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Grotius and Selden

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1 The context of Grotius’ career

When the history of recent moral philosophy was written at the end of the seventeenth and the beginning of the eighteenth century, a consistent account was given of the role of Hugo Grotius. In the eyes of men like Samuel Pufendorf, Christian Thomasius, Jean Barbeyrac, and their successors, he was the one who ‘broke the ice’ after the long winter of Aristotelianism; who provided a new theory of natural law which could supplant both the discredited theories of the scholastics and the anti-scientific and sceptical writings of Renaissance authors such as Montaigne and Pierre Charron. He was the inventor of a new ‘science of morality’, which was taken up in various ways by all the major figures of the seventeenth century, including Hobbes, Locke, and Pufendorf himself. His first important follower, they also all agreed, was John Selden, though the relationship between the two men was by no means a straightforward one (see Tuck 1979, pp. 174–5).

As we shall see, there is a sense in which these historians were absolutely correct; Grotius did see something for the first time which was to be crucially important in the succeeding century, namely that there could be a systematic moral and political philosophy which met the objections levelled against such an enterprise in the late sixteenth century. But this insight was hard-won, and embodied in a series of works which were to some extent pièces d’occasion; to understand the generation of his political philosophy, it is necessary to look first at his public career.

On 18 March 1598, shortly before his fifteenth birthday, Hugo Grotius left his native Holland on an embassy to the king of France. Despite his youth, he had been chosen by Johan van Oldenbarnevelt, advocate of the States of the province of Holland since 1586 and in effect the chief minister

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of the United Provinces, as an appropriate companion on one of the major diplomatic missions during the war between the Netherlands and Spain, and their joint enterprise marked the beginning of a political partnership which was to endure until Oldenbarnevelt's fall and execution in 1619. They both came from the same kind of social background; Grotius' father Jan de Groot was one of the regents of Delft— that is, one of the small group of magistrates who governed the city and who chose from among themselves delegates to sit in the States of Holland, the medieval parliamentary assembly which governed the province in the absence of the king. They were not elected, but coopted by the existing regents, and increasingly became a closed and hereditary group. Oldenbarnevelt, though not by birth a Hollander, came from a similar regent family in Amersfoort in the province of Gelderland. Both turned to the law for their career, though in Grotius' case this decision followed a brilliant and precocious career at the University of Leiden (which he entered at the age of eleven) and the appearance of a number of editions of classical texts. His decision to enter the legal profession was marked during the mission to France by the conferment on him of the degree of doctor utriusque juris by the University of Orleans in May. But the difference in age and position between Oldenbarnevelt and Grotius meant that the younger man was very much the protégé of the older, and his fortunes rose or fell with those of his patron.1

By virtue of his political position, Oldenbarnevelt had the resources at his disposal to reward his friends, and Grotius benefited accordingly. In 1601 he was made historiographer of Holland, a post which was not purely honorary—a monetary subsidy was also granted to him (at first he was on trial, but in 1604 he was secured in the post). In 1607 he became advocaat-fiscaal, one of the treasury officials of the States of Holland, and in 1612 received his greatest office when he was appointed pensionary of Rotterdam, becoming at the same time one of that city's representatives in the States of Holland. The pensionary was a kind of chief executive of the city, and Oldenbarnevelt had himself held this post immediately before becoming the States' advocate. In 1613 Grotius led an important delegation to King James in England.

Throughout this period he was producing a multitude of papers and speeches for Oldenbarnevelt, acting as a kind of political adviser and, sometimes anonymously at his patron's ideas; he even lived in Amsterdam. But throughout the second administration ran into many degrees of religious toleration, between his supporters in (primarily the representatives and opponents, a coalition notably those of Amsterdam), under the United Provinces, the power of the provinces (especially one of those which Oldenbarnevelt's was partly the result of his efforts. He escaped in dramatic and probably winked at by the Dutch soil of such an eminence for twenty-three years, threatened with arrest and expulsion of France and then from Queen Christina's gallery, her as resident ambassador to 1645. In that year he was determined to resign, allowed him to do; he moved on which he was involved in Pomerania, and Grotius felt it was only his body which was in the church of Delft.

1. For the association of Grotius and Oldenbarnevelt, and the latter's career, see den Tex 1973, passim. The best account in English of Grotius' life is Knight 1925.
2. See the address on the le...
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sometimes anonymously and sometimes openly, as a propagandist for his
patron's ideas; he even lived next door to Oldenbarnevelt in The Hague.²
But throughout the second decade of the century, Oldenbarnevelt's
administration ran into more and more opposition over its policy of a
degree of religious toleration. Eventually an open breach developed
between his supporters in the States General of the United Provinces
(primarily the representatives of the cities, though by no means all of them)
and his opponents, a coalition of clergymen and some municipal leaders
(especially those of Amsterdam) headed by the stadtholder Maurice. Since
under the United Provinces' constitution Maurice controlled the military
power of the provinces (rather like the governor of an American state), the
only way in which Oldenbarnevelt could secure himself when the crisis
point was reached was by attempting to raise a rival military force; he
failed, and was arrested for high treason. After a lengthy trial he was
executed at The Hague on 13 May 1619. Grotius was naturally implicated
in his fall, and faced trial also; he was almost sentenced to death, but in
the end was reprieved and sentenced to life imprisonment in the fortress
of Loeweinstein in the south of Holland, and his estate confiscated. His
reprieve was partly the result of his betrayal at the trial of his old friend and
patron. He escaped in dramatic and romantic circumstances (in a basket of books,
apropriately enough) two years later, and fled to France – his escape was
probably winked at by the stadtholder, embarrassed by the presence on
Dutch soil of such an eminent captive. Grotius was not to return to Holland
for twenty-three years, except for a brief visit in 1631 when he was
threatened with arrest and had to flee to Hamburg; he lived the remainder
of his life after his escape from Loeweinstein as a pensioner of royal courts, first
of France and then from 1634 onwards of Sweden, where he was one of
Queen Christina's gallery of European intellectuals and was employed by
her as resident ambassador in Paris. Paris was thus his usual base from 1621
to 1645. In that year he visited Sweden via Holland and was received with
honour in Amsterdam. Intrigues at the Swedish court seem to have
determined him to resign his ambassadorship, which the queen eventually
allowed him to do; he may have planned to return to Holland, but the
ship on which he was travelling to Lübeck was blown ashore on the coast of
Pomerania, and Grotius fell ill. He died in Rostock on 28 August 1645, and
it was only his body which finally returned to Holland, where it was buried
in the church of Delft.

² See the address on the letter from De Vigier, March 1668, Grotius 1928, p. 106 and n.
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Oldenbarnevelt's rise and fall had something of a classically tragic character, and was indeed the subject of a tragedy by John Fletcher. But it was also in one sense one of the formative dramas of the modern world: the issues at stake included the question of religious toleration, the emancipation of ethics from theology, and the location of sovereignty within the Dutch state. On all of these issues, Grotius had something important to say.

He began, like his master, by accepting many of the ideas to which rulers in the 1590s all over Europe were attracted—the impossibility of reaching a universal consensus on ethical and religious matters, and the importance of maintaining a powerful state which could prevent this lack of consensus from tipping over into civil war. This is the set of ideas associated most famously with Justus Lipsius (who was a friend and teacher of Grotius' father), and they found a ready audience in both the northern and southern Netherlands—the two halves of a nation which had after all been destroyed by just such a civil war. Inscribed above the front door of Oldenbarnevelt's house was the motto, 'Nil Scire Tutissima Fides ('To Know Nothing is the Surest Faith') (den Tex 1973, i, p. 7); but at the same time he worked hard to sustain the political unity of the United Provinces and their military strength—based on a disciplined army modelled on the Roman legions described by Lipsius.

But the group of writers round Oldenbarnevelt at the turn of the century, including Grotius himself and his old friend Jan de Meurs, saw that Lipsius' particular brand of political theory was not really appropriate to the problems of a nation without a prince, and they produced a number of remarkable essays in which they argued for the recognition of the United Provinces as a true aristocratic republic, comparable to Venice or (in their own interpretation of these constitutions) Athens and Rome. Grotius in a very early piece revealed his sympathy with the oligarchic Venetian constitution and his belief that it resembled that of the United Provinces (Stevin 1599, sig. *2f*), and in a longer work he composed in 1601–2, entitled Parallelon rerumpublicarum (the bulk of which is now lost), he produced a systematic comparison of the Netherlands with both Athens and Rome. Attacking both the traditional notion of the mixed constitution and the Bodinian view that Rome was a democracy, he argued that the 'ordinary and day-to-day authority' at Rome was possessed by the nobility. Hostility to the idea of a mixed constitution ran throughout his

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4. Grotius 1928, p. 29; 1801, passim.
work, despite the traditional view that Venice exemplified it; in the view of these early seventeenth-century Dutch republicans, Venice was in fact a true oligarchy or aristocracy.

ii Dutch republicanism and the transition to natural law

In his major constitutional work of this period which actually appeared in print, his *De Antiquitate Reipublicae Batavicae* of 1610, Grotius began by quoting Tacitus — 'all nations are ruled either by the people, the leading inhabitants (primores), or an individual'. The 'Batavians' or Netherlanders had always, he claimed, been ruled by primores, with whom a kind of prince had often been associated, but this did not make their constitution any more mixed, or less purely aristocratic, for the prince acted like a president or chairman of the oligarchs. Like Selden at the same time in England, Grotius read Tacitus and the other classical writers on the customs of the Germanic and Gaulish tribes as giving an account not of balanced or limited kingship (which had, for example, been François Hotman's reading) but of true aristocracy without a monarchical element. In a piece written for Oldenbarnevelt but never published until 1697, Grotius even argued that the States General of the United Provinces should be reconstructed on soundly aristocratic, non-representative lines (De Michels 1967, pp. 171–89). It actually consisted of mandated delegates from the provincial States, but Grotius claimed that to prevent civil strife and further the war, it should consist of self-appointing senators like the regents of his native city. In a number of other papers and letters he wrote before the Truce of 1660, Grotius expressed his whole-hearted support for the war, and his fear that constitutional change of this kind would be threatened by peace (e.g. Grotius 1928, p. 85; Van Eysinga 1955).

Unlike the Venetian writers on republicanism, however, Grotius and the other Dutch republicans linked their aristocratic theories with a defence of imperialism more like that of the populist Florentine republicans. Grotius' *Annales et Historiae* (note the Tacitist echo), the product of his years as historiographer to the States of Holland, chronicle the rise of the Dutch overseas empire and analyse its economic base; while in 1604 he started

5. *Grotius, De Antiquitate*, ch. i (1610, p. 17). The (unacknowledged) quotation from Tacitus is from the *Annales*, iv.33.

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work on a comprehensive defence of Dutch naval activity against Spain and Portugal in the East Indies. The form this took represented something new in his work: it went beyond the humanist reflections of the *Parallele* (which, he remarked in March 1605, 'now begins to displease its author' (Grotius 1928, p. 53), and involved Grotius in thinking about what moral rules could underpin the confrontation of two societies anywhere in the world. This is the work which lay in manuscript until it was discovered in 1654 (except for part of it which was published in 1669 as the *Mare Liberum*), and which was misleadingly entitled by its first editors *De Iure Praedae*. In fact, Grotius always referred to it in his correspondence as his work *De Indis*. The object of the work was two-fold. One was to persuade Dutch public opinion that the seizure of prize ships in the East Indies by ships of the Dutch East India Company was legitimate (for some members of the Company, particularly the Mennonites, seem to have been unsure about this), but the other was the wider object of demonstrating to an international audience (and particularly one familiar with the Spanish neo-scholastic literature) that the Dutch activity was legitimate. What the Dutch were trying to do in the Indies was to persuade native rulers (often by a show of military force) to trade with them rather than the Spaniards, and in many cases to help native guerrilla forces in their wars with Spanish-backed rulers – a classic example of informal imperial activity. In 1608 the Zeeland Chamber of the East India Company asked Grotius to publish part of the work as the *Mare Liberum*, though by the time it appeared the relevant agreements with Spain had already been made. Grotius himself had considered publishing the more general and theoretical parts in November 1606; he admitted that the issues they covered had been dealt with by 'many both ancient and modern writers', but claimed that he believed it to be possible to 'throw new light on them by employing a secure method and by combining divine and human law with the principles of philosophy' (Grotius 1928, p. 72).

This is indeed exactly what the *De Iure Praedae* (as I shall continue to call it) attempts. Its first chapter contains a critique of the customary humanist way of talking about such matters, and a remarkable manifesto for a wholly new method. He rejected both the use of positive civil law as a guide and the attempt to employ scriptural exegesis, as well as the idea that a simple comparative history was all that was needed. Instead, he proclaimed the need to do as the ancient jurists had done, and to 'refer the art of civil government back to the very fount of nature'. This call for a return to a naturalistic style of reason is remarkable breach within the human sciences, practical and theoretical, and mathematics and similar disciplines.

First, let us see what is at issue. The concept of 'natural law' under consideration. Just as a demonstration a preliminary definition of what is meant by 'natural law' is necessary. The concept of 'natural law' is most generally denoted by the phrase 'natural law' and is comprehended rather than less in the foundation of which it is a part.

And, indeed, the whole question is a matter of fundamental and a priori principles in the theoretical sciences for his discussion of the development of mathematics as the character of seventeenth-century science.

The idea that there should be a science of mathematics, which is often akin to the idea of a science of anything, is a reiteration of the belief that all things have a natural order, and that the order of any moral rule was to be found in that order (i.e., the order of nature). This was the main thrust of the discussion on a set of questions: I. What God has revealed? II. What the community of the believing can usefully do? III. What each individual can do.
naturalistic style of argument was accompanied by an even more remarkable breach with the general Renaissance Aristotelian methodology in the human sciences. Aristotle divided sciences into the categories of practical and theoretical – ethics and politics belonged to the practical, and mathematics and similar studies to the theoretical. And yet Grotius now outlined his own methodology as follows:

First, let us see what is true universally as a general proposition; then, let us gradually narrow this generalisation, adapting it to the special nature of the case under consideration. Just as the mathematicians customarily prefix to any concrete demonstration a preliminary statement of certain broad axioms on which all persons are easily agreed, in order that there may be some fixed point from which to trace the proof of what follows, so shall we point out certain rules and laws of the most general nature, presenting them as preliminary assumptions which need to be recalled rather than learned for the first time, with the purpose of laying a foundation upon which our other conclusions may safely rest.

( Ibid., MS, p. 5: 1950, t. p. 7)

And, indeed, the whole work is tightly organised as a series of discussions round nine fundamental 'rules' and thirteen associated 'laws'. In the writings of the scholastics, their concentration on the law of nature as a foundation for their arguments had led them also to blur the distinction between the practical and theoretical sciences – according to Aquinas, the distinction was merely that in the practical sciences deductions from the fundamental and a priori axioms were more difficult and contentious than in the theoretical sciences. Grotius' return to the law of nature as the basis for his discussion led him to make the same move, and to instate mathematics as the methodological model for the human sciences – a development which was to determine more than else the character of seventeenth-century European political thought.

The idea that there could be a universal and deductive science of ethics akin to mathematics, however, rested in the De iure Praedae not simply on a reiteration of the beliefs of the scholastics. Grotius argued first that the form of any moral rule was the pronouncement by an agent or agents of what their will was to be (a claim compatible, of course, with the most extreme relativism). This was true both of God and of man, and he based his whole discussion on a set of fundamental and formal rules.

I What God has shown to be his will, that is law.
II What the common consent of mankind has shown to be the will of all, that is law.
III What each individual has indicated to be his will, that is law with respect to him.
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IV What the commonwealth had indicated to be its will, that is law for the whole body of citizens.
V What the commonwealth had indicated to be its will, that is law for the individual citizens in their mutual relations.
VI What the magistrate had indicated to be his will, that is law in regard to the whole body of citizens.
VII What the magistrate had indicated to be his will, that is law in regard to the citizens as individuals.
VIII Whatever all states have indicated to be their will, that is law in regard to all of them.

( ibid., 1950, p. 369-70)

But such a formal system did not help his argument unless the contents of these acts of will, and particularly of God's, could be uncontentiously determined. This was the occasion for Grotius' striking and original idea, an idea of great simplicity whose consequences occupied him for the rest of his life. He went back to the principles of the Stoics upon which men like Lipsius had based their pessimistic and relativist view of the world, and in particular the Stoic claim that the primary force governing human affairs is the desire for self-preservation. But he interpreted this desire in moral terms, as the one and only universal right: no one could ever be blamed for protecting themselves, but they could never be justified in doing anything harmful which did not have the end in view. This was the content of God's will for mankind, which could be deduced simply by looking at the natural world.

From this fact the old poets and philosophers have rightly deduced that love, whose primary force and action are directed to self-interest, is the first principle of the whole natural order. Consequently, Horace should not be censured for saying, in imitation of the academicians [i.e. the skeptics], that expediency might perhaps be called the mother of justice and equity.

Upon this basic principle of self-interest, he argued, were grounded the two principles of the law of nature (and hence the first two 'Laws' which he set out as corollaries to his 'Rules'); 'It shall be permissible to defend one's own life and to shun that which threatens to prove injurious' and 'It shall be permissible to acquire for oneself, and to retain, those things which are useful for life.' But because men feel a certain sense of common kinship with one another, there are two other laws of nature: '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' (ibid., MS, pp. 6, 7; 1950, i, pp. 10, 13). Grotius was quite clear that this principle, and that altruism interest.

The order of presentation immediately hereafter has the good of another person each individual should be doing another.

It is important also to stress that society with all other men merely entails an obligation on any organised states that some there are laws peculiar to them already set forth, as follows: injuring other citizens, but not individuals; secondly, Citizens possessions... but should necessary to other individuals.

The natural society of mankind interests up to the point at which it is essentially understandable Aristotelian picture of the self.

A theory about how obviously essential to anyone in the theory in that part of human nature - the second law endorsed the acquisition that was only a kind of the salient feature of the world that they were not p. 101; 1950, i, p. 228). It naturally out of the whole technology developed to cultivated a system but cultivated the field co
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13). Grotius was quite clear that self-interest is the primary and overriding principle, and that altruism must in some way be explicable in terms of self-interest.

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.

(ibid., MS, p. 11: 1950, i, p. 21)

It is important also to stress that according to Grotius this natural sense of society with all other men does not entail any obligation to help them: it merely entails an obligation to refrain from harming them. It is only in organised states that something more emerges:

there are laws peculiar to the civil convenant, ... which extend beyond the laws already set forth, as follows: 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, ... but should furthermore contribute individually both that which is necessary to other individuals and that which is necessary to the whole [my italics].

(ibid., MS, pp. 114-11: 1950, i, p. 21)

The natural society of men is one in which individuals pursue their own interests up to the point at which such a pursuit actually deprives another of something which they possess; it is not one of benevolence as we would customarily understand the term, and it is very far removed from the Aristotelian picture of the zoon politikon.

A theory about how we acquire possessions in a state of nature is obviously essential to an argument of this kind, and Grotius provided such a theory in that part of the work which was later printed as the Mare Liberum. His central argument was that men can have a kind of property in nature—the second law of nature, as he had outlined it, after all precisely endorsed the acquisition of the things necessary for life by an individual. This was only a kind of property, or dominium quoddam as he put it, because the salient feature of the developed system of private property was absent: no one could claim a persistent and unique right over a part of the material world that they were not at the time putting to some direct use (ibid., MS, p. 101: 1950, i, p. 228). However, such a developed system would grow naturally out of the primitive condition of mankind as culture and technology developed: the growth of agriculture meant fields had to be cultivated on a systematic basis to produce consumables, and the man who cultivated the field could claim a property right in it. A system of
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conventions could then arise to allocate particular pieces of property, like taking seats in a theatre.

Not only private individuals, but also groups of people and states acquired their possessions in this manner. This further claim is linked to one of the most important themes of the work, that the rights enjoyed by a state and its government cannot be different in kind from the rights enjoyed by an individual in the state of nature. ‘Just as every right of the magistrate comes to him from the state, so has the same right come to the state from private individuals’ (ibid., MS, p. 40: 1950, 1, p. 929). Civil society developed out of a state of nature in which men were already bound by the fundamental laws of nature, and it was brought about largely because of the increasing numbers of people.

[Relatively small] social units began to gather individuals together into one locality, 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 one more convenient arrangement the numerous different products of many persons’ labour which are required for the uses of human life.

(ibid., MS, p. 10: 1950, 1, p. 19)

One of the main arguments against such an account of civil society in earlier literature had been that only a prince or a supreme magistrate could possess the power to punish offenders, since that appeared to be a special right which no individual could possess and which therefore no individual could transfer either to the state or to the magistrate; but Grotius was quite clear that this was not so. The first four laws of nature together entailed a right to exact restitution for wrongs committed against one, and since, as he said, ‘an injury inflicted even upon one individual is the concern of all . . . primarily because of the example set’, each person in a state of nature had an interest in restraining or punishing anyone who infringed another’s rights and deprived them of their possessions. He supported this claim with the identical argument that Locke was later to use in the same context, that modern states claim the right to punish foreigners for their transgressions, and that such a right must arise from the law of nature and not from civil law (ibid., MS, p. 40: 1950, 1, p. 92).

Although his purpose in the De Iure Praedae was not to defend the oligarchic Dutch constitution, Grotius nevertheless revealed that he did not believe that Dutch opposition to Spain was grounded on any obvious principle of popular resistance. As he said, ‘not every regime devoid of a prince is a popular government’. Liberty was important, but defined in the following way:

if the principate has already set up, the course proper indicated by the laws that good, above all, with relative not unbridled (for liberty ‘licence’), or in other words by the princely power of most important men, an

His vision was still that without a monarch, fig. imperialism.

As can be seen from Praedae is an astonishing (the dilemmas) which was the eighteenth century. So absorbed into a new way of life, his followers become ‘right of rights and duties. Bring into common habitation the construct by individuals of governments possess the main assumption of all centuries.

iii The A

While Grotius was able to work in relative isolation from between 1609 and his death defending Oldenhorn, the Dutch society appeared to approve of his ideas, but his book was able to apply it to his own century, the relations initially developed by Jacob Arminius, who was in October 1609. A

9. For the details of Armin,

esp. ch. 10 and 12.
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If the principate has already been abolished, and a republican form of government set up, the course properly to be followed by citizens in doubtful cases will be indicated by the laws that favour the claims of liberty... This principle holds good, above all, with reference to that form of liberty which is neither inimical nor unbridled (for liberty attended by these attributes is more accurately called 'licence'), or in other words, with reference to that free status which is confirmed by the princely power of the governing officials, by the authority of the country's most important men, and by the goodwill of the citizens.

(***, MS, pp. 135, 136: 1950, i, p. 301)

His vision was still that of an aristocratic republic, 'free' in the sense of being without a monarch, fighting to establish its right to engage in an aggressive imperialism.

As can be seen from this account of its main arguments, the De Jure Praedae is an astonishing book. In it we find laid out most of the themes (and the dilemmas) which were to occur in all his successors until the end of the eighteenth century. Sceptical moral relativism is answered by being absorbed into a new 'scientific' ethics: the 'necessities' of Lipsius and his followers become 'rights' which can be used to generate a complex system of rights and duties. What Grotius built on this foundation was the common habitation for his successors. The idea that civil society is a construct by individuals wielding rights or bundles of property, and that governments possess no rights that those individuals did not possess, is the main assumption of all the great theorists of the seventeenth and eighteenth centuries.

iii The Arminians and the problem of religious toleration

While Grotius was able to develop these ideas in the years before the Truce in relative isolation from urgent polemics, almost all his work in the decade between 1609 and his trial in 1619 was devoted to the single end of defending Oldenbarnevelt's position in the religious controversies which tore Dutch society apart. In the process, he had to modify and sharpen some of his ideas, but his basic vision of the world remained very stable, and he was able to apply it to what was to be a central issue for all the writers of this century, the relationship between church and state. The controversies had initially developed during the first years of the century over the teaching of Jacob Arminius, professor of theology at Leiden from 1603 until his death in October 1609.9 Arminius had long been worried about the notoriously

9. For the details of Arminianism and the controversies over it, see Harrison 1926 and den Tex 1973, esp. chs. 10 and 12.
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harsh Calvinist theory of salvation, that God determined to whom he would extend his grace and therefore who would be saved - human effort counted for nothing, except as a necessary (but not sufficient) condition for observers to say that someone counted as one of God's elect. Arminius proposed instead that God did not determine in particular who was to be saved, but rather in general: he offered grace, but it might be refused. Despite the allegations of his orthodox opponents, this did not make Arminius like the kind of late medieval Catholic whose repudiation had been the foundation of Protestantism, for he did not say that man might claim a right to salvation; a good analogy (though not one which Arminius actually used) would be with a parent who offers to buy something for his child. The child can refuse the offer, but he cannot buy the article for himself. But it was a sufficiently different vision from the other Calvinists to make them very alarmed.

The dispute over Arminius, though in origin a technically theological one, inevitably spilled over into a political conflict. Arminius himself never abandoned the traditional Calvinist view that doctrinal matters had to be settled by a synod, and that the role of the magistrate was to summon such an assembly, preside over it, and accept its conclusions. But his supporters realised that they could not win the day in such a synod, and in 1609/10 one of them, Johannes Uyttenbogaert, resolved on a decisive break with the political traditions of Calvinism as well as its theological ones, arguing that the States of each province and not the synod should control worship, preaching, the administration of sacraments, the care of the poor, and the final appointment of preachers, elders, and deacons.

This meant that the Arminians had created a coalition between themselves and anyone who (like Grotius himself), whilst not an Arminian, was nevertheless sceptical about ecclesiastical authority. The Arminians succeeded in manipulating this coalition very quickly: in January a group of ministers under Uyttenbogaert's chairmanship drew up a statement of their theological position, the famous 'Remonstrance', and on 22 August the States passed the resolution that 'Preachers of the opinions expressed in this remonstrance should be free from the censure of other preachers.' The States had thus unequivocally committed themselves to a piece of ecclesiastical regulation, and the issue of ecclesiastical authority was henceforward inextricably bound up with the theological battle between Remonstrants and 'Counter-Remonstrants' (as the Arminians' opponents came to be called).

Grotius' public involvement in this struggle began in 1613, when he published his first polemic, _Pietae Ordinum Hollandiae_. It was twofold: one object was to promote the cause of the other was to defend the States of Holland against the orthodox States of Holland had thus been thus involved in the argument of the _Pietae Ordinum_ as to the church to tolerate a principle that could govern its member's destruction. The work occurred: Grotius himself contributed issues, much of his labours (passed in January 1614) to form the principles of the

Although this passed over to the towns, and particularly to the belief in the need for an munity of ecclesiastical power: were spent trying to persuade the 23 April 1616 Grotius withdrew (later printed) to its conclusion without success. The calling of a synod, and Grotius meeting increasing pressure. In the voice to the demand; so he was forced by military pressure. Holland passed the so- military authority away from Oldenbarnevelt's care and succeeded in bringing the pensionary of Rotterdam demands put upon him. At this time he went to prison to finish two speeches to finish two of Christ's role as met.

10. Grotius
published his first polemical work concerned with ecclesiastical power, the
*Pietas Ordinum Hollandiae et West-Frisiae*. The occasion of the work was
twofold: one object was to defend the resolution of 22 August 1610, while
the other was to defend the appointment of Conrad Vorstius to a chair at
Leiden in May 1611. Vorstius had been accused of heresy (including
Socinianism) by the orthodox at Leiden, yet in face of this opposition the
States of Holland had ratified his appointment: precisely the same issues
were thus involved in his case as in the Remonstrance. The central
argument of the *Pietas Ordinum* was that the secular authorities could force
the church to tolerate a particular theological position; the will of the state
could govern its members in all matters except those which involved their
destruction. The work occasioned a considerable pamphlet battle, to which
Grotius himself contributed. For the next six years he worked away at these
issues, much of his labour being centred on a new toleration resolution
(passed in January 1614) which would restate in a possibly more acceptable
form the principles of the 1610 resolution (den Tex 1973, ii, pp. 550–2).

Although this passed by a bare majority, many of the most important
towns, and particularly Amsterdam, refused to accept it: both Grotius' belief
in the need for a strong and sovereign State, and his belief in the
nullity of ecclesiastical power, came together at this point. The next years
were spent trying to persuade the recalcitrant towns to come into line – on
23 April 1616 Grotius went to Amsterdam and delivered a public address
(later printed) to its council urging them to accept the resolution, but
without success. The Counter-Remonstrants continued to urge the
calling of a synod, and Oldenbarnevelt's refusal to do so put him under ever
increasing pressure. In the end the stadtholder intervened, and added his
voice to the demand; Oldenbarnevelt clearly feared that he would be
forced by military pressure to give way, and on 23 July 1617 the States of
Holland passed the so-called 'Stern Resolution' in effect seeking to wrest
military authority away from the stadtholder. This was the climacteric
of Oldenbarnevelt's career: his opponents organised behind the stadtholder
and succeeded in bringing the advocate down, together with his associate
the pensionary of Rotterdam. Despite the urgent character of the political
demands put upon him during these years Grotius had managed by the
time he went to prison in addition to his more polemical writings and
speeches to finish two longer works: one, a defence of the orthodox theory
of Christ's role as mediator for our sins, against the views of the Socinians,
was published in 1617, but the other, his general work on ecclesiastical authority the *De imperio summarum potestatum circa sacra*, remained unpublished until 1647. Both seem to have been written at least in draft form at about the same time, in the late summer of 1614 (Grotius 1928, p. 349 (*De imperio*), p. 367 (*Defensio*)).

It is important to stress that in none of his writings during these years did Grotius actually endorse the Arminians’ theology. His position was consciously that of a conciliator: in 1613, in a correspondence with the English theologian John Overall, he argued that a compromise between Arminius and Calvin was the desirable position to adopt.¹¹ Moreover, his *Defensio fidei Catholicae de Satisfactione Christi* against the Socinians was intended to be a similar contribution to an eirenic enterprise – he circulated it to a number of leading Calvinist theologians as evidence of his recruitment into the ‘great war’ against the heresy (it was received distinctly coolly, it should be said) (Grotius 1928, p. 397). The issue at stake in the conflict was not so much one of theological truth: it was whether the state had the right to make a judgement about what the church should allow to be taught. Part of Grotius’ case was that to allow such a right in Holland would occasion no great risk: the judgement which the secular rulers such as himself were capable of making was wholly orthodox; but part involved a matter of higher theory, that the state had a perfect right to legislate on any ‘sacred’ matter.

This was the heart of his case, and he established it in both the *De imperio summarum potestatum* and the *Defensio Fidei Catholicae* by showing the invalidity of any distinction between sacred and profane matters. To do so, he had to set out once again the fundamentals of his political theory, and show how they implied the nullity of ecclesiastical power. He drew on his original insight in the *De Iure Praedae*, that the laws of nature had to be principles which all people, sceptics and non-sceptics alike, would concede to be true, and that they were therefore an extremely minimal set of rules. The laws of nature, as he now put it, were ‘moral impossibilities’, and this very strong definition enabled him to make a distinction between what was customarily taken to be part of the law of nature (such as God’s commands to men in the Decalogue) and what was *truly* part of it, following as a logical necessity from some non-controversial assumption about the world (*De imperio*, c. III.2: 1679, III, p. 211).

In the *Defensio Fidei Catholicae* he made this distinction clear, as part of an argument against the Socinian claim that a just God could not waive punishment due to an offender without the breach of a fundamental moral law (and that the conventional account of the Atonement was therefore morally repulsive).

As in physics, so in moral matters, something is called 'natural' either properly or less properly. 'Natural' in physics is properly used about the necessary essence of anything — as when we say that a living creature must have sensations. It is used less properly about something which is convenient and suitable, as when we say that it is natural for a man to use his right hand. Similarly in morality, those things are properly natural which necessarily follow from the relationship of the things themselves to a rational nature — such as the immorality of lying. Other uses, as when we say that a son should succeed his father, are less proper.

(*Defensio*, c. iii: 1679, iii, p. 311)

Rather similar things about the necessity of the laws of nature were said by many scholastics, but Grotius' originality lay in his very narrow-minded approach to what actually constituted logical necessity. As he said in the *De imperio summarum potestatum*, 'given that it is certain that God the Father, the Son and the Holy Ghost is the one true God, it is part of the law of nature that we worship Him. God's commands either to individuals, or to nations, or to the whole human race, belong to another category and may be called the divine positive law' (*De imperio*, c. iii: 1679, iii, p. 212). God's commands even to the whole of humanity were not certain, or logically necessary, in the same way as the proposition that because he is the true God he must be worshipped. The latter proposition must be true at any time or place, whereas the content of God's commands can alter, and frequently has done so in human history.

This minimalist approach to the laws of nature implied among other things that the Decalogue, which had been used very generally as a compact statement of the laws of nature, was in fact merely a statement of positive law which could be altered (and which Grotius later observed had not been given to the Gentiles anyway). At this stage he did not draw this radical conclusion explicitly but the implications of his discussion were already clear; when his friend the Remonstrant J.A. Corvinus described the Decalogue as divine positive law and not the law of nature, in a tract of 1622 defending the Remonstrants' theology, the orthodox Antonius Walaeus (who had been the minister at Oldenbarneveld's execution) exploded that this was doctrine 'hitherto unheard of among Christians' and he was probably right (*Corvinus* 1622, p. 160; *Walaeus* 1643, p. 168).
The end of Aristotelianism

The conclusion which Grotius did draw explicitly at this time, and which the minimalist account of the law of nature was particularly good at underpinning, was that there was no natural and universal basis for a distinction between religious and secular authority. Civil society had as a matter of natural necessity to be governed by a sovereign with coercive power, and that sovereign was circumscribed in his activities by both the laws of nature and the divine positive laws applying to his people. But there was no area of special religious or sacred matters into which he could not intrude, for 'sacred' things could not be distinguished from 'profane'. It is true that in modern states there is a division of expertise, and some men spend their lives studying 'religious' matters; but this no more establishes a fundamental division between civil and religious responsibilities than does the similarly specialised study of medicine.  

iv Grotius' Of the Law of War and Peace

Ironically, given their detestation of him, and of what they took to be the 'atheist' implications of his views on church government, it was men like Walea and who gave Grotius the chance to produce work pulling together all the themes which he had considered since writing the De Jure Praedae. They did so, of course, by jailing him for two years in Loevestein, and thus giving him a period of enforced rest and study. He seems to have begun his time in prison by studying classical poetry once again (among other things editing the poetic fragments contained in the Byzantine compilation of Johannes Stobaeus), and by reading the New Testament with a critical eye. The great product of this period was a poetic treatise in Dutch on the truth of the Christian religion, the Bewijs van den waren Godsdienst, which was published in 1622 and which was in effect translated into Latin as the famous De Veritate Religionis Christianae (1627). Towards the end of his stay, however, his mind turned once again to jurisprudence and political theory; in the early part of 1620 he wrote an introduction to Dutch law, the Inleiding tot de Hollandsche rechts-gelooftheid (published in 1631), and in the course of the year following his escape he deliberately decided to write a major treatise on natural law. He first mentioned his project in a letter to his brother William in November 1622 (Grotius 1936, p. 254). It was finished and rushed by the printers to the Frankfurt book fair in March 1625 under the title De Jure Belli ac Pacis libros tres. The king of France received a dedicatory copy in May. While the title itself is clear that it was merely consultative, the first sentence of Book I declared that those who do not accept a simple and honest interpretation, his aim was to set forth the details of the relations he concentrates on, and to show that desirability of peace is to be pursued. The works of this generation in Europe, and which later came to be called Enlightenment. But Grotius intended to concentrate on the Rule and Dictate of the Christian Necessity, etc., which he and others believed to be commanded by God, and which is, in fact, the Christian Dictate, is given, are in the interests of the One God and this makes the Law of War, which Grotius himself, or in their classical form, as it renders the one Unitarian Church.

Elsewhere, he said implicitly that he was valid 'though we should not be at all concerned, that is, the affairs' (ibid., Prolegomena). He explained that God could not act in nature: he had after all a superior moral authority, which could not be ignored and enforced by society. But what was real in law was real in fact, and the De Jure Belli ac Pacis was given of the function of the argument eschewed altogether.

12. See, e.g., his remarks in De imperio, ch. ix,7 (1679, iii, p. 248).
May. While the title (and the subsequent fate) of the work might suggest that it was merely concerned with the laws of war, Grotius made clear in the first sentence of Book I that his subject-matter was "all the mistakes of those who do not acknowledge one common Civil Right" — in other words, his aim was to delineate the natural, pre-civil state of man in great detail, though since that state could be studied most easily in international relations he concentrated on them. There is not in fact much stress on the desirability of peace — one of his objects was still (as it had been in the De Jure Praeaeae) to legitimate war.

The works of this period are those which made Grotius' reputation in Europe, and which led to his being hailed later as one of the founders of the Enlightenment. But in fact they largely recapitulated and systematised ideas which he had first had up to twenty years earlier. Thus De Jure Belli builds on the same distinction between the law of nature and the divine positive law (or as he now called it, the divine 'voluntary' law) which we saw adumbrated in the De imperio summarum Potestatum and the Defensio Fidei Catholicae. Natural law

is the Rule and Dictate of Right Reason, showing 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. The Actions upon which such a Dictate is given, are in themselves either Obligatory or Unlawful, and must, consequently, be understood to be either commanded or forbid by God himself; and this makes the law of Nature differ not only from Human Right, but from a Voluntary Divine Right; for that does not command or forbid things as they are in themselves, or in their own Nature, Obligatory and Unlawful; but by forbidding, it renders the one Unlawful, and by commanding, the other Obligatory.

(De Jure Belli, I.1.10: 1738, pp. 9–10)

Elsewhere, he said in a notorious phrase that the laws of nature would be valid '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' (ibid., Prolegomena 11: 1738, p. xix). This did not, of course, mean that God could not still be seen as in some sense the author of the laws of nature: he had after all made man in such a way that his essence was that of a rational, social being, and the world in such a way that society could not be preserved if men behaved towards one another in certain ways.

But what was really important and striking about Grotius' argument in the De Jure Belli ac Paeis as much as in the De Jure Praeaeae was the account he gave of the functional necessities for any social existence. Once again, his argument eschewed the rich and complex Aristotelian account of social
The end of Aristotelianism

life, with its stress on friendship and on the development of the virtues. Instead, it began as before with a statement of what the sceptic believes (this time in the person of Carneades, the former head of the sceptical Academy) (ibid., Prolegomena 5: 1738, p. xiv), and then proceeded to find principles which could be common ground between the relativist and the anti-relativist; principles, that is, which even the relativist would have to concede underlay any possible social life. The sceptical relativists whom Grotius had in mind, such as Montaigne or Charon, had not questioned the possibility or even the desirability of social life as such; what they had questioned was the universality of any particular moral principle.

In particular, Grotius still argued that the right of self-preservation and the law against wanton injury were the crucial foundations for any social life, including the minimal sociability of international relations.

Right Reason, and the Nature of Society... does not prohibit all Manner of Violence, but only that which is repugnant to Society, that is, which invades another’s Right: For the Design of Society is, that every one should quietly enjoy his own, with the Help, and by the united Force of the whole Community. It may be easily conceived, that the Necessity of having Recourse to violent Means for Self-Defence, might have taken Place, even tho’ what we call Property had never been introduced. For our Lives, Limbs, and Liberties had still been properly our own, and could not have been, (without manifest Injustice) invaded. So also, to have made use of Things that were then in common, and to have consumed them, as far as Nature required, had been the Right of the first Possessor: And if any one had attempted to hinder him from so doing, he had been guilty of a real Injury.

(ibid., 1.2.1: 1738, pp. 25–6)

This initial natural right of consuming material objects was the basis for Grotius’ account of the acquisition of property, just as in the De jure Praedae, and his theories of both property and punishment in the De jure Belli ac Paris follow the De jure Praedae almost exactly (with one significant alteration, which we shall examine presently). But he was not much clearer than he had been before about a number of the implications of his general theory. First of all, he now argued explicitly that traditional theology was of very little use to moral philosophy, for the ‘divine voluntary law’ which actually applied to Christians was extremely slight. He dismissed the whole of the law given to the Jews as obviously given only to them. ‘A Law obliges, only those, to whom it is given. And to whom that Law is given, itself declares, Hear O Israel’ (ibid., 1.1.16: 1738, pp. 17–18). Even the law given to believers through Christ, he argued, was of a rather tenuous character; the new Testament shows what is lawful for Christian contrary to what most do, assured, that in that most holy Law of Nature in itself require. Things in it are rather recommend, that as to transgress, and know, that so to aim at the heart is the Part of a generous Mind.

Christians, Grotius argued, Christ’s commands and enthusiasm tended to carry any obligation to commit.

On the whole, then, with the assistance only laws specified a minima Everything else should be understood as a minimal set were ‘that I consider’ and that this had been the first attempt to destroy Society in general, which was restrained. ‘The laws religious beliefs – others. No Object of our Sight is not the Air; that The V was created by God, hav (ibid., 11.20.46.47: 1738) confirms this: there, one without no ground for religious preferred only because it is with great clarity all there were no good Christians, much less

As for those who use power or erroneous as to some but to be capable of unjust... But suppose easily convicted of befo

13. See particularly...
what is lawful for Christians to do; which Thing itself, I have notwithstanding, contrary to what most do, distinguished from the Law of Nature; as being fully assured, that in that most holy Law a greater Sanctity is enjoined us, than the mere Law of Nature in itself requires. Nor have I for all that omitted observing, what Things in it are rather recommended to us than commanded, to the Intent we may know, that as to transgress the commands is a Crime that renders us liable to be punished; so to aim at the highest Perfection, in what is but barely recommended, is the Part of a generous Mind.

(\textit{ibid.}, Prolegomena 51: 1738, p. xxxiii)

Christians, Grotius argued, must always be careful to distinguish between Christ's \textit{commands} and his \textit{advice}: the primitive Christians in their enthusiasm tended to confuse the two, but much of what Christ said did not carry any obligation, viewed properly.

On the whole, then, men (other than Jews) had to manage their lives with the assistance only of the laws of nature; and in religious affairs, those laws specified a minimal set of beliefs which must be enforced on all men. Everything else should be left to the individual, all things being equal. The minimal set were 'that there is a Deity, (one or more I shall not now consider) and that this Deity has the Care of human Affairs'; 'Those who first attempt to destroy these Notions ought, on the Account of human Society in general, which they thus, without any just Grounds, injure, to be restrained.' The laws of nature did not similarly prescribe any other religious beliefs — 'other general Notions, as that \textit{There is but one God}, that \textit{No Object of our Sight is God}, not the World, not the Heavens, not the sun, nor the Air; that \textit{The World is not eternal}, nor its compound Matter, but that it was \textit{created by God}, have not the same Degrees of Evidence as the former' (\textit{ibid.}, n.20.46.47: 1738, pp. 444–5). The \textit{De Veritate Religions Christianae} confirms this: there, Grotius argued that there are natural and rational grounds for religious feeling in general, but that Christianity is to be preferred only because it is (so to speak) an 'ideal type' religion, capturing with great clarity all that other religions also contain.\footnote{See particularly Grotius, \textit{De Veritate}, 12–7, n.8–16 (1679, m, pp. 4–7, 36–44).}

As for those who use professed Christians with Rigour, because they are doubtful, or erroneous as to some Points either not delivered in Sacred Writ, or not so clearly but to be capable of various Acceptations, ... they are undoubtedly very unjust ... But suppose the Error to be more palpable, and such as one may be easily convicted of before equitable Judges, from the holy Scriptures, and from the
concurrent Opinions of the primitive Fathers; even in this Case it is requisite to consider how prevalent the Force of a long standing Opinion is... Besides, to determine how criminal this is, it is requisite to be acquainted with the Degrees of Men's Understanding, and other inward Dispositions of Mind, which it is impossible for Men to find out. (De Jure Belli, n. 20. 50: 1738, p. 449)

His experiences since 1619 had made him clearer about the wide limits of toleration than he had been when engaged in the struggle with the Counter-Remonstrants.

The second implication of his general theory which Grotius now made explicit was its anti-Aristotelian character. We saw that in effect he had abandoned an Aristotelian methodology in the De Jure Praedae but there is no open critique of Aristotle in that work. In the De Jure Belli ac Pacis it is very different: Grotius in this work remarked that 'I could only wish that the Authority of this great Man had not for some Ages past degenerated into Tyranny, so that Truth, for the discovery of which Aristotle took so great Pains, is now oppressed by nothing more than the very Name of Aristotle' (ibid., Prolegomena 43: 1738, p. xxviii). In particular, he attacked the Aristotelian theories of the virtues and of justice: the virtues could not reasonably all be taken to consist in a mean, and the essential feature of justice was respect for one another's rights, not any distributive principle (ibid., Prolegomena 45: 1738, p. 39). Both these points were straightforwardly related to his general theory. As in the De Jure Praedae, mathematics is the model for the moral sciences in the De Jure Belli – 'as Mathematicians consider Figures abstracted from Bodies, so I, in treating of Rights have withdrawn my Mind from all particular Facts' – and there is no distinction between a theoretical and a practical science (ibid., Prolegomena 59: 1738, p. xxxv). But this means that, at least in principle, a definite and a priori science of ethics is possible, in which there will be little room for individual judgement or the exercise of phronesis. The idea that virtue is a mean is intimately bound up with the idea that ethics is practical (in the Aristotelian sense), for the selection of the mean point is essentially a matter of skill and judgement, and cannot be reduced to the application of a clear-cut rule. Furthermore, the basic provisions of the law of nature according to Grotius relate to the recognition of one another's rights and property: justice is thus primarily the maintenance of that natural moral order, and only secondarily something to do with the distribution of goods. After the De Jure Belli, it was impossible for anyone who wished to think about politics in a modern way – that is, in terms of natural rights and the laws of nature – to pretend that they were still Aristotelians, and much of the criticism levelled at

Grotius' work came from Aristotelian inheritances.

In addition to these grounds that it had one common government which he (ibid., n. 3. 2. 6: 1738, p. 149).

For the same reason, the existence of a right of entering civil society resisting where one's attacked by men again number (Hobbes himself many arguments for non-r- appeal for Grotius, Christians (as distinct rather than resist."

In all other respects subordinated to the other people could be sin notoriou passage therefore we must first reject the and without Exception Kings, as often as they occasioned, and may with it, every wise M.
Grotius and Selden

Grotius' work came from people who were unwilling to abandon the Aristotelian inheritance (e.g. Felden 1653).

In addition to these general implications of his theory, Grotius perceived that it had one consequence for his account of both property and government which he had overlooked in the earlier work. Given that the preservation of the self was an overriding principle and that it was to preserve themselves that men entered society, no society could expect its members not to continue to preserve themselves from wanton attack. Necessity must be a legitimate plea, even within civil society; and this entailed a modification in his account of private property. Grotius explained the origins and development of property in the same way as in De Iure Praedae, but he now concluded that if the point of dividing a common world into private estates was to advance the interests of the individuals concerned, then it was absurd to think that such a division would rule out the use of another's possessions in extremis (De Jure Belli, ii.2.6: 1738, p. 149).

For the same reasons he was now much clearer about the continued existence of a right of resistance within civil society. Given that the point of entering civil society is self-protection, there can be no reason for not resisting where one's physical existence is at stake, unless one is being attacked by men aggrieved by one's own wanton injury of one of their number (ibid., ii.1.3-5: 1738, pp. 113-17). This proviso is what keeps his theory at this point from sliding into Hobbes', but the gap is not great, and Hobbes himself managed to bridge it fairly easily. Certainly, traditional arguments for non-resistance to an aggressive and unjust sovereign had no appeal for Grotius, though he conceded that one of the things which Christians (as distinct from natural men) are obliged to do is suffer death rather than resist. 14

In all other respects than one's personal survival, one can be completely subordinated to the demands of civil society, and Grotius now argued that a people could be similarly subordinated to their prince, remarking in a notorious passage that

we must first reject their Opinion, who will have the Supreme Power to be always, and without Exception in the People; so that they may restrain or punish their Kings, as often as they abuse their Power. What Mischiefs this Opinion has occasioned, and may yet occasion, if once the Minds of People are fully possessed with it, every wise Man sees. I shall refute it with these Arguments. It is lawful for

14. This is the implication of his contrast between the actions of David or the Maccabees and those of the primitive Christians; Grotius, De Jure Belli, 1.4.7 (1738, pp. 115-17).
The end of Aristotelianism

any Man to engage himself as a Slave to whom he pleases; as appears both by the Hebrew and Roman Laws. Why should it not therefore be as lawful for a People that are at their own Disposal, to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him or them, without reserving any Share of that Right to themselves? neither should you say this is not to be presumed: for the Question here is not, what may be presumed in a Doubt, but what may be lawfully done? In vain do some allege the Inconveniences which arise from hence, or may arise; for you can frame no Form of Government in your Mind, which will be without Inconveniences and Dangers... but as there are several Ways of Living, some better than others, and every one may choose what he pleases of all those Sorts; so a People may choose what Form of Government they please: Neither is the Right which the sovereign has over his Subjects to be measured by this or that Form, of which divers Men have divers Opinions, but by the Extent of the Will of those who conferred it upon him.

( Ibid., 1.3.8: 1738, p. 64)

Characteristically, having given support to absolutism in this passage, he withdrew many of its familiar supports elsewhere. The critical question in his eyes was, indeed, 'the will of those who conferred' the sovereign power upon a person or institution. The superficial character of the form of government was uninstructive: men could be misled by it into thinking that (for example) a prince was superior to his States when in fact historically and legally the reverse was the case. A great deal of care was needed actually to distinguish the focus of sovereignty in a state, and Grotius made a number of (to contemporaries) surprising claims—such as that sovereignty is not necessarily perpetual (and thus the Roman dictator was a sovereign) and that it may be divided, though not in the way that mixed constitution theorists held—the example he gave was the Later Roman Empire, with its two emperors (Ibid., 1.3.17: 1738, p. 86). Kings would have a hard time in practice proving that they were Grotian sovereigns: what mattered to Grotius by 1625 was that there should be a definite sovereign in every state, not that it should be a monarch or any other similar institution.

The De Jure Belli ac Pacis represents Grotius' final and public break with both Aristotelianism and scepticism. In it he in effect promulgated a manifesto for a new science of morality, in which the radical disagreements of the previous generation could be subsumed into a consensus on a minimalist morality and theology. Beyond this consensus, the way of life or set of beliefs which a man chose were a matter only for him, and a great variety was possible: 'there are several Ways of Living, some better than others, and every one may choose what he pleases of all those Sorts' (Ibid., 1.3.8: 1738, p. 64). To a proposition beyond the opponents in the Nether and his criticisms of Ca seemed to many of them for Rome. This was, of throughout his life a dev genre of political theory twenty years of his life support. He wrote very until his death; largely in Pacis, and some notes on the Jurisprudence of Holo, simply restate the find.

What really engaged implications of his idea the period between 1638 and 1645. Earlier work, was the C, dogmas, and that the in particular the Tridentine, interpreted in a minim himself as part of a unity from the time of Christ, clear about the irrelevan cannot be condemned situation on graven images the Jews—there can be Catholics construct. 'Or Decalogue, but since it because of particular Chris, than the law of he published an exten point even clearer.

In his old age, Gro progressively more the. Reading these later w

Grotius and Selden

1.3.8: 1738, p. 64). To anyone who believed strongly in the truth of propositions beyond the minimal core – as all Grotius’ old Calvinist opponents in the Netherlands did – his views were likely to be anathema, and his criticisms of Calvinist doctrines in both theology and politics seemed to many of them to mean that he had simply deserted Protestantism for Rome. This was, of course, far from being the case; he remained throughout his life a deviant Protestant (like all his major successors in this genre of political theory) and not a Catholic. But his activities in the last twenty years of his life were not calculated to win back any Calvinist support. He wrote very little straightforward political thought from 1625 until his death; largely a second and extended edition of De Jure Belli ac Pacis, and some notes on the Corpus Juris Civilis, on his own Introduction to the Jurisprudence of Holland, and on Campanella’s Political Aphorisms. All simply restate the fundamental arguments of the De Jure Belli.

What really engaged his attention was working out the full theological implications of his ideas, and he did so in a series of works published between 1638 and 1645. Their common theme, already adumbrated in his earlier work, was that Christians are actually required to believe very few dogmas, and that the statements of faith of the major churches (and in particular the Tridentine decrees and the Confession of Augsburg) can be interpreted in a minimalist manner, such that a rational Christian can see himself as part of a universal Christian church with a continuous history from the time of Christ to the present day. Grotius was now absolutely clear about the irrelevance to Christianity of the Decalogue. Catholics cannot be condemned by other Christians for idolatry, since the prohibition on graven images in the ten commandments referred exclusively to the Jews – there can be no natural prohibition on the kinds of images which Catholics construct. ‘Certainly images are forbidden by a precept of the Decalogue; but since it is a positive precept, and one given to the Hebrews because of particular circumstances, it no more obliges the new people of Christ, than the law of the Sabbath. Images are aids to memory.’ In 1640 he published an extensive commentary on the Decalogue to make this point even clearer.

In his old age, Grotius (contrary to a common expectation) became progressively more radical in his thinking, particularly on theology. Reading these later works, one has a strong sense of a man excited by his

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own ideas, and conscious of their novelty and importance. That excitement was infectious; Grotius' achievement in both theology and moral philosophy caught hold of the imagination of many of his readers in the late 1620s and 1630s. But it did so in part, like most major ideas, because the ground was prepared: elsewhere in Europe other people had begun to think along lines broadly similar to his, conscious like him of the problems posed by the irreconcilable religious and political conflicts of the previous generation. In some ways Hobbes was the true heir of Grotius, but his first heir was taken by contemporaries to be another Englishman, Selden.

v Selden

Although England had not itself suffered a civil war in the late sixteenth century, its survival as a nation had been caught up in one of them – the Netherlands civil war and the Spanish attempt to defeat the rebels through an invasion of England. The problems of the European wars were as starkly visible west of the North Sea as east of it, and the men who ruled England in the late sixteenth century were cast to a great extent in the same mould as Oldenbarnevelt (the circle of the earl of Essex, for example, fostered the same kind of Tacitism as the Lipsians in the Netherlands, France, and Spain). James I disliked this intellectual style, preferring theological verities, but even under him and completely under his son, Englishmen were aware of its attractions and limitations.

Selden grew up in very much the same intellectual world as Grotius, though his social background was quite different. He was the son not of an urban aristocrat but of a yeoman farmer in Sussex, and he did not move by birthright in the world of international scholarship, but by his own efforts in a relatively open educational system. Born in 1584, he was spotted as exceptionally bright at the local grammar school, and was sent to an inexpensive Hall at Oxford. Encouraged by his tutor and friends there to make the law his career, on some recommendations from Oxford he became the legal agent of the earls of Kent, as well as developing a practice as an advocate. His financial and political fortunes continued to be dependent on the good will of the Kents and their friends in a group of politically active and independent-minded noblemen. He resided for much of his life in the Kents' household, in his later years as the generally acknowledged lover of the widowed countess of Kent. In the 1620s and again in the 1640s he was a regular figure among the modern parliament in the Civil Contemporaries.

As a young man his interests were still Grotius. Like the modernists and history, and mixed with legal order; and in a remarkable work written before published that the ancient Kingship.

In a series of works written history of the English law (necessity and reason of strong English legal system. The between interest-groups had cally reached agreement. Fundamental documents he described it as 'an instance of what is above all law, n

But the similarity with the Provinces, England faced between different kind Provinces, the governmen their calls for help from Remonstrants at the S immediately sympathi eclesiastical authority, published his famous denunciation of the mid centuries had blocked in work is very close to G

16. For Selden's life, see the DNB article by Edward Fry, Christianon 1984 and Tuck 1982.