspirations. Thus, the tenth element of the Grotian tradition is not, as Lauterpacht’s heading suggests, “the idea of peace,” but is rather the stronger principle of pacifism. Although Lauterpacht conceded that Grotius did “not deny that war is a legal institution,” he derived an erroneous sense of pacifism from both Grotius’ attempt to “humanise” the rules of war and from his tangible hatred of war.¹³¹ This corresponds directly to Lauterpacht’s desire to see war outlawed that formed the central principle of his proposal for the continuation of the League of Nations in 1942¹³² and again amounts to the prefiguring of Grotius’ ideas with twentieth-century concerns.

Finally, and derived from the contention that a “pacifist strain” can be identified running through Grotius’ work, is the final claim that the Grotian tradition “may not inappropriately be called the tradition of progress and idealism.”¹³³ Thus Lauterpacht concluded his discussion of the eleven elements of the Grotian tradition by listing the range of progressive ideas that can be attributed to Grotius, for example, the legalization of the extradition of criminals and the theorization of the practice of diplomatic immunity.¹³⁴ This too is a particularly problematic element of Lauterpacht’s “Grotian tradition” and one that, as we will see in chapter 5, led Martin Wight to argue that Lauterpacht had, in part at least, constructed the Grotian tradition in his own

image.¹³⁵ Indeed, in this Wight cited Walter Schiffer's alternative interpretation of Grotius' views on peace, progress and pacifism:

He obviously did not believe that some time in the future men would become so reasonable that they would generally arrive at uniform judgments with regard to the justice or injustice of the causes of wars . . . He did not expect that generally the law of nations would constantly improve until it was identical with natural law . . . Grotius neither expected nor suggested any fundamental changes in the conditions on which his legal theory was based.¹³⁶

Rather, Grotius was in the true sense of the word a conservative thinker who valued tradition and did not believe that radical change would achieve international order. What this suggests is that although many elements of Lauterpacht's Grotian tradition accord well with Grotius' own ideas, others were more in accordance with Lauterpacht's broader ideals and aspirations.

"The Grotian Tradition in International Law" concludes, in part, by returning to one of the original issues driving its construction, the "intrusions of opportunism and realism."¹³⁷ Thankfully, Lauterpacht noted, these intrusions "did not decisively influence the character of *De Jure Belli ac Pacis*" but rather constitute a "perennial problem" that has plagued Grotian scholarship ever since. He wrote:

It has been exposed to the inducement to supply a rationalization of inferior and irrational practices; to confuse, in the name of realism, the function of chronicling events with that of a critical exposition of rules of conduct worthy of the name of law; to furnish a philosophy of the second best; and to represent the transient manifestations of immaturity and anarchy in international relations as resulting necessarily and permanently from the nature of States the mutual relations of which, it is said, may be regulated by voluntary co-operation but not by a rule of law imposed and enforced from above.¹³⁸

These problems could be overcome, Lauterpacht argued, by reference to Grotius' work, the very last sentence of the article maintaining that:

It is a measure of the greatness of the work of Grotius that all these questions should have found a place in his teaching and that he should have answered them in a spirit upon the acceptance of which depends the ultimate reality of the Law of Nations as a "law properly so called."¹³⁹

Conclusion

Although the Grotian tradition of twentieth-century international law owes its foundations and origins to the scholarship of the seventeenth, eighteenth and, in particular, nineteenth centuries, it was with the work of Hersch Lauterpacht that the most comprehensively articulated incarnation of the Grotian tradition emerged. In particular, it was with Lauterpacht's "Grotian Tradition in International Law" that the most thorough fusion of the analytical and historical Grotian traditions of previous scholarship was achieved. Here Lauterpacht, like many of his predecessors, entertained a dual understanding of what the term "Grotian" meant. The analytical "Grotian tradition," conceived as the intermediary tradition of international law standing between the natural and positive legal traditions, was derived from that pattern of thought that had previously appeared in Oppenheim's *International Law* and stretched back to the late eighteenth century.

More importantly however, Lauterpacht's work also included a detailed exposition of the Grotian moral tradition. In addition to promoting the place of natural legal precepts in international law, Lauterpacht focused in particular on two important aspects of Grotian morality. First, as Grotius had himself done and as had appeared in both van Vollenhoven's defence of *De Jure Belli ac Pacis* and the general writings of many scholars labeled "idealist" in the interwar period, Lauterpacht emphasized the moral equivalence of individuals and states. For Lauterpacht, as for Grotius, the limitation and regulation of war required that the same moral scheme apply to states and individuals alike. Second, Lauterpacht's understanding of the Grotian moral tradition also focused on the principles of *caritas* and *temperamenta*, concepts that had appeared in van Vollenhoven's thought and, of course, in the works of Grotius and many of his followers, including Leibniz, Kent, and Wheaton. Where Lauterpacht's exposition of these and other the moral principles included in the Grotian tradition differed from his predecessors was, however, in their secularization. Indeed, whereas the principles of *caritas*, *temperamenta*, and mercy were firmly bound to their Christian foundations in both the works of Grotius and the figures responsible for the Grotian revival in America, as a secular Jew, Lauterpacht did not present them in an explicitly Christian context. As we will see in chapter 5 however, in the work of Martin Wight, these same principles were once again re-infused with their Christian heritage.

This aside however, Lauterpacht's understanding of the "Grotian tradition" influenced its subsequent development in four main ways. First, as we will see in the following chapter, it is Lauterpacht's understanding of the analytical version of the Grotian tradition that appears in the later works of

Martin Wight and Hedley Bull. Second, Lauterpacht's characterization of this analytical Grotian tradition as the universal *via media*, while also appearing in Schwarzenberger's thought, is perpetuated in Wight's pivotal article "Western Values in International Relations." Third, although less substantively, Lauterpacht's "Grotian Tradition in International Law" provided the impetus for Hedley Bull's article "The Grotian Conception of International Society," a piece written as an explicit response to Lauterpacht and van Vollenhoven and which marked the most significant turning point of the Grotian tradition in the second half of the twentieth century. Finally, and crucially, the fact that Lauterpacht entertained two distinct notions of what the Grotian tradition entailed, as many others had done prior to him, was of particular significance for its further development. In particular, although Bull relied heavily on Lauterpacht's "Grotian tradition" in the formulation of his own "Grotian conception of international society," he did not maintain Lauterpacht's distinction between the two notions of what it is to be Grotian. As a result, these two distinct sets of ideas became fused with one another and, as we will see in chapter 5, facilitated the erroneous association of Hugo Grotius with concepts characteristic of the analytical variant of the tradition bearing his name.

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CHAPTER 5

Hugo Grotius and Twentieth-Century International Relations

Trying to pick a path through the baroque thickets of Grotius' work, where profound and potent principles lurk in the shade of forgotten arguments and obsolete examples like violets beneath overgrown gigantic rhododendrons, I find that he does not say what I thought he said.¹

Despite his standing in the history of international legal thought, in contemporary international law Grotius is predominantly viewed as a romantic figure of the field's heritage. In the majority of textbooks on the subject he is relegated to the annals of history, a figure skipped over with relative brevity in introductory overviews of the history of modern international law. Among the few international legal theorists of the late twentieth century to discuss Grotius or the "Grotian tradition" in any detail are Julius Stone and Richard Falk, both of whose works are fundamentally concerned with notions of world order and neither of which discuss what is conceived as the "Grotian approach" in any great detail.² Thus, despite his earlier standing in international legal thought, in the second half of the twentieth century, Grotius became almost exclusively discussed within the admittedly porous and ill-defined bounds of (predominantly British) International Relations.

Among the most prominent International Relations theorists to consider both the works of Grotius and the construction of the "Grotian tradition" are Martin Wight and Hedley Bull. Although they are most often considered in this vein as members of the so-called English School of International Relations, the accuracy and utility of grouping together a range of scholars as diverse as Herbert Butterfield, Charles Manning, Adam Watson, and R.J. Vincent, to

name those most commonly cited, along with Wight and Bull, has long been questioned.³ In recent scholarship, debates over who ought to be attributed membership of the school, the extent to which it ought to be considered an extension of the British Committee on the Theory of International Relations, and the unity of its “theme and purpose” have resurfaced with the emergence of a new wave of works devoted to promoting the re-establishment of the “English school.”⁴ With this, the very existence of the so-called School has been brought into question once again, Ian Hall recently arguing that those scholars most commonly attributed membership of the school were “united neither by political conviction nor by a devotion to a particular methodology.”⁵ In a similar vein, Hidemi Suganami has argued that “on reflection . . . it would be better to do away with the notion of the school altogether” when used to firmly demarcate its membership.⁶

With this in mind, this chapter is less concerned with the development of the Grotian tradition within a so-called school of thought than with the particular contributions of Wight and Bull. It argues that two shifts can be identified in the transmission of ideas from Wight to Bull that have become central to the contemporary conceptualization of the Grotian tradition. First, in Bull’s writings on the Grotian tradition, we see a move away from the sort of “Grotian morality” that had, until then, dominated accounts of what it meant to be “Grotian.” In particular, by dropping the explicitly Christian elements of “Grotian morality” and tying the “Grotian tradition” firmly to the “solidarist” understanding of international society, Bull presented a largely new formulation of what it meant to be “Grotian.” Second, and of particular importance to the manner in which this new “Grotian tradition” was related to the historical figure of Hugo Grotius, a distinct shift in the understanding and employment of the term “tradition” can be identified between Wight and Bull. Thus, while Wight will be shown to have employed a vaguely “analytical” notion of tradition, Bull promulgated what was nominally, although not substantively, a more “historical” understanding of the term. In effect, the transmission of ideas from Wight to Bull thus amounted to what Schmidt has referred to as the tendency for international relations theorists to view analytical traditions as actual historical ones.

Martin Wight

Both the Grotian tradition and the figure of Hugo Grotius first appeared in Wight’s work during the course of a lecture series first delivered in Chicago where Wight spent a year in the 1950s at the invitation of Hans Morgenthau. Following his return to the London School of Economics, the lectures evolved and gained notoriety both among students and within the academic

community for bringing into “sharp focus” what otherwise appeared to be the “chaotic” world of international politics.⁷ In particular, Wight introduced a now famous scheme according to which international thought could be classified in terms of three dominant traditions; realism, rationalism, and revolutionism. Presented as part of a lecture series delivered over a ten-year period however, it is not at all surprising to find that the contents of the three traditions changed and evolved with the thought of their presenter. Indeed, as Michael Nicholson recognized, “there is a lack of coherence about his thought,” in part because of the oral tradition in which it was presented.⁸ Nonetheless, the lectures were published posthumously in 1991 under the title of *International Theory: The Three Traditions* and, although a range of problems are associated with presenting lecture notes in the form of a book, they remain a useful resource to be utilized with due care. Also of particular value in coming to grips with Wight’s thought is his “single most important paper, ‘Western Values in International Relations,’” a work that provides a “distilled, compressed version of part of the lectures.”⁹ Indeed, it is in this work, published in the 1966 collection *Diplomatic Investigations: Essays on the Theory of World Politics*, that some of the most important insights into how Wight understood both Grotius’ works and the “Grotian tradition” are to be found. Finally however, Wight’s most lucid and coherent discussion of Grotius is found in his 1959–1960 lecture recently published in *Four Seminal Thinkers: Machiavelli, Grotius, Kant and Mazzini*.¹⁰ Of course, as a lecture and thus not intended to be read as a written work, the same caveats apply to this work as to the three traditions lectures.

In a similar fashion to Hersch Lauterpacht, Wight presented two distinct, yet inter-related notions of the Grotian tradition in his work. The first amounts to an exact replication of the analytical international legal tradition known in earlier works as the “mixed” tradition and labelled “Grotian” in Oppenheim and Lauterpacht’s works. International legal writers, Wight explained, “were divided into naturalists, positivists, and Grotians,” the latter group combining elements of the former two and maintaining that “both are essential to the law of nations.”¹¹ Despite incorporating the “Grotian tradition” of international legal thought into his broader “rationalist tradition,” a move that, as we will see, has created a significant amount of confusion in subsequent scholarship, Wight did not follow Lauterpacht’s interpretation of Grotius or his understanding of “Grotian morality.” In particular, despite also discussing a second notion of what it means to be “Grotian” that focused on moral principles, Wight argued that in attributing “to Grotius ‘pacifism’, ‘the idea of peace’, and ‘the tradition of idealism and progress’,” Lauterpacht drew Grotius “in the image of Lauterpacht.”¹² In addition, despite retaining a number of elements central to Lauterpacht’s notion of Grotian morality,

Wight reinfused them with their explicitly Christian underpinnings. However, before we come to discuss the contents of these Grotian traditions in detail, it is useful to first come to grips with exactly what Wight meant when he used the term “tradition.”

Tradition

In constructing his famous triumvirate schematization of international theory, Wight employed a particular notion of “tradition” as the primary means of classification. This specific understanding of tradition can be gleaned from two main sources: first, his explicit, though brief, discussions of the concept itself; and second, from the application of his theoretical understanding of tradition to the particular traditions he constructed.

The theoretical notion of tradition employed in the formulation of the realist, rationalist, and revolutionist traditions of Wight’s construction was based on the premise that “political ideas do not change much” over time.¹³ In explaining this claim, Wight quoted A.P. D’Entrevès’ observation that “Men have kept repeating the same slogan over and over again. The novelty is very often only a question of accent.”¹⁴ Applied to the field of international theory, Wight’s classification scheme was thus based on the corresponding claim that “[i]f one surveys the most illustrious writers who have treated of international theory since Machiavelli, and the principle ideas of this field which have been in circulation, it is strikingly plain that they fall into three groups, and the ideas into three traditions,”¹⁵ realism, rationalism, and revolutionism.

The realist tradition, Wight argued, is comprised of “those who emphasise in international relations the element of anarchy, of power-politics, and of warfare,”¹⁶ and is generally equated with the works of Machiavelli and Hobbes. Revolutionists, on the other hand, are “those who believe so passionately in the moral unity of the society of states or international society, that they identify themselves with it, and therefore they both claim to speak in the name of unity, and experience an overriding obligation to give effect to it, as the first aim of their international policies.”¹⁷ Standing between these two positions, the rationalist tradition of international theory focuses on instances of “international intercourse” and in particular, patterns of “diplomacy and commerce” in international relations.¹⁸

[t]he Rationalists are those who concentrate on, and believe in the value of, the element of international intercourse in a condition predominantly of international anarchy. They believe that man, although manifestly a sinful and bloodthirsty creature, is also rational.¹⁹

As Jens Bartelson quite rightly points out, when used to describe the realist, rationalist and revolutionist perspectives, Wight's notion of "tradition" was less concerned with the apparent passage through time of an idea or set of ideas, than with their apparent coherence within a given set of parameters.²⁰ In particular, Wight conceived the three traditions as "patterns of thought" defined, not by a strict pattern of intellectual transmission, but by the "logical inter-relation" of their contents.²¹

That Wight intended his three traditions to be considered "patterns of thought" is made especially clear in the characterization of rationalism included in "Western Values in International Relations":

[t]his pattern is persistent and recurrent. Sometimes eclipsed and distorted it has constantly reappeared and reasserted its authority, so that it may even seem something like a consensus of Western diplomatic opinion.²²

In a similar vein, he also mentioned that "there are other patterns of ideas in international history for which persistence, recurrence and coherence can be claimed," thus emphasizing the central importance of coherence to his schematisation of international theory.²³

Although some sense of continuity akin to inheritance can be discerned in Wight's characterization of the rationalist tradition, described as originating "with the Greeks and especially the Stoics," owing its "upkeep" to the Catholic Church and following a path of transmission that takes in the "Protestants, humanists and Rationalists" of the modern world, he acknowledged the danger inherent in "tracing ideas through a variety of writers and politicians without dwelling on their place in each's complex aggregate of doctrine."²⁴ Indeed, in his description of the revolutionist tradition the element of continuity is almost entirely absent. Unlike realism and rationalism, the revolutionist tradition is thus characterized as "less a stream than a series of waves."²⁵ That the revolutionist tradition is nonetheless termed a "tradition" in Wight's assessment is testimony to the loose manner in which he understood the term. This is also particularly evident in Wight's discussion of the parameters of the rationalist tradition complete with its bounding "swamps," "craggs and precipices" of realism and revolutionism respectively.²⁶

For Wight then, the three traditions of international theory were broad, overlapping and vaguely demarcated categories according to which both individual theorists and their common ideas could be classified. This is not to say that he did not equally appreciate the inherent dangers of categorization. As mentioned in chapter 1, addressing this very issue, Wight wrote:

all of this is merely classification and schematising. In all political and historical studies the purpose of building pigeon-holes is to reassure oneself

that the raw material does *not* fit into them. Classification becomes valuable, in humane studies, only at the point where it breaks down. The greatest political writers in international theory almost all straddle the frontiers dividing two of the traditions and most of these writers transcend their own systems.²⁷

In particular, in his lecture on Machiavelli, Wight stressed that “[a]ll individual thinkers transcend typology; and in social studies, generalizations are abstractions, mental conveniences, and to that extent unreal. They must be contrasted with the concrete, historical person in all his richness and possible inconsistency.”²⁸ Nonetheless, recognizing the limitations of classification did little to ameliorate the impact of his use of the term tradition. In particular, Wight’s inconsistent conceptualization of “tradition,” at times approximating that of Krygier discussed in chapter 1 and at others resembling something akin to a paradigm, certainly contributed to the entanglement of historical and analytical variants of the Grotian tradition in subsequent scholarship to be discussed shortly.

The Grotian Tradition

As the intermediary category of his triumvirate schematization of international theory, Wight’s rationalist category was constructed via the simultaneous acceptance and repudiation of elements of the realist and revolutionist traditions. Thus, one of its defining features is:

its quality of a *via media*. This pattern of idea usually appears as the *juste milieu* between definable extremes, whether it is Grotius saying: “A remedy must be found for those who believe that in war nothing is lawful, and for those for whom all things are lawful in war” or Halifax’s classic exposition of the balance of power in *The Character of a Trimmer*, or Gladstone’s conception of the European Concert seen as a middle way between the radical noninterventionism of Cobden and Bright and the *Realpolitik* of Beaconsfield and Bismarck.²⁹

Although the “definable extremes” to which Wight referred are, in the broadest sense, those represented by the contending traditions of realism and revolutionism, they are intermingled with the natural and positivist legal categories ordinarily associated with international legal scholarship in “Western Values in International Relations.” That said however, it is important to note that while the “three old traditions or schools of international law, the Grotians, naturalists and positivists, are relevant” to the realist, rationalist, revolutionist

classification of international theory, they “do not exactly correspond.”³⁰ As such, and as will become apparent as this discussion continues, it is not possible to establish a neat and tidy set of relationships between these sets of ideas.

The position of realism and its relationship to legal positivism is relatively simple. The realism of Wight is the realism of Machiavelli, Hobbes, and Carr. What is more, Wight maintained that legal positivists are inductive realists, thereby conceiving legal positivism as a subcategory of realism.³¹ However, when we consider the position of revolutionism the relationship between Wight’s traditions and the traditions of international law becomes more complicated. Revolutionism does not equate directly to either realism or idealism, or to natural or positive law. As Peter Wilson notes, of Wight’s three categories revolutionism “bears the closest resemblance to idealism” however, by classifying a range of well-known idealists, including Norman Angell, Gilbert Murray and Alfred Zimmern as rationalists Wight makes it clear that they are not synonymous.³² Indeed, in much of Wight’s work the revolutionist tradition seems to oscillate between idealism and Marxism and, as it does not incorporate a well established theory of international law, generally stands outside the positivist/naturalist/Grotian scheme. As the intermediary tradition, rationalism combines elements of realism and revolutionism. As Wight argued, it “dove-tails” revolutionism in its idealism and shares a realist understanding of the anarchical nature of international relations.³³ However, for the reasons discussed above, this does not imply that rationalism also stands as the *via media* between realism and idealism for the most prominent idealists of the inter-war period are all classified as rationalists.

To further confuse matters, Wight also maintained that Grotians, in the international legal sense of the term, are rationalists. Critically however, the converse, that rationalists are Grotians, does not hold on account of Wight’s classification of writers significantly removed from Grotius, for example Edmund Burke, as rationalists.³⁴ Rather Grotians are conventionally defined in Wight’s work as combining elements of natural and positive law.³⁵ This aspect of Wight’s thought has precipitated much confusion in recent scholarship. For example, Edward Keene writes that although “Wight did not want to abandon altogether any idea of a link between Grotianism and rationalism, since he saw both of them as crucial to defining the vital category of the *via media* in international theory . . . he twisted himself into knots trying to explain how Grotians were similar to rationalists, while at the same time retaining a sense of the differences between the two traditions.”³⁶ However, the problem here is less to do with whether or not Grotianism and rationalism are synonymous with one another, for clearly they are not, but with persistent attempts in subsequent scholarship to make them appear to be. Thus, it is

only when rationalism and Grotianism are conceived as being one and the same that the fact that the triumvirates of natural/Grotian/positive law and revolutionism/rationalism/realism do not exactly equate becomes a problem. As we will see shortly, it was with the work of Hedley Bull that this problematic development took place.

Three central features of Wight's scheme are therefore apparent here. First, in light of the porous boundaries separating the three traditions of realism, rationalism and revolutionism, a significant amount of liberty is afforded the classification of both theorists and their ideas. Thus, as mentioned above, both theorists and ideas may appear in more than one category, Wight conceding that the most important theorists generally 'straddle the frontiers' of two distinct traditions.³⁷ Second, as the *via media* between a range of "definable extremes," rationalism is a far more elastic term than realism or revolutionism. Indeed, its derivation as the repudiation of the two traditions between which it stands indicates that it is not an independently conceived and thus tightly bounded category, but one constituted at least in part by the conglomeration of the vaguely compatible elements of the other two. As such, it is reasonably employed as the *via media* between realism and revolutionism, and legal positivism and natural law. What is important is not whether or not the extremes can be equated with one another, for clearly there were no absolutes in Wight's scheme, but that the central characteristic of rationalism was its intermediary status. In particular, Wight sought to justify rationalism's intermediary position by arguing that '[t]he golden mean can be an overcautious and ignoble principle as a guide to action, but it may also be an index to the accumulated experience of a civilization which has valued disciplined scepticism and canonized prudence as a political virtue.'³⁸

Finally, the relationship between these contending classification schemes is made slightly clearer in Wight's diagrammatical representation of the structure of international relations. Here, what Wight terms the "three stages of society and law" are presented as three concentric circles. In the inner circle stand the state and municipal law, whilst in the outer circle Wight places natural law and mankind. Forming the intermediary circle between the two are international society and the law of nations. What is significant about this scheme is that natural law exists in a more broadly based sphere than the law of nations, thereby exerting an influence upon it whilst not being synonymous with it. As Wight makes clear, it was only with the works of Francisco de Vitoria that the *jus gentium* and the *jus naturae* came to be confused, thereby creating the set of convoluted relationships described above.

The most coherent and polished explanation of the central precepts of Wight's rationalist tradition is found in "Western Values in International Relations." It is also here that the partial fusion of Lauterpacht's two distinct

understandings of the term “Grotian” takes place. In elaborating upon the rationalist position, here deemed indicative of “western values,” Wight discussed four particular subjects: the nature of international society, the maintenance of order in international society, intervention and, international morality. Thus, although a particular notion of international society was central to his discussion and was deemed the definitive concept of the rationalist tradition in subsequent scholarship, it was simply one of a number of subjects with which he was concerned. In each of the four subjects, rationalism is conceived as the *via media* between two opposed positions, realism and revolutionism, or natural and positive law.

The first section of Wight’s explication of the rationalist tradition is therefore concerned with the nature of international society and international law. On the one side stand those, Machiavelli and Hobbes among them, “who take the view that there is no such thing as international society,” while on the opposite stand proponents of the *civitas maxima* discussed briefly in chapter 3.³⁹ Drawing these opposing positions together then, rationalism posits international society as “true society,” derived from the assumed innate sociability of humankind and based on the mutual recognition of international law as the institution best suited to maintaining order in what is otherwise an anarchical society. It is defined as:

the habitual intercourse of independent communities, beginning in the Christendom of Western Europe and gradually extending throughout the world. It is manifest in the diplomatic system; in the conscious maintenance of the balance of power to preserve the independence of the member-communities; in the regular operations of international law, whose binding force is accepted over a wide though politically unimportant range of subjects; in economic, social and technical interdependence and the functional international institutions established latterly to regulate it.⁴⁰

Thus, on the one hand, the rationalist view of international society includes the distinctly realist notions of the balance of power and primacy of independent state sovereignty, while on the other, it promotes the “binding force” of international law.

Within Wight’s discussion of the central precepts of international society, Grotius is noted for the “fruitful imprecision” with which he described a number of early ideas that were later recognized as the intellectual antecedents of “international society.”⁴¹ However, his most significant contribution in this regard was, in Wight’s opinion, his claim that both states and individuals are the members of his ambiguously conceived international society. In particular, Wight highlighted the fact that this principle survived in the works of

writers as eminent as James Lorimer, T.J. Lawrence, John Westlake, James Brierly and Philip Jessup who saw international law “as a legitimate child of political philosophy,” rather than as “a recalcitrant vassal of legal science.”⁴² What is particularly significant in Wight’s discussion of “international society” and its relationship to international law is, however, the fact that he did not attribute Grotius with its inception nor did he consider him its most important proponent.

It was with Wight’s discussion of contending approaches to the maintenance of order in international society that the term “Grotian” first appeared in his published writings. Again, the rationalist tradition was conceived as the *via media* between two extremes, this time the realist claim that “[i]f there is no international society, then . . . [t]here is no call to maintain order,” and the revolutionist vision of the assimilation of the domestic and international realms.⁴³ What is particularly significant about Wight’s discussion here is not simply the manner in which he traced the development of the relationship between law and morality from Grotius to the Grotians of the early twentieth century, but his recognition that Grotius thought the “moral and legal order were the same.”⁴⁴ This idea, he noted, was revived in the twentieth century by Grotian jurists such as Cornelius van Vollenhoven who viewed the association of law and morality with the balance of power that had occurred during the nineteenth century as “a perversion of the gospel.”⁴⁵

Finally, it is with the discussion of international morality that the central tenets of realism and natural law are conceived in opposition to one another. As discussed earlier and, as Kenneth Thompson wrote, according to this realist perspective, states “tend to be repositories of their own morality.”⁴⁶ At the opposite extreme lies the natural law tradition, the “vitality” of which Wight commended on a number of occasions:

It might be thought enough to say of the natural law ethic that it survives in an awareness of the moral significance and the moral context of all political action. But the moral context is focused more precisely where the politically expedient and the morally permissible come into conflict.⁴⁷

It is in the *via media* between these two extremes that Wight contended the most prominent articulation of “western values” was to be found. Here, as in “The Origins of Our States-System: Geographical Limits,” Wight endorsed a “double-standard” of morality that provided a “permissible accommodation between moral necessity and practical demands.”⁴⁸ He justified this intermediary position by arguing that:

it assumes that moral standards can be upheld without the heavens falling. And it assumes that the fabric of social and political life will be maintained,

without accepting the doctrine that to preserve it any measures are permissible. For it assumes that the upholding of moral standards will in itself tend to strengthen the fabric of political life.⁴⁹

However, this is not the only dual moral standard evident in Wight's work. Indeed, in addition to the pattern of concentric circles described above, Wight also depicted the states-system in Grotius' works as a double set of circles. In the outer circle stood the law of nature, embracing all mankind and promoting the unity of the human race.⁵⁰ However, the inner circle is the *corpus Christianorum*, a unique circle "bound by the law of Christ."⁵¹ It is here that the first glimpse of something resembling Grotius' moral scheme appears in Wight's thought.

Grotian Morality

Although in the first half of the twentieth century, writers such as Hersch Lauterpacht and Georg Schwarzenberger conceived "Grotian morality" as the "golden mean" moderating the extremes of natural and positive law, with Wight came a return to an older, more established understanding of precisely what Grotian morality entailed.⁵² In particular, Wight recognized that foremost among Grotius' aims was the "reunion of Christendom."⁵³ Grotius, he wrote, quoting Carl Friedrich, believed that "all Christianity might be reconciled, if a common basis of piety were stressed, and doctrinal differences minimized" and thus, "on the basis of scriptural evidence . . . set forth a series of propositions common to all Christianity."⁵⁴

In Wight's view, Grotian morality was a two-tiered scheme fundamentally based on the law of nature and overlain with a higher morality derived explicitly from the central precepts of minimal Christianity. Significantly, despite recognizing the inherent "vitality" of the law of nature, Wight warned that it was "necessary to guard against" claims that natural law constituted a "kind of super-morality, a statement of the highest ethic of political life."⁵⁵ In particular, it seems that Wight was attempting to argue against the widely held view that Grotius' natural law morality was the central component of his universal scheme. What is more, Wight made it clear that although "natural law is not necessarily *Christian* at all," Grotius believed not only in God but that those human traits viewed as central to the law of nature were God's doing.⁵⁶

Standing above the law of nature was what Wight termed the "hierarchy of moral life," a morality that extends beyond both natural and positive law. The central principles of this tier of his moral scheme are "generosity, gratitude, pity [and] charity" and, in particularly Grotian style, *temperamenta*.⁵⁷ That these principles are of explicitly Christian origins is made clear in the number of tracts of *De Jure Belli ac Pacis* Wight quoted in making this point,

the two most important of which contend that “love for our neighbour prevents us from pressing our rights to the utmost limit,” and, in particular, that we are “bound by the laws of Christ beyond the limit of obligation imposed by the law of nature.”⁵⁸ What is most interesting about what follows in Wight’s discussion of Grotian morality is the contention that “[i]f the motives of love, charity, shame, reverence, or honour are to temper the political conflict, then it must be in so far as these direct the individual conscience.”⁵⁹ That is, Wight viewed Grotian morality in terms of “individual moral responsibility.” Thus although he did not actually deviate from Grotius’ own view here—Grotius certainly thought that morality was a matter for individuals acting on behalf of themselves and others, including the state—it amounted to a shift of emphasis away from the notion that states and individuals are morally equivalent and have comparable rights and duties. As we will see in the following section, this emphasis on the Christian foundations of Grotian morality was particularly problematic for Hedley Bull who, despite developing Wight’s three traditions, approached matters of faith with immense skepticism.

Hedley Bull

Hedley Bull remains perhaps the most significant proponent of the Grotian tradition in twentieth-century International Relations scholarship. As a junior academic at the London School of Economics he is known to have attended Martin Wight’s lecture series in the mid-1950s. As Bull readily confesses, the lectures exerted a “profound impression” upon him, going so far as to write that “[e]ver since that time I have felt in the shadow of Martin Wight’s thought—humbled by it, a constant borrower from it, always hoping to transcend it but never able to escape from it.”⁶⁰ Indeed, Wight’s influence on Bull is well documented, Tim Dunne’s history of the “English School” noting that Bull not only stands in a pattern of intellectual lineage that extends from Wight to Bull’s student R.J. Vincent, but “thought about International Relations in quintessentially Wightean terms.”⁶¹

At the outset however, it is important to note two particular points about Bull’s contribution to the development of the Grotian tradition. The first is that Bull did far more than borrow Wight’s three traditions, he wholly appropriated them, solidified their porous boundaries and embellished their contents. Thus, the vaguely defined realist, rationalist, and revolutionist traditions of Wight’s thought became with Bull the less flexibly demarcated Hobbesian, Grotian and Kantian traditions. In Bull’s view, rationalism *was* Grotianism, and Grotius was not only the progenitor of the “Grotian tradition” but its herald, exemplar and most eminent member. This new set of associations is most evident in the most important work in the transformation of the

Grotian tradition, Bull's "The Grotian Conception of International Society." As we will see shortly however, much of this shift can be attributed to the substantively different understandings of "tradition" that Bull and Wight employed.

The second important point to note is that although Bull followed his mentor at the London School of Economics in his appropriation of the three traditions, much of the substantive content of his work was at variance with Wight's views. In particular, Bull diverged significantly from Wight on matters related to questions of ethics and religion in politics, both of which have historically been central to the Grotian tradition. As Ian Hall notes, throughout his life Wight was "a fervent and rather traditionalist Anglican," his religious faith exerting a significant impact upon his own treatment of international relations.⁶² This, however, was a source of great consternation for Bull who admitted in "Martin Wight and the Theory of International Relations" that he often "felt uneasy about the extent to which Wight's view of International Relations derived from his religious beliefs."⁶³ This unease was not only reflected in Bull's reformulated understanding of the Grotian tradition but can be attributed to the influence of Bull's earliest, though least readily acknowledged, mentor at the University of Sydney, John Anderson.

Tradition

Following Wight, Bull conceived the "Grotian tradition" as standing between the Hobbesian and Kantian traditions, and as combining elements of the natural and positive law traditions. However, whereas Wight did not assume that the terms rationalist and Grotian were absolutely synonymous, the characterization of the Grotian tradition as a sub-category of the rationalist tradition was overlooked by Bull. Thus, in Bull we see the absolute equation of rationalism with Grotianism, and the solidification of the boundaries separating Wight's three traditions:

Throughout the history of the modern states system there have been three competing traditions of thought: the Hobbesian or realist tradition, which views international politics as a state of war; the Kantian or universalist tradition, which sees at work in international politics a potential community of mankind; and the Grotian or internationalist tradition, which views international politics as taking place within an international society.⁶⁴

Similarly, whereas Grotius stood as one of many members of the Grotian tradition in Wight's theory, Bull made a far more direct association between the works of Grotius and the Grotian tradition.

The transformation of Wight's traditions into more solidly demarcated categories and the contingent re-association of the (analytical) Grotian tradition with the works of Hugo Grotius can in large part be attributed to the contending notions of tradition employed by Wight and Bull. With regard to the theoretical notion of tradition apparent in Wight's three traditions of international theory, Bull wrote that "Wight himself was the first to warn against the danger of reifying the concepts he had suggested."⁶⁵ Revealingly, he continued that "the Machiavellian, Grotian and Kantian traditions were merely paradigms," and that "not even Machiavelli, for example, was in the strict sense a Machiavellian."⁶⁶ Thus, Bull seemed to acknowledge Wight's insistence that the "three traditions were only to be taken as paradigms," and even then not "too seriously."⁶⁷ Bull's apparent understanding of the dangers inherent in the practice of categorization is also reflected in a number of other works published around the same time. Thus, in "The Theory of International Politics 1919–1969" he argued that "[i]t is not possible to divide the theoretical works of the last half century into neat categories or schools that are logically exhaustive and exclusive of one another."⁶⁸ Similarly, in putting his "case for a classical approach" he acknowledged that "[t]here are dangers in lumping them [proponents of the scientific approach] all together, and it may be inevitable that criticisms directed at the whole of the genre will be unfair to some parts of it."⁶⁹ However, the pivotal point in Bull's thinking is revealed in his criticism of Wight's view and the subsequent claim that "one has to take [the three traditions] seriously, or not at all."⁷⁰ Indeed, this contention may be seen as being largely responsible for the solidification of what Bull recognized had been in Wight's view three vaguely defined traditions.

On a more fundamental level however, Bull's argument and contingent conceptualization of the Grotian tradition reveals the extent to which he viewed Wight's analytical traditions as actual historical ones with solidly demarcated boundaries and explicitly discernible patterns of transmission. In particular, "Bull criticised Wight for giving in to the temptation of coherence"⁷¹ with the following argument:

Much that has been said about International Relations in the past cannot be related significantly to these traditions at all. Wight was, I believe, too ambitious in attributing to the Machiavellians, the Grotians and the Kantians distinctive views not only about war, peace, diplomacy, intervention and other matters of International Relations but about human psychology, about irony and tragedy, about methodology and epistemology. There is a point at which the debate Wight is describing ceases to be one that has actually taken place, and becomes one that he has invented; at this point his work is not an exercise in the history of ideas, so much as the exposition of an imaginary philosophical conversation.⁷²

However, Bull similarly “invented” a Grotian tradition, only his paid more attention to the element of continuity than the element of coherence. Thus, Bull, unable to resist the equal temptation of locating “the origin of the Grotian tradition in the works of Grotius himself,”⁷³ constructed a single pattern of thought transmitted from Grotius to the twentieth century. In doing so, the central precepts of this broader “Grotian tradition” were demonstrated by reference to actual passages of Grotius’ most famous work, *De Jure Belli ac Pacis*, thus firmly establishing the position of Grotius in the Grotian tradition.

“The Grotian Conception of International Society”

Published in Butterfield and Wight’s edited collection, *Diplomatic Investigations: Essays on the Theory of World Politics*, “The Grotian Conception of International Relations” was written as a direct response to Cornelius van Vollenhoven and Hersch Lauterpacht’s attempts to re-establish a broadly conceived “Grotian position” in international law. In particular, the essay sought to “consider whether the return of Grotius does indeed constitute that advance which van Vollenhoven and Lauterpacht take it to be.”⁷⁴ As its title suggest, in Bull’s view the answer to this question pivots about the concept of international society. International society is defined in general terms as:

a group of states, conscious of common interests and common values, [who] form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the workings of common institutions. If states today form an international society . . . this is because, recognising certain common interests and perhaps some common values, they regard themselves as bound by certain rules in their dealings with one another, such as that they should respect one another’s claims to independence, that they should honour agreements into which they enter, and that they should be subject to certain limitations in exercising force against one another. At the same time they cooperate in the workings of institutions such as the forms of procedures of international law, the machinery of diplomacy and general international organisation, and the customs and conventions of war.⁷⁵

Bull entertained two understandings of the term “Grotian” that were associated with this conception of international society. In a broad sense, the “Grotian tradition” was defined by an acceptance of the supposed existence of international society and was thought to be synonymous with the rationalist tradition of Wight’s conception. In a narrower sense however, the “Grotian tradition” was also conceived as the “solidarist” variant of the broader tradition and stood in opposition to the alternative “pluralist” conception of international

society.⁷⁶ It is this solidarist form of the “Grotian tradition,” understood in contradistinction to pluralism that was the central concern of “The Grotian Conception of International Society.” However, before these contending approaches are discussed, it is necessary to back track a little in order to account for this division in the first place.

As Tim Dunne has noted on a number of occasions, for Bull international society could “only be understood in contradistinction to the idea of a states system.”⁷⁷ However, the states-system does not just stand in contradistinction to international society but exists as one of the two constituent components of its modern form. As such, Bull contended that while the existence of an international society “presupposes an international system,” the converse does not apply.⁷⁸ That is, while an international society cannot exist without an international system of states, the international system is not dependent on the existence of international society. In this Bull relied explicitly on A.H.L. Heeren’s conceptualization of the *Staaten-system* as existing “when two or more states have sufficient contact between them, and have sufficient impact on one another’s decisions, to cause them to behave—at least in some measure—as parts of a whole.”⁷⁹ Without this degree of contact, Bull reasoned, it would not be possible for states to become “conscious of common interests or values” that were deemed essential to the existence of international society.⁸⁰ For Bull, the modern concept of international society was thus constituted by two sets of ideas, Heeren’s *Staaten-system* and the much earlier notion that the force of the *jus gentium* is located in the *societas gentium*.

In Bull’s conception, this dually conceived notion of international society was also marked by an inherent tension between the concepts of order and justice. Order, Bull argued, is that “pattern of activity that sustained the elementary or primary goals of the society of states.”⁸¹ These include “preservation of the system and society of states itself,” “maintaining the independence or external sovereignty of individual states,” “peace” and the “limitation of violence resulting in death or bodily harm, the keeping of promises and the stabilization of possession by rules of property.”⁸² On the other hand, Bull argued that justice is “a term which can ultimately be given only some kind of private or subjective definition” and comes in three forms: international or interstate justice, individual or human justice, and cosmopolitan or world justice.⁸³ While Bull conceded that “justice, in any of its forms, is realizable only in a context of order,” he also argued that there is “an inherent tension between the order provided by the system and society of states, and the various aspirations for justice that arise in world politics.”⁸⁴

In response to this problem, “The Grotian Conception of International Society” distinguished between the solidarist and pluralist approaches to the

concept of international society, Bull heralding Grotius and Oppenheim as each perspective's respective prototypical representative. Recognizing the multiple conceptions of justice that operate within the international system, pluralism "is a conception of international society founded upon the observation of the actual area of agreement between states and informed by a sense of the limitations within which this situation rules may be usefully made rules of law."⁸⁵ In affording the maintenance of order primacy in international affairs, pluralism contends that "international society is composed of states, and only states possess rights and duties in international law."⁸⁶ In doing so, it particularly endorses the maintenance of state sovereignty via respect for the principles of non-intervention and non-use of force. Thus, although individuals "may be regarded objects of international law," this is only at the behest of domestic legislation and, as such, the individual recipients of rights and duties in international law cannot be conceived as "members of international society in their own right."⁸⁷

Contrary to this, the "solidarist" approach posits that the "members of international society are ultimately not states but individuals."⁸⁸ International society is consequently "a society formed by states and sovereigns" whose position "is secondary to that of the universal community of mankind" and it is from this that their legitimacy is derived.⁸⁹ As such, solidarism maintains respect for the right of the state to sovereign integrity, but does not conceive this as an absolute right. Characterized as being more compatible with the notions of justice in international society, solidarism's "central assumption is that of the solidarity, or potential solidarity, of most states in the world in upholding the collective will of the society of states against challenges to it."⁹⁰ It consequently stands in direct opposition to the pluralist view that states "are capable of agreeing only for certain minimum purposes which fall short of the enforcement of the law."⁹¹ Significantly, Bull contended that the second, narrow understanding of the term "Grotian," defined as "the solidarist form . . . of the doctrine that there is a society of states . . . united Grotius and the twentieth century neo-Grotians, in opposition to the pluralist conception of international society entertained by Vattel and later positivist writers," including Lassa Oppenheim.⁹²

In presenting the solidarist and pluralist approaches as a debate between Grotius and Oppenheim, Bull explicitly sought to extend the debate instigated by Cornelius van Vollenhoven earlier in the century that defended the solidarism of Grotius against the pluralism of Vattel.⁹³ However, a number of problems are apparent with this endeavor at the outset. As hinted at above, Bull seemed to suggest that the ideas of Grotius were commensurate with the central precepts of contemporary solidarism. In large part, this can be attributed

to the overwhelming extent to which Bull relied on Lauterpacht's interpretation of *De Jure Belli ac Pacis*. By doing so, as Dunne writes:

Bull infers that the "central Grotian assumption" of solidarity *is* the central assumption of Grotius. Such a distortion flows easily from Bull's attempt to read the tension between the power political order and the normative legal order in terms of a dialogue between Oppenheim and Grotius. His instrumental approach to the history of ideas is evident in the discussion that followed: "I had in mind," Bull reflected, "to criticise the conception of international relations embodied in the League and United Nations and to some extent in Western thinking about international relations." If Bull's target was the League of Nations (and the internationalist views that underpinned it) then why take the labyrinthine route of associating it with the work of Grotius?⁹⁴

Of course Bull chose to attack the League of Nations via the works of Grotius precisely because its inventors and proponents were considered "Grotians" in subsequent scholarship. However, by deriving his understanding of Grotius' works purely from the interpretation of one of those he sought to criticize, the Grotius that Bull addressed was, at least in part, a figment of Lauterpacht's imagination.

However, Bull did not simply want to extend van Vollenhoven's account but to refute its central claims. In particular, in direct contradiction to van Vollenhoven's position, Bull sought to actively criticize the "solidarist" or narrowly conceived Grotian tradition. As we will see in the following section, his reasons for doing so are caught up in his views on religion and morality and owe a great deal to his undergraduate philosophy teacher, John Anderson.

Bull on Religion and Morality

Although he is rarely acknowledged as such, John Anderson stands as one of the most important figures to have influenced Bull's intellectual development.⁹⁵ As Bull wrote in the preface to *The Anarchical Society*:

My greatest intellectual debt is to John Anderson . . . a greater man than many who are more famous. He had little to say directly about the matters discussed in this book, but the impact of his mind and his example has been the deepest factor in shaping the outlook of many of us whom he taught.⁹⁶

The Challis Chair of Philosophy at the University of Sydney from 1927 to 1958, Anderson was, in David Armstrong's view, "the most important

philosopher who has worked in Australia.”⁹⁷ Although he only published one book during his lifetime, *Education and Politics*—three editions of collected articles and lectures, *Studies in Empirical Philosophy*, *Education and Inquiry* and *Art and Reality* have been published posthumously while his *Lecture Notes and Other Writings* have been made available on-line—his influence extended to a number of realms.⁹⁸ In Australian society, Anderson is best remembered as a public controversialist who twice instigated censure motions in the New South Wales and Federal parliaments for his outspoken views on censorship, war memorials, sexual liberation and the role of religion in education. However, it was among his students that he exerted the greatest influence. Indeed, even critics among his former students acknowledge Anderson’s impact on their intellectual development. For example, David Stove once wrote that “[t]he influence Anderson exercised was purely, or as purely as a human influence can be, purely intellectual. I never felt anything like the force of his intellect.”⁹⁹

In the field of philosophy, Anderson expounded the merits of what A.J. Baker has termed “Australian realism,” a form of extreme philosophical realism, in a time when idealism was still the dominant mode of thought in Australian scholarship.¹⁰⁰ Anderson’s realism was marked by three principles, empiricism, pluralism, and positivism, and this extended to his view of ethics.¹⁰¹ Thus, Anderson argued that ethics must necessarily be concerned with “facts” and, as such, maintained that “there are no ‘values’ above facts.”¹⁰² Rather, ethics must be treated in the same manner as any other social phenomena; that is to say, positively. This, of course, is in direct contradiction to the more common understanding of ethics as being concerned not simply with the principles of human conduct but with how human beings ought to act; that is, with the normative element of ethical inquiry. However, Anderson went so far as to suggest that “there is no such thing as a ‘normative’ science.”¹⁰³ According to Anderson, “[t]he most obstinate confusion obstructing the growth of ethical knowledge lies in the assumption that ethics teaches us how to live or what to live for, that it instructs us in our duty or in the approach to the moral end.”¹⁰⁴

It is possible to identify two immediate implications of this view. The first, which I will return to in the following discussion of Anderson’s views about religion, is that he was outwardly hostile toward “moralism.” “Moralism” was, in Anderson’s view, a “fraud” because it brought with it a false sense of obligation.¹⁰⁵ The second implication of Anderson’s positivist view of ethics is the claim that not only is there “is no such thing as the common good” and no need to pursue moral or social progress, but that there is “perhaps no possibility of it” occurring at all.¹⁰⁶ This has specific implications for Anderson’s understanding of religion.

Anderson's hostility toward religion is almost legendary in Australian society and scholarship. Although he initially rejected religion on Comtean grounds, Anderson's later criticisms of it were made on "both ethical and logical grounds." In agreement with Nietzsche and in accordance "with his positive theory of ethics he regard[ed] Christianity . . . as essentially servile and philanthropic in its outlook and preoccupations . . . and so as quite opposed to what is intrinsically *good*."¹⁰⁷ Focusing his criticisms on Christianity in particular, he argued that "the Christian ethic, as an ethic of renunciation and consolation, as holding out to the lowly on earth in expectation of "elevation" in some unearthly sense, stands low in the scale of moralities."¹⁰⁸ In particular, Christianity brings with it, he argued, an implicit and unsubstantiated claim to a higher form of morality.¹⁰⁹ Christianity is thus "a feudal attitude which is characterised by social helplessness" and presents a "mere veneer of solidarity in its emphasis on acquiescence to oppression and its doctrine of personal salvation."¹¹⁰ On logical grounds, Anderson also argued that "[t]heology (is) not only an ambiguous doctrine *of reality*, (it) is also an ambiguous position itself." It cannot be, he maintained, treated as an aspect of science or even philosophy but can only be reduced to an aspect of social science, one of many facets of human history.¹¹¹

However, Anderson's complaint with religion was not simply a general one but was specifically directed toward the role of religion in education, the subject of one of the public controversies in which he found himself. Indeed, Anderson famously argued in his 1943 speech "Religion in Education," "[a]s with the subject of snakes in Iceland there is no religion in education." "Education," he argued, "may be described as the development of inquiry, the setting up of habits of investigation." Religion, he continued, is thus "opposed to education" because that which is "sacred" is, by definition, immune to inquiry, examination and criticism. "[T]o call anything sacred," he argued, "is to say, 'Here inquiry must stop; this is not to be examined'."¹¹²

Bull's time at the University of Sydney coincided with Anderson's "religion in education" phase. Indeed, Bull is acknowledged, albeit for his misunderstanding of Anderson's position, in the 1950 lecture "The Nature of Freethought":

Hedley Bull's "defence" of me says that I give an initial training in logic which is NON-Christian (not anti-Christian) and then state my conclusions (which *are* anti-Christian) and the student may disagree and criticise. But I do not "state," but *draw* conclusions. I show that what *follows* from premises I assume anyone will accept.¹¹³

It is in Bull's criticisms of the solidarist position and defence of pluralism that his proximity to Anderson's teachings on positivism, pluralism and empiricism

are particularly apparent. Bull was critical of solidarism for two main reasons. The first was the claim that solidarism had exerted “an influence positively detrimental to international order . . . by imposing upon international society a strain that it cannot bear.” This “strain” resulted from the imposition of what was actually a false sense of solidarity of interests that, far from strengthening international society “has the effect of undermining those structures of the system which might otherwise be secure.”¹¹⁴ Here Bull seemed to be echoing Anderson’s arguments against the supposed solidarity of human societies and, in doing so, directly refuted Lauterpacht’s emphasis on the common goals of international society.¹¹⁵ However, the echo becomes much louder indeed when Bull launches his further attack on solidarism’s notion of the common good in international ethics.

Bull’s second complaint with the solidarist approach to international society was derived from his well documented moral scepticism. As O’Neill and Schwartz write, Bull’s “scepticism had been nurtured by . . . a renowned sceptic and iconoclast,” John Anderson.¹¹⁶ Referring to the moral pluralism that colored his view of international society, Stanley Hoffman has also noted that Bull was “painfully aware of the multiplicity of moral perspectives” and, as a result, viewed with immense scepticism the assertion that any form of common morality, implied by the central concepts of the solidarist approach, can be identified in international relations.¹¹⁷ This scepticism is particularly displayed in his critique of E.B.F. Midgley’s *The Natural Law Tradition and the Theory of International Relations*, which he described as “dauntingly massive and impressively learned, if [an] avowedly dogmatic and profoundly reactionary attempt to rehabilitate the Thomist philosophy of natural law.”¹¹⁸ Revealing his outward discomfort with the avowedly Christian elements of Midgley’s work, Bull particularly criticized his “reliance on Christian revelation, his statement that the fundamental principles of his work are confirmed by the authority of the Church and his view that natural law cannot effectively be upheld today except by theists.”¹¹⁹ However, Bull’s most substantial criticism of Midgley’s work centered around his presentation of “moral issues in terms of ‘antinomies and paradoxes’.”¹²⁰ In particular, he argued, in accordance with Anderson and contrary to Midgley, that moral questions can only be answered “by reference to moral rules whose validity we assume”; that is, according to empirically verifiable arguments.¹²¹ These views on religion, morality and natural law certainly put him at odds with his fellow members of the “English School,” in particular, Martin Wight.

Similarly, Bull’s critical approach to notions of common morality was also displayed in his review article of Michael Walzer’s *Just and Unjust Wars*.¹²² In particular, Bull argued that, at heart, Walzer’s work rested on the implicit assumption that his readers “share[d] a common morality with him.” This,

Bull argued, led Walzer to assume that he did not need to “defend his basic moral principles” but that he could simply assert them.¹²³ However, as Bull pointed out later in the article, this was not the case for most of Walzer’s arguments were, in his view, “vulnerable” to attack from a variety of other positions.¹²⁴ Thus, while Bull praised Walzer’s “dismissal of relativist arguments” he also criticised his apparent “subjectivity.”¹²⁵ For example, Bull maintained that Walzer’s “basic proposition that—as against General Sherman’s doctrine that ‘war is hell’—the distinction between just and unjust war is of cardinal importance, would be disputed by absolute pacifists [sic], with whose position he makes no attempt to come to grips.”¹²⁶ The assumptions implicit in Walzer’s argument did not amount simply to the endorsement of a notion of common morality in Bull’s view, but represented the further claim that Western liberal values about the morality of war and the rights and duties of individual human beings are held universally. With Anderson, Bull disputed these very premises.

Despite Anderson’s influence and the effort with which Bull criticized the solidarist approach in *The Anarchical Society* and “The Grotian Conception of International Society,” a distinct shift toward this position can be discerned in his later works. Nicholas Wheeler and Tim Dunne attempt to reconcile this move by characterizing Bull as harboring a “pluralism of the intellect and solidarism of the will.” In particular, they argue that “later Bull came to express increasing disillusionment with pluralism on the grounds that it could not provide for order among states and hence order among the wider society of humankind.”¹²⁷ Evidence of this growing disillusionment first began to appear in the early 1980s and, in particular, the Hagey Lectures of 1983.¹²⁸ Here, despite his previous arguments against the solidarist approach, Bull discussed the notion of a “growing cosmopolitan awareness” in international relations.¹²⁹ Furthermore, he also began to discuss the “concept of a world common good” and argued that “in the absence of a supranational world authority” the need existed “for particular states to seek as wide a consensus as possible, and on this basis to act as local agents of a world common good.” However, reining himself back in, Bull did concede that “states are notoriously self-serving in their policies, and rightly suspected when they purport to act on behalf of the international community as a whole.”¹³⁰

Similarly, the posthumously published chapter “The Importance of Grotius in the Study of International Relations” also includes hints that Bull was no longer as hostile toward the solidarist approach than he had been earlier in his career. In particular, Bull did make two important concessions in this work. First, he admitted that “[b]y no means all that Grotius has to say seems to support what we have been calling a solidarist point of view,” even

going so far as to recognize that pluralist elements can be found in Grotius" works.¹³¹ Second, he also argued that "[i]t is absurd to read Grotius as if he were speaking to us directly about the problems of our own times," thereby further dissociating Grotius from the twentieth-century Grotian tradition of his own construction.¹³² It is difficult to determine precisely what these significant shifts in Bull's thinking mean, in large part because he passed away before having the opportunity to account for them in more detail. What is certain though, is that for the most part, the account of the Grotian tradition and discussion of the pluralist and solidarist approaches to the notion of international society in "The Grotian Conception of International Society" and *The Anarchical Society*, remain the most influential works in subsequent Grotian scholarship.

Conclusion

In scholarship subsequent to Bull, few if any developments of the "Grotian tradition" have occurred. In particular, Bull's implicit assertion that the "Grotian tradition" is synonymous with the "international society approach" to international relations has become something of a commonplace assumption.¹³³ More prominently, scholars continue to draw on Bull's division of approaches to the concept of international society into the contending pluralist and solidarist positions, and have applied it to a range of questions in contemporary scholarship. Nowhere has this been more apparent than in scholarship concerned with the theorization of humanitarian intervention.

Perhaps the most prominent scholar to have approached the concept of humanitarian intervention in this manner is Nicholas Wheeler whose *Saving Strangers: Humanitarian Intervention in International Society* aims to build on Bull's contribution by demonstrating the extent to which competing concepts within his work "generate competing approaches to the legitimacy of humanitarian intervention."¹³⁴ In particular, both Bull's contending "pluralist" and "solidarist" approaches to international society and the firm distinction he makes between principles of order and justice from which they are derived, are especially applicable to the concept of humanitarian intervention. As Nicholas Wheeler and Justin Morris argue, illustrating the tension inherent within the concept of humanitarian intervention, "conflict between order and justice is revealed in its starkest form in those exceptional cases of human suffering that are triggered either by the breakdown of the state into anarchy and civil war, or by the genocidal practice of governments and ethnic militias competing for control of the state."¹³⁵ Similarly, despite arguing that this characterization is somewhat too simplistic, Oliver Ramsbotham recognizes that the question of humanitarian intervention "is often said to represent a

conflict between concepts of sovereignty, order and non-intervention on the one hand, and human rights, justice and intervention on the other.”¹³⁶ With this, it is immediately apparent that even on a fairly superficial level, Bull’s scheme stands as a pervasive structure dictating and directing the theorization of other concepts in International Relations.

As Wheeler explains, adopting Bull’s pluralism/solidarism schematization, “[p]luralist international-society theory defines humanitarian intervention as a violation of the cardinal rules of sovereignty, non-intervention and non-use of force.”¹³⁷ At heart, this failure to endorse the practice of humanitarian intervention is derived from the reasoning that, as “agreement is not possible on universal principles of human rights, any attempt to impose what must necessarily be a particularist value would disrupt order” in the international system.¹³⁸ Extending this notion, and also revealing their reliance on Bull’s scheme, Ramsbotham and Woodhouse contend that although there is “enough commonality to generate rules of association that are generally respected” in international relations, from a pluralist perspective, not enough commonality exists “to overcome local particularisms” that could potentially disrupt order.¹³⁹ Conversely, the solidarist approach acknowledges that states have a responsibility not only “to protect the security of their own citizens, but also . . . [a] wider one of ‘guardianship of human rights everywhere’.”¹⁴⁰

As with the presentation of their contending approaches to international society, so Oppenheim and Grotius are deemed illustrative of the pluralist and solidarist positions on humanitarian intervention. However, although Oppenheim certainly voiced reservations about the notion of humanitarian intervention, arguing, somewhat sceptically that “[n]o State will ever intervene in the affairs of another if it has not some important interest in doing so,” he did concede the possibility of justifying collective intervention.¹⁴¹ Thus, writing in 1919, he doubted that “there really is a rule of the Law of Nations which admits such interventions,” but acknowledged that “public opinion and the Powers are in favour of such interventions” and that, “it may perhaps be said that in time the Law of Nations will recognise the rule that interventions in the interest of humanity are admissible, provided they are exercised in the form of a *collective* intervention of the Powers.”¹⁴²

Similarly, with the apparent ability of solidarism to justify the practice of humanitarian intervention, its representative, Hugo Grotius, has not only been reconnected to the concept but once again heralded as the “father of humanitarian intervention.” Indeed, following this admittedly understandable trend, in seeking to locate the historical origins of the concept of humanitarian intervention, Wheeler writes that “lawyers date the origins of the doctrine to the seventeenth-century Dutch international lawyer Hugo Grotius, who considered the rights of the sovereign could be limited by principles of

humanity.”¹⁴³ Similarly, despite recognizing the possibility of its earlier origins, Simon Chesterman writes:

The classical origins of what became known as humanitarian intervention lie in the emergence of a substantive doctrine of the just war in the Middle Ages. This was developed in large part by the scholastics, but achieved its most comprehensive and widely publicised form in the work of the Protestant Hollander Hugo Grotius.¹⁴⁴

However, as revealed in chapter 2, claims that Grotius ought to be considered the father of humanitarian intervention, although obviously derived from his position within the theoretical construction of the solidarist approach to international society, are ill-conceived. Although this is not immediately critical to the theorization of humanitarian intervention itself—although, its ramifications may well be—it serves as a warning that something has gone seriously awry in the construction of the “international society approach” to international relations.

What the assertion that Grotius ought to be considered the “father of humanitarian intervention” also reveals is the extent to which the historical figure of Hugo Grotius has been obscured in International Relations scholarship. For Hersch Lauterpacht and Martin Wight, the Grotian tradition was simply an intermediary category of international legal scholarship that stood between the dominant natural and positive law traditions. According to Lauterpacht, in an analytical sense, Grotius was not a “Grotian,” however in Wight’s incarnation, Grotius is both a “Grotian” and a “rationalist,” although he is not the only or most important member of either of these categories. Similarly, for Hedley Bull, Grotius is a “Grotian” and a “rationalist.” However, in Bull the “Grotian tradition” is not only synonymous with rationalism, as conceived by Wight, but also represents a subdivision of the rationalist tradition alongside “pluralism.” However, in this vein, it is not logically clear why “pluralism” is not also “Grotian.” In particular, given that Grotius’ work contains both “solidarist” and “pluralist” ideas, and the manner in which the pluralist category is constructed by fusing a broadly conceived notion of the “Grotian” with elements of realist and legal positivist thought, this seems to suggest that Bull’s pluralist/solidarist division is, in fact, a false one. Next, in an attempt to pin some sort of definition to the “Grotian tradition,” contemporary theorists have simply asserted that Grotians are “international society theorists” and, although Grotius is occasionally mentioned, his position within this “Grotian” tradition is rarely considered. Finally, this “international society approach,” complete with its “solidarist” and “pluralist” variants, has been applied to the concept of humanitarian intervention,

leading to the re-emergence of the erroneous claim that Grotius was the “father of humanitarian intervention.”

However, what is particularly significant here is not simply the designation of the “Grotian tradition” as a tradition of thought about international society, but the simultaneous invention of what might be called an “international society tradition.” In this vein, Bull depicts the development of the concept of international society as beginning in the fifteenth, sixteenth and seventeenth centuries with the natural law writings of thinkers such as Vitoria, Svárez, Gentili, Grotius and Pufendorf that emerged in response to the “social and moral vacuum left by the receding *respublica Christiana*,” continuing in a distinctly “European” frame in the eighteenth- and nineteenth-century writings of Wolff, Vattel, Moser, Burke, von Martens, Gentz, Heeren and others, before emerging as the concept of “world international society” in the twentieth century.¹⁴⁵ However, as discussed earlier in this chapter, “international society” is a conceptual conglomerate, fundamentally constituted by the fusion of two antecedent sets of ideas, those pertaining to the functioning of the *jus gentium* in the *societas gentium* and the existence of a *Staaten-system* while retaining elements of the *civitas maxima* and *respublica Christiana*. In this sense, the history of the idea that is “international society” may be considered a “scissors-and-paste” affair.¹⁴⁶ Critically however, until the mid-twentieth century, Grotius was associated with only one piece of the international society jigsaw and although he includes a number of concepts somewhat akin to notions of the *societas gentium*, “international society” was not coherently or consistently conceived in his works. With this in mind, it would make as much sense to herald Francisco Suárez with his notion of *societas gentium*, Richard Zouche on account of his identification of the *jus inter gentes* or Christian von Wolff for his devotion to the *civitas maxima*, the “midwife” of international society, as Bull describes Grotius.

Conclusion

In international relations scholarship, Hugo Grotius is a name more synonymous with a tradition than with a man. It is a name evoked with relative frequency in contemporary thought, and yet, little consensus exists as to precisely what it means to be “Grotian,” what the “Grotian tradition” entails or, indeed, whether or not Grotius can be considered a “Grotian” himself. In light of this, and in recognition of the fact that although the importance of Grotius’ most famous work, *De Jure Belli ac Pacis* has been “vast” in subsequent scholarship, “a comprehensive study of its intellectual has not yet appeared,”¹ this work has sought to provide an intellectual history of the “Grotian tradition” from the works of Hugo Grotius to its articulation in contemporary scholarship.

In doing so, it has sought to address two interrelated sets of questions. Drawing on the development of “Grotian” scholarship in international legal and political thought, the first focused on precisely what the term “Grotian” has meant both historically and as it is employed in contemporary scholarship. It asked why particular sets of thinkers and ideas have been classified as “Grotian” and, by extension, whether or not the term “Grotian” retains any necessary connection to the historical figure of Hugo Grotius himself. Starting with Grotius’ voluminous works it has considered not only the central themes of *De Jure Belli ac Pacis* but has paid particular attention to the religious concerns echoed in his less well-known theological works.

The second set of questions with which this work has been concerned sought to ascertain precisely what it means to designate a set of thinkers or ideas a “tradition” and highlight some of the epistemological ramifications of doing so. In the first instance, this line of inquiry has been pursued in purely theoretical terms. Thus, chapter 1 considered how the term “tradition” is best conceived and, in light of its historical implications, concluded that all traditions, like all forms of history, are invented. That is, as sets of ideas formed by

the retrospective association of antecedent ideas, traditions require links, connections and other relationships to be identified and perpetuated by its members and commentators. By applying a set of methodological principles derived from Brian Schmidt's "critical internal discursive" approach to the analysis of traditions, the remainder of the work proceeded by considering the sense in which the "Grotian tradition," in its various forms, was itself invented. In doing so, it asked precisely what individual proponents of the Grotian tradition have meant by its designation as a tradition and, by extension, how their particular understanding of what is constituted by a tradition has impacted the epistemological contents and membership of the Grotian tradition itself.

Considered together, these two lines of inquiry constitute an intellectual history of the Grotian tradition from Hugo Grotius to the present. Its central argument contends that the Grotian tradition is a tradition of thought concerned with the relationship between law and morality. It is a tradition of thought that has evolved, for the most part, with explicit reference to the works of Hugo Grotius although in the second half of the twentieth century crucial aspects of this connection were lost.

By extension, this work therefore also argues, although perhaps implicitly, that contrary to its contemporary conceptualization, the Grotian tradition has not, historically speaking, been a tradition of thought about international society. Rather, this union coincided with the emergence of more sophisticated conceptualizations of international society in the writings of Martin Wight and, in particular, Hedley Bull, and signaled the effective end of the Grotian moral tradition. This is not to suggest that events in the development of the concept of international society did not have an impact on the evolution of the Grotian tradition, or that law and morality do not constitute an essential part of contemporary conceptions of international society. Rather, it simply serves to suggest that international society has not been the central focus of either Grotian scholarship or the Grotian tradition for much of its existence.

The "Traditions Tradition" and International Relations

As suggested in chapter 1, the range of problems associated with the characterization of Grotius and the conceptualization of the "Grotian tradition" are, in many respects, symptomatic of the wider set of problems associated with the "traditions tradition" of International Relations. Indeed, many of the problems associated with the invention of the Grotian tradition center around the conceptualization of the term tradition itself. Whether employed as a taxonomic device or to designate a self-consciously perpetuated pattern

of transmission, the term “tradition” brings with it a range of historical and epistemological implications. Whether intentionally or not, traditions infer an inherent connection to the past and, in most instances, make certain sets of assumptions about origins. They demarcate who and what is “in” and, in doing so, create linkages between both thinkers and their ideas.

However, as discussed in chapter 1, a range of serious epistemological problems are associated with the indiscriminate use of the term in the framing of disciplinary histories, particularly, as we have seen, in International Relations. Traditions can, and often do, encourage the “pigeon-holing” of thinkers and their ideas, they stifle innovation, and erect barriers that serve to both protect the status quo and exclude alternatives to it. At the same time however, “tradition” remains a useful pedagogical device, a tool according to which the complexities of the subject can be neatly divided into more manageable portions. In scholarly terms however, these advantages do little to ameliorate the more serious epistemological problems brought about by the ill-considered use of “tradition” in international thought. In particular, as the transmission of ideas from the works of Martin Wight to Hedley Bull demonstrates, the tendency to view analytical traditions as actual historical ones is very real and can result in both the prefiguring of a thinker’s ideas and/or the establishment of anachronistic sets of relations between them and others’ ideas. In this, it seems that Schmidt’s claim that International Relations has been marked by a “tendency to view an *analytical* tradition as an actual *historical*” tradition is an apt one, borne out in this context.²

These findings also accord well with Schmidt and Gunnell’s criticisms of the “grand tradition” of international relations theory on two separate fronts. First, International Relations’ proclivity for the invention of “grand traditions” is played out with the construction of a single Grotian tradition extending from Grotius through almost four hundred years of scholarship to Martin Wight and Hedley Bull. In this, the “Grotian tradition” is conceived in a similar manner to those equally grand variants of the so-called realist tradition that group together writers as diverse as Thucydides, Machiavelli, Hobbes, Rousseau, Niebuhr, Carr, Morgenthau and Waltz, as somehow “following” a defined path of intellectual transmission. Second, and as hinted at in the conclusion of chapter 5, the invention of the “international society tradition” is equally “grand” in orientation. Here, as with the invention of the contemporary Grotian tradition, Hugo Grotius is appropriated as the great classical scholar from which an apparently grand tradition of thought is derived. However, what we have in all three of these cases is an analytical tradition that groups together a range of thinkers who have contributed elements of a modern conceptual composite, such as “international society,” “realism” or “Grotianism,” masquerading as an historical tradition.

As indicated in chapter 1, a number of specific problems are associated with the construction of traditions in this manner. In a methodological sense, the invention of a grand “Grotian” or “international society” tradition, conceived in accordance with their contemporary conceptualizations will inevitably entail, at the very least, the implicit prefiguring of the works included. For example, the designation of the Grotian tradition as a tradition of thought concerned with the concepts of international society and humanitarian intervention has led to anachronistic readings of *De Jure Belli ac Pacis* in contemporary scholarship. On an ontological level, the placement of a thinker in a retrospectively conceived tradition of thought limits or even precludes the possibility that they might be characterized in an alternative manner. By reinterpreting Grotius’ works in isolation from his contemporary characterization it has thus been possible to draw an entirely different picture of the man and his works to that ordinarily presented in International Relations scholarship. Finally, the construction of grand traditions as the means according to which present concepts are both explained and lent some sort of historically derived credence is, on a fundamental level, epistemologically limiting. In particular, the designation of the Grotian tradition as a tradition of thought about international society left little room for the consideration of Grotius’ moral scheme.

In order to overcome the plethora of problems surrounding the use of the term “tradition” in international thought then, it seems that we have two main options available to us. The first is somewhat defeatist and entails the abandonment of the term “tradition” itself. This was the solution that Michael Oakeshott favored in his later works. Indeed, although the discussion of both traditions of behavior and intellectual traditions was afforded a relatively prominent place in his early works, he came to avoid the use of “tradition” with regard to the theoretical analysis of politics. This change of heart came for Oakeshott with the realization that the study of politics could not, in the final analysis, be divorced from practical considerations. Even in *Rationalism in Politics*, first published in the 1960s, “tradition” is almost exclusively used in the context of “practice.”

Here Oakeshott identified two types of knowledge involved in any human activity. The first is termed “technical knowledge” and simply refers to the techniques involved in every practical activity, for example in every art and science.³ The second type of knowledge Oakeshott termed “practical knowledge,” knowledge that “exists only in use, is not reflective and (unlike technique) cannot be formulated in rules.”⁴ Practical knowledge, he contended, is traditional knowledge and its “normal expression is a customary or traditional way of doing things, or, simply, in practice.”⁵ Although in this essay and in “Political Education,” published in the same volume, Oakeshott used

the term “tradition,” by the publication of *On Human Conduct* in the 1970s it had been generally replaced in his writings by “practice.”⁶

However, abandoning the concept of “tradition” is itself a problematic enterprise. First, as this is more likely to occur on an individual than disciplinary or multi-disciplinary level, doing so will inevitably result in nothing more than individual isolation from what will, in all likelihood, be a mode of scholarship that continues to attract followers. As discussed in chapter 1, the attraction of “tradition” is plain to see and, given its pedagogical benefits, is unlikely to be discarded any time soon. As such, rather than call for the abandonment “tradition” what is required is a greater recognition that a more thorough consideration of precisely what it means to designate a set of thinkers or ideas as a tradition needs to be incorporated into contemporary scholarship, the second option to be discussed shortly. Second, ceasing to use the term “tradition” does not preclude the possibility of constructing tradition-like patterns of thought under a different title. This, in effect, is what Oakeshott himself ended up doing in replacing “tradition” with “practice.” A practice, he explained, is “a set of considerations, manners, uses, observances, customs, standards, canons, maxims, principles, rules, and offices specifying useful procedures or devoting obligations or duties which relate to human actions and utterances.”⁷ Highlighting their proximity to traditions, Oakeshott argued that practices most commonly emerge as “a continuously invented and always unfinished by-product of performances related to the achievement of imagined and wished-for satisfactions other than that of having a procedure.”⁸

Similarly, with regard to traditions of thought, Oakeshott appears to be far more critical of “tradition” in theory than in his own work. The construction of traditions of thought and, in particular, the identification of what is seen as “*the* history of political thought” presented in the form of a “continuous history of European thought” was, in Oakeshott’s view, a dangerous enterprise.⁹ Thus, despite believing in the “importance of studying the classic texts of political or legal philosophy,” he professed “no intention of compiling a list of ‘Greats’.”¹⁰ However, Oakeshott’s account of the history of political thought appears to do just that, focusing on the works of the “usual suspects” such as Plato, Aristotle, Hobbes and Montesquieu¹¹ and tracing the modern conception of the European state from Marsilius of Padua to Hegel. As Thomas Smith points out, “[a]ccording to the precepts of Oakeshott’s historical mode, this is practice: it is a backward-looking search for origins, a developmental narrative whose purpose, stated at the outset, is to derive the moral relationships that ground the civil constitution of modern European states.”¹²

Finally, the abandonment of “tradition” leaves the critical question of what we are to do with those traditions that are already in existence and will continue

to be constructed in International Relations. Are we simply to ignore them? It thus seems then that the way in which we can overcome many of the problems associated with the use of traditions in international thought is by fighting the battle from within. This does not mean simply identifying a range of types of tradition employed in the field, as Tim Dunne, and Benedict Kingsbury and Adam Roberts have usefully done, but considering their historical and epistemological ramifications.¹³

In light of the preceding discussion, it seems that there are four possible ways in which we might at worst limit and at best eradicate the indiscriminate and anachronistic use of the term “tradition” in scholarship concerned with the history of international thought. The first general move required is recognition of the fact that traditions are inherently “invented” phenomena. That is, they are functions of present thinking constructed by the retrospective association of antecedent ideas, whether previously associated with one another, in the manner of an historical tradition, or otherwise.¹⁴ It is thus the *manner* in which traditions of thought are invented that is important and about this we must be explicit. This entails, second, not simply recognizing that “invention” may entail the explicit fabrication of a pattern of thought or its organic evolution, but specifying which of these things we are referring to when we speak of a tradition of thought. For example, central to an accurate understanding of the different Grotian traditions of International Relations is the fact that when we are talking about a tradition of thought about international society, it is a fabricated tradition to which we are referring. On the other hand, the Grotian moral tradition, the central focus of this work, is a tradition that evolved organically at times, but was explicitly reformulated at others. That is, it is both an historical and an analytical tradition. Thus, third, overcoming the range of problems associated with the use of “tradition” also requires understanding, with Oakeshott, Gunnell and Schmidt, that historical knowledge exists in both “practical” and “historical” forms, each of which is defined by specific epistemological constraints and each of which is utilized for distinctly different purposes. Of course, these prescriptions may, and indeed will, seem somewhat pedantic to many scholars who continue to employ “tradition” as a useful schematic or taxonomic device in both the realms of teaching and research. However, the effect of the ongoing failure of writers to consider the epistemological ramifications of utilizing traditions in recent, and in the case of Wight and Bull, not so recent, disciplinary history is made clear in the preceding discussions.

However, there is also one far more fundamental treatment for this state of affairs: namely, a renewed recognition of the importance of historical self-awareness in the study of international thought. At first glance, this pronouncement may seem slightly absurd: what could such self-understanding

possibly tell us about the way in which states interact, wars are fought, or political decisions are made? Of course, the obvious answer is that it tells us nothing in and of itself. Rather, what historical self-awareness can provide is a better understanding of what we are doing when we conceive and present ideas of relevance to International Relations in an historical manner. International Relations is a fundamentally historical field of inquiry. It is concerned with historical events and processes and, it is almost too obvious to state explicitly, without history there could not be a subject of study we call International Relations. Both Oakeshott and Wight would undoubtedly approve of this suggestion, Wight regularly ending his courses on international relations with a reminder to his students that all theories of international relations, whether explicitly or otherwise, are predicated on a philosophy of history.

Grotius and the Grotian Tradition

In addition to considering precisely what a tradition of thought entails, the explication of the central argument of this work has required the recovery of both the historical figure of Hugo Grotius and the contents of his works. Contrary to his contemporary characterization therefore, Grotius is presented not as the “father of international law,” “secularizer of the law of nature,” “midwife of international society,” or even as a proponent of the doctrine of humanitarian intervention, but in terms of what has been called “Grotian morality”. As discussed in chapter 2, Grotian morality is a three-tiered moral scheme devised in response to a number of personal and historical tensions that Grotius faced. It is constituted by three interweaving layers of morality derived from the law of nature, the central precepts of the just war tradition, and the Christian law of love (*caritas*). Although it was not until the twentieth-century work of Hersch Lauterpacht that all three tiers of Grotius’ scheme appeared together under the banner of the “Grotian tradition,” albeit in a secular form, Grotian scholarship was sustained in the interim by the continuing appeal of its constituent parts.

In the first instance, Samuel Pufendorf drew upon Grotius’ work, presenting an even more forcefully argued case for the application of the law of nature to the conduct of nations than his intellectual “father” had done, reorienting Grotius’ natural law theory in accordance with the principles of moral voluntarism and attempting, unsatisfactorily, to resolve the problem of obligation inherent in it. Despite a period of relative moral downturn in the works of Wolff and Vattel, the early nineteenth century saw the revival of an explicitly Christian Grotian morality at the hands of James Kent and Henry Wheaton. Similarly, the early twentieth century saw the return of Grotius’

works to mainstream international scholarship with Cornelius van Vollenhoven's solid defence of Grotius' works and appeal to the principle of *temperamenta* and precepts of the *jus caritas*. At the same time, elements of Grotian natural law morality were evident in the "idealist" international works of theorists such as J.L. Brierly, while Georg Schwarzenberger identified a Grotian tradition of morality standing between those derived from the natural and positive legal traditions. However, Hersch Lauterpacht undoubtedly stands as the most important proponent of Grotian morality since Hugo Grotius himself. It is in Lauterpacht's conceptualization of the Grotian tradition of international law that all three tiers of Grotius' moral scheme not only appear but are specifically directed toward the regulation of state conduct. Finally, as indicated in chapter 5, it is this form of the Grotian tradition that appeared in the works of Martin Wight and was there categorized under the broader banner of the rationalist tradition. Thus, although a direct pattern of transmission cannot be discerned linking Grotius through successive generations of scholars to the twentieth century, it is clear that the Grotian moral tradition not only owes its origins to the seventeenth-century thinker but retains at least a minimal responsibility to his ideas. However, conceiving Grotius and the Grotian tradition in this manner is not possible without acknowledging that Grotius was not simply an international lawyer, politician, diplomat and historian, but a theologian and committed Christian. In this vein, a possible reason for the overwhelming neglect of the moral element of Grotian scholarship in International Relations is the reticence with which Christian based morality is approached in contemporary scholarship.

In an immediate sense, it is possible to identify two main sources for International Relations' general failure to acknowledge the importance of Grotius' theological works.¹⁵ The first, as mentioned in chapter 1, is largely the result of his writing style. Thus scholars have tended to gloss over the lengthy, convoluted and at times dull tracts of biblical exegesis and theological arguments with which his work is liberally seasoned. At the same time they have also been reluctant to mine his equally inaccessible theological works for passages that are of relevance to politics. The second reason for the marginalization of Grotius' theological thought from International Relations scholarship stems from the persistent assumption that *De Jure Belli ac Pacis* was responsible for the "secularization" of natural law and the emancipation of the law of nations from its ecclesiastical roots, a proposition that is highly questionable at best. Demonstrating what William George describes as the "textbook bias" for example, in his highly popular international law textbook Malcolm Shaw writes that "Grotius finally excised theology from international law and emphasised the irrelevance in such a study of any conception of a divine law."¹⁶ Presenting a far more accurate characterization of Grotius,

Mark Weston Janis writes that “[t]rained and famed as a theologian as well as a jurist, Grotius unashamedly brought the Bible into the law of nations.”¹⁷ Not only this but, as we saw in chapter 3, it was the specifically religious aspects of Grotius’ law of nations that secured his revival in the early nineteenth century and continued to fuel his popularity in the early twentieth century. Indeed, it was Lauterpacht’s Grotius that was, for the first time, a truly secular Grotius and one that, as we saw in chapter 5, certainly appealed to Hedley Bull, the figure who contributed more to Grotius’ popularity in the late twentieth century than any other.

Alongside these specific reasons however, it is also possible to point to some more general trends in treatment of religion in International Relations and international law that have contributed to this state of affairs.

Religion in Contemporary International Thought

Contemporary scholarship, it seems, is marked by what Scott M. Thomas has described as “an ideological reticence to discuss the religious beliefs of scholars or public officials.”¹⁸ Indeed, with very few exceptions, contemporary International Relations seems reluctant to consider the manifold ways in which religious thought infiltrates and at times directs the ways in which we think about phenomena in the international sphere.¹⁹ Thus, although it has been a recognized feature of human societies for literally thousands of years, in International Relations religion has generally been viewed simply as a recurrent cause of war.

Indeed, despite the pervasiveness of religion in international affairs, International Relations as a field remains reluctant to acknowledge or even consider the impact of religious ideas not simply on world events but on the concepts and theoretical frameworks we use to understand them. Religion is thus “rarely included in most major theories of international relations” and, as Vendulka Kabalkova writes, “when it is addressed, it is usually through viewing it as a subcategory of some topic that is considered more important such as institutions, terrorism, society, or civilizations.”²⁰ Religious thought that is specifically theological in orientation fares little better and is generally relegated to discussions of the “‘just war’ tradition, pacifism and the development of international law,” although even there its influence is often granted only passing acknowledgement.²¹

In *The Global Resurgence of Religion and the Transformation of International Relations* Scott Thomas suggests four possible reasons for the reluctance with which international relations scholars view religion as an important part of their sphere of study. The first is associated with modernization and, in particular, the rise of modernization theory. With modernization,

Thomas explains, came secularization and the assumption that an indelible link existed between the two. In short, modernization theory contends that modern society is necessarily secular in orientation and must, at least in word, maintain an absolute separation of religion and politics.²² Of course the period in which Grotius lived and wrote hovered on the brink of the modern era; the Reformation was well under way and, before too long, the absolute separation of Church and State it inspired would be complete. As we saw in chapters 1 and 2 however, Grotius, with his primitive legal thought and Arminian belief in the right of the state's authority over the church, cannot reasonably be considered a "modern" thinker.

The second reason Thomas suggests for the marginalization of religion from International Relations scholarship is derived from what he terms the "Westphalian Presumption." The Westphalian Presumption, derived of course from the treaties of 1648 maintains that religion is a matter to "be disciplined by the state" and, as a result, "is no longer supposed to be a part of international politics."²³ Following the Peace of Augsburg of 1555, the Westphalian treaties adopted the principle of *cujus regio, ejus religio* "the ruler determines the religion of his realm" and instituted the principles of religious tolerance and, most importantly, noninterference as the primary rules of the modern international system.²⁴ The formal institution of the principle of non-intervention has been widely viewed ever since as the most important rule of the international system of sovereign states. In this vein, the Peace of Westphalia has been viewed by many as "the majestic portal which leads from the old world into the new world."²⁵ That is, it is understood to mark the final transition from the medieval to the modern world.

Despite the pervasiveness of these assumptions, the claim that "Westphalia is the origin of modern international relations" has come under growing attack in recent scholarship.²⁶ In particular, Stephen Krasner has pointed out that "before Westphalia, Europe was substantially modern—states with sovereign privileges already existed—and that after Westphalia Europe was persistently medieval: the Holy Roman Empire and several compromises of sovereignty, including minority agreements for religion, remained."²⁷ This, of course, is not some perverse reversal of the modern and medieval periods but simply serves to highlight the fact that the move from the medieval to modern eras was a gradual process that did not occur in a single move with the Westphalian treaties. Taking a slightly different tack, Philpott argues that, contrary to the assumption of secularism, "[r]eligious ideas . . . are at the root of modern international relations."²⁸ Indeed, he goes further than this and argues not only that religious ideas are central to modern international relations but that they are "indispensable." That is, he argues that had there been no Reformation, the Peace of Westphalia would

not have been possible and as a result, “a system of sovereign states would not have arrived” in the form in which it did.²⁹

Despite such convincing arguments to the contrary, the Peace of Westphalia remains central to contemporary International Relations, indicating for many the emergence of modern International Relations and International Law. In this vein International Relations has traditionally been concerned with questions pertaining to the “state, the states-system” and the norm of non-intervention, all of which are deemed reliant on this orthodox interpretation of the Westphalian treaties. As a result religion is relegated to the realm of pre-modern history and is viewed in contemporary thought as “the ultimate threat to order, civility and security,” three central themes of post-Westphalian scholarship.³⁰

A further factor used to explain the marginalization of religion in the study of international relations is, as mentioned above, the fact that the dominant paradigms and traditions of thought according to which the subject is conventionally viewed have not considered such social forces to be of great importance.³¹ Although it is not necessarily incompatible with religious thought,³² realism, the dominant perspective of twentieth-century International Relations, is, of course, the major culprit in this state of affairs. By focusing on the state and conceiving power primarily in military terms, realism has managed to ignore religion as both a social and intellectual force. Ironically, foremost among twentieth-century scholars whose theological ideas have been marginalized or flatly ignored is the radical theologian and realist international relations theorist Reinhold Niebuhr. For example, despite acknowledging that *The Nature and Destiny of Man*, a heavily theological piece, is Niebuhr’s most important work, writers have typically dismissed it as being “likely to be of interest only to those with a serious theological or philosophical bent.”³³ The “Christian” element of Niebuhr’s “Christian realism” is, with a few notable exceptions, simply ignored.³⁴ For example, in his *History of International Relations Theory*, Knutsen recognizes that Niebuhr “provided the moral foundation for the new realist approach” that appeared in the 1930s but does not consider its theological foundations.³⁵ As such, despite being first and foremost a Christian theologian, Niebuhr has been transformed into a wholly secular theorist who, alongside Hans Morgenthau, is considered one of the two American “formulators” of realist thought.

Of course, foremost among those twentieth-century scholars to seriously consider the role of religion in politics were Martin Wight and his associate Herbert Butterfield. Indeed, Christianity played a particularly significant role in both Wight’s life and in his thought. As Hedley Bull notes, in the 1930s, Wight adhered to a particular notion of Christian pacifism,³⁶ even going to far as to register as a conscientious objector during World War II. Although his

pacifism later “dropped away,”³⁷ he remained, throughout his life “a fervent and rather traditionalist Anglican.”³⁸ As E.B.F. Midgley suggests, Wight’s Anglicanism may perhaps have directed his preference for the works of Grotius, a pious and revered protestant, over those of the Roman Catholic who preceded him intellectually, Francisco Suárez, in whose work Wight identifies a number of crucial elements of the rationalist tradition.³⁹ Wight’s faith was of a particularly pessimistic nature, shunning the notion of progress that had stood as a moral beacon for the Christian idealists of the interwar period, and viewing humans not as “well-meaning people doing our best,” but rather less optimistically as “miserable sinners, living under judgement, with a heritage of sin to expiate.”⁴⁰ Significantly, Wight maintained that Christianity had been “perverted” by its willingness to adopt as its central doctrine the notion that “God is Love.” Arguing against Arnold Toynbee’s characterization of Christianity in this manner, Wight wrote in “The Crux for an Historian Brought up in the Christian Tradition” that “[t]he central declaration of Christianity is not that God *is* something, but that God *has done* something in history.”⁴¹ What is more, he continued to argue that “God’s love is not a mere benevolence: it is a love that is identical with Holiness and Justice.”⁴² As such, Wight deviates significantly from the vague “Christian love” doctrine around which much previous Grotian scholarship had been centered. Nonetheless, he remains one of the only twentieth-century international relations theorists to consider the religious aspects of Grotius’ works.

Although one of Grotius’ foremost proponents in the twentieth century displayed a degree of theological aptitude however, his other, Hedley Bull, voiced critical disdain for religion in general and Christianity in particular. In this, Bull’s position was far closer to his earlier mentor at the University of Sydney, John Anderson, whose aversion to religion was renowned throughout much of the twentieth century. As we saw in chapter 5, at least part of the “Grotian tradition’s” shift away from its ecclesiastically inspired origins to a modern notion of international society can be attributed to this. Similarly, as Thomas points out, within the contemporary English School, relaunched in 1999, religion is afforded a marginal role at best.⁴³

Finally, Thomas also cites the rise of positivism and materialism as a further reason for the marginalization of religion in International relations.⁴⁴ By privileging “facts” over “values” and, in applying scientific methodologies according to which hypotheses are tested and “general laws, patterns, or regularities” “discovered,” religion and in particular religious beliefs are pushed beyond the margins of acceptable scholarship.⁴⁵ In a similar vein, Mark Janis suggests that among the most prominent reasons why religion has been afforded little attention in the field on international law has been the effort

with which nineteenth- and twentieth-century scholars have sought “to turn international law into a ‘science’.”⁴⁶

However, as David Kennedy writes, a range of more serious problems are associated with the marginalization of religion in international legal thought. In conventional histories of international legal thought, religion is commonly perceived to be just that, an element of history. Rather than exerting a continuing influence on contemporary thought however, this history is understood to be “over, short, early preliminary” and certainly able to be severed “from the ‘cases and materials’ of international law.”⁴⁷ Religion is, in short, something that was formerly associated with international law but is no longer.⁴⁸ What is more, despite performing a critical role in the emergence of modern international law, the range of religiously oriented legal texts deemed constitutive of the field’s history are not always treated with a great deal of respect. International legal history, has “typically devalued these early texts as the products of arcane religious or medieval ideologies.”⁴⁹ “Religion,” it is argued, “is where they went wrong.”⁵⁰ At the same time however, histories of international law also attempt to strike an uneasy balance between their disdain for religious thought and the frequency with which they draw on early religious works to provide “a quaint historical accent for contemporary moral principle.”⁵¹ Thus, religion is viewed simultaneously as the provider of moral authority and the destructor of moral order.

Despite its marginalization in contemporary scholarship, religion has played a central role in the histories of international political and legal thought. In an obvious sense, many of the “greats” of international legal and political scholarship are scholars who considered theology alongside international affairs; more than that, considered international affairs in terms of theology. The most obvious examples of such scholars include the Spanish Scholastics Francisco de Vitoria and Francisco Suárez and, of course, Grotius himself. Indeed, this work not only demonstrates the centrality of religious ideas to international political and legal thought but seems to confirm Philpott’s contention that “[r]eligious ideas . . . are at the root of international relations.”⁵² What the removal of thinkers’ religious ideas from their political thought results in, as we have seen, is both the anachronistic portrayal of important historical figures but, more significantly, the loss of some of their most profound ideas. Thus, by reconsidering the Grotian tradition in terms of its religious origins, International Relations gains not only a powerful and long-standing tradition of thought, but retains a notion of what it means to be “Grotian” that is both in essence and in substance true to the ideals and aspirations of Hugo Grotius.

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Notes

Chapter 1 The Grotius Story

1. Karma Nabulsi, *Traditions of War: Occupation, Resistance and the Law* (Oxford: Oxford University Press, 1999), p. 134.
2. Hugo Grotius, *The Rights of War and Peace* (hereafter *DJB*), ed. Richard Tuck (Indianapolis: Liberty Fund, 2005); Thomas Hobbes, *Leviathan*, ed. J.C.A. Gaskin (Oxford: Oxford University Press, 1996); Immanuel Kant, *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis: Hackett Publishing, 1983).
3. Hedley Bull, "The Grotian Conception of International Society," in Herbert Butterfield and Martin Wight (eds.) *Diplomatic Investigations: Essays on the Theory of World Politics* (London: George Allen & Unwin, 1966), pp. 51–73.
4. Philip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History* (London: Penguin, 2002), p. 512. As Edward Keene quite rightly points out, "[t]here seems to be a suspicion among Grotius scholars, and not necessarily an ill-founded one, that international relations theorists often invoke his name without actually having read his work, apart perhaps from a quick glance at the prolegomena to *De Jure Belli ac Pacis*." Edward Keene, "The reception of Hugo Grotius in international relations theory," *Grotiana*, Vol. 20/21 (1999/2000), p. 135.
5. Hedley Bull, "The Importance of Grotius in the Study of International Relations," in Hedley Bull, Benedict Kingsbury, and Adam Roberts (eds.) *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1990), p. 65.
6. Martin Wight, "The Origins of Our States-system: Geographical Limits," in *Systems of States*, ed. Hedley Bull (London: Leicester University Press, 1977), p. 127.
7. Voltaire, *Political Writings*, trans. David Williams (Cambridge: Cambridge University Press, 1994), pp. 87 and 89.
8. Hugo Grotius, *De Jure Praedae Commentarius: Commentary on the Law of Prize and Booty*, (hereafter *DJP*) trans. Gwladys L. Williams (Oxford: Clarendon Press, 1950).
9. Hugh Trevor-Roper, "Laudianism and Political Power," in *Catholics, Anglicans and Puritans: Seventeenth Century Essays* (London: Selter and Warburg, 1987), p. 52.

10. C. John Colombos, "Tercentenary of Grotius," *Transactions of the Grotius Society* (hereafter *TGS*), Vol. VII (1921), pp. 15–16.
11. Charles Edwards, *Hugo Grotius the Miracle of Holland: A Study in Political and Legal Thought* (Chicago: Nelson-Hall, 1981), p. 2. R.W. Lee writes that "[a]t the age of twelve he consoles his father in Latin verse on the death of a brother. At twelve he converts his mother to Protestantism, insisting that she is too intelligent to remain a papist." R.W. Lee, *Hugo Grotius*, Annual Lecture on a Mastermind, Henriette Hertz Trust of the British Academy 1930 (London: Humphrey Milford, 1930), p. 5.
12. W.S.M. Knight, "The Infancy and Youth of Hugo Grotius," *TGS*, Vol. VII (1921), pp. 15–16.
13. Edwards, *Hugo Grotius*, p. 2.
14. Richard Tuck, "Introduction" to *The Rights of War and Peace* (Indianapolis: Liberty Fund, 2005), p. xiii.
15. In 1580 François de Valois, the brother of Henry IV and Duke of Anjou was offered the position but after seizing Antwerp in 1583 was soon deemed unsuitable. Following the Spanish reconquest led by the Prince of Parma between 1582 and 1585, Queen Elizabeth I of England, though declining "the sovereignty offered to her by the United Provinces" intervened and sent the Earl of Leicester who was later appointed "Governor and Captain General" by the States General. After the failure of the Earl of Leicester's appointment, the United Provinces of the Netherlands became a sort of republic under the leadership of Johan van Oldenbarnevelt and William of Orange's son, Maurice of Nassau. Martin van Gelderen, "Introduction" to *The Dutch Revolt* (Cambridge: Cambridge University Press, 1993), p. xxvii.
16. Knight, "The Infancy and Youth of Hugo Grotius," p. 20.
17. See J.L. Price, *The Dutch Republic in the Seventeenth Century* (Houndmills: Macmillan, 1998) and Pieter Geyl, *The Revolt of the Netherlands (1555–1609)* (London: Ernest Benn, 1932).
18. Hugo Grotius, *The Antiquity of the Batavian Republic*, ed. and trans. Jan Waszink (Assen: van Gorcum, 2000), p. 49.
19. Cornelius Roelofsen, "Grotius and the International Politics of the Seventeenth Century," in Hedley Bull, Benedict Kingsbury, and Adam Roberts (eds.) *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1990), p. 102.
20. Hugo Grotius, "*De Republica Emendanda*: A Juvenile Tract by Hugo Grotius on the Emendation of the Dutch Polity," ed. Arthur Eyffinger, *Grotiana* Vol. V (1984), pp. 4, 69.
21. Hugo Grotius, *Commentarius in Theses XI: An Early Treatise on Sovereignty, Just War and the Legitimacy of the Dutch Revolt*, (hereafter *CiT*) ed. and trans. Peter Borschberg (Berne: Peter Lang, 1994).
22. Jean Bodin, *Six Books of the Commonwealth*, trans. M.J. Tooley (Oxford: Basil Blackwell, no year), I.VIII, p. 25; Grotius, *CiT*, 16, pp. 214–215. Similarly, the opening tract of *De Imperio Summarum Potestatum circa Sacra* defines the sovereign as "a person or a body [of persons] who has command over a people; this command being subject only to the command of GOD." Sovereignty is thus not a "right"

- itself, but refers to “someone who holds a right” and in much of Grotius’ work was designated by the Latin phrase *jus gubernandi*, the right to govern. A similar definition is also apparent in *De Jure Belli ac Pacis*: “That is called Supreme, whose Acts are not subject to another’s Power, so that they cannot be made void by any other human Will.” Hugo Grotius, *De Imperio Summarum Potestatum circa Sacra* (*The Magistrate’s Authority in Matters of Religion Asserted*) (London: Barksdale, 1655); Grotius, *DJB*, I.III.VII.1, p. 259.
23. Grotius, *CiT*, 23, pp. 224–225.
 24. Bodin, *Six Books of the Commonwealth*, I.10, pp. 47–48; Grotius, *CiT*, 4, p. 225; Borschberg, *Hugo Grotius’ Commentarius in Theses*, p. 120.
 25. Harm-Jan van Dam, “De imperio summarum potestatum circa sacra,” in H.J.M. Nellen and Edwin Rabbie (eds.) *Hugo Grotius Theologian: Essays in Honour of G.H.M. Posthumus Meyjes* (Leiden, E.J. Brill, 1994), p. 26.
 26. See Peter Borschberg, “Hugo Grotius, East India Trade and the King of Johore,” *Journal of Southeast Asian Studies*, Vol. 30, No.2 (September 1999), pp. 225–247; “The Seizure of the Sta. Catherina Revisited: The Portuguese Empire in Asia, VOC Politics and the Origins of the Dutch–Johore Alliance (1602–c.1616),” *Journal of Southeast Asian Studies*, Vol. 33, No.1 (February 2002), pp. 31–62.
 27. Hugo Grotius, *Mare Liberum* (*The Free Sea*), trans. Richard Hakluyt, ed. David Armitage (Indianapolis: Liberty Fund, 2004).
 28. Hugo Grotius in Richard Tuck, “Review: Peter Haggenmacher’s *Grotius et la Doctrine de la Guerre Juste* (1983),” *Grotiana*, Vol. 7 (1986), p. 91.
 29. Richard Tuck, *Philosophy and Government 1572–1651* (Cambridge: Cambridge University Press, 1993), p. 213; see Mónica Brito Vieira, “*Mare Liberum* vs. *Mare Clausum*: Grotius, Freitas, and Selden’s Debate on Dominion over the Seas,” *Journal of the History of Ideas*, Vol. 64, No.3 (2003), pp. 361–377.
 30. Tuck, “Introduction” to *The Rights of War and Peace*, p. xiv.
 31. Edwards, *Hugo Grotius*, p. 3.
 32. Tuck, “Introduction” to *The Rights of War and Peace*, p. xiv.
 33. Edwards, *Hugo Grotius*, p. 3.
 34. Grotius, *Ordinum Hollandiae ac Westfrisiae Pietas* (*The Religiousness of the States of Holland and Westfriesland*), trans. Edwin Rabbie (Leiden: E.J. Brill, 1995), p. 171. The conservative theologian who had brought the original charge, Sibrandus Lubbertus, replied to Grotius’ argument in his *Responsio ad Pietatem Grotii*, a work broadly criticized by the Remonstrants.
 35. Lee, *Hugo Grotius*, p. 16.
 36. Grotius, *Mare Liberum*, p. 7.
 37. W.S.M. Knight, “Grotius in England: His Opposition There to the Principles of the *Mare Liberum*,” *TGS*, Vol. V (1919), p. 22.
 38. Archbishop Abbot to Sir Ralph Winwood, Lambeth, June 1, 1613, in *Memorials of Affairs of State in the Reigns of Q. Elizabeth and K. James I*, Collected (chiefly) from the Original Papers of the Right Honourable Sir Ralph Winwood, Kts. (London: W.B. for T. Ward, 1725), Vol. III, pp. 459–460.
 39. See Jan Den Tex, *Oldenbarnevelt*, 2 Vols. (Cambridge: Cambridge University Press, 1973).

40. Of course, "Catholic" here refers to the universal Christian faith and does not refer specifically to the Catholic denomination.
41. Van Dam, "*De imperio summarum potestatum circa sacra*," p. 19.
42. Grotius quoted in *Ibid.*, p. 22. Italics mine.
43. Meletius was an Alexandrian Patriarch who Grotius heralds at the beginning of the work for emphasizing the "points of consensus between Christians."
44. Hugo Grotius, *Meletius sive de iis quae inter Christianos conveniunt epistola*, ed. and trans. Guillaume Posthumus Meyjes (Leiden, E.J. Brill, 1988), p. 2.
45. Grotius, *DJB, Prolegomena* XXIX, p. 106.
46. Timothy Samuel Shah, "Making the Christian World Safe for Liberalism," Ethics and Public Policy Center Online, www.eppc.org/publications/punID.311/pub_detail.asp. (February 1, 2000)
47. *Ibid.*
48. Grotius, *Meletius*, p. 90.
49. Shah, "Making the World Safe."
50. Henk J.M. Nellen and Edward Rabbie "Preface" to *Hugo Grotius: Theologian*, p. vii.
51. F.J.C. Hearnshaw, *The Social and Political Ideas of Some Great Thinkers of the Sixteenth and Seventeenth Centuries: A Series of Lectures Delivered at King's College University of London During the Session 1925–1926* (London: George C. Harrap, 1926), pp. 131–132.
52. J.E. Middleton, "Introduction" to Grotius *De Veritate Religionis Christianiae*, ed. and trans. J.E. Middleton, 2nd ed. (London: Rivingtons, 1855), p. viii.
53. *Ibid.*
54. The major difference between Grotius and Locke is, of course, that while Grotius extended toleration to the Catholic faith in his later works, Locke did not.
55. Grotius quoted in Ruben C. Alvaro, *The Right to Resist: Calvinist Constitutionalism and the Lockean Paradigm*, Chapter 8 (it is a work published by the common law Review on-line. On the website the individual chapters are presented on their own). "The Grotian Bequest," *Common Law Review* (1991), <https://www.commonlawreview.com/ccsp/res08.htm>. (September 10, 2005).
56. William Rattigan, "The Character of Hugo Grotius," in A. Lysen (ed.) *Hugo Grotius: Essays on his Life and Works* (Leyden: A.W. Sythoff, 1925), p. 101.
57. Henk J.M. Nellen, "*Disputando Inclarescet Veritas*: Grotius as a Publicist in France (1621–1645)," in Henk J.M. Nellen and Edwin Rabbie (eds.) *Hugo Grotius Theologian: Essays in Honour of G.H.M. Posthumous Meyjes* (Leiden: E.J. Brill, 1994), p. 136.
58. *Ibid.*
59. *Ibid.*, pp. 140–141, 134.
60. As Jonathan Israel writes, Grotius' Biblical annotations exerted a significant influence on subsequent Biblical criticism, including that of Benedict de Spinoza. He writes that "some key features of the new Biblical criticism . . . were in fact pioneered earlier by Grotius, who believed the reconciliation of the Christian Churches would only come about when Scripture is no longer used as an armoury for polemical warfare by one confession against another, but understood as an expression of the thought world of the ancient Israelites and early

Christians. During the Enlightenment, Grotius indeed was not infrequently considered the great exegetical innovator who initiated the process which culminated in Spinoza, Simon and Le Clerc." Jonathan I. Israel, *Radical Enlightenment: Philosophy and the Making of Modernity 1650–1750* (Oxford: Oxford University Press, 2001), p. 447. See also Hugh Trevor-Roper, "The Great Tew Circle," in *Catholics, Anglicans and Puritans: Seventeenth Century Essays* (London: Selter and Warburg, 1987), p. 223.

61. R.W. Lee, "Introduction to the Jurisprudence of Holland (*Inleiding tot de Hollandsche Rechts-Geleertheyd*) of Hugo Grotius," *TGS*, Vol. 16 (1930), p. 31.
62. H.J.M. Nellen, "Grotius' Exile," in *Hugo Grotius A Great European 1583–1645*, National Committee for the Commemoration of the Hugo Grotius Quartercentenary (Delft: Meinema, 1983), p. 25.
63. R.W. Lee, Preface to Hugo Grotius, *The Jurisprudence of Holland*, p. vii.
64. William de Groot, Address to the Reader in Hugo Grotius, *The Jurisprudence of Holland*, trans. R.W. Lee (Oxford: Clarendon Press, 1936), p. xiii.
65. See for example, a letter sent by Maria to her brother, dated March 11, 1622 in R.W. Lee, "The Family Life of Grotius," *TGS*, Vol. 20 (1934), p. 15.
66. Yasuaki Onuma, "Introduction" to *A Normative Approach to War: Peace, War and Justice in Hugo Grotius* (Oxford: Clarendon Press, 1993), p. 8.
67. Grotius, *DJB, Prolegomena* XXIX, p. 106.
68. *Ibid.*, *Prolegomena* LIX, pp. 131–132.
69. *Ibid.*, *Prolegomena* XXX, p. 106.
70. *Ibid.*, *Prolegomena* I, p. 75.
71. *Ibid.*, *Prolegomena* XXXIV, p. 108.
72. *Ibid.*, *Prolegomena* XXXVI, p. 108.
73. Tuck, *Rights of War and Peace*, p. 99.
74. Nellen, "Grotius' Exile," p. 27.
75. Among the most prominent international relations scholars to do so was Hedley Bull, "The Importance of Hugo Grotius in the Study of International Relations," p. 75.
76. Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002), p. 142.
77. Hamilton Vreeland, *Hugo Grotius* (New York: Oxford University Press, 1917), p. 590.
78. Hugo Grotius to William de Groot, November 1641, quoted in R.W. Lee, "Grotius—The Last Phase, 1635–45," *TGS*, Vol. 31 (1946), p. 208.
79. The vast majority of international legal textbooks cite Grotius as the figure responsible for initiating modern international law. See for example Arthur Nussbaum, *A Concise History of the Law of Nations* (New York: Macmillan, 1954), p. 113. Of course a range of other writers attribute the origins of modern international law to other thinkers such as Francisco de Vitoria and Alberico Gentili. See James Brown Scott, *The Spanish Origin of International Law: Francisco de Vitoria and his Law of Nations* (Oxford: Clarendon Press, 1934); Thomas Erskine Holland, *Studies in International Law* (Oxford: Clarendon Press, 1898).

80. Hedley Bull, "The Importance of Grotius," p. lxii; Keene, *Beyond the Anarchical Society*, p. 2.
81. Hedley Bull, "The Grotian Conception of International Society," in Herbert Butterfield and Martin Wight (eds.) *Diplomatic Investigations: Essays on the Theory of World Politics* (London: George Allen & Unwin, 1966), p. 66.
82. This claim was perhaps most famously made by Hersch Lauterpacht in "The Grotian Tradition in International Law," *The British Yearbook of International Law*, Vol. 23, No.1 (1946), p. 46. In contemporary scholarship it has been perpetuated by Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), p. 45; Vladimir Kartashkin, "Human Rights and Humanitarian Intervention," in L.F. Damrosch and D.J. Scheffer (eds.) *Law and Force in the New International Order* (Oxford: Westview Press, 1991), p.203; Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), p. 9. See Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs*, Vol. 16, No.1 (2003), pp. 57–71, for an argument against this.
83. Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996), p. 30; Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).
84. Peter Haggemacher, "On Assessing the Grotian Heritage," in *International Law and the Grotian Heritage* (The Hague: T.M.C. Asser Instituut, 1985), p. 125; Joan D. Tooke, *The Just War in Aquinas and Grotius* (London: S.P. C.K., 1965); James Turner Johnson, "Grotius' Use of History and Charity in the Modern Transformation of the Just War Idea," *Grotiana*, Vol. IV (1983), p. 23.
85. Alfred Verdross quoted in Tadashi Tanaka, "Grotius's Method: With Special Reference to Prolegomena," in Yasuaki Onuma (ed.) *A Normative Approach to War: Peace, War and Justice in Hugo Grotius* (Oxford: Clarendon Press, 1993), p. 30; Richard Tuck, *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), p. 78; Anthony Pagden, "Introduction" to *The Languages of Political Theory in Early-Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), p. 5; Bull, "The Importance of Grotius," p. 65.
86. See for example, Lauterpacht, "The Grotian Tradition"; Lassa Oppenheim, *International Law: A Treatise*, Vol. 1, 3rd ed. Ronald Roxburgh (London: Longmans, Green & Co., 1920), pp. 106–107.
87. Lauterpacht, *Ibid.*, p. 5.
88. Stephen Krasner, "Structural Causes and Regime Consequences: regime as intervening variables", *International Organization*, Vol. 36, No.2 (Spring 1982), pp. 185–206; see also Tony Evans and Peter Wilson, "Regime Theory and the English School of International Relations: A Comparison," *Millennium: Journal of International Studies*, Vol. 21, No.2 (Winter 1992), p. 331; Shah M. Tarzi, "The Role of Norms and Regimes in World Affairs: A Grotian Perspective," *International Relations*, Vol. 21, No.3 (Winter 1992), pp. 71–84.

89. Richard Falk, *The End of World Order: Essays on Normative International Relations* (New York: Holmes & Meier, 1983); R.V.A. Röling, "Are Grotius' Ideas Obsolete?," in *Hugo Grotius and International Relations*, p. 297. See also Dorothy V. Jones, *Toward A Just World Order: The Critical Years in the Search for International Justice* (Chicago: University of Chicago Press, 2002), p. 213.
90. Cornelius F. Murphy, "The Grotian Vision of World Order," *American Journal of International Law*, Vol. 76, No.3 (July 1982), pp. 477–498.
91. Karma Nabulsi, *Traditions of War: Occupation, Resistance, and the Law* (Oxford: Oxford University Press, 1999), pp. 128 and 140.
92. The existence and membership of the so-called English School is a matter of some contention in contemporary scholarship. This will be dealt with briefly in chapter 5.
93. N.J. Rengger, *International Relations, Political Theory and the Problem of Order: Beyond International Relations Theory?* (London: Routledge, 2000), p. 71.
94. Benedict Kingsbury and Adam Roberts, "Introduction: Grotian Thought in International Relations," to *Hugo Grotius and International Relations*, p. 51.
95. Tim Dunne, *Inventing International Society: A History of the English School* (London: Macmillan, 1998), p. xi; Presenting a different version of the "Grotian tradition," Robert Jackson has confessed to a "Grotian bent." Robert H. Jackson, "International Community Beyond the Cold War," in Michael Mastanduno and Gene M. Lyons (eds.) *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: The Johns Hopkins University Press, 1995), p. 60.
96. A. Claire Cutler, "The 'Grotian tradition' in International Relations," *Review of International Studies*, Vol. 7 (1991), p. 62.
97. Kingsbury and Roberts, "Introduction," p. 51.
98. *Ibid.*, p. 59.
99. An exception to this is Jens Bartelson who, in his insightful essay addressing the relationship between the "Hobbesian" and "Grotian" traditions comes closest to pinpointing the source of current confusion regarding the relationship between Grotius and the "Grotian tradition." Jens Bartelson, "Short Circuits: Society and Tradition in International Relations," *Review of International Studies*, Vol. 22 (1996), pp. 339–360. Tim Dunne also provides a brief discussion of tradition in *Inventing International Society*, pp. 54–58. A lengthier discussion is found in Tim Dunne, "Mythology or Methodology? Traditions in International Theory," *Review of International Studies*, Vol. 19 (1993), pp. 305–318, although it is not explicitly concerned with the "Grotian tradition."
100. Conal Condren, "Political Theory and the Problem of Anachronism," in Andrew Vincent (ed.) *Political Theory: Tradition and Diversity* (Cambridge: Cambridge University Press, 1997), p. 48.
101. J.G.A. Pocock, "Time, Institutions and Action: An Essay on Traditions and their Understanding," in Preston King and B.C. Parekh (eds.) *Politics and Experience: Essays Presented to Professor Michael Oakeshott on the Occasion of his Retirement* (Cambridge: Cambridge University Press, 1968), p. 212.
102. Martin Krygier, "The Traditionality of Statutes," *Ratio Juris*, Vol. 1, No.1 (1988), p. 21.

103. Terry Nardin, "Ethical Traditions in International Affairs," in Terry Nardin and David R. Mapel (eds.) *Traditions of International Ethics* (Cambridge: Cambridge University Press, 1992), p. 7.
104. Martin Krygier, "Law as Tradition," *Law and Philosophy*, Vol. 5 (1986), pp. 240 and 250.
105. Eric Hobsbawm, "Introduction: Inventing Traditions," in Eric Hobsbawm and Terence Ranger (eds.) *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), p. 1.
106. Ibid.
107. Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth, 1988), p. 326.
108. Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy and Tradition* (London: Duckworth, 1990), p. 116.
109. Ibid.
110. See my article, "Tradition as Invention: The 'Traditions Tradition' and the History of Ideas in International Relations," *Millennium: Journal of International Studies*, Vol. 34, No.1 (August 2005), pp. 57–84.
111. R.B.J. Walker, *Inside/outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993), p. 27.
112. Dunne, "Mythology or Methodology?," p. 308.
113. James Der Derian, "Introducing Philosophical Traditions in International Relations," *Millennium: Journal of International Studies*, Vol. 17, No.2 (1988), p. 190.
114. Ian Clark, "Traditions of Thought and Classical Theories of International Relations," in Ian Clark and Iver B. Neumann (eds.) *Classical Theories of International Relations* (London: Macmillan, 1996), p. 1.
115. Clark, "Traditions of Thought," p. 7; Wight, *International Theory*, p. 259.
116. Wight, *International Theory*, p. 259.
117. R.J. Vincent, "The Hobbesian Tradition in Twentieth Century International Thought," *Millennium: Journal of International Studies*, Vol. 10, No.2 (1981), p. 96.
118. Ibid., p. 8.
119. R.B.J. Walker, "History and Structure in the Theory of International Relations," in James Der Derian (ed.) *International Theory: Critical Investigations* (London: Macmillan, 1995), p. 315.
120. Walker, *ibid*.
121. Ibid.
122. Clark, "Traditions of Thought," p. 8.
123. John Patrick Diggins, "The Oyster and the Pearl: The Problem of Contextualism in Intellectual History," *History and Theory: Studies in the Philosophy of History*, Vol. XXIII, No.2 (May 1984), p. 152.
124. Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory: Studies in the Philosophy of History*, Vol. VIII, No.1 (February 1969), p. 3.

125. Skinner, "Meaning and Understanding," p. 50; R.G. Collingwood, *An Autobiography* (Oxford: Clarendon Press, 1978), p. 58.
126. *Ibid.*, p. 17.
127. *Ibid.*, p. 7.
128. *Ibid.*, p. 9.
129. Joseph V. Femia, "An Historicist Critique of 'revisionist' Methods for Studying the History of Ideas," in James Tully (ed.) *Meaning and Context: Quentin Skinner and His Critics* (Cambridge: Polity Press, 1998), p. 164. Peter Janssen however, defends Skinner's position against Femia's criticisms arguing that his argument is based on one controversial passage of Skinner's work. Peter L. Janssen, "Political Thought as Traditionary Action: The Critical Response to Skinner and Pocock," *History and Theory: Studies in the Philosophy of History*, Vol. XXIV, No.2 (May 1985), p. 120; Mark Bevir, "The Errors of Linguistic Contextualism," *History and Theory: Studies in the Philosophy of History*, Vol. XXXI, No.3 (October 1992), p. 289.
130. Preston King, "Historical Contextualism: The New Historicism?," in *Thinking Past a Problem: Essays on the History of Ideas* (London: Frank Cass, 2000), p. 187; Skinner has recently addressed this criticism of his work, writing that; "We are of course embedded in practices and constrained by them. But those practices owe their dominance in part to the power of our normative language to hold them in place, and it is always open to us to employ the resources of our language to undermine as well as to underpin those practices. We may be freer than we sometimes suppose." Quentin Skinner, "Introduction: Seeing Things Their Way," in *Visions of Politics*, Vol. I, Regarding Method (Cambridge: Cambridge University Press, 2002), p. 7.
131. John G. Gunnell, *Political Philosophy and Time: Plato and the Origins of Political Vision* (Chicago: University of Chicago Press, 1968/1987), p. xii.
132. John G. Gunnell, "The Historiography of American Political Science," in David Easton, John G. Gunnell and Luigi Graziano (eds.) *The Development of Political Science: A Comparative Survey* (London: Routledge, 1990), p. 14.
133. Gunnell, *Orders of Discourse*, p. 155.
134. John G. Gunnell, "The Myth of the Tradition," in Preston King (ed.) *The History of Ideas: An Introduction to Method* (London: Croom Helm, 1983), p. 249.
135. Gunnell, *Political Philosophy and Time*, p. ix.
136. Brian C. Schmidt, *The Political Discourse of Anarchy: A Disciplinary History of International Relations* (Albany: State University of New York Press, 1998), p. 15.
137. *Ibid.*
138. Alastair J.H. Murray, *Reconstructing Realism: Between Power Politics and Cosmopolitan Ethics* (Edinburgh: Keele University Press, 1997), p. 3.
139. *Ibid.*, p. 3.
140. Michael Oakeshott, "Present, Future and Past," in *On History and Other Essays* (Indianapolis: Liberty Fund, 1999), p. 35.

141. Michael Oakeshott, "The Activity of Being an Historian," in *Rationalism in Politics and Other Essays* (London: Methuen, 1962), p. 153.
142. Michael Oakeshott, *Experience and Its Modes* (Cambridge: Cambridge University Press, 1933/1966), p. 103.
143. Oakeshott, "Present Future and Past," p. 33.
144. Oakeshott, *Experience and Its Modes*, p. 106.
145. Schmidt, *Political Discourse of Anarchy*, p. 25.
146. Ibid.
147. Ibid.
148. Gunnell quoted in Schmidt, *ibid.*
149. Gunnell quoted in Schmidt, *ibid.*, p. 32.
150. Ibid., pp. 36–37.
151. Gerard Holden, "Who Contextualizes the Contextualizers? Disciplinary History and the Discourse about IR Discourse," *Review of International Studies*, Vol. 28 (2002), pp. 257–258.
152. Gunnell, *Political Philosophy and Time*, p. xii.
153. Ibid., p. 38.
154. Ibid., p. 38.
155. Ibid., p. 32.

Chapter 2 Hugo Grotius on the Rights of War and Peace

1. Henry Wheaton, *Elements of International Law*, ed. John Grafton Wilson (Oxford: Clarendon Press, 1936), p. 27.
2. David Kennedy, "Primitive Legal Scholarship," *Harvard International Law Journal*, Vol. 27 (1986), p. 7. David J. Bederman makes a similar point in "Religion and the Source of International Law in Antiquity," in Mark W. Janis (ed.) *The Influence of Religion on the Development of International Law* (Dordrecht: Martinus Nijhoff, 1991), p. 4.
3. Ibid., pp. 17 and 35.
4. Ibid., pp. 42 and 41.
5. Ibid., p. 7.
6. Wilhelm G. Grewe, *The Epochs of International Law*, trans. Michael Byers (Berlin: Walter de Gruyter, 2000), p. 192.
7. Bull, "The Importance of Grotius," p. 73.
8. Grewe, *Epochs of International Law*, p. 193.
9. Tuck, *Rights of War and Peace*, p. 81.
10. Tuck, *Natural Rights Theories*, p. 58.
11. Grotius, *DJB*, I.I.III.1, p. 136.
12. Grotius, *Jurisprudence of Holland*, II.1, p. 4.
13. Grotius, *DJB*, I.I.IV, p. 138.
14. Ibid.
15. Tadashi Tanaka, 'Grotius's Concept of Law' in *A Normative Approach to War*, p. 34.

16. Grotius, *DJB*, I.I.IX.1, pp. 147–148.
17. Ibid., I.I.XVI., p. 45.
18. Grewe, *Epochs of International Law*, p. 84.
19. Ibid.
20. Thomas Aquinas quoted in Grewe, *ibid.*
21. M.J. van Ittersum, “Hugo Grotius in Context: Van Heemskerck’s Capture of the *Santa Catherina* and its Justification in *De Jure Praedae* (1604–1606),” *Asian Journal of Social Science*, Vol. 31, No. 3 (2001), p. 513.
22. Ibid., p. 523.
23. Ibid.
24. Grotius, *DJP*, p. 8.
25. William Greene, “Hugo Grotius: Naturalist, Eclectic, or Theonomist?,” <https://mcu.edu/papers/Grotius.htm> (October 10, 2004).
26. Grotius, *DJB*, *Prolegomena* XLIX, p. 124.
27. Ibid.
28. Ibid.
29. Ibid., *Prolegomena* LI, p. 126.
30. Grotius, *DJP*, p. 9.
31. Ibid., p. 10.
32. Ibid., p. 9.
33. Ibid., p. 11.
34. Ibid.
35. Ibid., pp. 13–14.
36. Ibid., p. 14.
37. Ibid., p. 15.
38. Van Ittersum, “Grotius in Context,” p. 511.
39. Ibid., p. 526.
40. Grotius, *DJP*, p. 21.
41. Ibid.
42. Grotius’ discussion of the laws of nature continues by explicating his understanding of *dominium* (ownership) as private possession, an idea that, along with the notion of divided sovereignty was central to colonial discourse and is discussed in detail in Keene’s *Beyond the Anarchical Society*.
43. Robert Shaver, “Grotius on Scepticism and Self-Interest,” in Knud Haakonssen (ed.) *Grotius, Pufendorf and Modern Natural Law* (Aldershot: Ashgate, 1999), p. 63.
44. Grotius, *DJB*, *Prolegomena* V, p. 79.
45. Richard Tuck, “Grotius, Carneades and Hobbes,” *Grotiana*, Vol. IV (1983), p. 44.
46. Andrew Lister, “Scepticism and Pluralism in Thomas Hobbes’s Political Thought,” *History of Political Thought*, Vol. XIX, No.1 (1998), p. 36; Robert Shaver, “Introduction,” in *Hobbes* (Aldershot: Ashgate, 1999), p. xiv; Perez Zagorin, “Hobbes Without Grotius,” *Journal of the History of Ideas*, Vol. XXI, No.1 (2000), pp. 16–40.
47. Tuck, *Rights of War and Peace*, p. 135.

48. Grotius, *DJB*, *Prolegomena* XVII, p. 93.
49. Grotius, *DJP*, p. 21.
50. Ibid.
51. Grotius, *DJB*, I.II.I.3, p. 185.
52. Ibid., *Prolegomena* VI, pp. 79–81.
53. Ibid., *Prolegomena* VIII, pp. 85–86.
54. Ibid., p. 86.
55. Ibid., *Prolegomena* X, pp. 88–89.
56. Ross Harrison, *Hobbes, Locke and Confusion's Masterpiece: An Examination of Seventeenth-Century Political Philosophy* (Cambridge: Cambridge University Press, 2003), p. 132.
57. Trevor-Roper, "The Great Tew Circle," pp. 193–195.
58. Grotius, *DJP*, p. 8; *DJB*, I.I.X.1, pp. 150–151.
59. E.B.F. Midgley, *The Natural Law Tradition and the Theory of International Relations* (New York: Harper & Row, 1975), p. 141.
60. Grotius, *DJB*, *Prolegomena* XI, p. 89.
61. See Leonard Besselink, "The Impious Hypothesis Revisited", *Grotiana*, Vol. 9 (1988), pp. 3–63; M.B. Crowe, "The Impious Hypothesis: A Paradox in Grotius?", in Knud Haakonssen (ed.) *Grotius, Pufendorf and Modern Natural Law* (Aldershot: Ashgate, 1999), pp. 3–34.
62. As James St Leger argues however, Suárez cannot be Grotius' source here as he "was resolutely opposed to the notion," *The "etiamsi daremus" of Hugo Grotius: A Study in the Origins of Natural Law* (Rome: Herder, 1962), p. 145; Vazquez writes: "If we should concede, which is indeed impossible, that God did not judge as He does now, and if there remained in us the use of reason, sin would remain. The reason for this is that sin, as we have said, is not sin from the fact that it is understood as such by God, but rather the contrary." Vazquez quoted in St Leger, p. 146.
63. Javier Hervada, "The Old and the New in the Hypothesis 'Etiamsi daremus' of Grotius," *Grotiana*, Vol. IV (1983), p. 14.
64. Mary Clare Segers, *Hugo Grotius and Secular Natural Law Theory* (PhD thesis), (Ann Arbor: University Microfilms, 1977), p. 7.
65. Ibid.
66. Grotius, *DJB*, *Prolegomena* XI, pp. 89–90.
67. Ernest Troeltsch quoted in St Leger, *The "etiamsi daremus" of Hugo Grotius*, p. 35.
68. B.P. Vermeulen and G.A. Van Der Wal, "Grotius, Aquinas and Hobbes: Grotian natural law between *lex aeterna* and natural law," *Grotiana*, Vol. 16/17 (1995/1996), p. 71.
69. Grotius, *DJB*, *Prolegomena* XII, p. 90.
70. Grotius, *DJP*, p. 12.
71. Richard Zouche, *Iuris et Iudicii Feialis, sive, Iuris Inter Gentes, et Quaestionum de Eodum Explicatio*, (*An Exposition of the Feacial Law and Procedure, or of the Law of Nations, and Questions concerning the same*), trans. J.L. Brierly (Washington: Carnegie Institution, 1911).
72. Francisco de Suárez, "On Laws and God the Lawgiver," in *Selections from Three Works*, trans. Gwladys L. Williams (Oxford: Clarendon Press, 1944), p. 447.

73. As mentioned earlier, it is also possible that even by the early 1620s Grotius had not read Suárez.
74. Grotius, *DJB*, *Prolegomena* I, p. 75.
75. Ibid., *Prolegomena* XVI, p. 93.
76. Ibid., *Prolegomena* XVII, p. 93.
77. Ibid., *Prolegomena* XVIII, p. 94.
78. Ibid., *Prolegomena* XXII, p. 97.
79. Grotius, *DJB*, I.II.I, p. 185; I.II.V–IX, pp. 190–239.
80. Grotius, *DJP*, pp. 31–32.
81. Thomas Aquinas, *Summa Theologiae* II–II, in William P. Baumgarth and Richard J. Reagan (eds.) *On Law, Morality and Politics* (Indianapolis: Hackett Publishing Company, 1988), p. 221.
82. Grotius, *DJP*, p. 62.
83. Van Ittersum, “Grotius in Context,” p. 536.
84. Grotius, *DJP*, p. 67.
85. Ibid.
86. Ibid.
87. Grotius, *DJB*, II.I.II.I, p. 394.
88. Grotius, *DJP*, p. 67.
89. Ibid., p. 4.
90. David J. Bederman, “Reception of the Classical Tradition in International Law: Grotius’ *De Jure Belli ac Pacis*,” *Grotiana*, Vol. 16/17 (1995/1996), p. 7. Of course, to the claim that just wars could only be waged defensively, Cicero added that fighting for empire and glory were also permitted. Cicero, *On the Commonwealth*, in *On the Commonwealth and On the Laws*, ed. James E.G. Zetzel (Cambridge: Cambridge University Press, 1999), Book 3, 35a, p. 73.
91. Grotius, *DJB*, I.IV.II, p. 338.
92. Ibid., I.IV.III., p. 342; I.IV.IV, p. 344; I.IV.V, p. 349.
93. Ibid., I.IV.VII., p. 356.
94. Ibid., I.IV.VIII–XIV, pp. 373–376.
95. Onuma Yasuaki, “War” in *A Normative Approach to War*, p. 104.
96. Grotius, *DJB*, II.XXV.VIII.2–3, pp. 1161–1162.
97. Ibid., II.XXV.XIII.4, p. 1162.
98. Ibid., II.XX.XLIII.3, p. 1027.
99. Grotius, *DJP*, p. 315.
100. Grotius in van Ittersum, “Grotius in Context,” p. 538.
101. Ibid., p. 539.
102. Grotius, *DJP*, p. 315.
103. Ibid. XII, p. 216. See also *ML*.
104. Ibid., XII, pp. 314–315.
105. Van Ittersum, “Grotius in Context,” p. 540.
106. Grotius, *DJP*, p. 316, in van Ittersum, *ibid.*
107. Robert Shaver, “Grotius on Scepticism and Self-Interest,” in Knud Haakonssen (ed.) *Grotius, Pufendorf and Modern Natural Law* (Aldershot: Ashgate, 1999), p. 63.

108. Tadashi Tanaka, "Grotius's Concept of Law," in *A Normative Approach to War* p. 48. For example, *caritas* is referred in the following passages of the Latin volume of *De Jure Belli ac Pacis*, (New York: Oceana Press, 1964): III.II.VI, p. 447; III.XI.IV, p. 453; III.XIII.IV, p. 542; *delectio* in these; II.XXIV.II.3, p. 402; II.I.IV.2, p. 173.
109. Grotius, *DJB*, III.XIII.IV.1, p. 1478.
110. Ibid., II.I.IV.1, p. 398.
111. Ibid., I.II.VIII.3, p. 215.
112. Ibid., II.XXIV.II.3, p. 1136.
113. Ibid., II.I.X.1, p. 406.
114. Ibid., I.II.VIII.3, p. 215.
115. Augustine quoted in Thomas L. Pangle and Peter J. Ahrens Dorf, *Justice Among Nations: On the Moral Basis of Power and Peace* (Kansas: University Press of Kansas, 1999), p. 78.
116. Tadashi, "Grotius's Concept of Law," p. 49.
117. Grotius, *DJB*, I.IV.VII.2, p. 358.
118. Tanaka Tadashi, "*Temperamenta* (Moderation)," in *A Normative Approach to War* p. 296.
119. Grotius, *DJB*, III.XI.II.I, p. 1422.
120. Ibid.
121. Ibid., III.X.I.1, p. 1411.
122. Ibid., III.XII.VII.1, p. 1470.
123. Ibid., III.II.VI, pp. 1242–1243.
124. Ibid., III.XI.II.I, p. 1422.
125. Ibid., III.XI.IX, p. 1439; III.XI.X.2, p. 1443; III.XI.XI, p. 1445; III.XI.XII, p. 1446; III.XI.XIII, p. 1446.
126. Ibid., III.XI.XVII, p. 1454.
127. Ibid., III.VII.IX.1, p. 1372.
128. Ibid., III.XII, p. 1457; III.XIII, p. 1475; III.XIV, p. 1481; III.XV, p. 1498; III.XI, p. 1420.
129. Ibid., III.XI.XIX, p. 1456.
130. James Turner Johnson, "Grotius' Use of History and Charity in the Modern Transformation of the Just War Idea," *Grotiana*, Vol. IV(1983), p. 29.
131. Ibid.
132. Ibid., p. 32.
133. Grotius, *DJB*, *Prolegomena* 17, p. 15.

Chapter 3 Grotian Morality in Europe and Beyond

1. James Kent, *Commentary on American Law* (New York, 1836), p. 15.
2. Noel Malcolm, "Hobbes and the European Republic of Letters," in Noel Malcolm (ed.) *Aspects of Hobbes* (Oxford: Clarendon Press, 2002), pp. 527–528.

3. Mark Weston Janis, "American Versions of the International Law of Christendom: Kent, Wheaton and the Grotian Tradition," *Netherlands International Law Review*, Vol. XXXIX (1992), p. 43. See also, J.G. Starke, "The Influence of Grotius Upon the Development of International Law in the Eighteenth Century," in C.H. Alexandrowicz (ed.) *Grotian Society Papers 1972: Studies in the History of the Law of Nations* (The Hague: Martinus Nijhoff, 1972), p. 163.
4. Lord Blanesburgh, speech given at the banquet in celebration of the tercentenary of the publication of *De Jure Belli ac Pacis*, TGS, Vol. 11 (1925) (London: Wildy & Sons, 1962), p. xxvii.
5. M. Bignon, letter to Hugo Grotius, March 5, 1632, quoted in Middleton, "Introduction" to Grotius, *De Veritate*, p. vii.
6. Trevor-Roper, "The Great Tew Circle," p. 166.
7. Ibid., p. 183; quoting John Aubrey.
8. Ibid., pp. 189 and 192.
9. Ibid., p. 192.
10. Ibid., pp. 193–195. Trevor-Roper also adds moral scepticism to the common elements of Grotius' thought and that of the Great Tew Circle however, as made clear in chapter 2, I do not conceive this to be a major component of Grotius' thought.
11. Ibid., p. 223.
12. Ibid.
13. However, Grotius was not universally well received. In particular, puritan clerics such as John Owen accused Grotius of Socinianism, a charge Hammond went to some lengths to defend him. Similarly, in 1658 Richard Baxter, a "moderate English Presbyterian but a fanatical anti-papist" composed *The Grotian Religion Discover'd* in response to Grotius' accommodation of the Catholic Church in his plans to reunite Christendom in which he argues that "Grotius was not a Socinian but—need it be said?—a Jesuit disguised as a Socinian." Ibid., p. 225.
14. Peter Pavel Remec, *The Position of the Individual in International Law According to Grotius and Vattel* (The Hague: Martinus Nijhoff, 1960), p. 41.
15. Noel Malcolm, "Hobbes and the European Republic of Letters," p. 458.
16. Grotius quoted in *ibid.*, p. 472.
17. Grotius to William de Groot, April 11, 1643, quoted in *ibid.*, pp. 472–473.
18. Tuck, *Rights of War and Peace*, p. 109.
19. Ross Harrison, *Hobbes, Locke and Confusion's Masterpiece* (Cambridge: Cambridge University Press, 2003), p. 132.
20. Thomas Hobbes, *On the Citizen (De Cive)*, ed. and trans. Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), preface, p. 10.
21. Ibid., 1.12, p. 29; Thomas Hobbes, *Leviathan*, trans. J.C.A. Gaskin (Oxford: Oxford University Press, 1996), XIII.8, p. 84.
22. Hobbes, *Leviathan*, V.11, p. 73.
23. Ibid., 2.XVIII.16, p. 120.
24. Ibid., V.11, p. 73.

25. Charles Covell, *Hobbes, Realism and the Tradition of International Law* (New York: Palgrave Macmillan, 2004), p. 6.
26. Hobbes, *De Cive*, XIV.1, p. 154.
27. Hobbes, *Leviathan*, XIV.3, p. 86.
28. Covell, *Hobbes*, p. 40.
29. Hobbes, *Leviathan*, XXVI.3, p. 176.
30. Hobbes, *De Cive*, XIII.7, p. 144.
31. Hobbes, *Leviathan*, 2.XXX.30, p. 235.
32. Malcolm, "Hobbes' Theory of International Relations," p. 433.
33. Hans J. Morgenthau, *American Foreign Policy: A Critical Examination* (London, 1952), p. 34, quoted in *ibid.*
34. Malcolm, *ibid.*, p. 437.
35. Hobbes, *Leviathan*, p. 79.
36. *Ibid.*
37. *Ibid.*, p. 90.
38. George Shelton, *Morality and Sovereignty in the Philosophy of Hobbes* (London: Macmillan, 1992).
39. Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo* (hereafter *DJN*) trans. Charles Henry Oldfather and William Abbott Oldfather (Oxford: Clarendon Press, 1934), pp. v–vi.
40. *Ibid.*
41. Samuel Pufendorf, *Elementorum Jurisprudentiae Universalis* (hereafter *EJU*) trans. W.A. Oldfather (Oxford: Clarendon Press, 1931), preface, p. xxx.
42. Pufendorf, *OHC*, I.2.1, p. 27.
43. J.B. Schneewind, "Pufendorf's Place in the History of Ethics," in Knud Haakonssen (ed.) *Grotius, Pufendorf and Modern Natural Law*, p. 200.
44. Pufendorf, *OHC*, I.2.3., p. 27.
45. Pufendorf, *DJN*, II.I.8, pp. 152–153.
46. Pufendorf, *EJU*, I.XIII.24, p. 165.
47. Pufendorf, *OHC*, I.2.3., p. 27.
48. Andrew Linklater, *Men and Citizens in International Relations* (New York: St. Martin's Press, 1982), p. 66.
49. *Ibid.*, p. 65; Pufendorf quoted in *ibid.*, pp. 66 and 65.
50. Pufendorf, *DJN*, p. 949.
51. Linklater, *Men and Citizens*, p. 68.
52. Pufendorf, *DJN*, p. 1009.
53. Linklater, *Men and Citizens*, p. 68.
54. Pufendorf, *EJU*, p. 234.
55. Linklater, *Men and Citizens*, p. 72.
56. Pufendorf, *OHC*, II.III.23, p. 226.
57. Pufendorf, *EJU*, I.XIII.24, p. 165.
58. Pufendorf, *OHC*, p. 6.
59. *Ibid.*, p. 7.
60. *Ibid.*

61. Ibid.
62. Patrick Riley, "Introduction" in *The Political Writings of Leibniz*, trans. and ed. Patrick Riley (Cambridge: Cambridge University Press, 1972), p. 1.
63. Ibid., p. 28.
64. Gottfried Wilhelm von Leibniz, "Opinion on the Principles of Pufendorf (1706)," in *The Political Writings of Leibniz*, trans. and ed. Patrick Riley (Cambridge: Cambridge University Press, 1972), p. 65.
65. Ibid., p. 68.
66. Ibid., p. 70.
67. Ibid., p. 71.
68. Ibid.
69. Gregory Brown, "Leibniz's moral philosophy," in Nicholas Jolley (ed.) *The Cambridge Companion to Leibniz* (Cambridge: Cambridge University Press, 1995), p. 411.
70. Riley, "Introduction," p. 2.
71. Brown, "Leibniz's Moral Philosophy," p. 411.
72. Gottfried Wilhelm von Leibniz, "*Codex Juris Gentium Diplomaticus* (1693)" in *Philosophical Papers and Letters* ed. and trans. Leroy E. Loemaker, Vol. I (Chicago: Chicago University Press, 1956), p. 690.
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74. Riley, Ibid., p. 6.
75. Ibid.
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77. Ibid., p. 26.
78. Leibniz quoted in Ibid., p. 27.
79. Leibniz, "*Caesarinus Fürstenerius*," in *The Political Writings of Leibniz*, p. 112; Riley quoting Leibniz, p. 27.
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81. Riley, "Introduction," p. 31. This despite the fact that Leibniz was not Catholic himself.
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83. Ibid.
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91. Anton-Hermann Chroust, 118, in Charles Edwards, *Hugo Grotius The Miracle of Holland*, p. 10.
92. *Ibid.*
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96. Haakonssen, *Natural Law and Moral Philosophy*, p. 59.
97. *Ibid.*, As Haakonssen writes, "The all-important work of Samuel von Cocceji, *Novum systema jurisprudentiae naturalis et romane*, Berlin, 1740, known in another edition as *Elementa justitiae naturalis et romane*. This work was then absorbed into the five hundred folio pages of his *Introductio ad Henrici L.B. de Cocceji . . . Grotium Illustrarum . . .*, Halle, 1748, where it is the last of his twelve essays introducing his father's four volume *Grotius Illustratus*. The first three volumes of the latter contain not only the elder Cocceji's extensive commentary on Grotius but also a great deal of material from the son's hand." pp. 60–61.
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100. *Ibid.*, p. 85.
101. Rousseau quoted in *ibid.*
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105. *Ibid.*, *Prolegomena* 2, p. 9; *Prolegomena* 3, p. 9.
106. *Ibid.*, *Prolegomena*, 4 and 5, p. 10.
107. *Ibid.*, *Prolegomena* 7, p. 11.
108. *Ibid.*, *Prolegomena* 10, p. 13.
109. *Ibid.*
110. *Ibid.*, p. 6.
111. *Ibid.*, II.156, p. 84.
112. *Ibid.*, II.156–187, pp. 84–97.
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137. Ibid., pp. 111 and 112.
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150. Hart, "Introduction," p. x.
151. Austin, Ibid., I, p. 14.
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153. Ibid., p. 1.
154. Ibid., p. 9.
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158. Grewe, *Epochs of International Law*, p. 509. Thomas Erskine Holland, *The Elements of Jurisprudence* (Oxford: Clarendon Press, 1900).
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162. Bernard Bailyn, *The Ideological Origins of the American Revolution, Enlarged Edition*, (Cambridge, MA; The Belknap Press of Harvard University Press, 1992), p. 27, 43, 150 and 205; Philip A. Hamburger, "Natural Rights, Natural Law and American Constitutions," *Yale Law Journal*, Vol. 102, No. 4 (January 1993), pp. 907–960.
163. Significantly, all these figures also appear in Martin Wight's rationalist category alongside Grotius himself. See Martin Wight, *International Theory: The Three Traditions*, ed. Gabriele Wight and Brian Porter (London: Leicester University Press, 1991), p. 14.
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168. Alexander Hamilton to George Washington, New York September 15, 1790 in *The Papers of Alexander Hamilton*, Vol. VII, September 1790–January 1791, pp. 38–39.
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170. Janis, "American Versions," p. 38.
171. Kent, *Commentary on American Law*, p. 2.
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173. Ibid., p. 15.
174. Janis, "American Versions," p. 44.
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177. Ibid., pp. 2–3.
178. Ibid., pp. 3–4.
179. Janis, "American Versions," p. 49.
180. Ibid.
181. Ibid.
182. Ibid., p. 53.
183. Wheaton, *Eléments du droit internationale* (The French version of *Elements of International Law*) first published in 1836, 5th ed. 1874, quoted in Grewe, *Epochs of International Law*, p. 508.
184. Wheaton, *Elements*, p. iv.
185. Ibid., p. 30.
186. Ibid.
187. Ibid., p. iii.
188. Wheaton, *Elements*, I.I.11, p. 15.
189. Ibid., p. 44.

Chapter 4 The Grotian Tradition in International Thought

1. Cornelius van Vollenhoven, "Grotius and the Study of Law," *American Journal of International Law*, Vol. 19, No.1 (1925), p. 5.
2. Hedley Bull, "The Grotian Conception," p. 51; Cornelius van Vollenhoven, *The Three Stages in the Evolution of the Law of Nations* (The Hague: Martinus Nijhoff, 1919), p. 26.
3. Adam Roberts and Richard Guelff (eds.), *Documents on the Laws of War*, 3rd ed. (Oxford: Oxford University Press, 2000), p. 59.

4. Grotius, *DJB*, II.XXIII.VI, p. 1120; II.XXIII.VII, p. 1121. Interestingly, Grotius also lists, "casting Lots" and "Dueling," a custom according to which "two Antagonists, whose Disputes would otherwise involve whole Nations in misery and ruin . . . decide the Matter themselves by the Sword," as methods of dispute settlement. II.XXIII.X, pp. 1127–1128. See Dorothy V. Jones, *Towards a Just World*, p. 3.
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Chapter 5 Hugo Grotius and Twentieth-Century International Relations

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Conclusion

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