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Hugo Grotius: Mare Liberum.

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Hugo Grotius: *Mare Liberum*

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Synonyms

De Iure Praedae; Hugo Grotius; Imperialism; Individual rights; *Mare Liberum*; Modern political philosophy; Natural law

Description

This entry presents Hugo Grotius' conceptualization of territorial rights, as it can be articulated from his early philosophical works, *De Iure Praedae* and its 12th chapter, published as an anonymous pamphlet under the title *Mare Liberum*. The first section is devoted to reconstructing the immediate context of both works as well as to offering a brief introduction to their overall argument. The second section delves into the Grotian concept and theory of territorial rights. Finally, the third and conclusive section addresses the relevance of Grotius' theory in modern and contemporary debates on territorial rights.

Definition

This entry is devoted to reconstructing Hugo Grotius' conceptualization of territorial rights, as it can be articulated from his early philosophical works, *De Iure Praedae* and its 12th chapter, published as an anonymous pamphlet under the title *Mare Liberum*. In order to avoid an anachronistic reading of Grotius' ideas, a brief comment on the immediate historical context of these works is presented in the first section. Grotius was requested to prepare both texts by directors of the United East Indies Company under different circumstances. *De Iure Praedae* was originally intended as an apology for the company's privateering campaign in Asia. However, only its 12th chapter was published as an anonymous pamphlet years later. On this occasion, Grotius was commissioned to prepare a text which would favor the company's position during the Ibero-Dutch truce negotiations, when commerce in East Asia was at stake. The chief aim of *Mare Liberum* was to deny that claiming property over the oceans is either morally permissible or factually possible. Furthermore, Grotius held that free passage, commerce, and navigation are indefeasible rights which no political authority can interlope with. Thus, he sets a full-fledged account of subjective rights, which sets the limits to territorial and property legitimate acquisition. The atomic individual becomes the whole starting point of natural law theory, which almost equates territorial and property rights. Grotius' concept and

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theory of territorial rights are further developed in the second section. Although neither *De Iure Praedae* nor *Mare Liberum* could intervene in the specific debate for which they had been intended, his work was heavily influential on seventeenth-century authors like Pufendorf's, Locke's, and English colonists' theories. In recent years, Grotius' oeuvre has gained renewed attention, and scholars have offered an actualized version of his territorial rights theory. The third section evaluates the enduring impact of Grotius' ideas on modern and contemporary debates as well as the challenges it faces in light of ethical considerations.

Life and Times of Hugo Grotius

Hugo de Groot (1583–1645), better known by the Latinized name of Grotius in the Anglophone world, was a renowned Dutch jurist, poet, philosopher, and politician. Grotius was already a celebrated scholar in his own lifetime and has been a prominent figure among legal historians, international relationship scholars, and political philosophers ever since. Recently, his theory has gained renewed attention because of his theory of territorial rights. In order to avoid anachronistic readings of his work, a brief commentary of his historical and biographical context is unavoidable.

Grotius was heavily involved in the political affairs of his times. He was born in 1538 as the scion of a patrician Delft family, whose members had been part of the self-perpetuating local political elite since the thirteenth century. His father, Jan de Groot, was the regent of Delft, member of the body of magistrates who administered the town and sent delegates to sit in the provincial government, the States of Holland. Furthermore, he was a personal friend of Johan van Oldenbarnevelt, Advocate of the State of Holland and de facto political leader of the Dutch States. These political ties had great significance for Grotius political career. Thanks to the patronage of Oldenbarnevelt, Grotius' political career had a meteoric rise prior to 1618. He was appointed to several political offices from 1607 to 1613, such as Solicitor General of Holland and Pensionary (legal advisor) of Rotterdam. His political career reached its peak in 1617, when he took a seat at the Dutch States General, the federal government of the Dutch Republic, as a member of the Holland delegation. However, the religious conflict in the Low Countries put a dramatic end to his career when the commander in chief of the Dutch army and navy, Maurice di Nassau, overthrew the government in 1618.

Grotius' intellectual life was also shaped by the political upheavals of his native country. In the first place, the Dutch had been in conflict with the Spanish since 1585, when Philip II was abjured ruler of the Dutch Republic by the Dutch federal assembly. Even though the Dutch claimed sovereignty over their provinces, Spanish Archdukes still ruled over the Northern Netherlands. On the other hand, the Dutch were at a cutthroat commercial competition against the Portuguese and the Spaniards in East Asia. The Spanish and Portuguese ruler had imposed heavy commercial embargoes on the Dutch, and their access to trade in Asia was at stake. Neither the *De Iure Praedae* nor the publication of *Mare Liberum* can be understood thoroughly if detached from these events, since both texts were intended to intervene in his country's crucial political debates regarding this critical situation.

By October 1604, the United East Indies Company—*Vereenighde Oostindische Compagnie* (henceforth VOC)—requested Grotius to write an apology for their privateering campaign in Southeast Asia. As Ittersum points out, the VOC had been created after Holland and Zeeland overseas trading companies had merged in 1602. From then onward, the company enjoyed the monopoly of Dutch trade in the East Indies (Grotius 2006, p. xiv). The original occasion for the composition *De Iure Praedae* was an event that took place in February 1603—the seizure of Santa Catarina in Singapore Straits by one of VOC's captains. The Santa Catarina was a Portuguese carrack which freighted a bounteous cargo worth three million Dutch guilders. Although privateering was nothing new to these regions, this event was peculiar. Jacob van Heemskerck, the Dutch captain, lacked any kind of political authorization to engage in warfare. His voyage to Asia was supposed to be devoted

exclusively to enlarge Dutch commercial opportunities in Southeast Asia. Prince Maurice had expressly instructed Heemskerck to refrain from using force, except in cases of self-defense or to seek reparations for harm done to the captain himself, his crew, or his ships (Ittersum 2006, p. 46). Nonetheless, as Heemskerck himself wrote in his correspondence, his crew had waylaid a Portuguese carrack on its way to Macao and undertaken aggressive war against the Portuguese merchants for almost a day (Grotius 2006, p. 538). Finally, the Portuguese finally surrendered and gave up their galleon.

However, neither Heemskerck nor the VOC faced difficulties when the case was brought to the naval court in the Low Countries. The Amsterdam Admiralty Board's verdict endorsed Heemskerck's account of the events, and the ship cargo was adjudged a good prize (Grotius 2006, p. xx; Ittersum 2006, p. 117). As van Ittersum (2006) points out, the Admiralty Board's verdict was not enough to gain support for the Company's cause both in the domestic and international realm (p. 25), and this is why the Company requested Grotius to write a brief apology for its aggressive campaign. VOC directors may have expected Grotius to write a historical account in which warfare against the Portuguese was to be justified on account of their smear campaign in Southeast Asia (Ittersum 2006, p. 108), but Grotius did not meet the director's expectations. He spent at least 2 years writing the manuscript of *De Iure Praedae*, which contained much more than just an historical account of the case. However, the treatise revolutionized political philosophy in general and natural rights theory in particular.

Grotius set a full-fledged account of subjective individual rights, which are ultimately grounded on the will of God. Grotius stated that the divine content is not revealed through "oracles and supernatural portents" but that it is displayed in natural order (Grotius 2006, p. 21). As Tuck (1979) points out, this point was adequate to Aristotelian scholars and Protestant political thinkers (p. 59). However, Grotius' natural rights theory introduced further innovations. From his account, every single individual is entitled by natural law to judge and execute their rights in their own cause. Warfare is, thus, justified as the lawful means to attain one's own rights. Following this line, Grotius held that the VOC could have undertaken private war against the Portuguese because they had breached natural laws. However, according to Grotius, the VOC' captain had actually undertaken belligerent actions on behalf of the public authority of States of Holland (Grotius 2006, pp. 419–427).

Grotius' account on this point was indeed controversial. Few contemporaries of his might have agreed with Grotius' when he depicted the State of Holland as a full-fledged sovereign state (Grotius 2006, p. 392). As Ittersum notes, by 1609, Henry IV of France was still reluctant to acknowledge that his allies in the United Provinces were sovereign and independent (Grotius 2006, p. xviii). The Lower Countries' own viability was questioned both by foreigner and native observers due to its political organization (Roelfson 1997, p. 106). The United Provinces was governed by States General, an assembly of different states which already had their own supreme government. However, it was not clear in the United Provinces constitution to what extent each state remained sovereign. As Tuck (2002) acutely notes, Grotius defended the United Provinces constitutions upon the assumption that "any society with a suitable set of representative institutions count as a respublica" (p. 83), being self-sufficiency its salient feature. Upon this basis, Grotius understood that Holland was a sovereign state which was allied with the other provinces of the Lower Countries (Grotius 2006, p. 392). On a similar note, Grotius depicted Indian rulers as free and *sui iuris* sovereigns who could lawfully hold jurisdiction over their territories (Grotius 2006, p. 306). The Deft jurist reorganized traditional values to prove his point grabbing from humanist historiography and Spanish theology (Ittersum 2006, p. 98). According to Grotius, infidels could not be deprived of their possessions since "(…) the factor of religious faith (…) does not cancel the natural or human law from which ownership has been derived" (Grotius 2006, p. 308).

Although Grotius intended to publish a part of his "little treatise on Indian affairs" (Grotius 2006, p. 552), the manuscript would remain unknown to

the European audience for which it had been intended. In fact, *De Iure Praedae* only appeared in the press in the nineteenth century, after it resurfaced at a family auction (Ittersum 2006, p. 1). Scholars agree that Grotius may have decided not to publish the book because doing so would have caused turmoil on the eve of Ibero-Dutch Peace conferences (Grotius 2006, p. xx; Martínez Torres 2017, p. 73). In fact, it included both a fierce defense of the Dutch cause and vilification of the Portuguese and the Spanish. Nonetheless, when commerce in East Asia became a bone of contention of the truce talks, Grotius was commissioned by the Zeeland directors of the VOC to publish a pamphlet. Its aim was to have rights of navigation "thoroughly examined and adduced with rational and legal arguments" (Grotius 2006, pp. 555–556). Furthermore, Grotius' pamphlet was expected to have an impact on the "the inhabitants of these provinces (…) and more importantly, encourage neighbour princes and monarchs to help defend the nation's rights" (Grotius 2006, p. 555). It is clear from this that Zeeland directors intended to impress both Dutch political authorities and Henry IV of France's envoy Pierre Jeannine, which were holding truce negotiations by that time. Their ultimate concern was to obtain guarantees for commerce in East Asia, regardless if the result of the conferences were truce, peace, or war.

The 12th chapter of *De Iure Praedae* fit the Zeeland director's request. Grotius argued thereby that the rights of trade and navigation were indefeasible. Nonetheless, as Ittersum points out that the manuscript went under several revisions and major changes were made during November and December 1608. In the first place, the seizure of St. Catarina was not mentioned throughout the text. More importantly, key tenets underlying Grotius' plea of rights of trade and navigation were toned down, and his theory on natural rights was downplayed (Ittersum 2007, pp. 271–274). Regardless of Grotius' efforts to self-censor the warlike implications of the original manuscript, its publication was postponed until the Twelve Years' Truce was signed at Antwerp in April 1609. Oldenbarnevelt strictly requested Grotius not to publish any material which might upset the Spanish representatives when truce negotiations had reached its juncture in winter 1609 (Ittersum 2006, p. 341). Although it would not have the impact on the audience it had been intended for, the 12th chapter of *De Iure Praedae* would still become influential and well-known in the years to come under the title *Mare Liberum*.

Concept and Theory of Territorial Rights

Albeit *Mare Liberum* was intended to be read independently, it cannot be understood thoroughly if detached from the larger argument to which it belonged. In *De Iure Praedae*'s 12th chapter, Grotius put forward a theory on property and territorial rights reliant on his natural rights theory. In this theoretical framework, natural law provides a set of supra-juridical norms and principles, which in turn provide ethical guidelines and a validity criterion to evaluate institutions. Grotius held a voluntarist account on natural law, whose primary source is God's will. More importantly, a teleological understanding of the natural world underpins Grotius' natural law theory: divine will is displayed in the structure of the physical world. This basic premise has relevant consequences both in the epistemic and ethical realms. In the first place, natural rights and duties are intelligible through natural reason. On the other hand, its first principle is an inherent impulse which God has implanted in every living being: self-interest (Grotius 2006, p. 21). From this, Grotius considers self-love as the primary principle from which a set of moral rights are derived. The atomic individual becomes, thus, the whole starting point of his natural rights theory. As Tuck (1993) acutely notes, Grotius' idea was to equate self-preservation as a fundamental moral right which could provide a theory of ethical conduct and justice (p. 172). Moreover, the same author highlights a salient feature of Grotius' theoretical framework: the absence of any relevant moral quality that could differentiate the state and atomic individuals as essentially different moral entities. Tuck claims that: "The rights enjoyed by the atomic individuals in the Grotian state of nature filled out the moral world: the state

possessed no rights which those individuals had not formerly possessed, and was the same kind of entity as them" (Tuck 1979, p. 63).

From this theoretical framework, territory and private property are not substantially different—both of them are put under the head of *dominium* (ownership)—and arise from the same set of principles. The only difference between them is that territory refers to collective legal ownership, whereas private property refers to ownership by private individuals.

A second feature of Grotius' theory is his dynamical and teleological understanding of natural law. His theory reframes the terms underlying a long-dureé debate about property rights. In natural right theories, Tuck (1979) explains that, by the time Grotius wrote, there were two competing and opposite accounts on property rights. On one hand, scholastics claimed exclusive property rights derived immediately from natural law. On the other hand, humanists denied there were any rights to which individuals were subjected prior to civic institutions (Tuck 1979, p. 61). Grotius linked both traditions providing a historical-genetic explanation for the institution of *dominium*. From his theoretical framework, distinctions of ownership were not assigned by the natural order, yet property arrangements were the result of a "gradual process whose steps were taken under the guidance of nature herself" (Grotius 2006, p. 317). Therefore, the historical-genetic explanation on property is complemented with a logical-normative analysis of natural rights. From this standpoint, historical development is not depicted as a succession of contingent incidents. Instead, the genetic explanation renders property as morally necessary and, thus, following a rational order.

In his logical-normative analysis of natural law, Grotius set two laws concerning "self-defense" and "self-preservation" as strictly connected to expediency. The latter was defined as the power to rightfully "acquire for oneself and to retain those things which are useful for life" (Grotius 2006, p. 23). It should be noted Grotius' works with an ample notion of "use" which comprehends both strictly necessary means of subsistence and those "necessary to well-being" (Grotius 2006, p. 23). Grotius established a strict connection between *usus* (use), *possessio* (possession), and *dominium* (ownership) (Grotius 2006, p. 24). In the first place, use is inseparable from some kind of material possession, which was regarded as property's forerunner. Nonetheless, ownership was the consequence of the second set of natural laws. The deontic status of the first two laws can be understood as privilege rights, since they are not limited by any correspondent duties. On the contrary, the liberty holder's actions are limited by the third and the fourth laws, the "law of inoffensiveness" and "law of abstinence." These laws are negative precepts restraining individuals from injuring third parties and taking away another's possessions (Grotius 2006, p. 27). From Grotius' standpoint, these are "rational consequences" deduced from God's will, whose authoritative basis rested on mankind's unanimous consent (Grotius 2006, p. 25).

In a nutshell, *dominium* is a rational inference already implied in the natural order and to which humanity has agreed to. Furthermore, these claim-rights were already enforced by natural law, which included two further laws regarding retaliation. The fifth natural law commands that "evils must be corrected" and the sixth that "goods must be repaid" (Grotius 2006, p. 29). Following these laws, Grotius set the normative basis for a system of exchange and authorized individuals to judge and execute punishments in their own cause.

Ownership's genetic explanation only confirmed the empirical necessity upon which it had been introduced. From this account, God had bestowed the material world upon the whole human race. In this regard, Grotius advanced a conceptual disquisition between different kinds of "common possession." He distinguished the original common possession of the Earth from collective legal ownership. Whereas the latter implies exclusive rights of a community over an object, the former is understood in a negative sense "as the antonym of private property" (Grotius 2006, p. 315). Unlike humanists, Grotius' understanding of primitive common possession does imply natural rights, that is, rights of use. As Udi (2014) accurately notes, rights of use are common rights and, unlike exclusive property rights, do not entail duties hindering third parties' actions (p. 4).

According to Salter (2005), common possession is characterized by two salient features: the absence of claim-rights—which may limit third parties from access to the Earth's resources—and the privilege to prevent others from using a particular good by seizing possession of it first (p. 288). In Grotius' account, in the early stages of humanity, only immediate means of subsistence were used by individuals. Since consumption renders subsequent use impossible, use does not exclude third parties de iure but limits another's rights to use the same object de facto. However, Grotius explains that other movable objects and immovable objects also needed to be held into exclusive possession. Regarding land apportionment, Grotius provides a twofold argument: in the first place, arable lands are required to obtain immediate means of subsistence; in the second place, indiscriminate use could not be permitted due to land scarcity (Grotius 2006, p. 318).

Grotius' argumentative strategy sought to prove that the main attributes of property rights were already present—although in an inchoate form—in the early stages of humanity. He admitted, nonetheless, that property arose after some kind of law had been established in this regard. However, conventional property regimes did not derail from "nature's plan"—they only ratified extant rights and specified its requirements (Grotius 2006, p. 318). Although Grotius is not clear regarding the status of said law, from a systematic reading of the *De Iure Praedae*, it can be inferred he was thinking of "the law of abstinence," referred to before. In his *Prolegomena*, Grotius had advanced that "as a result of the Fourth Law, distinctions of property arise, together with the well concept of Mine and Thine" (Grotius 2006, p. 27). Even though this precept was grounded on natural law, its authoritative source was mankind's consent. In this regard, Marey (2019) acutely notes that:

> Grotius works with an epistemic toolbox that harmonises voluntarism and rationalism. The relationship between consent and natural law in Grotius' property theory is bidirectional: voluntary agreements are grounded upon the rationality of the act of consenting to a certain practice and at the same time voluntary agreements base the morality of the resulting practices (…) As some voluntary laws are taken to be part of the natural legal corpus, it also results that the distinction between natural and voluntary right is diffuse. (Marey 2019, p. 72)

From Grotius' standpoint, some kind of convention was necessary to specify property requirements over things which were not immediate means of subsistence, such as cattle and lands. In this regard, actual seizure was a necessary condition to take possession over movable objects, and erection of buildings was the requirement for acquiring immovable property. Nonetheless, human agreements had been "patterned after nature" because some kind of physical possession (occupation) is still the *sine qua non* condition to settle *dominium* (Grotius 2006, p. 318). More importantly, property rights were the result of unilateral and nonconsensual claims over the material world. It is noteworthy that, according to Grotius, land apportionment played an important role in human development and thus he referred to it as "the origin of human society" (Grotius 2006, p. 28). Relying on an authoritative quote of Macrobius, he claimed that "the establishment of laws grew out of the division of lands" (Grotius 2006, p. 28). In fact, from his historical account, ownership distinctions had been introduced at the same time when states were established. It could not have been otherwise since public property arises from the very same act private property does—occupancy—and, more importantly, has the same natural limits which any kind of property had (Grotius 2006, p. 324).

Following straightforwardly from these premises, Grotius stated there were two limits to unilateral claim-rights over the material world. Firstly, physical possession was strictly necessary, so those objects which could not be seized nor built upon were not capable of appropriation. Secondly, according to Grotius' historical explanation, apportionment of the material world had become necessary because objects did not admit indefinite or indiscriminate use of all users. Therefore, he claimed that:

> all those things which have been so constituted by nature that even when used by specific individuals, they nevertheless suffice for general use by other

> persons without discrimination, retain today and should retain for all times that status that characterised them when first they sprang from nature. (Grotius 2006, p. 320)

In a nutshell, to claim exclusive rights over these objects is both impossible and immoral. Grotius provides several examples in this regard, such as air, yet his major concern was to deny that either the sea or seashores were capable of appropriation. Therefore, Grotius claimed that, according to the law of nature, these objects should remain as undisturbed commons. Moreover, unlike other ownerless resources—which could become property by occupancy—common possession over the whole sea and seashores does entail claim-rights:

> (…) the right to use them, pertaining as it does to all men, can no more be taken from humanity as a whole by one individual than my property can be taken from me by you. (Grotius 2006, p. 323)

As Risse (2014) notes, usufructuary rights are privilege rights, whose beneficiaries are free of any duty to the contrary. However, egalitarian ownership entails a protective perimeter of claim-rights to liberty rights (Risse 2014, p. 189). In this case, common possession has to guarantee access to resources, so liberty holders have the duty to refrain from interfering with third parties' rights of use. In other words, individual use cannot be in detriment of others.

In regard to the ocean, Grotius' stance was clear enough. According to him, nature itself had commanded that the sea must be held in common possession and the obligations that sprung thereof had been sanctioned by mankind's unanimous consent (Grotius 2006, pp. 322–323). In this vein, restrictive conditions put the burden of proof onto private appropriators. In fact, Grotius admitted some kind of property over shores and running water was permissible, only if said conditions did not apply. For example, he claimed that small portions of the sea or river-forks could be appropriated by particular individuals if these had been fenced and turned into fishing spots (Grotius 2006, p. 325). Along the same lines, buildings could be erected upon seashores and could be thus esteemed as property, as long as their size did not interfere with common use. Property rights over sandbanks, however, would not endure if occupancy was interrupted (Grotius 2006, p. 324).

As far as public property goes, Grotius admitted it was allowable for a state to claim property over a river, since it was enclosed by its boundaries (Grotius 2006, p. 328). Nonetheless, this qualification could not be applied to the sea. In this respect, our author set an important distinction between jurisdiction and property. The former was defined as the power of protection a state holds over the people located overseas, yet it did not entail exclusive rights over maritime space. On this point, Grotius admitted different states could settle boundaries and appoint different regions of the sea in order to render them secure. Nonetheless, these functions were the result of bilateral agreements between nations and could not have binding force for third parties (Grotius 2006, p. 329).

More importantly, from Grotius' theoretical framework, sovereign rulers are not allowed to interlope neither the rightful exercise of navigation nor commerce (Grotius 2006 p. 338, p. 356). In the first place, these are common rights which could not be held exclusively by a particular party. Moreover, liberty of trade and navigation are, for Grotius, prior to any kind of political agreement, so they do not require any kind of political authorization. Grotius treated them as active rights which anyone can freely exercise without prior recognition. In a similar vein, property-holders cannot bar third parties from exercising rights of use to vast resources, if these entailed no damage to the owner (Grotius 2006, p. 332). Therefore, even if political authorities hold possession over their lands, they are not authorized to restrain foreigners from innocent passage over their territory (Grotius 2006, p. 338). All in all, free passage, navigation, and trade fulfilled moral duties of natural sociability, so, according to Grotius, neither of these can be abrogated without "doing violence to nature itself" (Grotius 2006, p. 303).

As was already mentioned, according to Grotius' depiction of the natural state, individuals were entitled to execute punishments if any injury was committed against them. Furthermore, his theoretical framework includes a wide

comprehension of an "injury," i.e., any transgression of natural law (Grotius 2006, p. 50). Belligerent actions, therefore, can be lawfully undertaken with the purpose of attainment of one's right. To sum up, Grotius concluded that the Dutch were allowed to engage in war against the King of Spain and Portugal, if he claimed the entire Indies trade and navigation for their subjects. From Grotius' standpoint, the Iberian attempted to hinder the rights of the whole human race (Grotius 2006, p. 361). Thus, warmongering becomes all the more explicit when Grotius finally identifies the Dutch's cause with that of humanity on the whole.

Grotius Theory in Modern and Contemporary Debates

Although neither *De Iure Praedae* nor *Mare Liberum* could intervene in the specific debate for which they had been intended, Grotius' theory had a great impact on international debates of his times. *Mare Liberum* ignited a dispute over the *dominium* of the sea among different scholars, like William Welwod, John Selden, and Justo Seraphim de Freitas, among others (See Tuck 2002, pp. 113–120; Grotius 2006 p. xviii.; Ittersum 2006; Martínez Torres 2017). Grotius himself proved to be less keen on maintaining his own theses during the Anglo-Dutch conferences of 1613 and 1615, when the Dutch commercial monopoly over East Asia was at stake (Vollertun 2017, pp. 183–185). In the long run, Grotius' theory of territorial rights also became very influential. In the seventeenth century, Pufendorf built upon Grotius' distinction between different kinds of commons (Pufendorf 1702, p. 318) yet rejected key aspects of his theory. Unlike Grotius, Pufendorf claimed that unilateral claims over common resources could not arise from non-consensual acts (Pufendorf 1702, p. 206). Moreover, Pufendorf also endorsed natural law theory, yet, from his account, private individuals are not entitled to execute punishments (Pufendorf 1702, p. 157). On the other side of the spectrum, the theory of property and punishment which John Locke put forward in his *Second Treatise* held strong similarities with Grotius' (Tuck 2002, p. 171; Locke 2018, p. 27, pp. 43–70).

In the twentieth century, legal historians attributed to Grotius the authorship of the Westphalian system of states, understood as a compound of discrete and fully sovereign territorial units in which interference was ruled out. Grotius also became a well-known reference among international relationship specialists, who saw him as an alternative to the mainstream and rival theories of Kant and Hobbes (See Wight 2005, pp. 29–55). These retrospective readings of his work have recently been revised by Vollerstun (2017) and Ittersum (2006, pp. xxiii-xxxvii). Ittersum (2006) and Tuck (2002) hold that Grotius' theory is a cornerstone of European colonialist and imperialist ideology. In fact, seventeenth-century British readers found in Grotius's theory a solid justification for their colonial enterprises (Ittersum 2006 p. xxvii; Tuck 2002, pp. 120–126). It is no wonder that they did so. Following his own reading of Vittoria, Grotius himself argued that the Spanish had undertaken just war against the American rulers after being barred from trading with native subjects. Spanish conquest was morally justified as a result of war (Grotius 2006, p. 304).

However, there is an alternative argument in *De Iure Belli ac Pacis* that was more adequate to British colonists' taste. As Tuck points out, British jurists distinguished between settlement on unoccupied land and military conquest and were eager to prove their colonial enterprise belonged to the former category (Tuck 2002, p. 121). Along the same lines, in *De Iure Belli ac Pacis*, Grotius contended that uncultivated land was unoccupied, so foreigners could lawfully claim possession over them, as long as they submitted to local authorities (Grotius 2005, p. 448). Even though in this case the state could still hold jurisdictional power, he argued that Indians were not capable of holding jurisdiction because of their limited capacities. He claimed, thus, American natives needed someone else to administer their property (Grotius 2005, p. 1105).

In recent years, Grotius' territorial theory has gained renewed attention among scholars. Risse (2014), for example, has built upon the concept of "common property" a theory on justice according

to which "all co-owners ought to have an equal opportunity to satisfy basic needs to the extent this turns on abstaining collectively owned resources" (Risse 2014, p. 189). From this account, exclusive ownership cannot invalidate common and active rights to use vast natural resources to individuals in dire situations. On the contrary, institutional powers should grant access to underused resources to needy individuals (Risse 2014, p. 197). Risse's reinterpretation has not gone without contestation. Nine (2019) has claimed that Grotius' territorial rights theory is substantially "object-centered" and cannot provide a satisfactory basis to address contemporary environmental problems. In Grotius' theoretical framework, limits to property are grounded on an outdated claim that there are some natural resources which admit indiscriminate use. Furthermore, his theory on property does not take into account cultural variability (Nine 2019, p. 1). In fact, Grotius territorial theory is wholly reliant on his natural rights theory, which is regarded as a supra-juridical set of moral principles immediately self-evident and universal. In this regard, little is to be done by civic institutions, which only need to ratify the consequences derived thereof and enforce them. Although property does rely in part on human agreements, as Marey (2019) acutely argued, consent does not function in Grotius' systematic theory as a critical standard to evaluate the legitimacy of property arrangements (p. 72). In a similar vein, primitive common property only appears in his historical account as the descriptive backdrop against which territorial and property regimes are established (Marey 2019, p. 74). As a result, his historical explanation redounds in a retrospective rationalization of the present state of things. This conservative historical account of property regimes may thus be contrasted to Marxists' account on primitive accumulation.

Conclusion

To sum up, Grotius' theory transformed modern political philosophy, particularly with his influential ideas on territorial and property rights. By reconciling the competing perspectives of scholastics and humanists, he proposed ownership arrangements developed through a logical and historical process. Moreover, Grotius posits self-interest as the core principle of his natural rights system, in accordance with his teleological and theological understanding of nature. The starting point of his political philosophy is the atomic individual, whose rights mirror the moral attributes typically associated with the state. For example, natural law authorized individuals to judge and execute punishments in their own cases. Furthermore, from this theoretical account, territory and private property stem from the same principles, with the distinction that territory pertains to collective ownership while private property refers to individual ownership. In addition to this, territory' extent has the same natural limits which any kind of property has. According to Grotius, the oceans and shores should remain in common with rights to use shared among all while recognizing certain exceptions for private appropriation when they do not interfere with public use. Subjective rights also set limits to the extent in which territorial and property rights can be exercised: free navigation, free passage, and free trade are regarded as indefeasible, active rights which need no prior recognition. It follows that any attempt to hinder these fundamental rights could be considered an injury to humanity and should be punished.

Both *De Iure Praedae* and *Mare Liberum* were originally written to intervene in specific debates of Grotius' times. Following the aforementioned philosophical premises, Grotius argued that the Dutch were justified in waging war against Spain and Portugal, as the Iberians were obstructing the rights of humanity as a whole. Although neither *De Iure Praedae* nor its 12th chapter could fulfil their original purpose, Grotius' theory has had an enduring impact in political theory. Recently, scholars like Risse put forward a contemporary application of Grotius' theory, arguing for equitable access to resources. Nonetheless, as critics have pointed out, Grotius' theoretical framework fails to account for cultural differences and contemporary environmental issues. All in all, Grotius' theory provides a conservative historical account of property regimes, which redounds in

a retrospective rationalization of the present state of things.

Cross-References

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- Francisco de Vitoria: Territorial Conquest in the New World
- John Locke: Property Rights and Labour Mixing
- Mathias Risse: On Global Justice
- Samuel Pufendorf: National Territory and the Law of Nature

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