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From Grotius to Kant
the International Order
Political Thought and
WAR AND PEACE
THE RIGHTS OF
INTRODUCTION

It was Hugo Grotius who was generally reckoned by writers at the end of the seventeenth century to have created a new science of morality by inventing a new way of talking about international relations; and what I outlined in the first two chapters was the intellectual context in which Grotius had to work. As we saw, there were (broadly speaking) two traditions of thinking about war and peace by the beginning of the seventeenth century. One, the more familiar to modern historians, was the scholastic tradition, represented principally by the Dominicans and Jesuits of Spain and Portugal, which persisted in judging warfare by the Thomist criteria, and which was therefore inevitably critical of much actual modern military activity (and in particular the conquest of Central America). The other was what I have termed the humanist tradition, which applauded warfare in the interests of one’s respublica, and saw a dramatic moral difference between Christian, European civilization and barbarism. In this chapter, I want to turn to what Grotius did, and the significance of his new ideas.

By birth and upbringing, Grotius belonged wholly to the humanist world; he was a spectacularly precocious classical scholar, who devoted the first twenty-five years of his life to the traditional pursuits of the young humanist, the writing of poetry and history. Indeed, though he is often spoken of as a jurist, he had no formal juristic training, and he was employed first in the typically humanist roles of political adviser (to Jan van Oldenbarnevelt) and historiographer—from 1601 to 1607 his only paid employment was indeed as official historiographer to the States of Holland, the assembly which governed the Province of Holland, the richest and most powerful province in the United Provi...
Amsterdam in 1603.' To understand the scale of the sums involved, the value of this prize was not far off the total annual expenditure of the English government at the time; the company paid out annually a dividend equivalent to about a third of that expenditure.  

The seizure of a prize on this scale was something quite unprecedented, and it seems to have occasioned general consternation in Europe, for it brought home to contemporaries that the United Provinces, having formerly been engaged wholly in a war of rebellion and self-defence against Spanish power in the Netherlands, was now engaged in a spectacular war of aggression. By 1603 the security of the United Provinces (it was generally recognized) was established, and indeed James VI of Scotland, coming to the English throne in that year, decided formally to end the war with Spain which the English had been waging as long as the new republic seemed unsafe. In 1605 Dutch aggression reached even greater heights, when they took a fort at Amboyna from the Portuguese. Very quickly, and by what is to us a familiar combination of finance and military threat, the Dutch either won over native rulers or arranged their overthrow by rival factions, and secured a firm grip on the spice trade from the Indies to Europe and (probably more importantly) on the intra-Asian trade in all kinds of commodities. The advanced industrial and commercial skills of the Dutch, once they were allowed to operate in Asia, turned out to be as competitive as they had already proved to be in Europe, and princes in Japan, China, and the Indies became as reliant on Dutch capital as those in Germany, England, and France.

The novelty of all this must be recognized. The Dutch were not waging a defensive war in the Indies to protect either their homeland or existing trade patterns: they were waging an offensive war, in order to open up trade routes and make a lot of money. Moreover, they were not even doing so through conventional political structures: until the United East Indies Company was formed in 1603, the Dutch companies (for one of whom Heemskerk was working) were governed by charters issued by the States of Holland which said nothing about military force, and even after that date the States-General of the Union (which authorized the United Company) gave only a very general and rather vague permission to the company to use force to preserve law and order. It was not even clear to neutral observers that the States-General, let alone the States of Holland, were legitimate sovereign bodies: Holland was a 'province' of the Netherlands whose status was disputed, while the States-General represented a union of provinces in revolt against their king (the King of Spain). The Dutch thus seemed to be violating some of the most fundamental principles of international relations. Grotius's commitment to defend them accordingly forced him to a fundamental revision of those principles, and in the process (it is, I think, no exaggeration to say) he fundamentally revised Western political thought itself.

His ideas were embodied in a treatise which he always referred to as the De Indis, but which its nineteenth-century editor entitled De iure praedae. It was to remain in manuscript for some three centuries, only being discovered in a sale of the De Groot family papers in 1864. It was then realized that Chapter XII of the work had been prepared separately for publication as the famous Mare Liberum, at the express request of the East Indies Company in November 1608, who wished to influence the peace negotiations then in progress. (The book actually appeared in 1609.) It was also realized that much of Grotius's major work, the De iure Belli ac Pacis of 1625, had been developed from this early essay, though in one of the areas with which I am concerned it did differ in a particularly interesting way, as we shall see. Some fragments of Grotius's working papers for the De Indis survive, which show that he was interested in contrasting his own views with those of Vitoria; but in general (it is fair to say) he was not well versed in the modern scholastic literature.

Grotius made his vital move in a passage discussing the right of punishment, or the ins gladii—the fundamental right to use force, possessed (according to every traditional theorist) by the civil magistrate and only the civil magistrate (or his equivalent, such as the head of a family—as we saw Molina was arguing at almost the same time as Grotius was writing the De Indis).


* For the dividend, see Kossman 'The Low Countries'. For the comparable figures for England, see the totals of government expenditure 1598-1608 in F. C. Dietz, English Public Finance 1558-1641 (London, 1964), 113: they average £100,000 p.a. The pound at this period was worth ten guilders—see the table in The Cambridge Economic History of Europe, IV (Cambridge University Press, 1967), 498.

* For the formation of the united company and the status of its predecessors, see Jan den Tex, Oostenbarmetijd (Cambridge University Press, 1973), 300-12.

individuals to make a civil society; but he also seems to have believed that any society with a suitable set of representative institutions would count as a república. It was upon this basis that he defended in the De Indis the Dutch revolt against the King of Spain, arguing that the States of Holland represented the people of Holland and that the magistrate (the king) was always under their authority.

It was also upon this basis that he defended his own vision of the constitution of the United Provinces. The Union had been born in the revolt, and had been formally created by the Treaty of Utrecht in 1579, in which a number of the countries¹¹ of the Northern Netherlands (dominated in practice by Grotius’s own country, Holland) bound themselves together to resist the king. The Union’s affairs were governed by an assembly, the States-General, meeting at The Hague, but each country also had its own States, meeting as its supreme government. As with many later unions, the constitution of the United Provinces was far from clear, and in particular it was unclear to what extent the individual countries remained sovereign states—this became a major personal issue for Grotius in 1618, when he and his master Oldenbarneveld had their careers destroyed by the institutions of the Union (see below).

Grotius’s answer to this question, long before the crisis of 1618, was unequivocal: the countries were sovereign states, as they had always been, since each continued to possess its own States. The Union was an alliance in which no participating country had shared any part of its sovereignty. He enlarged on this theme after 1618, in a defence of his political conduct (his Apologeticus),¹² in which he argued that the Union handled the conduct of war on behalf of the constituent countries, but left the summum potestas in the hands of the aristocratic assemblies (the

¹¹ Grotius uses two terms in his Latin writings to describe the ‘provinces’ such Holland. One is natio—see e.g. De Antiquitate Reipublicae Batavorum, ed. Collegium Classicum c.n. EDEPOL (Arnham, 1995), 78 (VII. 5) (Federatae natioes), while the other is república—see De Iure Praedae Commentarius, ed. H. G. Hanaker (The Hague, 1888), 276, and the De Antiquitate Reipublicae Batavorum throughout (‘Batavia’ is used strictly by Grotius to mean Holland—see Chs IV and V). The Treaty of the Union of Utrecht speaks in Dutch of ‘Landen’ and ‘Provinien’, though generally of ‘Provinien’, the usage followed by all modern historians. I have chosen to call them ‘countries’, in deference to Grotius’s views. For an English text of the treaty, see Texts Concerning the Revolt of the Netherlands, ed. E. H. Kossmann and A. F. Mellink (Cambridge University Press, 1974), 165-73.

¹² Apologeticus eorum qui Hollandiae Westfrisicae et vicinis obvusdam nationibus ex legibus praefuerant ante mutationem quae eventis anno 1618 (The Defence of the Constitutional Rights of the Countries of Holland and West Friesia and their Neighbours Before the Revolution of 1618). I have used the Paris edn. of 1690.
in relation to some specific matter over the other's will', he was drawing on precisely this tradition which we find articulated clearly for the first time in the De Indis: that we can best understand the rights which individuals possess vis-à-vis one another (outside the arbitrary and contingent circumstances of their civil agreements) by looking at the rights which sovereign states seem to possess against one another.

Having made this remarkable claim, that there is no significant moral difference between individuals and states, and that both may use violence in the same way and for the same ends, Grotius had of course accomplished one of his primary tasks—to show that private trading companies were as entitled to make war as were the traditional sovereigns of Europe. But he still had to accomplish one of his other tasks, a justification of the kind of war which Heemskerk had made. As we have seen, that was an equally difficult task, for on the face of it the violent incursions into the Indies had not been made straightforwardly for defensive purposes. In order to answer this question, Grotius once again went back to theoretical fundamentals. He set out his ideas in the Prolegomena to the De Indis. It began with two fundamental laws of nature:

first, that it shall be permissible to defend [one's own] life and to shun that which threatens to prove injurious; secondly, that it shall be permissible to acquire for oneself, and to retain, those things which are useful for life. The latter precept, indeed, we shall interpret with Cicero as an admission that each individual may, without violating the precepts of nature, prefer to see acquired for himself rather than for another, that which is important for the conduct of life. Moreover, no member of any sect of philosophers, when embarking upon a discussion of the ends [of good and evil], has ever failed to lay down these two laws first of all as indisputable axioms. For on this point the Stoics, the Epicureans, and the Peripatetics are in complete agreement, and apparently even the Academics have entertained no doubt."

Grotius then stipulated two further laws, 'Let no one inflict injury upon his fellows' and 'Let no one seize possession of that which has been taken into the possession of another. The former is the law of inoffensiveness; the latter is the law of abstinence.' He devoted much of the Prolegomena to explaining the meaning of these two laws and their

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18 De Jure Praedae Commentarius, I, pp. 10–11.
relationship to the first two. He was at pains to stress that self-preservation was the prior obligation:

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 indicates that by nature's ordinance each individual should be desirous of his own good fortune in preference to that of another, which is the purport of the proverbs, 'I myself am my own closest neighbour', γόνοι κνήματι ἐγγαύον [My knee is closer than my shin], 'My tunic is closer than my cloak'.

As I emphasized in Philosophy and Government, this meant that it was only if one's own preservation was secured that one would be obliged to care about the preservation of another person—the first consideration must always override the second. The only respect in which, in nature, men were obliged to think about actually helping their neighbours was, Grotius argued, that they ought always to return like for like—punishing men who transgressed the principles of inoffensiveness and abstinence and not harming those who did not. 'The function of such justice is twofold, namely: in regard to good, the preservation thereof; in regard to evil, its correction. Hence these two laws arise: first, Evil deeds must be corrected; secondly, Good deeds must be compensated.' The laws of inoffensiveness and abstinence, together with this obligation to punish, thus gave in general an extremely minimal picture of the natural moral life. Although Grotius glossed them as expressions of 'love', they required men merely to abstain from injury, and not to give any positive help to their fellows. He summed up his view by saying that 'Horace should not be censured for saying, in imitation of the Academics, that expediency might perhaps be called the mother of justice and equity' (a passage to which we shall return in discussing the De Jure Belli ac Pacis). It is worth observing at this point that this was of

course precisely Rousseau's account of the natural life of man, though (as we shall see) it was not presented in anything like so clear a fashion in Grotius's printed works.

However, Grotius also argued at some length that it was these principles which gave rise to 'that brotherhood of man, that world state, commended to us so frequently and so enthusiastically by the ancient philosophers and particularly by the Stoics' (p. 13), and especially by Cicero and Seneca, whom he quoted extensively on the subject (pp. 12–14, 93). Although one might suppose that the two visions of natural human life were diametrically opposed, we have already seen that this was not necessarily so in the minds of the Romans whom Grotius cited, and Grotius made clear what he had in mind, not in the passages where he directly described the world state, but in the passages where he depicted the transition from the state of nature (as we can fairly call it, though he did not) to civil society (pp. 19–23). Civil societies developed not with the intention of abolishing the society which links all men as a whole, but rather in order to fortify that universal society by a more dependable means of protection, and at the same time, with the purpose of bringing together under a more convenient arrangement the numerous different products of many persons' labour which are required for the uses of human life. For it is a fact (as Pliny so graphically points out) that when universal goods are separately distributed, each man's ills pertain to him individually, whereas, when those goods are brought together and intermingled, individual ills cease to be the concern of any one person and the goods of all pertain to all. (p. 19)

As a consequence, in civil society two more rules apply.

First, 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 . . . These two laws, then, are directed in a certain sense to the common good, though not to that phase of the concept with which the laws of the third order [those concerned with punishment] are concerned, namely, the good of give rise to lies; for what Horace said, 'Utility, Mother of Justice and Right', is Epicurean; Horace belonged to that tradition [familia]. We follow the Stoics, who derive from nature the law common to all men, and the law which is special to each city from its common utility, that is, from whatever benefits the city . . . (Opera Postuma qua de iure reliquit, III (2nd edn., Paris, 1657), col. 50, on Digest, 1. 1. 9. The first edn. was Recitationes ad titulum Digestorum de justitia et iure nunc primum in lucem editae (Speyer, 1595).

11 De iure Praeclare Commentarius, I, p. 15.
12 Utilitas just proprium mater et aequi (Satires, I. iii. 98). De iure Praeclare Commentarius, I, p. 9. Two things should be observed about this passage: first, Grotius describes it as 'Academic', i.e. sceptic, whereas it was well known that it was Epicurean—an interesting example of the two philosophers being treated as very similar, as they often were in the response to Hobbes and Gassendi. Second, the same passage had been used in the same context to make the opposite point by the great jurist Jacques Cujas, whom Grotius had certainly read (see pp. 109, 121, 161, 164, 335, 347). 'Epicurum did not derive universal law [ius commune] from nature . . . but from general Utility—from convenience, benefit, profit or necessity—which impels us to follow the ius gentium or universal law; not out of principle, but because it is inscribed in us by our utility [sic]. Utility by itself does not
the different individuals composing the community. [These laws] relate rather to the common good interpreted as the good of the unit and therefore as one's own. (p. 21)

And in civil society, he went on, the natural ordering of the fundamental principles does not apply, since the individuals concerned had agreed to subordinate their own interests to that of the community.

It is clear from this that natural society, for Grotius, was very unlike civil society in an essential respect, in that it wholly lacked a genuine community of interests or resources. Its sociability extended only as far as was necessary to justify the private right of punishment, and indeed he made this point absolutely clear in his discussion of that right.

One point . . . remains to be clarified. If the state is not involved, what just end can be sought by the private avenger? The answer to this question is readily found in the teachings of Seneca, the philosopher who maintains that there are two kinds of commonwealth, the world state and the municipal state. In other words, the private avenger has in view the good of the whole human race, just as he has when he slays a serpent; and this goal corresponds exactly to that common good towards which, as we have said, all punishments are directed in nature’s plan. (p. 93)

Another ways of appreciating Grotius’s idea is through a consideration of his account of justice—something about which Pufendorf was later to express puzzlement. As is well known, in the Aristotelian tradition, justice was divided into ‘general’ and ‘particular’ or ‘special’. Understood in its general sense, justice was the sum of moral virtue, and was therefore universal in a very strong sense: no civil societies were needed for general justice to be displayed by moral agents. Understood in its particular sense, justice was the virtue involved in administering a civil society, and was itself divided into ‘commutative’ justice, the right administration of punishment, and ‘distributive’ justice, the right distribution of the goods of the society. Although particular justice was restricted in its scope in this way, the Aristotelian writers assumed that the underlying principles upon which acts of particular justice were based were to be found among the principles of universal justice. Grotius, very extraordinarily in the eyes of contemporary Aristotelians, insisted that these distinctions were misleading: universal justice should be regarded as the commutative justice of the Aristotelian tradition, and particular justice was solely distributive justice.

De Indis: Practical Implications

There were two significant implications of this claim that natural individuals are like states, and are governed by a minimal morality comparable to that governing international relations. The first was that Grotius, like the good humanist he was, of course endorsed the claim that we may punish men over whom we do not possess political rights—for on his account of the ius gladii, punishment in nature must be exercised by men who do not possess political authority over the objects of their vengeance. So Grotius was even led (in the context of discussing punishment) to assert that Aristotle was not mistaken ‘when he says that certain persons are by nature slaves, not because God did not create man as a free being, but because there are some individuals whose character is such that it is expedient for them to be governed by another’s sovereign will rather than by their own’ (p. 62). In the critical struggle between humanist and scholastic over the right to inflict violence on barbaric peoples, Grotius (contrary to his popular reputation) supported its infliction—and as we shall see, went on in De Iure Belli ac Pacis to make his support for it even more explicit.

The second implication of the argument related specifically to the commercial conflict in the Indies. Grotius’s theory implied that it was a fundamental right possessed by all private individuals to acquire as many goods as possible, and to protect them, as long as they did not thereby take away the legitimate goods of another person. The Dutch therefore had a fundamental right to seek trade in the East Indies, and
attempts by the Portuguese to debar them could only be legitimate if the Portuguese could lay a reasonable claim to own the seas across which the Dutch were sailing. Grotius’s argument to show that they could not, was of course the chapter separately published as *Mare Liberum*; and it took the form, once again, of a fundamental re-examination of the idea of property.

The essence of Grotius’s new theory can be described as the claim that we have rights to those things—and only those things—in which we have a personal interest: once again, his origins as a humanist are vital to an understanding of his views, for he took the old humanist account of the pursuit of self-interest by individuals or cities, and made it the foundation of an account of rights.14 When it came to property, this technique elegantly differentiated between the sea and the land: for, as Grotius argued in *Mare Liberum*, one can have true, private property only in things which one can either personally consume or personally transform in some way, for it is only in such things that one can be said to have a personal interest. The fisherman needs to protect his catch from rivals, but he does not need to protect the sea itself, for there is (Grotius argued) always enough for other fishermen in it:

all that which has been so constituted by nature that though serving some one person it still suffices for the common use of all other persons, is today and ought to remain in the same condition as when it was first created by nature... The air belongs to this class of things for two reasons. First, it is not susceptible of occupation; and second its common use is destined for all men. For the same reasons the sea is common to all, because it is so limitless that it cannot become a possession of any one, and because it is adapted for all, whether we consider it from the point of view of navigation or of fisheries.21

So far, Grotius had said nothing that would contradict the conventional view, which I outlined in the previous chapter, that the sea could not be owned in the same way as the land could be, but it could come under a state’s jurisdiction. But when he turned to this issue, which was the critical one for his case, Grotius argued the following. First, if something cannot become private property, it cannot come under the control of a state either:


Ownership [Occupatio]... both public and private, arises in the same way. On this point Seneca [*De Beneficiis*, VII. 4. 3] says: "We speak in general of the land of the Athenians or the Campanians. It is the same land which again by means of private boundaries is divided among individual owners."26

And to make clear his ideas, Grotius argued in the key passage:

Those who say that a certain sea belonged to the Roman people explain their statement to mean that the right of the Romans did not extend beyond protection and jurisdiction; this right they distinguish from ownership [proprietas]. Perchance they do not pay sufficient attention to the fact that although the Roman People were able to maintain fleets for the protection of navigation and to punish pirates captured on the sea, it was not done by private right, but by the common right which other free peoples also enjoy on the sea.27

He acknowledged that this common right might be limited by an agreement about its exercise (so that one nation might agree not to police part of the sea which another nation was willing to patrol), but (my italics) ‘this agreement does bind those who are parties to it, but it has no binding force on other nations, nor does it make the delimited area of the sea the private property of any one. It merely constitutes a personal right between contracting parties,’ (p. 35). In other words, jurisdictional sovereignty at sea is critically different from jurisdictional sovereignty on land, and the two could not be casually equated as had been customary among the civil lawyers. Neither Grotius nor any other seventeenth-century jurist would have said that the sovereignty of (say) Venice over the terra firma was the consequence of a ‘personal right between contracting parties’ which any other nation that had not been a party to the agreement might ignore; by claiming this about Venice’s rights over the Adriatic, Grotius was making a very radical move, which took him close (as he acknowledged) to the position of Vazquez. The basis of the idea seems to have been a sense that even the Romans could not, as matter of sheer practicality, enforce their will on the high seas in a consistent and effective fashion—because of the size and unmanageable character of the sea, it was always possible for other people to slip through it unmolested and to fish in it. Giving naval jurisdiction to the Romans thus involved some people promising not to attempt to exercise any rival control over users of the sea, rather than (as it would be on land) the recognition of both a right and a capacity on the part of the Romans to do so against the wishes of anyone else.

26 Ibid. 26. 27 Ibid 35.
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The extreme originality of his view is not often recognized, and indeed most modern histories of the law of the sea misrepresent both Grotius's position and that of his predecessors. It was widely imagined, particularly at the beginning of this century by historians such as Fulton, that the freedom of the seas in its Grotian form was an ancient doctrine which merely needed restating against some novel opponents. But as we saw in Chapter 2, the almost universal view before Grotius was that states could claim jurisdiction over their neighbouring waters, and even over the ocean itself, against all other states; and that jurisdiction, while it might not allow the ruler actually to ban traffic and fishing, could permit him to regulate them in such a manner that they were virtually banned. Among the major jurists, only Vazquez had hitherto questioned this view, albeit in a somewhat elusive fashion; though, as we shall see in Chapter 4, English sailors in the last decades of the century had begun to oppose it with formidable effect. Grotius's novel view of the matter rested on his equally novel assimilation of states and individuals, for there were in general no specifically political rights in Grotius's theory. If an individual could not own something, he could not give his rights in it to a state; and since 'every right comes to the state from private individuals', a state could not have political control over unownable territory.

Grotius had to establish one other minor, but still interesting principle in De Indis before he had completed his defence of Dutch commercial activity in the East. Anxiety among Dutch Protestants about the conduct of the India Companies was not confined to unhappiness about their military activities; probably more influential among the bulk of the Protestant population was a belief that Christians ought not to make treaties with non-Christians. This was an important issue because the techniques the companies used, once they had run the Portuguese blockade, included signing preferential trading agreements with the native rulers and inciting them to break any understandings they had earlier had with the Portuguese. Heemskerk himself made such agreements, and as early as 1601 the King of Bali wrote to the 'King of Holland' pledging mutual loyalty. The capture of the Portuguese carrack itself was an incident in a war carried on by Heemskerk notionally on behalf of the Sultan of Johore, who wanted to trade directly with the Dutch and break the Portuguese embargo; moreover, Grotius himself had been involved in the treaty negotiations with the Sultan which began in 1602 and ended with a trading agreement in 1606 covering the modern site of Singapore. Conventional Catholic theology, including Aquinas, had usually held that binding treaties could be made with infidels, and the Portuguese had duly followed suit. But Protestants, influenced particularly by the censure of the Kings of Judah in I Kings for doing just this, were inclined to say that no treaty should be made with an infidel. The humanist Protestant theologian Peter Martyr argued this in the mid-sixteenth century, and as we have seen, the humanist Protestant jurist Gentili followed him in his discussion of whether a Christian should promise armed assistance to an infidel under a treaty.

Either a Christian joins arms with an infidel against another infidel or against a Christian. Against infidels the Maccabees did this and the kings of Judah, and in modern times the Portuguese. And such an alliance does not seem to me lawful . . . Therefore it is lawful neither to lend aid to infidels nor to accept aid from them against other infidels. And if it is not lawful to do this against infidels, how much less will it be allowed to do it against the faithful! . . . In this case I agree with a most learned theologian of our generation (Peter Martyr) who says that it is never right to make an alliance with infidels, although peace may be made and kept with them . . . It is characteristic of infidel barbarians to burn, pillage, and destroy. It is their way to use unfair wiles, to fight with poison, to wage a merciless war, at any rate to inflict slavery, which has been abolished in all Christian warfare. Hence I do not approve the treaty of the King of France with the Turks, because of which once so many thousands of men, boys, and women were captured and led off into everlasting and intolerable servitude. Moreover, you cannot trust the infidels. For although the impious oath of an infidel may be accepted, yet what trust can be put in an unbeliever?

Grotius responded to this by applying the principles he had outlined at the beginning of De Indis, and in particular the principle that in nature we may punish other men who breach the laws of inoffensiveness and abstinance. According to him, the Portuguese had breached

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20 See Thomas Wemyss Fulton, The Sovereignty of the Sea (Edinburgh, 1911). This was also the principal point of James Brown Scott's publishing programme for the Carnegie Endowment.

21 See the fascinating documents in J. F. Heere ed., Corpus Diplomaticum Nederland-Indicum, 1 (Bijdragen tot de Taad-, Land- en Volkenhandel van Nederlandsh-Indië, VII, 3 (1907)). Heemskerk's treaty with ruler of Banda is p. 11 and the letter to the King of Holland is p. 15.

22 See the treaties collected in J. F. Judice Biker ed., Coleção de Tratados e Comercia de paz, que o Estado da índia Portuguesa fez com os Reis e Senhores com quem teve relações nas partes da Ásia e África Oriental desde o principio da conquista até ao fim do século XVIII, I (Lisbon, 1881).

these laws by seeking to prevent the Sultan of Johore from trading with the Dutch.

Do we perhaps believe that we have nothing in common with persons who have not accepted the Christian faith? Such a belief would be very far removed from the pious doctrine of Augustine, who declares (in his interpretation of the precept of Our Lord whereby we are bidden to love our neighbours) that the term 'neighbours' obviously includes every human being... Accordingly, 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 [including Vitoria], that alliances and treaties with infidels may in many cases be justly contracted for the purpose of defending one's own rights, too. Such a course of action was adopted (so we are told) by Abraham, Isaac, David, Solomon, and the Maccabees.

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? And what would constitute interference both with the law of nations and with the distinct jurisdictions of different princes, if such a prohibition does not?²

**De Iure Belli ac Pacis: Sociability**

During the period between 1609 and 1613 Grotius returned on a couple of occasions to the themes of *Mare Liberum*. Both times it was to defend the Dutch against English accusations that they were now insisting on a Portuguese-style *dominium maris* in the Far East, and on each occasion he insisted that the treaties which the Dutch had struck with the local rulers entitled the company to monopoly trading privileges without violating the general principles of *Mare Liberum*. As we have just seen, the original draft of the *De Indis* included a full defence of such treaties, so Grotius's repeated claim that they were not inconsistent with *Mare Liberum* was justifiable—though it was greeted with understandable scepticism by his opponents.²² Along with his master Oldenbarnevelt,

²² *De Iure Praedae Commentarius*. I, p. 315.

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he fell from power in 1618 as part of the coup by the Stattholder and the Calvinists against the religiously liberal republicans who had been running the United Provinces; Oldenbarnevelt was executed and Grotius narrowly escaped death, being imprisoned for life in Loevestein Castle.

He escaped in 1612 and fled to France, where he became a pensioner of the King of France, and later (1634) Ambassador of the Crown of Sweden at the French court. It was in this time of exile that he wrote and published *De Iure Belli ac Pacis* (1625), which became the most authoritative statement of his political theory. In many ways his fundamental arguments remained as they had been in his earlier works; but he developed them in some new ways which were to prove both influential and controversial for the rest of the century.

It is important to remember that although he was to remain an exile for most of the rest of his life, in 1625 he did not know that this was to be the case: indeed, in that very year the old Stattholder died and was succeeded by his brother Frederick Henry, with whom Grotius had remained on good terms since 1621, and whose succession he had always expected would make his return easier. Grotius had provided some diplomatic help to Frederick Henry in Paris, as he had done also to the East India Company, with whose directors he kept in close contact. So we must not read *De Iure Belli ac Pacis* as the work of a hostile and bitter exile; rather, it was in part a contribution to rehabilitating himself with the Dutch government. The opposition to Oldenbarnevelt had also been the party which most supported the continuation of war with Spain, particularly over the Indies; Grotius had always tried to distance himself from Oldenbarnevelt's peace policy, and *De Iure Belli ac Pacis* reminded his audience that he was still an enthusiast for war around the globe. He was indeed a most improbable figure to be the tutelary deity of the Peace Palace at The Hague.

Most of the substantive theory of the *De Iure Belli ac Pacis* was in fact an expansion of the arguments of *De Indis*, with, in particular, a crucial role being played throughout the work by the analogy between states and natural individuals. For all the complexity and nuanced character of
the book, this is the simple message which its readers received and which was so important to the later seventeenth century. And the state which Grotius used as the analogue for a natural individual was still the sovereign state of the De Indis.

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. When I say, by any other. I exclude the Sovereign himself, who may change his own Will, as also his Successor, who enjoys the same Right, and consequently, has the same Power, and no other. Let us then see what this Sovereign may have for its Subject. The Subject then is either common or proper: As the Body is the common Subject of Sight, the eye the proper; so the common Subject of Supreme Power is the State [civitas]; which I have before called a perfect Society of Men. Several States may be linked together in a most strict Alliance, and make a Compound, as Strabo more than once calls it; and yet each of them continue to be a perfect State. The State then is, in the Sense I have just mentioned, the common Subject of Sovereignty. The proper Subject is one or more Persons, according to the Laws and Customs of each Nation. (I. 3. 7)

Here, though (interestingly) the term civitas has replaced the term respublica to describe the initial subject of sovereignty, the basic idea is still the same, with the social pact creating a sovereign body which can then exercise its sovereignty through a magistrate (though Grotius now, famously, was less prepared to treat the magistrate as expendable by the civitas—see I. 3. 8).

However, unfortunately for his later readers, Grotius did not make it anything like as clear as he had done in his earlier work what the theoretical foundations of his argument were. But it should be said that they were somewhat clearer in the first edition than in subsequent editions, since one of the things which has confused commentators on the book is that Grotius introduced some marked changes into the second edition, which he produced in what we shall see were special circumstances, in 1631. It is worth bearing in mind that Hobbes and

the other early readers of Grotius may well have read the 1625 edition.

In the De jure Belli ac Pacis, the principal discussion of self-interest and sociability comes in the Prolegomena. It follows immediately a famous passage in which Grotius summarizes Carneades’ scepticism about a universal morality and proclaims his own intention to refute it. The first edition reads in full at this point (using my own translation, as no translation of the first edition exists):

When he [Carneades] undertook the critique of justice (which is my particular subject at the moment), he found no argument more powerful than this: men have established jus according to their own interests [pro utilitate], which vary with different customs, and often at different times with the same people; so there is no natural jus: all men and the other animals are impelled by nature to seek their own interests: so either there is no justice, or if there is such a thing, it is the greatest foolishness, since pursuing the good of others harms oneself. We should not accept the truth in all circumstances of what this philosopher says, nor of what a poet said in imitation—‘never by nature can wrong be split from right’. For though man is an animal, he is one of a special kind, further removed from the rest than each of the other species are from one another—which for there is testimony from many actions unique to the human species. Among the things which are unique to man is the desire for society [appetitus societatis], that is for community with those who belong to his species—though not a community of any kind, but one at peace, and with a rational order [pro sui intellectus modo ordinatar]. Therefore, when it is said that nature drives each animal to seek its own interests, we can say that this is true of the other animals, and of man before he comes to the use of that which is special to men [my italics] [antequam ad usum eius, quod homini proprium est, pervenerit]… This care for society in accordance with the human intellect, which we have roughly sketched, is the source of jus, properly so called, to which belong abstaining from another’s possessions, restoring anything which belongs to another (or the profit from it), being obliged to keep promises, giving compensation for culpable damage, and incurring human punishment.

A particularly interesting feature of this passage is the remark which I have emphasized—‘when it is said that nature drives each animal to seek its own interests, we can say that this is true of the other animals, and of man before he comes to the use of that which is special to men’. Read in the context of the theory which we know he had drafted in De Indis, this part of the Prolegomena does not sound radically different from his

De jure Belli ac Pacis (Paris, 1625) sig a v. (The later division of the Prolegomena into numbered paragraphs does not occur in this edition; the passage was later numbered §-8.)
original work: Grotius was arguing against the sceptic (in the person of Carneades) who believed that there were no universal principles of justice, but he was not willing—yet—to deny that in some sense self-interest was a primary principle for human beings, nor to give a richer account of human natural society than he had done in De Indis.

It is true that he spoke eloquently about the fundamental human desire for society with other human beings, and it is also true that instead of applauding Horace for his Epicurean or sceptical sentiments, he was now cautiously critical:

What not Carneades alone but others as well have said, 'expediency might perhaps be called the mother of justice and equity', is not true, if we speak accurately: for human nature itself is the mother of natural law, for it drives us to seek a common society [societatem mutam] even if there is no shortage of resources ... But expediency [utilitas] is annexed to the natural law.\(^{41}\)

But on the central question of what the character of this natural common society might be, he reiterated in the clearest fashion his original idea about the distinction between corrective and distributive justice, and the assimilation of the former but not the latter to the notion of universal justice.

He now said that corrective justice dealt with rights 'strictly so called', whereas distributive justice dealt with what was customarily termed 'imperfect' rights, or claims upon other people for their assistance, which, he insisted (against, he recognized, the conventional view) was not really part of the system of natural right. To distributive justice, he wrote,

belongs a prudent Management in the gratuitous Distribution of Things that properly belong to each particular Person or Society [cœtus], so as to prefer sometimes one of greater before one of less Merit, a Relation before a Stranger, a poor man before one that is rich, and that according as each Man's Actions, and the Nature of the Thing require; which many both of the Ancients and Moderns take to be a part of Right properly and strictly so called; when notwithstanding that Right, properly speaking, has a quite different Nature, since it consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness they may demand.\(^{42}\)

And Grotius nowhere in the body of the book used imperfect rights to explicate the relationships of states, or persons in a state of nature. His approach to them was made particularly clear at II. 22. 16:

\(^{41}\) Prolegomena, 16, my translation.

\(^{42}\) The Rights of War and Peace, in Three Books, p. xvii (Prolegomena, 10).
there is no God’ (Prolegomena, 11), Grotius in 1625 continued that the natural law
despite the fact that it stems by necessity from internal principles of man, can
rightly be ascribed to God, since he willed that such principles should exist in
us: in which sense Chrysippus and the Stoics said that the origin of jus was not
to be sought anywhere but in Jove himself; it can probably be said that the
Latinus took the word jus from the name of Jove. Among men, our parents are
like Gods, to whom is due not an infinite but a proper obedience.

In 1631 this limited claim was greatly expanded. First, the phrase ‘by
necessity’ was dropped; then Grotius inserted after ‘the name of Jove’
the following long passage.

It should be added that God has made these same principles more conspicuous
by giving laws, even to those whose powers of reasoning are feeble: and he has
forbidden those powerful impulses which attend to the interests of both ourselves
and others from straying into the wrong courses,“ by strictly restraining
the more vehement of them and by coercing them in both their ends and their
means. Moreover sacred history, besides that part which consists of precepts,
greatly excites our social feeling, since it teaches us that all men are sprung
from the same first parents; so that in this sense too we can truthfully say what
Florentinus said in another sense, that there is a kinship established among us
by nature: and as a consequence that it is wrong for one man to plot against
another.

Revealingly, this last passage also includes a more strident claim about
human sociability than he had put forward in 1625. There can be no
question but that the first edition of De Iure Belli ac Pacis was far more
dissuasive of the role of God in natural law than the subsequent editions: in 1625 God (in some ways) played merely the same role that he was
to play in Hobbes’s work, that of the maker of a universe which
included creatures endowed with the appropriate natural ‘principles’ or
feelings. In 1631 his status as law-giver, whose laws were apparent to his
subjects as his laws, was stressed for the first time, setting in train a
long-standing puzzle for the interpretation of Grotius’s ideas.

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1. This is a translation of the sentence et in diversa trahentes impetus, qui nobis ipsius, quique alius consistat, vagari vetuit, which appears in all the editions seen through the
press by Grotius. Since the time of Barbeyrac, it has been customary to suppose that this
should read male consistat, but that seems to me to be a misrepresentation of what
Grotius was saying. His point was that our self-interested and benevolent impulses did
in principle keep us on the right road, though they might (as he claimed in 1631) need
some sort of control by God to make sure that they did so.

Similarly, immediately after his explication of his famous claim that
the natural law would govern man ‘even though we should assume that
impossible here; but, briefly, I would argue that in this area also the 1625
edition was more like De Indis than the 1631 edition was to be. De Indis
argued that the laws of nature are based on the will of God——What God
has shown to be His Will, that is law. This axiom points directly to the
cause of law, and is rightly laid down as a primary principle’ (p. 8). But
Grotius argued that the content of the laws of nature was then to be
sought in a consideration of the character of the natural world, and in
particular the fundamental principles upon which all creatures seem
to act, above all the principle of self-preservation (p. 9). This claim,
that the legal character of the law comes from the assumption that
God has created the natural order, but our knowledge of its content
comes simply from our observation of the facts of the material uni-
verse, is broadly what Grotius says in the first edition of De Iure Belli ac
Pacis (for example, that the ius naturale is ‘a dictate of right reason,
indicating of any act whether it possesses moral turpitude or moral
necessity, from its congruity or incongruity with rational nature itself,
and consequently whether it was forbidden or permitted by God the
author of nature’).

But in 1631 Grotius attempted to make divine law a basis for natural
law in a more direct fashion, unmediated by an examination of the
material world. The very first sentence of the Prolegomena included the
claim in 1625 that

the law which adjudicates between different peoples, or between the rulers of
peoples, whether proceeding from nature itself or introduced by custom and
tactit agreement, has been handled by few writers, and not by anyone hitherto
in a systematic and comprehensive fashion.

In 1631, this read

the law which adjudicates between different peoples, or between the rulers
of peoples, whether proceeding from nature itself, or established by divine laws
[my italics], or introduced by custom and tactit agreement, has been handled by
few writers, and not by anyone hitherto in a systematic and comprehensive
fashion.

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1. 1. 10 (my trans). Barbeyrac inserted at his own initiative the words ‘and social’ (ac
social) after the word ‘rational’ in this passage (The Rights of War and Peace, in Three
Books (9, p. 2)—from my perspective, a revealing attempt to make Grotius more of a theorist
of sociability than in fact he was).
It is important to stress, however, that all these changes did not affect the body of the book: the actual theory which Grotius put forward about the principles of natural human relations, and international relations, remained unaltered between the two editions. The consequence was that a theory about minimal natural sociability, based on a general view of the role of self-interest in the natural world, appeared to later readers to be based instead on a different view, and one which was closer to traditional notions of both human sociability and divine law. Nevertheless, the extent to which early readers of Grotius saw something disturbing in his account of sociability and self-interest should not be underestimated. I shall have more to say about this in Chapter 5; here, I will simply observe that it became to a degree a commonplace in late seventeenth-century Germany that Grotius had failed to refute Carneades because his own basic idea was the same, and that there was at bottom little to choose between Grotius and Hobbes. This line of criticism culminated in the marvellous observations of Rousseau in Emile which I quoted in the Introduction.

When I hear Grotius praised to the skies and Hobbes covered with execration, I see how far sensible men read or understand these two authors. The truth is that their principles are exactly the same: they only differ in their expression. They also differ in their method. Hobbes relies on sophisms, and Grotius on the poets; all the rest is the same."

**De Iure Belli ac Pacis: Native Peoples**

In addition to this carefully judged reworking of the fundamental theory he had put forward in *De Indis*, Grotius in *De Iure Belli* both expanded his ideas in certain areas, and modified them in others. The most striking matter about which he was now much more explicit was the principle of international punishment. In *De Indis* he had briefly registered his agreement with the conventional humanist view, found for instance in Gentili, that barbarians or natural slaves might rightfully be appropriated by civilized peoples. In *De Iure Belli ac Pacis*, he was much more eloquent on the subject.

Kings, and those who are invested with a Power equal to that of Kings, have a Right to exact Punishments, not only for Injuries committed against themselves, or their Subjects, but likewise, for those which do not peculiarly con-

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It is remarkable—and, I think, completely unrecognized by modern scholars—that Grotius specifically aligned himself with Innocent IV and against Vittoria on this crucial issue. The idea that foreign rulers can punish tyrants, cannibals, pirates, those who kill settlers, and those who are inhuman to their parents neatly legitimated a great deal of European action against native peoples around the world, and was disconcertingly close to the extreme pre-Vitorian arguments used by the Spaniards in America (though it is worth noting that Grotius praised the Inca's, Kings of Peru who 'obtained an Empire, of all we read of, excepting their Religion, the justest') (p. 438 n. 9). The central reason why Grotius had developed his argument in this direction was, I think, that the Dutch had begun to change the character of their activity in the non-European world since his earlier works, and in particular had begun to annex territory.

In 1604 and 1609 Grotius had been entirely concerned with the question of the sea, and in both the *De Indis* and *Mare Liberum* he had assumed that land should be owned and politically controlled in a traditional fashion. This was no doubt (at least in part) because at that
time the East India Company was concerned purely to force trade and capital on the native rulers, and had not yet any thoughts of colonial occupation. But from 1612 onwards its mind turned to planting colonists in the East Indies, and it was from 1619 onwards (spurred on by increasing English and French competition in the East, and indeed by armed conflict with the English) that the company began forcibly to annex native territory (hitherto all forts and factories had been set up by agreement with native rulers). At more or less the same time Dutch policy in the West suffered the same transformation, under the same spur of competition from England and France (see the next chapter). The first Dutch settlements in North America were very like its factories in the East—Fort Orange, the present-day Albany, established in 1614 near the limit of navigation on the Hudson River, deep into the fur-producing area, was not at first the centre of a substantial agricultural colony. After the foundation in 1621 of a West Indies Company, however, policy in North America changed: the company was charged under its charter with advancing 'the peopling of those fruitful and unsettled parts'. Two substantial settlements were fairly quickly established, one in Guiana and the other centred on Manhattan Island at the bottom of the route up the Hudson (New Netherlands). From 1628 the company also controlled a major colony, New Holland, in North-East Brazil.

These recent activities focused Grotius's attention on the implications of his general theory of property for the occupation and ownership of uncultivated land, and he perceived that if the sea could not be owned by the men who hunted over it, neither presumably could the land. In II. 2 of De Iure Belli ac Pacis he listed a number of qualifications on men's right to enjoy ownership over terrestrial objects, which together represent a formidable set of constraints on property in land. The alleged owners of a territory must always permit free passage over it, both of persons and goods; must allow any strangers the right to build temporary accommodation on the seashore; must permit exiles to settle (all of these again rights which the Spaniards and other Europeans had pleaded against native peoples); and, in particular, must allow anyone to possess things which are of no use to the owners. This is a right (he argued II. 2. 11) based on

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innocent Profit; when I seek my own Advantage, without damaging anyone else. Why should we not, says Cicero, when we can do it without any Detriment to ourselves, let others share in those Things that may be beneficial to them who receive them, and no inconvenience to us who give them. Seneca therefore denies that it is any Favour, properly so called, to permit a Man to light a Fire by ours. And we read in Plutarch . . . 'Tis an impious Thing for those who have eat sufficiently, to throw away the remaining Victuals; or for those who have had Water enough, to step up or hide the Spring; or for those who themselves have had the Advantage of them, to destroy the Sea or Land Marks; but we ought to leave them for the Use and Service of them, who, after us, shall want them.

Seneca's remark is important in Grotius's general argument, for he too wished to emphasize that it is not a favour, that is, it does not belong to the sphere of distributive justice and imperfect right, the locus of 'benefits'. There is no ownership in things which are of no use to their owners, and therefore other people have a perfect right to occupy them.

Drawing on Gentili, though characteristically without acknowledgement, Grotius argued (II. 2. 17) that it followed from this that if there be any waste or barren Land within our Dominions, that also is to be given to Strangers, at their Request, or may be lawfully possessed by them, because whatever remains uncultivated, is not to be esteemed a Property, only so far as concerns Jurisdiction [imperium], which always continues the Right of the ancient People. And Servius remarks, that seven hundred Acres of bad unmanured Land were granted to the Trojans, by the original Latins: So we read in Dion Praeaeasis [i.e. Dio Chrysostom] . . . that They commit no Crime who cultivate and maneure the untilled Part of a Country. Thus the Anabaptists formerly cried (in a quotation from Tacitus's Annals) that As the Gods have Heaven, so the Earth was given to Mankind, and what is possessed by none, belongs to every one, And then looking up to the Sun and Stars as if present, and within hearing, they asked them, whether they could bear to look upon those uninhabited Lands, and whether they would not rather pour in the Sea upon those who hindered others to settle on them.

He made the connection between his account of common ownership and the American situation (and the prehistory of Europe) clear in II. 2—'the Right common to all Men'—must have continued till now, had Men persisted in their primitive Simplicity, or lived together in perfect Friendship. A Confirmation of the first of these is the Account we have of some People of America, who by the extraordinary Simplicity of their Manners, have without the least Inconvenience observed
the same Method of Living for many Ages... Horace, speaking of the Scytheni and the Getae, represents their Way of living in the following Manner, that they lived in the Fields, and drew their moveable Huts with Wagons, whenever they changed Place, that they did not divide their Lands by Acres. (II. 2. 2 and n. 3)

Grotius’s ideas about cultivating land should be associated with an equally striking passage in his De Veritate Religionis Christianae, composed in Loevestein and first published (in Dutch) in 1622, in which he praised Christianity for being the religion which most clearly recognized the moral truth that

our natural needs are satisfied with only a few things, which may be easily had without great labour or cost. As for what God has granted us in addition, we are commanded not to throw it into the sea (as some Philosophers foolishly asserted), nor to leave it unproductive (inutilis), nor to waste it, but to use it to meet the needs (inoptam) of other men, either by giving it away, or by lending it to those who ask; as is appropriate for those who believe themselves to be not owners (dominos) of these things, but representatives or stewards (procuratores ac dispensatores) of God the Father.**

The assimilation of a Christian moral vision to that of the religions of antiquity is absolutely characteristic of Grotius.

As we have just seen, part of Grotius’s argument over this question turned on a distinction between property and jurisdiction—there is a general natural right to possess any waste land, but one must defer to the local political authorities, assuming they are willing to let one settle. If they are not, of course, then the situation is different, for the local authorities will have violated a principle of the law of nature and may be punished by war waged against them. This distinction between property and jurisdiction was, as we have seen, a standard feature of earlier theories about the law of the sea, but was expressly ruled out, at least in its orthodox form, by Grotius in the Mare Liberum. In De Iure Belli ac Pacis, however, he went into more detail about his own current view of the distinction. Thus, he remarked

as to what belongs properly to no Body, there are two Things which one may take Possession of; Jurisdiction, and the Right of Property, as it stands distinguished from Jurisdiction... Jurisdiction is commonly exercised on two Subjects, the one primary, viz. Persons, and that alone is sometimes sufficient, as in an Army of Men, Women, and Children, that are going in quest of some new

** Grotius, Opera Omnia Theologica (London, 1679), III. 43 (II. 14). The last sentence is a reference to 1 Tim. 6: 17, 18.
the rules of the West India Company for New Netherlands, drawn up in 1629, specified that 'whoever shall settle any colony out of the limits of the Manhattes' Island, shall be obliged to satisfy the Indians for the land they shall settle upon.' But it is not at all clear that Grotius's distinction between jurisdiction and property was a satisfactory one, and if it were to fail, then either a more ruthless colonization or no colonization at all would be the consequence. As we shall see in the next chapter, the English determinedly took the former course.

As I have already suggested, the view taken of Grotius in the conventional histories of international law badly misrepresents his real position. Far from being an heir to the tradition of Vitoria and Suarez, as was assumed by writers at the beginning of this century, he was in fact an heir to the tradition Vitoria most mistrusted, that of humanist jurisprudence. The account of states' rights in international affairs from which Grotius's general theory took its start was in most respects modelled on that of jurists such as Gentili; the one significant respect in which Grotius differed from Gentili was over the question of treaties with non-Christians. As a consequence, Grotius endorsed for a state the most far-reaching set of rights to make war which were available in the contemporary repertoire. In particular, he accepted a strong version of an international right to punish, and to appropriate territory which was not being used properly by indigenous peoples. Since, as I have stressed, his general theory then involved him in attributing comparable rights to private individuals, he equipped the modern liberal rights theories which he had launched with a far-reaching account of what agents can do to one another, both in a state of nature and in the international arena. In the following chapters, we shall see how his successors reacted to the often brutal implications of his ideas.


THOMAS HOBBES

ELIZABETHAN IDEAS ON COLONIZATION

If one way of viewing Grotius, as we saw in the previous chapter, is that he put into the form of a modern rights theory the ideas about war found in writers like Gentili, then just the same kind of claim can be made about Hobbes. As I said in the Introduction, Hobbes was the most clear-headed exponent of the new ideas, and the intellectual relationship between him and Grotius was much closer than many eighteenth-century writers were willing to admit—with the striking exception of Rousseau. In this chapter, I want to show how Hobbes can be read in this way, and how his ideas grew in part out of an English debate about war and colonization, in which Gentili was both intellectually and personally a commanding presence.

Just as in the case of France which we looked at in Chapter 1, the English began their colonial activity as part of their struggle against Spain at home. Successful action against Spain in Europe gave rise to the hope of supplanting it in the world as a whole, a hope articulated particularly well, for example, by Walter Raleigh in his History of the World (1614), with its suggestive account of the rise of great empires and their overthrow by small but valiant nations which went on to achieve new world hegemonies. But the English took a very different path from the French when it came to justifying the occupation of the lands of native peoples. It is, I think, safe to say that seventeenth-century English writers took the most uninhibited and non-legalist approach to these matters of all contemporary theorists; and it may well be that the disconcerting but historic consequence of this was that in the end the English were the most successful of all these rival nations at constructing a world empire.

Already under Elizabeth we can see that the preferred justifications for the English resembled much more the literature of secular raison