

THE IDEA OF INTERNATIONAL SOCIETY

A STUDY OF THE VIA MEDIA IN THE THEORY OF INTERNATIONAL RELATIONS,

WITH SPECIAL REFERENCE TO

ERASMUS, VITORIA, GENTILI AND GROTIUS

by

Ursula Vollerthun

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This thesis is my own original work.

Ursula Vollerthun

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ABSTRACT

This study is about a hypothesis in the theory of international relations, a search, and what was found. It consists of eight chapters divided into three parts.

Part One, containing one chapter, presents the hypothesis of Otto von Gierke, Martin Wight and Hedley Bull that midway between the realist (also referred to as the Machiavellian or Hobbesian) tradition and the universalist (or Kantian or revolutionist) tradition there is the Grotian (or rationalist or internationalist) tradition - here called the via media. It originated in Europe in the late fifteenth/early sixteenth century and, together with the other two, has existed since that time. It has its own distinctive pattern of ideas, although some of these ideas are also present in the other two. The term which best describes and identifies this pattern is international society.

Part Two records the search and its findings. It comprises five chapters. Chapter Two discovers evidence for the existence of the idea of international society well before 1500. Chapters Three to Six explore the writings of four thinkers associated with the early phase of this tradition and find the idea of international society in three of them - Erasmus, Vitoria and Gentili - but not in the fourth, Grotius.

Part Three evaluates the findings of Part Two. It consists of two chapters addressed to the idea and the thinkers respectively. Chapter Seven concludes that the pattern of ideas found in Erasmus, Vitoria and Gentili, while not identical in the three thinkers, has all the elements of the hypothesis of Gierke, Wight and Bull as well as certain additional elements. Chapter Eight finds that thinkers of the via media may be no less "realistic" observers of events than realists; it further finds that that which links the former across time is not so much "a tradition of thought" as "a way of thinking".

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INTRODUCTION

The theory of international relations is host to the significant but little explored hypothesis that, midway between realism and idealism, there is a third tradition of thought - here called the via media - which originated in Europe in the late fifteenth/early sixteenth century and which, along with the other two, has existed since that time. It displays a pattern of ideas which, while having some elements in common with the other two, is distinct from both of them. The term which best describes and identifies this pattern is international society.

The hypothesis is significant. It challenges the view that thinking about international relations is typified by two modes of thought, realism and idealism. It promises to account for phenomena which the other two dismiss as either unimportant or anomalous. It holds out a set of values which may appeal to those who are not persuaded by what is offered by either of the other two.

Yet, no serious attempt has been made to test this hypothesis, to add to or subtract from its claims by carefully examining it. It is no more certain now than when it first appeared in the literature of international relations that thinkers regarded as representatives of the via media actually have the pattern of ideas ascribed to them, or that they are linked in what has been called a tradition.

Hence, it seems worth investigating the hypothesis, thereby contributing to a branch of international relations which has enjoyed little growth: the historical study of its ideas. The few general histories that have appeared, along with the small number of more specialized studies of individual thinkers and of topics such as the law of nations, peace proposals, the just war, the balance of power, reason of state and natural law do not occupy much space on a book-shelf.

The present study, which is best described as attempting to discover a pattern of ideas in the past, rather than writing its history, is arranged in eight chapters.

Chapter One presents and discusses the idea of the three traditions of thought found in the writings of Otto von Guericke, Martin Wight and Hedley Bull, sets out the hypothesis, and formulates questions which are

suggested by it.

Chapter Two describes the search for the beginnings of the idea of international society.

Chapters Three to Six explore the writings of four of the earliest thinkers suggested by the hypothesis - Erasmus, Vitoria, Gentili and Grotius - and present the findings under a varying number of headings, reflecting the attempt not only to offer answers to the initial questions, but also to give expression to differences in thought encountered in the four thinkers. Two steps are thus involved. The first may be called analytical: the close reading of the sources and the identification of ideas that are relevant, and also supported by their authors' thought as a whole. The second step entails synthesising, assembling the ideas thus identified in a new order, under headings suggested by the hypothesis. The idea of international society is a composite product of the mind, and its ingredients appear in a different order and different language in these thinkers of the past. It is not offered as a complete, familiar whole, but needs to be discovered.

Quotations are used extensively in all four chapters, as they permit contemporary readers to judge for themselves that the ideas ascribed to these thinkers are actually present in their writings. The quotations also convey impressions about the personality and style of their authors, and hence may be seen as bringing them to life for today's reader.

Because of its complex nature, the inquiry does not extend beyond Grotius.

Chapters Seven and Eight assemble and compare the findings of the search, and relate them to the initial hypothesis. Chapter Seven addresses itself to the pattern of ideas, whereas Chapter Eight is concerned with the thinkers, commenting on their relationship to the political events of their times, and to one another. An Appendix has been added to compare the vocabulary of the early thinkers with that of their twentieth-century counterparts.

The study is based mainly on primary sources, and of these the writings of Erasmus, Vitoria, Gentili and Grotius - books, treatises, letters, lecture notes, commentaries and prefaces - constitute by far

the greatest part.

Meeting these four thinkers and their writings means encountering four different situations.

Erasmus, scholar and propagandist for "the new learning", wrote and published prolifically. His languages were Latin, Greek, and possibly Hebrew. Numerous editions of his writings, translated into many languages, have appeared in the course of time, and continue to appear. The number of studies on almost all aspects of his thought seems infinite. A noticeable lacuna, however, is the near absence of scholarly analysis of the ideas on international relations which are dispersed throughout his writings. Their discovery and assessment thus require time and care.

Vitoria, professor of theology and jurisconsult, published nothing during his life-time except four prologues, and his original manuscripts are said to have disappeared about the time of his death. He wrote in Latin and Spanish. What exists of his writings today is attributed to manuscript copies and the spoken word. It is incomplete, and it is not vast. It has gone through a number of editions and translations. The ideas which are of interest in the context of this study are easily found, appearing in a limited number of writings, but they are not equally easily read and interpreted. Vitoria's method of argument, his language and the imperfect nature of the record combine to work against a quick conquest. Commentaries exist, but they are often enthusiastic rather than searching.

Gentili, professor of law and jurisconsult, wrote a great deal - his language was Latin - but did not publish everything. Most of what was published did not go through further editions after his death, and remained untranslated. No comprehensive study exists of his work as a whole. Exempted from this total disregard have been three of his writings - his ideas on international relations - which were kept alive by new editions and translations, but even they have met with widespread disregard by the scholarly community. As a result there exist only a few studies with which to compare notes. Gentili's ideas are not quickly apprehended: although his method of presenting them differs from Vitoria's, it is no less complex.

Grotius, author and man of affairs, has many writings to his cred-

it - in Latin and Dutch, and in numerous editions and translations - but his fame, at least in the field of international relations, rests almost entirely on one book, De Jure Belli ac Pacis, although his ideas on the subject are not confined to it. An extensive literature, impressive for its mainly concordant views, has built up around it. However, it projects an image of Grotius which is not in harmony with the original, whether one looks at just the one book, or extends the search to include his other writings on the subject. Hence, the difficult task arises of identifying the Grotius of the original sources against the Grotius of most of the commentators. It is a task which is not facilitated by the way Grotius presents his ideas.

Of great value in this search for the idea of international society are the general histories of the sixteenth and seventeenth centuries, as they provide the wider context within which to place the four thinkers and their ideas.

Wherever possibly in this study, references are to English translations of the original languages, and, in their absence, to French, Spanish and German translations. Only where there are no translations, or where these need to be clarified, are the original languages referred to. The reason for this approach is that, on the whole, scholars in international relations, while expert in more than one discipline and language, are not specialists in old languages. All quotations in this study are in English - my own translations where non-English texts have been used.

PART ONE

THE HYPOTHESIS

CHAPTER I

THREE WAYS OF THINKING ABOUT INTERNATIONAL RELATIONS

There is a chain of thought which links Martin Wight to Otto von Gierke, and Hedley Bull to Martin Wight. Inscribed in it is the idea that since the beginning of modern times there have been three ways of thinking about international relations: one which denies the existence of international society, another which sees it as insubstantial and transitory, and a third which asserts its existence and validity.

Gierke, the jurist, identified the three ways of thinking when studying the history of the German Genossenschaft¹. Whether he was the first to do so remains a question to be answered by scholarship; he himself does not say. Wight, the historian of ideas, describes them as a "familiar aspect" of the intellectual history of modern Europe², although his only reference is to Gierke.³ Bull, the international relations scholar, refers to them as a matter of fact: "Throughout the history of the modern states system there have been three competing traditions of thought".⁴ The intellectual lineage which he establishes is to Wight and Gierke.⁵

Gierke did not incorporate his findings into his theory of corporations. His reason was simple: "Excluded from consideration are all associations ... which do not succeed in attaining an independent legal personality above their members".⁶ Wight moved the three ways of thinking to the centre of his theory and made them the framework within which he investigated the history of thought and practice in international relations. Bull's reaction was more ambivalent. "Is it true?" he asked when confronted with what he called Wight's "great structure of ideas".⁷ "Can one really categorize the history of thought about international politics in this way?"⁸ His answer was: "Much that has been said about International Relations in the past cannot be related significantly to these traditions at all".⁹ "But", he went on to say, relenting a little, "there is no doubt that it has a firm basis in reality".¹⁰ If one can arrange the history of thought about international politics in this way, he resumed the question, "does an account of the debate among the three traditions really advance our understanding of international politics in the twentieth century?"¹¹ His reply was: "That (Wight's) account of

these past traditions of thought contributes directly to our understanding of contemporary international politics there can be no doubt".¹² To reject or to accept Wight's structure of ideas - this was Bull's question, and a final answer will no longer come from his pen.

This chapter presents the accounts of the three ways of thinking by Gierke, Wight and Bull (Sections One to Three); offers a comparison of these accounts (Section Four); sets forth the hypothesis which the thesis will investigate (Section Five); and formulates the questions which will guide research in Part Two of this study (Section Six).

1. Gierke's Account

The idea that there are three ways in which men¹³ have thought about international relations since the beginning of modern times was first mentioned by Gierke in his monograph Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien¹⁴, published in 1880. The idea reappeared in 1913 when the fourth volume of his monumental work Das Deutsche Genossenschaftsrecht¹⁵ was published, and it is the second account of the idea, rather than the first, which is presented here, mainly because it is more detailed.

In the fourth volume of his Genossenschaftsrecht, entitled Die Staats- und Korporationslehre der Neuzeit¹⁶, Gierke writes in the first chapter covering the period to the middle of the seventeenth century:

The medieval idea of a world monarchy was foreign to the natural-law theorists. They left it to the Imperial publicists to conjure up, on reams of paper, the lifeless shadow of the imperium mundi¹⁷, while they themselves developed out of the indestructible core of that dying idea the new and fruitful idea of voelkerrechtliche Gemeinschaft.¹⁸ Beginning with the sixteenth century, it became customary to base the binding force of the jus gentium¹⁹ on a societas gentium²⁰ in which the original and indestructible unity of mankind was held to continue to exist, while sovereignty had passed to the individual nations.²¹

Gierke mentions thinkers such as Omphalus, Connanus, Gregorius, Suárez, Winkler, Gryphiander and Grotius as representatives of this view.

After noting that the nature of this society of states remained unclear because no distinction was made between the concept of partnership

and that of corporation²², Gierke continues: "And it happened that, on the one hand, the inclination to compress this society into a world state with a world government organized along republican lines appeared again and again"²³ - he thinks of theorists such as Vitoria, Gentili, Boxhornius and Junius Brutus - "while, on the other hand, the stricter adherents of the theory of sovereignty altogether rejected the idea of a natural community binding the states".²⁴ The two examples which he gives are Bodin and Hobbes.

After this brief outline of the three ways of thinking about international relations, Gierke returns to "the dominant theory, decisive for the future of the law of nations"²⁵, to point out that its exponents maintained that:

(T)here did exist an association based on natural law amongst nations, and that this association, while it did not produce any power of the whole over its parts, did generate mutual rights and obligations of a social kind. The law of nations was interpreted as natural law binding the states - which as a result of their sovereignty remained in the state of nature - just as the pre-state natural law²⁶ had bound human beings in the state of nature.

In the second chapter, which covers the period from the middle of the seventeenth century to the beginning of the nineteenth century, Gierke observes that the question relating to the existence and nature of voelkerrechtliche Gemeinschaft continued to be answered in different ways. On the one hand, there were those who altogether rejected the idea of a general society of states. Their reasoning was that "if the state of nature was a state without a social life, and if the law of nations was nothing more than pure natural law which continued to be valid between states, who as personae morales²⁷ lived in a state of liberty and equality, then there could be no general society of states".²⁸ His research showed Gierke that, because of the esteem in which Samuel Pufendorf was held, it looked for a time as if such a view would carry the victory. Apart from Pufendorf, it was people such as Hornius, Spinoza, Hertius, Boehmer and Justi, who expounded this view. However, in the long run, as he observed, the opposite view prevailed:

It was argued that in as far as an original community amongst human beings was assumed, the state of nature which existed among states was also that

of a natural society. Yet, even if one proceeded from the assumption of individualization, but saw in the creation of the social condition a development of natural law itself, one arrived at the idea of a society among nations established by natural law or at least postulated by natural law. The representatives of this view usually recognized a positive law of nations which was produced within this society by extending the natural law of nations through a process of express or tacit consent. In this way, the concept of a general²⁹ society of states was successfully defended.

Gierke mentions Johann a Felde, Mevius, Praschius, Bossuet, Placcius, Leibniz and Thomasius as representatives of this view. "Yet every so often", the account concludes, "the idea of a civitas maxima³⁰, whose citizens, the states, were subject to a true universal government, reappeared".³¹ Its advocates, Gierke notes, were thinkers such as Vico, Wolff, Achenwall, Kant and Fichte.

2. Wight's Account

Martin Wight's first published account of the three ways of thinking about international relations - in "Western Values in International Relations", a contribution to Diplomatic Investigations published in 1966³² - is also the most detailed, and hence the one presented here. The same account, in a much condensed version, is included in Systems of States which was published in 1977.³³ An early formulation of it, dating back to 1960, became available in 1987 with the publication of the paper "An Anatomy of International Thought".³⁴ And according to Hedley Bull's and Brian Porter's writings another, possibly much more elaborate version is contained in Wight's as yet unpublished lectures on the theory of international relations.³⁵

To return to "Western Values", Wight's "single most important paper"³⁶:

"Ever since Machiavelli and Hobbes", the account begins,

(T)here have been those who take the view that there is no such thing as international society: that international relations constitute an anarchy whose social elements are negligible. The doctrine that the state is the ultimate unit of political society entails the doctrine that

there is no wider society to embrace states.³⁷

According to the exponents of this view, Wight goes on to say, the diplomatic system, the network of functional international organizations, the League of Nations and the United Nations furnish no evidence of an international society, and international law "is only the sum of the principles and rules which states ... have agreed to regard as obligatory; and the basis of international obligation is purely contractual".³⁸ Apart from Machiavelli and Hobbes, Wight holds, it was, for example, Hegel, the Social Darwinists, the legal positivists and many a diplomat of the nineteenth and twentieth centuries, who represented this line of thinking.

"At the opposite extreme", Wight continues, there are those who believe that:

(T)he society of states is the unreal thing - a complex of legal fictions and obsolescent diplomatic forms which conceals, obstructs and oppresses the real society of individual men and women, the civitas maxima³⁹. On this view, international society is none other than the community of mankind. If the community of mankind is not yet manifested, yet it is latent, half glimpsed and groping for its necessary fulfilment.⁴⁰

The Huguenots, Kant and Turgot, according to Wight, represent this view, and so do the Jacobins, Mazzini, President Wilson and the Communists. The road to a world state may be peaceful or it may be marked by war, but whatever its nature, it is believed that, as Wight puts it, "the community of mankind, like the kingdom of God, is the glory that shall be revealed ...".⁴¹

Having outlined the two extreme ways of thinking about international relations, Wight introduces the third tradition of thought which has the "quality of a via media"⁴²:

Between the belief that the society of states is non-existent or at best a polite fiction, and the belief that it is the chrysalis for the community of mankind, lies a more complex conception of international society.⁴³

It is a conception, Wight holds, which is expressed in a language which is imprecise and full of qualifications. It does not deny the sovereign-

ty of states, but maintains that this sovereignty is relative and not absolute. It sees the states not as dissolving and merging into a world community, but rather as parts of a greater whole, and this greater whole, international society, exercises restraints upon its parts, the states.

Given "such tension between opposites" an understanding of this conception of international society, Wight argues, can be arrived at only by extensive historical and sociological study. International society, on this view,

(I)s the habitual intercourse of independent communities, beginning in the Christendom of Western Europe and gradually extending throughout the world. It is manifest in the diplomatic system; in the conscious maintenance of the balance of power to preserve the independence of the member-communities; in the regular operations of international law, whose binding force is accepted over a wide though politically unimportant range of subjects; in economic, social and technical interdependence and the functional international institutions established latterly to regulate it. All these presuppose an international social consciousness, a world-wide community-sentiment.⁴⁴

As representatives of this way of thinking, Wight mentions Vitoria, Suárez, Gentili, Grotius, Locke, Callières, Halifax, Montesquieu, Burke, Gentz, Castlereagh, Coleridge, Tocqueville, Lincoln, Gladstone, Cecil of Chelwood, Ferrero, Churchill, Brierly, Harold Nicolson and Spaak.

3. Bull's Account

"The Grotian Conception of International Society" and "Society and Anarchy in International Relations", Hedley Bull's two contributions to Diplomatic Investigations, both mention the three ways of thinking about international relations - the former very briefly; the latter in greater detail.⁴⁵ His most comprehensive account, and the one discussed here, is contained in The Anarchical Society⁴⁶, Bull's inquiry into the nature of order in world politics, where it is used as one of the elements to construct an answer to the question, "Does Order Exist in World Politics?":

Throughout the history of the modern states system there have been three competing traditions of thought: the Hobbesian or realist tradition ...;

the Kantian or universalist tradition ...; and⁴⁷
the Grotian or internationalist tradition ...

According to the Hobbesian tradition - Bull mentions Machiavelli, Bacon, and Hegel and his successors in addition to Hobbes - international relations:

(R)epresent pure conflict between states and resemble a game that is wholly distributive or zero-sum: the interests of each state exclude the interests of any other. The particular international activity that ... is most typical of international activity as a whole, or best provides the clue to it, is war itself. Thus peace, on the Hobbesian view, is a period of recuperation⁴⁸ from the last war and preparation for the next.

To this Hobbesian description of the nature of international relations, Bull adds the Hobbesian prescription for international conduct:

(T)he state is free to pursue its goals in relation to other states without moral or legal restrictions of any kind ... If any moral or legal goals are to be pursued in international politics, these can only be the moral or legal goals of the state itself ... The only rules or principles which ... may be said to limit or circumscribe the behaviour of states in their relations with ~~one~~⁴⁹ another are rules of prudence or expediency.

At the other extreme, there is the Kantian or universalist way of thinking about international relations. As Bull presents it, the Kantian view is that:

The dominant theme of international relations ... is only apparently the relationship among states, and is really the relationship among all men in the community of mankind - which exists potentially, even if it does not exist actually, and which when it comes into⁵⁰ being will sweep the system of states into limbo.

The Kantians hold that:

Within the community of all mankind ... the interests of all men are one and the same; international politics ... is ... a purely co-operative or non-zero-sum game. Conflicts of interest exist among the ruling cliques of states, but this is only at the superficial or transient level of the existing system of states ... The particular interna-

tional activity which ... most typifies international activity as a whole is the horizontal conflict of ideology that cuts across the boundaries of states and divides human society into two camps - the trustees of the immanent community⁵¹ of mankind and those who stand in its way ...

For the Kantians, Bull claims, there do exist moral rules in international relations, but these rules do not enjoin the preservation of the system, but rather its overthrow and replacement by a universal society.⁵²

Between the realist and the universalist traditions there is the Grotian or internationalist tradition. As Bull puts it:

The Grotian tradition describes international politics in terms of a society of states or international society. (This tradition contends) that states are not engaged in simple struggle ... but are limited in their conflicts with one another by common rules and institutions. (It accepts) the Hobbesian premise that sovereigns or states are the principal reality in international politics; the immediate members of international society⁵³ are states rather than individual human beings.

Neither complete conflict of interests between states nor complete identity of interests reflects international reality. Neither war between states nor horizontal conflict cutting across the boundaries of states is the most typical international activity, but rather "trade - or, more generally, economic and social intercourse between one country and another".⁵⁴

As far as their prescription for international conduct is concerned, the Grotians hold that:

(A)ll states, in their dealings with one another, are bound by the rules and institutions of the society they form ... States ... are bound not only by rules of prudence or expediency but also by imperatives of morality and law. But ... what these imperatives enjoin is not the overthrow of the system of states and its replacement by a universal community of mankind, but rather acceptance of the requirements of coexistence and co-operation⁵⁵ in a society of states.

Bull's list of representatives of this tradition of thought is long. It includes, for example, Vitoria, Suárez, Gentili, Grotius, Pufendorf,

Calliëres, Bynkershoek, Wolff, J.M. Moser, Vattel, Burke, G.F. von Martens, Heeren, Gentz, Ancillon, Castlereagh, Ranke, Gladstone, Phillimore and Salisbury.

4. Comparing the Three Accounts

The idea that thinking about international relations can be arranged in three distinctive patterns forming traditions of thought is central to the three accounts discussed above, just as the idea of international society is central to one of these traditions: the Grotian or rationalist or internationalist - the via media.

Gierke, in contrast with Wight and Bull, does not use the word "international" to describe the society of states. Instead, he uses the word voelkerrechtlich, a word for which there is no entirely satisfactory translation into English.⁵⁶ Gierke does not make clear whether he avoids the word "international" because he feels it is inappropriate to apply a word, first used according to the Oxford Dictionary in 1780⁵⁷, to an entity which he sees appearing nearly three centuries earlier; whether he uses voelkerrechtlich in order to emphasize its legal aspect; or whether he thinks there is nothing but the legal aspect to it.

There is a second definitional question. It relates to the word "society". Gierke does not distinguish between Gemeinschaft (community) and Gesellschaft (society), nor does he use the word "system". Wight, like Gierke, uses "society" and "community" interchangeably: "Sociologists", he explains, "have not agreed on a satisfactory distinction in usage between the words "society" and "community", and in this paper, as in most of the literature of international law, they will be used interchangeably".⁵⁸ But Wight also uses the word "system" and, for the most part, does not distinguish between "system" and "society" or "community". There is a sentence which suggests that "society" and "system" may not be identical, but this occurs only once: "It can scarcely be denied that there is a system of states, and to admit that there is a system comes half way to admitting that there is a society; for a society is a number of individuals joined in a system of relationships for certain common purposes".⁵⁹ For the rest, Wight moves with ease between "society", "community" and "system": "(International society) has been variously called the family of nations, the states-system, the society of states, the international community".⁶⁰

Like Gierke and Wight, Bull does not distinguish between "society" and "community", but he does draw an important distinction between "society" and "system". He defines the latter thus:

(W)here states are in regular contact with one another, and where in addition there is interaction between them sufficient to make the behaviour of each a necessary element in the calculations of the other, then we may speak of their forming a system.⁶¹

"Society", in contrast, is defined in the following way:

A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.⁶²

Is it, in the interest of clarity of thought, advisable to distinguish between "society", "community" and "system", or does it, as Geoffrey Berridge suggests, add confusion to the discussion?⁶³ The answer seems to lie between these two positions. As none of the three thinkers distinguishes between "society" and "community", as Gierke does not use the word "system", and as Bull draws an important distinction between "society" and "system", it seems best, for the purposes of this inquiry, to regard "society" and "community" as interchangeable, but to accept Bull's distinction between "society" (or "community") and "system".⁶⁴ The question then remains whether the findings of this study will support the proposed usage of these three words.

A third definitional question involves the word "tradition". Gierke does not use it when presenting the successive exponents of the three patterns of thought; Wight and Bull do not hesitate to employ it. Is it an appropriate term, or does it suggest connections and continuities which, on closer inspection, do not hold? The findings will help to answer this question. In the meantime, the word "tradition" will not be avoided, but will be used to reflect Wight's and Bull's usage of it.

Gierke places at the origin of the three ways of thinking about international relations different views about the nature of sovereignty. For Wight and Bull, they arose from disagreement about the nature of the relationship between states. Gierke sees the different views appearing

in the sixteenth century, his representative thinkers being Bodin, Con-
nanus and Vitoria. Wight does likewise, mentioning Machiavelli and Vi-
toria. Bull speaks of a first phase of the three traditions of thought,
which he attaches to the fifteenth, sixteenth and seventeenth centuries.
Machiavelli and Vitoria are his first spokesmen; like Wight, he does not
name a universalist.

In Gierke's account the three ways of thinking about international
relations remain nameless. They were christened by Wight, who initially
called them the realist, rationalist and revolutionist traditions, and
later the Machiavellian, Grotian and Kantian traditions respectively.
Yet this naming process became known only through Hedley Bull's and Bri-
an Porter's writings.⁶⁵ Wight's published work does not mention any of
these names in connection with the three traditions.⁶⁶ The only time he
refers to a tradition by name is in "Western Values" where he calls the
Grotian tradition the "constitutional tradition"⁶⁷, adding that it has
the quality of a via media. Bull, pondering Wight's thoughts, expressed
a preference for the second set of names, that is, the terms Machiavel-
lian, Grotian and Kantian, but himself chose a slight variation: the
Hobbesian or realist tradition, the Kantian or universalist tradition
and the Grotian or internationalist tradition.⁶⁸

The three accounts include the names of many thinkers. Yet neither
Gierke, Wight nor Bull claims completeness for his lists. It is there-
fore not surprising to find that, while some names recur in each account
in the same tradition (for example, Suárez, Hobbes, Grotius and Kant),
other names recur in only two accounts in the same tradition (for exam-
ple, Callières, Burke, Gentz and Hegel), and some other names again oc-
cur in only one account (for example, Leibniz, Halifax, Vattel and
Fichte). However, there are some names which appear in different tradi-
tions in the three accounts. Vitoria and Gentili, for example, figure
in Gierke's account amongst the universalists, whereas Wight and Bull
mention them among the internationalists. Pufendorf is allocated to the
realists by Gierke, and to the internationalists by Bull. Do these dif-
ferences reflect changing views on the part of those thinkers? Or do
they result from different criteria of selection on the part of Gierke,
Wight and Bull - criteria which they do not explain? There is a third
question: are there thinkers in the history of international relations
who do not fit into any one of the three traditions? And a fourth ques-
tion: the three traditions are presented as having appeared and devel-

oped in Europe, and all of the thinkers mentioned by Gierke, Wight and Bull are European or American. Does this mean that the experience reflected in the three traditions is exclusively Western, or have there been other sources as well?

The three accounts not only agree that thinking about international relations in the past can be arranged in three distinctive patterns forming traditions of thought. They also agree that these traditions present themselves in a certain way: the middle position is taken up by the Grotian, rationalist or internationalist tradition; one side is occupied by the Machiavellian, Hobbesian or realist tradition, and the other side is held by the Kantian, revolutionist or universalist tradition. And the three accounts agree that this coexistence has not been entirely peaceful. The language which Gierke uses to describe the interaction of the three traditions - to be victorious and to die, to be dominant and to defend - reflects his general belief that: "Just as all life, so all history is a struggle; and the struggle does not lead to harmony in the short run; more often it results in suppression of the vanquished and in tyranny of the victor ... Only in the long run, the growing intelligence, the growing consciousness of nations ... will achieve the longed-for harmony".⁶⁹

Wight shares Gierke's view that the three traditions have not lived quietly side by side. His language, however, is less dramatic. When thinking of the Grotian tradition, he says: "This pattern of ideas is persistent and recurrent. Sometimes eclipsed and distorted, it has constantly reappeared and reasserted its authority ..." ⁷⁰, and later he adds: "(T)here are other patterns of ideas in international history for which persistence, recurrence and coherence can be claimed". ⁷¹ But in contrast with Gierke, Wight sees no end to the struggle or debate, either in the short or in the long run.

Bull prefers the term "competition" when describing the relationship between the three traditions of thought:

Throughout the history of the modern states system there have been three competing traditions of thought ... ⁷²

In the twentieth century as in the sixteenth and seventeenth centuries, the idea of international society has been on the defensive. On the one hand, the Hobbesian or realist interpretation of

international politics has been fed by the two World Wars, and by the expansion of international society beyond its originally European confines. On the other hand, Kantian or universalist interpretations have been fed by a striving to transcend the states system so as to escape the conflict and disorder that have accompanied it in this century, and by the Russian and Chinese revolutions, which have given a new currency to doctrines of global transnational solidarity, both communist and anticommunist.⁷³

Bull neither suggests a harmonious solution like Gierke nor no solution like Wight. There may be one or there may be none. And if there is one, it may be quite different from all previous experience.⁷⁴

Whether one sees the relationship between the three traditions as a struggle, or a debate, or a competition, there is a question which remains. The three accounts make it clear that the Hobbesian and Grotian traditions are incompatible with one another. They are less clear whether the universalist tradition is incompatible with the other traditions, or rather is addressed to different concerns, that is to say, is less concerned with the character of the international system or society as it exists, and more concerned to transcend it. For the purposes of this inquiry, thinkers who put forward ideas of a world state and/or world government will be regarded as representing the universalist tradition of thought.

The context within which the accounts are placed differs from Gierke to Wight, and from Wight to Bull. In both of Gierke's works, Johannes Althusius and Das Deutsche Genossenschaftsrecht, the account of the three ways of thinking about international relations is part of the discussion of natural-law theories of state and society. To use Gierke's own words: "The contradictions we find at work in the natural-law theory of corporations are reflected in the way it treats associations above the state".⁷⁵ For Gierke, the link between the three ways of thinking about international relations and the natural-law theories of state and society is direct. He also holds that in its core the natural-law conception of state and society is a juristic conception - he even thinks of it as "a rather one-sided conception".⁷⁶ Machiavelli thus cannot be made a representative of the same tradition as Hobbes, for his conception of state and society is "purely political", which means that it becomes "the rival of the natural-law construction of state".⁷⁷ The idea

of a rival theory is not further developed by Gierke.⁷⁸ Nor does he put the three ways of thinking about international relations to any further use. The reason was given above: "Excluded from consideration are all associations ... which do not succeed in attaining an independent legal personality above their members".⁷⁹

Wight, in contrast with Gierke, made the three traditions central to his thinking about international relations.

In "Western Values" it is the suggestion that the values of a society express themselves in its ideas rather than in the record of its practice which provides the context within which he presents his account of the three traditions, and he advances the proposition that, while the existence of these three traditions is a characteristic feature of the history of thought about international relations in modern Europe, the "constitutional tradition" is "specially representative of Western values".⁸⁰ And he investigates this proposition by relating it to questions such as order and how to maintain it, intervention and international morality.

In Systems of States Wight places his account of the three traditions in the context of cultural questions which he raises in the introductory chapter entitled "De Systematibus Civitatum" or "On Systems of States". After noting that "(w)e must assume that a states-system will not come into being without a degree of cultural unity among its members"⁸¹, he points out that:

A characteristic feature of the European states-system has been its tendency to internal fracture ... The Religious Wars marked the first fracture in the states-system; the French Revolutionary Wars marked a second; the totalitarian revolutions and wars of the twentieth century have marked a third.⁸²

There follows a question: "Has any other states-system shown an internal cultural differentiation leading to ideological schism and crusading attitudes?"⁸³, immediately after which he introduces the three traditions of thought: "A familiar aspect of the intellectual history of the modern European states-system has been the way in which its theory has fallen into three main traditions".⁸⁴

The other four papers on states systems contained in the volume

Systems of States represent an application by Wight of his proposition that international society, on the Grotian view, can be "properly described only in historical and sociological depth".⁸⁵ Thus we find him exploring the chronological and geographical boundaries of the states systems he is concerned with, and what he calls their "internal marks", by which he means the members of the system (sovereign states), their mutual recognition, great powers, the diplomatic system, international law, and the balance of power.⁸⁶

In "An Anatomy of International Thought" Wight gives an account of the three ways of thinking about international relations without providing a specific context. As he presents it, analyzing international thought means discerning three patterns of thought.⁸⁷

Regarding his as yet unpublished lectures on international theory, it is impossible to say, from what has been written about them, whether or not there was a specific context within which he discussed the three traditions.⁸⁸ The uses to which Wight put his account have, however, been pointed out. Thus Hedley Bull writes:

Having identified these three patterns of thought Wight went on to trace the distinctive doctrines that each of them put forward concerning war, diplomacy, power, national interest, the obligation of treaties, the obligation of an individual to bear arms, the conduct of foreign policy and the relations between civilized states and so-called barbarians.⁸⁹

And, as an after-thought, Bull adds:

Wight was, I believe, too ambitious in attributing to the Machiavellians, the Grotians and the Kantians distinctive views not only about war, peace, diplomacy, intervention and other matters of International Relations but about human psychology, about irony and tragedy, about methodology and epistemology.⁹⁰

Bull, in contrast with Gierke and Wight, was not so much concerned with showing the three traditions to be a historical experience of the Western mind, but rather to explore their role and significance in the context of present day thinking and action in international relations.

In "Society and Anarchy in International Relations" Bull's account of the three traditions of thought is preceded by the observation that

"(i)t might be thought that the opinions I propose to consider are to be found at the present time only among the small group of people who advocate the establishment of a world government. This is far from being the case".⁹¹ And the sentence which concludes the discussion of the three traditions and their underlying assumptions reads: "Formidable though the classic dangers are of a plurality of sovereign states, these have to be reckoned against those inherent in the attempt to contain disparate communities within the framework of a single government"⁹², adding that "(i)t is an entirely reasonable view of world order at the present time that it is best served by living with the former dangers rather than by attempting to face the latter".⁹³

The experience of this century is again very much in the foreground of Bull's mind when he discusses "The Grotian Conception of International Society" which contains a very brief mention of the three traditions. "Underlying a great deal of the theory and practice of international relations since the First World War there is a certain conception of international society, whose imprint may be traced in the Covenant of the League of Nations, the Paris Act, the United Nations Charter and the Charter of the International Military Tribunal at Nuremberg".⁹⁴ After stating the essence of the Grotian conception and evaluating the adequacy of its prescriptions, Bull leaves the reader with the following thought: "And although the solidarity exhibited by international society may increase in the future, just as it may decrease, it can still be argued that in the twentieth century the Grotian conception has proved premature".⁹⁵

The third time we meet Bull's account of the three traditions is in The Anarchical Society. This "inquiry into the nature of order in world politics, and in particular into the society of sovereign states, through which such order as exists in world politics is now maintained"⁹⁶, poses in the second chapter the question, "Does Order Exist in World Politics?". It is within this context that the account appears and Bull uses it as one of the means to arrive at an affirmative answer to his question. International order, he argues, is part of the historical record, because international society is part of the historical record. At the level of ideas, it is the Grotian tradition of thought which shows this to be the case, and at the practical level, it is institutions such as the balance of power, international law, diplomacy,

and war which "serve to symbolize the existence of an international society that is more than the sum of its members".⁹⁷ Bull examines these institutions of international society and their contemporary relationship to international order and concludes: "International society today is in decline ...".⁹⁸

The foregoing discussion of the accounts by Gierke, Wight and Bull provides form and substance to the statement with which this chapter begins, and points to the place which the three traditions of thought occupy in the writings of the three scholars. The whole of this "structure of ideas" will, however, not be made the subject of this inquiry. Thus questions such as "Does all past thought about international relations fit into the three traditions?" or "How much of international politics can be explained by these traditions of thought?" will remain unanswered. It is only one of its component parts that is of interest here - the part which figures most prominently in the writings of Wight and Bull: the Grotian or rationalist or internationalist way of thinking - the via media.

5. The Hypothesis

There is, it is claimed, a way of thinking about international relations which is to be found midway between the realist (or Machiavellian or Hobbesian) tradition and the universalist (or Kantian or revolutionist) tradition. This is the Grotian (or rationalist or internationalist) tradition - here called the via media. It originated in the Europe of the fifteenth and sixteenth centuries and, together with the other two, has existed since that time. The list of its exponents is long, and includes among its first representatives thinkers such as Vitoria, Connanus, Suárez, Gentili and Grotius.

The via media, it is further claimed, displays a pattern which, while sharing some ideas with the other two, is distinct from both of them. In contrast with the universalist pattern, it presents the idea of a plurality of political entities - entities which Gierke, Wight and Bull identify as sovereign states - and, in contrast with the realist, it includes the further idea that there is a tie that binds the sovereign states. Gierke gives it the form of a natural law of nations, Wight describes it as an "international social consciousness", a "community-sentiment", and Bull speaks of common interests and common val-

ues. According to Gierke, the tie that binds is universal: mankind constitutes an indestructible unity. For Wight and Bull, it is initially limited to Christendom, in the case of Wight even only to Western Christendom, and becomes universal only gradually. Wight and Bull extend the pattern of ideas further by submitting that the tie that binds expresses itself in common rules and common institutions among the sovereign states, such as, for example, the diplomatic system, the maintenance of the balance of power, the regular workings of international law, the special role of the great powers, and economic, social and technical collaboration.

The term which best identifies this pattern of ideas is international society.

6. Questions Suggested by the Hypothesis

The hypothesis derived from Gierke, Wight and Bull suggests a number of questions which relate partly to the pattern of ideas, and partly to the thinkers.

1. Do the thinkers said to represent the via media have the idea of a plurality of political entities and, if so, what do they say about these entities?

- Do they have the idea of that which links these entities and, if so, what content do they give to it?

- Do they have the idea of rules and institutions shared by these entities and, if so, how do they present these?

- How do they reconcile war with the idea of international society?

- Are there other relevant ideas, not suggested by the hypothesis, but present in the writings of these thinkers?

2. Do the thinkers said to represent the via media see themselves as taking up a position which differentiates them from both realism and universalism?

- Are they familiar with one another's writings and, if so, what is their reaction to them? Do they regard themselves as forming a tra-

dition of thought and, if so, when or with whom do they see it beginning?

These questions will guide the search for the idea of international society in Part Two of this study, and the attempt to answer them will provide the structure of four of its five chapters - those on Erasmus, Vitoria, Gentili and Grotius. Chapter Two will follow a different order of presentation, as it is not concerned with a particular thinker but inquires into the beginnings of the idea of international society.

PART TWO

THE SEARCH AND THE FINDINGS

CHAPTER II

THE IDEA OF INTERNATIONAL SOCIETY BEFORE 1500

The search for the beginning of the idea of international society, its first formulation so to say, would not involve a long journey back in time. This, at least, was the expectation raised by the hypothesis: Otto von Gierke, Martin Wight and Hedley Bull had been at one in claiming that it originated in Europe in the late fifteenth/early sixteenth century¹, and the wider community of international relations scholars had not questioned their claim: the Middle Ages were seen as the time of the ideas of unity, of hierarchy, and of universal empire, which came to an end with the fifteenth century when the Modern Age, with new sets of ideas, began.²

This expectation turned out to be mistaken. The search led through the fifteenth century, the fourteenth, and the thirteenth, without finding what it had sought: the beginning of the idea of international society. Instead, it uncovered evidence for the continuation of this idea back in time, negating the claim that the medieval view of the world was to be equated with universalism. And the search was not pursued into the twelfth century because there was no indication that it would bring the much wanted discovery. There was Justus Hashagen saying:

One used to be inclined to put the emergence of the European states system at the end of the Middle Ages, when the French King Charles VIII opened the fight for Italy in 1494 ... But this date has proved to be by far too late, for it disregards a lot of evidence which clearly points to the beginnings of the European states system in the preceding centuries.

There was Walther Kienast referring to "the leading position which Frederick I (1152 - 1190) occupied in the European world of states ...".⁴ There was Otto Hintze writing about the decay of the universal empire, which, in his opinion, began in the second half of the ninth century and which made it possible for the Church to emancipate itself from the temporal power, and noting:

With the discord between emperor and pope, a dis-

cord which characterizes the whole of the Middle Ages, the possibility for the formation of a European states system was given ... Neither power, either the temporal or the spiritual, was able to realize the idea of a Christian universal empire, because the one always prevented the other from achieving this. In this way, between emperor and pope, a group of co-ordinated, independent states was able to develop.

And there was Geoffrey Barraclough making the additional point that "at the very same time (as this "interlocking system" came into existence)" - his reference is to the early twelfth century - "philosophers and historians and propagandists began to build up the ideological foundations of the new national states".⁶

Quite clearly, an inquiry into the idea of international society before 1500 was not something to be compressed into one chapter, the overture so to say to the main work. What could be done, however, in a chapter, was to give an account of the search by presenting examples of aspects of the idea of international society which impressed the mind when travelling back in time - aspects which would be met with again in the writings of Erasmus, Vitoria, Gentili and Grotius - thereby anchoring this study in its own past.

Reflecting the experience of the journey, the examples are presented in inverse chronological order. They emphasize the ideas of political plurality and equality, the unexpected findings, without, however, omitting the idea of that which links - all three important elements of the idea of international society. In fact, it will be interesting to see how often, in these examples, the three ideas occur in close proximity. A comment on language concludes the chapter.

The Fifteenth Century

The fifteenth century was traversed quickly with the aim of reaching that event which Ernest Nys had called "those imposing meetings of Christendom"⁷, and to which Adda Bozeman had attached the subtitle "The Beginnings of Congressional Diplomacy"⁸: the Council of Constance. For if no trace of the idea of international society could be found there, one would not need to continue the journey, but should turn back and go over the ground more slowly in order to discover where that idea might first be perceived.

The Council of Constance met from 1414 to 1418 with the purpose of accomplishing "first, the perfect pacification and union of the Church, second, the reformation of the ecclesiastical state"⁹, and a reading of the three Chronicles, composed during or shortly after the event¹⁰, quickly dispelled all uncertainty: they contained more than a trace of the ideas of plurality and equality, and these were found to be accompanied by ideas of law and what is right and just.

To give three examples:

(a) There is the memorandum composed by the Cardinal of Cambrai proposing an answer to the question of who should be admitted to vote on measures in the Council. "The following considerations", he begins, "are presented to oppose the pride and ignorance of those who maintain that in this holy Council of Constance, through all its sessions, only the greater prelates, bishops, and abbots should vote in the final verdict on the problems before us".¹¹ The Cardinal then draws a distinction between subjects which relate to the Catholic faith about which his memorandum has nothing to say, and the subjects which concern the ending of the schism and to which his memorandum does address itself, and goes on to argue for a widening of the electoral base by including, not only "priors and the doctors of sacred theology and canon and civil law"¹², but also "kings and princes and their ambassadors":

With regard to the question of putting an end to the present Schism and restoring peace to the Church, it would seem neither just, right, nor rational to attempt to exclude kings, princes, or their ambassadors from a vote or share in the final decision, since they make up a large and honorable part of the Council and the establishment of peace intimately concerns them and the people under them, and without their advice, assistance and favor the decisions of the Council cannot be put into execution.¹³

As the Chronicles show, kings, princes, or their ambassadors were included in the decision-making process.

(b) There is the long speech by the ambassador of the "most serene King of France" against the English, contending that, by law, the latter do not constitute a nation with "the voice or representative authority of one fourth or one fifth of Christendom or of the entire obedi-

ence of the Roman Pontiff", which should and could, by law, be considered equal to "the voice and authority of all Italy or all Gaul or all Spain or all Germany".¹⁴

The English spokesman replies with as many reasons why the French protest should not be valid:

They dare call it inconsistent with justice and reason to treat the English nation as equal to the whole Gallic nation ... Do not law, reason, and letters put the two nations on an equality? As regards all the requirements for being a nation like the Gallic nation ... - whether a nation be understood as a race, relationship, and habit of unity, separate from others, or as a difference of language, ... or ... as an equality of territory with for instance, the Gallic nation - in all these respects the renowned nation of England or Britain is one of the four or five nations that comprise the papal obedience ...¹⁵

The Englishman goes on to condemn that "odious discrimination" which results from calling the nomenclature of nations after particular kingdoms. It simply is "prejudicial and arrogant", he insists, "to call men who are neither French nor Gauls, nor subject to them, Frenchmen or Gauls".¹⁶

The French petition was unacceptable to the English, and they demanded its rejection by the Council:

An equal has no authority over an equal nor one great power over another ... (T)he renowned nation of England or Britain ... deserves to represent and exercise a voice of as much authority in a general council as any other nation ... Therefore, all and each who protest ... against it ... should without exception be punished ...¹⁷

As the Chronicles show, the English nation remained a nation.

(c) There is the question of the rights of non-Christians "solemnly placed" before these imposing meetings of Christendom.¹⁸ The relevant entries in the Chronicles are rather brief and cryptic such as: (February 1416) - "King Ladislas of Poland, Duke Alexander Withold, Grand Duke of Lithuania, ... presented by envoys and letters their complaints and accusations against the Teutonic Knights of Prussia"¹⁹; (June 1416) - "(A)ll the nations assembled together and the envoys who had gone to the

heathen appeared before them. They complained of the Teutonic lords, the brothers of Prussia, who had opposed them ..."²⁰; (April 1418) - "As the clamor and altercation on either side increased around the ambassadors of the King of Poland and Duke Withold, lord Paul of Ladimir (sic), one of the said ambassadors, suddenly rose ...".²¹

An illumination of these passages is provided by Stanislaus Belch's two-volume work Paulus Vladimiri and His Doctrine Concerning International Law and Politics.²² Here one meets with numerous references to the Council of Constance and the question that concerned the Polish ambassadors. Thus one learns that in July 1415 Paulus Vladimiri (ca. 1370 - 1436), rector of the university of Cracow, read his treatises on the powers of the pope and emperor in relation to non-Christians, censuring the Teutonic Order and its defenders²³, and proposing two resolutions for adoption: the rejection of the doctrine denying non-Christians the rights which they have by natural law; and the enforcement, as a law binding all Christians, of the teaching of Thomas of Aquinas on the rights of non-Christians²⁴; or one learns that in November 1415 Vladimiri acted as the spokesman for a delegation from the non-Christian Samogitians who arrived at Constance to plead for "the restitution of what had been taken away from them by Christian powers, the freedom from the Order's tyrannic rule, the right to be converted to (the) Christian religion by missionaries respecting their rights, and the right to offer and owe their allegiance to whichever superior power they chose".²⁵

The question of the equality of rights between Christians and non-Christians was debated at Constance, and it is tempting to stay for a moment with the thoughts of Paulus Vladimiri. The Polish scholar and diplomat argues that there is a natural equality between Christians and non-Christians, resting on the fact that both are human beings created by God. Being human beings, they are alike, and likeness makes for friendship. This natural friendship is the source of justice. According to this natural justice, Christians and non-Christians have the same rights to possess material goods, and these rights are given legal expression by the same law - the jus gentium. It is a law which is distributive and regulative, that is, it is concerned with the division of material goods among men, and it is concerned with procuring justice.²⁶ "(T)he pagans", Vladimiri insists, "possess their dominions justly by the natural law of nations; therefore their dominions cannot be lawful-

ly seized by others".²⁷

As Belch indicates, the Council was unable to decide the question of the rights of non-Christian peoples.

The idea that conflict ought to be resolved with the help of diplomacy, an important instance of which was the Council of Constance, was not new. According to Christian Lange's study Histoire de l'Internationalisme, the period of 1147 to 1495 witnessed on the average one case of mediation or arbitration every second year.²⁸ And the role of mediator or arbitrator was not the reserve of a particular office - emperors and popes, kings and princes and cities assumed it at one time or another.

The Fourteenth Century

Leaving Constance behind, the search continued into the fourteenth century where, in 1387, it met with the writings of the famous prior from Provence, Honoré Bonet (ca. 1340 - 1405), a man of whom it is said that his knowledge of "the intricate politics of Anjou and of Avignon, of Aragon, of Cyprus and Genoa, was at first hand", and that "(o)n Spain in general, on Portugal, on Hungary and the Turkish menace, he was, at least, unusually well informed".²⁹

In the second chapter of the fourth part of his book The Tree of Battles, Bonet raises and answers the question: "By what law or on what ground can war be made against the Saracens?", and it is worth accompanying his thoughts for a moment.

There are two reasons mainly, Bonet argues, why war should not be made against non-Christians.

Firstly,

(O)ur Lord God has created all the good things of the earth for human creatures, for the evil as well as for the good ... And He makes good corn and all other kinds of good fruits to grow on the lands of the unbelievers as on the lands of the Christians, and sometimes more fruitfully; and also gives them science and natural sense and discretion to lead them in justice; and has given them kingdoms, duchies, counties and empires, and their faith ... And so, since God has given them so many blessings, why should Chris-

tians take these from them?³⁰

Secondly,

(A)ccording to the Holy Scripture we cannot, and ought not to constrain or force unbelievers to receive either Holy Baptism or the Holy Faith, but must leave them in their free will that God has given them.³¹

War may only be declared, Bonet holds, if the non-Christians act against the law of nature; if the non-Christians take lands which belong to the Christians; and if the non-Christians oppress Christians living amongst them.

As Frederick Russell's study The Just War in the Middle Ages shows, attempts at presenting a just law of war did not originate with Bonet, but had a long history going back to Antiquity.³²

In chapter one hundred and six, to give another example from The Tree of Battles, Bonet asks: "What Christian people ought to respect a safe-conduct given by a Christian king to a Saracen king?". Prima facie, he argues, there is no reason why it should be respected. The pope and the emperor are not subject to the king; other kings are not bound by it, because "no man has power over his peers"; also the king's subjects are under no obligation to obey, for "the Scripture says that in things involving sin the subject is not required to obey his lord".³³ But then, Bonet continues:

(W)e must understand clearly for what reason the safe-conduct has been given. If it were for the purpose of treating of the ransom of the king's own brother, a prisoner in Saracen lands, or to consider the baptism of Saracens, or for any other reasonable cause, I would say that in such a case in good equity all Christians would be bound to be favourable to the safe-conduct, and allow the Saracen to pass peacefully ...³⁴

Bonet suggests, in other words, that there may be a "reasonable cause" why Christians and non-Christians should wish to communicate with one another, and this should be acceptable to all, irrespective of other considerations.

Moving from Provence to Paris, one finds Nicole Oresme (ca. 1320 - 1382), a distinguished churchman and scholar, thinking about the benefits of commerce. As he puts it in his Traictie de la Première Invention des Monnoies:

(I)n the course of time men multiplied over the earth, and their possessions were divided and shared among men ... (O)ne man had more of one thing ... than his needs required, while another had little or none of the same thing, but on the contrary had a plenty of something else, of which another was greatly in need. For this reason, therefore, men began to traffic and exchange their riches with one another ...³⁵

Oresme was not the first to give expression to the idea that commerce is a link benefitting those who participate in it. As is evident from M.L. de Mas Latrie's two-volume work Traité de Paix et de Commerce, it was present in treaties which Christian and non-Christian states of the Mediterranean had concluded with one another since the twelfth century, and, in these treaties, it was accompanied by the further idea that custom provides the norms by which the contracting parties agree to abide.³⁶

Via Spain, where a Franciscan composes his Book of the Knowledge of all the Kingdoms, Lands, and Lordships That Are in the World, which he adorns with ninety-four flags³⁷, the way leads to Italy where, about mid-century, Bartolus of Sassoferrato (1314 - 1357) wrote and taught - the "Light of Law" or "Father of Law" as he was called by his contemporaries.³⁸ He formulated in theory what had been the case in practice for a hundred years and longer: the independence of the city.

Gierke had - in the second volume of Das Deutsche Genossenschaftsrecht - offered a detailed description of the actual position of the cities in the thirteenth and fourteenth centuries. According to him it was "the cities as such" which concluded all kinds of political treaties - alliances, peace treaties, treaties of legal protection and commercial treaties - and, when doing this, they acted independently of their overlords, and even if the latter were a party to these treaties, the cities nevertheless appeared as independent powers, side by side with their overlords. It was "the cities as such" which were the partners in the many leagues, above all in "the great south German city leagues" and in "the nordic associations which contained the germ of the Hanse".³⁹ And he had concluded his long account of the external activities of these cities by saying:

Hence, in actual fact, the city is a voelkerrechtliche⁴⁰ entity ... It is as much a unitary political power as princes and lords ... In the fullness of its political power, it represents its territory

and its citizens in the same way as princes and lords represent their territory and their people.⁴¹

The same was true of the cities of north Italy, of Tuscany and Lombardy.

Bartolus brought thought into line with practice by developing a theory of the independent city - the city which recognized no superior and which, within its territory, had the same power as the emperor within his empire. It assured the independent city rights and privileges which made it the equal of other independent political entities, such as king and emperor.⁴² Political plurality was not Bartolus' ideal, but the empire was weak and could no longer be appealed to in dealing with injustices.

The idea of political plurality as the ideal was, however, put forward by a man who was influential in the early years of the fourteenth century: the Dominican John Quidort of Paris (ca. 1240 - 1306), who taught that:

(F)rom the (inner) unity of mankind, there does not follow the necessity of the external unity of its political being; but rather that the nature of man as well as the nature of temporal power accord with a plurality of states.⁴³

This idea, around which he built a theory of the laws according to which the world is structured, is contained in his work De Potestate Regia et Papali⁴⁴ which appeared at Paris in 1303.

Quidort, to stay with his treatise for a moment, argues that, while it is divine prescription which lays down the hierarchical structure of the ministers of the Church, divine law does not determine that in temporal matters the faithful are subject to one supreme universal ruler. Natural, God-given inclination leads to a life in political communities and hence to a choosing of rulers, and these rulers are different according to the different communities over which they rule. A single supreme authority in temporal matters is not required by either natural disposition or by divine law, nor has it here the same usefulness as with the ministers of the Church; firstly, because human beings differ in their body, whereas the human soul which concerns the Church is everywhere the same; secondly, because in temporal matters one person

is not sufficient to rule the whole world, whereas in spiritual matters one head does suffice. The reason is this: the word, the weapon of the spiritual power, reaches everywhere, whereas the sword, the weapon of the temporal power, cannot, if wielded by one person only, penetrate everywhere. For these reasons, it is better that several kings rule in several kingdoms rather than one emperor over the whole world. It also follows from the fact that, at the time when there were emperors, the world never enjoyed such peace as before and after their rule.⁴⁵

Political plurality rather than political oneness is the desirable structure of political life, and Quidort addresses this idea to the pope as much as to the emperor: "(K)ingly power is not from the pope either in itself or in respect to exercise", he declares, "it is from God and from the people ...".⁴⁶

To the idea of political plurality, the learned abbot Engelbert of Volkersdorf (1250 - 1331) joins the idea of that which links. As he formulates it early in the fourteenth century:

There is the jus naturale⁴⁷ which is common to all peoples and kingdoms, and side by side with it there are the norms which derive from Roman law and which, from the point of view of justice and usefulness, are applicable to all peoples and kingdoms, and which all peoples and kingdoms are required to observe within their own boundaries⁴⁸ and in relations with neighbours and foreigners.

The Thirteenth Century

The thirteenth century, no less than the fourteenth, proved to be of interest for those pursuing the idea of international society.

To mention some of the findings:

Towards the end of the century, there was the learned Spanish Franciscan Ramón Lull (1235 - 1316), famous for his work as a missionary, politician, philosopher, and poet, writing:

Humanity is linked in such a way that it would be appropriate if there were only one emperor who stood above the many kings and free princes, just as there is one pope and many prelates. But today there is no emperor with the power which people were used to when the Roman Caesars ruled, and

there now ... is an equality of power ... between one prince and the next, between one city and the next, and the empire has broken up into many parts ...⁴⁹

Between 1270 and 1280, while the young Marco Polo accompanied his father to the Court of Kublay Khan, who entrusted him with public offices, Marino da Caramanico, a judge with King Charles I of Sicily and possibly a professor at the university of Naples, argued for the complete equality of kings with the emperor. The title of princeps⁵⁰, he held, is appropriate for both the emperor and the king, and for every other monarch, for the royal authority is not inferior to the imperial authority. Kings exercise complete and full power.⁵¹ "It is without hesitation, he writes, that:

(W)e call the King of Sicily a free monarch and princeps of his kingdom, and everything that is due to the emperor, is due to him in his kingdom. We boldly assert that he has the right to enact laws for his subjects, including such laws that contradict the general Roman law. He is also entitled to exercise the other imperial rights: to resist him is *lèse-majesté*; he legitimizes bastards; there is no appeal to his judgments. He has his own *fiscus*. All this is because the former Roman empire⁵² has gone, just as the Roman people has gone.

And he adds a sentence which places his argument into historical perspective. "Long before the times of both", he submits, "there already existed, in accordance with the jus gentium which emerged with the human race, established and recognized kingdoms. Hence, an old injustice is being made good".⁵³

In 1268 Henry de Bracton, who had served Henry III of England as a high judge, died leaving an uncompleted work De Legibus et Consuetudinibus Angliae.⁵⁴ Famous for its contribution to English constitutional thinking, this treatise also makes a case against a universal emperor. It argues that, as vicar of Christ, the king has no superior on earth, and places the princeps or king and whoever is not subject to anybody but God on the same level. Just as in spiritual matters the pope is supreme, in temporal matters the king possesses the highest jurisdiction in his realm. The king has all the power which is necessary for him to rule. The English king has the same rights as the Roman emperor.⁵⁵

During the journey through the early seventies, along the sixties and into the fifties, it was impossible not to hear of the great man from Aquino (1225 - 1274). Wherever one went, his name was on the lips of the learned and not-so-learned, and his words, spoken or written, provided food for their minds. Questions relating to God's existence and nature, to creation, free will and immortality, to the process of knowledge, to good and bad, to natural law and government - they all found a place in Thomas Aquinas' synthesis of Christianity and Aristotelianism.⁵⁶

This is not the place to attempt to outline his philosophical system, not even his political theory, which has been described as "characterized by moderation, balance and common sense"⁵⁷, but it is the occasion to note what he had to say about the relationship of Christians to non-Christians. As Heydte puts it:

Not for the first time, but with the whole authority of his name, the Aquinate said: The Church does not prohibit its faithful communication and community with unbelievers,⁵⁸ who have never accepted the religion of Christ.

Taking up this position meant lending support to those who held that a legally binding relationship between Christians and non-Christians was possible.

From 1243 to 1254 Pope Innocent IV was at the helm of the Catholic Church. In his comments on the Decretals⁵⁹ he makes it clear that "(p)roperty and possession, power and dominion may legitimately and without sin exist with infidels", for, as he sees it, "all this is not only for Christians but for every creature endowed with reason, and Christians, for this reason, have no right to rob and take it away".⁶⁰

About the same time, possibly slightly earlier, Raymond of Peña-
fort, one of the great missionaries of the age, also makes it known that it is his view that the property of non-Christians is real property in the legal meaning of the word, so that he who in peace acquires it by force is a robber in the legal sense; that the non-Christian state is a real state which is entitled to demand levies from Christians who live within its boundaries, and the laws of which are binding on Christians who find themselves within its territory; and that the non-Christian state is the equal partner in treaties with a Christian state.⁶¹

Approaching the beginning of the century, one finds the English canonist Alanus teaching at Bologna in 1208, and saying:

What is being said of the emperor may be interpreted in such a way as if it were said of every king or prince who is not subject to a superior: for any king or prince has as much right in his kingdom as the emperor in his empire. The partition (of the world) into kingdoms, which has its legal basis in the jus gentium, has been approved by the pope ...⁶²

And Pope Innocent III (1198 - 1216) opens the thirteenth century by according the French king the right to recognize no superior in temporal matters. This right is contained in the famous Bull Per Venerabilem⁶³ issued in 1202. Kienast, who discusses this event, puts it this way:

A word from Innocent III ..., a subordinate clause⁶⁴ which, however, in no time became a locus communis of the juridical literature, causing much pondering, fell like manna from heaven on the French ... The pope had written: the king of France does not recognize a superior in temporal matters.⁶⁵

With this, the chronicle of examples of aspects of the idea of international society before 1500 closes. It testifies to the existence of the ideas of political plurality and equality in the thirteenth, fourteenth and fifteenth centuries, thereby offering evidence that the universalist pattern of ideas may be insufficient to capture medieval thinking about the world.⁶⁶ And the presence, in the record, of the idea of that which links, in its various forms, may be taken as an indication that plurality and equality were seen, at least by some, to be inseparable from the idea of that which circumscribes.

A Word about Words

On the journey to the thirteenth century, the following question arose more than once: How is one to write about this period, when some of the key words at one's disposal either did not exist or, if they did exist, had a different meaning?

To take the word "state", for example. The Oxford Dictionary says that the word "state" in the meaning of "the body politic as organized for supreme civil rule and government; the political organization which is the basis of civil government; hence the supreme civil power and

government vested in a country or nation" was not used before 1538.⁶⁷ Heydte, to mention a second opinion, argues that it would be anachronistic to apply the word "state" to the political associations of the tenth, eleventh and twelfth centuries; but he advocates its use from the turn of the thirteenth to the fourteenth century onward, since it was not only at that time that the state in our meaning of the word came into existence, but it also was that period which gave this new political phenomenon the name status, state, état.⁶⁸ A third opinion is held by Heinrich Mitteis who submits that one might look at the Middle Ages as having no state only if one thought of the state as an institution based on the concept of an abstract supreme power severed from the personal. If one adopted such a view,

(O)ne would, however, block the path to an understanding of the historical forms of the state. For history, the state is any organization of a people for the purpose of attaining its political ends ... The Middle Ages knew such an organization. It was represented by a system of authoritative personal relations, a structured sequence of authority and subordination, of leadership and followers.⁶⁹

Consequently, Mitteis does not hesitate to use the word "state" at any time during the Middle Ages. The differences in the three opinions, it may be observed, are partly over definition and partly over historical interpretation.

Another word which poses difficulties is "nation". The Oxford Dictionary gives a definition which stems from the nineteenth century, namely "a distinct race or people, characterized by common descent, language, or history, usually organized as a separate political state and occupying a definite territory".⁷⁰

The early fifteenth century, as the Chronicles of the Council of Constance show, knew of two meanings of the word. One was presented by Ulrich Richental, the author of one of the Chronicles, when he said:

Now that you may understand the matters that are to follow, you must know that all Christendom is divided into five parts, which are called in Latin naciones. The first are Italici ... The next part are Germani ... The third are Frantzoni ... The

fourth are Yspani ... The fifth are Anglici.⁷¹

Adding, a few pages later: "Now you must hear what lands and kingdoms belong to each nation".⁷² The list that follows is long, too long to be reproduced here, but to give just one example. Of the Italian nation Richental writes:

To their nation belong Rome and its territory, Lombardy, Tuscany, Liguria, Florence, Venice, the kingdom of Naples ..., the kingdom of Cyprus ..., the empire of Constantinople and the Christian lands belonging to it, the kingdom of Bosnia ..., the kingdom of Sicily and of Candia ..., the kingdoms of Greater and Lesser Turkey or the Christians there, those also that live in Tartary, wherein are included seven empires. All who live there and are Christians belong to the Italian nation.⁷³

The second meaning of the word "nation", akin to the nineteenth-century understanding, was given by the representative of the English nation when he said that a nation may be understood as "a race, relationship, and habit of unity, separate from others, or as a difference of language ...".⁷⁴

Sources relating to the fourteenth and thirteenth centuries continue to mention both meanings. Thus, one of the editors of the *Chronicles of the Council of Constance* points out that the division of the members of a Council into nations had been heard of as early as 1274, on the occasion of the Council of Lyons, and was formalized at Vienne in 1311.⁷⁵ Bozeman notes that the credit for using the word "nation" in this way does not go to the Church Councils but to the medieval universities.⁷⁶ And Heydte, more interested in the second meaning of the word, makes the point that "nation" in the sense of "community linked by common descent" and "characterized by a common language" was employed throughout the Middle Ages.⁷⁷ How frequently it was used in this sense is another question. Bonet, for example, does not include it in his book *The Tree of Battles*. When referring to the subjects of particular kings or of the emperor, he uses the word "people" or "peoples"⁷⁸ which, in Latin, may be gens (gentes) or populus (populi), and these two words, in turn, have different connotations.⁷⁹ And, to give another example, the Latin for "law of nations", appearing a number of times on the preceding pages, is not jus nationum but jus gentium, which the French have preserved in their rendering of it: le droit des gens.

The list of words posing difficulties for the twentieth-century mind could be extended. "International" would be next, and even the word "Europe" would have to be included, for, as Denys Hay points out: "Throughout the centuries up to and including the thirteenth the word 'Europe' itself is ... rarely met with in passages other than those descriptive of geographical situation".⁸⁰ But perhaps the examples discussed above suffice to indicate the nature of the problem and the need to observe care when applying today's vocabulary to the past - be it the Middle Ages or the times of Erasmus, Vitoria, Gentili and Grotius.

CHAPTER III

DESIDERIUS ERASMUS OF ROTTERDAM

The findings of the journey back in time, presented in the preceding chapter, made it difficult not to think that the late fifteenth/early sixteenth century should have had more thinkers representative of the via media than the hypothesis suggests. Otto von Gierke, Martin Wight and Hedley Bull, it is true, do not claim completeness for the list of names accompanying their respective accounts of the idea of international society, but there are very few entries earlier than the seventeenth-century thinker Hugo Grotius.¹ A further thought was quick to join the first: if it were possible to find another name to add to the existing list, this would strengthen not only the hypothesis but also the findings of the foregoing chapter.

It did not take long to find a name: there is hardly a general history of the Europe of that time which does not accord a place to Desiderius Erasmus of Rotterdam.² It took a little longer to discover whether the name stood for a thinker of the via media. Histories of thought about international relations say little about Erasmus, and what they say is inconclusive in relation to this question.³ The decision to include Erasmus in this study resulted from a reading of his writings, and the decision to read him was prompted by James Brown Scott's discussion of The Education of a Christian Prince.⁴

If the findings of the preceding chapter led to Erasmus, the reverse does not hold true: Erasmus seldom refers to authors of the Middle Ages - that thousand-year period reaching back to the fifth century A.D. - and when he does, he usually expresses disapprobation.⁵ The authors to whom he feels attracted belong mainly to classical and Christian Antiquity - that other thousand-year period going back to 500 B.C.: he translates, edits and annotates them, and uses them as sources in his own writings.

If Erasmus distanced himself from the Middle Ages, his own age was anxious to make his acquaintance, and the wish to meet him has persisted over time. Evidence for this are not only the numerous editions and translations of his works which have appeared, and continue to appear,

but also the many studies of his life and works which accompany them. For a ready appreciation of this immense intellectual activity, his own and that of others, it suffices to look at one of the more comprehensive bibliographies.⁶ And these same sources also reveal that his ideas about international matters have met with little interest on the part of the international relations community.

For purposes of introduction, some details about his life and publications may be useful at this point.⁷

Erasmus was born of an "unlawful" and as he called it "sacrilegious union"⁸ - his year of birth is variously given as 1466, 1467 or 1469 - in Rotterdam, Holland, then part of the Burgundian Low Countries which came under Habsburg rule in 1477. His schooling took place mainly at Deventer where he studied with the Brethren of the Common Life, a group of teachers regarded as the leading educators of the time. In 1487 he entered the Augustinian monastery at Steyn and stayed there for approximately six years. From this period date letters, and also Anti-barbarorum Liber (The Book of the Antibarbarians), a treatise in which he sets out his position in support of the use of classical learning - a position which he never abandoned, as is evident from his editions of authors such as Aristotle, Cicero, Euripides, Galen, Isocrates, Ovid, Plutarch, Seneca, Suetonius and Terence, which he published in the course of his life. In 1493 he was appointed secretary to Henry of Bergen, Bishop of Cambrai.

In 1495 Erasmus took leave of absence from the Bishop to study theology at the university of Paris for four years. In 1499 he accepted an invitation to England and stayed for a year, studying Greek, the ancient Church Fathers and the Scriptures. He returned to Paris in 1500 and published the first edition of the Adagia (Adages), a collection of proverbs from classical Antiquity, which he kept expanding throughout his life.

From 1501 to 1505 he was in the Low Countries, mainly in the university city of Louvain where, in 1503, he published his composition Enchiridion Militis Christiani (The Handbook of a Christian Soldier), a guide to Christian living. In 1504 he gave an oration, Panegyricus (The Panegyric), at Brussels, capital of Burgundy, on the safe return from Spain of Prince Philip, Duke of Burgundy and father of the future empe-

ror Charles V. In 1505 he visited England again.

The years 1506 to 1509 saw him in Italy, travelling and studying. From this period also dates his doctorate in theology from the university of Turin. In 1509 he returned to England and spent the next five years there - a sojourn interspersed with journeys to the Continent. During this time he wrote what came to be one of his best known works, Moriae Encomium (The Praise of Folly), published in Paris in 1511. Also credited to his account is the dialogue Julius Exclusus e Coelis (Julius Excluded from Heaven), a satire on the late Pope Julius II, which appeared anonymously in 1514 in Paris. The attempt, that year, by the Augustinian canons to regain Erasmus for the monastic life at Steyn was unsuccessful.

Between 1514 and 1521 he stayed at various places in the Low Countries, visited England three more times, and travelled in Germany and Switzerland. In 1516 he was appointed Councillor to Prince Charles. His response was the treatise Institutio Principis Christiani (The Education of a Christian Prince), which he dedicated to Charles. The same year also saw the publication of his editions of the Greek New Testament, with his translation into Latin, and of Jerome, an ancient Church Father. In 1517 he organized the Collegium Trilingue for the study of Hebrew, Greek and Latin at Louvain, and published his "great denunciation of war", Querela Pacis (The Complaint of Peace). In 1519/1520 he helped to formulate a policy of protection sought by the Duke of Saxony for Martin Luther. His advice is contained in letters to various rulers and in what has come to be known as Axiomata pro Causa Lutheri (Propositions in Support of Luther).

In 1521 Erasmus left the Low Countries, as his reaction to Luther was viewed with suspicion at Louvain, and moved to Basel where he stayed until 1529. Publications during these years include editions of further Church Fathers, for example, Arnobius, Hilary, Irenaeus, Ambrose, and Augustine; some of his "most piquant" Colloquia (Colloquies), dialogues or conversations; a tract against Luther entitled De Libero Arbitrio (On Free Will); and his Opus Epistolarum - not the first but the largest edition of his letters during his lifetime.

Because of religious turbulence Erasmus left Basel in 1529 and moved to Freiburg, which was then under the rule of the Austrian branch

of the House of Habsburg. He stayed for six years, continuing to write and publish: for example, in 1530 the essay Utilissima Consultatio de Bello Turcis Inferendo (A Valued Discussion on War against the Turks); in 1533 De Sarcienda Ecclesiae Concordia (On Mending the Peace of the Church); and in 1535 Ecclesiastes (On Preaching).

In 1535 Erasmus returned to now reformed and tranquil Basel. He declined Pope Paul's III invitation to Rome, and died at Basel in 1536.

What Erasmus, often seen as the greatest scholar and writer of his age, offers to those who pursue the idea of international society is not confined to a particular book or treatise, or to a particular phase of his working life, but is dispersed throughout his writings. For the purposes of this study, his ideas may be presented in ten sections:

Section One, Erasmus and the Events of His Time, is a response to the numerous references found in his writings to the events of his time rather than to a specific question suggested by the hypothesis. These references are instructive for the light which they throw on the historical context within which he lived and worked; they also invite the question whether thinkers other than "realists" may be credited with the distinction of being realistic observers.

Sections Two, Erasmus in Opposition to Realism, and Three, Erasmus in Opposition to Universalism, offer an answer to the question: Do the thinkers said to represent the via media see themselves as taking up a position which differentiates them from both realism and universalism?

Sections Four, Erasmus Presents a Model of the Perfect Temporal Christian Prince, and Five, Erasmus Presents a Model of the Perfect Spiritual Christian Prince, formulate two ideas discovered in his writings in response to the question: Do the thinkers said to represent the via media have the idea of a plurality of political entities and, if so, what do they say about them?

The question, Do the thinkers said to represent the via media have the idea of that which links the entities constituting political plurality and, if so, what content do they give to it, leads to findings in Erasmus' writings which are presented in Sections Six to Ten - Six, The World as It Ought to Be: The Idea of Harmonious Discord; Seven, Law as a Link; Eight, Learning as a Link; Nine, Moderation as a Link; and

Ten, The Question of War.

1. Erasmus and the Events of His Time

Erasmus lived in a Europe which knew political plurality and conflict. The former expressed itself not only in the variety of forms of government which existed - according to the historian J.R. Hale there were monarchies, republics, confederations, cities, an emperor and a pope⁹ - it was also reflected in the number of political units which constituted Europe. A list drawn up by Hale of Europe in about 1500 may be reproduced as follows:

Russia - Moldavia - Lithuania (ruled from and in conjunction with) Poland - Hungary - Bohemia - Germany (as chief component of the Holy Roman Empire theoretically under the authority of the emperor-elect, Maximilian of Habsburg, hereditary ruler of the duchies of Austria, Styria, Carinthia, Carniola and Tyrol; in practice a congeries of independent units comprising some thirty principates, fifty ecclesiastical territories, about one hundred counties and sixty self-governing cities) - The Netherlands (traditionally part of the Holy Roman Empire, now ruled jointly with Luxembourg and Franche-Comté by Prince Philip of Habsburg, son of Maximilian) - Switzerland - Denmark - Sweden - Norway - Italy shared by (to name the chief independent powers of the peninsula) Venice, Milan, Florence, the Papal States and Naples - Sicily - Spain comprising Aragon and Castile - Portugal - Navarre - France - England.¹⁰

And this was not all. As Hale points out, there were further political units functioning as "independent states either by right ... or because their nominal superiors were unable to control them ...".¹¹ His examples include Scotland and Savoy, Luebeck and the area controlled by the Teutonic Knights. And there was one state, he reminds his readers, "which was not of, but was half in Europe, the empire of the Ottoman Turks ...".¹²

The political plurality which Europe then knew was accompanied by conflict, and references to conflict run like a red thread through the writings of Erasmus. Studying these references means meeting a well-

informed, discerning and sober observer, and not, as one commentator has suggested, a man who did not understand his time.¹³ To convey this impression by means of a few examples is difficult, but this is all that can be offered in the context of this inquiry.

The Italian wars, which had begun in 1494 when Charles VIII, King of France, entered Italy with the intention of taking up a claim to Naples, were still continuing when Erasmus visited Italy from 1506 to 1509. In a letter of 1506 to Servatius Rogerus, Prior of Steyn, the Augustinian monastery where he had spent the years 1487 to 1493, Erasmus writes:

I came to Italy mainly in order to learn Greek; but studies are dormant here at present, whereas war is hotly pursued ... Bentivoglio has left Bologna; the French ... were driven back ... On St Martin's Day Julius, the supreme pontiff, entered Bologna ... The emperor's arrival is awaited. Preparations¹⁴ are afoot for a war against the Venetians ...

The League of Cambrai concluded in 1508 by Louis XII, King of France, Ferdinand, King of Aragon and Regent of Castile, the Emperor Maximilian, Pope Julius II and the Duke of Mantua, with the purpose of partitioning Venice, was followed three years later by the Holy League which joined Julius II with Ferdinand, Maximilian, Venice and Henry VIII. The adversary now was Louis XII. Erasmus, writing in 1511 from Cambridge to Andrea Ammonio, Latin secretary to Henry VIII, comments:

As to the war that has been set on foot, I am afraid that the Greek proverb about the moth in the candle-flame will soon be appropriate. For if anything happens to the Roman church, then who, I ask you, could more properly be blamed for it than the all-too-mighty Julius? But pray suppose the French are driven out of Italy, and then reflect, please, whether you prefer to have the Spaniards as your masters, or the Venetians, whose rule is intolerable even to their own countrymen ... I fear Italy is to have a change of masters and, because she cannot endure the French,¹⁵ may have to endure French rule multiplied by two.

The conflicts in Italy generated conflicts in other parts of Europe. In 1512 the Netherlands saw Henry VIII at war with the French, whom he defeated near Saint-Omer in 1513. In 1514 it seemed that the war would be resumed. Erasmus observes from London in a letter to An-

toon van Bergen, Abbot of St Bertin, a man of influence with the Court at Brussels:

But the war that is being prepared for has brought about a sudden change in the character of this island. Here the price of everything is going up every day, while liberality declines ... Besides, while it is a kind of exile to live on any island, our confinement is closer still at present by reason of the wars, so that one cannot even get a letter out.¹⁶

In September 1517, nearly two months before Luther's theses became public knowledge, Erasmus writes from Antwerp, communicating his apprehensions to Thomas Wolsey, Cardinal of York:

In this part of the world I am afraid a great revolution is impending, unless the favour of Heaven and the piety and wisdom of our rulers provide for the interests of humanity.¹⁷

The Diet of Worms took place in 1521. Luther refused to retract his writings, was condemned, and disappeared behind the walls of the Wartburg. In the same year the Emperor, now Charles V, and the French King, now Francis I, resumed the war in Italy, which came to a temporary end in 1525 when Francis was taken prisoner at Pavia. In the same year, 1521, the Turks moved to conquer Belgrade; in the following year, Rhodes; and, in 1525, they won a decisive victory at Mohacs against the Hungarians. Erasmus' Colloquy of 1526, "The New Mother", contains advice on the care of babies, instructions on the nature of the soul, and a brief survey of the political situation in Europe:

King Christian of Denmark, a devout partisan of the gospel, is in exile. Francis, King of France, is a 'guest' of the Spaniards ... Charles is preparing to extend the boundaries of his realm.¹⁸ Ferdinand has his hands full in Germany. Bankruptcy threatens every court. The peasants raise dangerous riots ... The commons are bent on anarchy; the Church is shaken to its very foundations by menacing factions ...¹⁹ The Turks conquer and threaten all the while ...

Upon signing the peace treaty of Madrid in 1526, which brought his release from imprisonment, Francis I formed a league with Milan, Venice, Florence and the Pope, now Clement VII, against Charles V. The ensuing campaigns led in 1527 to the sacking of Rome by the imperial forces.

Erasmus expresses the significance of this event in one sentence contained in a long letter which he addresses in 1528 to Jacobus Sadoletus, Bishop of Carpentras, Avignon, regarding "this calamitous event": "This surely was the destruction of a world rather than a city".²⁰

In 1530 the Diet of Augsburg met, leaving both the Lutherans and the Catholics even more intransigent than previously. And no change in their respective attitudes took place during the remaining years of Erasmus' life. In a letter from Basel in 1535 to Bartholomeus Latomus, the first professor of Latin in the Collège de France at Paris, Erasmus observes:

It seems that the pope is seriously thinking of a council here. But I do not see how it is to meet in the midst of such dissension between princes and lands.²¹

The red thread is nearing its end. As one leaves it behind, the impression stays that Erasmus was a realistic observer of events - an impression which is confirmed by historians who compare his observations with those of his contemporaries. James Froude concludes his series of lectures in 1893 - 94 by saying to his students:

I believe that you will best see what it (the most exciting period of modern history) really was if you will look at it through the eyes of Erasmus.²²

More recently, James Tracy credits Erasmus with being "a reliable source", "well-informed", and with understanding of "what was happening before his eyes".²³ Erasmus himself, it is also worth noting, regards no books as having "more to offer" than "the works of those who have transmitted to posterity a true account of events public and private".²⁴

2. Erasmus in Opposition to Realism

Erasmus perceives the conflicts of his time realistically, but he rejects a response which, according to Gierke, Wight and Bull, the realists (or Machiavellians or Hobbesians) would have given. While his whole work testifies to this refusal, one of his writings provides an especially good example both of his familiarity with the realist way of thinking and his rejection of it.²⁵ The writing in question is Julius Exclusus e Coelis, a satire which appeared anonymously in 1514, about a

year after the death of Pope Julius II.²⁶ It is presented in the form of a dialogue between Julius knocking at the gate of heaven, demanding to be admitted, and Saint Peter refusing to admit him.

In the course of the dialogue Julius reminds Peter of his deeds on earth. Had he not restored Bologna, after it had been occupied by the Bentivogli, to the Roman See? Had he not defeated the Venetians, previously not conquered by anyone? Had he not nearly succeeded in "trapping" the Duke of Ferrara after harrying him in war for a long time? He also drove the French out of Italy, and intended to do the same with the Spaniards "if death had not snatched" him from the earth. And he disposed of a schismatic council by "faking a counter-council". In brief, his "authority", or perhaps his "cunning", had been such that:

(T)oday there are no Christian kings whom I have not provoked to arms, rending, tearing, and shattering all the treaties²⁷ by which they had been closely bound together.

And when he died, he made sure that the wars which he had "stirred up" everywhere would not come to an end, and that the money put aside for that purpose would be secure. Without money, Julius submits, "nothing goes well, either sacred or profane".²⁸

Saint Peter takes up each point in turn. Why, he demands to know, did Julius occupy Bologna? Had it broken away from the faith? Was Bentivoglio a bad administrator? Had he taken over the administration without the consent of the citizens? Did the citizens dislike him as a prince? Julius answers each question in the negative. His reasons had been different: Bentivoglio administered Bologna in such a way that "from the immense sum he collected from the citizens, only a few thousand found their way to our treasury". Furthermore, the occupation of that city was "expedient" for his plans at that time.²⁹

Saint Peter next inquires about the Venetians. Julius does not hesitate with his reply: They behaved "like Greeks", they "made sport" of him. They bestowed priesthoods without consulting anybody; they referred none of their trials to the appropriate courts; they purchased no dispensations. In brief, they caused the Roman See an "intolerable loss".³⁰

Next, Saint Peter wishes to know why the Pope had been hostile to

the Duke of Ferrara. Julius' main reason was that the Duke's realm should be joined to his own, because of its "strategic location".³¹ But why, Saint Peter asks a little later, did you turn against the French and their King? Julius replies that it would take a long time to tell the whole story, but the crux of it is that:

I never really loved the French ... No Italian really loves barbarians³² ... But I ... used them as friends for just so long as I needed their services, since up to that point one may take advantage of barbarians.³³

Saint Peter moves on to the next point. How did Julius manage to provoke the greatest kings to grave wars, especially when, as a means to that end, he had to break so many alliances?³⁴ Julius has no problem in answering this question:

This was my major concern, to become thoroughly acquainted with the animating spirit, character, emotions, wealth, and strivings of all nations, and especially of all princes: who was at peace with whom, who had fallen out with whom; and then to make use of all these things for our own purposes.³⁵

Having revealed his general approach, Julius goes into the details. It was easy to rouse the French against the Venetians; he then made "common cause" with them, and the Emperor also joined.³⁶ At the same time he began to incite the Spanish against the French, as it was not desirable that the latter should become too strong³⁷; he also made it look as if the Venetians were "back in favor"; then he alienated the Emperor from the French; and he made use of his knowledge that the English have an "instinctive hatred" of the French, as well as of the Scots.³⁸ In this way he managed to involve these princes in "the gravest war of all". In addition, he approached all the other kings as well, for he knew that, if they were parties to the conflict, too, "no one else would be at peace".³⁹

There is another point about which Saint Peter wishes to know more, and that is the Council which Julius had managed to evade. Had he not been bound by oath to convoke a general council? Had he not been elected Pope on that condition? Julius agrees: that is correct, but he released himself from that oath when it seemed best. "Who would hesitate to swear to anything at all, when it is a question of a king-

dom?"⁴⁰ Julius then was the kind of person people said he was? Saint Peter asked. The response came without hesitation: "What does that matter? I was Pope". And the Pope, God's representative on earth, cannot be criticized by any human being, not even a general council.⁴¹ Saint Peter pursues the question further: A "criminal and pestilent Pope" can then not be removed at all? "Who's to remove the man at the top?"⁴² Julius does not doubt his absolute power. But why did he then try to avoid a general council? Julius replies:

Why don't you ask monarchs why they hate a senate and general assemblies? The fact is, when so many outstanding men gather together, the royal dignity is overshadowed to a certain extent ... (H)ardly any council has ever turned out so well that the supreme Pontiff has not experienced some loss⁴³ to his majesty, and departed less supreme.

So, all that matters then is that "the royal majesty" of the Pope should be secure, rather than "the general interest" of Christendom?⁴⁴ Julius is in no doubt: "Each man looks out for his own interest; we take care of our business".⁴⁵

Julius' values were not those of Saint Peter - nor are they the values held by Erasmus.⁴⁶

3. Erasmus in Opposition to Universalism

Erasmus sees the conflicts of his time realistically, but his response does not consist in advocating the abolition of the existing political plurality and the establishment, in its place, of a universal state or ruler as a way of overcoming them - a response which, as Gierke, Wight and Bull see it, the universalists would have given. Erasmus, as his writings amply demonstrate, rejects universalism and what he perceives as so many steps in its direction: territorial expansionism or what has come to be referred to, since the nineteenth century, as imperialism.⁴⁷

As early as 1495, when he was a student of theology in Paris and invited by the well-known French historian Robert Gaguin to fill a blank page at the end of his history of France, Erasmus voices opposition to policies of agrandissement:

Our early forbears used to pay godlike honours

to those of their countrymen who had either won imperial power or increased the boundaries of the commonwealth ... Yet it is a much nobler act to spread the fame of one's ancestors from the rising to the setting sun than to extend the boundaries of one's territory ...⁴⁸

In 1502 he contributed a preface to "one of the most strident contemporary statements of universal monarchy": De Precellentia Potestatis Imperatorie (On the Excellence of Imperial Power) by Jacobus Anthonisz, the vicar general of the Bishop of Cambrai.⁴⁹ While not withholding all praise from this "compendium of legal and theological opinions", Erasmus does not hesitate to liken the author to a "busy-bee" which flies everywhere and collects honey wherever it can find it. "I would", he writes, "that you had exercised more choice and also a little restraint".⁵⁰

Two years later, in 1504, Erasmus delivered "The Panegyric" at Brussels on the safe return from Spain of the Duke of Burgundy. In the course of his public address he says:

The best form of political government is not the one which extends the boundaries of its empire by war-like actions, but the one which comes⁵¹ closest to the image of the celestial city.

The letter addressed to Antoon van Bergen in 1514⁵² also includes a passage against the building up of empires:

If we would find something to call glorious, it is far more glorious to found states than to destroy them ... What expenditure of blood it cost to build the⁵³ Roman empire, and how soon its collapse began!

Three years later, in 1517, Erasmus dedicated to the Dukes of Saxony his edition of De Vita Caesarum (The Lives of the Caesars), historical biographies of the Roman emperors from Julius Caesar to Domitian, by Gaius Suetonius Tranquillus, the Roman historian who lived from ca. 69 - 140 A.D. In his preface Erasmus asks whether the Roman empire, "that ancient empire" whose authority was "founded and consecrated by impiety, murder, parricide, incest and tyranny"⁵⁴, should be restored as it once was? "For my part", he answers:

I do not think any intelligent man would desire

this, even if wishes could put it back; so far is it from seeming right to defend and revive an institution which for many centuries now has been largely outdated and non-existent, at the price of a great upheaval in human affairs and very great loss of Christian lives.⁵⁵

Monarchy, Erasmus elaborates, is the best form of government if he who exercises it surpasses every other human being by as much goodness and wisdom as he does in power, but he doubts that one could be so fortunate to get such a ruler; and if one were, he does not think it likely that any mortal's mind would be capable of such extensive rule. But suppose it were. When would such a ruler find out what was happening among far distant subjects? But suppose he discovered. When would he be in a position to help? A "great emperor", Erasmus concludes, who does no more than levying taxes, is not a "true emperor".⁵⁶

In the same year, 1517, Erasmus dedicated a revised edition of the history of Alexander the Great by Quintus Curtius Rufus to the Duke of Bavaria. In the letter accompanying the gift he expresses his views against the ideal of a ruler which the author sets before his readers in the person of Alexander the Great:

For my own part, I have no more liking for the Alexander of the Greek historians, than I have for Homer's Achilles. Both the one and the other present the worst example of what a sovereign should be, even if some good qualities may seem to be mingled with so many faults. It was forsooth well worth while, that Africa, Europe and Asia should be thrown into confusion, and so many thousands of human beings slaughtered, to please one young madman, whose ambition this solid globe would have failed to satisfy!⁵⁷

In March 1527, when the imperial forces were fighting a winning battle against the allied forces of Francis I and the Pope in Italy, the chancellor of Charles V, Mercurino Gattinara, wrote from Valladolid in Spain to Erasmus:

I have recently discovered Dante's De Monarchia⁵⁸, a suppressed book as I am told by those who aspire unduly to a universal monarchy⁵⁹ ... As it may serve the cause of the Emperor, I would like to see it published ... Nobody in our time is better suited to be entrusted with this work. It is up to you to decide whether it is convenient

to publish the work or to leave it unpublished.⁶⁰

As P.S. Allen and H.M. Allen, editors of Erasmus' letters in Latin comment: "The proposal here made is interesting, as marking an attempt to commit Erasmus definitely to the Imperial side ...".⁶¹ He decided not to publish De Monarchia.⁶² Two months later he wrote to the Polish King Sigismund I: "Just as certain ships are too big to be navigated, in the same way it is extremely difficult to successfully administer an empire which is too extended".⁶³

About two years later, in March 1529, Erasmus responded in a letter to Alfonso Valdes, Gattinara's "loyal secretary", to "the stupid argument" put forward by the Spanish Franciscan Luis de Carvajal in a tract entitled Apologia Monasticae Religionis Diluens Nugas Erasmi (A Defence of Monasticism in Refutation of the Nonsense Written by Erasmus). The whole "chicanery" of these people, Erasmus writes, is directed at the word "new": "The Emperor wants a new, universal monarchy" ... "(A)s if there ever had been, apart from God, a universal monarch". Even today, part of the world continues to be unknown, and the known part has never obeyed one ruler.⁶⁴ But listen to "that good man", he invites Valdes: Proposition One, "What the sun is in the heaven, the Emperor is on earth". This comparison would be justifiable only if one man were capable of giving his attention to every nation on earth. Two, "Aristotle places monarchy ahead of aristocracy". Yes, if it were possible to find a man who excelled every other in virtue and wisdom; but when Aristotle speaks of monarchy, he does not have in mind the world, but independent states such as Crete, Sparta, and Athens. Three, Carvajal quotes Homer saying that one leader is better than many. True, but Homer refers to a military leader, and even then, he accords him absolute power only in combat. Finally, Carvajal holds that Christ himself approves the imperial authority: "Give to Caesar what is Caesar's ...". Yes, but "(i)f Christ had taught in Savoy ... he would have said: Give to the Duke what is the Duke's ...".⁶⁵

Not long afterwards Johann Rinck, a lawyer from Cologne, requested Erasmus' opinion on the question of whether or not to make war against the Turks. Erasmus' response was the Consultatio of March 1530. The passage which is of interest in the context of this section reads as follows:

Most of us ... dread the name of World Empire ... a title at which others seem to be aiming ... A unified empire would be best if we could have a sovereign made in the image of God, but, men being what they are, there is more safety in kingdoms of moderate power united in a Christian League.⁶⁶

Erasmus, as his writings reveal, is a constant and consistent opponent of universalism: neither the road to it nor the destination itself hold any promise of generating less conflict than the existing political plurality.⁶⁷

4. Erasmus Presents a Model of the Perfect Temporal Christian Prince

In opposition to both realism and universalism Erasmus puts forward the idea of Christian princes being linked in concord to one another. References to this idea can be found in many of his writings, for example, in the Adage "War Is Sweet to Those Who Do not Know It"⁶⁸, in the treatise The Education of a Christian Prince⁶⁹, in letters to the Dukes of Saxony and the French King Francis I⁷⁰, and, slightly differently worded, in the conclusion to his discussion of the question of war against the Turks.⁷¹ It is an idea which includes both political plurality and that which links. This section and the next will focus on the former, presenting Erasmus' ideas of the temporal Christian prince and of the spiritual Christian prince respectively, while Sections Six to Ten will be concerned with that which makes for concord among Christian princes.

Erasmus gives expression to his idea of the temporal Christian prince by means of a model of the perfect temporal Christian prince to remind "good rulers" of what they are doing, and "bad rulers" of what they ought to do.⁷² The inspiration for adopting such a course comes from classical Antiquity. The ancients, Erasmus explains, did not praise their rulers in order to flatter them; they praised them because they understood that, proud and impatient as they often were, they would not "tolerate either the authority of a mentor or the censure of a critic":

So, out of regard for the nation's well-being, they altered course, and reached the same goal by a less obvious route. In the guise of a panegyric they presented the prince with a kind of

model of the perfect ruler, depicted in a painting as it were, in order that he might measure himself upon the pattern thus offered and privately acknowledge how far he fell below the standard of the prince they lauded.

The three prime qualities of the Christian prince are wisdom, goodness, and power.⁷⁴ Wisdom, according to Erasmus, is an attribute in itself, and it tells a prince how to rule "beneficently".⁷⁵ "But there is only one means of deliberating on a question, and that is wisdom".⁷⁶ Of goodness, Erasmus says: "Nothing is really 'good' unless associated with moral integrity".⁷⁷ A prince's goodness makes him want "to help all"⁷⁸, "to fill as many needs as possible for everyone".⁷⁹ Wisdom and goodness are closely linked in the Christian prince, "(f)or true wisdom consists not only in the knowledge of truth, but in the love and eager striving for what is good".⁸⁰ Power is the quality which makes the prince the supreme ruler of his realm. Supreme, however, does not mean absolute. Above him, there is the law:

In meetings of the council, one shall listen to the most noble and the old; but in such a way that the decision is with the king ... who cannot be compelled or passed over by anyone. The king obeys only the law, and the law corresponds to the idea of honesty.⁸¹

The power of the Christian prince is limited in a second way. His subjects are not only free men, they also are Christians, that is "people who are twice free".⁸² "(A)mong Christians", Erasmus insists, "supreme rule means administration of the state, and not dominion".⁸³ Wisdom, goodness and power belong together, for "power, unless it is allied to wisdom and goodness, is tyranny and not power ...".⁸⁴ "Power without goodness", the idea recurs, "is unmitigated tyranny; without wisdom it brings chaos, not domain".⁸⁵

The Christian prince employs wisdom, goodness and power for the good of his country. "The cardinal principle of a good prince", Erasmus is in no doubt, "should be not only to preserve the present prosperity of the state but to pass it on more prosperous than when he received it".⁸⁶ And prosperity, he is equally certain, does not only mean material wealth; it also includes physical health and, most importantly, spiritual well-being.⁸⁷

In order to attain these ends, the Christian prince has to see not only how "things that are evil can be avoided or removed", but also how "good conditions can be gained, developed, and strengthened".⁸⁸ The guiding ideas in this endeavour are justice and co-operation, and the Christian prince follows their inspiration, within his own realm and beyond it.

As far as his own realm is concerned, the Christian prince knows that:

The most felicitous condition exists when (he) is obeyed by everyone, (he) himself obeys the laws, and the laws go back to the fundamental principles of equity and honesty, with no other aim than the advancement of the commonwealth.⁸⁹

And equity, as Erasmus explains, does not consist in bestowing upon everybody "the same reward, the same rights, the same honor"; this, he declares, is sometimes "a mark of the greatest unfairness".⁹⁰

The Christian prince also knows, and this is a second, more complex image inspired by the ideas of justice and co-operation, that it is for the good of his country if the various elements of society can be made to check and balance one another in such a way as to achieve an "eternal truce":

(E)ach part of the body politic would retain its rightful authority, the people would be given their due, the councillors and magistrates would be paid the respect proper to their learning, to law and to justice; the bishops and priests would receive the honour due to them. Nor would the monks be denied what is due to them. The harmonious discord of all these, this variety tending to one and the same end, would serve the commonwealth ...⁹¹

More specifically, the Christian prince knows and loves his country and its people, and seeks to win its love in turn - a task made easier if it is his fatherland, too, for "friendship is created and confirmed most when the source of good will is nature itself".⁹² He makes it his concern that his country's young people are given a proper education, for citizens who have been acquainted with "the best principles" will follow "the right course" of their own accord, and there will be less need for either many laws or punishment.⁹³ He burdens his people with as few taxes as possible, and least of all the

poor. Thrift, Erasmus notes, "is a great source of revenue".⁹⁴ The Christian prince's laws are not only equitable, but also written in a "clear language", with as few "complexities" as possible, and familiar to the people.⁹⁵ His magistrates are not only wise but also incorruptible.⁹⁶

The ideas of justice and co-operation are the Christian prince's guide not only within his realm, but also beyond it - for purposes of analysis, however, it seems best to present the latter aspect not at this point, but to leave it for inclusion in Section Six.⁹⁷

Erasmus' Christian prince is an idea. It is also a reality, as his letter of 1527 to King Sigismund of Poland shows, and this reality, for purposes of instruction, may be transmitted without separating the external from the internal aspect:

(T)hree qualities seem to me to be especially necessary for the man who means⁹⁸ to appease human movements of such magnitude: piety, an elevated soul, and wisdom. The term 'piety' embraces two virtues, love of one's country and religious ardour ... Have you not deployed all your vigilance, all your zeal and all your care to look after the interests of your kingdom, to preserve them, to make them fruitful, to enhance them and to consolidate them ... Besides, the integrity of your whole being manifests the fact that the Christian religion is not a minor concern for you ...

In the inevitable wars which you have often fought with as much success as with valour, against the Vlachs, the Tatars, the Muscovites and the Prussians, you have testified to a really royal elevation of soul. But the signs of a still rarer sublimity were there when you preferred to conclude a truce with the Muscovites who so often have made war on you, rather than to subject by (force of) arms to your rule an area of an extreme affluence, when this would have been easy for you, and the unanimous pressure of the notables urged you to do so ...

However, I think that the same facts⁹⁹ reveal the exceptional wisdom which you possess.

To use Erasmus' own classificatory system, the letter to the King of Poland is a panegyric reminding a good ruler of what he is doing.

5. Erasmus Presents a Model of the Perfect Spiritual Christian Prince

The prince of the Christian church possesses the same three cardinal qualities as the temporal Christian prince, that is, wisdom, goodness, and power. "(Y)our goodness", Erasmus writes to Pope Leo X in 1515, "makes you wish to be of service, your singular wisdom shows you how to aid humanity, and your supreme position as pontiff makes this possible".¹⁰⁰

While the prime attributes are the same, the aims in the pursuit of which they are employed are different. For the temporal Christian prince, as the preceding section has shown, there is nothing more important than to enhance his country's prosperity, whereas the spiritual Christian prince delights "in upholding the rule, the glory and the justice of Christ"¹⁰¹; he longs "for nothing other than the glory of Christ and the salvation of all mankind".¹⁰²

In the pursuit of his aims, the spiritual Christian prince travels along a road which is different from that followed by the temporal Christian prince. The great importance which Erasmus attaches to this point is reflected in many of his works, for example, in the Adage "The Sileni of Alcibiades":

I wish the Popes to have the greatest riches - but let it be the pearl of the Gospel, the heavenly treasure ... I wish them to be fully armed, but with the arms of the Apostle ... I wish them to be fierce warriors, but against the real enemies of the Church, simony, pride, lust, ambition, anger, irreligion ... Which models are more suitable for imitation by the vicar of Christ - the Juliuses, Alexanders, Croesus, and Xerxes, nothing but robbers on the grand scale, or Christ himself ...?¹⁰³

Again, when he addresses the French King Francis I:

(T)he evangelical pastors possess the evangelical sword which has been given to them by Christ, in order to eliminate human vices, and to remove human passions. The kings possess their proper sword, which Christ, too, has given to them in order to frighten the wicked and to honour the good ... There are two kinds of swords, just as there are two ways of exercising sovereignty ...¹⁰⁴

A king, Erasmus submits, does not possess "greater majesty" than when he sits in the courts of justice, administering justice, or when he attends the meetings of council, looking after the interests of the state. A bishop, on the other hand, manifests the "dignity of his office" no more truly than when he teaches the philosophy of Christ from the height of a pulpit.¹⁰⁵

The spiritual Christian prince uses his wisdom, goodness and power as prescribed by his aims, and does not get "immersed in the kingdom of this world".¹⁰⁶ Leaving "worldly things to the world"¹⁰⁷, he is in a position to meet the demands made by the office of arbitrator and mediator. It is appropriate for the pope, for cardinals, bishops, and abbots, Erasmus writes in 1514 to Antoon van Bergen, Abbot of St Bertin, to work for the settlement of disputes among princes. This is, he insists, how "they should wield their authority and reveal the power they possess ...".¹⁰⁸ But let the world experience the power of the pope - his addressee this time is the French King Francis I, and the year is 1523 - "as being beneficial for the reconciliation of kings and the maintenance of their concord".¹⁰⁹

Erasmus' prescription is clear: the spiritual Christian prince is in charge of one form of administration, and the temporal Christian prince of another; and the two ought to be kept separate. Where they intersect, as happens in cases of arbitration and mediation on the part of the spiritual Christian prince, the latter does not threaten political plurality, but acts as its defender.

6. The World as It Ought to Be: The Idea of Harmonious Discord

Concord or harmony, it is Erasmus' view, is discernible in the world as a whole. "In this universe, composed of such different elements", he writes in "War Is Sweet to Those Who Do not Know It", "there is a harmony".¹¹⁰ He finds it, as was shown above, in the state in which "the various elements of society" so balance and control one another that they achieve an "eternal truce".¹¹¹ Why should it not be operative among Christian princes and the peoples committed to their care?

Wise and good Christian princes, Erasmus suggests, follow the idea of justice not only within their respective realms, but also beyond them - in their relations with one another and with non-Christian

princes. "(I)t is the part of a Christian prince to regard no one as an outsider unless he is a nonbeliever, and even on them he should inflict no harm".¹¹²

"Inflicting no harm", in relation to non-Christians, means that Christian princes do not attack them¹¹³; they do not take their riches¹¹⁴; they do not subject them to their political rule¹¹⁵; they do not force them to become Christians¹¹⁶; and they keep promises made to them.¹¹⁷ It means, in other words, that they respect their separateness and independence. "Inflicting no harm", in relation to one another, has the same meaning. As Erasmus formulates it: "Let us not do anything by force, and certainly do unto others what we would wish them to do unto us".¹¹⁸ Irrespective of whether it concerns non-Christians or Christians, "(a) good prince should never go to war at all unless, after trying every other means, he cannot possibly avoid it". In such a case, Erasmus adds, the good prince endeavours to wage the war "with as little calamity to his own people" as possible, and to conclude it as soon as possible.¹¹⁹

While the idea of justice applies equally to Christians and non-Christians, the idea of co-operation does not. Good and wise Christian princes, Erasmus submits, are not "too closely allied" to those who have a different religion.¹²⁰ These they neither attack nor do they have them as allies.

The idea of co-operation which guides Christian princes prescribes that they preserve peace with one another:

A good and wise prince will make an effort to preserve peace with everyone but especially with his neighbors; for if they are wrought up they can do a great deal of harm, while if they are friendly they are a big help, and without their mutual business relations the state could not even exist.¹²¹

It invites them, in times of peace, to collaborate in strengthening and beautifying their realms:

To make beneficial arrangements together for these things, and to compare all their plans for these ends is the ~~one~~ thing really worthy of Christian princes.¹²²

It urges them, when war has broken out, to "take counsel together" in order to re-establish peace:

I will only urge princes of Christian faith to put aside all feigned excuses and all false pretexts ... to work for the ending of that madness for war ... that among those whom so many ties unite there may arise a peace and concord ... (I)f, after common counsel, we should carry out our common task ... each one would be more prosperous.¹²³

It encourages them to offer help if one of them is "in distress":

(I)t is not sufficient that all those who support the Christian cause heave lamentations; it is also necessary to help fellow-peoples in distress: for, unless we consider these misfortunes as being common to all of us ... it is to be feared that in reality they will become our common lot.¹²⁴

While justice supports separateness and independence, co-operation circumscribes both.

The aim which wise and good princes set for themselves - securing the good of their country - is an end in itself, and it serves another end. "If each (prince) does his best to embellish his own possessions", Erasmus writes, "then all will be flourishing everywhere".¹²⁵ "(I)f one of them does wrong, it is to the detriment not of one family but of the whole world".¹²⁶ The idea that whatever happens in one Christian country is of significance to the whole of Christendom is persistent in Erasmus' writings. For example, it reappears in The Education of a Christian Prince¹²⁷; it occurs in his preface to "Of How to Write Letters"¹²⁸; and it is included in his discussion of the question of war against the Turks.¹²⁹

That which links one Christian to another also links one Christian prince to another Christian prince. "Among all Christian princes", Erasmus writes, "there is at once a very firm and holy bond ...".¹³⁰ "(A)mong good and wise princes", it comes back like an echo, "... there is an established friendship ...".¹³¹ The concord which unites Christian princes among themselves is not based on "many painstaking contracts"; and certainly not on marriage alliances, for even though "common opinion" regards such alliances as the "adamantine bonds of public

harmony", they are, as a matter of fact, the cause of "the greatest upheavals (in) human affairs".¹³² The concord which is operative among wise and good Christian princes is traceable to one source, and Erasmus places this source at the centre of three circles:

Christ ... is the centre surrounded by various circles. The centre must not be removed from its position. For, in accordance with it, all human actions are to be judged. Those who are nearest to Christ, the priests, bishops, cardinals and popes whose duty it is to follow Him wherever He goes, are to uphold that purest sphere and, as much as possible, transmit it to those next to them. The second circle is formed by the temporal princes whose arms and laws serve Christ in their own way, be it that they defeat the enemy in necessary and just wars¹³³ and protect public tranquillity, be it that by lawful punishments they keep evil-doers within bounds ... In the third circle finally ... there are the ordinary people; although they form the grossest part ... they nevertheless belong to Christ.¹³⁴

The image of the three circles is Erasmus' illustration of how divine law as expressed in the teachings and life of Christ is transmitted from the centre of the "community which is our religion" to the periphery, becoming less pure as it travels outward. It also shows that divine law is the source from which the Christian princes derive the principles informing their actions. Divine law, and Erasmus makes it clear that it is a law which "neither ought to be judged nor can it be abolished"¹³⁵, is the Christian princes' standard and guide.

The three circles are a description of Christianity. They leave out all those who do not share its spirit; that is, the non-Christians are excluded. These outsiders, however, are potential insiders:

I have no doubt whatever that Christianity, now confined within narrow limits, would happily spread if the barbarous nations realized they were called not to human servitude but to gospel freedom; sought out not for the purpose of plunder but for the fellowship of happiness and holiness. When they have united with us and found in us truly Christian behaviour, they will contribute voluntarily more than any force could wring from them.¹³⁶

Sharing the philosophy of Christ removes the boundary which separates outsiders from insiders.

7. Law as a Link

Erasmus' writings contain a number of ideas suggesting ways of bringing the world as it was more into accord with his vision of the world as it ought to be, which has been outlined in the preceding section. The remainder of this chapter is devoted to a discussion of these ideas.

One way of narrowing the gap, Erasmus thinks, consists in reforming existing laws. Two measures in particular seem to be indicated. One is that the philosophy of Christ, that is, the law of Christ, needs to be restored to its original purity and simplicity.¹³⁷ The second involves human laws: these should be revised and emended according to the idea of justice as derived from the philosophy of Christ.

(a) The philosophy of Christ, Erasmus holds, is no longer as pure and simple as when it subdued "both the pride of the philosophers and the unconquered scepters of the princes".¹³⁸ With the passage of time, it has become corrupted not only through mistakes committed by "unskilled" or "inattentive" copyists, and "ignorant" or "lazy" translators, but also through the inclusion of many a human decree.¹³⁹ As a result, it no longer provides the standard by which everything else is judged, or, as he puts it: "(M)atters of the greatest importance depend not on the law of Christ but on the definitions of scholastics and the power of some bishop".¹⁴⁰ If the philosophy of Christ is to be "true", "authentic" and "efficacious" again, it is necessary to return to its sources, to read and compare the early manuscripts, to re-edit them, and to make them accessible by translating them into "all the languages", Latin as well as the vernaculars.¹⁴¹ Furthermore, it is necessary that the Church refrain from issuing a new decree "every day".¹⁴² The attempt to regulate too many aspects of human life is responsible for much of the dissension within Christendom, and it deters non-Christians from joining the community of the Christian religion. As he writes in the Colloquy "A Fish Diet":

Nowadays we see the whole world shaken by reason of these deadly disputes. If these and ones like them were got rid of, we could both live in greater peace, not bothering about ceremonies, but straining only after those things Christ taught, and other races would more readily embrace a religion joined with freedom.¹⁴³

And he meets the argument that "(i)t is easy to prescribe in general" when what is needed is advice on "specific matters", and "particular cases", with the following counter-argument: human affairs are so numerous and varied that it is impossible to respond with certainty regarding each one of them; there is such "a variety of circumstances" that, unless one knows them all, one cannot even respond with certainty; finally, even if one thinks that one has certainty on one's side, there are others who think likewise, but their answer is not necessarily in agreement with one's own. Hence, those who are "the more sensible" will not say: "Do this", "avoid that", but rather: "In my opinion this is the safer course, this I think is tolerable".¹⁴⁴

(b) It is Erasmus' view that many human laws, and practices sanctioned by these laws, fall far short of the standard set by divine law - they are not equitable¹⁴⁵, and he submits a number of examples in support of his view. One concerns the effects of deceased foreigners. These effects, he notes, are usually taken over by the prefect in the king's name - a practice which goes back to a good intention: "To prevent those who had no right to the stranger's property from claiming it", and to keep it safely "until the rightful heirs appeared". Now, however, it is the case that "the property of a foreigner reverts to the treasury whether there be heirs or not".¹⁴⁶

Another example relates to the imposition of import and export duties. It all began, Erasmus tells his readers, as an excellent plan. Officials, whose task it was to supervise imports and exports with the particular purpose of guaranteeing safe passage, were stationed along the boundaries of the various kingdoms. If anything was stolen, the prince in whose territory the theft occurred saw to it that the merchant suffered no loss, and the thief was punished. As "a matter of courtesy" perhaps, "merchants started to give a small fee". Now, however, "everywhere the traveler is stopped for his custom fee, the stranger is bothered by it, the merchants are fleeced", and there is no suggestion of offering any protection to anybody, even though "the tax mounts from day to day".¹⁴⁷

A third example concerns goods surviving from a shipwreck. Erasmus notes that originally the law prescribed that only goods which were not properly claimed by anyone became the property of the state where they were found. Now, however, "the prefect, more unrelenting than the sea

itself, seizes upon whatever is lost by any cause at sea as if it were his own":

There are many provisions like these among many nations which are no less unjust than injustice itself. It is not the purpose of this treatise to change any particular state. These practices are common to substantially all states, and they have been condemned by the judgment of everyone. I have brought them up for purposes of instruction.¹⁴⁸

It is for princes to change them.¹⁴⁹

In suggesting to princes that they improve the laws that obtain among them, Erasmus takes up a position which accords with what Richard Tuck says of humanists in general, and of humanist lawyers in particular. "What was important to them", he observes, "was not natural law but humanly constructed law; not natural rights but civil remedies".¹⁵⁰ Erasmus, as one finds when one reads his writings searchingly, has the idea of the law of nature¹⁵¹, but he does not put it to any use. Pierre Mesnard, however, misses the point when he writes in his study L'Essor de la Philosophie Politique au XVIe Siècle:

Erasmus' failure occurs in relation to the notion of law ... Between principle and action he needs an appointed intermediary which is like the practical equivalent of the principle while at the same time representing its moral constraint ... the notion of law ... In limiting the rights (of princes) the idea of Right (Law) has succumbed.¹⁵²

Erasmus, as this section has shown, does not formulate new laws, but he points to the need for a reform of existing ones.

8. Learning as a Link

Erasmus' writings draw attention to a second way of achieving greater correspondence between the world as it was and the world as it ought to be - the advancement of learning. Christian princes, in his view, are not as wise and good as they ought to be. Greater learning will make them wiser and better.

One meets with this idea on numerous occasions, for example, in the Adage "Make Haste Slowly" (1508):

(W)e spend our time on the rubbish written by all and sundry, and in the meantime the noble old systems of thought are lying neglected with the authors who expounded them, and ruin threatens the authority of senate, council, school, legal expert or theologian. If things go on as they have begun, the result will be that supreme power will be concentrated in the hands of a few, and we shall have as barbaric¹⁵³ a tyranny among us as there is among the Turks.

Or, to give another example, in the Adage "Kings and Fools Are Born, not Made" (1515):

(I)f we may not choose a suitable person to be our ruler, it is important to try to make that person suitable whom fate has given us ... It seems to me that he should have attached to him, while still an infant, some skilful educator ... Let him instil into this childish mind, as yet blank and malleable, opinions worthy of a prince; arm it with the best principles of conduct, show it the difference between a true prince and a tyrant ...¹⁵⁴

The two passages just quoted hint at the kind of learning that Erasmus wants to see propagated: "the noble old systems of thought", "the best principles of conduct", both refer to the same product - the ideas contained in the literature of Antiquity, sacred and profane, uncontaminated by the passage of time. He revives these ideas partly by incorporating them as sources in his own writings, partly by publishing them in their original versions. In this way, Ambrose and Aristotle, Chrysostom and Cicero, Jerome and Origen, Plato and Plutarch, Seneca and Vergil, and the New Testament - to name just a few - come to life again; and for him there is no inherent conflict between the Christian and non-Christian writings of Antiquity. As he puts it in the Colloquy "The Godly Feast" (1522):

Sacred Scripture is of course the basic authority in everything; yet I sometimes run across ancient sayings or pagan writings ... so purely and reverently and admirably expressed that I can't help believing their authors' hearts were moved by some divine power. And perhaps the spirit of Christ is more widespread than we understand, and the company of saints includes many not in our calendar.¹⁵⁵

The ideas contained in the literature inherited from Antiquity are the subject-matter destined to narrow the gap between practice and principle; and Erasmus not only publishes as much of it as he is able to, but he also directs most of it to the attention of the princes of his day, and those near them, by dedicating each writing to one of them. The list of dedications compiled by the editors of Opus Epistolarum is long¹⁵⁶; a few examples must suffice to make the point:

Philip of Burgundy, Bishop of Utrecht and "one of the pillars of Margaret's government in the Netherlands"¹⁵⁷: The Complaint of Peace (1517);

Prince Charles (Charles V): The Education of a Christian Prince (1516);

Ferdinand, Archduke of Austria and brother of Charles V: Paraphrase on the Gospel of St John (1523);

Alonso Fonseca, Archbishop of Toledo, who "took a leading part in the government of Spain during the absence of Charles V"¹⁵⁸: The Works of Augustine (1529);

Francis I, King of France: Paraphrase on St Mark (1523);

Henry VIII, King of England: Plutarch's On Distinguishing between a Flatterer and a Friend (1517);

Pope Leo X: The New Testament (1516);

Christopher of Schydlowyetz, a Polish statesman whose "energies were devoted to the maintenance of peace"¹⁵⁹:

Lingua (1525), a treatise on the power of the human tongue for good and for evil.

The dedications usually include a message in accord with the gift. For example, he writes to Henry VIII in 1517:

Another chief merit is this, that among so many affairs in which your kingdom, and indeed the whole world, is concerned, you scarcely let a day pass but you bestow some time upon reading, and delight in converse with those ancient sages, who are anything but flatterers; while you choose especially those books, from which you may rise a better and a wiser man, and more useful to your country.¹⁶⁰

And to Francis I in 1523:

Indeed, I had dedicated Matthew to Charles, my Prince; John, whom I interpreted immediately after Matthew, to Ferdinand, Charles' brother; and Luke, whom I tackled in the third place, to the King of England; Mark seemed rightly left to you so that the four volumes of the gospel were consecrated to the four most important monarchs of the world. May it please Heaven that the text of the gospel unite your names in a harmony similar to that which the spirit of the gospel ought to bind your hearts.¹⁶¹

The ideas of Antiquity, chosen to promote harmony in discord, are not only distributed within Christendom, but also beyond it. Erasmus offers this information in 1508 when he writes in the Adage "Make Haste Slowly" that the symbol of the anchor and dolphin cannot have enjoyed greater prestige, when it passed from hand to hand on the imperial coinage, than now when it is dispatched into the world beyond Christendom "on all kinds of books, in both languages, recognized, owned and praised by all to whom liberal studies are holy ...".¹⁶² And in 1520 he presents Columbus' son Ferdinand with an autographed copy of his Antibarbari which argues, amongst other things, against all those who condemn something simply because it was invented by pagans.¹⁶³

The world needed learning in order to become more as it ought to be; but learning also needed the world in order to survive and prosper. As Erasmus sees it, and notes in a letter to a friend in 1500, it is a question of obtaining "from whatever source" what is necessary in order to be able to live a scholar's life, or else having to abandon studies.¹⁶⁴ A letter written thirty years later testifies to the success he has had in gaining patrons not only for himself - he now has a "room full of letters from men of learning, nobles, princes and cardinals" and a "chest full of gold and silver plate, cups, clocks, and rings ..."¹⁶⁵ - but also for learning in general. "Compare the world as it was thirty years ago ...", he writes, and look at it now. "Then, not a prince would spend a farthing on his son's education; now every one of them has a paid tutor in his family".¹⁶⁶

In his study Triumph und Tragik des Erasmus von Rotterdam Stefan Zweig describes the success of learning in winning social and financial support in the following way:

Every one wanted to become a citizen, a cosmopolitan, in this realm of learning; emperors and popes,

princes and priests, artists and statesmen, young men and women competed to be educated in the arts and Wissenschaften¹⁶⁷; Latin became their common brotherly language ...¹⁶⁸

When Erasmus refers to "this realm of learning" he sometimes uses the term res publica literaria, the Republic of Letters.¹⁶⁹ He is even credited with having coined the term.¹⁷⁰ He speaks of "our commerce" when he refers to the exchange of ideas which takes place amongst the members of the Republic of Letters.¹⁷¹ He comments on its fortunes in peace and war, noting that peace is favourable to the advancement of learning¹⁷² while war obstructs it¹⁷³, although he also observes that it is possible for princes to be at war, while scholars are at peace and communicate with one another¹⁷⁴; and vice-versa that, while princes are at peace, there may be discord amongst scholars.¹⁷⁵ The Republic of Letters has the aim of advancing "the cause of enlightenment"¹⁷⁶; it has its own language and its own values. It has fewer members than the res publica christiana¹⁷⁷, but it is more or less coextensive with it. One finds all this in his writings, but he does not say, as Zweig does, that:

The humanists are as determined to rule the world in the name of reason, as the princes are in the name of authority, and the Church in the name of Christ. Their dream aims at an oligarchy, a government of the aristocracy of learning ...¹⁷⁸

According to Erasmus it is the product of the Republic of Letters which is the element providing for more harmony in discord, not its practitioners.

9. Moderation as a Link

Avoiding extremes or, to put it positively, observing moderation is another suggestion on the part of Erasmus to move practice in the direction of principle, and he advocates this idea - J.A.K. Thomson speaks of Erasmus' passion for moderation¹⁷⁹ - whenever he meets with its opposite. "It is amazing", he writes in a letter of 1515, "how there is no middle course ...".¹⁸⁰

This finding may be documented with the help of a few examples relating to religion and politics, within Christendom and beyond it.

One set of examples consists of Erasmus' advice to the princes

within Christendom to resolve their conflicts by arbitration and mediation. "(W)hat need is there", he asks in 1515, "to fly to arms at once?"

The world has so many earnest and learned bishops, so many venerable abbots, so many aged peers with the wisdom of long experience, so many councils, so many conclaves set up by our ancestors, not without reason. Why do we not use their arbitration to settle these childish disputes between princes?¹⁸¹

He includes the advice in almost identical wording in The Education of a Christian Prince dedicated to Prince Charles in 1516.¹⁸² He submits it to the French King in 1523:

As far as I am concerned, Excellent King, I like to persuade myself that, given your character, that of the Emperor Charles, and of the King of England, you all would have, without any doubt, followed good advice for a long time if a counsellor could have been found, who was free in his moderation¹⁸³ at the same time as moderate in his freedom.

And he praises the Polish King in 1527 for supporting the cause of moderation by intervening, with the help of diplomacy, in a dispute between two neighbouring princes "in an attempt to avoid war until all other means susceptible to prevent it had been tried".¹⁸⁴

A second set of examples concerns the conflict which developed within Christendom with the appearance of Luther. Erasmus prescribes moderation as an approach to the solution of this conflict, as many of his writings bear witness. To quote from a letter written prior to the Diet of Worms (1521) called together to decide on Luther's fate:

The question is not what Luther deserves, but what is best for the peace of the world. The persons who are to prosecute, the remedies which are to be applied, must be carefully chosen ... Force never answers in such cases, and other means must be found ... Luther was advised to be more moderate ... His prosecutors were cautioned too ... The fear is that, if Luther's books are burnt and Luther executed, things will only grow worse ... Luther's conduct and the causes which led to it ought to be referred to a small committee¹⁸⁵ of good learned men who will be above suspicion.

To quote from another letter written nine years later, when the Diet of Augsburg was meeting and news emanating from there did not sound favour-

able to the cause of moderation: Pope and Emperor were reported to be "urging extremities", and "the reforming leaders" made it no secret that "they were in earnest on their side"¹⁸⁶:

If the Emperor is only putting on a brag, well and good; if he means war in earnest, I am sorry to be a bird of ill omen, but I am in consternation at the thought of it ... The question is not what the sectarians deserve, but what course with them is expedient for Europe. Toleration may be a misfortune, yet a less (sic) misfortune than war.¹⁸⁷

And in the treatise "On Mending the Peace of the Church", published in 1533, Erasmus reminds those on whom the affairs of men depend¹⁸⁸ that "(p)ower that is lacking in discretion falls to the ground with its own weight", adding that the "gods carry tempered power to greater heights", and suggesting that "with moderate advice and calm minds" the task of establishing peace in the Church may be accomplished.¹⁸⁹

A third set of examples is given by Erasmus' advocacy of moderation on the part of Christendom in its approach to the non-Christian world. The case which concerns him in particular is the Turkish question.

In 1515, at a time when there was peace between Christendom and the Turkish empire, the latter having renewed its treaties with Hungary and Venice¹⁹⁰, Erasmus writes in his Adage "War Is Sweet to Those Who Do not Know It":

To me it does not even seem recommendable (sic) that we should now be preparing war against the Turks ... What is taken by the sword is lost by the sword. Are you anxious to win the Turks for Christ? Let us not display our wealth, our armies, our strength. Let them see in us not only the name, but the unmistakable marks of a Christian ... Why do we not rather acknowledge them, give them encouragement and gently try to reform them?¹⁹¹

Fifteen years later Christendom and the Turkish empire were no longer at peace, and Turkish troops were moving in the direction of Vienna, but Erasmus' Consultatio of 1530 on the question of war against the Turks still argues for moderation, even though it does not reject war: "It would be highly desirable", he writes, to win the territories of the Turkish empire in the same way in which the Apostles won "the nations of the earth" for Christ; to overcome the enemy with "a behaviour and a soul worthy of the Gospel"; to send "heralds of integrity" who seek all

advantage for Christ, and none for themselves; and to permit those who do not immediately accept the Christian religion "to live for some time under their own laws, until they slowly become one with us". This is how Christian rulers "progressively abolished paganism" in former times.¹⁹²

Whether within Christendom or beyond it, moderation is more easily exercised if a distinction is drawn between essentials and non-essentials. Erasmus expresses this idea on numerous occasions. For example, concerning the world within Christendom he observes in a letter of 1523 to John Carondelet, Councillor to Margaret of Austria:

The perfection of our religion consists in peace and harmony. And this can hardly be established unless we define as few things as possible and leave each man free to form his own decisions on many questions.¹⁹³

And he chooses almost the same wording when he presents the idea in relation to the world beyond Christendom.¹⁹⁴

It is mainly in the context of religion that Erasmus advances the idea that a distinction ought to be made between essentials and non-essentials. The following passage from The Education of a Christian Prince, however, concerning the question of treaties between Christian princes, expresses the same idea in the context of politics:

If any portion of a treaty appears to have been broken, we should not at once conclude that the whole pact is invalidated, lest we seem to have pounced upon an excuse for breaking off friendly relations. On the contrary, we should rather strive to patch up the breach with the least trouble possible. It is advantageous sometimes even to overlook some points, since not even among private individuals do agreements long remain in effect, if they carry out everything to the letter, as the saying goes.¹⁹⁵

The foregoing examples reflect Erasmus' belief that moderation, whether it finds expression in arbitration and mediation, toleration, persuasion or restraint in general, reduces not only the incidence of conflict but also its severity, thus making the world as it was more like the world as it ought to be.

10. The Question of War

It is mainly in the context of the question of war that Erasmus has been mentioned in the literature of international relations, and perhaps because his position has not been closely studied, a tradition has evolved which makes him the pacifist par excellence. Two of the more recent exponents of this view are F.H. Hinsley, who writes in Power and the Pursuit of Peace:

Pacifists like Erasmus in the early sixteenth century and like the Quakers in the seventeenth century were untypical of the age in abandoning the medieval distinction between just and unjust wars on the ground that all war was incompatible with reason and morality.¹⁹⁶

And Michael Howard, who says in War and the Liberal Conscience:

Erasmus did not concede, indeed, that there could be any circumstances under which war would be justified ...¹⁹⁷

However, a careful reading of Erasmus' writings suggests that his attitude toward war may rather be identified as: not to approve of war but to accept it in case of necessity. Such an attitude directs attention to the existence in his thought of another way of bringing practice more into accord with principle, and this section will therefore be concerned with discussing it.

Erasmus expresses his ideas about war against a climate of opinion which accepts war readily. As he observes in "War Is Sweet to Those Who Do not Know It":

War is now such an accepted thing that people are astonished to find anyone who does not like it; and such a respectable thing that it is wicked (I nearly said heretical) to disapprove of the thing ...¹⁹⁸

Erasmus does not approve of war. "(E)ven when it is waged with perfect justification", he writes, "no man who is truly good approves it".¹⁹⁹ His reasons for not approving it include moral as well as practical considerations. War, he holds, is immensely destructive, both physically and morally²⁰⁰; it inflicts the greatest suffering on those who least deserve it, the common people²⁰¹; it is always costly²⁰²; and its out-

come is never certain.²⁰³

For Erasmus, not to approve of war means to avoid it if possible:

If there is anything in mortal affairs which should be approached with hesitancy, or rather which ought to be avoided in every possible way, guarded against and shunned, that thing is war ...²⁰⁴

There are better ways of trying to resolve a conflict, for example, arbitration and mediation. "The pagan warriors, before they took to arms, took to parley".²⁰⁵ A wise and good prince, he insists, never goes to war "unless, after trying every other means, he cannot possibly avoid it".²⁰⁶

Erasmus, then, does not approve of war; he advises that it ought to be avoided if possible; but, as two of the above passages already imply, he does not rule it out altogether. The sword was taken away from Peter, he writes to Francis I in 1523, but it was not taken away from the princes.²⁰⁷ "What is the significance of the sword", he asks in 1516, if it does not mean that a country ought to be safe under its prince's protection - "safe both from outside enemies and those within?"²⁰⁸ "I do not condemn war absolutely", he affirms in 1526²⁰⁹; and in 1530 he says in his discussion of the question of war against the Turks:

There are in fact people who think that the right to make war is forbidden to Christians in an absolute way - an opinion which I consider to be too absurd to have to refute it.²¹⁰

There is a case, he holds, when war may have to be resorted to, and that case is necessity: "(N)o war should surely be engaged in, in any manner, unless necessity compels it".²¹¹

It is possible that a good prince will, one day, go to war, but then an extreme necessity will have pushed him into this position, after he has tried everything in vain.²¹²

"(A) war against the Turks", he affirms, "is not to my liking, unless an inevitable necessity forces it upon us".²¹³

What, in Erasmus' eyes, is necessity, and what is it not? The answer, contained in many statements scattered over his writings, is clear:

ambition, anger, greed for riches, thirst for glory, desire for power, hatred, envy, an old title, or some selfish treaty - none of these constitutes necessity, even though most wars, both within Christendom and with non-Christians, have arisen from one of these "trivial, stupid or wicked reasons".²¹⁴ Necessity, however, does present itself when it is a question of having to defend one's country and religion against an aggressor.²¹⁵ There is a suggestion, both in Julius Exclusus and in "War Is Sweet to Those Who Do not Know It", that a war which is fought in order to remove a tyrant may be regarded as having necessity on its side²¹⁶, but this idea does not recur and is not elaborated in any way.

Necessity is also the first ingredient of Erasmus' idea of a just war:

War is not to be condemned entirely, if it is undertaken for a just reason, which means in defence of public tranquillity, under circumstances which make it unavoidable; if it is undertaken by piously thinking princes and with the consent of those for whom it is waged; if it is announced in the generally recognized way and is conducted in a just and moderate manner, which means as few bloody losses and sacrifices as possible for those who have not caused the war, and if the war is concluded as soon as possible.²¹⁷

To him, just war does not mean what it means to many of his contemporaries. As he comments critically:

'Just' indeed - this means any war declared in any way against anybody by any prince ... Who does not think his own cause just?²¹⁸

And:

(Roman law) regards war as praiseworthy if it is just. 'Just' is defined as what has been ordered by the prince, even if he be a child or a fool.²¹⁹

A war is just only if it is necessary; if it is undertaken by a prince, that is, a ruler possessing goodness, wisdom and supreme power; if it has the consent of the people, that is to say, the estates; and if it is declared, conducted and concluded in a just way.

Erasmus' writings suggest a further condition which ought to be met if a war is to be just - a condition which he does not include explicit-

ly in the statement above, but which he expresses elsewhere:

If you cannot defend your realm without violating justice, without wanton loss of human life, without great loss to religion, give up and yield to the importunities of the age!²²⁰

In other words, it is his view that a war ceases to be just if it risks destroying the society in whose defence it is fought.²²¹

Not only does Erasmus distinguish between just and unjust wars but, as his theory of the three circles reveals, the former has a well defined place in his thought:

The second circle is formed by the temporal princes whose arms and laws serve Christ in their own way, be it that they defeat the enemy in just wars and protect public tranquillity, be it that by lawful punishments they keep evil-doers within bounds.²²²

In not ruling out war altogether, he takes up a position which differentiates him from those who "deny that Christians should wage any war" and those who "blow the trumpet to summon men to war for any and every cause", as he himself points out.²²³

Some Reflections in Conclusion

Erasmus wrote and published nearly five hundred years ago, yet his works continue to be readily available - in old editions and in new ones, in their original language and in translation.

Scholars in international relations, unlike their counterparts in other disciplines, have displayed little curiosity for them. Part of the reason may be that they have not shown much interest in the history of their discipline's ideas in general; part of it may be that the few histories that mention him do so in words that are likely to act as a deterrent to further inquiry rather than encourage it: labels such as "idealist", "pacifist", and "humanist"²²⁴ seem to place him outside the scope of most of the discipline's concerns - be they theory or policy. And histories of political theory, as they began to be written this century, would not have challenged this impression: they either mention him only in passing²²⁵, or suggest that he should not be mentioned because he was not a party to any of the great religious movements of his age²²⁶,

or, if they do discuss him, choose words which again are unlikely to attract interest: a man of "moderation, of compromise and arbitration", as one scholar puts it²²⁷, seems to have little to offer to either realists or universalists. This century, it is probably correct to say, has been more interested in the "extreme man" than in his opponent.²²⁸

Erasmus needs space when writing; he uses many words where others limit themselves to a few. He attempts to persuade with the help of eloquence rather than dialectics. Ideas relating to different spheres of human experience - religion, philosophy, morality, law, government, society, national and international politics, to mention a few - are closely interwoven, and difficult to separate; only the emphasis changes, highlighting different ideas at different times and in different contexts.

Erasmus' way of presenting his ideas may be unpalatable to the twentieth-century specialist - it certainly does not invite the formulation of theory - and it is easy to miss a particular idea in a particular work. However, as one continues to explore his writings, definite impressions begin to form: for his ideas return, in different configurations, but consistently and continuously, and in the end one is tempted to compare his method with that of a printmaker who uses many plates, each one by itself partial, perhaps unimpressive, to create a print - a picture which is complete, and perhaps telling.

As this chapter has shown, Erasmus rejects realism, even though his disagreement with that way of thinking cannot be said to begin at the level of observation. At this level, he has been found to be realistic. He also rejects universalism, and what he perceives as a road to it, territorial expansionism; and he does so in words which are unequivocal.

In opposition to both realism and universalism Erasmus puts forward a third way. Central to it is the idea of political plurality, and he joins to it the idea of that which links and circumscribes. Political plurality, in his case, means a plurality of Christian princes; but it also means a plurality of Christian peoples or states, for "a prince cannot exist without a state ...".²²⁹ He places the emphasis on princes rather than peoples, not because the latter are unimportant, but because princes are responsible for their peoples. Princes, with their

peoples, are the "discordant elements" within Christendom, but he does not focus on that which differentiates them²³⁰ but rather on that which they have, or ought to have, in equal measure - the former wisdom, goodness, and power, the latter checks and balances in their internal affairs at as many levels as possible. And the spiritual Christian prince does not aim at overthrowing political plurality, but acts in its support.

That which links and keeps within bounds Christian princes and their peoples, or, to use the language of this chapter, that which promotes harmony in discord, is the Christian religion or philosophy of Christ, reinforced and complemented by learning and a positive law of nations, moderation, and an attitude towards war which avoids it unless it is just, and justice includes above all the idea of necessity.

Erasmus' third way incorporates ideas from the distant rather than the immediate past, and the question presents itself, although it is not the task of this inquiry to answer it, whether it is possible that his negative attitude towards the centuries immediately preceding him may have contributed to the decision, taken by a later age, to divide history into medieval and modern at this point in time, and also to the view, prevalent until well into this century, that "medieval" is synonymous with "dark". Erasmus himself, it is worth noting, refers to thinkers such as Thomas of Aquinas not as medieval but as modern, and contrasts him with the ancients.²³¹

Erasmus' idea of international society, the idea of a society of Christian princes, is central to his way of thinking about the world: the third way, the via media.

CHAPTER IV

FRANCISCO DE VITORIA

The second thinker to be included in this study is the Spanish Dominican Francisco de Vitoria (1480? - 1546).

Otto von Gierke as well as Martin Wight and Hedley Bull mention him in their respective accounts of the three ways of thinking about international relations but list him under different headings. Gierke attaches him to the universalists and gives a source upon which he bases his decision¹; Wight and Bull group him with the representatives of the via media, Wight offering a source² and Bull omitting to do so.³

The reference given by Gierke turns out, on closer examination, to be rather unilluminating. It reads: "Rel. III, nos. 12 and 15", followed by the sentence that Vitoria speaks "of a human respublica⁴ which comprises all states as members, and in which majority decisions hold".⁵ Without the title of Vitoria's treatise it is difficult to identify this source, as not all the editions of Vitoria's relectiones⁶ follow the same order of presentation. For example, the edition of 1694 which is the basis for the well-known publication of 1917 in The Classics of International Law gives as the third relectio "Concerning Civil Power".⁷ Its items 12 and 15, however, do not relate to the point in question. In fact, a perusal of all thirteen relectiones as published by the Dominican Teófilo Urdánoz in 1960⁸ leads to the conclusion that items 12 and 15, wherever they appear, are not relevant to the question. And the sentence which Gierke adds in his footnote does not explain his decision. Wight offers a reference to the relectiones "Concerning Civil Power" and "On the Indians", but the ideas which they identify - "the world as a whole, being in a way one single State" and "natural society and fellowship" - could also belong to the universalist pattern of thought. Rather than giving evidence to justify their respective decisions, Gierke, Wight and Bull may be said to withhold it.

The problem-free interpretation offered by James Brown Scott and others of Vitoria's life and work contains no suggestion that the endeavour to come to grips with this sixteenth-century thinker may be accompanied by difficulties⁹; and yet, as the inquiry proceeds, it becomes

clear that to many questions, there are no certain answers.

One set of unresolved questions relates to dates and places. There is no agreement amongst scholars as to when Vitoria was born. Some have suggested the year 1480; others 1483, 1486 and 1492.¹⁰ The disagreement about his year of birth gives rise to questions about his place of birth¹¹, and these, in turn, lead to further questions. For example, while it is agreed that Vitoria entered the Dominican convent of San Pablo at Burgos, it is not clear when he did so; and, while it is agreed that he spent a good many years in Paris, studying and teaching, there is no agreement regarding the number of years he was there nor when he obtained his doctorate in theology from the Sorbonne.¹²

The date of his return to Spain does not appear in the sources, but it is agreed that from 1523 to 1526 he taught at the Dominican convent of San Gregorio, established shortly after the discovery of America at Valladolid; that in 1525 his Order promoted him to Maestro¹³ of Sacred Theology, the highest teaching degree conferred by the Dominicans; that from 1526 to 1546 he occupied the Prima¹⁴ Chair of Theology at the university of Salamanca, the most important chair of theology in Spain, and that, during those twenty years, he lived at San Esteban, the convent from where, in 1510, the first Dominicans had left for America.¹⁵ Less certain are the dates to be assigned to the products of his mind: the lectiones¹⁶, relectiones and other writings such as opinions and letters.¹⁷ The numerous pages of small print which Urdánoz devotes to discussing the chronology established by the Dominican Beltrán de Heredia¹⁸ do not succeed in assuring the reader of its reliability, especially since Urdánoz himself is prepared to tinker with it.¹⁹

Vitoria's year of death is usually given as 1546.²⁰ It is not known where he is buried, and there exists no portrait of him, of whom a learned Belgian, Joannes Vasaeus, wrote: "His erudition was incredible, his reading almost unlimited, his memory ready; he was like a miracle of nature", adding that "(i)n the whole of Spain there was no one so wise, so simple, and, I make bold to add, so saintly".²¹ And a chronicler of the convent of San Esteban recorded:

From all the kingdoms and remotest provinces, theologians, jurists, knights, merchants, royal councillors, consulted him, and all depended on his verdict as on an oracle.²²

A second set of unresolved questions concerns the fate of his ideas. Scholars agree that he published nothing during his life-time except four prologues written during his years in Paris.²³ They also agree that his manuscripts were not published posthumously, and subsequently disappeared.²⁴ How did his ideas survive, given that his manuscripts never saw the press? There is no agreed answer to this question. One theory is that Vitoria's texts stem from oral transmission, that is, from notes taken by his students in the course of his lecti-ones and relectiones. The most prominent exponent of this view seems to be the Dominican Luis Getino.²⁵ Beltrán de Heredia and Urdániz subscribe to this theory only in so far as it concerns the lectiones.²⁶ They reject it for the relectiones. These, they hold, were copied as from 1538 onwards, and manuscript copies were used for the first edition of relectiones which appeared at Lyons, France, in 1557; and manuscript copies plus the Lyons edition went into the making of the second edition which was published at Salamanca, Spain, in 1565. Subsequent editions no longer used manuscript copies but followed the first two printed versions.²⁷

The theory of the written transmission does not eliminate the question of authenticity. The editor of the Lyons edition, Jacques Boyer, is said to have expressed himself in the following way:

(O)ne person had mutilated (Vitoria's writings) by making an unhappy transcript, another had read them incorrectly ... and many had placed the comments of their foolish mind (sic) in the midst of his scrupulous doctrine and singular erudition ...²⁸

Alonso Muñoz, the Dominican editor of the Salamanca edition, is reported to have reacted to the Lyons edition with these words:

(T)here appeared a little book with a most imposing title, but containing countless horrible misprints, absurdities which were disgraceful and insulting to the author as well as the whole theological school.²⁹

To the unknown editor of the third edition, published at Ingolstadt, Germany, in 1580, the following comment is attributed:

But I do not know by what ill-chance (sic) it has happened that into this Salamanca edition, so clean, so clear, so gilded, have crept blunders

and faults neither few nor trivial.³⁰

Making a long step from the sixteenth century to the present, one finds Urdánoz writing towards the end of his long introduction:

Given that the original of the text is missing and that it is not possible to restore the same with absolute precision by way of the first copies, which are also unknown, and because the meagre written tradition does not permit the exact reconstruction of the derivation of families and dependencies which go back to the first copies or the original, one can aim at no more than a critical text which comes very close to the original laid down by Vitoria.³¹

Thus, whether one accepts the theory of the oral transmission or that of the written transmission, there is no way of knowing by just how much or how little the text as we read it today differs from the original.

How does one, for example, react to the fact that Vitoria's relectiones are incomplete?³² Does one agree with Urdánoz, who debits this defect entirely to Vitoria's account? "The anomaly of leaving unfinished the theme of his compositions and solemn lectures", he writes, was "the usual way of proceeding on the part of Vitoria".³³ Or does one base an explanation on the mode of transmission or on yet some other cause?

A third set of unresolved questions concerns the context within which Vitoria lived and worked. What was his relationship with the institutions of which he was a member - the Dominican Order, the university, the Catholic church? There is no answer. What was the rapport between Vitoria and the Spanish Crown? The answer is inconclusive: Getino maintains that the King, Charles I, who at the same time was the Emperor, Charles V, became increasingly ill-disposed towards Vitoria and, in the end, ordered the confiscation of his writings³⁴; Urdánoz rejects this view.

Turning from institutions to individuals, the available information does not become much more enlightening. The records reveal the names of two men - the Constable of Castile, Don Pedro Fernández de Velasco, and the Dominican Provincial of Andalusia, Father Miguel de Arcos - who, scholars agree, were friends of Vitoria³⁵; but, for the rest, there is uncertainty. What, for example, was Vitoria's relationship to

his brother Diego, also a Dominican? There is no answer.³⁶ Or, to take another example, what was his relationship to Erasmus of Rotterdam? The answer is uncertain.

On Erasmus' side, the story sounds rather simple: Vitoria and Erasmus never met. Erasmus heard of Vitoria through the Spanish humanist Luis Vives, on whose advice he wrote to Vitoria in 1527 to request the latter's support at the junta³⁷ which was taking place that year at Valladolid to discuss the orthodoxy of Erasmus' writings. No reply is known to have been received.³⁸

The story is more complex on Vitoria's side. It starts the same way: Erasmus and Vitoria never met; but then it develops differently. One source reports that, during his years in Paris, Vitoria expressed "admiration" and "adoration" for Erasmus, and "defended" him more than once before numerous theologians.³⁹ Another source, when referring to his stay in Paris, qualifies his "affection" and "admiration" for Erasmus by saying that he followed "the new trends" with "moderation and a critical spirit".⁴⁰ Of Vitoria's participation in the junta of Valladolid in 1527 one source writes:

(Vitoria's) opinion was moderate; he disapproved of Erasmus' dogmatic affirmations concerning the Trinity and the divinity of the Word, but he continued nevertheless to consider him a good Catholic.⁴¹

Another source puts it this way:

His judgment is one of the most severe. In all of Erasmus' propositions, he finds the affirmation scandalous, temerarious and erroneous; distortions and calumnies, which favour heresy ... Nevertheless he tries to save ... the orthodox sense and intention of Erasmus whom he regards in any case as a Catholic.⁴²

It is not known whether Vitoria received Erasmus' letter, and there seems to be no further reference to Erasmus on his part except for a comment contained in a lectio on St Thomas, to which the year 1534 has been assigned.⁴³ It expresses disagreement with Erasmus.

The existing sources make it impossible to give any meaningful shape to the particular context within which Vitoria lived and worked - hence to use it as an explanatory tool, a device for throwing light on

his life and the fate of his ideas. It is only when one looks at a more general setting such as that, for example, provided by J.H. Elliott's history of Imperial Spain: 1469 - 1716, that one finds clues which may point to an understanding.⁴⁴ These lead one to ask: Were Vitoria and his ideas the victims of the Spanish Inquisition? - a question which has not been raised in the existing literature, and the sources do not provide an answer; yet it might explain why "(t)he men of his time permitted his writings to perish and forgot his tomb and his remains".⁴⁵

Given the number and nature of questions that remain unresolved, it is possible to doubt that the twentieth century meets the same Vitoria as the sixteenth century - but the thinker whom this century encounters, even if he is no more than an imperfect copy of the original, has much to offer to those who pursue the idea of international society.

For the purposes of this inquiry, his ideas are presented in seven sections. These follow a similar order to those given in the preceding chapter, and they are based on the same reasons. Their number differs, as does the wording of some of the headings, reflecting the presence of differences in the two thinkers.

Section One, Vitoria and the Events of His Time, records some political events of the first half of the sixteenth century and examines Vitoria's reaction to them; Section Two, Vitoria's Position within the Three Traditions of Thought, gives a preliminary delimitation of Vitoria's position in relation to realism and universalism; Section Three, The Perfect Temporal Community, responds to the question of political plurality; the idea of that which links and circumscribes is given expression in Section Four, The Perfect Spiritual Community, and in Section Five, The World as a Community of Perfect Communities; Section Six, The Question of War, presents Vitoria's idea of the just war; and Section Seven, Moderation, captures another aspect of the idea of that which links and circumscribes.

1. Vitoria and the Events of His Time

This section, like its counterpart in the preceding chapter, notes some of the political events of the time - the emphasis is again on conflict rather than co-operation - and explores the question whether Vitoria, like Erasmus before him, may be regarded as a realistic observer.

During the first half of the sixteenth century, the conflicts which engaged Spain's material and intellectual resources abroad occurred mainly in three areas: Europe, North Africa and America. Of these, North Africa ranked least high on the list of priorities.

After the completion of the reconquista⁴⁶ of Spain in 1492, the Spanish under Queen Isabella of Castile and her husband Ferdinand, King of Aragon, did not pursue the Moors across the Straits into Africa, in spite of the encouragement which they received from Pope Alexander VI, a Spaniard. America and Italy engaged their attention. Only in 1509, after the conclusion of the League of Cambrai⁴⁷, did Spanish troops cross the Mediterranean. They captured Oran, and occupied part of the coast for about a year. The next twenty years were again characterized by inactivity on the part of the Spanish, despite increasingly frequent raids of the Spanish coast by North African pirates.⁴⁸ It required the seizure by pirates of Tunis, one of Spain's Moorish vassalages, in 1534, for Charles I (V) to become active. In 1535 he recaptured Tunis, but did not stay to consolidate his position. The Duchy of Milan required his presence. A new expedition undertaken in 1541 against Algiers ended in failure and, during the remainder of the period under consideration, the Spanish made no further attempt to gain a firm hold over North Africa. As Elliott notes, first Ferdinand, and then Charles were "too pre-occupied with other pressing problems to devote more than fitful attention to the African front".⁴⁹

Spain's involvement in European affairs is very much the story as told in the preceding chapter, with slight differences in emphasis.

The initiative for the conclusion of the alliance of Italian powers against the French in 1495 came from Ferdinand, King of Aragon. The French attempt to take up their claim to Naples was unsuccessful, and Naples became Spanish in 1504. In 1508 Ferdinand joined the side of the French in the League of Cambrai against Venice. The Holy League of 1511 re-established the old adversaryship between the Spanish and the French, and in 1512 Ferdinand helped Pope Julius II to return the Medici to Florence.

The French throne changed its occupant in 1515, the Spanish thrones in 1516, and the Imperial throne followed in 1519. The new rulers continued the Italian policies of their predecessors, and war resumed in

1521. The general who fought Charles' winning battles at Pavia (1525) and Landriano (1529) was a Spaniard, Antonio de Leiva. In 1530 Pope Clement VII crowned Charles with the Imperial crown and the crown of Italy at Bologna. R. Trevor Davies observes: "Charles, mainly by the help of his Spanish kingdoms, had now reached the height of his power".⁵⁰ The meeting at Bologna of emperor and pope is also seen as the moment when "Spain definitely became antagonistic to the humanists".⁵¹

In 1532 Charles I (V) led six thousand Spanish soldiers to Central Europe to fight the Turks. In 1536 Francis I and the emperor were at war over the Duchy of Milan. It ended in a truce mediated by Pope Paul III, but hostilities resumed in 1541. Henry VIII became Charles' ally, and Francis I was supported by Suleiman the Magnificent. A peace was signed in 1544. Two years later, Francis I died and Charles V, accompanied by Spanish troops, met the Lutherans at Landshut in South Germany. It was the year when Vitoria is said to have died.

The discovery of America and the first fifty years of its conquest by Spain represent a story rich in conflict. For the purposes of this chapter, a few excerpts must suffice.

The discovery of the New World in 1492 by the Genoese Christopher Columbus was followed, in 1493, by Pope Alexander VI's famous donation: the Bull Inter Cetera⁵² appointed the Spanish kings and their successors "the lords of the islands and mainland discovered or to be discovered".⁵³ The papal grant did not mention coercion or war but, as Benno Biermann points out, "everywhere the advancing Spaniard employed force, subjugated the Indians, and treated them as rebels if they offered resistance".⁵⁴

According to Lewis Hanke, the first discussion of "the basis for Spanish rule in America and the right of Spaniards to profit from Indian labor" took place in Spain in 1503.⁵⁵ It resulted in the decision that "the Indians should serve the Spaniards and that this was in accordance with law, human and divine".⁵⁶ The Dominican Antonio de Montesinos is credited with raising the first public protest in America. In 1511 he asked on the island of Hispaniola:

Tell me, by what right or justice do you keep these Indians in such a cruel and horrible servitude? On what authority have you waged a de-

testable war against these people, who dwelt quietly and peacefully on their own land?⁵⁷

One answer consisted in the Laws of Burgos, promulgated in Spain in 1512/1513⁵⁸; another came by way of two treatises - Concerning the Rule of the King of Spain over the Indies by Matias de Paz (1512) and On the Ocean Isles by Juan Lopez de Palacios Rubios (1512) - both of which agreed that the just title of Spain to the Indies rested on Pope Alexander VI's grant⁵⁹; a third answer was the requerimiento, a document composed by Palacios Rubios in 1513, which required the Indians to acknowledge the Church as the ruler of the world and in its place the Spanish kings, and to allow the Christian religion to be preached.⁶⁰

The conquest spread and the debate about its justice continued. In 1519 Bartolomé de Las Casas confronted Charles, King and Emperor, at an audience in Barcelona with the following words: "I am one of the first who passed over to the Indies, and I have been there many years. In those years I have seen with my own eyes the greatest cruelties done ...".⁶¹ The Council of the Indies was established in 1524⁶², but the nature of the conquest did not change.⁶³

The papal Bull Sublimis Deus⁶⁴ appeared in 1537. Pope Paul III decreed that "the said Indians ..., though they be outside the faith of Christ, must not be deprived of their liberty or ownership of their possessions". He further ruled that the Indians "must be invited to receive the said faith of Christ with the preaching of the word of God and with the examples of a good life".⁶⁵ In 1542 the New Laws were promulgated, to be partly revoked three years later.⁶⁶

In subsequent years there was no change in either Spanish conduct in America⁶⁷ or the intensity with which it was debated. The junta summoned by Charles I (V) met at Valladolid in 1550 - 51 "to inquire into and establish the manner and the laws by which our Holy Catholic faith can be preached and promulgated in that New World"; and to examine "in what form those peoples may remain subject to His Majesty the Emperor without injury to his royal conscience, according to the Bull of Pope Alexander".⁶⁸ The protagonists were Las Casas and Juan Ginés de Sepúlveda.⁶⁹ The debate ended inconclusively.

Vitoria's formal writings, his lectiones and relectiones, refer to the conflicts of his time, but they do not often reveal how realistic an

observer he is.

Regarding Spain's relationship with North Africa, for example, he says:

(I)f great spiritual injury to Africa should result from the civil administration of the Spanish State, the Spanish prince would be bound to correct that form of administration.⁷⁰

References to Spanish involvement in European affairs take the following form:

If, for example, the Spanish should undertake against the French a war which, in other respects, was just, and which was, besides, advantageous to the Spanish kingdom, but which involved Christendom as a whole in still greater harm and loss (suppose, for instance, that the Turks in the meantime take possession of Christian provinces), then the Spanish should cease from waging that war.⁷¹

The conquest of America figures prominently in his formal writings, but again the argument often takes the formula 'if ... then'. For example:

If any of the native converts to Christianity be subjected to force or fear by their princes in order to make them return to idolatry, this would justify the Spaniards, should other methods fail, in making war ...⁷²

Vitoria's conditional arguments do not reveal the extent of his knowledge and understanding of what is the case. Their truth or falsity depend on their internal logic and not on the assumptions underlying them. These may be true or false. In his famous debate with Sepúlveda in 1550 - 51 Las Casas made the following statement:

Sepúlveda, as clearly appears from the Latin text of his Apologia⁷³, cited the most learned Francisco de Vitoria in support of his doctrine, saying that Vitoria approved of war⁷⁴ against the Indians. The reader of the two parts⁷⁴ of the first Relección⁷⁵ can easily satisfy himself that Vitoria (1) proposed in the first part seven titles which might appear to justify war against the Indians and roundly refuted them; (2) cited in the second part titles all or part of which might justify the transfer of jurisdiction over the Indians to the Spaniards. Now, as concerns the Indians he makes certain assumptions that for the most part are com-

pletely false ...⁷⁶

It is true that Vitoria's assumptions in the "second" part of the relectio do not reflect reality, but this does not necessarily mean, nor does Las Casas say that it means, that Vitoria does not know better.

However, there are instances in Vitoria's formal writings, including the relectio "On the Indians", which may be read as realistic appraisals of what is the case. To give two examples:

(T)he true state of the case is that (the Indian aborigines) are not of unsound mind, but have, according to their kind, the use of reason ...
 (T)here is a certain method in their affairs, for they have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the use of reason; they also have a kind of religion.⁷⁷

Or:

It is not sufficiently clear to me that the Christian faith has yet been so put before the aborigines and announced to them that they are bound to believe it ... I hear of many scandals and cruel crimes and acts of impiety.⁷⁸

A much clearer picture emerges when one turns to Vitoria's informal writings, his letters. Not many have survived, and not all of these are intact, but they project a man who is in touch with events and discerning when assessing a situation.

There are, for example, his two letters to the Constable of Castile, probably written in 1536. Vitoria begins the first by saying: "We were already informed of the fact that Your Excellency had departed for the Queen's Court, since the Count of Siruela had written to me to that effect"⁷⁹; and later he mentions: "I saw a letter, written from the field of battle, and declaring that Antonio Leiva⁸⁰ met his death".⁸¹ The second letter has the opening paragraph: "The news I send your Excellency from Salamanca must needs by slight, since you yourself are at the source of all news"⁸²; and a comment on the situation in Europe:

I realize that conditions are unfavourable ..., but if it were possible to find some means of effecting a compromise between His Majesty ... and the King of France, that achievement would seem

to me even more auspicious than the conquest of Tunis ... (L)et honest men say whether our wars promote the well-being of Spain, France, Italy, or Germany, or whether such wars tend to destroy all these nations,⁸³ and so swell the numbers of Moors and heretics.

Regarding the situation in America, there exists a letter, probably of 1534, to the Dominican Provincial of Andalusia, which discloses Vitoria's knowledge and understanding:

(I) am no longer startled or shocked by any of the questions which come to my attention with the exception of benefices held through trickery, and events in the Indies, at the mention of which my blood runs cold ...

First of all, I do not understand the justice of that war; I do not indeed dispute the fact that the Emperor can conquer the Indies which, strictly speaking, I suppose he can do. But, according to what I have heard from the very persons who took part in the recent battle with Tabalipa, never had either Tabalipa or his people done any injury to the Christians, or other thing on account of which war should be made ... And I believe that the other conquests since then have been more despicable ... And although the Emperor may have just titles to conquer them, the Indians do not know it nor can they know it; and therefore they most truly are innocent as far as it concerns the war.⁸⁴

The available evidence, then, permits two conclusions: (i) the events of his time figure in Vitoria's writings and sometimes prominently; (ii) his statements concerning them, at times, reveal his position; at other times, they do not. When his position is disclosed, it appears as that of a realistic observer - a finding with which the words of his contemporary, the chronicler of the convent of San Esteban, may be read to agree⁸⁵; when his position remains hidden, the speculative mind is tempted to search for reasons why he opts for this form of argument.

2. Vitoria's Position within the Three Traditions of Thought

The study of Vitoria's writings indicates that it is his thought as a whole rather than any particular work or idea which excludes him from universalism and realism, and identifies him as a thinker of the via media. For this reason, it seems preferable not to try to delimit his position in this section but to permit it to crystallize in the course of the chapter as a whole and, at this stage, to offer no more than a

few introductory observations.

As far as the realist way of thinking is concerned, there is no sign in his formal and informal writings that Vitoria has heard of or read his near-contemporary Machiavelli, and these same writings, unlike those of Erasmus, contain no evidence that an explicit rejection or dissection of realist thinking is one of his concerns.

The same cannot be said of universalism and, by way of introduction, this section presents one of his ideas on the subject, namely the proposition that there is no universal temporal ruler now, nor was there in the past. Vitoria advances it in the context of his relectio "On the Indians" against those who claim that the Spaniards, when they first travelled to the New World, "took with them a right" to occupy the lands of the Indians; and he uses it in the relectio "Concerning the Power of the Church" (One), as part of his attempt to define the extent of spiritual power. In the former, he develops his ideas in relation to emperor and pope⁸⁶; in the latter, he limits himself to discussing papal claims.⁸⁷

To abstract from a complex argument:

Vitoria sets out with the statement that "(t)he Emperor is not the lord of the whole earth"⁸⁸, and the proofs which he offers come from natural law, divine law, and human law. His main authority regarding natural law is St Thomas:

(B)y natural law mankind is free save from paternal and marital dominion ...; therefore ~~no~~ one by natural law has dominion over the world.

Regarding divine law, he looks back into history and, supported by numerous references to the Scriptures, concludes that "before the coming of Christ no one was vested with world-wide sway by divine law" and the same is true of the time which followed "our Lord's coming".⁹⁰ He dismisses the relevance of human law in the following way:

(I)t is manifest that the Emperor is not the lord of the world, because either this would be by the sole authority of some law, and there is none such; or, if there were, it would be void of effect, inasmuch as law presupposes jurisdiction.⁹¹

And, without appealing to any specific authorities, he concludes this line of reasoning by saying:

Nor ... had the Emperor this position by lawful succession or by gift or by exchange or by purchase or by just war or by election or by any other legal title, as is admitted. Therefore the Emperor never was the lord of the whole world.⁹²

At the other level of discourse, Vitoria argues that it "is indubitably and manifestly false" to say, as many jurisconsults do, that:

(T)he Pope is lord of the world in the strictly temporal sense; and that he possesses a temporal authority and power of jurisdiction throughout the world and over all princes.⁹³

This, he believes, is "merely a fabrication intended as flattery and adulation for the Popes".⁹⁴ In support of his opinion, he names several authorities: the Scriptures, St Bernard and St Thomas; the jurisconsults Joannes Andreae and Hugo.⁹⁵ He mentions historical "facts" such as "dominion over certain lands" had been granted to the pope by the emperor; the pope has never had temporal power over the lands of the infidels⁹⁶; and "the Pope himself has never recognized the existence of the power in question".⁹⁷ Had not Innocent clearly said that he had "no power over the Kingdom of France in temporal matters"?⁹⁸ And he points to the three systems of law:

(N)o lordship can come to (the Pope) save either by natural law or by divine law or by human law. Now, it is certain that none comes to him by natural or by human law,⁹⁹ and none is shown to come to him by divine law.

The pope, Vitoria is certain, is not lord of the world in temporal matters; nor is he lord of the world in spiritual matters, and Vitoria knows that even his opponents agree with him on this point, for the pope has "no spiritual jurisdiction over unbelievers".¹⁰⁰ His authority is the Scriptures.

According to Vitoria, then, the past has known of no universal ruler nor does the present. Whether there ought to be one in the future, he does not say.

With these preliminary points in mind, it is time to meet one of

Vitoria's key concepts: the perfect temporal community.

3. The Perfect Temporal Community

Vitoria offers two approaches to the idea of the perfect temporal community. One is direct and swift, inspired by Aristotle:

(A) State¹⁰¹ is properly called a perfect community ... A perfect State or community ... is one which is complete in itself, that is, which is not a part of another community, but has its own laws and its own council and its own magistrates ...¹⁰²

As examples, he cites the kingdom of Castile, the kingdom of Aragon and the Republic of Venice, adding that "there is no obstacle to many principalities and perfect States being under one prince".¹⁰³ A similar definition is given when he quotes Tommaso de Vio, Cardinal Cajetan:

(O)ne applies the term state (to a given group), not because it has one head, but because it is a perfect state, not part of another state; and because it does not conduct its affairs in conjunction with any other state whatsoever.¹⁰⁴

The above definition is accompanied by his remark that "(t)his holds true, moreover, regardless whether or not (that group) has a superior".¹⁰⁵ The example he gives is the Duke of Milan who is subject to the emperor. "(N)evertheless, (the state of Milan is) perfect and does not share its being with any other state".¹⁰⁶

The other approach is more winding, and awkward, consisting of several steps, but is also more instructive of Vitoria's thinking.¹⁰⁷ It follows authorities such as Aristotle, the Scriptures, Cicero, St Augustine and St Thomas.¹⁰⁸

The first step consists in proving that:

States and commonwealths had not their fount and origin in the invention of man, nor in any artificial manner, but sprang, as it were, from Nature, who (sic) produced this method of protecting and preserving mortals.¹⁰⁹

Vitoria arrives there by arguing that man needs society, not only because nature has made him "frail, weak and needy", but also because it has

given him "reason and virtue":

And truly the will, whose chief ornaments are justice and friendship, would of necessity be entirely deformed and ... crippled, if it were separated from human society: justice, indeed, cannot be practiced except by the multitude; and the same is true of friendship ...¹¹⁰

Agreeing with his sources, he holds that of all societies, civil society best meets man's needs and hence it is "an exceedingly natural form of intercommunication".¹¹¹

In the second part of his argument, he is concerned to show that society for its continued existence needs a force or power¹¹² to maintain and direct it. As he puts it:

(I)f all were equal, and subject to no power, each individual would draw away from the others in accordance with his own opinions and will; the commonwealth would of necessity be torn apart; and the State would be dissolved ...¹¹³

Given that society has its origin in natural law, of which God is the author, it follows that the power without which society cannot continue to exist must also derive from that source. This is the proposition which he advances as the third step in his argument:

If, then, God created for men such a necessity and inclination that they cannot subsist except in a social state and under some ruling power, it must be true that these very conditions are also derived from God.¹¹⁴

In the fourth part, Vitoria gives the power which is necessary for the continued existence of society its home. It resides, he says, in society itself. His proof runs as follows:

(S)ince by natural and divine law there must be a power for the government of the State, and since - if common, positive, and human laws are laid aside - there is no reason for depositing that power in one person rather than in another; it necessarily follows that the community is self-sufficing and that it has the power to govern itself.¹¹⁵

Here, then, the idea of the perfect community is met with again. This time it means that a community or state is perfect if the force or power

which directs it inheres in the community or state itself.

Thinking about the two definitions, one readily finds a correspondence between them: the quality of being self-sufficient or perfect at one level - the community's power, authority or right to govern itself - expresses or reflects itself in the same quality at the other level - the community's laws and institutions. Also, the needs which a particular community experiences express or reflect themselves in its laws and institutions.

To stay with the concept of the perfect temporal community for a little longer:

According to Vitoria, the perfect community does not itself exercise the power inherent in itself, but entrusts it to "some person or persons" and "it matters not whether (it) is entrusted to one or to many".¹¹⁶ It means that the perfect community can adopt the form of government "it desires, even if this be not the best form".¹¹⁷ It can choose between the rule of one, of a few, or of many; it also can opt for a combination of these. "The best rule" is the rule of one¹¹⁸; "the safest rule", however, is a mixture of the three.¹¹⁹ And there is no need for the community to be unanimous, "the act of the greater part" being "the act of the whole".¹²⁰ However, it does not have the authority to dispense with government altogether: "(T)he agreement would be null and void, being contrary to natural law".¹²¹

He who is entrusted with the administration of a perfect community "is obliged to procure the temporal good of the community".¹²² Vitoria offers no definition or description of the temporal good, but his writings leave no doubt that the most basic value or purpose to be secured by the prince is the life or survival of the community. In Vitoria's words, the state must be guarded "against injury from its own citizens or from aliens".¹²³ This means that, in the internal context, the prince is entitled to punish transgressors of the law and, as far as external relations are concerned, he has the right to go to war - to defend the community and to avenge a wrong received.¹²⁴ The explanation which Vitoria gives is this: "It is ... imperative for the due ordering of human affairs that this authority be allowed to States".¹²⁵

There is equally no doubt that the most elevated value or purpose of the perfect community is "natural felicity" or "human well-being".¹²⁶

For the prince, this goal means that, within his own realm, the exercise of virtue must be made possible¹²⁷; and, beyond his community, the prince is entitled to intervene in other communities if innocent people suffer there.¹²⁸

Between life and survival on the one hand, and natural felicity or human well-being on the other, there exist other values. Vitoria especially mentions peace and unity. It is important for the prince to ensure harmony amongst the citizens and if conflict cannot be avoided, that it be resolved peacefully. As he observes: "(U)nity is such a great good that, without it, the community cannot subsist".¹²⁹ Yet there are limits to peace and unity. "Sometimes, it is necessary to disturb the tranquillity of the state".¹³⁰ When it is faced with the rule of a tyrant, "the concord of its citizens may be fatal".¹³¹ Another example mentioned by Vitoria at this level of values is the imposition of religious uniformity. The coexistence of different religions within one community, he holds, may cause less strain than enforced unanimity.¹³² Regarding the world beyond his realm the prince should strive to "live in peace with all men ... (O)nly under compulsion and reluctantly should he come to the necessity of war".¹³³

The prince's obligation to pursue the temporal good of the community is no other than his obligation to be just in the exercise of power, and just means to be mindful not only of what is lawful but also of what creates and conserves felicity.¹³⁴ In less abstract language, Vitoria holds that the prince must rule in accordance with existing laws, for "(t)he law must consider the common good".¹³⁵ It is for this reason that a prince who has been entrusted with the administration of more than one perfect temporal community is obliged to rule each one according to its own laws.¹³⁶ G.R. Elton's comment is relevant here, namely: "The point about the rule of law was not that it made puppets of kings but that it prevented strong kingship from deteriorating into despotism".¹³⁷

The perfect temporal community is not only an old institution - according to Vitoria "the world was certainly divided after Noah into different provinces and kingdoms ... (T)hrough the descendants of Noah ... sovereignty and lordship began in the world ..."¹³⁸; it also is ubiquitous. Using St Paul as his authority, he asserts: "(A)mongst the unbelievers there is complete temporal and civil authority ...".¹³⁹ "Indeed, it should not be a matter of any doubt", the idea returns,

"that legitimate princes and lords exist among the heathen ...".¹⁴⁰ For him, there is no doubt. A plurality of political entities is not only a fact, but, as the following statement reveals, it is also an extremely pleasing fact, for, reminding his audience of Cicero's reference to Scipio's words, he says: "(N)othing is more acceptable in the sight of God ... than are those groups called States ...".¹⁴¹

In addition to its temporal power the perfect community has spiritual power over itself, and this by natural law.¹⁴² It is an aspect which Vitoria does not discuss in a general way, perhaps because he believes that, although spiritual power has been possessed by all perfect communities at all times, perfect spiritual power has come into existence only with Christ and now exists only where there are Christians - an idea which underlies his thinking about another perfect community, the perfect spiritual community, to be presented in the next section.

4. The Perfect Spiritual Community

All those perfect temporal communities which have adopted the Christian religion and all Christians who live in non-Christian perfect temporal communities form a community in their turn. Vitoria variously refers to this community as the Christian church, the Christian community, the Christian state.¹⁴³ "(T)he Church as a whole is, so to speak, a State and one body ...".¹⁴⁴ It is perfect because it is complete in itself. It is spiritual because the end which it pursues - ultimate or eternal felicity - is spiritual. He posits its existence when he discusses Christian spiritual power and its relation to Christian temporal power. His argument, which he sees as following a middle course - "(b)ut we", he says, "tempering the force of the two conflicting opinions"¹⁴⁵ - enlists support mainly from the Scriptures, Aristotle, Pope Innocent III, St Thomas, Torquemada and Cajetan.

Spiritual power, Vitoria declares in his relectio "On the Power of the Church" (One), is as old as temporal power and has existed since the beginning. Proof of this is man's nature: man consists of body and soul; therefore it is natural for him to worship God "not only with his soul and insight, but also with material and external acts ...".¹⁴⁶ Given that natural inclination on the part of man, it is necessary to give it direction:

But just as it is necessary in the state that the acts of men strive after a human end and that there be someone who orders and (someone) who obeys, so it is necessary that there be somebody who ... takes it upon himself to direct men to a supernatural end in order that his acts be guided to this same end. And as precisely in this consists spiritual power, it follows that it must have existed since the beginning.¹⁴⁷

Vitoria pursues the fortunes of spiritual power through the ages of natural law and written (old) law¹⁴⁸ to arrive at the conclusion:

(T)he proper and perfect spiritual power which consists in the keys to the kingdom of the heavens never¹⁴⁹ existed ... before the coming of ... Christ.

The power to open or close the heavens, to give or refuse to give eternal life, is "more excellent" than any other spiritual power. It is true, he says, that the Indians have priests, but they are "certainly false ones"¹⁵⁰; it also is true that the Turks have a religion - he calls it a sect - but it consists of no more than "tales and mere trifles".¹⁵¹

Not only is Christian spiritual power "more excellent" than the spiritual power which resides in non-Christian perfect communities, it also is "more eminent" than the temporal power which exists in Christian perfect temporal communities. This latter idea appears mainly in two of his relectiones, "On the Power of the Church" (One) and "On the Indians".

To begin with, Vitoria does not doubt either that "temporal power existed before "the advent of Christ"¹⁵² or that it would continue to exist even "if there were no state of supernatural blessedness"¹⁵³, for "civil power is complete and perfect in itself ...".¹⁵⁴ But he is certain that ultimate felicity does exist and also that temporal power is not equipped to secure it:

Civil government is not sufficient to elevate men to eternal salvation; neither are civil virtue nor goodness sufficient for eternal life; for apart from other things, faith is needed.¹⁵⁵

It requires a separate power to administer spiritual things. Of the many opinions which he cites in support of this view, one is St Gregory's:

"(T)he government over souls is the art of all the arts".¹⁵⁶ In a way which is reminiscent of Erasmus, he writes:

As divine law is the norm of ecclesiastical power, and the temporal princes do not have divine law as their law ... it must be the pontiffs and other prelates ... who govern sacred things. This is confirmed by considering that one man could not administer those two offices nor acquire two branches of knowledge necessary to rule the temporal and ecclesiastical communities ...¹⁵⁷

He accords no equality to the two powers in question:

(T)he purpose of spiritual power excels that of temporal power to the same extent that perfect blessedness and ultimate felicity excel human or earthly felicity.¹⁵⁸

The inferior, temporal power is separate from the superior, spiritual power, and yet the former is in a certain way linked to the latter. It would be wrong to assume, he holds, that "civil and spiritual power are like two distinct and separate States" such as, for example, the French and the English.¹⁵⁹ The truth rather is that:

(I)n the Christian State, all offices, ends, and powers are properly subordinated and connected ... (T)he temporal members serve those which are spiritual ...¹⁶⁰

The relationship is one of "dependence and subordination"¹⁶¹, and it holds even if it proves detrimental to temporal power.¹⁶²

According to Vitoria, spiritual power does not reside in the whole community in the way in which temporal power does, but "in certain persons".¹⁶³ His writings make it difficult to say anything with certainty about his position in "that hateful comparison between pope and council"¹⁶⁴, but they do permit the conclusion that it is his view that "the Pope is sovereign with respect to all ecclesiastical power ...".¹⁶⁵

Not being a temporal prince, the pope has "no power which tends to a temporal end".¹⁶⁶ It means, for example, that he is not entitled to set up or depose temporal princes, to judge in disputes between temporal princes or to intervene in questions of law relating to temporal matters.¹⁶⁷ However, if spiritual interests are at stake, the pope has "the most ample temporal power" over all Christian princes, kings, and

the emperor. ¹⁶⁸

(T)he spiritual State - like the temporal State - must be perfect and, consequently, self-sufficient; and a temporal State has this right, namely, that when it cannot in any other way preserve itself from injury and harm, it may exercise jurisdiction and authority over a foreign province ... and therefore, if spiritual power were not in any other way able to preserve the spiritual State from harm, it could, on its own authority, perform all the acts ... that might be necessary to its safety; otherwise, spiritual power would be a cripple, and ¹⁶⁹ insufficiently prepared to attain its natural end.

That is, in case of necessity - Vitoria insists on this condition, for "otherwise the office of prince would cease to exist"¹⁷⁰ - the pope has, by virtue of his spiritual power, the temporal power to do all the things which temporal princes do and more. He could, for example, oblige Christians to elect one monarch, should "the existence of one monarch be "expedient to the defence and propagation of the Christian faith"¹⁷¹; entrust the spreading of the Christian religion to one Christian ruler rather than to another; permit trade with a non-Christian country to one Christian people rather than to another¹⁷²; or give a Christian prince to a pagan people converted to Christianity.¹⁷³ The temporal power of the pope in case of necessity is extensive; but it does not include the right to dissolve Christian perfect temporal communities.

Vitoria raises the question whether the temporal power of the Church "to preserve and protect itself"¹⁷⁴ should be exercised directly or only indirectly, and his reply is that the pope "should first avail himself of his spiritual power"¹⁷⁵, that is to say, he should use persuasion and command before resorting to the direct exercise of temporal power, for he "should not and cannot usurp civil power, except in cases of necessity":

(I)n order that a given act may fittingly be performed by the Pope, it does not suffice that the act in question should be necessary, in a general sense, to the attainment of spiritual ends; on the contrary, the particular case involved should also be one of necessity; that is, a ¹⁷⁶ case in which civil power ceases to function ...

Thus, the perfect spiritual community which he delimits by describ-

ing Christian spiritual power and its relation to Christian temporal power is based on a dual obligation: on the part of Christian temporal power to further and, if necessary, to serve the interests of Christian spiritual power; on the part of Christian spiritual power to respect the separateness of Christian temporal power and to limit interference with it to cases of necessity.

5. The World as a Community of Perfect Communities

Vitoria's writings contain the idea of a third community, that of the whole world. It does not become clearly visible when one looks at the general statements he makes about it. These indeed tend to mystify rather than explain it. For example, in "Concerning Civil Power" he says: "(T)he world as a whole, being in a way one single State ..." ¹⁷⁷; in "On the Law of War" he refers to its "end and aim and good" and identifies it as "a condition of happiness". ¹⁷⁸ Again, in "Concerning Civil Power" the world as a whole is accredited with the power "to create laws that are just and fitting for all" ¹⁷⁹; in "On the Law of War" it is given the power "to deter wrongdoers and prevent them from injuring the good and innocent", and this through the instrumentality of princes. ¹⁸⁰ Vitoria's third community, upon which he never confers the attribute of being perfect, rather takes on shape when one examines his thought on (a) the laws which direct relations within it and (b) the rights and obligations which derive from these laws.

(a) According to Vitoria the world as a whole is made up of perfect temporal communities or, as he puts it, "one nation is a part of the whole world" ¹⁸¹, and intercommunication within it, that is amongst its component parts, in peace and in war, is based on two laws: natural law and the law of nations. He offers a definition for both, but the distinction remains blurred.

As for natural law, Vitoria, following St Thomas, postulates that "in general, natural law is well defined when one says that it is necessary law". ¹⁸² By necessary he means a law which is independent of the human will: God is its author; hence it is just and binding. Although it is of divine origin, it does not reach beyond the natural order. ¹⁸³

He further postulates that the necessary has degrees and, in agreement with St Thomas, he distinguishes three such degrees:

- i. All that which by natural light is evidently known to all as just and in accordance with right reason, and its opposite as unjust, is called natural law.
- ii. All that which one infers and deduces with sound logic from naturally evident principles, is also natural law.
- iii. All that which one deduces by means of a moral conclusion, morally known, is very probably natural law.¹⁸⁴

Urdánoz illuminates Vitoria's rather cryptic language by referring to the first level or degree as "first principles" of natural law; to the second level as "precepts derived from these principles by direct and evident conclusion"; and to the third level as "indirect conclusions from the natural principles by way of a more distant sequence".¹⁸⁵

As Vitoria points out under (i) above, natural law is known to man through "natural light", that is, natural reason; and his threefold division suggests that not all of natural law may be equally easily knowable. In fact, as the following excerpts show, he allows for the possibility that not all know it and that, when it is not known, it may be difficult to prove.

From "On Temperance":

(F)urthermore, one ... cannot demonstrate with evidence all the things which belong to natural law at least to every one.¹⁸⁶

From "On the Indians":

(I)t is not every sin against the law of nature that can be clearly shown to be such, at any rate to every one.¹⁸⁷

Further, what is it that the writers in question call a profession of the law of nature? If it is mere knowledge, they do not know it all ... Further, we certainly possess clearer proofs whereby to demonstrate that the law of Christ is from God and is true than to demonstrate that ... things which are ... forbidden by natural law are to be shunned.¹⁸⁸

It is possible, Vitoria submits in "On the Indians", that ignorance of the law of nature is invincible; consequently, it also is possible that

a war may be just on both sides. His reasoning is this: on one side there may be "right" and on the other "invincible ignorance".¹⁸⁹

Turning to his definition of the law of nations, one meets with ambiguity.

In a lectio, part of which is entitled "On the Law of Nations and Natural Law", Vitoria asks whether the law of nations is positive or natural law, drawing attention to the ongoing debate between theologians and jurisconsults regarding this: the former, including St Isidore of Seville and St Thomas, he points out, tend to argue that the law of nations "is more contained under positive than under natural law"¹⁹⁰, whereas the latter hold that "the ius gentium falls under natural law".¹⁹¹ In this lectio, he sides with the theologians. The law of nations, he says, unlike the law of nature, is "only relatively good". It does not have "equity of itself, from its own nature, but was established as inviolable, from agreement among men".¹⁹² He distinguishes between a law of nations resulting from "private agreement" and one from "public agreement", and identifies the latter as being "from the common consensus of all peoples and nations".¹⁹³ He does not raise the question whether it is possible that a people or nation does not know the law of nations; what he asks is whether it is a sin to violate the law of nations, given that "it is of the positive law", and his answer is that "it is always illicit to violate the ius gentium, because it is contrary to the common consensus".¹⁹⁴ He also asks whether the law of nations can be abrogated, and his reply is: never the whole of it, for "it is impossible that the consensus of the whole world could be obtained for the abrogation of the law of nations"¹⁹⁵; only in part may it be abrogated.

Vitoria's possibly most famous statement on the law of nations as positive law - James Brown Scott devotes a paper to it in the course of which he quotes it three times¹⁹⁶ - is contained in "Concerning Civil Power" (unfortunately the term jus gentium is translated as "international law"):

(I)nternational law has not only the force of a pact and agreement among men, but also the force of a law; for the world as a whole, being in a way one single State, has the power to create laws that are just and fitting for all¹⁹⁷, as are the rules of international law. Consequently, it is clear that they who violate these international

rules, whether in peace or in war, commit a mortal sin; moreover, in the gravest matters, such as the inviolability of ambassadors, it is not permissible for one country to refuse to be bound by international law, the latter having been established by the authority of the whole world.¹⁹⁸

In his later relectio "On the Indians" Vitoria seems to be on the side of the jurisconsults, for he offers a very different definition of the law of nations. Here he says: "(T)he law of nations ... either is natural law or is derived from natural law".¹⁹⁹ And he adds the sentence which, for Nys and others, is the main reason for crediting him with the distinction of being "the founder of the modern science of international law"²⁰⁰, namely: "What natural reason has established among all nations is called the ius gentium".²⁰¹ Two pages further on, he affirms the link between the law of nations and natural law when he states that the law of nations, "because it has a sufficient derivation from natural law, is clearly capable of conferring rights and creating obligations".²⁰²

Vitoria offers no explanation why he should have changed from viewing the law of nations as positive law to presenting it as identical with, or derived from, natural law. And a doubt remains where he ultimately stands in the debate, for, in the same relectio, when referring to the binding force of the law of nations, he says:

(E)ven if we grant that it is not always derived from natural law, yet there exists clearly enough a consensus of the greater part of the whole world,²⁰³ especially in behalf of the common good of all.

Perhaps there is no need for an explanation. In "On the Law of Nations and Natural Law", he dismisses the dispute between theologians and jurisconsults as one "of words", concerning "the name rather than the thing", and expresses the view that "one may speak as a theologian or as a jurisconsult", the important point being a moral one²⁰⁴, and in relation to this, as all his writings show, he never changes his position, which is that it is always illicit to violate a law - be it of divine or human origin.

(b) The law of nations - whether it be positive or natural law - is the source of the rights and obligations which Vitoria ascribes to

all perfect temporal communities, Christian and non-Christian alike, in their relations with one another. His ideas on this subject are contained mainly in two of his relecciones, "On the Indians" and "On the Law of War", but they are not confined to these. In the former, to be discussed in this section, he formulates his argument in relation to the encounter of a Christian people, the Spaniards, with non-Christian peoples, the Indians of the New World, but he makes it clear that it applies equally to Christian perfect temporal communities in relation to one another; in "On the Law of War", to be discussed in the next section, the setting for his ideas is the world of Christian perfect temporal communities, but again it is evident from his argument that the world beyond it is included on equal terms.

In "On the Indians" Vitoria presents some of the rights in question in the negative form, and enlists for support of his argument sources such as the Scriptures, St Thomas, Torquemada and Cajetan.

To mention a few of these rights:

(i) He argues that, since the Indians have true dominion both publicly and privately, just like Christians, the Spaniards have no right to deprive them of it on the grounds that the emperor, their king, is lord of the world, for the emperor never had lordship over the whole world and does not have it now.²⁰⁵

(ii) Since the Indians have true dominion, the pope has no right to declare the king of Spain sovereign over them on the grounds that he is temporal lord of the world. The pope has no temporal power over the Indians or other unbelievers, for he has no spiritual power over them.²⁰⁶

(iii) Since the lands of the New World have true owners, there is no right of discovery on the part of the Spaniards. "This title", Vitoria holds, "gives no support to a seizure of the aborigines any more than if it had been they who had discovered us".²⁰⁷

(iv) The Indians may refuse to accept the Christian religion; the Spaniards have no right to compel them to accept it.²⁰⁸

(v) Although the Indians commit many sins "against nature", some "very heinous", the Spaniards have no right, even with the authorization of the pope, to compel them to desist from these or to punish them.

"There are many sinners in every realm", and in these matters it is not for one prince or people to sit in judgment of another, Christian or non-Christian.²⁰⁹

The above negative rights which he ascribes to Christian and non-Christian perfect communities alike correspond to the obligation, on the part of these same communities, to respect one another's separateness and independence. As he sees it, the division of the world, inherited from a distant past, is by the mutual agreement of peoples, and it is proper that it should be defended.²¹⁰

Vitoria also identifies positive rights, and in support of his reading of the laws in question he cites mainly the Scriptures.

(i) He argues that the Spaniards have a right "to travel into the lands in question and to sojourn there"; the obligation on their part is "to do no harm" to the Indians; the latter's obligation, in turn, is to honour the Spaniards' right²¹¹:

(I)t would not be lawful for the French to prevent the Spanish from travelling ... in France, or vice versa.²¹² Therefore it is not lawful for the Indians.

(R)unning water and the sea are common to all, so are rivers and harbours, and by the law of nations ships from all parts may be moored there.²¹³

(ii) The Spaniards have a right to trade with the Indians; their obligation is to do no harm; and the Indians must accept the Spaniards' right²¹⁴:

(I)t is certain that the aborigines can no more keep off the Spaniards from trade than Christians can keep off other Christians.²¹⁵

(iii) The children born to Spaniards in a country of the New World have a right to acquire the citizenship of that country; and the Indians cannot deny this right²¹⁶:

(A)s man is a civil animal, whoever is born in any one State is not a citizen of another State. Therefore, if he were not a citizen of the State referred to, he would not be a citizen of any State, to the prejudice of his rights under both natural law and the law of nations.²¹⁷

(iv) The Spaniards have a right "to preach and declare" the Christian religion to the Indians, and the latter may not hinder them²¹⁸, for:

(I)f the Spaniards have a right to travel and trade among the Indians, they ~~can~~²¹⁹ teach the truth to those willing to hear them.

(v) The Spaniards have a right to defend innocent people from tyrannical rulers and tyrannical laws; but the Indians sacrifice innocent people for cannibalistic purposes; hence the latter can be compelled to abstain from such "nefarious usage", and it is of no relevance that "all the Indians assent to rules and sacrifices of this kind", for "herein they are not of such legal independence".²²⁰

To the principle of separateness and independence, the principle of "natural society and fellowship"²²¹ has been joined. Their coexistence makes for the plurality, equality, and community which Vitoria ascribes to the world as a whole. As he understands it, it is not the intention of peoples, by that division, to do away with mutual communication.²²²

Evidence for this is the existence of a further positive right which he mentions in a number of his writings, to wit: ambassadors have a right to be admitted, and are inviolable among all nations.²²³ He mentions it in preference to any other right when making the point that it is illicit to violate the law of nations. It is illicit because it creates inequality and injustice. As he formulates it in "On the Law of Nations and Natural Law":

(I)f one party sends ambassadors to make a peace and they are not violated, and the other party sends ambassadors too, and they are violated, it²²⁴ follows that there is inequality and injustice.

Vitoria's idea of the world as a whole may be summed up as follows:

The world as a whole is mankind. It has been given a law - natural law, and it itself is the source of a law - the law of nations as positive (private) law.

Mankind is divided into perfect temporal communities. They, too, have been given a law - the law of nations as natural law, and they

themselves are the source of a law - the law of nations as positive (public) law.

These laws are just and fitting, hence binding, for all.

The right to enforce them and punish violations of them is held by perfect temporal communities and their rulers - and this is by natural law, the law of nations, and the authority of the world as a whole.

There is no universal ruler or government, and there is no suggestion that there should be one.

6. The Question of War

For Vitoria the question of war is the question of the just war, and he devotes much attention to it.

There are two kinds of war, he states at the opening of his relectio "On the Law of War", and also of his lectio "On War", and both of these may be just.

One is defensive war. As he sees it, any defensive war is just - by defensive he means "force employed to repel force"²²⁵ - and any community, irrespective of whether or not it enjoys the attribute of being perfect, may resort to it.²²⁶ For him, the right of self-defence is obvious - natural law attests to its justice and so do "the written law" and "the Gospel law", St Augustine and St Thomas - and he allocates but little room to it.

The other is offensive war, and it is this second kind which absorbs his attention, for it is his view that the avoidance of "disorder in the world" may require a more effective means than defensive war.²²⁷ "The peace and security" of the individual community and "the happiness of the world" may not be secured if "all that a State (can) do when enemies attack it unjustly (is) to ward off the attack ...".²²⁸ He cites St Augustine: "Those wars are described as just wars which are waged in order to avenge a wrong done ..."²²⁹; and he quotes St Thomas: "(F)or a just war there must be a just cause, namely, they who are attacked ... must deserve the attack".²³⁰ He explicitly rejects as a just cause "difference of religion", "extension of empire", "the prince's personal glory or some other advantage to him"²³¹ - terms which may be seen as

covering the negative rights mentioned above²³² - and identifies his own position as:

There is a single and only just cause, for commencing a war, namely, a wrong received.²³³

The right to declare and make war, that is, the right to commence a war, is reserved to the perfect temporal community or its ruler, for, as Vitoria sees it, if everybody had the right to be "the judge of his own cause", the world would be ungovernable.²³⁴ In fact, he considers this right to be one of the basic elements of the state's self-sufficiency. As he puts it: "(A) State ought to be self-sufficient, and this it would not be, if it had not the faculty in question".²³⁵ He also sees it as a right conferred by the world as a whole:

(I)f a State can (inflict pains and penalties on its citizens who are dangerous to it), society at large no doubt can do it to all wicked and dangerous folk, and this can only be through the instrumentality of princes. It is, therefore, certain that princes can punish enemies who have done a wrong ...²³⁶

Vitoria subjects the exercise of this right to a number of considerations. The prince must be certain that that, which looks like a wrong, really is a wrong. This is not easily achieved:

For truth and justice in moral questions are hard of attainment and so any careless treatment of them easily leads to error, an error which will be inexcusable, especially in a concern of great moment, involving danger and calamity to many, and they our neighbours, too, whom we are bound to love as ourselves.²³⁷

Even if it is certain that a wrong has been committed, it is possible that, at its source, there is "invincible ignorance"; or its nature may be such that it does not justify the resort to war. There are kinds and degrees of wrong, he holds, and the prince should not forget that "the degree of the punishment ought to correspond to the measure of the offence".²³⁸ Yet, even if the wrong is such that it would be lawful to go to war, he advises the prince to avoid it if possible: "A wise man must make trial of everything by words before resorting to force ...".²³⁹ Last but not least, he offers the following thought:

(N)o war is just the conduct of which is manifestly more harmful to the State than it is good and advantageous; and this is true regardless of any other claims or reasons that may be advanced to make of it a just war ... Nay more, since one nation is a part of the whole world, and since the Christian province is a part of the whole Christian State, if any war should be advantageous to one province or nation but injurious to the world or to Christendom, it is my belief²⁴⁰ that, for this very reason, that war is unjust.

Thus, it is his view that a war which is just in itself ceases to be just if it is to the detriment of the prince's own community or to that of Christendom or the world - contingencies which he also refers to as "collateral circumstances". If these apply, he has no doubt, the prince is bound "to give up his own rights and abstain from war".²⁴¹

Vitoria distinguishes between (a) a wrong done to the prince's own community and (b) a wrong done to others.

(a) When thinking about the kinds of wrong which entitle a prince to go to war when inflicted upon his own community, Vitoria sometimes expresses himself in a general way. Thus, he mentions "unjust attack"²⁴²; or he refers to a situation where a community has failed "to exact punishment for an offence committed by its citizens ... or to return what has been wrongfully taken away".²⁴³ At other times, he is quite specific. Thus, the violation of the right to travel, the right to trade or the right to use that which is common to all, entails the right to go to war. As he puts it in "On the Indians":

(W)hen the Indians deny the Spaniards their rights under the law of nations they do them a wrong. Therefore, if it be necessary, in order to preserve their right (sic), that²⁴⁴ they should go to war, they may lawfully do so.

The right of ambassadors to be admitted is another specific example, the denial of which confers the right to go to war.²⁴⁵

(b) When it concerns a wrong done to others, Vitoria distinguishes between (i) the cause of "allies and friends" and (ii) the cause of innocent people.

(i) In agreement with Cajetan, he asserts that:

(T)he cause of allies and friends is a just cause of war, a State being quite properly able, as against foreign wrongdoers, to summon foreigners to punish its enemies.²⁴⁶

Following this principle, he notes, it would be permissible for the Portuguese to help the Spaniards; for the Spaniards to defend the Duke of Milan against the French and for the Tlaxcaltecs to align themselves with the Spaniards against the Mexicans.

The same cause applies when Christians in non-Christian communities or under non-Christian rulers suffer on account of their religion. The right to render assistance in such circumstances is

(B)ased not only on religion, but on human friendship and alliance, inasmuch as the native converts to Christianity have become friends and allies of Christians and we are under an obligation to do good unto all men, especially unto such as are of the household of faith.²⁴⁷

Intervention in the above case may, if necessary, go as far as changing the ruler.

(ii) The right to go to war in response to a wrong done to others applies also in the absence of a link such as friendship or alliance. Vitoria permits intervention in a number of cases, provided there is no doubt regarding the wrong done and injustices greater than the one to be rectified do not result. For example:

A prince has the right to intervene in another community if that community is ruled by a tyrant - a prince who does not rule in accordance with the existing laws - and the community as a result is "suffering unjustly".²⁴⁸

(T)he people in question are an innocent people, and ... princes may and can defend²⁴⁹.. the world, lest injury be inflicted upon it.

Also, if the laws of a community are tyrannical, that is, if they "work wrong to innocent folk"²⁵⁰, he allows intervention by an outside prince. Examples refer to the Turks whose laws permit exposing unwanted children²⁵¹ and to some Indian peoples who act in accordance with their own laws when innocent human beings are killed for cannibalistic purposes:

(A)ny one may defend (innocent people) from such tyrannical and oppressive acts, and it is especially the business of princes to do so.²⁵²

He raises the question of intervention in the case where a people does not seem to be able to "administer a lawful State up to the standard required by human and civil claims"²⁵³, but his answer is uncertain. As he formulates it: "(T)he sovereigns of Spain might undertake the administration of their country so long as this was clearly for their (the Indians') benefit".²⁵⁴

Vitoria's examples of intervention have one criterion upon which their justification rests: the suffering of innocent people(s), and it does not matter whether this suffering is caused by physical or spiritual distress.

There is one further point which he includes in his discussion of the just war, and he introduces it in the form of the question: "What kind and degree of stress is lawful in a just war?"²⁵⁵

In his answer he develops the idea that what is lawful in war depends on "the end and aim" of war, and this in turn depends on the wrong done and the circumstances accompanying it, so that that is lawful which "observes proportion as regards the nature of the circumstances and of the wrongs done"²⁵⁶ - an idea which will be given further attention in the next section: moderation.

Assembling Vitoria's thought on the just war one discerns the idea that a just war is a last but lawful means of safeguarding justice in the world - the justice as embodied in the law of nations and of nature.

7. Moderation

The idea of moderation, not postulated by the initial hypothesis derived from Gierke, Wight and Bull, but consistent with it, is ever present in Vitoria's writings, especially when he thinks about (a) administering a perfect temporal community; (b) spreading the Christian religion; and (c) waging a just war.

(a) Administering a perfect temporal community. Vitoria does not in a general way link moderation to the internal context, except to condemn

the rule of a tyrant or tyrannical laws²⁵⁷; his concern, as his writings suggest, is rather with a particular situation, that of a Christian prince ruling over a non-Christian community.

In the fragment of his relectio "On Temperance" he argues that, when a Christian prince acquires the rule over a non-Christian community, he must not burden it more heavily than his Christian community, for example, by imposing higher taxes, taking away liberty or subjecting it to other oppressive measures.²⁵⁸ The reason he gives is this: the non-Christian community is not part of the Christian community; neither does it subordinate itself to it. Hence, in order to avoid acting "unfaithfully", the prince must have regard for what is good for his new community rather than what is good for his Christian community.²⁵⁹

He also argues that the Christian religion is to be introduced only gradually into the newly acquired community. As he explains:

It would not be a tolerable law if immediately an edict were passed which required that nobody, on penalty of death, must worship Mohamed or the idols, or that all adore Christ; or that the same be ordered under penalty of exile or confiscation of their belongings ...²⁶⁰

Rather, the first step should consist in persuading the non-Christian community by teaching and instruction of the truth of the Christian religion and the falsehood of the old laws and rites.²⁶¹ A law ordering the destruction of idols or of the Moslem religion should be considered only at a later stage, and even then it should not threaten death or exile but choose "a much milder approach".²⁶²

In a lectio which discusses the question "Whether one can force the infidels to convert (to Christianity)", Vitoria presents the case of Christians and non-Christians living together in one community under the rule of a Christian prince. He opens the argument by asserting that "in itself it is ... lawful to oblige the non-Christians by way of sanctions, threats and punishments to receive the Christian faith, to conserve it and to defend it".²⁶³ Next, he takes up the statement by St Thomas that infidels must not be forced.²⁶⁴ The apparent contradiction is resolved by citing St Paul according to whom "there are many things which are lawful but not advisable".²⁶⁵ By way of explanation, Vitoria offers three reasons:

(i) The prince who has used force will never know for certain whether the Christian faith has "really been received";

(ii) a wrong impression will be created, for infidels and Christians will believe that in the conversion to Christianity force has always been used, "which is false";

(iii) experience speaks against it: "I doubt that we did well in our times to force the Moslems to become Christians in the way we did: to tell them to convert or to leave the country". He knows that many chose to become Christians but he thinks that they are bad Christians.²⁶⁶

In the same tract he also raises the question whether the prince may treat his non-Christian subjects more harshly than his Christian subjects by imposing higher burdens, and the answer is that, while it may be lawful, it may not be advisable. It would mean coercion to convert.²⁶⁷

(b) Spreading the Christian religion. Preaching the Christian religion in realms that are not under the rule of Christian princes is, according to Vitoria, a right on the part of Christians, but it is linked to the obligation not to use force when exercising it.

His most extensive example in support of his view is the conversion of the Indians in America. The Indians, he argues, are not bound to believe immediately and "merely because it has been declared and announced to them" that the Christian religion is the true religion.²⁶⁸ Following Cajetan, he writes:

(I)t would be rash and impudent for any one to believe anything, especially in matters which concern salvation, unless he knows that this is asserted by a man worthy of credence ...²⁶⁹

"Persuasive demonstration" is the way to attract the Indians²⁷⁰, and yet it is not impossible that this approach will not work. The Indians may continue to refuse to accept the Christian religion - a response, Vitoria insists, which does not justify the Christians to resort to war for "war is no argument for the truth of the Christian faith".²⁷¹

The resort to war becomes lawful if the Indians deny the Christians their right to preach. In such a case, the latter may do "in right of war everything which is permitted in other just wars", yet "always

with a regard for moderation and proportion ...".²⁷² However, he again draws attention to the possibility that what is lawful may not be advisable:

(I)t may be that these wars and massacres and spoliations will hinder rather than procure and further the conversion of the Indians. Accordingly, the prime consideration is that no obstacle be placed in the way of the Gospel, and if any such be so placed, this method of evangelization must be abandoned ...²⁷³

(c) Waging a just war. Vitoria's two writings, his lectio "On War" and his relectio "On the Law of War", devote numerous pages to the idea of moderation in war. In the words of Ernest Nys: "In treating of the cruel topic of the law of war, he asserted principles which bore the imprint of moderation and humanity".²⁷⁴

Vitoria states his general position as follows:

When war for a just cause has broken out, it must not be waged so as to ruin the people against whom it is directed, but only so as to obtain one's rights and the defence of one's country and in order that from that war peace and security may in time result.²⁷⁵

Peace and security is one consideration; the possibility of error is another. It is always possible, he holds, to be wrong about justice being on one's side and therefore:

(T)he victor ought not to make seizures or exactions in temporal matters beyond the limits of just satisfaction ...²⁷⁶

He arrives at his general position after examining a number of particular questions. For example, he asks whether it is lawful to kill the innocent, that is, those presumed to be innocent, children, women, peasants, clerics, members of religious orders, foreigners who happen to be in the country of the enemy. His answer is that "in itself" it never is lawful. It may become lawful through the force of circumstances, that is "when there is no other means of carrying on the operation of a just war ...", but the obligation is to see to it that "greater evils do not arise out of the war than the war would avert".²⁷⁷

Another question which he raises is whether it is lawful to kill

all the guilty. His reply is: "In the actual heat of battle" - yes; after the war - yes in principle, but when the nature of the wrong done by the enemy is taken into account, it may be found that it would not be right to do so. His authority is Cicero: "(T)he punishment which we inflict on the guilty must be such as equity and humanity allow".²⁷⁸

To give a third example: Vitoria inquires into the lawfulness of deposing the princes of the enemy and installing new ones or of placing the foreign community under one's own rule. His findings are that it "is not unqualifiedly permissible", for in general such measures are "utterly savage and inhumane"²⁷⁹, and he restricts it to cases where:

(T)here may ... arise sufficient and lawful causes for effecting a change of princes ... and this may be either because of the number and aggravated quality of the damages and wrongs which have been wrought or, especially, when security and peace cannot otherwise be had ...²⁸⁰

For most of the time, his advice concerning moderation in war does not differentiate between Christian and non-Christian adversaries. There are, however, some instances where he does suggest a different response depending on whether or not the enemy is Christian. For example, in his relectio "On the Law of War", he says:

(I)t is indubitably lawful to carry off both the children and the women of the Saracens into captivity and slavery.

Whereas:

(T)his enslaving is not lawful in a war between Christians.²⁸¹

And:

(T)here are times when security cannot be got save by destroying all one's enemies: and this is especially the case against unbelievers, from whom it is useless ever to hope for a just peace on any terms.

However:

(I)n a war with Christians ... I do not think this would be allowable.²⁸²

Vitoria's instances of differential treatment are, on the whole, limited to the Old World; however, there is a passage in the relectio "On the Indians", in the form of a conditional statement, which reads that if the Indians act like "forsworn enemies" all the rights of war may be enforced against them, and they may be made slaves, following the law of nations that "whatever is captured in war becomes the property of the conqueror ...".²⁸³

Thinking about moderation, then, Vitoria invites his audience to consider what is lawful but also to take account of what is advisable. The advisable, when linked to the lawful, for most of the time makes for more moderation; only in cases of persistent enmity, it makes for less.

Conclusion

Vitoria's thought as it can be reconstructed today may not be a faithful reproduction of the sixteenth-century original; and, unless care is taken when analysing and abstracting from his complex arguments, new mutations may be introduced which remove his ideas even further from their original conception.

An example of such a mutation is Lange's statement that Vitoria when thinking about the problem of "international organization" is "frankly unitary".²⁸⁴ The evidence which he offers in support of his view consists of three passages quoted from Vitoria's relectio "Concerning Civil Power". For the purposes of this argument it suffices to reproduce two of them:

- (i) The best government is the one exercised by one sole person, as if the whole world were ruled by one very wise prince and master.²⁸⁵

Apart from differences in the wording between the above text and the one given by Scott²⁸⁶, it is important to note that Vitoria advances the proposition, not when speaking about "international organization", but when discussing "national organization". It is part of his discussion of the question whether there is "less liberty in a monarchy than in an aristocracy, or a democracy", and, as mentioned above, it keeps company with another proposition, namely, the "safest" form of government is that which combines elements of all three - monarchy, aristocra-

cy and democracy.²⁸⁷

- (ii) As the greatest part of a state may set up a king over the whole of the state, even against the wish of the others, so the majority of Christians, even if the others are against them, may lawfully create a monarch whom all²⁸⁸ the princes and provinces will have to obey.

Again, apart from textual differences²⁸⁹, it is necessary to point out that the above example is not an expression of Vitoria's "ideal" of "the unity of the world" - as Lange likes his readers to believe - but, as the context makes it clear, a conditional statement relating to the Christian world, and one which does not imply the abolition of political plurality within it.

It is possible that Gierke chose the same approach: disregarding the general context provided by Vitoria's writings and considering isolated statements abstracted from their particular context, thereby arriving at the conclusion that Vitoria belonged to the universalists - a conclusion which this inquiry is unable to support. To summarize its findings: Vitoria, in opposition to the universalist claims of both emperor and pope, imperialists and theocrats, puts forward the principle of plurality and by linking it to the ideas of natural society and of justice, he avoids moving to the other extreme, that of realism.

A point upon which this inquiry is not in a position to comment concerns the originality of Vitoria's ideas. While it is clear that he is inspired by a great many different sources ranging from Antiquity through the Middle Ages to his more immediate past and present, there is also no doubt that he belongs to what came to be called the scholastic tradition. Nevertheless, he may be as original as Adda Bozeman claims he is²⁹⁰, but it seems hazardous to agree with her unless one has familiarized oneself with the writings of at least St Thomas, Torquemada and Cajetan - a task which Bozeman does not seem to have undertaken and which this inquiry is not meant to perform. His inclusion in this study follows from the initial hypothesis, and not from any claims to originality.

Vitoria's writings do not suggest that he ever tried to build his three communities - the perfect temporal community or state, the perfect spiritual community or Christianity, and the community of perfect com-

munities or world - into one, logically consistent theory of international society. An attempt to do so now proves unsuccessful. Let us see why.

There is no problem in identifying three levels of description of increasing generality and decreasing concreteness.

At the first level there is the perfect temporal community. It is composed of individual human beings. The code of rules which binds them consists in the laws which they create for themselves. These differ from the laws which the other temporal communities existing at this level devise in response to their specific needs.

The second level is home to the perfect spiritual community. Its members are Christian perfect temporal communities and Christians who live in non-Christian perfect temporal communities. The specific law which they share and obey is the law of Christ. The same level of description would have to accommodate other spiritual communities following their own divine laws, such as the Moslem community, had Vitoria been concerned to show that they existed.

The third level of description is constituted by the world as a whole. Its members are perfect temporal communities. Individuals - citizens and princes - appear as representatives of their communities rather than in their own right. Intercommunication at this level is based on the law of nations and of nature.

The problem is encountered when trying to establish linkages between the three levels of description.

Levels One and Three are linked easily. The perfect temporal community, while complete in itself, is a part of the world. The greater whole provides ideas of justice in the form of the law of nations and of nature to its constituent parts which, in their turn, defend and protect what is just in the world as a whole.

Also part of Level One and Level Two present no problems of linkage. Each Christian temporal community is complete in itself; yet, at the same time, it is also a part of the Christian spiritual community. The latter provides for the spiritual needs of the former, whereas the former helps if the latter requires temporal support.

However, problems of linkage are found and not overcome when attempts are made at linking Level Two to Level Three and to that part of Level One which is non-Christian. The perfect spiritual community at Level Two is complete in itself but it is independent of the greater whole at Level Three - the world. The non-Christian perfect temporal community at Level One is complete in itself but it is independent of the greater whole at Level Two - the perfect spiritual community. In both cases the absence of dependence makes for unrelatedness - a condition which is incompatible with theory construction.

CHAPTER V

ALBERICO GENTILI

The Italian jurist Alberico Gentili, who lived from 1552 to 1608, is the third thinker to be included in this inquiry. Otto von Gierke as well as Martin Wight and Hedley Bull cite him in their respective lists of thinkers but, as in the case of Francisco de Vitoria, disagree about the place to be accorded to him: Gierke claims him as a universalist¹, whereas Wight and Bull consider him a man of the via media.²

Gierke offers his reason in the form of a footnote, half in German and half in Latin, which reads:

Thus Albericus Gentilis, de jure belli³ (1588), pages 11 - 13, explains the binding force of the jus gentium by saying that, indeed, all the nations never came together, but that which over time has seemed acceptable to all, is to be regarded as having been decreed by the whole world; and he adds: as the rule of a state and the making of its laws are in the hands of a majority of its citizens, just so is the⁴ rule of the world in the hands of the aggregation⁵ of the greater part of the world.

Turning to Gentili's text for a better understanding of the above passage, the assumption being that contexts impart meaning to words and sentences, one finds that the first half appears on page eleven⁶ as part of an argument of how the law of nations was established⁷; and the second half - the sentence following the three words "and he adds" - occurs on page thirteen⁸ where it is embedded between two statements: one, if all known nations have used a certain code of laws, it may be inferred that all nations have used it, for the reason that from "the known" one learns "the unknown"; and, two, an unwritten law or custom of a state binds every one of its members, even if not every one has agreed to it.⁹

The additional information does not strengthen Gierke's case. Wight refers the reader to Chapter Six of Book One of De Jure Belli, entitled "That War May Be Waged Justly on Both Sides", in support of his argument that Gentili contributed to the theory of international legitimacy through his ideas about the just war¹⁰ - which may be interpreted to

mean that he accepts Gentili as a thinker of the via media but does not explain why he does so, except perhaps indirectly. Bull offers no reference. The reasons, then, which led Gierke, Wight and Bull to adopt their respective positions remain rather unclear.

On first meeting Gentili, one fact crystallizes quickly: the two earlier thinkers, Erasmus and Vitoria, are not unknown to him. He refers to them on numerous occasions¹¹, sometimes using them simply as sources, at other times expressing opinions. And it is not difficult to detect that they produce different reactions. Erasmus causes displeasure. When inquiring into the question of the justice of war, for example, Gentili says:

In fact, some cite Erasmus in our favour, others on the opposite side. Perhaps a third view will be nearer the truth, that the flighty dilettante did not know what he thought.¹²

Vitoria, on the other hand, is awarded the distinction of being "learned". "But the learned Victoria (sic)", Gentili writes a few pages following his pronouncement on Erasmus, "declares that (the) principle of not making war from religious motives is approved by all without exception ...".¹³

Another point which becomes clear quickly is that Gentili is neither as resistant to exploration as Vitoria nor does he possess the same ability to attract thinkers and writers as Erasmus. He has neither Vitoria's mysteriousness nor Erasmus' lustre. The main facts of Gentili's life are known and agreed upon, and his writings, while at times obscure¹⁴, have survived intact; yet few scholars have studied them closely. For example, the only substantial investigation of his life and works to be published this century is Gesina van der Molen's Alberico Gentili and the Development of International Law, which appeared in 1937.¹⁵

For purposes of introduction it may be useful at this point to submit a few details regarding his life and writings.¹⁶

Gentili was born in 1552 at San Ginesio in Northern Italy. At the age of twenty-one he obtained his doctorate in civil law from the university of Perugia, and for the following three years was praetor¹⁷ at Ascoli. In 1575 he returned to San Ginesio to take up the position of

municipal lawyer. He did not seek reappointment to this office in 1577, but devoted himself to private study. The threat of persecution from the Inquisition for heretical views forced him to leave Italy in 1579.

In 1580 Gentili arrived in England and began to teach civil law at Oxford the following year. In 1587 he was appointed Regius Professor of Civil Law¹⁸ at that university, and retained this position until his death in 1608, although after 1590 he increasingly left the teaching to two deputies, Francis James and John Budden, moved to London, established a forensic practice there, and visited Oxford only on special occasions. In 1600 he became a member of Gray's Inn - the same Inn to which Francis Bacon belonged - and in 1605 was appointed to the office of Advocate to the Spanish Embassy, a position which required him to represent Spanish interests in the London Court of Admiralty.¹⁹ He held it until his death in 1608 at London. The historian of Oxford Anthony Wood²⁰ is recorded to have described him as "the most noted and famous civilian and the grand ornament of the university of his time".²¹

If Gentili's professional life knew diversity, so did the products of his mind. In the words of Thomas Erskine Holland, his nineteenth-century rediscoverer, Gentili's numerous writings, all of which were included in the Index of Prohibited Books in 1603:

(T)ouched upon an extraordinary variety of topics, dealing not only with questions of civil and international law, but also with witchcraft, casuistry, canon law, biblical exegesis, classical philology, the Vulgate, English politics, and the prerogative of the crown.²²

Not all of them have been published, and those which have - they amount to something like thirty books or treatises²³ - are all in their original language - Latin - with the exception of three works which, in Holland's opinion, constitute Gentili's "principal contributions to the science (of the law of nations)".²⁴ These three works appeared in English in The Classics of International Law earlier this century under their Latin titles: De Legationibus Libri Tres, De Jure Belli Libri Tres and Hispanicae Advocationis Libri Duo, originally published in 1585, 1598 and 1613 respectively, and the present inquiry is based upon them.

Nine sections have been chosen to present Gentili's ideas. Six of

these have counterparts in the previous two chapters and need no further justification, although some of their headings are differently worded, reflecting differences in thought - to wit: Section One, Gentili and the Events of His Time; Two, Gentili and the Three Traditions of Thought; Four, The State, a Public Part of the World; Five, The World, a Lofty Structure; Eight, The Question of War; and Nine, Moderation. Sections Three, Six and Seven occur for the first time: Section Three, The Perfect Ambassador, delineates an idea which is not suggested by the initial hypothesis but is present in his writings, and relevant to this inquiry, as it represents an aspect of his more general idea of the world as a "lofty structure"; Six, Commerce as a Link, and Seven, Diplomacy as a Link, depict two activities which are further expressions of the idea of that which links and circumscribes, discussed in Section Five.

The order in which the nine sections are presented is similar to that adopted in the two preceding chapters.

1. Gentili and the Events of His Time

Gentili's years in England (1580 - 1608) were a time rich in events for his adopted country²⁵, and this section seeks to ascertain whether his observations, like those of Erasmus and Vitoria before him, may be described as realistic. For analytical purposes, the emphasis is again on conflict rather than on co-operation.

The four main areas of conflict which engaged English attention at that time were: conspiracy at home; rebellion in the Netherlands; war at sea with Spain; and rebellion in Ireland.²⁶ All of these find their way into Gentili's writings, not only acting as the initial spark, but also serving as examples or cases in his argumentation.

(a) The Initial Spark. De Legationibus Libri Tres grew out of an incident which to this date finds a mention in books on English history concerned with that period: the Mendoza affair.²⁷ The story has all the qualities of a Shakespearean drama centring on a plot to assassinate the Queen. The essential point in the context of this inquiry is that in 1583 Don Bernardino de Mendoza, the Spanish ambassador to the English Court, was discovered to be "irrevocably implicated" in the conspiracy.²⁸ Gentili and Jean Hotman²⁹ were invited by the English government

to advise on what ought to be done. Mendoza was expelled in early 1584. Later in the same year, Gentili made the rights and duties of ambassadors the subject of a disputation which he presented at the annual comitia³⁰ at Oxford and subsequently published. Further elaboration led to the work as it is known today: De Legationibus Libri Tres, which appeared in 1585.

For the comitia of 1588 Gentili chose as his topic the law of war. England had been at war with Spain since 1585, supported the rebellion in the Netherlands and was ready to fight the approaching armada. Nothing is known about the reception of his discourse, but it appeared shortly afterwards in the form of a series of three commentaries (1588 - 9). De Jure Belli Libri Tres, the work which is known today, was published nine years later in 1598.

Hispanicae Advocationis Libri Duo appeared posthumously in 1613, published by Gentili's brother Scipio who gave it a subtitle, the English rendering of which is: In which treatise different famous maritime questions according to the Law of Nations and the practice of today are explained and settled as clearly as possible.³¹ In fact, a perusal of the work reveals that it consists of more than what is indicated by the title and subtitle: it not only contains notes prepared by Gentili in connection with the cases which came his way in his capacity as Spanish advocate in the Court of Admiralty between 1605 and 1608, when England and Spain were at peace again but not yet Spain and the Netherlands; it also includes records of cases in which he represented English interests; and there are opinions concerned with private law rather than with maritime and prize law.³²

Thus, events of his time are at the origin of all three of his writings on the law of nations.

(b) Examples and Cases. Turning to the contents of these writings, one meets with references to events of his time in all three of them, but with varying frequency.

De Legationibus contains few references to the contemporary scene. Gentili has a reason for this: examples relating to Antiquity are preferable to those of recent origin, because they give embassies "that degree of prestige which we assert they have, and which age so easily

adds to all things".³³ An important exception is the Mendoza case, which he mentions in the course of his chapter "If an Ambassador Should Conspire against the Sovereign to Whom He Is Accredited". His conclusion:

There was justice ... in England's recent treatment of the Spanish ambassador, who was dismissed for conspiring against the life³⁴ of the sovereign and the safety of the kingdom.

In De Jure Belli Gentili demonstrates his familiarity with the events of his time on numerous occasions. For example:

- He refers to the refusal by the king of Spain to submit to arbitration his claim to the crown of Portugal and remarks: "(H)e who tries to avoid a legal process distrusts the justice of his cause".³⁵

- He mentions the complaint by the Hanseatic cities about the pillage of their ships by the English fleet and comments: "One must be regarded as an enemy who does what is pleasing to the enemy".³⁶ The comment is based on his knowledge that the Hanseatic ships supplied the Spaniards, the enemy of the English, with "provisions and munitions of war".³⁷

- He takes up "what is just now a burning question, namely, whether the English did right in aiding the Belgians against the Spaniards"³⁸ and, in the course of his argument, observes:

(T)he Belgians, if vanquished in the war, would wholly change their condition, as we see in the conquered part of their country, which has now utterly fallen from its former state of liberty, and is grievously oppressed with garrisons and ruled by the mere nod of a sovereign.³⁹

- The rebellion in Ireland appears when Gentili, for example, refers to "certain Irish territory, from which the English rule has now been driven by a rebellious slave ...".⁴⁰

Hispanicae Advocationis Libri Duo derives exclusively from incidents which occurred in Gentili's own time - they are so-to-say its raison d'être - and one therefore approaches it with the expectation that it will be a rich mine easy to exploit. However, Gentili's last work constitutes anything but a simple source. For most of the time the notes

refer only obscurely to the cases in question, emphasizing the arguments or pleas to be made rather than the incidents upon which they rest.⁴¹ Every so often, however, cases are set out clearly, as, for example, in the following instance:

There was an English ship off the Tuscan shore, already loaded and about to sail here to England, when it was seized on the orders of the Tuscan, unloaded, and sent to war and lost on the return trip. Two counts are made against our shipowners, who now demand that they be compensated by the Tuscan for their loss ...⁴²

Reviewing the evidence which Gentili supplies, one can safely conclude that he saw the events of his time: both the origin and the contents of his works testify to this. More difficult to answer is the question whether he saw them realistically. Some of his examples and cases indicate that he did; but many of them do not offer this kind of information. What they offer are juridical evaluations, not political assessments, and the former do not necessarily depend on a correct reading of what is the case. The existing evidence, then, can be summed up in no more certain a statement than that Gentili sometimes saw the events of his time realistically and that, at other times, it cannot be ruled out that he did.

2. Gentili and the Three Traditions of Thought

Gentili discloses his position as a thinker of the via media in the course of his writings on the law of nations, and no synoptic preview is intended. However, there are a few findings, instructive for what they reveal about his attitude towards the other two traditions, which may usefully be presented at this point.

Gentili, the realist or probable realist at the level of observation, is familiar with Machiavelli's writings, quotes from them on a number of occasions⁴³, and admits his admiration for the Florentine's "remarkable insight".⁴⁴ Machiavelli and his "precious" Observations on Livy, he writes, should be looked at as a model and imitated; yet "the most distinguished of his class" is slandered, because his purpose is misunderstood. The truth is that:

He was a eulogist of democracy, and its most spirited champion. Born, educated, and attaining to

honors under a democratic form of government, he was the supreme foe of tyranny ... It was not his purpose to instruct the tyrant, but by revealing his secret counsels to strip him bare, and expose him to the suffering nations ... The purpose of this shrewdest of men was to instruct the nations under pretext of instructing the prince ...⁴⁵

Yet neither his admiration for Machiavelli's "remarkable insight" nor his understanding of the Florentine's purpose make Gentili take up the position which Wight and Bull identify as realist. He sometimes refers to adherents of this position as "the unscrupulous". For example, when making his case for the existence of the law of nature and of nations, he says: (T)he unscrupulous will deny its existence ...".⁴⁶ At other times he denotes their approach as "Greek cunning and Punic craft". The "treacherous envoy" belongs to this category⁴⁷, and so does he who deceives the enemy.⁴⁸ As this chapter will show, Gentili puts his insights into reality to a use which differs from Machiavelli's, whether understood according to Gentili or differently.

Gentili's opposition to universalism or, as he himself formulates it, "universal control and power to fall into the hands of one people"⁴⁹ or "one man"⁵⁰, is implicit in his whole work and will become apparent as this chapter proceeds. It is made explicit on a number of occasions, two of which are especially noteworthy.

In his chapter "Of the Overthrow of Kingdoms" he argues that it is not true to say that "the Roman emperor does not now exist and the Roman Empire has vanished", for "an empire does not come to an end if it survives even in some tiny part"⁵¹; but this does not mean that "the Roman emperor could claim sway over the whole world". The Roman emperor is not only not "lord of the whole world", he also has "no right of action" against those territories which formerly belonged to the empire, to wit, territories which are now being held by the Turks and other barbarians; the French, the English and the Spaniards; Venice, Florence and other cities of Tuscany; and the pope of Rome.⁵²

The other occasion is provided by his discussion of the question whether it is legitimate to make war when the only reason we have is fear that we ourselves may be attacked.⁵³ In the course of his lengthy answer Gentili draws attention to a "powerful argument" which, in his view, has proved acceptable to all ages, namely the idea that one ought

to oppose those who "are content with no bounds, and end by attacking the fortunes of all".⁵⁴ Is it not just, he inquires, that we oppose those who, like the Turks and the Spaniards, are "planning and plotting universal dominion"?⁵⁵ Is not this our aim, he reiterates a little later, "that one man may not have supreme power and that all Europe may not submit to the domination of a single man"?⁵⁶ A just response to such a threat consists in preventive action, and he makes use of an analogy which is usually ascribed to a later age:

So, too, the maintenance of union among the elements is dependent upon their equal distribution; and on the fact that⁵⁷ one is not surpassed in any respect by another.

This link of politics to science is reinforced by a reference to history. It was Lorenzo de Medici's unremitting concern, Gentili reminds his audience, that:

(T)he balance of power⁵⁸ should be maintained among the princes of Italy. This he believed would give peace to⁵⁹ Italy, as indeed it did so long as he lived ...

The peace which results from an equal distribution of power, and the war which is fought in order to oppose the reach for universal political rule are expressions of the same concern on the part of Gentili: the preservation of that which is "right and just". As he puts it at the end of his argument against universalism:

No one's sovereignty must ever on any account be allowed to grow so great, that it is not permitted to call in question even his manifest injustice ...⁶⁰

Gentili's explicit rejection of universalism as expressed above constitutes a first and serious challenge to Gierke's view of Gentili as a universalist.

3. The Perfect Ambassador⁶¹

Gentili's imagination is not caught by either Erasmus' perfect temporal Christian prince or by Vitoria's perfect temporal community. His mind is inspired by the idea of the perfect ambassador, and he presents a portrait of it in De Legationibus.⁶² As it represents an important as-

pect of his more general idea of the world as a "lofty structure", perhaps even its distinguishing mark, its inclusion in this chapter under a separate heading is indicated.

Gentili attaches a twofold purpose to his creation:

(a) It is to instruct ambassadors how they "ought to be" and how they "ought to behave".⁶³ Such knowledge is important in view of the function which they fulfil: "(A)n ambassador is one ... sent ... by the state, ... in the name of the state, ... as the representative of the state"⁶⁴; "the ambassador is a statesman and is invested with the personality of his prince"⁶⁵; "a bearer of messages, ... a judge of affairs ..."⁶⁶; "(ambassadors) represent one sovereign, and approach the other with the intention of negotiating with him on a basis of equality".⁶⁷ More formally he defines the ambassador as:

(O)ne who in⁶⁸ the name of the state or person still more sacred has been sent without the right of supreme command to a state or person still more sacred to say or do something in the interest of the state⁶⁹ or sacred person by whom he has been sent.

(b) It is to correct an image of the ambassador with which he does not agree: the ambassador as the spy. Gentili mentions this view on a number of occasions⁷⁰, but does not say how prevalent it was at his time or for how long it had existed. His source is the French statesman and historian Philippe de Comines⁷¹, who is said to have met Machiavelli in 1494 but does not attribute to him such a "degrading view". A relevant passage in Comines' Mémoires relating to the year 1471 reads:

Were it my Case, for one Ambassador they sent me, I would be sure to send them two; nay, though they were weary, and desir'd to have no more, I would not fail to send when I had Opportunity and Convenience; for there is no Spy so good, and so safe, nor can⁷² have such Liberty to pry and inform himself ...

The assigned task is indeed not small, and one way to acquaint oneself with the object - the portrait of the perfect ambassador - is to watch Gentili create it.

Two categories of "essential qualities" are involved:

(a) "Graces and Refinements". Perhaps because he is interested in stage-plays and acting⁷³, Gentili begins his portrait by delineating the "external circumstances". The stage has to be set properly or, as he puts it:

(The Ambassador's) equipment and suite should be marked by a splendor commensurate with the dignity of him who has sent him ...⁷⁴

Next comes the actor. The perfect ambassador is endowed with "blessings of nature" and "blessings of fortune". The former include "a comely appearance", beauty based on dignity, and vigour linked to courtesy. A "good personal appearance", Gentili remarks, is especially important with barbarians.⁷⁵ "Blessings of fortune" comprise a distinguished origin and position, for "a man of ignoble station" can hardly assume the personality of a prince.⁷⁶

With the next stroke of his brush Gentili adds talents which are partly inborn and partly acquired and developed: ready wit and eloquence - two characteristics which help to win friends, "the greatest art of ambassadors".⁷⁷

Purely acquired qualities come next.

There is a knowledge of languages. The perfect ambassador knows his own language, a universal language - Gentili suggests Latin for his day and age in preference to Greek - and the language of the state or sovereign to whom he is sent. The reason is this: "(T)he wise ambassador will never have (an interpreter)".⁷⁸

There is a knowledge of history - past and contemporary. The study of the past generates learning, helps to arrive at a norm for one's own conduct, and enables one to understand the present and to foresee the future. However, the perfect ambassador does not reach an understanding of the present merely by engaging in speculations based on the past; he studies the contemporary scene itself.

And there is a knowledge of philosophy, that branch of it which is concerned with morals and politics. As Gentili comments:

This is in a sense the soul of history, for it includes and explains the causes of all words, deeds

and issues, and so does not suffer historical knowledge to be a bare and empty thing, but brings it within the field of ⁷⁹well-defined and useful practical experience.

The group "Graces and Refinements" is now complete except for a few finishing touches, and he applies them without delay. The perfect ambassador walks in the "sunlight" rather than buries himself in books, that is, his knowledge of languages, history, and philosophy is not acquired at the cost of practical experience. He is familiar with "practical politics and ... the administration of high offices"⁸⁰, and he is experienced in foreign travel. The perfect ambassador is more than thirty years of age.

(b) The second group of qualities comprises "virtues". Gentili endows the perfect ambassador with four virtues - fidelity, fortitude, temperance, and prudence - and he attributes their parentage to nature and to diligence.

Fidelity is important because "(h)e who shows good faith ... has a claim on good faith"; courage enables one to perform one's duty "in spite of violence of any kind"; temperance places "a seemly limit on things", and prudence permits "a shrewd analysis of the truth ...".⁸¹

When prudence, which according to Gentili "directs and regulates all the virtues"⁸², is linked to fidelity, the perfect ambassador knows how to behave in a situation where there is a conflict between duties to his state or prince and duties to his religion, his integrity, and the situation⁸³; when prudence accompanies courage, he discerns when to be persevering and when to defer to circumstances⁸⁴; and when prudence joins temperance, he understands in which circumstances a word or deed is appropriate.⁸⁵

Prudence has its own regulatory device. In order to avoid deception the perfect ambassador studies the person who says or does something (the adviser) and that which is being said or done (the situation). If both agree in what they convey, there is no problem. If they disagree, the perfect ambassador chooses the situation rather than the adviser as the basis for his decision: "A conclusion ... based on the situation is more reliable ...".⁸⁶

All the virtues which Gentili considers essential in the perfect ambassador are now present, and he completes the portrait by adding the following detail: those who accompany the perfect ambassador are "of such character that every one of them could perform the duties of the embassy ...".⁸⁷

The finished product is dedicated to Philip Sidney, "a living image and example of the perfect ambassador".⁸⁸ It fits neither the realist way of thinking about the world nor that of the universalists.

4. The State, a Public Part of the World

Unlike his near-contemporary Thomas Smith, whose work De Republica Anglorum⁸⁹ of 1565 contains a complete statement of what he understands the state to be, namely:

A common wealth is called a society or common doing of a multitude of free men collected together and united by common accord and convenauntes among themselves, for the conservation of themselves as well in peace as in warre ...⁹⁰,

Gentili himself does not offer any such ready insight into his thinking about the state.⁹¹ The absence of a definition, atypical for his approach more generally⁹², may be seen as an indication of his concern to differentiate himself from the political philosophers, who since the time of Plato and Aristotle have devoted themselves to theorizing about the state and what happens within it. As he puts it in his introductory chapter to De Jure Belli:

For the moralist, whether he treats of the private customs of individuals or aims at the highest good in some other way,⁹³ always confines himself within the city-state⁹⁴, and rather limits himself to the foundations of the virtues than rears lofty structures.

And when a political thinker has looked beyond his own state, so Gentili finds, it was for the purpose of establishing its own needs. An example comes readily to his mind:

And although (our own Justinian) discussed the law of nature and of nations ... as well as the cause of wars, prisoners, slaves, and some other topics relating to the subject: he nevertheless considered

them all from the standpoint of his own state and explained them with reference to its requirements ...⁹⁵

Gentili's writings on the law of nations do not provide a definition of the state nor do they contain the ingredients which, when collected and put together, would permit a conclusion regarding his conception of the state other than that it is a community "joined together by common laws".⁹⁶ His writings on the law of nations take the state as something given, and observations about it are no more than side-products of his larger concern - those "lofty structures" neglected by the political philosophers: they throw light on one or the other aspect of the state and, in turn, reflect on the larger enterprise. For the purposes of this chapter, it is worth mentioning three of these aspects.

(a) The formal position of the state. The state with which Gentili is concerned may be Christian or non-Christian, Catholic or Protestant, as long as it is represented by a princeps or is constituted by a princeps populus - a prince or people who has no "earthly judge" or acknowledges no "judge or superior"⁹⁷, a "free prince" or "free people".⁹⁸ And he includes in this category those princes or peoples who have religious, feudal or treaty ties to pope, emperor, or some other ruler, provided that jurisdiction in and dominion over their realms or territories⁹⁹ are theirs.¹⁰⁰

To the princeps - prince or people - Gentili accords the title of "public citizen", whose realm is a "public part of the world".¹⁰¹ To the princeps he attaches the right and duty to act externally, that is, to maintain the law of nations. This includes actions such as going to war; making peace¹⁰²; sending and receiving ambassadors¹⁰³; entering into public agreements¹⁰⁴; helping another prince¹⁰⁵; and redressing a wrong committed by another prince or, as he expresses it, acting as "the magistrate of the law of nations".¹⁰⁶

(b) The use and abuse of power by those who rule. Gentili mentions that states can have different "forms" - they may appear as kingdoms, republics or empires - and a particular state can change from one form to another¹⁰⁷, but he abstains from discussing the differences between them or indicating his preferred "form". Equally, he speaks of "absolute or modified sovereignty"¹⁰⁸ and of what he calls the "magistrate" or prince of a "free state"¹⁰⁹ without telling his audience what he under-

stands by these terms or hinting at any preference on his part.

This disinterest may have its origin in the position he has taken up: he is not a political philosopher. It also may stem from his conception of power. Gentili identifies "power" as "that which we can do legitimately and without injustice". "Fullness of power" he explains as "that which is good and praiseworthy ...", adding that, however "absolute" power may be, "nothing unseemly is admitted".¹¹⁰

Given this view of power, it may not matter who wields it - an absolute ruler of a kingdom or a magistrate of a free republic. It may not even matter whether the ruler is legitimate or illegitimate. As he puts it:

Each of them is master, and law perhaps is the basis of each one's sovereignty. A king rules over his subjects because they want him to do so, a tyrant in spite of them. Yet a tyrant is none the less a prince ...¹¹¹

For Gentili the important point does not seem to be, who exercises power, but to what end it is exercised. "(Power) is not for purposes of tyranny, but of administration".¹¹² He offers no detailed explanation as to where the one begins and the other ends, but points to the existence of a general criterion - the common good. As he formulates it variously:

(A) good ruler ... will always bear in mind that kingdoms were not made for kings, but kings for their kingdoms ...¹¹³

Or:

(G)overnments are constituted, not for the advantage of any individual, but for that of the community.¹¹⁴

There is no definition of the common good or advantage, but it may be close to what he calls "reason of state", namely peace, security, and justice¹¹⁵, as the following propositions suggest: a prince desires to be "the father of his people ... fountain head of peace and love ..."¹¹⁶, and "a principality"¹¹⁷ is meant to be "a protection for mankind".¹¹⁸

Thus, when thinking about the use or abuse of power, Gentili con-

siders the final cause of power (the end) rather than its formal cause (the extent) - to use sixteenth-century language - although he does not leave the topic without admitting that "(p)ower is always under suspicion ..." ¹¹⁹ and positing the following rule, borrowed mainly from Baldus de Ubaldis, the Italian legal scholar of the fourteenth century:

A prince who makes a contract with his subjects is bound to them by natural law, by the law of nations, and by the civil law ... (T)he prince is indeed superior to every positive law, but ... he can subject himself to reason and is subjected to reason, because he is a reasonable being; therefore his acts cannot prevail against reason and therefore he is bound by a compact ... ¹²⁰

(c) The third aspect relates to the "participant in the burdens and honours of the state" ¹²¹: the subject or citizen.

In terms of allocated space this aspect figures more prominently in Gentili's writings than either princeps or "power". Yet, when individual statements and whole chapters are put together, the resultant picture shows no more than a pale entity, imperfectly outlined.

Consistent with what has been said before, Gentili's subject or citizen is not on a footing of equality with his ruler. ¹²² What else he is, or has, is more difficult to ascertain. Gentili seems to prefer to adopt a vague stance, for he suggests that the position of the subject depends on the nature of his subjection ¹²³, but does not illuminate this idea by discussing it more fully. All that he is prepared to disclose is that the rights and duties of a public subject may differ from those of a private individual. ¹²⁴ Clarity, however, appears to reign when it comes to the binding force of any agreements that exist between ruler and ruled: they are mutually binding. ¹²⁵

Whatever the nature of subjection or compact between ruler and ruled, the subject is entitled to just rule and protection by the ruler ¹²⁶; in return, he is obliged "to render loyal obedience". ¹²⁷ Gentili does not explain the concept of loyal obedience, but, at one level, it seems to include the idea that the subject "owes it to his prince and country to fight for them" ¹²⁸; and, at another level, it appears to extend to the principle that the subject has no right to revolt against his ruler, even if the latter breaks his compact or treats him "badly", although Gentili does not put it this way. What he says is that "(r)eb-

els are enemies", for they "secede from those under whose authority they are".¹²⁹ The absence of clarity in his picture of the subject and his unjust or cruel ruler does not mean that Gentili does not have an answer to the problem. In fact, he refers to such a prince as a tyrant and permits his punishment by another prince; that is, he places the force to secure internal justice and security outside the state.¹³⁰ As he puts it in the context of his chapter "On Defending the Subjects of Another Against Their Sovereign":

And unless we wish to make sovereigns exempt from the law and bound by no statutes and no precedents, there must also of necessity be some one to remind them of their duty and hold them in restraint.¹³¹

And the context makes it clear that that "some one" is a "sovereign".

The links which the above discussion establishes between the inside of the state and its outside may be summarized as follows: he who has jurisdiction and dominion internally, the princeps, is public citizen externally; administration rather than tyranny is appropriate for the state which is a public part of the world; if tyranny exists inside, the outside is entitled to intervene.

5. The World, a Lofty Structure

Gentili's "lofty structure" may be seen as projecting itself as a rather modern composition presenting (a) an indefinite number of vertical divisions, four horizontal partitions and (b) three distinct yet related materials which give cohesion to the whole. Gentili left his creation nameless; some commentators assert or imply that he attached the words societas gentium¹³² to it.¹³³

(a) The Frame. Identical at each of the four horizontal levels, the vertical divisions are constituted by the states or public parts of the world. They are basic to Gentili's construct: they have existed since the early age of mankind¹³⁴, and they will continue to exist until its end.¹³⁵ Individual states may be born or die, but states in a sense are immortal.¹³⁶

The four horizontal partitions reflect different features of their component parts, the states, resulting in different patterns or groupings of the basic units at each level:

The first level presents the idea of formal equality. States may differ in many ways - Gentili especially mentions size, power¹³⁷, rank¹³⁸, and religion¹³⁹ - but from a legal point of view they are identical, having the same rights and the same obligations. As he puts it: There is "no supervision of one sovereign by another"¹⁴⁰ but "one sovereign is said to be on an equality with another ...".¹⁴¹

At the second level the idea of foreignness appears. It makes for a pattern which distinguishes between "one's own state" and all the other states. Gentili's interest in "examin(ing) this very matter of a foreign nation"¹⁴² is expressed in a lengthy discussion which may be abbreviated in the following way:

(T)he law says ... that independent allies are foreign to us ... (T)he ... old grammarians teach that a foreigner is one whom we speak of as belonging to a foreign nation, to an alien land, as coming from another people ... Virgil (says) ... that every land which is free and not beneath our sceptre is foreign ... Those who are not subjects are foreigners ... A foreigner is a resident alien, not a citizen ...¹⁴³

The distinction between "the self" and "the others" cannot be blurred, neither by an individual moving from one country to another nor by two states concluding an alliance.

The third level shows the idea of foreignness from a different angle. Foreign states in relation to one's own state may be enemies, friends or neither of the two.

Gentili defines the enemy as one "who (has) officially declared war upon us, or upon whom we have officially declared war ..."¹⁴⁴ and adds: "(An enemy) is the equal of his opponent".¹⁴⁵

"If friendship is contracted", he writes at the beginning of his chapter "Of Friendship and Alliance", "by this term something of no slight importance is designated".¹⁴⁶ And he explains what he means by this statement: states which agree to be friends do not thereby agree "to become one body" and "to regard all (their) possessions ... as common property" - they thereby agree to aid one another in case of necessity, whether they make this commitment explicit, as in an alliance providing for mutual aid in the event of one of them being "wronged", or whether they leave it unspecified, for "(i)f this is not so, what is

gained by that agreement and that title of friendship?"¹⁴⁷

It is at this level and in this context that his lofty structure displays an irregularity, for he argues that "it is lawful neither to lend aid to infidels nor to accept aid from them ...".¹⁴⁸ There may be war with infidels and there may be peace, but no treaty of friendship or alliance.¹⁴⁹ This is a restriction which he does not explain further, and one which Vitoria does not impose.¹⁵⁰

For those states which are neither enemies nor friends in relation to one's own state, Gentili does not have a name. They may act like enemies, friends, or neutrals, although he does not use the latter term.¹⁵¹

At the fourth level states group themselves according to their religious beliefs, and Gentili finds that there is no state which has no religion. "Name me one such nation, if you can".¹⁵² The resultant pattern is characterized by diversity - all religions are present, having followings of various sizes - but this does not establish a relationship of dependence between groupings and their constituent parts. As he puts it:

Religion is a relationship with God. Its laws are divine, that is between God and man; they are not human, namely, between man and man.¹⁵³

Religion may form a link amongst states¹⁵⁴, but it does not affect their status of being princeps.

With the fourth level, Gentili's structure has reached its upper extension. It stands for the idea of a plurality of states.

(b) The Cohesive Materials. The first to be noted is the idea of human society. Gentili also calls it the "association of the human race"¹⁵⁵ or "that great community"¹⁵⁶ and he draws attention to the fact that all along the ages there have been men who believed that:

(T)he whole world was, as it were, one common-wealth ... all men were one people and fellow citizens, being, so to speak, like a single herd grazing in a common pasture.¹⁵⁷

Did not Aristotle call the world "a greater city"? Was not Cicero the one who said that "(s)ociety ... in its broadest sense is between men and men ..."? Philo, the Jewish-Hellenistic philosopher, held the view

that "(the world) is a great state, having the form of one commonwealth ...", and Seneca, the Roman orator, statesman and philosopher, asserted that man "looks upon the world as one home". Did not Tertullian, the theologian, see the world as "the one commonwealth of all, and the common city of all"? Without commenting on the variety of concepts used by these authors as descriptions of the entity called "the world", and without attempting to explain their meaning, Gentili affirms as true that there is "a bond of fellowship among men", and that "the world forms one body".¹⁵⁸

The cause for mankind's oneness is nature. As he explains it:

(N)ature has made us all kindred, since we have the same origin and the same abode. She has implanted in us love for one another and made us inclined to union.¹⁵⁹

Thus, by nature, men are not enemies of one another, and he agrees with St Augustine that "the nations of the earth are united through this human society".¹⁶⁰

Most societies have their outsiders and human society is no exception. Excluded from it, according to Gentili, are two categories of men: pirates and rebels. "Pirates", he writes, "are the common enemies of all mankind ...".¹⁶¹ "To pirates and wild beasts no territory offers safety".¹⁶²

How can men who have withdrawn from all intercourse with society and who ... have broken the compact of the human race, retain any privileges of law, which itself is nothing else than a compact of society?¹⁶³

As for rebels, a subject on which he remains uncommunicative¹⁶⁴, Gentili does not mean those "who have proved false to friendship, to a treaty, or even to voluntary dependence ..."; he has in mind those "who were subject to authority" and rejected it.¹⁶⁵ These men are "enemies to the extent of losing their citizenship", and they are not given "the benefit of a new law, to wit, the law of nations ...".¹⁶⁶

The second material to bind together Gentili's structure is the law of nature and of nations.

There are statements in his writings which, when taken out of context, suggest that he neatly differentiates between the law of nature and the law of nations. To give a few examples: "Natural law ... is more powerful than any law of princes"¹⁶⁷ or "(the law) of nature ... cannot be annulled ..." ¹⁶⁸ as against "our subject is the law of nations"¹⁶⁹, which controls relations with foreigners, not with one's own people"¹⁷⁰ or "(the law of war) is derived from the law of nations ...".¹⁷¹ The following proposition seems to be especially appealing both for its clarity and its suggestiveness in terms of theory-building:

(N)ot only is the civil law an agreement and a bond of union among citizens, but the same is true of the law of nations as regards nations, and the law of nature as regards mankind.¹⁷²

However, no such impression remains if one looks at his writings as a whole. In fact, on closer examination, it appears as if he did not even wish to draw a distinction between the law of nature and the law of nations. The following two passages which he offers as definitions of the law of nations make this point rather well:

- i. (The authors and founders of our laws) say that the law of nations is that which is in use among all the nations of men, which native reason has established among all human beings, and which is equally observed by all mankind. Such a law is natural law. The agreement of all nations about a matter must be regarded as a law of nature.¹⁷³
- ii. But there is another more elegant definition of the law of nations ... namely, that there are everywhere certain unwritten laws, not enacted by men ... but given to them by God ... (W)e have¹⁷⁴ gained them, not by training, but by instinct.

While the above two definitions, to which, in 1601, he adds a third, namely, "(t)he law of nations is that which natural reason has established among all peoples; that which is common to men among themselves"¹⁷⁵, make their point, they give rise to a new question, for in spite of, or perhaps because of, all the information they contain, they leave the reader puzzled as to what exactly Gentili considers this law of nature and of nations to be.

One possible way of arriving at an answer consists in taking the

key ideas from the above definitions and relating them to other statements found either in the same chapter or elsewhere in his writings; as this produces a kind of genesis of the law of nature and of nations at the same time, it seems a fruitful approach.

Men did not receive this law from men but from God, and God gave it to men when they were in need of it¹⁷⁶, which was at an early stage in their history: "(T)he law of nations¹⁷⁷ is a portion of the divine law, which God left with us after our sin ...".¹⁷⁸

Men received God's gift in the form of natural law, or natural reason, or natural instinct. Not that they were ever able to demonstrate it, but those who were neither "dull" nor "unscrupulous" knew that it existed. They knew from themselves because they knew when they transgressed it; and they knew from others: from their words because "it is the habit of philosophers and other wise men to speak according to the promptings of nature"¹⁷⁹; and from their deeds because "the actions of great and good men" are in accordance with nature.¹⁸⁰

Good and wise men were not the property of any particular people, but the inclination to do what ought to be done according to natural reason - to make "use of a certain code of laws"¹⁸¹ - existed in all peoples. Hence, the observance of this law everywhere was not the result of a single decision, "not ... that all nations actually came together ..."¹⁸², but it was the manifestation of natural reason over time and space or, as Gentili puts it, the law of nations should be regarded as "that which has successively seemed acceptable to all ...".¹⁸³

The law of nations established itself like a custom¹⁸⁴ and, as such, it is binding upon all, even if not every one has agreed to it.¹⁸⁵

For Gentili, then, the law of nations is all of these things: natural law, natural reason, natural instinct, agreement, custom¹⁸⁶; but whatever the name under which it travels - one which is consistently absent is "positive law" - it encloses the same subject-matter.¹⁸⁷ As he sees it, there is a "first" law of nature and of nations which is concerned with "the worship of God; the honouring of father and mother; the differentiation of peoples; the separation of dominions".¹⁸⁸ And there is a "secondary or derived" law of nature and of nations. It deals with "wars, treaties, obligations, and other things of this kind"¹⁸⁹, and it

owes its status of being secondary or derived to the fact that "from that separation of dominions have followed wars, treaties, etc."¹⁹⁰

The third material to give cohesion to Gentili's creation is the principle of good faith, which stands in opposition to "treachery", "trickery", and "deception". It permeates all dealings between princes, states, and their representatives¹⁹¹, in times of peace and in war.¹⁹² Good faith constitutes "the essence of the law of nations ...".¹⁹³

The presence of these three cohesive materials means that the normal or natural state or condition of Gentili's lofty structure is peace which, as he agrees with St Augustine, is "ordered harmony": "(O)rder is the proper distribution of things, which ... is the nature of justice".¹⁹⁴

With this observation, Gentili's "world", so far as it concerns its form or appearance, is complete. The activities to which it gives rise - Gentili singles out commerce, diplomacy and war - will be discussed in the next three sections of this chapter.

6. Commerce as a Link

Regarding the origin of commerce Gentili is not very communicative. All that he is prepared to say is that it happened before the institution of embassies arose and after the formation of states or what he describes as "the separation of the nations, the foundation of kingdoms, the partition of dominions ..."¹⁹⁵; and he does not hint at which came first - commerce or war. His indefiniteness in relation to time is offset by his certainty regarding purpose - a certainty which he shares with, or derives from, other thinkers. Their argument may be presented in the following way:

God made the earth one, for men to see. Gentili's source is William Camden's Britannia:

(T)here is no land so remote, no island so secluded, that the sight does not reach it from some other land ... (T)his was so planned by God, in order that men might have this unity before their eyes and mutual access on every hand.¹⁹⁶

Although God made the earth one, he did not distribute its products equally. Gentili quotes: "Here the crops of grain are richest, there

grapes grow best".¹⁹⁷ A reason for this natural inequality is offered by Seneca, the Roman statesman and philosopher:

Commodities are distributed over different regions, in order that it may be necessary for mortals to have commerce with one another.¹⁹⁸

This suggests that one purpose of commerce is seen to consist in bringing about a more even distribution of the riches of the earth amongst the peoples of the earth. And it implies another, higher, purpose which Gregoras, the Byzantine historian, states more fully:

But if nature had given everything equally to all men, the reasons for loving one another would readily be destroyed; for it is through this inequality that we ask and give in turn without ceasing. This is the law of friendship and its strongest bond.¹⁹⁹

Thus, the end and aim of commerce lies not only in making the world more "complete" or, to use today's language, more equal, but also in linking it more closely. "(C)ommerce", Gentili writes, "is in accordance with the law of nations ..."²⁰⁰ which was devised "to bring men together".²⁰¹

For commerce to attain its purpose it is necessary that nobody exclude himself from participation in the interchange of things. Gentili quotes Gregoras again:

If any one is so greedy that he does not wish the good things of life to be distributed, he will have to take heed that he does not ... establish a law upon the earth which sanctions every kind of wickedness and does away wholly with all intercourse and commerce. Every one must realize that no blessing has been bestowed by divine Providence upon any one for his sole enjoyment.²⁰²

It is equally necessary that nobody be excluded from taking part. Gentili mentions the case of the ancient Megarians²⁰³ who were "forbidden all intercourse and commerce and kept from the harbours of the Athenians ...".²⁰⁴ Their complaint, in his view, was just. The Athenians acted "contrary to the law of nations ...".²⁰⁵ He also refers to the non-Christians of his own day and states his position unequivocally: "Commerce with infidels is not forbidden".²⁰⁶

The right and duty of all peoples to participate in the inter-

change which "makes the completeness of the universe"²⁰⁷ becomes, at a different level of the argument, the "right of way" or the duty not to close the lines of communication. Gentili insists: "All routes are free by nature"²⁰⁸ and by nature the use of harbours and the sea is open to all.²⁰⁹ His source is Hermes Trismegistus, the ancient Egyptian god of wisdom: "(I)n harbours, navigation, communication, and accommodation is the strongest bond of human interdependence ...".²¹⁰

There is one constraint which he places on commerce: it must not do harm to the state, for "the principle on which states are governed" is to avoid suffering harm.²¹¹ Reason of state may take precedence over reason of commerce in cases such as these:

In times of peace, a state may prohibit the importation of certain goods, if they present a risk to the physical or mental or moral health of its members; it may forbid the exportation of a commodity, if it needs it itself; for reasons of security it may refuse access to certain parts of its territory.²¹² In times of war, a state which is engaged in a just war may prevent commerce from aiding its enemies.²¹³

Apart from these and similar instances - limited in time and/or extent - the interference with commerce constitutes a denial of a "privilege of nature", a violation of the law of nature and of nations, and furnishes a just cause for war.²¹⁴

Gentili leaves no doubt on the part of his audience: commerce is an essential activity within his lofty structure - the world.

7. Diplomacy as a Link²¹⁵

The term "diplomacy" had not yet been coined when Gentili wrote about that branch of politics which subsequently came to be defined as:

The management of international relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; the business or art of the diplomatist; skill or address in the conduct of international intercourse and negotiations.²¹⁶

Gentili uses the term legatio, which the Latin dictionary and his translators render as "embassy", and he does not always assign the same meaning to it. When, for example, he speaks of sending or receiving an em-

bassy, undertaking or being on an embassy, the word "mission" comes readily to one's mind; when he writes "(t)he term embassy, though strictly connoting a public function, is used both of public and private negotiations"²¹⁷, he denotes the substance of the enterprise; and when he says "embassies assembled from all parts ..." ²¹⁸, one thinks first and foremost of the people engaged in the enterprise. So, the point which Harold Nicolson makes about the term "diplomacy" can also be made about its predecessor, the term "embassy", to wit: it denotes "several quite different things".²¹⁹

In terms of the purpose of the institution, Gentili distinguishes the following five "types" of embassy:

(a) "The embassy for the transaction of business". It arose, he has no doubt, after the formation of states and the establishment of commerce.²²⁰ He is even prepared to be slightly more precise about the age of this embassy: "(W)e certainly shall not ... abandon the view of those who set it down to the credit of Belus".²²¹ Belus, as Latin dictionaries reveal, was the founder of Babylon, in 4000 B.C.

If Belus was the "visible reason", necessity was its underlying cause. As Gentili persuasively argues:

But since it was inevitable that obligations and negotiations should arise between organizations having such reciprocity of rights as exists between nations, commonwealths and kings, and since those organizations are either unwilling or, as often happens, unable to meet (certainly states can not meet), it was absolutely necessary ... that others should be appointed, who by representing the organizations would be able to transact the necessary business. These representatives, moreover, had to be persons ... not subject to him to whom they are sent. Otherwise the distinction of sovereignties would not be kept intact.²²²

The business with which this embassy is charged consists of "peaceful negotiations" and "negotiations pertaining to war".²²³

(b) Possibly less ancient than the embassy for the transaction of business is the "embassy of courtesy". Gentili is not sure. He easily traces it back to the time of Alexander the Great, but beyond that point he is not prepared to commit himself.²²⁴ As to its purpose, however, he has no doubts:

(E)mbassies of this class are sent not only by those who offer congratulations on the good fortune, or condolences on the misfortune, of others, but also by persons whom good or bad fortune has befallen ...²²⁵

Hence, the embassy of courtesy does not owe its existence to necessity, but, as he points out, "just resentment results from (its) omission ...".²²⁶

(c) The "free embassy", Gentili is certain, is of more recent origin than the embassy for the transaction of business, and perhaps it is younger than the embassy of courtesy, although it, too, can be shown to have existed at the time of Alexander the Great.²²⁷ Gentili explains that it is called "free" because it is not "limited by time or place".²²⁸ Its purpose is not public but private, or, as he puts it:

By this (the free embassy) is meant the embassy of one who, although endorsed and honored by the public title of ambassador, has really gone abroad on some private business.²²⁹

An embassy of this kind may have for its object the fulfilment of a vow, the acceptance of an inheritance or the collection of a debt.²³⁰ It is granted for reasons of honour or prestige or influence - necessity is not its parent.

(d) The most recent of all embassies, according to Gentili, is the "time or resident embassy". He defines it thus:

By a time embassy or time ambassadors, I mean those who are sent on no specific or definite business but for a period of time sometimes prescribed, sometimes not, with the understanding that while they are on the embassy they shall be responsible for the negotiation and performance of everything which during the whole period may happen to be in the interest of the person sending them.²³¹

It is Gentili's opinion - and this may be of interest to many a twentieth-century author²³² - that the institution of time or resident embassy goes back, not to the fourteenth and fifteenth centuries, but to Roman times. According to his source, Philip Sidney, Rome accommodated "embassies of the provincials and the allied nations" for a period of time; and the custom became more widespread under the popes, "for on

their manifesting a tendency to have their own ambassadors everywhere, other princes imitated the practice".²³³

The time or resident embassy owes its existence, not to necessity, but to a "good reason":

(O)ccasions for negotiation arise so frequently between princes that it would be more inconvenient to keep sending ambassadors than to maintain them always at one another's court.²³⁴

And at times, as he sees it, courtesy rather than volume of business is the reason which makes for the establishment of a time or resident embassy.²³⁵

(e) Lastly, and least prominent in Gentili's thought, is the "sacred embassy". By it he means messengers "sent by a God or to a God or on some sacred mission".²³⁶ History, he points out, has known many such messengers, for example, apostles, angels, Iris, Mercury, or the oracle of Delphi; demons, birds or dreams, or today's envoys dispatched by or to the pope. The sacred embassy, in his view, is of "very great antiquity".²³⁷ Whether it is as old as, or perhaps older than, the embassy for the transaction of business, he does not say. At its origin: necessity? He does not say either.

Gentili seems to mention the sacred embassy mainly for the sake of completeness, for as soon as he has introduced it, he abandons it. His reason: "It is not of it ... that we have undertaken to speak".²³⁸

The age of the various kinds of embassies, and the reasons for them, point to the existence of a law relating to embassies²³⁹ which Gentili is concerned to make as visible as possible, for:

(I)f all antiquity, if Greece and Rome in so many ways ... attest that embassies enjoyed the highest honor among them, are we not justified in claiming a like distinction for them among ourselves and among all nations, now and forever?²⁴⁰

Of the various ideas which he ascribes to the law relating to embassies - a law which in turn is a part of the law of nature and of nations - it is instructive, for the purpose of this chapter, to note the following three:

(a) The right to send embassies is enjoyed by all public citizens, that is, independent princes or states, and "ought not to be disturbed on account of religious differences".²⁴¹ Dependent princes or states may have this right in matters which do not involve "the rights of their state"²⁴², that is, in "private affairs".²⁴³ Rebels, pirates and brigands never have this right²⁴⁴, but it may be conceded in a situation like civil war, when "each faction lays claim ... to the whole organization of the state".²⁴⁵

(b) To the right to send embassies corresponds the duty to receive them. The exceptions which Gentili grants to this "eternal law" are of two kinds:

(i) A state may refuse to admit embassies if they mean interference with the "transaction of business", slighting of the "dignity of the state", or "danger of any kind".²⁴⁶ These are what he calls "adequate reasons". Their justification:

(U)nless one had the privilege of forbidding the coming of embassies, considerable confusion would be introduced by this alone into the law of nations²⁴⁷, which insists and orders that control over one's own affairs shall be final and inviolable.²⁴⁸

(ii) "Intrinsic reasons" constitute the other kind of exception. A state may refuse to admit those embassies which are not necessary for the "intercourse of nations", that is, the free embassy, the embassy of courtesy, and the resident embassy.²⁴⁹

(c) Ambassadors are inviolable. This, according to Gentili, is the most majestic and prestigious principle of all. It holds irrespective of whether ambassadors find themselves "under the laws of allies" or "amid the weapons of the enemy".²⁵⁰ Its disregard invites disaster. He cites from the records of history to make the point:

(T)he sacrilegious treatment of ambassadors was either punished with the utmost severity, or was given such unfavorable publicity that the loss of prestige which resulted may be regarded as²⁵¹ more serious than all the rest of the damage.

This reaction, he submits, is proof of the strict enforcement of the principle's observance. And inviolable are not only the ambassadors, but

all those who accompany them, and the ambassadors's effects.²⁵²

Gentili raises a number of specific questions in order to show how far the principle of inviolability extends. For example, it is his view that:

- The principle of inviolability holds even if an ambassador is suspected of having been sent for the purpose of spying. The country to which he goes may refuse to admit him or, if it has admitted him, may expel him, but it may not do harm to him. Suspicion is not sufficient.²⁵³

- The principle of inviolability holds even if an ambassador is found to be planning to commit an offence. The case which he discusses in detail is the ambassador who conspires against the life of the prince to whom he has been dispatched. "(D)ismissal is the proper treatment", he rules, for "the mere consideration of plans" is not sufficient to justify doing violence to the ambassador.²⁵⁴

- The principle of inviolability ceases to hold if an ambassador is found to have committed an offence. In discussing this point Gentili distinguishes between an offence which constitutes a violation of the "legal obligations in the country of his embassy"²⁵⁵ and an offence against the law of nations. While in both cases the law according to which the ambassador is to be judged is the law of nations²⁵⁶, in the former case - Gentili mentions business and law suits - the measure of the punishment is provided by the principle "like for like", and the judge of the ambassador, the magistrate of the law of nations, is the prince of the country of his embassy.²⁵⁷ In the case of an offence against the law of nations - he refers to the ambassador who injures the prince of the country of his embassy by word or deed - the ambassador must be surrendered or punished "with great severity by (his) own nation".²⁵⁸ "I hold", he writes, "that an ambassador ... should be put to death or be surrendered, if he has inflicted even the slightest injury upon the sovereign".²⁵⁹

- Lastly, it is his view that a prince who does violence to an ambassador should not hope for the safety of his own ambassador.²⁶⁰

As the above examples indicate, the principle of inviolability extends far, but no so far as to protect those who themselves violate it.

To summarize the argument: In the world as Gentili constructs it, embassies constitute a necessary and/or desirable "interchange" which enjoys great age, prestige, universality, and inviolability.

8. The Question of War

War, which Gentili defines as "a just and public contest of arms"²⁶¹, has a remote origin. "(W)ho doubts", he says in De Legationibus, "that wars occurred soon after the separation of the nations"?²⁶² In De Jure Belli he identifies its origin as necessity:

(W)ar has its origin in necessity; and this necessity arises because there cannot be judicial processes between supreme sovereigns or free peoples unless they themselves consent, since they acknowledge no judge or superior.²⁶³

The necessity must be "real" and "actual", which means that unless an attempt is made first to resolve the conflict by the use of argument - Gentili points to the many cases of arbitration that every age is known to have submitted to in preference to war - war cannot be said to be necessary.²⁶⁴

The fact that the necessity of war is admitted into his lofty structure does not mean that every war is so admitted. War as the arbiter of last resort must be just, that is, "lawful" and "perfect in all its parts"²⁶⁵, or, as he also says:

(W)e hold the firm belief that questions of war ought to be settled in accordance with the law of nations, which is the law of nature.²⁶⁶

And necessity is no more, and no less, than one of the elements which go into demarcating a just war from an unjust war.

In presenting his idea of the war which is "perfect in all its parts", Gentili distinguishes four causes which, borrowing from Aristotle, he calls (a) the efficient cause, (b) the material cause, (c) the formal cause, and (d) the final cause.²⁶⁷

(a) The efficient cause is the princeps. For a war to have a claim to justice, it must be undertaken by a "free prince" or "free people", that is, a public citizen.²⁶⁸ "(P)rivat individuals, subject peoples,

and petty sovereigns" have no right to resort to war as "they can obtain their legal rights before their superiors' tribunal".²⁶⁹

(b) As for the material cause of war, Gentili distinguishes between (i) divine causes, (ii) natural causes, and (iii) human causes.

(i) Divine causes are treated with scepticism. Men claim, he says, that they fight a war on the command of their god, but, he suggests, "we must go to the root of things and consider whether their religious feeling in these instances is correct".²⁷⁰ "Religious feeling" in its turn is dismissed as a just cause for war: "(N)o man's rights are violated by a difference in religion, nor is it lawful to make war because of religion".²⁷¹ And he adds:

(I)f men in another state live in a manner different from that which we follow²⁷² in our own state, they surely do us no wrong.

(ii) Regarding natural causes of war, his basic position is that "no war is natural"²⁷³, for "by nature" men are all akin:

If man's desires are boundless and there is not sufficient glory and power to satisfy²⁷⁴ them, that is not a law of nature, but a defect.

While rejecting the idea that any war can be natural, Gentili admits, as just, wars undertaken "under Nature's guidance".²⁷⁵ This category includes defensive war and offensive war.

Defensive war:

- "Necessary defence", which he defines as "the repelling of force by force"²⁷⁶, is the most obvious of all rights. "War is just for those for whom it is necessary ...".²⁷⁷

- "Defence on grounds of expediency", which he identifies as a war made "through fear that we may ourselves be attacked".²⁷⁸ The cause of fear must be justified, that is, suspicion is not enough - a condition which, he admits, is not always easily determinable, but he offers a guideline - powerful and ambitious princes should be opposed:

Do not all men with complete justice oppose on one side the Turks and on the other the Spaniards,²⁷⁹ who are planning and plotting universal dominion?

- "Defence for the sake of honour" which, in his language, is a war undertaken for "the sake of others"²⁸⁰:

"The other" may be a prince and help may justly be offered on the principle that "nature has established among men kinship ...".²⁸¹ The tie of natural kinship is at times reinforced by an alliance, a treaty, a common religion, a common border or the fear that if the "other's" enemy is a great power, it may become even greater if it succeeds in conquering the "other".²⁸²

"The other" may be a people which suffers from its unjust and cruel prince.²⁸³ Help may justly be rendered on the same principle as above: "(T)he subjects of others do not seem to me to be outside of that kinship of nature ...".²⁸⁴ Sometimes, necessity and expediency add support to honour as the reason for helping "to ward off injury".²⁸⁵ As he observes in the case of English help to the Dutch against their Spanish rulers: "(I)f that bulwark of Europe ... should be broken down by the Spaniards, nothing would be left as a bar against their violence".²⁸⁶

Offensive war:

- Offensive war for reasons of "necessity". It is Gentili's view that necessity may force a people and its prince to make war if, for example, they cannot otherwise maintain their existence, or an emergency compels them to leave their country and find a place somewhere else.²⁸⁷ Such a war is just.

- Offensive war for reasons of "expediency". Here he has in mind the right of a state to undertake a war in response to a wrong received. It is "perfectly clear", he writes, that a state may avenge a wrong suffered at the hand of another state if the latter fails to right the wrong itself, for example, by returning wrongfully seized property.²⁸⁸

- Offensive war for "natural reasons", by which he means the right to go to war if a "privilege of nature" is refused, for example, the right of way, access to harbours, or the right to engage in commerce and trade.²⁸⁹

- Offensive war for "honourable reasons", that is, "in behalf of others". If a people sins against the laws of nature - one of his examples refers to the Indians being punished by war by the Spaniards for

killing innocent human beings for the purpose of eating them - it is just to make war on it.²⁹⁰

(iii) Human reasons form Gentili's third and last category of material causes of war. It is his contention that the violation of a "man-made" law may constitute a just cause of war.²⁹¹ Amongst other examples he mentions the breaking of a treaty and, more prominently, rape, a crime which he considers to have been responsible, for example, for the "undying enmity between the Greeks and Barbarians ...".²⁹²

Gentili thus concedes a just material cause of war not only to the princeps who fights a war of defence; he also grants it to the prince or people who undertakes an offensive war, provided the latter is fought in defence of a right which accords with natural or human law.

In addition, he is prepared to consider that a just material cause may be present on both sides. In support of his view he advances three reasons:

- Princes not being "cognizant of that purest and truest form of justice" - divine justice - can aim at no more than justice as man understands it, and if they think they act in pursuit of this justice, they cannot be called unjust.²⁹³

- The prince being obliged to help "allies, friends, kindred (and) neighbours", thereby "justly rouses against himself the arms of the adversary whom he is attacking".²⁹⁴

- Justice, like other virtues, is not "limited to a point". One side may have a just cause, for example, defending its right to engage in commerce, and the other may have a still more just cause, such as securing the country's safety.²⁹⁵

(c) Both the requirement that a war be just in all its parts and the possibility that a just material cause may be present on both sides make it essential that the formal cause of war - the conduct of war - be just. As Gentili variously puts it: "Of all our laws ... that one seems to me the clearest which grants the rights of war to both contestants ..."²⁹⁶; or, with Cicero: "In war an enemy retains his religion and his rights ...".²⁹⁷

The whole of the second book of De Jure Belli is devoted to the

question of justice in war. For the purposes of this chapter, a few examples will suffice to document the general theme:

- It is Gentili's view that the prince who has decided to make war must inform of his intention the prince against whom the war is to be made:

This is the voice of God. This is natural law, that before you take hostile steps, you first utterly renounce the friendship or common tie which you have with the men in question.²⁹⁸

- Poisoning is a weapon not to be used against the enemy. His nineteenth, and last reason in a long argument is that "war ought to be limited to things which it is within human power to resist".²⁹⁹

- "(T)he rights of humanity and the laws of war" require that those who have surrendered be spared.³⁰⁰

- Farmers and religious men are safe, for "there can be no war with unarmed men"; traders, travellers and other people who happen to sojourn with the enemy are safe, for they are not the enemy.³⁰¹ Only if they help the enemy, do these people become the enemy and are treated as such.³⁰²

- It is the law of nations and of humanity "to bury the dead or to turn them over to their countrymen when they ask for them".³⁰³

(d) The fourth ingredient of Gentili's idea of the just war is the just conclusion of war - the final cause or end of war: peace.

Peace, as was pointed out earlier in this chapter, is defined by Gentili in a general way as "ordered harmony", "the proper distribution of things", "justice"³⁰⁴; when he applies it to the conclusion of war, it becomes "the orderly settlement of war" - a definition to which he adds the following explanation:

(O)ur definition ... has the provision about justice, which is what we seek in this cessation of war, along with order and the assignment of his own to each man.³⁰⁵

Gentili distinguishes between a situation where, at the end of war, there is a victor and a vanquished, in which case the establishment of

peace is the responsibility of the victor alone; and a situation where arms are laid down by agreement and war is settled by both sides.

In the first situation, the victor assumes the role of judge and should, if the peace which he makes is to be lasting, take into account not only his own rights, but also those of the vanquished.³⁰⁶ The punishment which he decides and which is intended to achieve "solace for injury and security for the future"³⁰⁷ should depend, not on what he is "able" to do³⁰⁸, but on "the character of the persons concerned, the nature of the offence, the time, the age, the sex ...".³⁰⁹ Too much severity may not be in the interests of peace:

For one who has been injured beyond his deserts will not be tranquil, but will continually desire revenge; and one who is forced to accept pitiless conditions will carry the burden only so long as he is under the necessity of obedience.³¹⁰

Too little severity may, at times, not be conducive to a lasting peace either. A vanquished enemy who has done evil in the past and would do evil in the future because of his "inclination" must not be given the opportunity to do so. Gentili quotes a source from history: "Since we cannot put an end to your perfidy, we will above all break your power".³¹¹

The third book of De Jure Belli reveals the many questions which may come up for consideration and judgment by the victor when he makes peace: the payment of expenses and losses of war; the imposition of tributes; the acquisition of territory; the removal of treasures and ornaments; the sacking of cities; the punishment of the enemy's leaders and soldiers; the internal organization of the state; and particular aspects of it such as religion, language, and customs. When making peace, Gentili writes:

(T)he victor may, without violating the laws of nature, do anything which tends to make his victory firm and ensure a peace which is just to himself and to the vanquished.³¹²

The idea of justice is of equal importance in the other situation: the settlement of war by mutual agreement. Whatever the decisions which enter the agreement - Gentili discusses questions relating to the laws of each party; territories; towns and buildings; prisoners; arms and armies; friendship and alliance - they need to be based on the principle

of "right and justice" in order to achieve a peace which is "perpetual and assured".³¹³

It is an elaborate argument which Gentili submits in the attempt to reconcile war with the idea of society or, to remain within the language adopted by this chapter, to accommodate war within his lofty structure. Its quintessence: Given the structure of the world, there is a need for an arbiter of last resort. On the condition that war be just in all its aspects, it may assume the role of that arbiter.

9. Moderation

The idea of moderation is easily traceable in Gentili's work. Sometimes, it appears as openly as in the following statement, noteworthy besides for the link which it establishes with the idea of the via media:

The unique power and inmost marrow of all the virtues is moderation. Hold to the mean, if you do not wish to lose moderation; a middle course is the seat of moderation and moderation is virtue.³¹⁴

At other times, it is embedded in the argument and remains unnamed, for example, in the discussion of "The Ambassador Who Is a Spy and a Traitor" where Gentili says:

(I)f, on the mere suspicion that one had come not as an ambassador but as a spy, it should be lawful to deprive him of the title of ambassador ..., the door would be flung wide open to the unscrupulous for outrages against all ambassadors.³¹⁵

And there are occasions where it appears in the guise of a different name such as "temperance", to which, as was noted above, he refers as "the quality which is seen to impose a seemly limit on things"³¹⁶; or "discretion", of which he says, following St Bernard:

Discretion ... is the mistress of zeal and mercy. When they are blind in the eye of discretion, men are wont to seize upon one or the other of these and to occupy the extremes.³¹⁷

Whatever the form or name given to the idea of moderation, its general meaning, as the above examples indicate, corresponds to what Gentili identifies as observing "the proper limit".³¹⁸

The proper limit, as one discovers when one looks carefully at the particular instances to which he applies the general idea, may be drawn at more than one level. In fact, it is possible to distinguish three situations.

(a) To be moderate means to refrain from the use of force altogether. For example, in Book One of De Jure Belli Gentili argues for arbitration in place of war, and submits examples drawn from all periods of history in order that:

(T)hose who avoid this kind of contest by arbitration and resort at once to ... force, may understand that they are setting their faces against justice, humanity, and good precedent ...³¹⁹

In Book Two of the same work he insists that a justly conducted war demands that children, women, farmers, religious people, traders and travellers be spared.³²⁰ They are innocent. He also is of the opinion that "it is mad and utterly raving" if the enemy's temples, colonades, and statues are destroyed, for these things "yield no profit in themselves and (their) destruction does no damage to the enemy".³²¹ He further condemns it as "a mark of extreme hatred" if crops are destroyed, farm-houses set on fire and other such "outrages" committed.³²² To give a last example: it is his view that it is improper to be angry with the dead. "Indignation which is moderate ends with the man".³²³

(b) To be moderate means not to go as far as what would be lawful and just. For example, Gentili concludes his chapter "Of Cruelty toward Prisoners" in Book Two of De Jure Belli by saying:

But surely it is fitting to restrain the violence of war as much as possible ... (E)ven if it is allowed you to do harm, the permission must yet be used with moderation. Also if it has been allowed you as an arbiter to impair our rights, you must do so with moderation and to a slight degree ...³²⁴

In his chapter "Of the Vengeance of the Victor" in Book Three of De Jure Belli he argues that there is a limit to punishment and the question ought to be, not what the vanquished deserve, but what befits the victor. Quoting the Greek historian Polybius, he writes:

(T)hose who are endowed with minds, when they decide to punish the enemy, do not first consider what he may suffer in accordance with his deserts, but rather³²⁵ what they themselves may do with propriety.

For example, it is not against the law to pillage churches and take sacred objects, but, as he notes: "I should prefer to show respect to moderation and honour, and to refrain from doing what is permitted by the laws".³²⁶

(c) To be moderate means not to go beyond what is lawful and just. For example, the punishment of an ambassador who is discovered to conspire against the life of the prince to whom he has been sent must be expulsion and not death. As noted above, this is the position which Gentili takes up in De Legationibus, and he offers the following reason for it:

We commit a grave offense against the law of nations³²⁷, if in our efforts to repel violence we go beyond the proper limit. To put to death such an ambassador would be to show cruelty³²⁸ far transcending the requirements of the case.

In De Jure Belli he argues that to kill the captured leaders of the enemy, unless there is a just reason, amounts to "severity" which "ought not to be shown".³²⁹ If there is such a reason, death may be "approved" but torture must not be applied³³⁰: "Who will defend the Spaniards when they inflicted a wretched death upon some great kings of the New World ..."?³³¹

Hispanicae Advocationis contains the case of "An English Ship Sailing to Turkey with a Quantity of Powder and Other Merchandise".³³² It is captured by the Sardinians and Maltese, who accuse the English of violating the laws by "carrying forbidden articles to the Turks", the enemies of the Spaniards and therefore the enemies of the Sardinians and Maltese; the English complain, and Gentili pleads in defence of the English and moderation. One of his main arguments concludes thus:

From these sources³³³ they (Gentili's opponents) can prove only that the Maltese and others may obstruct this trade, not that they may punish either in person or in property those who seem willing to act in violation of this law of nations, for the law of nations punishes offenses³³⁴ only when they have been brought to completion.

Gentili thus measures the idea of moderation in terms of what is lawful and just, and this in turn depends on the particular instance under consideration.

Some Reflections in Conclusion

It was not a task of this inquiry into Gentili's ideas to search for an explanation why his writings have failed to attract much scholarly analysis; yet a reason offered itself in the course of the investigation: Gentili presents his ideas in a way which is rather unpalatable. Whether one takes De Legationibus, De Jure Belli or Hispanicae Advocationis, references to the pronouncements of other men and other ages are so numerous - for a quick appreciation of this fact it suffices to consult the indices compiled by his editors of the authors cited by him³³⁵ - that it proves difficult to discern his argument and to see the whole for the parts, "the wood for the trees".

Apart from the difficulty of keeping in touch with the main argument, Gentili's method generates other problems. It makes for obscurities: Gierke's quotation cited at the beginning of this chapter is a case in point. Inconsistencies easily slip in. There is, for example, no doubt that Gentili prefers the use of argument to the use of force³³⁶; yet his writings contain the small sentence: "(T)o war with words is folly".³³⁷ There is, to give a second example, also no doubt that for him the distinction between "planning to do something" and "actually doing it" is important³³⁸; yet his writings include the phrase: "One who is prepared to do a deed differs but little from one who does it".³³⁹ Another problem connected with his method is that it tends to corrupt the language. Gentili does not, for example, hesitate to refer to both "the state" and "the world" as respublica, civitas, or societas, to mention the most frequently used words only; yet it is clear from his writings that "the state" and "the world" are two entities which represent quite different things.

Given these difficulties, it is important to observe the context within which he places words and sentences, and to link the latter carefully to the former in order to minimize misunderstandings.

Before moving to the next point, it is, however, worth noting that Gentili's method has its positive aspects: apart from demonstrating his

erudition, and independence of argumentation, it establishes continuity where many a nineteenth- and twentieth-century author has seen discontinuity, to wit, the well-known dissection of history into three neat compartments commonly referred to as Antiquity, the Middle Ages, and the Modern Age.

Gierke's decision to claim Gentili for the universalists has been proved wrong by the findings of this investigation. Why it occurred in the first place is difficult to see, except if one assumes that Gierke disregarded both the immediate context of the passage in question and the wider context of Gentili's work on the law of nations as a whole. Gentili's lofty structure, expressing as it does the idea of a plurality of formally equal states, is incompatible with a world government, Gierke's criterion for universalism.³⁴⁰

The inclusion, on the other hand, of what has been called in this study the three cohesive materials - the idea of human society, the law of nature and of nations, and the principle of good faith - excludes Gentili from realism. Yet there is a voice which calls him, not indeed a Machiavellian, but "a man who ... partially ... succumbed to the Machiavellian doctrine".³⁴¹ Midgley's main reason for this assertion is the presence in Gentili's thought of the idea of "a war of expediency undertaken to maintain the balance of power".³⁴² If Gentili had isolated this idea from all other considerations, one might have agreed with Midgley; as it is, however, Gentili links the causa utilis firmly to the idea of justice.³⁴³

Midgley is equally hostile to Gentili's idea that a war can be just (objectively) on both sides³⁴⁴; and to this disagreement there is no answer, except to suggest that it arises between one who represents the universalist way of thinking about the world, and one who does not. As this chapter has shown, Gentili has the ideas of plurality and equality, and he joins to them the idea of that which links and circumscribes - a combination which identifies him as a representative of the via media.

Gentili is the first of the three thinkers examined in this study who does not have an "earthly" function for religion. Absent from his lofty structure are Erasmus' perfect spiritual Christian prince to uphold "the justice of Christ"³⁴⁵, and Vitoria's perfect spiritual community "to direct men to a supernatural end"³⁴⁶, and no equivalent entities are

put in their place. For him, religion is a relationship between God and man, and no religion is more excellent than any other. "(A) thing which has its own standard should not be measured by that of another".³⁴⁷

When Gentili refers to non-Christian states, he usually applies to them the name which they have as peoples. Thus he speaks of the Chinese, the Turks, the Indians, and so on. Only when making a general point, for example in relation to the question whether or not to conclude a treaty "with men of a different religion", does he refer to all non-Christians as "infidels"³⁴⁸, and the latter are not subdivided into infidels of the Old World and all other infidels. Non-Christian states have the same rights and duties as Christian states, and they participate in activities such as commerce, diplomacy and war in the same way. The only barrier which he erects between the two concerns a treaty of friendship or alliance: it is excluded as unlawful.

Gentili does not call the totality of states societas gentium nor does he make explicit a theory regarding it. But the ideas found in his three writings on the law of nations and reflected in this chapter may be translated into a theory of international society which consists of two levels of description, although one of these is so poorly illuminated that it becomes only imperfectly visible.

Difficult to see, for reasons suggested above³⁴⁹, is the less general of the two levels, Level One. It contains the state or community which is represented by a "free prince" or is constituted by a "free people". Its members are individuals and sometimes also dependent communities.³⁵⁰ The laws which bind them are the laws of their state or community, and these are different from the laws of the other states or communities existing at this level.

The plane of discourse which receives nearly all of Gentili's attention is the second level of description, the world. It, too, is identified as a "state" or "community", but characteristic of it is the absence of a princeps. The states, described at Level One, form the public parts of the world at Level Two, and the "free princes" and "free peoples" of Level One become public citizens at Level Two. The members of the "state" or "community" called the world are linked to one another by the idea of human society, the law of nature and of nations, and the principle of good faith, and their rights and duties in dealing with

one another - exemplified in the activities commerce, diplomacy and war - derive from that threefold bond.

Ideas of what is right and just generated at the level of the state, Level One, are transmitted to the world³⁵¹, Level Two, and vice versa, ideas of what is right and just present at the level of the world pass to the states.³⁵² This two-way traffic constitutes the link between the two levels of description.

CHAPTER VI

HUGO GROTIUS

Hugo Grotius (1583 - 1645) elicits a unanimous response on the part of Otto von Gierke, Martin Wight and Hedley Bull: they not only accord him a place on their respective lists of thinkers but also assign him to the same tradition of thought - the tradition which Gierke refers to as "the dominant theory, decisive for the future of the law of nations", Wight as "the constitutional tradition" and Bull as "the Grotian or internationalist tradition", and which, in the context of this investigation, is called the via media. The reasons, however, which they adduce in support of their decision and the methods for establishing them vary.

Gierke limits himself to a footnote which he attaches to his proposition noted above that:

... Beginning with the sixteenth century, it became customary to base the binding force of the jus gentium on a societas gentium in which the original and indestructible unity of mankind was held to continue to exist, while sovereignty had passed to the individual nations.¹

The footnote gives six references to Book Two of Grotius' De Jure Belli ac Pacis.² As one follows these references and examines their contents, one finds that there is one idea only which is common to all but one of them and which links them to the proposition in support of which they are cited, and this is the idea of human society:

Reference one admonishes the reader to distinguish "the laws common to many peoples separately from those which contain the bond of human society".³ Reference two contains the idea that "by nature there is a kind of relationship between men".⁴ Reference three is the exception. It is limited to Christians, reminding them that "they are members of one body".⁵ In reference four the idea of human society recurs a number of times, for example, in the statements "kings, in addition to the particular care of their own state, are also burdened with a general responsibility for human society"⁶ or "those who first begin to abolish these ideas (that there is a God and that he cares for the affairs of men) may be restrained in the name of human society".⁷ Reference five speaks of

"crimes which in some way affect human society"⁸; and reference six includes the sentence that "the law of nations introduced the provision that both infants and insane persons should be able to acquire and retain ownership - the human race, as it were, meanwhile representing them".⁹

Thus, in making his case for Grotius as an exponent of the via media, Gierke stresses the presence of the idea of human society in the work of the seventeenth-century author.

Wight's reasons for appropriating Grotius for the via media are not contained in a footnote. They appear as one follows his argument presented in "Western Values".

In the context of his observation that the tradition of thought which is representative of Western values has "the quality of a via media", Wight cites Grotius for the first time. It is the latter's dictum that:

A remedy must be found for those that believe that in war nothing is lawful, and, for those for whom all things are lawful in war.¹⁰

Next, when outlining this tradition's conception of the nature of international society, characterizing it as "complex", lacking in intellectual conciseness" and employing a language "full of qualifications"¹¹, Wight says:

In Grotius' description of international society there is a fruitful imprecision. Communis societas generis humani, communis illa ex humano genere constans societas, humana societas, magna illa communitas, magna illa universitas, magna illa gentium societas, mutua gentium inter se societas, illa mundi civitas,¹³ societas orbis¹² - such is his range of language.

He does not identify the above enumeration by references to Grotius' writings.

The third occasion to meet Grotius arises in the context of Wight's investigation of the question of order in international society. In support of his point that "(t)he notion that there could be a lawless or delinquent state has been integral to this conception of international

society"¹⁴, Wight reports the incident which led to Grotius' composition of De Jure Praedae and quotes its opening paragraph.¹⁵ Equally essential to this understanding of international society, Wight argues, is the idea that the delinquent state deserves punishment. He refers the reader to De Jure Praedae and, more emphatically, to De Jure Belli ac Pacis, without, however, disclosing the location of this idea in either of the two sources.¹⁶

Looking at the question of intervention Wight notes that "(b)etween the opposing positions of non-intervention and intervention, there is a central doctrine of what might be called the moral interdependence of peoples"¹⁷, and he quotes Grotius: "Kings ... in addition to the particular care of their own state, are also burdened with a general responsibility for human society".¹⁸ Wight also identifies Grotius as supporting intervention on "humanitarian grounds". As he writes and documents, "(Grotius) refused to allow oppressed subjects to take up arms in their own behalf, but permitted a foreign Power to intervene for them".¹⁹

In concluding his argument Wight addresses the question of international morality, but he does not refer to Grotius until he is ready to suggest that perhaps the very development of a theory concerned with relations between states is a characteristically Western experience:

(T)he Greeks never developed the theory of a society of states mutually bound by legal rights and obligations. There was no Greek Grotius.²⁰

The reference to Grotius is not reinforced by a reference to his writings.

According to "Western Values", then, Wight claims Grotius for the via media because he approves of wars which are fought in accordance with law; he does not limit the membership of international society to states but includes individuals; he has the conception of the "delinquent" state whose punishment he prescribes; he supports intervention on moral and humanitarian grounds; he has a theory of international society.

Wight's account of the three traditions of thought in Systems of States mentions Grotius only once, and then in a non-committal way:

when referring to "those who accept the states-system as constituting a valid society of mutual right (sic) and obligations", Wight says: "... of these Grotius is usually taken as the great exemplar".²¹ Reservation also characterizes his attitude when he declares in "Why Is there no International Theory?":

Grotius has to be read at large to be understood; the only possible extract is the Prolegomena, which gives a pallid notion of whether or why he deserves his reputation.²²

The perusal of Bull's writings for reasons which may have induced him to link Grotius to the tradition which "views international politics as taking place within an international society"²³ leads one to conclude that, with one exception, the establishment of such reasons is not one of Bull's concerns; rather that he takes Grotius' membership of this tradition as something given, and applies it to questions that are his concern.

To demonstrate this briefly:

In The Anarchical Society he offers a detailed account of the tradition of thought in question. He speaks of it as "the Grotian tradition" and calls its adherents "the Grotians"²⁴, but he does not speak of Grotius nor does he refer to his writings. There is a footnote in which he gives the two meanings in which he uses the word "Grotian" - the idea that there is a "society of states" and "the solidarist form" of it²⁵ - but he does not tell the reader where to find these two ideas in the writings of Grotius.

In the section immediately following his account of the Grotian tradition, Bull discusses "the metamorphoses" which, in his view, this tradition has undergone in the course of its existence. He identifies Grotius, together with some other thinkers, with its first phase which he depicts as covering the fifteenth, sixteenth and seventeenth centuries, and to which he ascribes five characteristics: its values are Christian; it lacks a principle by which to determine the membership of international society; it places natural law above "positive international law" as the source of obligation for "princes and communities"; it superimposes universalist ideas upon its "rules of co-existence"; it lacks a "set of institutions" which derive from "the co-operation of

states".²⁶ Shall one take these characteristics as reasons why Bull aligns Grotius with the tradition that has been given his name? They emphasize differences rather than similarities with its later phases. They could also be descriptive of a phase of the universalist tradition. There are no references to Grotius' writings.

Perhaps Bull's references a little later in The Anarchical Society to some of Grotius' ideas on war, such as his condemnation of wars without any cause as "wars of savages"²⁷ or the approval of only those wars which "remedy an injury received"²⁸, can be taken as reasons why Grotius is seen to fit the via media.

"The Grotian Conception of International Society" looks at the disagreement between two members of the via media, Grotius and Lassa Oppenheim, in relation to three questions - the place of war in international society, the sources of the law which binds "the member states of international society" and the place of the individual in "the society of states" - and evaluates the appropriateness of their ideas to the functioning of international society in the twentieth century.²⁹ In spite of its promising title, this investigation reveals little about its author's reasons for appropriating Grotius for the via media. It contains the statement that:

Both assert the existence of an international society and of laws which are binding on its member states in their relations with one another.³⁰

But he does not identify this idea in Grotius' writings, in spite of the fact that, a couple of pages earlier, he describes the De Jure Belli ac Pacis "as containing the classical presentation of (the Grotian conception of international society)".³¹ He also points out that both Grotius and Oppenheim reject "(t)he pacifist and militarist positions ... (as) inimical to the idea of international society" and approve of certain wars as being legitimate.³² On this occasion Bull offers a source. It is Grotius' idea in the "Prolegomena" mentioned also by Wight: "For both extremes, then, a remedy must be found ...".³³

"Society and Anarchy in International Relations" does not advance the quest for reasons for including Grotius in this tradition of thought.³⁴

More helpful, and hence the exception, is "The Importance of Grotius in the Study of International Relations". Grotius' work is "cardinal", Bull writes, because it formulates one of the "classic paradigms" in terms of which international relations have been thought about in modern times, and this is the idea of international society.³⁵ He goes on to identify five characteristics: it accords a central place to natural law; its extent is world-wide; it accommodates not only states but also individuals and non-state groups; it is marked by "solidarism"; it accords little or no place to international institutions³⁶ - characteristics, it may be noted, which are not identical with those given earlier³⁷; and he offers numerous references to Grotius' writings. As one pursues these references, often to whole chapters, one meets with many of Grotius' ideas, but that of international society remains elusive.

Thus, while the information supplied by Gierke, Wight and Bull provides much food for thought, it does not answer the question: And what is Grotius' idea of international society? Grotius thence becomes the fourth thinker to be included in this study.

The other three thinkers - Erasmus, Vitoria and Gentili - are no strangers to Grotius.

Grotius knows Erasmus well, but this is not obvious from his books. De Jure Praedae does not mention him at all, and De Jure Belli ac Pacis does not go beyond referring to him as "my fellow-country man" and grouping him with those who show "the utmost devotion to peace"; that is, those who "have come to the point of forbidding all use of arms to the Christian".³⁸ Of Erasmus' writings, only The Praise of Folly receives a mention.³⁹ It is Grotius' correspondence which reveals his closeness to Erasmus. Here, Grotius portrays him as the example, the "greatest man", the man who has done so much toward showing the way to a "legitimate reformation" and whom "we Hollanders" cannot thank sufficiently, the man who is on his side in his struggle for religious peace.⁴⁰

Vitoria does not figure in Grotius' correspondence, but he is given a great deal of attention in De Jure Praedae: references to the Spaniard's works are numerous, and Grotius offers them in support of his own arguments.⁴¹ He credits him with "irrefutable logic" and "thoroughly sound" conclusions.⁴² In De Jure Belli ac Pacis he speaks of Vitoria's "sound judgement" only once.⁴³ He often refers to his writings, although

less extensively than in De Jure Praedae⁴⁴, and not always in order to express agreement with him. In fact, the "Prolegomena" contains the following view:

I have seen ... special books on the law of war, some by theologians, as Franciscus de Victoria ... others by doctors of law ... All of these ... have said next to nothing upon a most fertile subject ...⁴⁵

Gentili also is well known to Grotius - a point established by both his correspondence and books. In a letter of 1615, for example, Grotius refers to Gentili as an "eminent" jurisconsult - eminent because of his writings on the law of nations and on public law; and in letters of 1622/23 from Paris to his brother Willem in Holland Grotius urgently requests among other works Gentili's De Jure Belli and Hispanicae Advocacionis as he needs them for a "commentary".⁴⁶ In his books De Jure Praedae and De Jure Belli ac Pacis the references to Gentili are numerous.⁴⁷ In the former work the emphasis is on agreement, and Gentili finds himself amongst the "jurisconsults of the greatest renown".⁴⁸ In the latter work disagreement is observable, Grotius rejecting some of Gentili's views as "untenable", "unacceptable" and erroneous.⁴⁹ Where agreement holds, no particular praise in favour of the Italian jurist is added. The "Prolegomena" contains the following acknowledgement:

Knowing that others can derive profit from Gentili's painstaking, as I acknowledge that I have, I leave it to his readers to pass judgement on the shortcomings of his work ...⁵⁰

Grotius, then, is familiar with all three thinkers, and in relation to two of them, Vitoria and Gentili, he reveals a change in attitude - a change for which the reason is not readily available.

Who is Hugo Grotius or, as he is also called, Huig(h) de Groot?⁵¹

The existing literature is likely to identify him as an extraordinarily gifted personality, "one of the greatest men of Europe", as Pierre Bayle put it in 1697⁵², "the miracle of Holland" as is still being echoed to this day.⁵³ Yet few scholars seem to have felt inclined to record and examine this greatness closely. Only a few biographies "worth notice" have appeared in the course of time.⁵⁴ Of these the most recent and widely quoted - W.S.M. Knight's The Life and Works of Hugo Grotius - goes back to 1925, has no claim to completeness⁵⁵, and does not always

escape the weakness, which Knight attributes to others, of failing to apply a critical mind to the facts at hand.⁵⁶ Not only is there no "fully documented" modern biography of Grotius, there also is no modern critical edition of his works.⁵⁷ Comprehensive studies of his thought are all but absent.⁵⁸ Specialized studies, of which this century has produced a good number, especially in relation to his legal writings, often do not distinguish themselves by a searching approach.⁵⁹ Criticisms formulated in the seventeenth, eighteenth and nineteenth centuries have been given little attention by this century's scholarship.⁶⁰

It is the uneven nature of the existing literature, together with contradictory statements embedded therein, the occasional dismantling of an "established truth", and laconic statements such as:

In fact De Groot the man of history and Grotius
the genius of legend are almost two different
people⁶¹ -

which suggest that Grotius has yet to be discovered. A welcome step in this direction is the Oxford publication in 1990 of Hugo Grotius and International Relations.⁶²

The following details about his life and writings are offered as a way of introducing him.⁶³

Grotius was born in 1583 at Delft, Holland, into a family of influence and ambition. He attended the university of Leyden from 1594 to 1597, following "primarily" an arts course.⁶⁴ In 1598 he accompanied a diplomatic mission led by Admiral Count Justin of Nassau, a member of the house of Orange, and the Landsadvocaat⁶⁵ Johan van Oldenbarneveldt to Henry IV, King of France. While in France he received a doctorate in law from the university of Orleans.⁶⁶

Toward the end of 1599 Grotius was admitted to the bar at the Hof van Holland⁶⁷ and the Hooge Raad⁶⁸ at The Hague. In 1601 the States of Holland and West Friesland appointed him official historian. During 1604/1605 he wrote De Jure Praedae. In 1607 Grotius became Advocaat-Fiscaal⁶⁹ of Holland, Zeeland, and West Friesland. A year later he married Maria van Reigersberch, the daughter of an influential family in Zeeland.

The year 1613 saw his appointment as Pensionary⁷⁰ of Rotterdam. This gave him a seat in the States of Holland and West Friesland and, later, a seat in the States-General of the United Provinces. The year 1613 also witnessed his participation, as its spokesman, in a diplomatic mission to England to review the longstanding maritime rivalry between the English and the Dutch. In 1615 a second Anglo-Dutch conference took place, this time at The Hague, Grotius again being the spokesman for the Dutch.

In 1616 he became a member of the College van Gecommitteerde Raaden, a committee which, with its chief member Oldenbarneveldt, was in charge of the day to day matters of the province of Holland and West Friesland. In 1618 the Stadhouder⁷¹ Maurits, Prince of Orange, had Oldenbarneveldt, Grotius and some others arrested and put on trial the following year. The charge: treason.⁷² The outcome: the Landsadvocaat was executed in 1619, Grotius was sentenced to lifelong imprisonment and forfeiture of all his property, and the Stadhouder took over the reigns of government. As Grotius put it in a letter to the Prince:

If the Chief-Counsellor of Holland (Oldenbarneveldt) had remained with your Excellency on the same terms and in the same favor, how happy I ... should have been.⁷³

Grotius escaped to France in 1621⁷⁴, and stayed there, mainly in Paris, for the next ten years. In 1625 he published De Jure Belli ac Pacis. Late in 1631 he returned to Holland for a few months and, as he was refused permission to return to public life, left again to spend about three years at or near Hamburg.⁷⁵ From 1635 to 1645 he was again in Paris, this time as Sweden's ambassador to the Court of France.

The year 1645 saw the termination of his ambassadorship, his voyage via Holland to Sweden, and his death at Rostock in Pomerania - three years before the Peace of Westphalia and five years before the house of Orange was to hand back political power to Holland's oligarchs.

Grotius' writings are numerous and diverse, ranging from the poetical to the theological, from the philological to the political and juridical. Various people at various times assisted in their composition.⁷⁶ A fair number of them were published only posthumously.⁷⁷ Their original language is mainly Latin, sometimes Dutch. Most of his writings have

been translated into other languages; a significant exception is his voluminous correspondence.

This inquiry into Grotius' idea of international society is based mainly, but not exclusively, on his two juridical works De Jure Praedae and De Jure Belli ac Pacis. It follows an order of presentation which is similar to that adopted in the three preceding chapters, and consists of ten sections. Nine of these have counterparts, under sometimes differently worded headings, in the foregoing chapters and need no further justification. They are: Section One, Grotius and the Events of His Time; Two, Grotius and the Three Traditions of Thought; Four, The State and the Ruler; Five, Human Society - Another Kind of Commonwealth; Six, A Plurality rather than a Society of States and Rulers? Seven, Commerce; Eight, Diplomacy; Nine, The Question of War; and Ten, Moderation. Section Three, The Fatherland, occurs for the first time. It captures an idea which, while not suggested by the initial hypothesis, offers a way to understanding some of the other ideas found in his writings and presented in this chapter.

1. Grotius and the Events of His Time

Historical records relating to the years which spanned Grotius' life present an extraordinarily complex picture of political life, both within and beyond the Netherlands.⁷⁸ Conflict, the condition which, for analytical purposes, is of interest here, is discernible at a number of levels:

There is conflict within Holland amongst its oligarchs over political, economic, military, and religious issues; conflict between Holland and the other six "provinces" of the northern Netherlands, linked together in what is variously called the United Provinces, the Rebel Provinces, or the Dutch Republic, over essentially the same questions, but argued in terms of the principle of provincial sovereignty; conflict between the United Provinces and the Spanish South Netherlands, hence Spain, over the question of freedom from Spain - a struggle which engages its protagonists not only on Dutch soil, but also in other parts of Europe and outside Europe; conflict between the United Provinces and other European powers, within Europe and beyond, in Africa, Asia, and America, over questions of commerce and/or colonies; and there is conflict between the successive Grand Pensionaries and Princes of Orange

over all of these points.

These conflicts and the wider context within which they take place are very much a part of Grotius' experience, first in Holland and later abroad; but it is not from his books that one learns the extent of his knowledge regarding them or the way he views them, and this for a number of reasons.

His most famous work, De Jure Belli ac Pacis, published in Paris in 1625, is not a response to the conflicts of his time, except in a very general sense. In the "Prolegomena" he gives as one of the reasons for writing the book "the lack of restraint" which he notices "throughout the Christian world".⁷⁹ And the conflicts of his time do not constitute its subject-matter. As he informs the reader:

If any one thinks that I have in view any controversies of our own times, either those that have arisen or those which can be foreseen as likely to arise, he will do me an injustice.⁸⁰

The Jurisprudence of Holland, a textbook on Holland's civil law, published in Grotius' mother-tongue in 1631 at The Hague, is similarly divorced from the conflicts of the times.⁸¹ The year of its publication may be seen as significant: 1631 is the year when Grotius attempts to return to Holland; it is the year which witnesses an intensification of the struggle for power between Holland's oligarchs and the Prince of Orange; but if one chooses to see it that way, shall one equate Grotius' lack of success in resuming his residence in Holland with a lack of ability on his part to see things realistically?

De Jure Praedae appears to be an exception. Written in the years 1604 to 1605 it owes its existence to the war fought between the Dutch and the Portuguese (and Spaniards) in the East Indies. The particular event responsible for it is described by Grotius in the following words;

In the year 1602, after several manifestations of hostility on both sides, it so happened that Jacob Heemskerck ... forced a Portuguese vessel to surrender and, disbanding its crew, sailed it home.⁸²
This vessel ... was laden with merchandise.

The book is devoted to the argument that "this particular instance" and "all such captures" are "right", "praiseworthy" and "beneficial for the

future"⁸³, and concludes with the plea: "I beg ... everyone of our governmental assemblies ... that they will continue to promote and protect ... this enterprise".⁸⁴ Events in the East Indies are not neglected, in fact, a whole chapter is devoted to them⁸⁵, but, as the nineteenth-century historian Robert Fruin observes:

(The Historica) are ... a protracted indictment of the Portuguese, a defence of the East India Company. Whatever does not serve this purpose is left unrecorded by the barrister. Whatever would bear witness against his clients is concealed by him ... De Groot ... cannot be acquitted⁸⁶ of wilful partiality in writing his narrative.

De Jure Praedae was not published until 1868, but its twelfth chapter, "Wherein It Is Shown that even if the War Were a Private War, It Would Be Just, and the Prize Would Be Justly Acquired by the Dutch East India Company ...", now subdivided into thirteen chapters, was released anonymously under the title Mare Liberum in 1609⁸⁷ - the year which, after many years of negotiations, saw the conclusion of the twelve-year truce between the Dutch and the Spanish. Addressed to the rulers and free peoples of Christendom, it presents its case for the right of navigation and the freedom of commerce, and insists that "(t)he delays to peace can no more be laid to our charge than the causes of war".⁸⁸ Events are not discussed in the course of the argument, only principles.

In 1613 the Englishman William Welwood attacked the fifth chapter of Grotius' Mare Liberum, entitled "Neither the Indian Ocean nor the Right of Navigation thereon Belongs to the Portuguese by Title of Occupation", in the twenty-seventh chapter of his treatise An Abridgement of all Sea Lawes⁸⁹, under the heading "Of the Communitie and Proprietie of the Seas". Grotius' response, not published until 1868, is contained in his Defensio.⁹⁰ The discussion is about "the ownership of the seas and the prohibition of fishing", Grotius arguing that "in every age the Batavian fishermen have fished freely under the very shores of England and Scotland ...".⁹¹ As far as events are concerned, he mentions the treaty of 1594 which "the greatest of rulers, James, then King of Scotland, now of all Britain and Ireland, made with the United Estates of our nations"⁹², and which supports his argument, but omits other, contrary events such as the Edict of 1609 by the same ruler, which forbids all foreigners to fish off the coasts of Great Britain.

A Treatise of the Antiquity of the Commonwealth of the Battavers, which is now the Hollanders⁹³ is a response to the conflict which separated Holland and its Landsadvocaat from the other six provinces of the United Provinces and the Prince of Orange over the question of who is or ought to be in control of affairs, and, in turn, was intended to influence the course of events. Published in 1610, the year after the truce with Spain, when it became possible to focus on the internal situation, and republished in 1631, when the conflict went through another intense phase, the treatise is a long argument in favour of Holland's sovereignty. The evidence on which it rests is taken from history; contemporary events, with one exception⁹⁴, are not recorded; and, as Fruin notes, later in life Grotius conceded that:

(I)t contained assertions which ... proceeded rather from his love of freedom and his native country than from earnest research.⁹⁵

"The Colonial Conferences between England and the Netherlands in 1613 and 1615"⁹⁶ includes a great number of documents on both sides over the question of trade in the East Indies. Grotius, who is credited with the formulation and presentation of the argument on the Dutch side, submits principles rather than events in the attempt to justify the exclusion of the English from commerce in the East Indies. As Knight comments: And "(s)o did Grotius ... conveniently forget his rhetoric of the Mare Liberum".⁹⁷

Events inspire but do not enter into Grotius' treatise True Religion Explained, And Defended against the Arch-enemies thereof in these Times⁹⁸ published in Latin in 1627. Its "Preface" states "the occasion of this worke" which first appeared in Dutch verse as follows:

For my purpose was to benefit all my Country-men
... I exhorted them to use that art (of navigation),
not onely for their owne proper gaine and commodity,
but also for the propagation of true Christian Religion.
For neither is there wanting matter for such their endeavours ... Neither are
there wanting ... wicked men.

True Religion is concerned with refuting "as repugnant" to Christianity "Paganisme", "Judaisme" and "Mahumetanisme".

Annales et Histoires des Troubles du Pays-Bas¹⁰⁰, begun by Grotius when appointed official historian of Holland in 1601, but not published

until 1657, is the story of the war with Spain up to and including the year of the truce in 1609. Events are its very ingredients, but it is descriptive rather than interpretative, and in that quality, it is not a faithful reflection of reality: "(T)he extremes on either side" in the course of this war, as Knight observes, "receive little consideration, being, as often as not, entirely ignored".¹⁰¹

Thus a number of reasons combine - events are simply absent, events inspire but do not enter the writings, events are present but subjected to "wilful partiality" - to make Grotius' books an unfruitful source in relation to the question of realism on the part of their author vis-à-vis the events of his time.

The same cannot be said of Grotius' correspondence. The many weighty volumes published by Martinus Nijhoff¹⁰² show Grotius as he participates in a far-flung communications-network, informing and being informed, on the events of the times - great and small, good and bad, nearby and distant, expressing his views and seeking those of others, intent on seeing things as they are.

In order to give an impression of the nature of his observations, a few excerpts from letters written from France are presented here:

23/11/1626 ... Here we have ten days to the beginning of the Assembly of Notables ... Cardinal Rochefocaud will preside, which is not to the liking of many as he is very much in the service of the Pope ... We understand here that the Persian and the Turc are about to conclude peace, which will make it possible for the Turc to display his strength against Hungary which, in turn, will enable France to advance against the German emperor ...¹⁰³

4/2/1628 ... I have seen the proposal by the Spaniards and Imperials, Poland and Danzig included, to Luebeck ... It aims at greatly reducing the traffic into our country and reinforcing the other side at sea ... Cardinal Bernulle has written to Richelieu's people ... including a proposal for an agreement between Spain and the United Provinces mediated by France ... I am afraid that the accord will come to nothing ... From England no help is to be expected ...¹⁰⁴

3/7/1631 ... England, so I hear, is up in arms on account of the question of fisheries ... The letters from Spain of 18 June say that the Cardinal of Spain will visit the Netherlands, also that a fleet of thirty ships, of which fifteen are warships, is to go to Fernambuco or the Baye ...¹⁰⁵

16/10/1636 ... The good news regarding Poland pleases me all the more as the truce with Sweden is so long that few peace agreements between powerful neighbours have lasted as long. At sea, in Burgundy, and Picardy things are "in balance" ... The English and the Dutch are in conflict over the question of a tax on the herring, and the free entry of the English into Flanders ... Meanwhile both desire to enrich themselves with the help of the wealth of the Orient ...¹⁰⁶

3/3/1640 ... I cannot believe that those who govern France desire to conclude peace. What Sweden's mood is, we shall see when the rijcxdagh, which is now taking place, comes to an end ... Many at the Court of England are trying to persuade the King of Great Britain to make some concessions to the Scots ... In Italy there is fear of the Turk and of internal sedition ... The Turk is also feared in Poland, as one does not know what the purpose of his massive preparations on land and sea is ...¹⁰⁷

20/10/1640 ... We hear that the King of Spain tries to establish peace with the Sultan, and that he is likely to succeed; the former now has many things on his hands, and the latter wants to take revenge on the Polish cossacks and, as I believe, on Moscow, and with Persia the situation is uncertain ... The agreement between Sweden and the United Provinces is said to be of no great importance. Sweden, I don't think, has much to fear from Denmark ...¹⁰⁸

It is not only the twentieth-century reader of Grotius' correspondence who is prepared to issue him with a certificate of competence as a well-informed and discerning observer. Grotius' contemporaries are quite ready to do the same. As the Spanish King Philip IV writes to Francisco de Moncada, Marquis de Aytona, Governor of the Spanish South Netherlands, to whom he communicates "conditions to attract Hugo Grotius ...

to the services of His Majesty", in 1634¹⁰⁹: "Of all those who live to-day Hugo Grotius has the most perfect insight into the situation of the Rebels ...".¹¹⁰

2. Grotius and the Three Traditions of Thought

In the preceding chapters it was found that Erasmus, Vitoria and Gentili see themselves as taking up a position which differentiates them from the realists on the one hand, and the universalists on the other. This section attempts to ascertain whether Grotius does likewise, submitting the following observations:

(a) Grotius, as De Jure Belli ac Pacis reveals, likes to think of himself as representing no particular pattern of thought, proceeding like the early Christians who thought that there was "no philosophic sect whose vision had encompassed all truth, and none which had not perceived some aspect of truth", and who believed that by assembling "the truth that was scattered" they created "a body of teaching truly Christian".¹¹¹

(b) Grotius does not devote much time or space to the idea of universalism, and when he mentions it, it is in order to reject it. Thus, in De Jure Belli ac Pacis he lists as an unjust cause of war "the title to universal empire", whether advanced by the Roman emperor or the pope. The emperor's claim, he argues, is "absurd, as if he had the right of ruling over even the most distant and hitherto unknown peoples". It is not only contrary to reason, but, no matter what Dante thinks, it also is disadvantageous to mankind, for like "a ship" it "may attain to such a size that it cannot be steered". Even if the advantages outweighed the disadvantages, "the right to rule by no means follows", for such a right has its origin in consent or punishment, and neither of these applies. The Roman emperor is no longer entitled even to all that the Roman people once possessed, for changes have occurred due to war, treaties, abandonment, and internal developments.¹¹² And, as far as the papal claim is concerned, the Church has no rights over peoples "outside the bounds of Christendom", and within these bounds, it is not entitled "to rule over men in the manner of this world".¹¹³

De Jure Praedae exhibits the same negative attitude towards universalism. Chapter Twelve, the later Mare Liberum, contains the statement

that "no person is the master of all mankind"; hence nobody is entitled to grant the exclusive use of the sea to "any particular man or nation".¹¹⁴ The same chapter borrows Vitoria's ideas against the pope's temporal rule of the world¹¹⁵ in order to divest the Portuguese of any rights over the East Indian peoples as a result of the papal donation. "(T)here is no person who has the power to bestow by grant that which is not his own".¹¹⁶

Apologeticus or The Defense of the Lawful Government of Holland¹¹⁷ is another work in which Grotius expresses himself against universalism. As Edward Dumbauld formulates Grotius' idea on the subject:

There are those who believe that it would be desirable if the whole world, especially Christendom, were governed by a single authority,¹¹⁸ but such proposals seem laughably impracticable.

Grotius thus is constant in his rejection of universalism: reason, practicability and law all speak against it.

(c) Less readily assessable is Grotius' attitude towards the realist tradition of thought.

At one level, and this is easily discernible, Grotius gives the impression of being distant or negative in regard to it: he never mentions Machiavelli's name, nor is there any sign that he is familiar with his writings.¹¹⁹ Thomas Hobbes, a near-contemporary of Grotius, gets a mention in Grotius' correspondence. In 1643 he writes to his brother Willem that he has seen De Cive, that he approves of its views concerning kings, but that he disagrees with the foundations upon which its propositions rest, in particular, the idea that war between all men is natural.¹²⁰

Scholarship has not yet established the existence of a link from Machiavelli to earlier "Machiavellians", but Grotius singles out one thinker - Carneades, the Greek philosopher and founder of the New Academy, who lived from 215 to 129 B.C. - in order to attack in him all those "who view this branch of law (the whole law of war and peace) with contempt as having no reality outside of an empty name"; who declare that "nothing is unjust which is expedient"; and who say that "might makes right".¹²¹

The "Academics", Grotius argues in De Jure Praedae, are wrong to negate justice properly so-called. It is not true, he holds, that the justice which is based on nature has regard only for the self, and that civil justice is no more than a matter of opinion, for they overlook that "justice which is characteristic of humankind" - outward-looking justice expressing regard for the other.¹²² In De Jure Belli ac Pacis he formulates his disagreement with this way of thinking along the same lines¹²³, adding that Carneades is wrong to divide "all law into the law of nature and the law of particular countries", for there is also the law of nations.¹²⁴

At this level, then, Grotius' disapproval of the realist tradition of thought is obvious. At another level his attitude towards this set of ideas becomes visible only after a careful examination of his writings. It is an enterprise which takes one well beyond the "Prolegomena" of De Jure Praedae and that of De Jure Belli ac Pacis, and its results are best presented in the relevant subsequent sections of this chapter.

3. The Fatherland

The idea which inspires Grotius is not Erasmus' perfect temporal Christian prince; nor is it Vitoria's perfect temporal community or Gentili's perfect ambassador. Grotius is moved by the idea of the fatherland.

Many of the titles of his writings contain a reference to his native country, for example, A Treatise of the Antiquity of the Commonwealth of the Battavers, which is now the Hollanders, Ordinum Hollandiae ac Westfrisiae pietas ... vindicata¹²⁵ and The Jurisprudence of Holland; and his country, or an aspect of it, provides their subject-matter. In other cases, the title does not mention his native country, nor does the subject-matter deal with it, but Grotius uses the introduction to establish a link between the one and the other, for example, in True Religion which, he says, is meant "to benefit all my Country-men, but specially Sea-faring-men ... in farre-distant-forren Countries"¹²⁶ when meeting with the enemies of Christianity. There are also cases where the title does not refer to his country, although the work itself is concerned with it. An example is De Jure Praedae.

Grotius never makes a secret of the close link between his writings and his country. In 1618, following his arrest at The Hague, he puts it

this way: "My inclination to serve the Country is shown in my Writings ... and also in my deeds ...".¹²⁷ In 1632, after approximately ten years in France, he writes:

During all the time that I have been in France, I have not only seized upon all occasions but also searched for them ... to serve my fatherland ... Several writings which I have published ... are my witnesses before all the world of my constant affection for this land ...¹²⁸

And after his death, on the occasion of the publication of Annales et Histoires des Troubles du Pays-Bas by his children, the latter write in their dedication to the States of Holland and West Friesland: "(Y)ou will see that, until the last moment of his life, this author has preserved a perpetual love for his fatherland ...".¹²⁹

The country which is close to Grotius' heart and mind is not the whole of the Netherlands, nor its northern part, the United Provinces, but one of the provinces, the most powerful province - Holland. "Grotius ... preferred to think of himself as a Hollander, ... and to treat the other provinces as mere allies ... of Holland".¹³⁰ These words stem from the Dutch historian Johan Huizinga, and his colleague Peter Geyl puts it this way: "This Hollander ... identified without a qualm the Respublica Battava with the fatherland".¹³¹

Grotius' many efforts to serve his fatherland include an image which he creates of it. It displays the following features:

(a) Great age. Holland is a very old "true commonwealth". In De Jure Praedae he gives as its age "seven centuries"¹³²; in A Treatise on the Antiquity ... he traces its birth back to "before the time of Julius Caesar, yea, peradventure some hundred years before ...".¹³³

(b) Love of independence. Holland has always been an independent commonwealth. It was "established by a people of a free originall beginning in a free Land"¹³⁴, and it retained its independence, even during "the flourishing time" of the Romans. Holland "never was subject neither to the Lawes nor Customes of the Emperour, nor of the Empire ...".¹³⁵ When there were attempts at subjugation - and there were two, towards the end of the Roman empire and during the reign of Philip II - the Bat-tavers, now the Hollanders, took up arms and defended their liberty,

such that "the principall Sovereignty over the Hollanders hath been among themselves, and never depended upon any forraigne Authority".¹³⁶

(c) A moderate government. Holland has always had the same form of government - a government of the nobles, "the principall best men"¹³⁷ distinguished by their birth or wealth or understanding, "the Fathers of the Fatherland"¹³⁸, with a "principality annexed thereunto".¹³⁹ Such a government shares the advantages of "Regall Authority" - majesty and dignity - and of "the Authority of the Common People" - equal liberty - and avoids the disadvantages of both of them - the rule of one man, which is subject "to many errors", and the rule of "the Common People who are ignorant".¹⁴⁰ Such a government is not only good in itself. As the experience of many centuries shows, it "well agrees" with the Hollanders' "nature and manner of life".¹⁴¹ Hence: it ought to be preserved.

(d) A virtuous people. The people of Holland distinguish themselves by their "undaunted courage and fidelity"¹⁴², their "extraordinary fortitude" and "inviolable good faith", their "candour and foresight", their "justice", their gentleness and compassion, their "modesty and goodwill"¹⁴³, their "aptnesse for all sorts of warre"¹⁴⁴, their skill as navigators.¹⁴⁵ Even God approves of them: "(I)t has been His pleasure to reveal the glory of our race to the farthest regions of the world created by Him ...".¹⁴⁶

(e) Valued as an ally. Holland, because of its government and because of its people, has always been a sought-after ally - both in war, as a "confederate" of many a people, and in peace, as a partner in marriage alliances.¹⁴⁷

A country displaying such traits is surely worthy of support.¹⁴⁸

4. The State and the Ruler

For Grotius the idea of the state does not possess the same inspirational force as the fatherland - he does not create an image of it. He only mentions aspects of it, and he does this when discussing other things, for example, law or war. But these aspects, when placed together, suggest some conception of the state. They may be presented as follows:

- (a) the origin and purpose of the state; (b) definitions of the state;
- (c) civil or sovereign power; and (d) the citizen or subject.

(a) Grotius ascribes the origin of the state neither to a natural disposition on the part of man, nor to God, although there is a passage where he places the state's origin "in God"¹⁴⁹, but to the free will of man¹⁵⁰; and he offers various reasons for man's decision to establish the state. In De Jure Praedae he invokes the lawlessness of the pre-state condition. "(M)any persons", he writes, "either failed to meet their obligations or even assailed the fortunes and the very lives of others", getting away, for the most part, without punishment.¹⁵¹ To which he adds a practical consideration: the increasing number of human beings. The latter reason figures exclusively in The Jurisprudence of Holland. "(M)en had so increased in number", he submits, "that they could not conveniently be subject to one common government" and for this reason "divide(d) themselves into several civil communities".¹⁵² In De Jure Belli ac Pacis he gives expression to the idea that "that kind of association of which we have spoken (the state), and subjection to authority, have their roots in expediency".¹⁵³ Human beings, he writes, "leagued themselves together" that "as a united whole they might prevail against those with whom as individuals they could not cope".¹⁵⁴

Regarding the origin of the state, then, Grotius does not subscribe to the idea attributed by Gierke to the natural law thinkers before the mid-seventeenth century that man changed from natural society to civil society in accord with "unchangeable natural laws", "eternal norms"¹⁵⁵, but, as E.B.F. Midgley formulates it, sees "the state as a voluntary institution founded upon contract".¹⁵⁶

The origin of the state goes back in time; how far exactly, he does not say.

Grotius portrays the purpose of the state by ideas such as "self-protection through mutual aid" and the "equal acquisition of the necessities of life"¹⁵⁷, "peace and order"¹⁵⁸, "mutual advantage"¹⁵⁹, thereby tying it to the reasons which made for its establishment. There is one occasion, however, where he identifies a purpose which links the state to an entity larger than itself - human society. The state was founded, he submits in De Jure Praedae, not for the purpose of destroying "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 ...".¹⁶⁰

(b) Grotius offers various definitions of the state. Sometimes the

idea of community is emphasized:

The state is a complete association of free men, joined together for the enjoyment of rights and their common interest.¹⁶¹

At other times the accent is on self-sufficiency, as in the following example which he credits to the accounts of Thucydides, Cajetan, and Vitoria:

(A) state must be conceived of as something ... self-sufficient, which in itself constitutes a whole entity; something ... possessed of its own laws, courts, revenue, and magistrates; something endowed with its own council and its own authority ...¹⁶²

Occasionally a definition of the state contains the concept of civil power, as illustrated by the following example borrowed from Vitoria:

(A)ll civil power resides in the state, which is by its very nature competent to govern itself, administer its own affairs and order all its faculties for the common good.¹⁶³

And there is one instance, singled out by Gierke¹⁶⁴, where the concept of sovereign power appears in a definition of the state. It is a definition, the ingredients of which Grotius attributes to Plutarch, Paul, Seneca, Aristotle and Alfenus, which does not distinguish between state and people:

(A) people ... (has) a single essential character ... a single spirit ... (T)hat spirit or essential character in a people is the full and perfect union of civic life, the first product of which is sovereign power; that is the bond which binds the state together, that is the breath of life which so many thousands breathe ...¹⁶⁵

Grotius himself nowhere indicates a preference for any one of the definitions mentioned by him, nor does he discuss or compare them. And he does not offer a definition of the state which places the civil or sovereign power apart from the community or people, such as Louis XIV's "l'état c'est moi"¹⁶⁶, although the idea is present in his works.¹⁶⁷ In fact, Grotius is not so much interested in the state¹⁶⁸ as in civil or sovereign power.

(c) Tracing the idea of civil or sovereign power in Grotius' writings, one meets with difficulties in the attempt to decide whether Grotius wishes to distinguish between civil and sovereign power or whether he regards them as one and the same thing, merely emphasizing different aspects of it.

(i) He defines civil power as "(t)he moral faculty of governing a state"¹⁶⁹, although his writings, especially De Jure Praedae, impart to it a second meaning - civil power is the power which inheres in the state and makes it "self-sufficient" or "perfect".¹⁷⁰ As he puts it in answer to the question: What is the difference between individuals and the state? "Undoubtedly, that factor is civil power".¹⁷¹ The aspect which concerns him in relation to civil power is not so much to whom, apart from the community itself, it may belong, but rather in what it consists.

Invoking Aristotle he distinguishes three parts or manifestations: "the architectural" to which he assigns the task of "framing and abrogating laws respecting religious matters ... as well as secular"; "the political" under which he subsumes "the making of peace, of war, and of treaties", "taxes, and other things of a like nature" including "the right of eminent domain"; and "the judicial" which is responsible for the termination of "controversies between individuals".¹⁷²

This tripartite division of civil power does not recur in his writings¹⁷³ nor does he use it as the starting point for a more elaborate discussion of the ideas contained therein.¹⁷⁴

(ii) Leaving the concept of civil power and turning to sovereign power, Grotius presents a definition, less than two pages after the definition of civil power, which reads as follows:

That power is called sovereign whose actions are not subject to the legal control of another, so that they cannot be rendered void by the operation of another human will.¹⁷⁵

Unlike civil power, the concept of sovereign power does not prompt him to discuss in what it consists, although he attributes to it, in statements scattered through his writings, some of the same rights as to civil power¹⁷⁶ but rather to look at questions such as: - In whom does sovereign power reside? - What constitutes an abuse of sovereign power

and does it confer the right of rebellion? - What may terminate sovereign power?

- Sovereign power may reside in the community - a case considered exclusively in De Jure Praedae¹⁷⁷ - but, as Grotius argues in De Jure Belli ac Pacis, it is wrong to assume that it always does.¹⁷⁸ Depending on its needs or inclinations, a community may transfer its sovereign power in its entirety to one person or to several persons. A ruler may also receive sovereign power not from "the will of the people" but from God or through a victorious war.¹⁷⁹ It also may be the case that a community retains part of its sovereign power, transferring the other part to one person or to several persons.¹⁸⁰ Whatever a community's form of government - and he mentions some further possible forms¹⁸¹ - it should not, he holds:

(B)e measured by the superior excellence of this or that form ..., in regard to which different men hold different views, but by its free choice.¹⁸²

- According to Grotius there is one kind of abuse of sovereign power which entails no right of rebellion on the part of the citizen or subject, and there is another kind which does confer such a right. The principle underlying this idea is not made clear, but it is possible to interpret him as meaning that the unjust exercise of sovereign power by its rightful "owner" - be it the state and/or the ruler(s) - confers no right, whereas rebellion is justified when the ruler tampers with the sovereign power.

It is unjust, Grotius argues, on the part of him who holds sovereign power to show disrespect for the law of nature, divine law, and the law of nations; to disregard the law of the country; to violate a pledge¹⁸³; and the subject is free not to carry out any order(s) resulting from such wrongful use of sovereign power, but:

(I)f from any such cause, or under other conditions as a result of caprice on the part of him who holds the sovereign power, unjust treatment be inflicted on us, we ought to endure it rather than resist by force.¹⁸⁴

Even if the treatment is such, he reiterates in a later passage, "as no one is warranted in inflicting"¹⁸⁵, subjects have no right to take up arms. "Others" may do it on their behalf.¹⁸⁶ That is, he permits inter-

vention from the outside or what he calls "the exercise of the right vested in human society" as a response to injustice on the part of the sovereign power.

The "law of non-resistance", as Grotius presents it, derives its strength not only from the purpose which underlies the state - the maintenance of tranquillity, peace and order¹⁸⁷; it also is upheld by the Hebraic law, the Gospel, and the practice of the early Christians.¹⁸⁸ And, although he stipulates elsewhere that "(h)uman laws ... go further than nature ... but never ... contrary to nature"¹⁸⁹, the law of non-resistance is an example of a human law which indeed goes "contrary to nature", for "by nature" every one has the right to resist a wrong.¹⁹⁰ It is a law which supports order rather than justice.

Regarding the second case Grotius gives seven instances of what he identifies as an abuse of sovereign power that may be resisted by force:

The ruler who rules by mandate only (the community having retained the sovereign power) oversteps the "bounds defining his office".¹⁹¹ This case figures exclusively in De Jure Praedae, and consequently makes Grotius, in that context, appear the advocate par excellence of the right of resistance.¹⁹²

The ruler "renounces" or "abandons" the sovereign power.

The ruler proceeds to transfer the people to some other ruler.

The ruler intends to destroy the people.

The ruler violates a clause the very observance of which was the condition on which the sovereign power was "granted" to him.

The ruler attempts to gain for himself a part of the sovereign power which does not belong to him.

The right to resist "in a particular case" was agreed upon when the people transferred the sovereign power to the ruler.¹⁹³

Grotius does not subsume the above seven instances under a "law of resistance", but they may be taken to express the view that a violation of "the constituted order" on the part of the ruler entails the right of

resistance on the part of the ruled.

- Notwithstanding its human origin, the state, unlike the individual, is immortal. Grotius' authorities are Alfenus and Plutarch, Seneca, Aristotle, and the Scriptures: "(W)heresoever the course and order of ruling and obeying is once admitted, the same always continues there".¹⁹⁴ But a particular state may perish, either in its "body" or in its "form or spirit"; and when this happens, sovereign power perishes with it.¹⁹⁵ As destructive causes of the body Grotius mentions the sea; earthquakes; voluntary destruction; pestilence; rebellion, that is, when "the citizens withdraw from the association of their own accord"; and war which disperses a people such that "it cannot unite again". The form or spirit of a state is destroyed when, as a result of war, "its entire or full enjoyment of common rights has been taken away".¹⁹⁶

Factors which, however, do not extinguish the body or spirit of a state are: migration, sharing a ruler with another state; uniting in a "confederation" with one or more states, that is, and he borrows the idea from Strabo, "forming a system"; concluding an unequal alliance; paying tribute; and feudal tenure.¹⁹⁷

(iii) Grotius does not attempt to distinguish between civil power and sovereign power when he applies the two concepts to the external context. Here they mean the same: the absence of subjection to another state or ruler, or, to put it positively, the possession of independence. In De Jure Praedae he formulates this idea in the following way:

Truly, there is no greater sovereign power set over the power of the state and superior to it, since the state is a self-sufficient aggregation.¹⁹⁸

In De Jure Belli ac Pacis a number of pages are devoted to the idea that, in the external context, sovereignty is synonymous with independence.¹⁹⁹ To give just one example:

(P)atronage in the case of a state does not take away independence; and independence without sovereignty is inconceivable.²⁰⁰

Being independent or being subject to none means having the right to make war, to conclude peace, to enter into treaties and to act as "the

guardian and vindicator of the divine law, the natural law and the law of nations".²⁰¹

To turn to the point initially raised: Grotius does not explain the presence in his work of the two concepts civil power and sovereign power, and perhaps there is no other explanation than the way in which he uses sources.²⁰²

(d) In contrast to the sovereign power, the citizen or subject is, as Grotius puts it, "under the rule of another", that is, under the rule of another human will - the sovereign power.²⁰³ Being "truly subject" and as such "part of the state"²⁰⁴ or "part of the ruler"²⁰⁵ entails the duty to obey. This duty appears equally strong in De Jure Praedae where Grotius says: "The gods have assigned to the prince the supreme power of judgement; to the subjects, the glory of obedience has been left"²⁰⁶; and in De Jure Belli ac Pacis where he reminds the reader of Seneca's dictum: "The rule of a king, just and unjust, you must endure".²⁰⁷ His reason:

Now beyond doubt the most important element in public affairs is the constituted order²⁰⁸ of bearing rule and rendering obedience ...

The citizen or subject may refuse to obey an order which involves injustice, such as fighting an unjust war²⁰⁹; he may withdraw from the ruler, that is, go into exile²¹⁰; but he may not, except for the cases noted above, use force against the sovereign power.

Grotius' ideas about sovereignty portray those in whom it is vested - the state and/or the ruler(s) - as having no superior above them and as being supreme in relation to those whom they rule - the citizens or subjects. The origin of the state and its purpose make, on the part of those who rule, for a concern with order rather than justice in relation to those whom they rule.

5. Human Society - Another Kind of Commonwealth

The idea of human society appears in a number of Grotius' writings; Gierke makes it the sole reason for appropriating their author for the via media; and Wight gives it as one of his reasons. What is this idea and what is its place in Grotius' thinking?

An answer may be attempted under the following four headings: (a) the origin of human society; (b) the members of human society; (c) the law of human society; and (d) human society from the point of view of states and rulers.

(a) Human society, according to Grotius, owes its existence to a "natural disposition" on the part of man²¹¹ or, as he puts it in De Jure Belli ac Pacis:

But among the traits characteristic of man is an impelling desire for society, that is, for the social life ²¹² not of any and every sort, but peaceful ...

The existence in man of a "strong bent towards social life" does not mean that man is not "regardful of self". On the contrary. As Grotius assures the reader: "(I)n human affairs the first principle of a man's duty relates to himself".²¹³

Human society existed before states were founded²¹⁴, and it continues to exist, together with them.

(b) Grotius has many names for it: apart from human society, possibly the most frequently used term, he speaks of mankind; the brotherhood of man; the world state; commonwealth; that society which embraces all mankind; that great society²¹⁵: "(T)he human race is like a great people, and hence some philosophers call this world a city ...".²¹⁶

The members of human society, as the above names suggest and the texts at large confirm, are human beings. In fact, all human beings are included, even pirates and tyrants. Human society knows of no outsiders.²¹⁷

(c) The law which is proper to human society is the law of nature or primary law of nations. Grotius identifies it by offering an answer to the following two questions: (i) What is the law of nature or primary law of nations? and (ii) What is the subject-matter of this law?

(i) The answer to the first question may be presented in five parts:

- In De Jure Praedae Grotius distinguishes between the law of nature and the primary law of nations, although, in the text at large, he

usually omits the word "primary" and simply speaks of the law of nations.

The law of nature is inherent in all living creatures or, as he formulates it, it is "the law instilled by God into the heart of created things, from the first moment of their creation, for their own conservation ...".²¹⁸ The primary law of nations, on the other hand, is specific to man - for man, in contrast with all other beings, is endowed by God "with the sovereign attribute of reason" - and reveals itself in "the mutual accord of nations".²¹⁹ "(T)he consensus of all nations" on any matter, he says in agreement with Cicero and forgetting the distinction just made between the two laws, "should be regarded as a precept of the natural law".²²⁰

The primary law of nations, like the law of nature, "takes it being" from the will of God.²²¹

In De Jure Belli ac Pacis Grotius rejects the distinction between the law of nature and the primary law of nations as of "hardly any value": "For, strictly speaking, only a being that applies general principles is capable of law".²²² Consequently, he offers no definition of the primary law of nations - even though the notion, on the whole without the qualifying word "primary", is present in the text at large²²³ - but only one of the law of nature, and it has little in common with what he says about either law in De Jure Praedae:

The law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God.²²⁴

A further variation appears in The Jurisprudence of Holland. Here, he does not mention the primary law of nations, but speaks of the "natural law in man" and identifies it as "an intuitive judgement" which indicates "what things from their own nature are honourable or dishonourable, involving a duty to follow the same imposed by God".²²⁵

- Regarding the "immutable and eternal" character of the law of nature of primary law of nations Grotius seems firm in De Jure Praedae: it is law "for all times and all places"²²⁶; although there also is the

statement that:

(T)he negative dispositions of the law of nations are subject to change, whereas its affirmative dispositions are immutable.²²⁷

In De Jure Belli ac Pacis Grotius states that the law of nature cannot be changed, not even by God; but he also informs the reader that "the thing, in regard to which the law of nature has ordained", can change.²²⁸ And he adds the further point that some things belong to the law of nature by "a combination of circumstances", that is, if "no provision has otherwise been made"²²⁹; but provisions in relation to those things which the law of nature permits can be made, and have been made, by both the will of God²³⁰ and the will of man.²³¹

In The Jurisprudence of Holland the law of nature is presented as unchangeable in the sense that:

That which is forbidden by the law of nature may not be enjoined by positive law, nor that which is enjoined by the first forbidden by the second, circumstances remaining unchanged.²³²

In addition to the qualification "circumstances remaining unchanged", there is the further thought:

(A)nd things may be so changed by another law, or by the voluntary act of man, that the obligation of the law of nature ceases to apply in the circumstances.²³³

The idea of immutability, then, one of the distinctions between natural and volitional law - Gierke might consider it the most important distinction²³⁴ - does not seem to be inseparable from the law of nature or primary law of nations as Grotius presents it.

- The existence of this law, Grotius holds, can be proved by referring to reason itself - there are "certain fundamental conceptions which ... no one can deny ... without doing violence to himself"²³⁵ - and to the statements of philosophers, historians, poets, orators, and other "men of wisdom" such as those "inspired by God", for:

(W)hen many at different times, and in different places, affirm the same thing as certain, that ought to be referred to a universal cause ...²³⁶

Yet he also provides evidence that "reason" does not necessarily produce the same conclusion in every reasonable being and that there are different opinions as to whether or not something is according to the law of nature. François de Connan, to give just one example, is, in Grotius' eyes, "a man of exceptional learning", but he is wrong to hold that:

(A)ccording to the law of nature, as well as the law of nations, no obligation is created by those agreements which do not contain an exchange of considerations ...²³⁷

Grotius may well say: "(T)he law of nature is not what opinion but what innate force supplies to us"²³⁸; but he also demonstrates the opposite.²³⁹

- There are statements in his writings in which he equates the law of nature or primary law of nations with custom, such as the following: "(T)he law of nature has been used to designate that which is everywhere the accepted custom".²⁴⁰ And there are other statements in which he does not treat them as the same, for example, when he says: "(I)t has resulted from established practice rather than from natural reason that the sea was not occupied".²⁴¹ Such "contrariety" raises the question whether Grotius wants customs or practices to be seen as manifestations of the law of nature or primary law of nations - or as something different; and, as the next section will note, there is also no aversion on his part to equate custom with positive law.²⁴²

- At the definitional level Grotius identifies a primary law of nations and, as will be discussed in the next section, a secondary law of nations; yet, in the texts at large, he mainly uses the term law of nations, making it difficult at times for the reader to know which law he has in mind. Uncertainty is especially likely to arise in the case of Mare Liberum which, as a separate publication, lacks the defining context of the larger work whence it originated.²⁴³

As Grotius presents it, the law of nature or primary law of nations is law in the "proper sense" and law in the "extended meaning"; it is law which commands or forbids, law which permits, and law which declares what is honourable; it is unchangeable, and it can be changed; it is evident, and not so evident - it is a law which can be strengthened or weakened as a bond among human beings, depending on the use to

which it is put.

(ii) In response to the second question Grotius may be seen as presenting the subject-matter of the law of nature or primary law of nations at two different levels:

The first is general and abstract. In De Jure Praedae he ascribes six laws to it:

It shall be permissible to defend (one's own) life and to shun that which threatens to prove injurious ... It shall be permissible to acquire for oneself, and to retain, those things which are useful for life ... Let no one inflict injury upon his fellow ... Let no one seize possession of that which has been taken into the possession of another ... Evil deeds must be corrected ... Good deeds must be recompensed.²⁴⁴

And, he adds, in case "the laws appear to conflict with one another", the first two, being the laws of the first order, take precedence over those that follow.²⁴⁵ In De Jure Belli ac Pacis he identifies a collection of items assembled in a paragraph of the "Prolegomena" as belonging to the law of nature "properly so-called":

(T)he abstaining from that which is another's, the restoration to another of anything of his which we may have, together with any gain we may have received from it; the obligation to fulfill promises, the making good of a loss incurred through our fault, and the inflicting²⁴⁶ of penalties upon men according to their deserts.

Items such as "self-defence" and "self-assistance" occur elsewhere in the work.²⁴⁷ In The Jurisprudence of Holland he again chooses the form of a "list" including:

(T)o do to others as you would they should do to you, to maintain faith; and further²⁴⁸ obedience, gratitude, and every moral virtue.

The above three statements permit the conclusion that, as Grotius presents it, there is nothing necessary about the subject-matter of the law of nature or primary law of nations - even at this level.

At the second level the law of nature or primary law of nations displays a less general and more concrete subject-matter; it also reveals a less secure existence in relation to "the will of man".

Three kinds of situation may be noted:

- There are principles of law which, because of the general context in which they appear and of statements elsewhere in the texts, the reader is inclined to see as manifestations of the law of nature or primary law of nations but which Grotius fails to identify as such. To take the following series of principles as an example:

The right of innocent use. To this he attributes "the right to the use of running water" or, as he also puts it: "(A) river ... is the property of the people through whose territory it flows, or of (its) ruler"; but "any one may drink ... from it".²⁴⁹ He also ascribes to it "the right of passage over land and rivers". These should be "open to those who, for legitimate reasons, have need to cross over them".²⁵⁰

The right of temporary sojourn: "To those who pass through a country ... it ought to be permissible to sojourn for a time ... for any ... good reason".²⁵¹

The right of permanent residence: To foreigners "expelled from their homes" a permanent residence "ought not to be denied".²⁵²

The right of possession over certain areas. If a people owns territory which is "deserted or unproductive", it ought to grant it to foreigners "if they ask for it".²⁵³

These principles are contained in the chapter "Of Things which Belong to Men in Common", the initial proposition of which is that "(s)ome things belong to us by a right common to mankind"²⁵⁴; they are clearly supportive of human society; but Grotius relates them to "the old community of property" rather than to the law of nature or primary law of nations, perhaps, because the latter, at least as he defines it, seems little relevant to that "old community".²⁵⁵

- There are other principles which Grotius does relate to the law of nature or primary law of nations, but which he is prepared to sacrifice without ado to positive law. For example:

By the law of nature, a man has the right to hunt wild animals, fish, and birds. This is true, he says, "so long as mu-

municipal law does not intervene".²⁵⁶

From "the force of natural liberty" a man derives the right to buy things which he needs for life at a fair price; to refuse to sell what belongs to him; to seek marriage abroad; and, if in a foreign country, to demand equal treatment with all other foreigners in relation to such things as the right "to hunt, fish, snare birds, or gather pearls, to inherit by will, to sell property ...". All this, Grotius holds, is permitted by the law of nature, unless "annulled by any statute law".²⁵⁷

By the law of nature a king is bound by contracts which he concludes with his subjects. However, this does not mean that "it is ... permissible for subjects to compel the one to whom they are subject".²⁵⁸

Nature confers upon all men the right to resist in order to avoid injury, but "the state ..., in the interest of public peace and order, can limit that common right of resistance".²⁵⁹

- Finally, there are principles which Grotius treats differently in different contexts. For example:

The freedom of commerce is securely tied to the law of nature or primary law of nations in De Jure Praedae where he says of this principle: "Freedom of trade ... springs from the primary law of nations, which has a natural and permanent cause, so that it cannot be abrogated"²⁶⁰ - even though one also meets with the statement that "under the primary law of nations there were "no commercial transactions".²⁶¹ In "The Colonial Conferences between England and the Netherlands in 1613 and 1615" he negates the principle of the freedom of commerce by confronting it with another principle of "the law of nations" - the principle that agreements are to be kept.²⁶²

Excluded from individual ownership is the sea, for the sea is "common to all under natural law".²⁶³ Grotius presents this principle in De Jure Praedae and Mare Liberum, adding in the Defensio that not even parts of the sea are exempted from this rule, for "if parts of the sea could become property, the en-

tirety which consists only of its parts could also".²⁶⁴ In De Jure Belli ac Pacis he is not averse to granting the right to acquire "a part of the sea": "(T)he law of nature presents no obstacle to such procedure".²⁶⁵

Good faith must not be violated. This principle of the law of nature or primary law of nations occupies a secure position in his writings²⁶⁶ until one comes to the nineteenth chapter of Book Three of De Jure Belli ac Pacis, "On Good Faith between Enemies", where he mentions five situations in which good faith need not be observed.²⁶⁷ The first of these is identified as: "if the condition changes".

The principle of just war is linked in De Jure Praedae and De Jure Belli ac Pacis to both the law of nature or primary law of nations and the secondary or volitional law of nations.²⁶⁸ Yet, as both works show, the two laws provide a different answer to what constitutes just war, and when the secondary or volitional law of nations presents its case, the law of nature or primary law of nations is placed at a disadvantage.²⁶⁹

As the above examples indicate, the emphasis, at the less general and more concrete level, is on those things which the law of nature or primary law of nations neither enjoins nor forbids.

The answers to both questions: What is the law of nature or primary law of nations? and What is its subject-matter? combine to give human society an uncertain and changing appearance.

(d) Nature, it is Grotius' view, rejects as a man-made fiction the distinction between "people grouped as a whole and private individuals".²⁷⁰ States and rulers, however, do not do likewise. From their point of view, there is a difference, and this difference is "civil power".²⁷¹ Civil or sovereign power entitles states and rulers to act in accordance with their interests, and these interests may or may not be those of human society - which means:

(i) In the internal context, states and rulers may enact laws which are in harmony with the law of nature or primary law of nations, but they also may, "in the interest of peace and order", pass legislation which goes against it²⁷²; they may act in accordance with contracts con-

cluded with their subjects, but if they choose not to do so, the latter have no right to compel them.²⁷³

(ii) In the external context, states and rulers may establish rules which support the law of nature or primary law of nations²⁷⁴, but they also may adopt laws which are contrary to it, such as the rules governing formal war²⁷⁵; they may act as the "guardians and vindicators" of the law of nature or primary law of nations and, for example, uphold the freedom of commerce²⁷⁶ or punish wrongdoing anywhere in the world²⁷⁷, but they also may decide not to - their interests may be better served by contravening the freedom of commerce²⁷⁸ or by disregarding the right to punish. As Grotius holds: One people is not bound to defend another people from wrong.²⁷⁹

The observance of the law of nature or primary law of nations is "binding upon all kings", according to a statement in De Jure Belli ac Pacis²⁸⁰, but, as the texts at large reveal, much of what Grotius is concerned with relates to that which is not obligatory according to this law, which means, states and rulers have a choice.²⁸¹

As Grotius presents it, human society cannot be certain of support by states and rulers.

To conclude: In De Jure Praedae Grotius speaks of human society as "commended to us so frequently and so enthusiastically by the ancient philosophers"²⁸² and in De Jure Belli ac Pacis he notes that "the force of the relationship which nature has wished to prevail among men" is being restored²⁸³, but his own treatment of the matter does not amount to a statement on behalf of human society.

6. A Plurality rather than a Society of States and Rulers?

There are sentences in Grotius' writings which attract the eye and mind of those interested in the idea of international society. For example, De Jure Belli ac Pacis speaks on page one of its "Prolegomena" of the neglect which "that body of law ... which is concerned with the mutual relations among states or rulers of states" has "up to the present" experienced, and the necessity to remedy the situation²⁸⁴; a few pages later, reference is made to "certain laws ... between all states, or a great many states" having "in view the advantage, not of particular states, but of the great society of states"²⁸⁵; Book Two identifies "in-

ternational law" as affecting "the mutual society of nations in relation to one another"²⁸⁶; the concluding chapter of Book Three draws attention to the importance of keeping good faith, "(f)or not only is every state sustained by good faith ... but also that greater society of states"²⁸⁷; and De Jure Praedae is in no way outdistanced by De Jure Belli ac Pacis, for, in its "Prolegomena", it presents the idea that:

(O)wing to the existence of a common good of an international nature, the various peoples who had established states for themselves entered into²⁸⁸ agreements concerning that international good.

However, the expectations which these utterances raise remain largely unfulfilled. Their wording, it is true, is more suggestive in the English language in The Classics of International Law than in the Latin original - the latter does not speak of "the advantage ... of that great society of states" but of "the advantage ... of that great society"²⁸⁹; it does not identify the law affecting "the mutual society of nations" as "international law" but as "the law of nations"²⁹⁰; it does not present good faith as sustaining "that greater society of states" but "that greater society of nations"²⁹¹; and it does not talk of "the common good of an international nature" or "the international good" but of "the common good of states"²⁹² - but the Latin text is suggestive enough²⁹³, even if one makes allowance for the often non-political meaning of the word gens or "nation".²⁹⁴ Expectations remain unfulfilled because Grotius does not provide the ingredients necessary to put substance into the statements referred to above. Like fata morgana they lure the searcher into traversing the many pages of his writings without leading to what they promise. The findings gathered together in the course of this exploration are presented in this and the following sections. They amount to a picture of international relations which is fragmented, indeed.

Let us see how it takes shape.

(a) There is first of all and readily discernible the idea of a plurality of independent states and rulers. Grotius attests to their presence everywhere when he says:

(I)n every part of the world we find a division into just such united groups, with the result that persons who hold themselves aloof from this estab-

lished practice²⁹⁵ seem hardly worthy to be called human beings.

Although he qualifies the above statement when he declares that states are absent "on the sea, in a wilderness, or on vacant islands", and where "men live in family groups and not in states" or, as he also formulates it, "in any region where the people have no government"²⁹⁶, he is firm in his insistence that states are immortal. The permanence of states, he holds, is immediately attributable to man, for "mans wisdom and policy have some stroke in point of government", but ultimately "the preservation of Commonwealths" is imputable to "an all-guiding providence".²⁹⁷ As noted above, claims to universal rule by pope and/or emperor have no room in this scheme of things.

(b) Also clearly visible is the idea that states and rulers are formally equal, although Grotius does not devote much time to its delineation. It appears in De Jure Praedae when he says: "One state ... is not in subjection but in contraposition ... to another state".²⁹⁸ And it manifests itself in De Jure Belli ac Pacis when he speaks of "the equal rights" of those who "are subject to no one"²⁹⁹, or when he reminds his audience that among the Greeks, according to Thucydides, "colonies in respect to legal independence were on the same plane as the mother cities".³⁰⁰ States and rulers may differ in a number of ways, for example, in power or prestige, civilization or religion, but these factors do not affect their formal standing.

(c) The next component is problematic. It is the law which "Carneades passed over altogether", the law which holds between states and rulers³⁰¹, the law which Grotius variously calls the law of nations, the law of nations properly so-called, the volitional law of nations, or the secondary law of nations, and which, in the context of this inquiry, is called the secondary or volitional law of nations. Its problematic nature is not immediately obvious but appears as one follows Grotius' answers to the two closely related questions: (i) What is the secondary or volitional law of nations? and (ii) What is its subject-matter? These answers are presented at some length, as they concern an important aspect of the idea of international society.

(i) In response to the first question Grotius defines the secondary or volitional law of nations in De Jure Praedae as "a species of mixed

law, compounded of the (primary) law of nations and municipal law"³⁰² - although on a later page he identifies its origin simply as "civil"³⁰³ - which comprises the agreements reached between "the various peoples who had established states for themselves" regarding their common good.³⁰⁴

In De Jure Belli ac Pacis he not only places the human will at the origin of this body of law, but he also makes it the product of time and custom; he substitutes the less clear-cut term "nations" for "peoples" or "states" and designates it as law "common to" nations rather than "existing between" them, in spite of the fact that in the "Prolegomena" he identifies it as "law between states"³⁰⁵; and he allows for a less than universal applicability. To use his own words:

(The volitional law of nations) is broader in scope than municipal law ... (it) has received its obligatory force from the will of all nations, or of many nations ... of many nations, for ... outside of the sphere of the law of nature³⁰⁶.. there is hardly any law common to all nations.

"The law of nations", he adds, citing the ancient Greek rhetorician Dion Chrysostomus, "is the creation of time and custom".³⁰⁷

In The Jurisprudence of Holland he offers a different answer again. Here he defines the law under consideration as "(h)uman positive law ... common to all nations" which, "though not an absolutely essential consequence of the law of nature, closely resembles it"; he postulates an origin in time preceding the formation of states; and he identifies its purpose as serving "the community of mankind".³⁰⁸

The above three definitions of the secondary or volitional law of nations do not impress by their congruence - although one can agree with Gierke that Grotius' jus gentium is "the concordant positive law of all or many peoples"³⁰⁹ - but before evaluating them further, it seems best to look at what Grotius says about the subject-matter of this law.

(ii) Grotius presents the subject-matter of the secondary or volitional law of nations in the "Prolegomena" to De Jure Praedae by means of a two-fold division which he attaches to his definition of this law. The first category has "the force of an international pact"³¹⁰ - although this does not mean that it is not "susceptible to change"³¹¹ -

and includes the inviolability of ambassadors, the burial of the dead, and judicial procedure.³¹² The second category lacks "the force of a pact": it is not law but rather "accepted custom" and contains "provisions relative to servitude, to certain kinds of contract, and to order of succession".³¹³ These provisions, Grotius holds, may be abrogated by individual states, because they do not owe their existence to a common agreement but to a chance accord. As he formulates it:

(They) have been adopted in identical form - either imitatively or as a coincidence - by all or ... a majority of nations, in accordance with their separate and individual interests.³¹⁴

De Jure Belli ac Pacis does not give this twofold division, even though it has room for the idea that there is a law of nations "properly so-called" and one which only "simulates" that law³¹⁵; but at the end of the nineteenth chapter of Book Two Grotius offers a list of items which he subsumes under the volitional law of nations. Apart from "the right of legation" and "the right of sepulchre" they include:

(T)he right to things possessed for a long time (prescription), the right of succession ..., and the rights which are created by a contract no matter how unfair.³¹⁶

All these rights, he submits, impose an "obligation by virtue of the volitional law of nations"³¹⁷, which may be interpreted to mean that he accords them the same status, and the wording which he chooses suggests the status of "pact" or "law" rather than that of "custom". How difficult or easy it may be to abrogate them he does not say.

The Jurisprudence of Holland mentions "the law relating to the safe-conduct of ambassadors and many other rules concerning peace and war" as belonging to the subject-matter of the volitional law of nations, and it notes that this law, because of its resemblance to the law of nature, its age and "extensive" use, is not "readily altered".³¹⁸

Comparing the three "lists of items" which Grotius offers in response to the question: What is the subject-matter of the secondary or volitional law of nations? one notices the absence of commerce - an item which figures prominently in a number of his writings. In fact, as the latter reveal, he sometimes assigns it to the law of nature or primary law of nations and, at other times, makes it the subject-matter of con-

tracts or treaties.³¹⁹

- Diplomacy, or rather aspects appertaining to it, appears as an item in all three lists. In his works as a whole, however, Grotius devotes only one chapter to diplomatic matters, and here, as one finds, he displays some ambivalence towards the law underlying them.³²⁰

- Except for the indirect reference in the first list, and the fleeting mention in the third, war is absent from Grotius' lists of items belonging to the secondary or volitional law of nations. Yet war plays a prominent role in De Jure Praedae and De Jure Belli ac Pacis. In the former work the law governing war is presented as "a phase of the law of nature"³²¹, although two of its aspects - judicial procedure and the seizure of booty by the subjects of both belligerents - are appropriated for the secondary or volitional law of nations³²²; in De Jure Belli ac Pacis Grotius equates the law of war sometimes with the law of nature³²³ and at other times with the law of nations³²⁴, presenting the latter, especially in Book Three, as a law which distinguishes itself by its severity.³²⁵

- "The right of sepulchre" appears in two of the three lists. However, in the chapter which Grotius devotes to it in De Jure Belli ac Pacis, he associates this right with the law of nature and custom rather than with the secondary or volitional law of nations, the two main questions which he raises being: "Whether the right of burial is obligatory in the case of notorious criminals?" and "Whether the right of burial is obligatory in the case of those who kill themselves?"³²⁶

- "The right of prescription", included in one of the three lists, is treated inconsistently in the texts at large. Rejecting prescription in De Jure Praedae as having no "force in the relations between free nations or between the rulers of different peoples"³²⁷, he admits it in De Jure Belli ac Pacis.³²⁸

- "Provisions relating to servitude" or "the right over prisoners of war" are mentioned in the first of the three lists, under the heading of custom, but when Grotius discusses them, which he does in De Jure Belli ac Pacis, he presents them in one context as a severe law³²⁹, suggesting to the reader the absence rather than the presence of society amongst those who agreed to it³³⁰, and notes that they no longer apply

to "Christians ... among themselves" and to "Mohammedans among themselves".³³¹ In another context, he makes them subject to the idea of moderation.³³²

- "Provisions relative to certain kinds of contract" or "the rights created by a contract no matter how unfair" appear in two of the three lists - in De Jure Praedae, in the category of custom, and, in De Jure Belli ac Pacis, under the heading of law. Only the latter work, however, discusses contracts, or treaties as Grotius also calls "the public agreements" between states and rulers.³³³ Yet, while it presents a classification of treaties, raises the question whether treaties may be concluded with "strangers to the true religion" and answers it from the point of view of natural law, Hebraic law, and the law of the Gospel, and also looks at the termination of treaties, it never mentions what states and rulers may have agreed to in relation to treaties under the secondary or volitional law of nations - except for the provision, and this is given separately from the main discussion, that "an inequality in terms is considered an equality as regards external acts".³³⁴ Towards the end of De Jure Belli ac Pacis Grotius devotes some space to peace treaties, but again there is no mention of the secondary or volitional law of nations, only an occasional reference to a "strict law of nations".³³⁵

- The "order of succession" figures in two of the three lists - in De Jure Praedae, under custom, and, in De Jure Belli ac Pacis, under law. The first text does not discuss it; the second does so in terms of "the laws or customs" of individual states, and where such laws or customs do not exist, natural law, nature, natural justice are called upon to provide an answer.³³⁶

- Not included in the three lists but occurring in both De Jure Praedae and De Jure Belli ac Pacis is the "law of reprisals". The latter work identifies it as falling within the secondary or volitional law of nations.³³⁷ De Jure Praedae, on the other hand, gives it no clearer label than "the law of nations", and the context suggests the primary law of nations rather than the secondary or volitional law of nations.³³⁸

- Not inscribed in the lists, and not linked to the secondary or volitional law of nations in the texts at large, is the idea that states and rulers have the right - sometimes it also appears as "responsibili-

ty", but never as an obligation - to "protect human society from violence" by punishing anybody anywhere for "crimes against God" and "the law of nature or of nations".³³⁹ While the existence of this right is posited on a number of occasions, mainly in the chapter "On Punishments", it is never made the result of an agreement between states and rulers.

Looking back over the answers provided by Grotius to the two questions - What is the secondary or volitional law of nations? and What is its subject-matter? - one finds little that adds to his initial statement that there is such a law:

The definitions, diverse, as they are, fail to promote a particular conception of the secondary or volitional law of nations. As he presents it, it is law between states and law common to nations; it is law between all states and law common to all or many nations; it is law which the will of states or nations establishes, and law which has custom at its origin; it is law which has natural law as one of its sources, law which is quite distinct from the law of nature³⁴⁰, and law which closely resembles the law of nature; it is law which is susceptible to change, and law which is not readily altered.

Vagueness at the definitional level is not helped by the use, in the texts at large, of the less descriptive term "law of nations" in preference to the terms "primary" and "secondary law of nations"; there are even indications that Grotius has the idea of yet another law of nations not covered by any of his definitions.³⁴¹ Also, the presence in the texts at large of terms such as "universal customary law"³⁴², "universal common law"³⁴³, "the customary law of nations"³⁴⁴, "the strict law of nations"³⁴⁵ - terms which are never explained - does not make for a clearer vision. Equally, there is no definition of "custom", Grotius presenting it sometimes as something different from "law"³⁴⁶ and, at other times, equating it not only with the secondary or volitional law of nations³⁴⁷, but also, as the previous section noted, with the law of nature or primary law of nations.³⁴⁸

The subject-matter of the secondary or volitional law of nations is limited, and becomes more so, as one assembles Grotius' ideas about it: in the case of the right of burial, treaties and the order of succession, the link to the secondary or volitional law of nations is not

made clear; in the case of war, Grotius establishes a link to the law of nature or primary law of nations as well as to the secondary or volitional law of nations; prescription, servitude and reprisals are given a different status in different contexts; only diplomacy is consistently linked to the secondary or volitional law of nations, but even it is not quite firmly anchored in "this law of nations, whatever it is".³⁴⁹

The idea of the common good of states and rulers or nations is linked to the secondary or volitional law of nations in such a way that the former should be deducible from the latter, but, given the way in which the latter is treated, the former fails to materialize, and Grotius does not give it any further attention. Thus, judging from what he says about it in De Jure Praedae, it is possible to see it as a good specific to states and rulers; in De Jure Belli ac Pacis it becomes "the advantage" of human society; and in The Jurisprudence of Holland it is identified with "the preservation of the community of mankind".³⁵⁰

(d) Continuing the search for ingredients which may give substance to the idea of international society, one meets with the principle of good faith. In the context of human society, Grotius clearly sees it as a bond, for he says: "(I)f good faith has been taken away, all intercourse among men ceases to exist"³⁵¹ - even though, as was pointed out in the preceding section, he renders it vulnerable by the exceptions which he attaches to this principle.³⁵² In connection with the state, he also ascribes to it the quality of a bond, for "every state", as he notes, "(is) sustained by good faith".³⁵³ But when he applies the principle to the relations between states and "the supreme rulers of men", he makes no such claim. He presents the principle in relation to allies and enemies³⁵⁴, he asserts its importance - good faith must not be violated³⁵⁵ - and he mentions breaches of good faith³⁵⁶; but he seems reluctant to expose his reasons for insisting that good faith should be observed.³⁵⁷ In De Jure Praedae there is the idea that good faith imposes "a restriction for warfare"³⁵⁸; the same idea - enriched by the remark that this is in "the interest of mankind" - occurs in De Jure Belli ac Pacis³⁵⁹; and the conclusion of the latter work contains the admonition to rulers that they should keep good faith "more earnestly than others" because "they violate it with greater impunity".³⁶⁰ For the sake of their conscience, they should "cherish good faith", and in the

interest of their reputation as it supports "the authority of the royal power".³⁶¹

Good faith - conducive to society among states and rulers? Grotius does not present it as such.

(e) Searching for further possible links between states and rulers, one encounters the idea of religion. Within the state, Grotius plays down its importance as a unifying force: here "the laws and the easy execution of the laws" take the place of religion.³⁶² At the level of human society, however, things are different: here, the laws are few and their enforcement is difficult, hence religion - which in the form of piety is of universal extent - is of great consequence:

If piety is removed ... with it go good faith and the friendly association of mankind,³⁶³ and the one most excellent virtue, justice.

When Grotius places religion in the context of states and rulers, he becomes more specific: religion in its general form of piety makes room for the Christian religion; he also shows himself, at least at times, in a less disinterested light: the Christian religion must be defended; but when all is put together, it is difficult to see what follows for the relations among states and rulers.

To demonstrate this briefly:

According to De Jure Praedae Christian states may justly conclude alliances and treaties with non-Christians against Christians. Such alliances may not only be "encouraged to persist"; they may also be "expanded".³⁶⁴

In De Jure Belli ac Pacis treaties with non-Christians are presented as being permissible according to the law of nature, the Hebraic law and the law of Christ, but caution is advised - "the power of the heathen" may greatly increase by such alliances.³⁶⁵ In the same work Christian "peoples and kings" are encouraged to form an alliance "while an impious enemy is raging in arms", for in this way they will be able to serve Christ with the power that is theirs.³⁶⁶

In True Religion Grotius exhorts his country-men to take the Christian religion to non-Christian countries, to:

Pagans, such as live in China, Arabia, and Guinea; ... Mahumetans, as those under the dominion of the Turks, the Persian, and Moores of Barbarie; or ... the Iewes themselves, at this day the professed enemies of Christianity.³⁶⁷

His reason: the Christian religion "excels" all other religions.³⁶⁸

The religious differences within Christianity are discounted. Does not disagreement happen in "all kinde of Arts and Sciences"? Is not this variety "contained within certain bounds"?³⁶⁹ And the wars within Christendom are not attributed to religious differences. Nevertheless, Grotius would like to see them disappear: "(T)hat there bee no sects or divisions among them".³⁷⁰

The idea of a "Christian world" is invoked in a number of his writings. For example, Mare Liberum is addressed to "The Rulers and Free Peoples of the Christian World"³⁷¹; and De Jure Belli ac Pacis concludes with the words: "May God ... inscribe these teachings on the hearts of those who hold sway over the Christian world".³⁷² But the wars fought by Christian states and rulers - within Christendom and beyond - are described as "ruthless"³⁷³, and the law regulating formal war is presented as severe and applicable to both Christian and non-Christian states and rulers.³⁷⁴

Thus, while religion in the form of the Christian religion appears at times as a link among Christian states and rulers, it is a link which seems to be of little consequence for the relations among said states and rulers.

(f) While searching for further possible ties between states and rulers, one notes the idea that there are "civilized nations", "nations more advanced in civilization", "more civilized peoples", "nations of the better sort"³⁷⁵ as against "uncivilized peoples".³⁷⁶ On the whole, Grotius identifies the former only indirectly as European - by mentioning a particular aspect of their laws, practices, or customs.³⁷⁷ Only once does he establish a direct link between "civilized" and "European" when he says:

But this also (to poison weapons or water) is contrary to the law of nations, not indeed of all nations, but of European nations, and of such others as attain to the higher standard of Europe.³⁷⁸

Grotius does not dwell on this idea. He mentions it so-to-say in passing.

With this, the search for ingredients to put substance into the idea of international society may be concluded. Its findings: there is the idea of a plurality of independent states and rulers; there also is the idea of formal equality between states and rulers; the secondary or volitional law of nations is poorly developed as a link between states and rulers; and the principle of good faith, as also the ideas of religion and civilization, do little to strengthen that link. These findings will be submitted to further scrutiny in the next three sections: Commerce, Diplomacy and The Question of War.

7. Commerce

Grotius' ideas on commerce are adapted to the occasion on which he pronounces them.

(a) Within the framework of De Jure Praedae two lines of argument are developed:

(i) Free Commerce between private individuals in the interest of human society

Under the heading "Wherein It Is Shown that even if the War Were a Private War, It Would Be Just ..." Grotius invites the reader to assume, for the duration of the chapter, that the United East India Company is a group of private individuals who represent no particular state and whose war against the Portuguese and Spaniards in the East Indies is a private war fought in the defence of the freedom of commerce.³⁷⁹

To engage freely in commerce, Grotius argues, is a right conferred by the law of nature or primary law of nations on all human beings, and no one is entitled to deprive anybody of this right.³⁸⁰ The reason he submits is this: God distributed the goods of the earth unevenly and endowed different people with different skills, because He wanted "human friendship" to be "fostered by mutual needs and resources": individuals might become "unsociable" if they thought themselves to be "self-sufficient".³⁸¹ Hence: "(A)nyone who abolishes this system of exchange, abolishes also the ... fellowship in which humanity is united".³⁸²

Given this, the individuals in question would be entitled to trade with the East Indians even if the Portuguese were "the owners" of those regions. But - and Grotius borrows Vitoria's reasoning and that of other Spanish thinkers such as Cajetan and Vasquez - the Portuguese "lack possession" because those regions have their own rulers, and they lack all "title to possession" because theirs is not the right of discovery nor the right of war, nor do they derive the right to take possession from the papal donation.³⁸³

Equally, the Portuguese have no exclusive possession of the sea nor of the right of navigation. Not only is the sea "too vast" to be taken into possession by any one; it also is "suited" for the use by all - whether for purposes of navigation or fishing. In Grotius' words: "(N)ature ... commands ... that the sea shall be held in common".³⁸⁴ And the pope cannot donate what is the property of no one in particular. Nor does prescription or custom apply, for, besides being "rooted in civil law", it also can have no force when opposed to the law of nature.³⁸⁵

Lastly, the Portuguese have no exclusive possession of the right to engage in commerce with the East Indians. The right of commerce is not "susceptible of seizure"; nor does it fall within the jurisdiction of the pope; prescription or custom does not apply, for the reasons mentioned before; and equity demands that the profits from commerce be not reaped by any one alone, but be to the advantage of all. Commerce, Grotius insists, is not an activity "devised for the benefit of a few persons" only:

(T)he ... practice (of monopoly) ... is regarded as gravely pernicious when carried on within a single state ... (S)hould (it) be tolerated within that great community made up of the human race, thus enabling the Iberian nations to establish a monopoly over the whole earth?³⁸⁶

Clearly, the freedom of commerce must be defended against those who obstruct it.

This, then, is Grotius' case for free commerce between private individuals in the interest of human society. And it does not violate the interests of that part of human society which is under the care of Dutch rulers.

(ii) Free commerce in the interest of the state

But commerce is not really a private activity. As Grotius points out in the beginning of De Jure Praedae³⁸⁷ and, again, in its concluding chapter to which he gives the title "Discussion as to What Is Beneficial"³⁸⁸, there is a close link between commerce and the well-being of the state. "(W)ho is so ignorant of the affairs of the Dutch", he asks, as not to know that "the sole source of support, renown, and protection for those affairs lies in navigation and trade?"³⁸⁹ In particular, the commerce with Asia is the main, if not the whole, source of "the wealth of our state".³⁹⁰

The importance which rulers attach to commerce, Grotius pursues his argument, is obvious from the fact that "in all lands the management of shipping falls within the sphere of supreme governmental power", so that anybody who returns with supplies from abroad is considered as having been away "practically on state business"³⁹¹; and when the Dutch rulers founded the United East India Company, nobody doubted that with it, "the surest possible foundations of public prosperity had been laid".³⁹² Look at the Spaniards and Portuguese, he invites the reader: from what poverty to what wealth have they risen! Regarding the cause of this phenomenon, there can be no doubt:

(T)he very foundations of that Iberian power lie, not in the Low Countries nor in Spain, but in transoceanic regions from which the said peoples derive their wealth and the means to maintain their public largess and their wars.³⁹³

Hence, and Grotius turns again to his own country, an activity as beneficial and as necessary for the state as commerce should not be abandoned.

As a matter of fact, the war which the Dutch fight in the East Indies is not a private war, but a public war.³⁹⁴ Under the chapter heading "Wherein It Is Shown that the War Is Just ... in the Public Cause of the Fatherland" Grotius presents a number of reasons why, in this war, Holland and its allies have justice on their side.³⁹⁵ One such reason which figures, not among the general causes, but among the special causes of the war, is the interference by the Portuguese and Spaniards with the principle of free commerce, and it figures, not as a direct, but as an indirect cause. The Dutch don't fight the Portuguese and Spaniards

because they obstruct commerce; they fight because such obstruction constitutes an injury to "the welfare of the state" and the state has the right to defend itself against such injury.³⁹⁶

Grotius' second argument for free commerce does not refer to human society nor does it imply the existence of international society. It centres on the state, and a particular state at that, Holland.

(b) Mare Liberum may be seen as an argument for free commerce between states in the interest of human society:

Grotius' next statement on commerce appears anonymously in 1609.³⁹⁷ It is addressed to the rulers and free peoples of Christendom and requests their opinion on a case which it wishes to draw to their attention. As Grotius puts it: To the "double tribunal" of "conscience" and "public opinion" we submit a new case.³⁹⁸

The case concerns "practically the entire expanse of the high seas, the right of navigation, the freedom of trade"³⁹⁹, and involves the Dutch, on the one side, and the Spaniards and Portuguese, on the other. Grotius argues it along the same lines as his first case in De Jure Praedae but, by giving it a different wrapping or, to use the language of this investigation, a different context, he makes it appear different, and hence it can be interpreted differently.

The old title "Wherein It Is Shown that even if the War Were a Private War, It Would Be Just ..." has been removed and, in its place, a new title has been put: Mare Liberum.

The original proposition that the Dutch fighting in the East Indies be considered private individuals representing no particular country has disappeared, and Grotius now introduces the Dutch as "the subjects of the United Netherlands".⁴⁰⁰

There are no longer definitions of both the law of nature or primary law of nations and the secondary or volitional law of nations. Only one law now applies, and Grotius presents it in the following way:

The law by which our case must be decided is ... the same among all nations ... it is innate in every individual ... (I)t is a law derived from nature, the common mother of us all ...⁴⁰¹

As a result of these new "facts", the case which Grotius submits to the rulers and free peoples of Christendom may be seen as the case of the United Provinces whose right of commerce - a right conferred by the law of nature or nations - is interfered with by the Spaniards and Portuguese who, on their side, are unable to claim any right in support of their action.⁴⁰² And the Dutch "are to maintain at all hazards that freedom which is (theirs) by nature ..." ⁴⁰³, even if it means continuing the war:

Therefore, if it be necessary, arise, O nation unconquered on the sea, and fight boldly, not only for your own liberty, but for that of the human race.⁴⁰⁴

The obstruction of commerce appears as a direct cause of a public war.

In Mare Liberum, then, Grotius may be seen as arguing for free commerce between states, but he still cannot be seen as arguing for international society. His reference, in the last quotation above, is to human society, and so it is on numerous other occasions, as in the following passage:

If king act unjustly and violently against king, and nation against nation, such action involves a disturbance of the peace of that universal state, and constitutes a trespass against the supreme Ruler ...⁴⁰⁵

As Grotius presents it, it is human society rather than international society which suffers as a result of the violation of the principle of free commerce.

Dutch interests and the interests of human society are again in harmony.

(c) "The Colonial Conferences between England and the Netherlands in 1613 and 1615" submits the Dutch case for monopolized commerce in the interest of the state:

In 1613 Grotius "by order from the States of Holland"⁴⁰⁶ heads a delegation of three commissioners of the United East India Company to London, and he is again the spokesman for his country's interests when, two years later, an English delegation comes to The Hague.⁴⁰⁷ The main

item on the agenda is the commerce with the East Indies: the English demand "free Trade into the East Indies and every part thereof", to which they are entitled "as well by the Law of the Nations, as by the admittance of the Kings and Princes there ..." ⁴⁰⁸; the Dutch find reasons why this should be denied to them.

As the documents exchanged between the two sides show, the argument presented by Grotius centres on the following three points:

(i) The question of law. The "laws of nature and nations", indefinite in themselves - no definition of these laws is offered by Grotius in this context ⁴⁰⁹ - are limited and defined by the laws and institutions of peoples, such that, for example, there is not one realm where it is lawful "for every man to buy every commodity of every person, in every place, and at all times". ⁴¹⁰ The rulers and peoples of the East Indies have chosen to agree to sell their spices to the Dutch alone, and nothing accords more with the laws of nature and nations than that these agreements be kept. ⁴¹¹

The Dutch do not generally deny that the English, as a result of the liberty of the law of nations, are entitled to trade with the East Indies, but they maintain that the English have no right to buy that which is contracted by its owners to someone else:

(If (the English) claim is based on the rule of the law of nations which says that it is lawful to trade everywhere, our defence is based on the rule of the same law which says that agreements must be kept. ⁴¹²

The liberty of the law of nations does not prevent anyone from selling what is his.

Above all, the Dutch insist on the very just cause of these contracts, which is the continuous defence on their part of those with whom they have entered the contracts, the rulers and peoples of the East Indies, against the Spaniards and Portuguese. Who wants to deny that it is a man's right to contract his products, present and future, in order to save his life? ⁴¹³

(ii) The question of equity. The commerce with the East Indies, Grotius argues, is impossible unless those regions are defended against the Spaniards and Portuguese. This defence has been and continues to be

undertaken by the Dutch at great cost. But the English want to partake in the profits derived from that commerce without partaking in the expenses necessary to arrive at these profits. This is not equitable.

The English, while not denying this, question the necessary nature of the link between the expenses and the profits, in response to which the Dutch can only say that there is no doubt about it, for the Spaniards and Portuguese have shown that, wherever they have succeeded in making themselves masters, they have excluded all other nations from commerce.⁴¹⁴

(iii) The question of common utility. Because of the war which the Dutch have made on the Spaniards and Portuguese in the East Indies, the English have been able to trade there. But the cost of the war has eaten into Dutch profits. If the Dutch have to share the profits with the English, but may not share the expenses, it will not be possible for the Dutch to continue paying for the war. But the war is necessary. Without it, neither the Dutch nor the English can have any hope of retaining the trade, for the Spaniards and Portuguese would take over. Show us how the Dutch can have commerce there without defence; defence without expenditure; and expenditure without profits.⁴¹⁵

(If free trade is granted to everybody, the French, the English, ourselves, and whoever else might be interested, where would you find ... the order and money necessary to push back the force of Spain.⁴¹⁶

As the English observe, the Hollanders do not "declare themselves in the behalf of free Trade, and to all nations, with as much liberty and freedom as (in) mare liberum".⁴¹⁷

The argument of 1613/1615 does not depict commerce as a link between states nor as a link between individuals. The idea of international society is absent, and so is the idea of human society. The case it makes is for the monopolization of commerce by one state - the state on whose behalf the argument is put forward.

Towards the end of the (inconclusive) negotiations of 1613/1615, only one of the three points presented above is retained - the question of common utility. Given that the concern is with working out what is to be done rather than what is just and right, the Dutch suggest, the

English should look at the problem in such a way as might result in a satisfactory solution, in which case the question of law could, by mutual consent, be dropped without having been decided.⁴¹⁸

(d) De Jure Belli ac Pacis does not manifest much interest in the question of commerce, and the little it says does not come together to form an argument:

(i) Free commerce in the interest of human society

The chapter "Of Things which Belong to Men in Common" contains the idea of the freedom of commerce. Grotius presents it in the context of his discussion of the right of passage over "lands, rivers, and any part of the sea that has become subject to the ownership of a people".⁴¹⁹ The right of passage, he argues, without identifying the law on which he bases this right⁴²⁰, should be granted, not only to persons, but also to merchandise:

No one, in fact, has the right to hinder any nation from carrying on commerce with any other nation at a distance.⁴²¹

The reason he gives is this: commerce is "in the interest of human society".⁴²² His evidence is drawn from Antiquity: "If you destroy commerce, you sunder the alliance which binds together the human race".⁴²³

(ii) Monopolized commerce in the interest of the state

The same chapter also contains the idea of the monopolization of commerce. In fact, the half page devoted to it is reminiscent of the argument of 1613/1615:

(I)t is permissible for a people to make an agreement with another people to sell to it alone products of a certain kind, which do not grow elsewhere ... especially ... if the people which has obtained the concession has taken the other under its protection ...⁴²⁴

Such an agreement, Grotius holds, is not "at variance with the law of nature" provided that "the people which buys is prepared to sell to others at a fair price".⁴²⁵

The chapter concludes without any suggestion that there may be a

conflict between the idea of free commerce in the interest of human society and the idea of the monopolization of commerce.

(iii) Commerce as the subject-matter of bilateral treaties

Commerce is mentioned once more in a later chapter, when Grotius - offering a classification of treaties - distinguishes between those which establish "the same rights as the law of nature" and those, equal and unequal, which "add something beyond the rights based on the law of nature".⁴²⁶ Commerce may be the subject-matter of all three kinds of treaty:

To the first category belong treaties which say that there shall be rights of commerce on both sides.⁴²⁷ Treaties which, for example, stipulate that no import duties are to be paid on either side or that such duties remain the same as at present, belong to the group of equal treaties of the second category.⁴²⁸ Unequal treaties of the second category are not illustrated by any examples.⁴²⁹ The significance of these distinctions remains unclear.

Grotius' reasoning on behalf of commerce displays:

- Variety. He argues for commerce between private individuals in the interest of human society; free commerce between states in the interest of human society; free commerce in the interest of the state; and monopolized commerce in the interest of the state.

- Contradiction. Grotius' case for free commerce, whether between private individuals or states, in the interest of human society runs counter to his case for the monopolization of commerce by one state, and he does not attempt to resolve the contradiction.

- Constancy. Firstly, whatever Grotius' argument for commerce, it is always in support of his country's interests; secondly, whatever his argument for commerce, the idea of international society is always absent.

8. Diplomacy

Grotius' definition of ambassador identifies diplomacy as a link between rulers. Ambassadors, he writes, "are those representatives whom rulers

with sovereign powers send to one another".⁴³⁰ That this extends also to states or peoples is clear from the context within which he places the definition.⁴³¹ But the context is no more informative about the nature of this link between states and rulers than the definition.

In fact, Grotius says little about diplomacy. Apart from a few remarks which he includes in De Jure Praedae⁴³², his ideas on the subject are contained in one chapter in De Jure Belli ac Pacis, entitled: "On the Right of Legation".⁴³³ And it is a short chapter.

Its main points are:

(a) The law relating to embassies belongs to the secondary or volitional law of nations.

Though he displays some reluctance at the beginning of the chapter to commit himself regarding the nature of this law, when commenting a few pages later on the different views that exist in relation to the inviolability of ambassadors, he is prepared to be definite:

(T)his law does not certainly arise from definite reasons, as the law of nature does, but takes its form according to the will of nations.⁴³⁴

That is, the law relating to embassies is positive law.

(b) Two rights derive from the law relating to embassies: (i) the right to be admitted; and (ii) the right to be free from violence.

(i) As Grotius sees it, the law relating to embassies does not command the admission of ambassadors, but "it does forbid the rejection of ambassadors without cause"⁴³⁵; and he mentions three causes which justify the refusal to receive an ambassador:

- The one who dispatches the ambassador may be the cause. He is "an enemy in arms" or is "planning war".

- The ambassador may be the cause. He has an objectionable belief system, such as being "an atheist"; or he is unacceptable for reasons of "personal hatred".

- The embassy or mission may be the cause. It is suspected of "stirring up the people"; its rank is not "proper"; it arrives at an

"inopportune time"; or it is permanent.⁴³⁶ Grotius formulates the last point in the following way:

But permanent legations, such as are now customary, can be rejected with the best of right; for ancient custom, to which they were⁴³⁷ unknown, teaches how unnecessary they are.

The above three causes and the way he illustrates them make it clear that he favours a right of admission which can be easily inactivated.

(ii) The right of the ambassador to be free from violence, Grotius points out, has been and continues to be subject to different interpretations. Livy, the Roman historian, for example, was of the opinion that ambassadors should be safe even if "they commit hostile acts"; whereas Sallust, also a Roman historian, took up the position that "equity and justice" permit the punishment of ambassadors who are found to have committed a wrong.⁴³⁸ Grotius' own view is not slow to crystallize: "(I)t is contrary to the law of nations that ambassadors should be brought to trial".⁴³⁹ The reasons which he gives are the following:

- There is nothing "great" or "outstanding" about a law which protects ambassadors "only from unjust violence".

- Any advantage which may be derived from punishment is outweighed by the disadvantage of jeopardizing the security of ambassadors. Punishment can be exacted by the one who sends the ambassador or, if he is unwilling, by means of a war.

- If ambassadors are required to explain their behaviour to any person other than the one who sends them, their safety rests on an "extremely precarious footing"; for the one who sends the ambassador and the one who receives him "generally" differ in their views, and "often" hold "directly opposed" views.⁴⁴⁰

Grotius offers his "unqualified conclusion" when he says:

(T)he rule has been accepted by the nations that the common custom, which makes a person who lives in foreign territory subject to that country, admits of an exception in the case of ambassadors. Ambassadors as if by a kind of fiction are considered to represent those who sent them ... (B)y a

similar fiction, ambassadors (are) held to be outside of the limits⁴⁴¹ of the country to which they (are) accredited.

Hence a wrong committed by an ambassador should be overlooked, if "it can be treated lightly", or the ambassador should be ordered to leave. If the wrong is "particularly atrocious", the ambassador should be sent back with the demand that he be punished or surrendered.⁴⁴² Two exceptions only are admitted by Grotius. "(D)ire necessity" such as "guarding against serious hurt, especially to the state", permits the detention and questioning of an ambassador; and "natural defence" allows the killing of an ambassador if he attempts armed force.⁴⁴³ For the rest, an ambassador, once admitted, is "under the protection of the law of nations even among public enemies".⁴⁴⁴ The same is true of his suite and his effects.

Grotius declares this law, which extends full security to ambassadors, to be binding on the state or ruler who admits the ambassador.⁴⁴⁵ He exempts from it any state or ruler through the territory of whom the ambassador passes without a safe-conduct in order to get to his destination.⁴⁴⁶ Indeed, if the ambassador is going to or returning from the enemy of that state or ruler, or if he is planning hostile action, he may, according to Grotius, be killed. In the absence of such reasons, he may still be mistreated, and such conduct does not constitute a violation of the law relating to embassies. It merely violates the "dignity" or "friendship" of the one who sends him or the one who receives him.⁴⁴⁷

What do these ideas reveal about the nature of the link which diplomacy forms between states and rulers?

(a) They say little about the reason(s) why states and rulers engage in diplomacy. In fact, there are only two references to its "final cause": one speaks of "the usefulness of embassies" without saying why they are useful⁴⁴⁸; the other puts some substance into the idea of usefulness, to wit:

(I)n war (many matters) cannot be handled except through ambassadors, but also peace itself is hardly to be made by any other means.⁴⁴⁹

Diplomacy, then, is useful or necessary in war and to end war. A third

reference which appears in the chapter "On Doubtful Causes of War" mentions "a conference" as "a method" of preventing a dispute from developing into a war.⁴⁵⁰ In his other works, too, diplomacy is placed in the context of conflict and war rather than peace. In De Jure Praedae, for example, the purpose of the embassies sent by the East Indian states and rulers to The Hague is identified as seeking "a general combination of forces" to attack the Portuguese⁴⁵¹; and the negotiations of 1613/1615 aim not so much at resolving a commercial conflict as winning the English for an offensive alliance against the Portuguese.⁴⁵²

(b) When Grotius identifies the law relating to embassies as belonging to the secondary or volitional law of nations, one is ready to take this as an indication that, in his opinion, there exists a law or body of rules expressing the will or agreement of states and rulers in relation to diplomatic matters. It is changeable, but it exists. In De Jure Praedae, too, he speaks of "the pact" entered into by all states, which accords "equal sanctity" to ambassadors.⁴⁵³ However, when he presents his ideas on the law relating to embassies in terms of the right to be admitted and the right to be free from violence, it appears that, in his view, there exists no such law or agreement; there only exist the different opinions of "the wise men" of each age, expressing what they think this law or agreement is.⁴⁵⁴ Diplomacy may be a universal institution, but the juridical basis on which he places it is uncertain, indeed.

(c) Grotius' formulation of the reasons which, in his view, justify a refusal to admit ambassadors is such that it invites a wide interpretation. Such a stance means that he is not averse to making it easy for states and rulers to find a legitimate reason for not receiving an embassy, hence, to interrupt diplomatic activity. His proposition not to admit permanent embassies points in the same direction: there is no intention on his part to weld diplomacy into a strong link between states and rulers. Its operation on an ad hoc basis is quite sufficient.

(d) Equating the inviolability of ambassadors with full security, irrespective of what they do, means being prepared to sacrifice justice, and Grotius affirms this choice:

(O)n the one side lies the advantageousness of punishment of grave offenders; on the other is the usefulness of embassies, and the ease in sending

embassies is best promoted by making their safety as secure as possible.⁴⁵⁵

It is a choice for order at the cost of justice. Its victim is that part of human society which belongs to the state or ruler to whom the offending ambassador has been sent.

(e) By making a safe passage through a country dependent on a safe-conduct, Grotius not only limits the right to be free from violence to the country to which the ambassador is sent, but also gives to the right of passage a restricted meaning. In fact, the question of embassies is not part of his discussion of the right of passage.⁴⁵⁶ Furthermore, by linking a safe passage to a safe-conduct, he places states and rulers in a position to render a passage unsafe or to interrupt the link that constitutes diplomacy, whenever it suits them to refuse to grant a safe-conduct.

Grotius depicts diplomacy as a link which operates between mainly suspicious or hostile states and rulers. Its juridical basis is uncertain, and it is easy for states and rulers to interfere with it. International society is not the idea which inspires it, and human society is its potential victim.

9. The Question of War

When Grotius defines war, he does not distinguish between private and public war. Thus, in De Jure Praedae he writes: "Armed execution against an armed adversary is designated by the term war"⁴⁵⁷, and in De Jure Belli ac Pacis he puts it this way: "(W)ar is the condition of those contending by force ...".⁴⁵⁸ In the former work he comments on his definition but does not justify it:

To be sure, in the majority of cases where writers employ the term war, they are referring not to private but to public war, which is more frequently the subject of discussion.⁴⁵⁹

In De Jure Belli ac Pacis there is a comment and a justification:

And usage does not reject this broader meaning of the word. If, to be sure, the term war is at times limited to public war, that implies no objection to our view, since it is perfectly certain that the name of a genus is often applied in a particular

way to a species,⁴⁶⁰ especially a species that is more prominent.

Of two further reasons which appear in De Jure Belli ac Pacis - private war "is more ancient than public war" and private war "has, incontestably, the same nature as public war"⁴⁶¹ - only the first survives intact. The second reason is contradicted not only by statements such as "private wars ... differ from public wars with respect to their efficient agents and their form"⁴⁶², but also by the whole train of his thought regarding war - a point which will become clear as the discussion proceeds.

For Grotius the question of war is: Can any war be just?⁴⁶³ His reply: Some wars are just.⁴⁶⁴ To the question: What wars are just? he offers an answer which, after careful scrutinizing of his writings, may be read to mean that he has room for four kinds of just war.⁴⁶⁵

(a) There is the just private war in De Jure Praedae.⁴⁶⁶ Grotius explains it by making Aristotle's idea of the four causes its constituent principle: for a private war to be just, its four causes - the efficient cause, the material cause, the formal cause, and the final cause - need to be just.⁴⁶⁷

Regarding the efficient cause, Grotius stipulates that "any person whatsoever" may justly resort to war.⁴⁶⁸ An individual may wage it on his own behalf or on behalf of "allies", and these may be relatives, neighbours, fellow-citizens or simply fellow-men, for: "It is ... natural for us to do good to one another, and to lend each other aid".⁴⁶⁹ An individual may be helped by allies, and by those who are under his authority, that is, his children, slaves, servants and so on. These, in Grotius' language, are subjects or instruments⁴⁷⁰, whereas those in authority, and their allies, are voluntary agents.⁴⁷¹

In relation to voluntary agents, Grotius admits as just four kinds of material cause of war: self-defence; the defence of one's property; exacting payment of that which is one's due; and the inflicting of punishment⁴⁷² - these are just because they correspond to rights conferred by the law of nature or primary law of nations.⁴⁷³ The enemy is the one who causes the injury or wrong. It may be an individual or individuals; it may be a state or ruler; and any allies and subjects are "included under the head of enemies".⁴⁷⁴

In relation to subjects or instruments, there is only one just material cause of war: the order of the one in authority. It is just, provided "the reason of the subjects is not opposed thereto after weighing the probabilities".⁴⁷⁵

The question whether a just material cause can exist on both sides is answered by Grotius in two ways. As far as voluntary agents are concerned, his answer is "no": "(T)here can be no war that is just for both parties". Regarding subjects or instruments, his answer is "yes": "(T)here is nothing to preclude the possibility of a war that is just on both sides".⁴⁷⁶ His reason: to subjects or instruments there applies what Carneades applies to all people - the idea that "justice is a matter of opinion".⁴⁷⁷

The just formal cause of war consists of "just form in undertaking war" and "just form in waging war". The former condition is met "when judicial means for the attainment of our rights are defective".⁴⁷⁸ This may happen for brief periods, when things do not permit of a delay, as is the case when life or property is threatened; when the debtor absconds; or when the transgressor looks like escaping from punishment. It also may happen on a continuous basis when, for example, "there is no one possessing jurisdiction" or when the one who possesses it is "disregarded" or has no time.⁴⁷⁹ Just form in waging war is observed when "the requisite of moderation" is fulfilled.⁴⁸⁰ For voluntary agents, this means that they must remain within the limits of the right for which they wage war; for subjects or instruments, it means that they must remain within the limits of the order given by their superior(s).⁴⁸¹

Regarding the purpose or final cause of war, Grotius is brief: voluntary agents wage war in order to attain their right(s); and subjects or instruments wage it "in order to render obedience to a superior".⁴⁸²

The just private war as presented by Grotius in De Jure Praedae - at the more concrete level a fictitious argument, as he himself points out⁴⁸³ - is in agreement with human society because it attempts to secure the justice which is embodied in its law - the law of nature or primary law of nations.

(b) De Jure Praedae contains a second kind of just war - the just public war. Its constituent principle is the same as for the just private war: a public war, in order to be just, must derive "entirely from

just causes".⁴⁸⁴

As Grotius portrays it, the just public war has the same material and final cause - at the more general and less concrete level - as the just private war⁴⁸⁵; the former differs from the latter merely with respect to its efficient and formal cause.⁴⁸⁶

The just efficient cause is the state or ruler, or, as Grotius calls the latter in De Jure Praedae, "the supreme magistrate".⁴⁸⁷ Also admitted as a just efficient cause is "the magistrate next in rank", for the supreme magistrate may be "absent or negligent" - a provision to which he attaches the condition: "when no law exists expressly prohibiting this alternative course".⁴⁸⁸ The ally in a just public war is another state or magistrate or other states and magistrates. The one who is "bound by the laws of (the) state" - the citizen - is the subject or instrument.⁴⁸⁹

When discussing the just formal cause, Grotius does not engage in admonitions not to rush into war. He raises this point briefly in an earlier chapter as "a matter not so much of right as of discretion"⁴⁹⁰, and limits it to the advice that "comparatively trifling injuries" should not cause us "rashly ... to be aroused".⁴⁹¹ Nor does he dwell for long on the question of arbitration, offering the following reason for such neglect:

Certainly resort to arbitration is an honourable procedure, but arbitration is a voluntary, not a necessary measure; ... no one is compelled to entrust his rights to this or that person.⁴⁹²

Just form in undertaking a public war, the first aspect of the just formal cause of war, consists in its conformity with the secondary or volitional law of nations. States and rulers, Grotius argues, because they are equal and have no "superior" who might act as a judge, and also because it is impossible for those who are not a party to a dispute "to reach an agreement providing for an inquiry by them into the case of each disputant"⁴⁹³, have agreed that the injured state should do two things. It should offer the transgressing state the opportunity to present its case and, if the latter fails to discharge its "judicial duty", pass judgment itself⁴⁹⁴; and it should issue the declaration of war.⁴⁹⁵ Neither of these procedures is required when things do not permit of a

delay, for example, when an unjust war has been commenced against the state.⁴⁹⁶

Just form in waging a public war, on the other hand, the second aspect of the just formal cause of war, is related to the law of nature or primary law of nations and, with one exception, is the same as for private war, that is, "the requisite of moderation" must be observed.⁴⁹⁷ For example, while it is lawful to attack enemy subjects who resist, subjects who do not interfere with the execution of the right in question - women, children, farmers, prisoners and so on - should be spared; or, while it is lawful to despoil all enemy subjects, nothing should be taken which is in excess of what is due; and faith should be kept with the enemy.⁴⁹⁸

The exception is introduced towards the end of the discussion when, in connection with the question of war being just for subjects on both sides, Grotius posits the existence of the rule that "by the law of nations, not in its natural but in its positive phase", subjects on both sides in war rightfully acquire spoils.⁴⁹⁹ To which, in a later chapter, he adds the further rule that "whatever is acquired through the citizens by the command and in the interests of the state is acquired for the state".⁵⁰⁰

Grotius does not express any concern about the implications of his argument, but it undermines his case for the just public war, and this for two reasons:

- It eliminates the just material cause as an essential ingredient of the just public war, because spoils are rightfully acquired by both the state which wages war for a just material cause and the state which does not have a just material cause.

- It violates "the requisite of moderation" as embodied in the just formal cause, because the state which does not have a just material cause may rightfully acquire spoils.

Grotius' case in De Jure Praedae for the just public war is not supportive of human society. And it does not suggest the existence of international society, for there is no indication that this is the war which states and rulers have agreed to regard as just.

(c) De Jure Belli ac Pacis presents the reader with what may be called the formally or externally just public war and which Grotius variously calls the "complete war", the "formal public war", the "just or formal war" or simply the "formal war".⁵⁰¹ It is just because it accords with the secondary or volitional law of nations, and this is because it meets two requirements: firstly, it is waged by the state or ruler on each side; and, secondly, it is publicly declared.⁵⁰²

A just material cause is not a requisite of Grotius' third kind of just war: "(T)o harm an enemy ... is permissible ... for either side indiscriminately."⁵⁰³ Moreover:

(I)n a public⁵⁰⁴ war ... anyone at all becomes owner, without limit or restriction, of what he has taken from the enemy.⁵⁰⁵

Nor does the final cause of war come into the discussion. The important point is that a war waged by sovereigns on both sides, and publicly declared, has particular effects, and these effects are just. In Grotius' language:

If we interpret the word just in relation to certain legal effects, in this sense surely it may be admitted that a war may⁵⁰⁶ be just from the point of view of either side ...

The formally or externally just public war is "extremely frequent"⁵⁰⁷, and Grotius devotes six chapters to an exposition of its effects.⁵⁰⁸ They distinguish themselves by their severity. To give a few examples:

- The right of killing, which is a right of war, "extends not only to those who actually bear arms, or are subjects ... but ... to all persons who are in the enemy's territory". Foreigners who have failed to depart are regarded as enemies. Subjects may be killed in "any place whatsoever": in their own country, in the country of an enemy, in territory which is "under the jurisdiction of no one"; on the sea. Children and women may be killed, also prisoners, suppliants or hostages.⁵⁰⁹

- Whole cities may be destroyed; walls may be levelled to the ground; and fields devastated. Sacred things are not exempt from destruction.⁵¹⁰

- The property of the enemy may be acquired "without limit or restriction".⁵¹¹

- Not only do prisoners become slaves, but "(t)here is no suffering which may not be inflicted with impunity upon such slaves ...".⁵¹²

- The conquerors may rule the conquered "just as they please".⁵¹³

Grotius mentions only a few exceptions to his dictum that according to the "law of nations ... anything is permissible as against an enemy".⁵¹⁴ For example, it is not permissible to kill the enemy by poison, to poison weapons or water, to use assassins or to rape women.⁵¹⁵ And there is the rule that faith must be kept with the enemy, for otherwise there would be "no limit nor termination" to such wars.⁵¹⁶

To the question: Why did states and rulers agree to such a law of war? Grotius provides an answer which does not amount to a statement on behalf of the idea of international society:

To undertake to decide regarding the justice of a war between two peoples had been dangerous for other peoples, who were on this account involved in a foreign war ... Furthermore, even in a lawful⁵¹⁷ war, from external indications it can hardly be adequately known what is the just limit of self-defence, of recovering what is one's own, or of inflicting punishments; in consequence it has seemed altogether preferable to leave decisions in regard to such matters to the scruples of the belligerents ...⁵¹⁸

Not only did the law of war result because states and rulers did not see themselves as forming a society, but the idea of "a greater whole" is also not a part of "the scruples of the belligerents". As Grotius does not fail to point out, they have regard only for what is advantageous for themselves.⁵¹⁹

Grotius' formally or externally just public war in De Jure Belli ac Pacis is an expression of a plurality of states and rulers, negating both international society and human society.

(d) De Jure Belli ac Pacis also contains the idea of what may be called the materially or morally just public war. Grotius refers to it sometimes as the "just war" or the "less formal war", at other times simply as "public war".⁵²⁰

Its efficient cause may be the state or ruler, but it need not be.
As he puts it:

In war the principal efficient cause is generally the person whose interest is at stake ... in public war the ⁵²¹public power, in most cases the sovereign power.

The enemy may be a state or ruler, but it also may be a private person or private persons.⁵²²

There may be a public declaration of war, but there need not be.⁵²³

Its claim to justice derives from the nature of its material cause: this needs to be just or, as he also formulates it:

(I)f the cause of a war should be unjust, even if the war should have been undertaken in a lawful ⁵²⁴way, all acts which arise therefrom are unjust ...⁵²⁵

They are unjust, not from the point of view of any law "properly so-called", but, as he puts it in this context, from the point of view of "moral injustice".⁵²⁶

Grotius sometimes calls the just cause "just cause", but at other times, and at the more formal level, he refers to it as "justifiable cause"⁵²⁷, pointing out that many a thinker before him has equated the latter with "pretext" or "nominal cause".⁵²⁸ But whatever the choice of words, he means that which is "free from reproach and just".⁵²⁹ In opposition to the just or justifiable cause he places the unjust cause which, in agreement with said thinkers, he also identifies as "persuasive cause" or "real cause".⁵³⁰ This language suggests, and Grotius leaves it as a suggestion, that the real cause of war is not also a just cause or, to put it the other way round, the material cause of war, which is just, is the apparent and not the real cause.

The unjust or real cause of war receives only a few pages' coverage. Its main instances are: "the fear of something uncertain"; "advantage apart from necessity"; "the refusal of marriage"; "the desire for richer land"; "the discovery" of what is held by another; "the desire to rule others against their will on the pretext that it is for their good"; the claim to universal empire by emperor or pope; "the desire to fulfil prophecies, without the command of God"; and the desire to force

the Christian religion on those who are unwilling to accept it.⁵³¹

The just or justifiable cause of war, on the other hand, occupies most of Book Two of De Jure Belli ac Pacis - or this, at least, is what the opening paragraph of its first chapter suggests: "Let us proceed to the causes of war - I mean the justifiable causes".⁵³² Yet much of what Grotius covers in Book Two is not about just causes of war but about rights and, occasionally, about an obligation⁵³³ - a fact communicated by the opening words of many a chapter. For example, one finds the following beginnings: "From the point of view of individual right ..." ⁵³⁴ - "A serious difficulty arises at this point in regard to the right of usucaption"⁵³⁵ - "A right is acquired not only over things but also over persons".⁵³⁶ And as the chapter begins, so it continues.

It is, of course, possible to see each of these chapters as containing the unwritten invitation to identify the violation of a right discussed, or the neglect of an obligation mentioned, as a just cause of war, but to do so would mean to say something which - a very few exceptions apart⁵³⁷ - Grotius himself chooses not to say. To offer a few examples:

- The chapter "On Secondary Acquisition ..." states that owners of property have the right to transfer ownership; that sovereignty can be transferred; that sovereignty over a part of the people cannot be transferred by the people against the will of the part; that sovereignty over a place can be transferred; that the public domain cannot be transferred; that a will is a form of transfer.⁵³⁸ A just cause of war is not specified by Grotius.

- The chapter "On Promises" investigates what constitutes a "perfect promise"⁵³⁹, but does not identify a just cause of war.

- The chapter "On Treaties and Sponsions" discusses different types of treaties and asks whether they are permissible; it also asks whether one side may be freed by "the perfidy" of the other. The answer is "yes".⁵⁴⁰ It does not ask whether this constitutes a just cause of war.

Furthermore, the rights presented in Book Two are mainly rights "for which we are indebted to the law of nature".⁵⁴¹ As such they do not belong to those things which this law enjoins or forbids, but relate to that which it permits⁵⁴² - and this, as Section Five above found, is ac-

accompanied by uncertainty.

Thus, much of what Book Two is concerned with may be seen as being about causes of war, rather than just causes, and this is what Grotius himself indicates in the "Prolegomena": "The second book", he writes, "having for its object to set forth all the causes from which war can arise ...".⁵⁴³

The generous-looking coverage of the just or justifiable causes of war does not, then, provide much information on the main ingredient of Grotius' materially or morally just public war - the just material cause. So, what is the little that it does provide?

At the general and abstract level Grotius identifies four just causes: "defence, the obtaining of that which belongs to us or is our due, and ... punishment"⁵⁴⁴, pointing out that the first of these, defence, is a right which "does not arise from another's wrong".⁵⁴⁵ At the less general and more concrete level he distinguishes between what may be referred to as "just causes concerning self" and "just causes concerning another":

(i) Concerning self. It is just for states and rulers to resort to war in order:

- To defend themselves against a "threatened" injury:

(I)t is permissible (for public powers) to forestall an act of violence which is not immediate, but which is seen to be threatening from a distance ...⁵⁴⁶

This, however, does not mean that a state or ruler is entitled to "weaken a growing power which, if it become too great, may be a source of danger".⁵⁴⁷

- To seek reparation for an injury received. States and rulers may, for example, exercise "the right of reprisals" and authorize their subjects to seize the goods of subjects of another state or ruler in order to recover the debt of that state or ruler.⁵⁴⁸

- To inflict punishment for an injury received. The injury may, for example, consist in the ill-treatment of their ambassadors, the denial of burial to their dead, or the help extended to their enemies.⁵⁴⁹

(ii) Concerning another. It is just for states and rulers to resort to war in order:

- To assist their subjects. As Grotius puts it: A "particularly necessary concern is for subjects", and he mentions the Romans who "often waged wars because their traders and sailors had been wrongfully treated".⁵⁵⁰

- To help allies or friends. As Grotius knows: "The Romans ... frequently waged wars ... not only on behalf of their allies ... but also on behalf of their friends".⁵⁵¹

- To help "any persons whatsoever"⁵⁵², for "liberty to serve the interests of human society through punishments ... is in the hands of the highest authorities ...".⁵⁵³ The examples which Grotius gives relate to the punishment of those who "oppress" their own people, that is tyrants; those who show "impiety towards their parents"; those who feed on human flesh; or those who engage in piracy.⁵⁵⁴

- To defend God. In Grotius' words: "(T)hose who ... abolish (religion) may be restrained in the name of human society ...".⁵⁵⁵

The right to assist another, it is worth noting, is accompanied by qualifications⁵⁵⁶, and the right to intervene, where punishment would require intervention, is often withheld.⁵⁵⁷

The above examples represent Grotius' main instances, at the more concrete level, of just material causes of war; yet even they do not always reveal the nature of the wrong - whether not yet committed or already done - which justifies the resort to arms.

To leave the just material cause of war and to turn to its just formal cause: according to Grotius just form in waging the materially or morally just public war consists in observing moderation. He devotes seven chapters to the exposition of this idea⁵⁵⁸, submitting precepts such as:

- Innocent persons such as women, children, and old men should not be killed; religious men or men of letters, farmers or merchants should not be injured; prisoners of war or hostages should not be deprived of life.⁵⁵⁹

- Devastation of that which belongs to the enemy should be refrained from, and sacred and consecrated things should be preserved.⁵⁶⁰

- The enemy's property should not be retained beyond the amount of his debt.⁵⁶¹

- A slave, that is, a prisoner of war, should suffer no more than is permitted by "the nature of justice and goodness".⁵⁶²

- Sovereignty over the vanquished should not be acquired.⁵⁶³

These precepts resemble those presented in De Jure Praedae, but, in contrast with what he says in the earlier work⁵⁶⁴, in De Jure Belli ac Pacis he does not portray them as being imposed by the law of nature "properly so-called", but ascribes them to moral justice, goodness, highmindedness, what is right from the point of view of religion and morals, a sense of shame, mercy, clemency, humaneness, rules of love, fairness, kindness, prudence, generosity⁵⁶⁵ - things which reason declares to be honourable and praiseworthy, but not obligatory.⁵⁶⁶

The end and aim of war, its final cause, is scarcely mentioned in De Jure Belli ac Pacis.⁵⁶⁷ The chapter "On the Good Faith of States by Which War Is Ended" discusses questions such as: Who has the right to make peace? - How to interpret peace treaties - How a peace treaty may be broken - How war may be ended by lot, set combat and arbitration⁵⁶⁸, noting that "the parties" do not usually "arrive at peace by a confession of wrong", whencefore treaties should be given that interpretation which "puts the parties on an equality with regard to the justice of war".⁵⁶⁹

The materially or morally just public war in De Jure Belli ac Pacis neither strengthens the idea of human society nor points to the existence of international society, mainly because its essential ingredient - the just material cause - is poorly developed and rests on insecure ground. And Grotius himself does not make any claims for it other than this: If rulers fight for an unjust cause, they "cannot reach the Kingdom of Heaven without repentance".⁵⁷⁰

None of Grotius' four kinds of just war suggests that there is an international society with which it must not come into conflict if it wants to retain the quality of being just: the just private war in De

Jure Praedae is concerned with human society and not with international society; the just public war in De Jure Praedae, which may be seen as combining the two just public wars of De Jure Belli ac Pacis, is not identified as the war which states and rulers have agreed to regard as just; the formally or externally just public war in De Jure Belli ac Pacis reflects the idea of a plurality rather than a society of states and rulers; and the materially or morally just public war in De Jure Belli ac Pacis fails as an argument.

Of Grotius' four kinds of just war only one - the private war in De Jure Praedae - supports the idea of human society; the just public war in De Jure Praedae and the formally or externally just public war in De Jure Belli ac Pacis are in conflict with human society, because they violate the idea of justice as it inheres in its law, the law of nature or primary law of nations; and the materially or morally just public war in De Jure Belli ac Pacis, because of the weakness of its argument, is no more supportive of the idea of human society than of international society.

10. Moderation

Grotius' writings contain the idea of moderation and also that of its opposite, immoderation. Various instances of both have appeared at different times in the course of this chapter, and it will be the task of this section to bring them together and to evaluate them.

(a) The idea of moderation occurs in four variants:

(i) It presents itself as the idea of the "middle ground". Grotius identifies as the medium or modus or mediocritas "that which lies between extremes" and, on numerous occasions, expresses himself in favour of it. For example, in A Treatise on the Antiquity ... he "most commends" the government of the Hollanders, that is, a "Government of the Nobles", because it is "placed between the Regall Authority, and the Authority of the Common People", and hence "avoideth the evils of both of them, and draweth unto it selfe from them all which is good after it".⁵⁷¹ Or, in De Jure Praedae, he declares:

Justice consists in taking a middle course. It is wrong to inflict injury, but it is also wrong to endure injury.⁵⁷²

Or, in De Jure Belli ac Pacis, when speaking of those who endorse all war, no matter how unjust, and those who are against all war, he expresses the opinion that "(f)or both extremes ... a remedy must be found ...".⁵⁷³ On other occasions, however, he sacrifices the "middle ground" to the idea of the extreme: "(T)here are some things of which the extent is limited by no boundaries". The example he submits: "We cannot ... worship God too much ...".⁵⁷⁴

(ii) The idea of using words rather than force is a second form of moderation present in his writings. In both De Jure Praedae and De Jure Belli ac Pacis Grotius mentions numerous thinkers of Antiquity, men such as Herodotus, Euripides, Thucydides, Terence, Livy and Tacitus, as having expressed themselves in favour of settling disputes by "discussion" rather than "violence"⁵⁷⁵, and, in De Jure Belli ac Pacis, he adds instances of arbitration.⁵⁷⁶ Yet in neither work does he portray himself as an advocate of the use of words in place of the use of force. In De Jure Praedae he identifies it as an "honourable" but not a "necessary measure"⁵⁷⁷; and in De Jure Belli ac Pacis, while presenting it as a possible method, in case of doubt, of avoiding war, even declaring that "(e)specially ... Christian kings and states are bound to pursue this method ..."⁵⁷⁸, he undermines it when finding that, in such matters, states and rulers prefer not "to have recourse to the judgements of others".⁵⁷⁹

(iii) Moderate is that which accords with the law of nature or primary law of nations. Grotius makes this point "forcefully" in De Jure Praedae when discussing just form in waging war, private and public, identifying any act which is committed in excess of that which the law of nature or primary law of nations prescribes as transgressing the "requisite of moderation". Does not "that most sacred of natural precepts" decree that "man must not be prodigally misused by his fellow man"?⁵⁸⁰ In De Jure Belli ac Pacis, however, he does not reaffirm this link between moderation and the law of nature or primary law of nations.⁵⁸¹

(iv) When, in De Jure Belli ac Pacis, Grotius links the idea of moderation - and this may be taken as its fourth manifestation - to just form in waging the materially or morally just public war, he invokes "higher grounds", reasons less "forceful" than law - moral justice, highmindedness, a sense of shame, mercy, goodness, kindness, and so on.⁵⁸² Moderation also has "its advantages", he points out, and should

be "valued" on that account: it takes away from the enemy "a great weapon, despair"; it gives the impression of "great assurance of victory"; it is likely to win the minds of men, be they the enemy or someone else; and it identifies him who wages war as a Christian.⁵⁸³

Grotius' four variants of the idea of moderation suggest that his commitment to this idea is limited - an impression which is reinforced by the existence in his writings of the idea of immoderation.

(b) Apart from acting as a competitor of the "middle ground", the idea of immoderation occurs mainly in connection with volitional law - law within the state and law between states.

(i) Grotius admits the idea of immoderation into the state when he discusses "a human law ... approved by God": the law of non-resistance. It says that a ruler may resort to injustice, arbitrariness, violence, oppression, and the subject has no right to resist.⁵⁸⁴ Immoderation goes with impunity because:

(B)eyond doubt the most important element in public affairs is the constituted order of bearing rule and rendering obedience ... This truly cannot coexist⁵⁸⁵ with individual licence to offer resistance.

(ii) Grotius finds a place for the idea of immoderation between states and rulers when he attaches it to that part of the secondary or volitional law of nations which concerns itself with what is permitted in the formally or externally just public war.

In De Jure Praedae he ascribes to the secondary or volitional law of nations the rule which makes it permissible for the just and unjust belligerent alike to irrevocably acquire the enemy's property⁵⁸⁶ - a rule which contravenes the "requisite of moderation", as it grants the unjust party a right for which there is no corresponding claim. In De Jure Belli ac Pacis he depicts a severe "law of war" as part of the secondary or volitional law of nations⁵⁸⁷, offering as an explanation the following thought: "For his own advantage, therefore, each one resorts to so extreme severity in cases in which it seems expedient ...".⁵⁸⁸

Moderation and immoderation exist side by side in Grotius' writings, and there is no attempt on his part to reconcile the one with the other except to declare the former to be "right" and the latter to be "permis-

sible".⁵⁸⁹ And, as this section has shown, he does not give the former a clear endorsement.

Grotius links the idea of moderation to the law of nature or primary law of nations but attaches it to different "phases", which may be interpreted to mean that he does not regard it as an essential ingredient of the idea of human society. He never establishes a link between moderation and the secondary or volitional law of nations. Its exercise in accordance with moral justice and its many variants may be seen as benefitting states and rulers in their relations with one another, but he rarely portrays it that way. On the other hand, he does not hesitate to associate the secondary or volitional law of nations with the idea of immoderation - a view which goes against the idea of international society.

Conclusion

Why, it may be asked, present this chapter - longer than the preceding three - when what it shows is not what is the case but what is not the case? Not to include it, it may be replied, would only prompt the question: Why not? Gierke, Wight and Bull are at one in attributing the idea of international society to Grotius, and this study is concerned with thinkers whom they regard as early exponents of this idea. Furthermore, they are not only unanimous in crediting Grotius with the idea of international society, but Wight and Bull are also prepared to name the tradition of thought to which this idea is central the "Grotian tradition" and to refer to its adherents as the "Grotians", for they see Grotius as "cardinal" in the advancement of this way of thinking about international relations. There is an additional reason: the findings of this chapter, negative though they are, may help to advance the knowledge of Grotius the man of history, for knowledge grows not only by affirmation.

In support of their decision to appropriate Grotius for the via media, Gierke, Wight and Bull offer some references to his writings, and the ideas thus identified exist, but they are not sufficient to permit the inference, which all three scholars draw, that Grotius has the idea of international society; furthermore, and this is equally important, there are other ideas in his writings which do not reinforce or complement the former, but qualify them, changing their meaning and significance.

Grotius, to present the main findings of this inquiry, does not view "international politics as taking place within an international society" nor does he say that they should, even though he has the term societas gentium. The feature which stands out in the picture that has been taking shape in the course of this chapter is the absence of a bond among the independent and formally equal states and rulers that are universally present. There is the law of nature or primary law of nations, but the accent is on those "phases" which are not obligatory; there also is the secondary or volitional law of nations, but it is ill defined, and its limited subject-matter reinforces rather than bridges the separateness that goes with plurality; other potential links such as good faith, religion, and civilization are not developed; commerce, diplomacy and war - activities which, as the preceding chapters found, help to establish whether a thinker has the idea of international society - do not, in this case, make of the plurality of states and rulers a society of states and rulers. Moderation is present, but so is its opposite, immoderation.

Grotius does not fit the via media, but nor is he a representative of the universalist tradition of thought. On this point there is agreement between the findings of this study and the accounts of Gierke, Wight and Bull. Grotius is not in favour of a world government (Gierke)⁵⁹⁰, nor does he argue for the replacement, by peaceful or violent means, of states and rulers by the universal society of mankind (Wight and Bull).⁵⁹¹ Section Two of this chapter identifies Grotius as rejecting universalism, and subsequent sections do not modify this initial position. Grotius accords a good deal of space to the idea of human society, but he does not give it a position of primacy. Human society, as he presents it, depends for its well-being on the support of states and rulers, and this may or may not be forthcoming. It thus even lacks the quality of being potentially destructive of states and rulers, which Bull ascribes to this idea.⁵⁹²

Grotius' lack of rapport with both the via media and the universalist tradition of thought raises the question whether he should, in spite of his condemnation of Carneades, be more appropriately placed among the realists as defined by Gierke, Wight, and Bull.

These three scholars require a member of this tradition of thought to reject "the idea of a natural community binding together the states"

(Gierke)⁵⁹³, to assert the doctrine that there is no "wider society to embrace states" (Wight)⁵⁹⁴ or to hold that there is no society of states (Bull).⁵⁹⁵ Grotius does not do this - he simply fails to establish the existence of such a society.

However, his poorly developed secondary or volitional law of nations may be seen as representing no more than "the principles and rules which states ... have agreed to regard as obligatory" (Wight)⁵⁹⁶ or "rules of prudence and expediency" (Bull).⁵⁹⁷ More specifically, Grotius' lines of reasoning, as present in De Jure Praedae, Mare Liberum, A Treatise on the Antiquity ..., "The Colonial Conferences between England and the Netherlands in 1613 and 1615" and, at times, in De Jure Belli ac Pacis, correspond rather neatly to one of Bull's criteria of the realist tradition of thought, to wit:

If any moral or legal goals are to be pursued in international politics, these can only be the moral or legal goals of the state itself.⁵⁹⁸

Consideration of the interests of other states and rulers: this idea finds no more support in Grotius than in Carneades.

On the other hand, the presence of ideas such as human society and its law, the law of nature or primary law of nations, and moderation militates against Grotius' appropriation for the third tradition of thought.

Elements of all three traditions are present in Grotius' writings, and they cannot be built into one general theory of international relations, be it the universalist, the realist, or the via media.

To conclude on a more constructive note:

It is possible to find a positive explanation for the vaguenesses, inconsistencies and disconnections which characterize Grotius' writings, if one abandons the assumption of Grotius the thinker being their author, and replaces it by another assumption, that of Grotius the politician.

Grotius the politician, who identifies the cause of his fatherland with his own, does not choose ideas for their truth-value or explanatory power, nor does he aim at moulding them into a general theory or sys-

tem of thought. For him ideas are tools to be employed where and when his cause requires it. To him it does not matter how well defined they are, or how or whether they interrelate. He is ready to desert them where and when his cause demands it. Ideas are there to satisfy the needs of the moment and to satisfy them well.

Grotius the politician is a hypothesis derived from the many sources consulted for the purposes of this chapter. It is, as Roelofsen confirms⁵⁹⁹, a hypothesis worth exploring, holding the promise of taking knowledge further in the direction of Grotius the man of history.

PART THREE

AN EVALUATION

CHAPTER VII

A PATTERN OF IDEAS

The search for the idea of international society, presented in Part Two of this study, has met with the unexpected no less than with the hoped for.

Chapter Two finds evidence, dispersed through numerous writings, for the existence of the idea of international society well before 1500. Chapters Three, Four and Five identify Erasmus, Vitoria and Gentili as thinkers of the via media - Erasmus, writing in the first third of the sixteenth century, offers the idea of a society of Christian princes; Vitoria, his near-contemporary, puts forward the idea of a community of perfect communities; and Gentili, towards the end of the sixteenth/early seventeenth century, chooses the image of the "lofty structure" to present his idea of a society of free princes and free peoples. Chapter Six, however, discovers that Grotius, writing his works in the first half of the seventeenth century, offers reflections about the relations among states and rulers which are not inspired by the idea of international society.

This third and final part of the study compares the findings of the search, and relates them to the initial hypothesis presented in Chapter One. It comprises two chapters, Chapter Eight, which addresses itself to the thinkers, and this chapter, which is concerned with the idea.

The initial hypothesis suggests, and the findings confirm, that the idea of international society is a composite idea. Its ingredients or components are numerous other ideas. Some of these, as the chapters on Erasmus, Vitoria, Gentili and Grotius show, recur with each thinker; others are less constant. Those which reappear do not necessarily present themselves in the same language or have precisely the same meaning, nor are they always associated in the same way. This variety, which finds visual expression in the four chapters in the changing number of sections, under sometimes differently worded headings, may for the purposes of this evaluation be contained within the following four sections: One, The Members of International Society; Two, That Which

Links and Circumscribes; Three, The Origin, Extent and Termination of International Society; and Four, That Which Is Desirable.

1. The Members of International Society

One of the ideas which recurs with unflinching regularity in all four thinkers is the idea of a plurality of political entities.

In some respects, they present differing images of these entities:

(a) Erasmus refers to them as Christian princes; Vitoria as perfect communities; Gentili as free princes and free peoples; and Grotius as states and rulers.

(b) Erasmus clothes them in the Christian religion; Vitoria, Gentili and Grotius do not insist on the same religion.

(c) Erasmus does not reveal in whom sovereignty resides; Vitoria places it almost invariably in the community¹; Gentili is prepared to ascribe it to prince or people²; and the same is true of Grotius, although he uses different language to formulate this idea.³

(d) Erasmus emphasizes the wisdom and goodness of the Christian prince⁴; Vitoria stresses that the perfect community has "its own laws and its own council and its own magistrates"⁵; the feature which Gentili singles out in the prince or people is their freedom from a superior⁶; and Grotius is concerned with civil or sovereign power.⁷

In other important respects, the four images resemble one another.

(a) Erasmus' Christian prince, Vitoria's perfect community, Gentili's free prince or people, and Grotius' state or ruler share the characteristic of not being subject to another prince, community, people, state or ruler - they are independent or sovereign. The Christian prince, as Erasmus formulates it, is "the supreme ruler" of his realm⁸; the perfect community, as Vitoria reasons, is "complete in itself" or "self-sufficing"⁹; Gentili's free prince or people has no "earthly judge"¹⁰; and Grotius' state or ruler is "complete" or "self-sufficient" or, as he also puts it, is not "under the rule of another human will".¹¹ And in this respect they are equal - prince with prince; community with community; people with people; state with state; and ruler with ruler.

(b) Erasmus, Vitoria, Gentili and Grotius are also at one in attaching to this attribute of being independent or sovereign the rights and obligations with which they invest princes, communities, peoples, states and rulers in relation to one another, although they differ to some extent in the way in which they distribute these rights and obligations: Erasmus emphasizes obligations; Vitoria and Gentili very nearly balance rights and obligations; Grotius, on the other hand, puts the emphasis on rights. These points receive further attention in Section Two below.

(c) A third point of correspondence: All four leave their princes, communities, peoples, states and rulers free to choose the form of government that they wish to have. Erasmus, who gives the same religion to his princes, does not prescribe the same form of government for them¹²; Vitoria intimates that the perfect community adopts the form of government "it desires, even if this be not the best form"¹³; Gentili makes it clear that he does not have a "best" form: his princes and peoples have whatever form of government they have, and he sees no reason why they should not change from one form to another¹⁴; and Grotius puts it this way: because there is no agreement on what constitutes "superior excellence of this or that form", the important point is that there be free choice.¹⁵

The question, then, of who exercises sovereignty is not a major concern for them, and it may be answered differently from prince to prince, community to community, people to people, state to state, and ruler to ruler. What matters - at least to Erasmus, Vitoria and Gentili - is that sovereignty, irrespective of who exercises it, is exercised justly: power is not for purposes of tyranny, but for purposes of administration. This idea recurs like a refrain from Erasmus to Vitoria, and from Vitoria to Gentili. The wise and good prince, Erasmus holds, respects the laws, and the laws embody "the fundamental principles of equity and honesty".¹⁶ The ruler who is entrusted with the administration of the perfect community, Vitoria sets forth, considers what is lawful and what creates and conserves felicity.¹⁷ However "absolute" power may be, Gentili submits, "nothing unseemly is admitted".¹⁸ Grotius, while agreeing that it is unjust to show disrespect for the laws, condones it in the one who exercises the sovereign power that he rightfully possesses: more important than justice is the "constituted order".¹⁹ Of the four thinkers Vitoria is the only one to grant the

right of resistance.²⁰ Erasmus does not refer to it, and Gentili and Grotius withhold it²¹, except that the latter concedes it where the ruler tampers with the "constituted order".²²

(d) There is a further point of correspondence between the images which the four thinkers present of their princes, communities, peoples, states and rulers. They all contain the idea - although it does not always appear in the same garb - that what happens within one realm is of significance to the rest of the world. Erasmus puts it this way: If each prince strives to beautify his own country, "then all will be flourishing everywhere"; if one of them does wrong, it will be to the detriment of all.²³ A right of intervention, if the latter is accorded, is no more than hinted at.²⁴ Vitoria presents it as follows: If a perfect community is faced by a tyrannical ruler or adheres to tyrannical laws, other perfect communities are entitled to intervene²⁵; however, the latter do not necessarily have the right of intervention if all that is "at fault" is that the administration of the former is not "up to the standard required by human and civil claims".²⁶ Gentili gives it the following expression: In case of internal injustice, and this may take the form of an unjust or cruel ruler, or it may express itself in a violation of the law of nature, the outside has the right to intervene.²⁷ Grotius echoes Gentili in what he says about injustice internally and intervention from the outside²⁸; but in his case, the idea coexists uncomfortably with his other idea that the "constituted order" is more important than justice - a coexistence which perhaps explains the numerous qualifications which he attaches to the right of intervention.²⁹

(e) Another, and final, point of correspondence is that the political entities portrayed by Erasmus, Vitoria, Gentili and Grotius are not necessarily collectivities but may be individuals. In the case of Erasmus, the emphasis is entirely on individuals, although it is quite possible that the sovereign power with which he endows them resides, in fact, in the communities of which they are the rulers, rather than in themselves. Vitoria depicts communities rather than individuals, although, when he comes to the perfect spiritual community, he is prepared to place its sovereign power "in certain persons".³⁰ Gentili's principes are peoples or individuals; and the same is true of Grotius' political entities. Individuals or collectivities - by virtue of their sovereignty they are the same, having the same rights and the same ob-

ligations in relation to one another.

To be distinguished from the sovereign individual is the subject or citizen. Any rights and obligations which he may have in the external context belong to him - and Erasmus, Vitoria, Gentili and Grotius are in agreement on this point - as a member of a particular community or "a part of a particular ruler", and are defined by the laws or rules that exist among the sovereign entities - the princes, communities, peoples, states and rulers.³¹ Vitoria, Gentili and Grotius are further agreed on what may be called the idea of mutual liability, that is, they hold that for a wrong which the subject or citizen commits abroad, his community or ruler may be held responsible, and, vice versa, a wrong committed by the latter may be avenged on the former; and if the subject or citizen suffers a wrong, his community or ruler is entitled to seek redress.³² Erasmus does not go into these details. Grotius, in addition, elaborates the idea of the private individual who is entitled to enforce his rights under the law of nature or primary law of nations by means of the private war, but he places it in a context where there are no states and rulers or where these are not functioning³³, hence outside any society that may exist among states and rulers. In the internal context, the subject or citizen - this, at least, is the view of Erasmus, Vitoria and Gentili - is entitled to just rule³⁴; but, if such rule is not forthcoming, he has no entitlement to help from the outside, even though the outside may be entitled to help him.

The subject or citizen may, then, not be given a higher status than "indirect member" of international society - a position for which the pirate and at times the rebel do not qualify.

Erasmus, Vitoria and Gentili, to summarize this section, present the entities which constitute political plurality - princes, communities or peoples - as sovereign and, in this respect, equal; free to choose the form of government which they desire; concerned with the pursuit of justice internally; open to intervention from the outside, in case such pursuit is neglected, but not unreservedly so; and endowed with rights and obligations in relation to one another. They appear as collectivities and/or individuals. Grotius offers an image of these entities which differs mainly in two respects: internally, he depicts them as being concerned with the maintenance of the "constituted order" rather than with the pursuit of justice; and, in the external context,

he endows them with rights rather than obligations.

2. That Which Links and Circumscribes

The idea of that which links political entity to political entity recurs in all four thinkers, and they all depict it as consisting of sets of ideas, although they do not all opt for the same ones. They also are at one in deriving from these sets of ideas the rights and obligations with which they invest their princes, communities, peoples, states and rulers in relation to one another, but they differ, not only in respect to particular rights and obligations which they present, but also in the way in which they present them. Lastly, three of the four thinkers include a word of advice which reinforces that which links and circumscribes; the fourth does not have such advice.

(a) In the case of Erasmus, that which links encloses three sets of ideas which reinforce and complement one another.

First among these is the Christian religion or, as he prefers to call it, the philosophy of Christ. To be Christian is as much an attribute of his princes as is being supreme; and to be a Christian prince means to be bound to all other Christian princes. "Among all Christian princes", Erasmus notes, "there is at once a very firm and holy bond because of the very fact that they are Christian".³⁵ Supplementing the Christian religion are all those ideas which lie embedded in "the noble old systems of thought" of Antiquity - perhaps, also, inspired by Christ. Sharing these ideas means to be linked by what Erasmus calls "learning".³⁶ Complementing religion and learning are legal ideas - those ideas which are contained in a just positive law of nations, that is, a law which Christian princes impose upon themselves.³⁷

Religion, learning and law provide Christian princes with a code of conduct which tells them, on the one hand, to respect one another's separateness and sovereignty. The temporal Christian prince, as Erasmus puts it, should not inflict harm on another prince - he should not attack him, he should not take his riches, he should not subject him to his rule or religion, and he should not break a promise made to him.³⁸ The temporal Christian prince is entitled to go to war, but only if it is a question of defending his country or religion.³⁹ On the other hand, the Christian princes' code of conduct prescribes co-operation.

The temporal Christian prince, as Erasmus formulates it, should act in common with other Christian princes in achieving peace when war has broken out; in strengthening and beautifying their respective realms; and in helping a Christian people in distress.⁴⁰ The spiritual Christian prince is subject to the same two kinds of precept. On the one hand, he should not, as Erasmus points out, become involved in "worldly things" but should uphold the rule of Christ; on the other hand, he should use the authority of his office to arbitrate and mediate in conflicts among temporal Christian princes.⁴¹

Erasmus' way of seeing that which links, although formulated in terms of obligations rather than rights, supports both the idea of separateness and sovereignty and that of society.

His word of advice amounts to this: Whatever it may be right to do according to religion, learning and law, it is wise to be moderate. Moderation tempers power, and tempered power is conducive to harmony.⁴²

(b) Vitoria presents two sets of ideas, the first of which comprises the law of nations. It links Christian and non-Christian perfect temporal communities. At times, it appears as positive law, its author being the world as a whole. As Vitoria formulates it, "(t)he world as a whole ... has the power to create laws that are just and fitting for all ...".⁴³ At other times, it takes the form of natural law. "What natural reason has established among all nations", he writes, "is called the law of nations". At its origin is God.⁴⁴

The Christian religion forms the second set of ideas. It makes for a bond among those perfect communities which have adopted it - the Christian community, the Christian church, the Christian state, as Vitoria variously refers to it.⁴⁵

Law and religion complement one another where they coexist, but they do not necessarily reinforce one another.

The law of nations in both its forms is the source of the rights and obligations which perfect temporal communities have in relation to one another. Some of these rights are negative. As Vitoria presents it, the perfect temporal community does not have the right to deprive another perfect temporal community of what belongs to it, nor does it have the right to claim discovery in relation to territory which al-

ready has legitimate owners, nor the right to force another perfect temporal community to accept its religion. These negative rights correspond to the obligation to respect the separateness and sovereignty of other perfect temporal communities.⁴⁶ Other rights are positive. Thus, the perfect temporal community has the right to trade with another perfect temporal community, and the members of the former are entitled to travel to, and sojourn among the latter. The obligation attached to these rights is "not to do harm" to the other temporal community. The latter, in turn, is under the obligation to respect the rights of the former. Both the positive rights and the obligations which accompany them correspond to what Vitoria calls "natural society and fellowship".⁴⁷ The right to go to war is another positive right held by the perfect temporal community. It is circumscribed by the obligation not to go to war, unless it is just; and a war is just, according to Vitoria, only if it is fought in defence of either separateness and sovereignty or of natural society and fellowship.⁴⁸

The bond which constitutes the Christian religion creates a special relationship between what Vitoria calls Christian spiritual power and Christian temporal power. As he sees it, the latter is under the obligation to further and, if necessary, to serve the interests of the former, and the former is under the obligation to respect the separateness of the latter and to limit interference with it to cases of necessity.⁴⁹

Vitoria's law of nations, as a link between perfect temporal communities, emphasizes obligations and rights, whereas the Christian religion, as an additional link between Christian perfect communities, places the emphasis on obligations rather than rights. Yet, both uphold the idea of separateness and sovereignty, on the one hand, and that of society, on the other.

His word of advice is this: Whatever it may be lawful to do, it is important to consider what is advisable. Often, though not always, it is advisable to exercise moderation rather than to insist on what is lawful. Moderation is conducive to peace and security. Only in case of persistent enmity is it advisable not to put moderation ahead of what is lawful.⁵⁰

(c) In the case of Gentili, that which links consists of two sets of ideas which reinforce and complement one another.

The first of these centres on the concept of human society. As Gentili depicts it, the "great association of the human race", that "great society", owes its existence to nature. Nature, he says, has created human beings akin; it has given them love for one another; it has made them "inclined to union"; and, as he notes, through this common bond of nature, through this human society, "the nations of the earth are united".⁵¹

The other set comprises those ideas which constitute the law of nations. It presents itself as natural law, natural reason, natural instinct, agreement, custom or, as Gentili puts it, the law of nations is that which is "in use among all the nations of men, which native reason has established among all human beings"; it contains "certain unwritten laws given to (men) by God ... gained, not by training, but by instinct"; it is that which "natural reason has established among all peoples"; it is natural law.⁵² Its essence, he declares, is the principle of good faith.⁵³

This twofold link formed by the ideas of human society and a natural law of nations generates the rights and obligations with which Gentili endows his free princes and free peoples in relation to one another. As he presents it, princes and peoples have the right to participate in commerce, and they are under the obligation to do so. Commerce is necessary, not only for a more even distribution of the products of the earth, but also in order "to bring men together". Only if participation causes "harm", may it be refused, for a limited time and/or to a limited extent.⁵⁴ Princes and peoples have the right to send ambassadors to one another, and they are obliged to receive them. Diplomacy is necessary, for where there is "such reciprocity of rights", there "inevitably" is a need for negotiations. Only if admission means "suffering harm", may it be refused. Ambassadors have the right to be free from violence, provided that they themselves refrain from committing an offence.⁵⁵ Princes and peoples have the right to go to war, but only if it is necessary - if the conflict cannot be resolved "by words", and if it has a just cause - a requirement which is not met unless the war is fought in defence of "self" and the rights which attach thereto, or for "the sake of others".⁵⁶ Princes and peoples have the right to conclude

peace; their obligation is to conclude a just peace.⁵⁷ And finally, princes and peoples are under the obligation to observe the principle of good faith in their dealings with one another, in times of peace and in war.⁵⁸ All of which, as Gentili sees it, amounts to the right, and obligation, of princes and peoples to maintain the law of nations.⁵⁹ It safeguards both separateness and sovereignty, on the one hand, and "natural kinship", on the other.

Gentili, like Vitoria when treating of the law of nations, emphasizes both obligations and rights.

The word of advice which he offers is this: Be moderate. Observe the proper limit. Depending on circumstances, it may be fitting to use no force at all, or it may be proper to use less severity than the laws permit; but, whatever the circumstances, never go beyond what is lawful and just. Moderation is virtue. It serves "justice, humanity and good precedent".⁶⁰

(d) Grotius is the third thinker to present two sets of ideas. They both belong to the realm of law, but they do not necessarily reinforce or complement one another.

The first of these is the law of nature or primary law of nations. It is the law which is "innate in every individual", "the same among all nations"; it is "a dictate of right reason which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God".⁶¹ What Grotius emphasizes, however, when he discusses this law, is not what it forbids or enjoins, but what it permits, and this, as he shows, is changeable. By the law of nature, a man has the right to hunt wild animals, fish, and birds, "so long as municipal law does not intervene"; nature confers upon all men the right to resist in order to avoid injury, but "the state ..., in the interest of public peace and order, can limit that common right of resistance". Under the primary law of nations "all things were common property" and there were "no commercial transactions"; yet "(f)reedom of trade ... springs from the primary law of nations, which has a natural and permanent cause, so that it cannot be abrogated"; but states and rulers have the right to conclude treaties which exclude others from commerce.⁶² With the empha-

sis on rights, and changeable rights, Grotius' law of nature or primary law of nations is likely to make for division rather than agreement.

The other set of ideas comprises the secondary or volitional law of nations. It is, as Gierke summarizes Grotius' various definitions of it, "the concordant positive law of all or many nations".⁶³ It formulates the will or agreement of states and rulers in relation to diplomatic matters. As Grotius presents it, there is no right of states and rulers to send ambassadors, rather, there is the right of ambassadors to be admitted. The right of admission does not entail the obligation to admit, or, as he puts it, "it does not command the admission of ambassadors". When admission is granted, ambassadors are entitled to full security, that is, they have the right to be free from violence even if they commit grave offences. Third states and rulers are not under the obligation to respect the inviolability of ambassadors, and the latter have no "right of passage". A safe passage is tied to a safe-conduct, and third states and rulers have the right to withhold it.⁶⁴

The same law also formulates that which states and rulers have agreed to in relation to war. As Grotius depicts the formally or externally just public war, states and rulers have the right to go to war without being under the obligation to have a just material cause of war. The proviso is that they declare it publicly.⁶⁵ The idea of a just material cause appears in the context of another public war, the morally or materially just public war, but Grotius gives this idea neither a definite content nor standing.⁶⁶

The secondary or volitional law of nations includes the further agreement that states and rulers have the right to enter into treaties "no matter how unfair". That is to say, there is no obligation that treaties be just. And there is no mention of an obligation that treaties be kept: one side may be freed by "the perfidy" of the other.⁶⁷ As he presents it, the secondary or volitional law of nations reinforces rather than bridges the separateness that goes with plurality. Other potential links such as the principle of good faith, the Christian religion, and the idea of civilization are not developed.⁶⁸

Grotius argues in terms of rights, and changeable rights⁶⁹, rather than obligations. His way of depicting that which links supports the idea of separateness and sovereignty, but not that of society. He is not against offering a word of advice, but it usually lacks the quality

of that which circumscribes, as when he submits that "(t)hat which benefits the circumstances in which the state is situated, is especially beneficial".⁷⁰ At times, while displaying the idea of restraint, it lacks the quality of that which links. For example, when he admonishes rulers to keep good faith, he appeals to their conscience and reputation.⁷¹ Or it meets with that which contradicts it. Grotius has the idea of moderation, but also that of immoderation.⁷² He offers no advice which both links and circumscribes.

All four thinkers have the idea of that which links, although it never recurs in exactly the same form, but while Erasmus, Vitoria and Gentili present it as circumscribing the separateness and sovereignty of their princes, communities and peoples, and thus supporting the idea of society, Grotius does not do so in the case of his states and rulers.

3. The Origin, Extent and Termination of International Society

Erasmus, Vitoria and Gentili do not treat directly of these aspects of international society, but their thinking about them may be captured by looking at the idea of the authority of that which links and circumscribes. All three thinkers, and also Grotius, have the idea of the authority of that which links, but Grotius, it should be remembered, does not extend the meaning of that which links to include that which circumscribes. For the purposes of this section, four questions may usefully be asked.

(a) Authoritative - on what grounds?

As Erasmus sees it, the Christian religion or philosophy of Christ is the law of Christ. As it is divine, it "neither ought to be judged nor can it be abolished", but all human action is to be judged in accordance with it.⁷³ The old systems of thought inherited from Antiquity are not as "basic an authority" as "Sacred Scripture", but they are "noble", providing "the best principles of conduct". Their authors were not divine, but they were "sage", inspired in all likelihood by some divine power, perhaps also by Christ.⁷⁴ The law of nations is of human origin. Wise and good Christian princes devise it and agree to abide by it. It accords with the idea of justice as it inheres in religion and learning.⁷⁵

The law of nations as natural law, Vitoria teaches, is "necessary" law. God is its author; hence it is just and binding.⁷⁶ As positive law, it is of human origin and "only relatively good", but as "the world as a whole" is its author, it is just and fitting for all. It cannot be abrogated, as it is "impossible" that "the consensus of the whole world" could be secured for its abrogation.⁷⁷ The Christian religion, it is Vitoria's conviction, is "the true religion". All other religions are "sects".⁷⁸

The idea of human society, Gentili writes, is "true" and "a fundamental principle". Wise and good men have affirmed and reaffirmed it all along the ages, and such men speak according to "the promptings of nature".⁷⁹ The law of nations, Gentili has no doubt, comes from God. He gave it to men when they needed it. He gave it to them in the form of natural law, natural reason, natural instinct, and it has "successively seemed acceptable to all". The law of nations established itself like a custom, and, like a custom, it is binding on all.⁸⁰

Grotius' answer is firm only in relation to law which is the product of the human will.⁸¹ The secondary or volitional law of nations, he declares, has "obligatory force". It represents "the will of all nations, or of many nations".⁸² Usefulness, rather than justice, is its concern.

All four thinkers present that which links their princes, communities, peoples, states and rulers as authoritative. They give it, or its main ingredient, the form of law, although they do not all choose the same law, nor do they, when it is the same law, endow it with exactly the same characteristics, but while Erasmus, Vitoria and Gentili depict its source as existing independently of princes, communities and peoples, Grotius places his states and rulers at its origin.

(b) Authoritative - to what extent?

There are two aspects to this question, reflecting two meanings of the word "extent": "Authoritative for whom?" and "Authoritative to what degree?"

Erasmus makes it clear that the authority of that which links is of less than universal extent. It limits itself to Christian princes and their peoples, leaving outside its reach all those who do not share

the philosophy of Christ - non-Christian princes and their peoples.⁸³ However, and Erasmus makes this point equally clearly, not all Christian princes observe at all times that which they ought to observe. There may be spiritual Christian princes who lack wisdom and goodness and get "immersed" in worldly things⁸⁴, and there may be temporal Christian princes who lack the same two qualities and neither exercise justice nor do they co-operate.⁸⁵ In order to make such princes do what they ought to do it is necessary to make them wiser and better, and the way to achieve this is not by punishment - wars should not be fought unless they are for purposes of defence⁸⁶ - but by greater learning. As he puts it: "Arm them with the best principles of conduct".⁸⁷

The law of nations in both its forms, Vitoria is certain, is authoritative for all perfect temporal communities that exist in the world. "The law of nations", he says, is that which "natural reason has established among all nations". It is that which "the world as a whole" has created, and no country may refuse to be bound by it.⁸⁸ But Vitoria also knows, and here he is in agreement with Erasmus, that that which is authoritative is not always treated as such - there may be ignorance of the law in question, or unwillingness to comply with it, and the latter may happen occasionally or persistently.⁸⁹ The response, he suggests, should be mindful of circumstances. Sometimes, it may be best to limit it to "teaching and instruction", "persuasion" and "demonstration"⁹⁰; at other times, it may be advisable to resort to punishment. "The avoidance of disorder in the world", he says, "may require a more effective means than defensive war".⁹¹ Punishment in war may also be a way of deterring wrongdoing. But when the answer is punishment, there should be a regard for "moderation and proportion"; only where there is no hope for "amends" ever to be made, is there no requirement for restraint.⁹²

Of less than universal extent, Vitoria is equally certain, is the authority of the Christian religion - it does not reach beyond Christian perfect communities.⁹³ Whether or not it is always faithfully observed, he does not say. He simply posits the right of punishment in case of non-observance.⁹⁴

Gentili does not mention the idea of human society in this context, but the law of nations, he agrees with Vitoria, is endowed with universal authority. All free princes and free peoples are subject to

it or, as he also formulates it, "the law of nations is that which is in use among all the nations of men".⁹⁵ But, like Erasmus and Vitoria before him, he acknowledges that that which is authoritative is not always "equally observed by all"⁹⁶; and, like them, he thinks about ways of encouraging compliance. History, he points out, teaches that disregard was punished, sometimes severely, and the right to punish a violation of the law of nations is still a just cause of war.⁹⁷ Earlier ages, he adds, also made use of "unfavourable publicity" such that the resulting "loss of prestige" was "more serious than the rest of the damage".⁹⁸ Who or what is to prevent the present or future ages from responding in like fashion?

The secondary or volitional law of nations, Grotius states, is authoritative for states and rulers, but he leaves it open whether this includes "all" states and rulers, or only "many".⁹⁹ He also does not indicate whether he regards observance of this law amongst those for whom it is authoritative as satisfactory or something less than that, nor does he formulate ideas on how to encourage observance.¹⁰⁰ He identifies the right to punish "wrongdoing" as a just cause of war, but it is not always clear what constitutes wrongdoing¹⁰¹, and the formally or externally just public war, as he presents it, does not require a materially just cause in order to qualify as just.¹⁰²

Erasmus, Vitoria and Gentili agree that that which links is authoritative for all their princes, communities and peoples, which means that it is of universal extent in the case of Vitoria's perfect temporal communities and Gentili's free princes and free peoples. They further agree that it does not follow that all their princes, communities and peoples will also always comply with it; and they present ideas to counter non-compliance. Grotius does not commit himself on the first point, and abstains from discussing the other two.

(c) Authoritative - since when?

Erasmus is not explicit on this point, but it is clear from what he says about the why of the authority of that which links, and its extent, that he regards the philosophy of Christ as having been authoritative for many centuries. As he presents it, this law is authoritative by definition, hence since its beginning, and it came into existence with the life and teaching of Christ. It is, and has been, authorita-

tive for Christian princes, and their history is part of the history of the beginning and expansion of Christendom. The noble old systems of thought, by contrast, have only more recently become authoritative for Christian princes, and a just positive law of nations has yet to be established. Whether earlier times knew of one, he does not say.

Vitoria offers no more explicit an answer than Erasmus, but what he says about the authority of that which links permits the conclusion that its history is long. As he depicts the law of nations in both its forms, it is, and always has been, authoritative, its author being God and "the world as a whole" respectively. It is, and has been, authoritative for perfect temporal communities, and these have a distant origin. "Through the descendants of Noah", Vitoria says, "sovereignty and lordship began in the world".¹⁰³ Being authoritative is equally an attribute of the Christian religion. As he presents it, it is, and has been, the norm for Christian perfect communities, and these came into existence, not as early as perfect temporal communities, but some time after Christ.

Gentili is prepared to make the historical dimension of the authority of that which links more clearly visible than either Erasmus or Vitoria. He presents the law of nations as inherently authoritative - and to this extent he resembles Vitoria - but, unlike him, he goes on to say that God gave it to men when they needed it, and this was early in their history or, as he puts it, "after our sin".¹⁰⁴ Men needed it when "the differentiation of peoples", "the separation of dominions" took place, and they further needed it for what happened afterwards, for "from that separation of dominions have followed wars, treaties, etc.". ¹⁰⁵ The authority of the law of nations, Gentili is in no doubt, goes back to a remote past - certainly to well before the time of Belus, the founder of Babylon in 4000 B.C.¹⁰⁶ He says less about the idea of human society, limiting himself to the observation that it had exponents as far back as the fourth century B.C.¹⁰⁷

Grotius does not indicate when it was, or might have been, that states and rulers agreed to devise laws for themselves, nor does he say when it was, or might have been, that states began to form. However, his reliance on the "old authorities" for support of his ideas may be interpreted to mean that he would not object to attributing both of these phenomena to the ancient world.

All four thinkers, it may be concluded, see the authority of that which links, or of its main ingredient, beginning in the distant past, and, in the case of Erasmus, Vitoria and Gentili, having existed for as long as Christian princes, perfect communities, and free princes and peoples have existed.

(d) Authoritative - until when?

Erasmus, Vitoria and Gentili have room for the idea that not all their princes, communities and peoples may at all times observe that which they ought to observe, but they do not say how many of them would have to ignore it before it could no longer be regarded as authoritative. They also do not reveal whether they consider it possible that all their princes, communities and peoples might one day disregard it. It is clear how they would depict such a world: Erasmus would empty it of justice and co-operation and put tyranny and conflict in their place; Vitoria would remove justice and friendship, and fill it with disorder and enmity; and Gentili would present inequality, insecurity and isolation where there had been justice and participation. It is equally clear that at least two of them do not think it likely that such a world will come into existence. Wise and good Christian princes, Erasmus holds, have existed in the past, hence it is likely that they will exist in the future; and Christian princes who lack these two qualities can be made wiser and better, if not wholly wise and good. Free princes and free peoples, Gentili points out, have the material need and the natural desire to communicate with one another, and the law of nations makes this possible. Vitoria may have a corresponding view, but, unless one is prepared to accept his conception of human nature as evidence to the contrary, he does not disclose it. Human beings, he says, are "frail, weak and needy", but they also have "reason and virtue".¹⁰⁸

Grotius is silent on these questions. He does not reveal how many of his states and rulers would have to show disrespect for the law of nations before its authority would have to be regarded as no longer existent, but then he does not specify for how many it is meant to be authoritative - for all or only for many? He does not indicate whether he considers general non-observance a possibility, but then he does not insist that observance should be as complete as possible. And he says nothing about the likelihood of general non-observance, but then, how significant a difference would it make to his world? Free commerce

and monopolized commerce, admitting ambassadors and not admitting them, granting a safe-conduct and withholding one, war with a just material cause and war without such a cause - all this would be compatible with the law of nations being observed.

None of the four thinkers answers the question "Authoritative - until when?" Three of them make it clear that they would consider the demise of the authority of that which links undesirable, and of these Erasmus and Gentili make it equally clear that they think it unlikely. Grotius offers no answer to these questions.

To sum up: Erasmus, Vitoria and Gentili place the origin of international society at the same time as the origin of the political entities which compose it. For Erasmus, its extent is the world of Christian princes, for Vitoria and Gentili, the world as a whole. All three would find its termination undesirable, and Erasmus and Gentili consider it unlikely. Grotius gives no beginning to his law of nations except by implication, is not specific about its extent, and offers no reflections about its termination.

4. That Which Is Desirable

Last but not least, there is the idea of that which is desirable. It recurs from thinker to thinker and comprises those abstract, general and pervasive ideas which identify what is regarded as worth having and preserving - ideas which, for the purpose of this section, may be called values.

Numerous are these values in the case of Erasmus, Vitoria and Gentili, and the patterns which they form are complex, changing with each thinker, but a valid abstract capturing their essential character may be obtained by focusing on five ideas: independence, co-operation, justice, peace and moderation. Grotius shares only the first of these: independence.

(a) Independence

All four thinkers are agreed that princes, communities, peoples, states and rulers are free to make decisions and act accordingly.

"(T)he decision is with the king", says Erasmus, "who cannot be compelled or passed over by any one".¹⁰⁹ The state, Vitoria teaches, "does

not conduct its affairs in conjunction with any other state whatsoever".¹¹⁰ Gentili points out that the law of nations "insists and orders that control over one's own affairs shall be final ...".¹¹¹ And Grotius puts it this way: because "the actions" of states and rulers "are not subject to the legal control of another ... they cannot be rendered void by the operation of another human will".¹¹² Not to be independent seems unacceptable, if not intolerable.

Their opposition to political universalism confirms their attachment to independence. It also points to some other values which they see as being supported by independence. Erasmus links it to security and prosperity, Vitoria to that which is just and pleasing to God, Gentili to justice, and Grotius to usefulness.

Independence, they agree, is worth preserving, and they all make its defence against unjust attack a just cause of war.¹¹³ Only if such a war risks destroying prince, community, people, state or ruler, must it not be fought. Survival is more important than independence.¹¹⁴

(b) Co-operation

Co-operation is dear to three of the four thinkers, although it does not have exactly the same meaning for them. Erasmus sees it as collaboration or acting in common. For Vitoria and Gentili, it sometimes has the same meaning; at other times, the one depicts it as openness or non-exclusion, and the other as participation or sharing. Wise and good Christian princes, Erasmus submits, co-operate in maintaining peace; they make joint efforts to restore peace when war has broken out; they work together to strengthen and beautify their respective countries; and they help when one of them is in distress.¹¹⁵ Perfect temporal communities, Vitoria argues, are not closed to one another, but receive one another's traders and travellers, and those who wish to stay for a while; they defend not only friends and allies, but anybody who "suffers unjustly"; and Christian perfect temporal communities, in addition, help Christian spiritual power "to preserve and protect itself".¹¹⁶ Free princes and free peoples, Gentili insists, do not exclude themselves from commerce and diplomacy, nor do they exclude others. They all participate, and when it is a question of defending another prince or people against unjust attack, they are prepared to do so.¹¹⁷

Co-operation is not only satisfying in itself, it also promotes other values. Erasmus connects it with peace, prosperity, justice and independence, Vitoria with justice, happiness, peace, security and independence; and Gentili sees it as contributing to material equality, friendship, justice, peace and independence.

Clearly, co-operation is worth preserving. Yet, the refusal to co-operate is not necessarily a just cause of war. When co-operation means acting in common, none of the three thinkers makes non-co-operation punishable in war. Erasmus perceives it as a lack of wisdom and goodness, and prescribes greater learning as a means to counteract it. Vitoria permits various forms of punishment short of war, but places these in the context of Christian temporal power refusing to co-operate with Christian spiritual power.¹¹⁸ Gentili does not suggest any counter-measures. When co-operation means openness and participation, both Vitoria and Gentili identify non-co-operation as a just cause of war¹¹⁹, but neither of them regards war as the only possible answer. If co-operation means "suffering harm", and Erasmus, Vitoria and Gentili are at one again, it may be refused without inviting any remedial action.

Grotius does not reveal a concern for co-operation, but only mentions, as a matter of right, that states and rulers may defend subjects, allies, friends and "any person whatsoever" against wrongful treatment.¹²⁰

(c) Justice

Erasmus, Vitoria and Gentili present justice as equity, fairness, reasonableness or appropriateness.¹²¹ Justice, they are agreed, inheres in that which links prince to prince, community to community and people to people, and often, though not always, it is indistinguishable from moderation; it is also present in conduct which accords with that which links. The just prince, Erasmus holds, does not attack another prince, take his riches, subject him to his rule or religion, nor does he break a promise made to him.¹²² Vitoria and Gentili concur, although they formulate it differently, and they go beyond Erasmus by including co-operation in that which is just.¹²³ For the latter, co-operation is an aspect of goodness rather than justice, although like justice, it inheres in that which links.¹²⁴ The just prince, Erasmus adds, only goes to war if he has a just cause.¹²⁵ Vitoria and Gentili agree. Communi-

ties and peoples abstain from war, unless they have a just cause.¹²⁶
The question which they answer differently is: What constitutes a just cause?

Justice is a value in itself, and it is important in relation to other values. It protects independence and, through it, plurality and diversity. In the case of Vitoria and Gentili, it also safeguards co-operation and, through it, "natural society and fellowship" and "human kinship". Justice promotes peace and, in the case of Erasmus, it works, together with co-operation, for prosperity and the well-being of Christendom; in the case of Vitoria and Gentili, it adds security to peace and makes for a "condition of happiness" and "friendship" in the world at large.

Erasmus', Vitoria's and Gentili's commitment to justice finds expression in the way in which they present it; in their unwavering opposition to those who deny the existence of that which is just or who refuse to be bound by it - those whom Wight and Bull identify as the realists; and in the fact that they make a violation of justice a just cause of war. Only if such a war risks producing injustices greater than the one to be remedied, must it not be undertaken.

Grotius distinguishes between what is just and what is lawful or "not unjust", and attaches the latter to that which links his states and rulers. The law of nations, as he presents it, reflects a concern with usefulness rather than justice, and is compatible with the idea that that which is "most lawful is most unjust".¹²⁷ Adherence to it advances order, but the order which Grotius endorses is not always that which is acceptable to all; at times, it appears as that which suits only the stronger.

(d) Peace

Peace, as Erasmus, Vitoria and Gentili depict it, has a positive meaning. "But what is peace except friendship among many?" asks Erasmus, and equates it with concord, harmony and tranquillity.¹²⁸ Vitoria uses the same ideas to give expression to his understanding of peace.¹²⁹ And Gentili is not against citing St Augustine: "Peace", he says, "is ordered harmony", adding that "order is the proper distribution of things, which ... is the nature of justice".¹³⁰

Peace, as they perceive it, is order joined by justice, and their choice of words reveals that they regard it as a pleasing state of affairs. For Erasmus, it opens the way to the prosperity and well-being of Christendom. Vitoria sees it as a precondition for "natural felicity" and "the happiness of the world". And Gentili takes it as an indication that things are as they ought to be according to nature, for, by nature, he is convinced, men are friends, and not enemies, of one another.

Peace, the three agree, is such a good that it must not be abandoned lightly. Erasmus never tires of portraying the physical and moral devastations that result from war. Vitoria and Gentili do not use the same method of dissuasion, but they join Erasmus in requiring princes, communities and peoples to go to war only if it is in defence of justice, and then only if all attempts at peaceful settlement have failed.¹³¹ And Erasmus and Vitoria make it clear that, at times, peace without justice may be preferable to the "justest" of wars. Such is the case, they hold, when the choice is not between justice and injustice, but between more and less injustice.¹³²

Grotius says little about peace, and what he says does not permit the conclusion that he regards it as desirable or preferable to war. He defines peace as an "act of the state on behalf of the whole body and on behalf of its parts", and raises some questions which concern the "when" and "how" of such acts rather than the "why".¹³³

(e) Moderation

Erasmus never defines moderation, but his attachment to it is such that it has been called a passion.¹³⁴ Vitoria presents it as "temperance" or that which "has regard for proportion".¹³⁵ And Gentili puts it this way: "The unique power and inmost marrow of all the virtues is moderation ... (A) middle-course is the seat of moderation and moderation is virtue".¹³⁶ Whatever their attempts at defining it, moderation accompanies many of their ideas and qualifies them.

To focus on the preceding four values:

Moderation tempers independence. Princes, communities and peoples, while free to make decisions and act accordingly, are not free to make any decisions whatsoever. They must not violate that which links.

Moderation imposes limits on co-operation. Prince co-operates with prince, community with community, and people with people, but not at the cost of "suffering harm".¹³⁷

Moderation inheres in their idea of justice, and it is there to modify conduct which, while just, may, in particular circumstances, not be "wise" or "advisable" or "proper".

And the peace which they endorse is not peace at any price, but peace based on justice; and if justice is violated, peace may be abandoned. War itself, as they agree, is not beyond the reach of moderation: its conduct must accord with it.

Moderation is the value which makes it possible for independence, co-operation, justice and peace to coexist, and all three thinkers display a firm commitment to it. Only if moderation ceases to be "advisable" or "proper" - a possibility which Vitoria and Gentili concede¹³⁸ - may it be disregarded.

Grotius, like Erasmus, Vitoria and Gentili, has the idea of moderation, but he does not present it as qualifying the value which he shares with them: independence. He also has the idea of immoderation, but he does not attempt to reconcile the one with the other, nor does he give a clear endorsement of the former.

To conclude this section: independence, at a more concrete and less general level, becomes sovereignty, co-operation translates into commerce, diplomacy and other activities that bridge separateness, justice finds expression in law and other authoritative systems of thought, and concern with peace is responsible for the idea of the just war. Moderation does not take the form of another idea, but affects all - the regulative principle operative within the idea of international society.

At yet another level, more concrete again and less general than the preceding one, that which is common to all becomes, through the inclusion of further values, that which is specific to each: Erasmus' perfect Christian prince, Vitoria's perfect community and Gentili's perfect ambassador. Grotius does not share their pattern of values, and they do not share his idea of that which is perfect: the fatherland.

Conclusion

The hypothesis presented in Chapter One delineates a pattern of ideas which the findings of Chapters Three, Four and Five confirm and extend.

Firstly, the members of international society, according to the hypothesis, are sovereign states.

The findings identify them as Christian princes, perfect communities, and free princes and free peoples - collectivities and/or individuals. The characteristic which they share, in respect to which they are equal, and which qualifies them for membership, is their sovereignty. The findings also include ideas about the internal context, establish a link between it and the external context, and permit a statement about the subject or citizen in international society.

Secondly, according to the hypothesis, there is a tie that binds the sovereign states. Gierke gives it the form of a natural law of nations; Wight describes it as international social consciousness or a feeling of belonging together; and Bull depicts it as common rules and common institutions.

The findings present the idea of that which links and circumscribes. It consists of various sets of ideas - the Christian religion, the noble old systems of thought, a positive law of nations, a natural law of nations and the idea of human society - which formulate the rights and obligations of princes, communities and peoples in relation to one another.

Thirdly, the hypothesis identifies the diplomatic system, the maintenance of the balance of power, the regular working of international law, the great powers, and economic, social and technical co-operation as the manifestations of international society, and presents them as its institutions.

The findings depict commerce, diplomacy and war - Gentili also has the idea of the maintenance of the balance of power, but does not give it prominence - as activities, rather than institutions, that take place among princes, communities and peoples.

Fourthly, the extent of international society, according to Gierke,

is universal. Wight and Bull, for the period under consideration, see it limited to Christendom, Wight even only to the Christendom of Western Europe.

The findings show Erasmus to be in agreement with Wight and Bull, although he extends it to the whole of Christendom, and Vitoria and Gentili to concur with Gierke. The findings also offer reflections about the degree of compliance within international society and how to encourage it, the origin of international society, and its termination.

Lastly, the hypothesis does not specify any values, but their presence is implied.

The findings generate the idea of that which is desirable. Characteristic of its complex pattern is the presence of five values: independence, co-operation, justice, peace and moderation.

The idea of international society found in Erasmus, Vitoria and Gentili contains all the elements of the hypothesis of Gierke, Wight and Bull, but, contrary to the original expectation, it does not recur in Grotius. This finding does not falsify their claim that there is such an idea, but it does affect the hypothesis in another respect which will be taken up in the concluding chapter.

CHAPTER VIII

A WAY OF THINKING

There remain the findings relating to the thinkers, and they may be presented in two sections: One, Observation and Thought; and Two, The via media - a Tradition of Thought rather than a Way of Thinking?

1. Observation and Thought

Erasmus, Vitoria, Gentili and Grotius did not formulate their ideas in isolation from the events of their time. As the findings of this study indicate, they knew and communicated with well-informed, often politically important figures, and were themselves well-informed. Events of their time were not only at the origin of many of their writings, but references to events also became part of the contents of their writings.¹ The image of the ivory tower man does not fit any one of them.

They were well-informed and realistic observers - realistic in the sense of discerning and sober - neither omitting nor glossing over the conflicts of their time. This finding is most readily available in the case of Erasmus, whose observations have been compared by historians with those of his contemporaries and found to be shrewd and reliable.² In the case of Vitoria, Gentili and Grotius, studies of this kind do not exist, but there are the views of contemporaries. Vitoria would not have been consulted by "theologians, jurists, knights, merchants, and royal councillors", it is fair to assume, if he had been regarded as ignorant and lacking in understanding of the problems which led them to seek his advice³; and the Spanish King Philip IV would not have been interested in attracting Grotius "to the services of His Majesty", had he not held him to have "(o)f all those who live today" "the most perfect insight into the situation of the Rebels".⁴ The fact that Grotius has also been found to show "wilful partiality" and lack of "reliability" when reporting on events is not necessarily incompatible with the ability to see things realistically.⁵ In the case of Gentili, the evidence permitted no more certain a conclusion than that "sometimes he saw the events of his time realistically, and that, at other times, it cannot be ruled out that he did"⁶, the only contemporary view which has been found being that of the Oxford historian Wood who describes him as "the

most noted and famous civilian and the ornament of the university of his time".⁷ Gentili, however, was not only professor of civil law at Oxford, but also a forensic practitioner in London, a member of Gray's Inn, and Spanish advocate in the Court of Admiralty.

The word "realistic" used to describe the observations of Erasmus, Vitoria, Gentili and Grotius may not be the best one - in fact, studies such as R.N. Berki's intimate just how difficult a word it is⁸ - but it establishes a linguistic link to "realists" - those who claim that they alone are realistic observers.

The findings, then, suggest that thinkers other than realists may be accomplished observers of events - what distinguishes them is the way in which they react to what they observe.

Erasmus, Vitoria and Gentili, in responding to their observations, do not propose that the existing political plurality be abolished and a universal state or ruler be established in its place. They reject universalism and what they regard as leading in its direction - territorial expansionism or, to use a later word, imperialism. "Most of us dread the name of World Empire", Erasmus writes in 1530. "(M)en being what they are", he suggests, "there is more safety in kingdoms of moderate power united in a Christian League".⁹ There is no universal ruler now, nor was there in the past, Vitoria argues about the same time against imperialists and theocrats who claim that the Spaniards "took with them a right" to occupy the lands of the Indians. There is no law, divine or human, he explains, to support such a claim. A plurality of states is a fact, and a pleasing one at that.¹⁰ Is it not "right and just", Gentili asks towards the end of the sixteenth century, that we oppose those "who are planning and plotting universal dominion?" "No one's sovereignty must ever on any account be allowed to grow so great", he submits in reply, that "his manifest injustice" cannot be called in question.¹¹ Grotius is at one with Erasmus, Vitoria and Gentili in opposing universalism - reason, practicability and law speak against it¹² - but he is not equally insistent when it comes to policies of agrandissement. In fact, if pursued by his fatherland, they may be defended as "beneficial". "(W)ho knows", he writes early in the seventeenth century, "but that success in the East Indies might presently give us confidence to undertake some bold enterprise in the American sphere?"¹³

Erasmus, Vitoria and Gentili reject universalism, but they also oppose those who regard the violent conflicts of their time as a necessary, if not desirable accompaniment of political plurality, suggesting no other choice but to accept them and to get the best out of them. They do not use the word "realism" or any other abstract general term when referring to this way of thinking, nor do they identify Machiavelli as being representative of it. Erasmus chooses Pope Julius II as the target of his disagreement, charging him with preferring war to peace; expanding conflict rather than keeping it within bounds; preferring others to be at war rather than being linked through agreements; being intent on increasing his power and influence; having regard for what is expedient rather than what is right; using people and situations for his own purposes; and being concerned with his personal advantage rather than with what is good for the community entrusted to his care.¹⁴ Vitoria does not supply any evidence that an explicit rejection or dissection of realist thinking is one of his concerns, except that he rejects as an unjust cause of war "the prince's personal glory" or some other "advantage" to him.¹⁵ Gentili, unlike Erasmus, does not single out an individual but speaks of "the unscrupulous" - the unscrupulous deny the existence of the law of nature and of nations - or of "Greek cunning and Punic craft" - the "treacherous envoy" belongs to this category, and so does he who deceives the enemy.¹⁶ Grotius is ambiguous. On the one hand, he voices a clear disagreement with realist thinking when he attacks in Carneades all those who see "the whole law of war and peace as having no existence outside of an empty name"; who declare that nothing is unjust which is expedient; and who say that might makes right.¹⁷ On the other hand, he presents a law of nations which may be quite acceptable to realists; and so may be the lines of reasoning with which one meets in many of his writings.¹⁸

In opposition to both realism and universalism, Erasmus, Vitoria and Gentili formulate a third way, central to which is the idea of society among the entities which constitute political plurality - society among princes, communities and peoples.

2. The via media - a Tradition of Thought rather than a Way of Thinking?

Wight and Bull use the term "tradition of thought" to refer to that which links thinkers across time¹⁹, inviting the question whether the

thinkers thus linked see themselves in this way. The findings of this study are that Erasmus, Vitoria and Gentili did not.

Erasmus knew of Vitoria²⁰, but there is no indication in his writings that he had read his lectiones and relectiones. Vitoria was familiar with Erasmus' writings, as one learns from secondary sources, but these sources do not indicate with which ones, and are divided on how he reacted to them. His own writings contain hardly a reference to them.²¹ Gentili refers to both Erasmus and Vitoria, using them as sources and expressing disapproval in the one case, and admiration in the other²², but they are two among many, if not innumerable thinkers to whom he refers, according them no particular place or role in the arguments which he presents.

In the case of Grotius, the findings are less clear. In one of his works he states that he was motivated to write it, not because he found the work of earlier investigators wanting, but because he felt he was able to contribute to "the doctrines handed down" by these earlier investigators²³, even though he also speaks of its "novelty".²⁴ In another work, however, he presents himself as not belonging to any particular "sect of philosophers", but as "gathering up" the truth wherever it can be found.²⁵ What is clear is that he knows the writings of Erasmus, Vitoria and Gentili and refers to them extensively²⁶, but not more so than to other authors.

Shall the twentieth-century reader, in spite of these findings, regard these thinkers as forming a tradition of thought? There are some further findings which suggest that the answer should be "no".

Looking at the writings of Erasmus, Vitoria, Gentili and Grotius from a distance in time, one witnesses a process not so much of "handing down" to those who came later - "tradition" in one sense - as of borrowing from those who came earlier; a process furthermore which does not entail respect - "tradition" in a second, possibly predominant sense - but which is characterized by selectivity and unpredictability.²⁷ Vitoria borrows from Erasmus, Gentili from Erasmus and Vitoria, and Grotius from Erasmus, Vitoria and Gentili, at the same time as they borrow from innumerable other thinkers, not necessarily from the same ones, and, if from the same, not necessarily the same ideas, Erasmus preferring those of classical and Christian Antiquity, Vitoria, Gentili

and Grotius including the intervening ages as well. They borrow for the purpose of strengthening their own arguments, or because they want to formulate disagreement - all the while weaving their own patterns of ideas, which, when complete, impress, delight, or antagonize those who study them, not because of the borrowings from other, perhaps authoritative thinkers, which they contain, but because of the distinctiveness or independence of the arguments which they present - arguments which their authors formulate in response to their particular concerns or those of the times. As Gentili's contemporary Jean Hotman put it:

From century to century, from hand to hand, we learn from each other. Few writers have done otherwise, especially in serious discussion and matters of importance. Such a work without aid and counsel would be both too defective and too sterile ... (T)hey all borrow from each other, although each one of them has labored independently.²⁸

What links Vitoria to Erasmus, and Gentili to both, and places Grotius apart, is a way of thinking about relations between princes, communities, peoples, states and rulers which is informed by the idea of international society, according equal importance to political plurality and that which links and circumscribes - not necessarily the same plurality or the same links and constraints, as the pattern of ideas presented in the previous chapter shows - a way of thinking which regards "the other" as no less important than "the self".

Which name to give to it? It proves a question difficult to answer.

"Rationalist", as Wight suggests? Apart from being a word which requires definition rather than defines²⁹, "rationalist" belongs to a group of words which are very much a part of the realist vocabulary, for example, "rational" in "the rational actor"; "rationality" in "rationality in foreign policy"; and "reason of state" - a term which identifies an idea long associated with realist thinking.³⁰

"Constitutional", as Wight also proposes? Having been used and continuing to be used, in the realm of politics, to refer to that which is "in harmony with, authorized by, or supporting" the political constitution of a country³¹ - usages which align it with the idea of government, even central government - "constitutional" seems to be a word more congenial to universalist thinking than to that of the via media.

"Internationalist", as Bull suggests, is a word which - according to its history - has been used to identify not only those who acknowledge the existence of a plurality of states, and endorse it, but also those who regard it as "insubstantial" and "transient". "Internationalists" include, for example, international lawyers and members and sympathizers of the International Working Men's Association.³²

"Grotian", as Wight, Bull, and others propose? The findings of this study speak against this name, mainly because the way of thinking which links Vitoria to Erasmus, and Gentili to both, is not Grotius' way.

The literature mentions other attempts at finding a name. There is, for example, John Herz who initially called the way of thinking which he positions between "political realism" and "political idealism" "realist liberalism"³³, to suggest later that "realistic idealism" or "idealistic realism" might have been better terms, as they lack the connotations of the first, namely nineteenth-century free-trade and constitutional liberalism.³⁴ And, to mention another example, nearly four hundred years ago Émeric Crucé entitled his "Discourse of the Occasions and Means to Establish a General Peace, and the Liberty of Commerce throughout the World" Le Nouveau Cynée, which he addressed "To the Monarchs and Sovereign Princes of the Present Time"³⁵, seeing himself in the role of the ancient Cyneas, who advised his king, Pyrrhus of Epirus, to observe moderation in his relations with other rulers.

To come to the term via media which has been used throughout this study: As a spatial description of the relationship between the three ways of thinking it is not, the findings suggest, a perfect fit - for, while it is true that Erasmus, Vitoria and Gentili see themselves as delineating a position which places them in opposition to realism and universalism, it is also true that they do not, except in some specific contexts³⁶, see their position as being "between" the other two. Furthermore, there are indications in their writings³⁷, and in the literature more generally³⁸, that realists are not averse to establishing a direct line from "statism", to use a sixteenth-century word, to universalism via imperialism, by-passing the via media - a finding which may be read to mean that the spatial relationship between the three ways of thinking may be more fittingly described in terms of an equilateral triangle. As a qualitative description, however, the term via media captures the "unique power and inmost marrow" of this way of thinking,

permeated as it is by the idea of moderation, which enables it to respond without sacrificing that which is essential to it - political plurality and that which links and circumscribes. In this sense, Erasmus, Vitoria and Gentili understand themselves, and may be understood by those who study them.

The via media, the findings suggest, is a way of thinking which is not exclusive to Erasmus, Vitoria and Gentili, but may be met with again and again - earlier in time, and later. Its exploration, the study further suggests, holds the promise of enriching the theoretical and historical understanding of international relations - hence of capturing the imagination of those today to whom the care of peoples is entrusted - statesmen and women.

APPENDIX: A WORD ABOUT WORDS

Words are the means by which thinkers give expression to their ideas, and "discontinuity" is perhaps the word which best describes the relationship that holds between the words chosen by Gierke, Wight, and Bull to present the idea of international society, using the English language, and those employed by the four earlier thinkers in their Latin writings, or, to put the same idea more descriptively, there are few direct lines connecting the vocabularies of the two groups of thinkers separated by centuries - and this despite the "Latinate reaches"¹ of the English language. Words used as a matter of course by one group are not available to the other; words that are at the disposal of both have different meanings; words that differ between the two groups have the same meaning; and words that survive the passage of time unchanged are given a different currency.

This Appendix offers a comparison of words used by Gierke, Wight and Bull with those employed by one of the early thinkers - Vitoria has been chosen, as his writings are less extensive than those of the other three thinkers.² The comparison consists of four sections, and the emphasis is on key words - those words which denote important ideas within the idea of international society.

1. International, Society, Community

(a) To begin with the word "international", one of the constituents of the term "international society":

Wight and Bull use the word, a creation of the late eighteenth century³, in the sense of that which appertains to relations among states. Both its formative elements, "inter" and "national", go back to the Latin language, the former directly, as it is the Latin for "between", "among", "amidst", while the latter, along with the older word "nation", is derived by adaptation from natio, "nation", "people", "race".

The Latin language does not have an adjective corresponding to "international", but it has the word inter, and Vitoria uses it in conjunction with nouns which denote the specific entities with which he is concerned. Thus he speaks of the peace which is to be conserved "among

princes", pax inter principes, of the victor who sits as judge "between the states" who went to war, iudex inter respublicas; and of the law that reason has established "among all nations", ius inter omnes gentes. He also makes use of the genitive plural, for example, when he speaks of "the mutual accord of nations", consensus mutuus gentium; of "the intention of nations", intentio gentium; and of "the law of nations", ius gentium - a way of expressing himself which Gierke, writing nearly four hundred years later, also chooses, for he speaks of the society "of states" rather than "international" society.

(b) The word "society", the other constituent of the term "international society" or "society of states", is used by Gierke, Wight and Bull interchangeably with "community" to describe the nature of the relationship held to exist among states - a usage which dictionaries have not yet added to the lists of meanings and changes of meanings attributed to the two words since they appeared in the fourteenth century. At their origin are the Latin words societas and communitas respectively.

The word societas is part of Vitoria's vocabulary, but when he uses it, he does not tie it to other nouns denoting political entities. Societas gentium, to mention just one possibility, is not among his expressions. When he uses the word societas, he gives it other companions. Thus it appears together with the adjective naturalis. Societas naturalis, "natural society", is inclusive of all human beings. Or it is accompanied by the words humanus or homines. Societas humana, "human society", or societas hominum, "society of human beings", is exclusive of all who live "in solitude", in "the manner of wild beasts". Or, thirdly, it is joined by the word civilis. Societas civilis, "civil society", is "of all societies that which best provides for the needs of men".⁴

(c) The word communitas occurs in Vitoria's vocabulary in mainly one sense: communitas perfecta, "the perfect community", communitas quae habet proprias leges, proprium consilium et proprios magistratus, "the community which has its own laws, its own council and its own magistrates"⁵ - which is his definition of the state.

As used by Vitoria, societas and communitas may relate to the same entity, but if they do, they emphasize different aspects of it.

2. World, Christendom

Gierke, Wight and Bull make little use of two words which are prominent in the vocabulary of Vitoria: "the world" and "Christendom".

(a) Vitoria uses the word orbis, which he prefers to mundus, when he speaks of "the beginning of the world", principium orbis, when he contrasts "the New World", Novus Orbis, with "our world", noster orbis, or when he refutes claims by emperor and pope to universal empire. Imperator non est dominus totius orbis, "the Emperor is not lord of the whole world".⁶ Papa non est dominus civilis aut temporalis totius orbis, "the Pope is not civil or temporal lord of the whole world".⁷ He also uses the word orbis as a metonym for "mankind". Una respublica (est) pars totius orbis, "a state is a part of the world as a whole".⁸ Totus orbis ... aliquo modo est una respublica, "the world as a whole is in a way a state".⁹ He speaks of its "authority", auctoritas totius orbis, and of its "end and good", finis et bonum totius orbis.

(b) Ecclesia, "the Church", respublica christiana, "the Christian state", respublica spiritualis, "the spiritual state", christianitas, "Christianity" - these are the words which Vitoria uses when he refers to Christians collectively or to the Christian domain. Tota Ecclesia est quodammodo una respublica, "the Church as a whole is in a certain way a state".¹⁰ Provincia christiana (est) pars reipublicae (christianae), "a Christian province is a part of the Christian state".¹¹ Respublica spiritualis debet esse perfecta, "the spiritual state must be perfect".¹² And the word christianitas appears in expressions such as invadere christianitatem, "invading Christianity", or cum damno christianitatis, "to the detriment of Christianity".

3. State, Sovereignty

(a) The word "state", in the sense of "body politic" used since the sixteenth century, is employed by Gierke, Wight and Bull to identify the members of international society. It is derived from the Latin word status.

Status is part of Vitoria's vocabulary, but for him, contrary to the expectations raised by Heydte¹³, it only means "standing", "position", "condition". Thus one meets with formulations such as status reipublicae, "the position of the state", or status felix, "a happy condi-

tion".

When Vitoria refers to those public entities which he endows with rights and obligations in relation to one another, he uses a number of words other than status.

Foremost amongst these is the word respublica. Quid est respublica? "What is a state?"¹⁴ he asks. Respublica proprie vocatur perfecta communitas. "A state is properly called a perfect community".¹⁵ Quaelibet respublica habet auctoritatem indicendi et inferendi bellum. "Every state has the authority to declare and to make war".¹⁶ Apart from using it in this general sense, he also applies it to particular states, for example, when he identifies "the French" and "the English" as "two distinct and separate states", duae respublicae disparatae et differentes, ut gallorum et anglorum.¹⁷

Nearly as prevalent as respublica is the word civitas. It appears in general statements such as nihil est illi principi Deo ... acceptius quam concilia coetusque ... quae civitates appellantur, "nothing is more acceptable in the sight of God our King than are those associations called states"¹⁸, or civis (est) qui natus est in civitate, "a citizen is he who is born in a state".¹⁹ And it occurs in reference to specific states, for example, when he speaks of "free states such as Venice and Florence", liberae civitates ut sunt Venetiae et Florentiae.

Less frequently than respublica and civitas appear the two words gens and populus, but both of these, especially gens, enjoy a greater currency than natio, which is used only infrequently. Gens, which Vitoria defines as "the association based on the consent of the law and the community of interest"²⁰, is placed alongside civitas when he points out that gens vel civitas, "a people or state", may justly be punished if it fails to make amends for a wrong committed by its citizens²¹; and it is the turn of populus when he discusses the case of "a Christian people", populus christianus, which chooses a non-Christian ruler.²² References to particular peoples are numerous. Non liceret Gallis prohibere Hispanos a peregrinatione Galliae, vel etiam habitatione, aut e contrario, "it would not be lawful for the French to prevent the Spanish from travelling or even from living in France, or vice versa".²³

Respublica, civitas, gens, populus, and the proper names of na-

tions - these are the main words used by Vitoria when Gierke, Wight and Bull speak of "states".

(b) The states which Gierke, Wight and Bull identify as members of international society are "sovereign". This word, which goes back to Middle English²⁴, has at its origin the popular Latin superanus, from super "above".

Vitoria does not have the word superanus, nor does he have another, specific word to take its place. His way of giving expression to this Janus-faced idea comprises a number of words and expressions.

(i) When he speaks of the state, people, or nation, which does not have another "above" itself, he describes it as liber, "free", sui iuris, "independent", per se totum, "complete in itself", perfectus, "perfect", sibi sufficiens, "self-sufficient"; non esse pars alterius reipublicae, "not being a part of another state", non esse subiectus alicui extra se, "not being subject to any one outside itself"; habere potestatem gubernandi se, "having the power to govern itself", and by power he means facultas, auctoritas, sive ius, "ability, authority, or right".

(ii) When he refers to the prince or ruler who does not have another "above" himself and who is "above" every one else in the community, he mainly makes use of the word princeps. Principes ... non habent superiores, "princes do not have superiors"²⁵; praesunt reipublicae, "they are at the head of the state". King, emperor, and pope are principes.

Interchangeably with but less frequently than princeps occurs the word dominus. King, emperor, and pope are domini.

His main words for "supreme rule", the rule of princeps or dominus, are principatus, dominium, regnum and imperium, and of these dominium and principatus occur far more often than regnum and imperium.

(iii) And when Vitoria treats of the state, people or nation which is deprived by another of its status of being "sovereign", he uses expressions such as venire in potestatem aliorum, "to come under the power of others", venire in dicionem aliorum, "to come under the sway of others"²⁶; and he uses further expressions such as occupare principatum,

"seizing supreme rule"²⁷, dominos priores deponere et novos constituere, "deposing former lords and setting up new ones"²⁸ - combinations which intimate that he sees sovereignty as having two faces: an external and an internal.

4. International Law, Commerce, Diplomacy, Balance of Power, Great Powers and War

The terms included under this heading are used by Gierke, Wight and Bull to denote the common rules and institutions ascribed to international society. A comparative glance across the centuries identifies only one of these readily - commercium - while the others are found to have either quite different corresponding words or none at all.

(a) International Law

"International", as mentioned above, is a creation of the eighteenth century. "Law", on the other hand, goes back to a distant past, at its origin being the Old English²⁹ word lagu, plural laga. "International law", like its component "international", is an eighteenth-century invention. Older than it are the expressions "the public law of Europe" and "the law of nations".

Ius gentium is the corresponding term in Vitoria's vocabulary. Quod naturalis ratio inter omnes gentes constituit, vocatur ius gentium, "what natural reason has established among all nations is called the law of nations".³⁰ He uses the word ius in other expressions such as ius divinum, "divine law", ius humanum, "human law", ius canonicum, "canon law", ius civile, "civil law", and ius belli, "the law of war". But he employs the word lex when he refers to that body of law that constitutes the Christian religion. This is lex christiana, "the Christian law", or lex Evangelica, "the Evangelical law". In the case of "the law of nature" or "natural law" one meets with both ius naturae or ius naturale and lex naturae or lex naturale. Ius gentium, however, never becomes lex gentium, but ius gentium, as Vitoria puts it, habet vim legis, that is, it "has the force of law".³¹

(b) Commerce

The word "commerce", in the sense of exchange of merchandise, especially on a large scale between countries, has been in use since the

sixteenth century. It is derived from the Latin commercium.

Vitoria's vocabulary includes the word commercium, and he gives it the same meaning as his twentieth-century counterparts to its derivative. Et Lusitani magnum commercium habent cum similibus gentibus, quas non subiecerunt, "and the Portuguese maintain a huge commerce with similar nations (as the Spaniards), without reducing them to subjection".³²

(c) Diplomacy

The English language acquired the word "diplomacy", from French diplomatie, in the late eighteenth century. Older than it and its cognates "diplomatic" and "diplomat" are "ambassy", "ambassade", "ambassador" and "legation", "legate". Both of these groups of words are of Latin origin, the respective etymons being ambactus and legatus.

Vitoria uses the word legatus, and the point that matters to him is that legati iure gentium sunt inviolabiles, that is, "ambassadors are by the law of nations inviolable".³³

(d) Balance of Power

The first usage of the term "balance of power" has not yet been ascertained by scholarship. David Hume, writing in the 1740s, credits "these later ages" with the invention of the "phrase", which he distinguishes from the idea to which he assigns a long history³⁴; Parkinson identifies it in the Treaty of Utrecht which was concluded in 1713 to end the War of the Spanish Succession³⁵ - hints that the term "balance of power" may not have originated before the eighteenth century.

Vitoria does not give expression to the idea of the balance of power.

(e) Great Powers

Not much is known about the beginnings of the term "great powers". The Shorter Oxford English Dictionary mentions that the word "power" in the sense of a state or nation having international authority or influence was not used before the early eighteenth century.³⁶ It offers no information on the term "great powers". In his essay of 1833, entitled "The Great Powers", Leopold von Ranke expresses the view that it is "our century" that "called the great powers into being"³⁷, but he says nothing about the term which he uses to give expression to that phenomenon.

The essay seems to have been first translated into English in 1950.

Vitoria's vocabulary does not include a word or combination of words corresponding to "great powers".

(f) War

"War", like "law", does not have a Latin origin. It is a native word going back to the late Old English werre.

Vitoria's word for "war" is bellum. He speaks of "defensive war", bellum defensivum, and of "offensive war", bellum offensivum; of "the law of war", ius belli, and of "the rules of war", regulae belli; of "the just war", bellum iustum, and of "the justice of war", iustitia belli. He does not use the words privatus, "private", and publicus, "public", in conjunction with bellum, but his concern is with the latter, public war.

NOTES

CHAPTER I

1. For Gierke's word Genossenschaft a number of translations have been put forward, ranging from "association" (Lewis) to "fellowship" (Maitland and Barker). See J.D. Lewis, "Gierke, Otto von", D.L. Sills (ed.), International Encyclopaedia of the Social Sciences, vol. 6, Macmillan and The Free Press, New York, 1968, p. 178; F.W. Maitland, "Introduction", O. Gierke, Political Theories of the Middle Age, Beacon Press, Boston, 1959 (first published in 1900), pp. xxv - xxviii; E. Barker, "Introduction", O. v. Gierke, Natural Law and the Theory of Society 1500 - 1800, vol. 1, Cambridge University Press, Cambridge, 1934, p. xc. Friedrich's "co-operative association" may be the most satisfactory translation. See C.J. Friedrich, "Gierke, Otto von", in E.R.A. Seligman (ed.-in-chief), The Encyclopaedia of the Social Sciences, vol. 6, Macmillan, New York, 1931, p. 655. Gierke received the "von" during his life-time; hence one meets with both Otto Gierke and Otto von Gierke in the literature.
2. M. Wight, Systems of States, edited with an introduction by H. Bull, Leicester University Press, Leicester/London, 1977, p. 38.
3. M. Wight, "An Anatomy of International Thought", Review of International Studies, vol. 13, 1987, p. 227. For other references to Gierke, see M. Wight, "The Balance of Power and International Order", in A. James (ed.), The Bases of International Order: Essays in Honour of C.A.W. Manning, Oxford University Press, London, 1973, p. 97; Wight, Systems of States, pp. 21, 204, 214 and 215. No other scholar, either before or contemporary with Gierke, or between Gierke and Wight, is known to have presented the idea of the three ways of thinking about international relations. A variation of this idea is formulated by J.H. Herz, Political Realism and Political Idealism: A Study in Theories and Realities, University of Chicago Press, Chicago, 1951, pp. 17 - 42 and 129 - 153. See also the latter's autobiography, J.H. Herz, Vom Ueberleben: Wie ein Weltbild entstand (On Survival: How a View of the World Came into Existence), Droste, Duesseldorf, 1984, pp. 160 - 168.
4. H. Bull, The Anarchical Society: A Study of Order in World Politics, Macmillan, London, 1977, p. 24.
5. Ibid., pp. ix and 28. See also H. Bull, "Martin Wight and the Theory of International Relations: The Second Martin Wight Memorial Lecture", British Journal of International Studies, vol. 2, 1976, p. 111.
6. O. v. Gierke, Das Deutsche Genossenschaftsrecht (The German Law of Co-operative Associations), vol. 1, Akademische Druck- und Verlagsanstalt, Graz, 1954 (first published in 1868), p. 5.
7. Bull, "Martin Wight and the Theory of International Relations", p. 110.
8. Ibid.

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9. Ibid., p. 111.
10. Ibid.
11. Ibid., p. 110.
12. Ibid., p. 111.
13. In this thesis, when words of common gender do not exist in the English language, the masculine noun is used.
14. O. v. Gierke, Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien (Johannes Althusius and the Development of the Natural-Law Theories of the State), 5th ed., Scientia, Aalen, 1958 (first published in 1880), pp. 235 - 237.
15. O. v. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, Akademische Druck- und Verlagsanstalt, Graz, 1954 (first published in 1913), pp. 361 - 363 and 535 - 541; in Barker's translation, Gierke, Natural Law and the Theory of Society, the corresponding pages are: vol. 1, pp. 85 - 86 and 195 - 196; vol. 2 (notes), pp. 282 - 283 and 394 - 395.
16. Translated: The Theory of State and Corporation of Modern Times.
17. Translated: universal empire. The term was used to refer to the Roman Empire.
18. There is no entirely satisfactory translation of voelkerrechtlich, but Gierke's meaning of voelkerrechtliche Gemeinschaft is perhaps best conveyed by translating it as the legal community of nations (or states).
19. Translated: law of nations.
20. Translated: society of nations.
21. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 361.
22. For Gierke, a corporation is a juristic person, whereas a partnership is no more than the sum of its members. See Ibid., vol. 1, p. 6.
23. Ibid., vol. 4, p. 362.
24. Ibid.
25. Ibid.
26. Ibid.
27. As Barker comments: "The adjective 'moral' is only used in a negative sense, as the antithesis of 'natural' or 'physical'". See "Introduction", Gierke, Natural Law and the Theory of Society, vol. 1, p. lxv.
28. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 535.

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29. Ibid., pp. 535 - 536.
30. Translated: world state.
31. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 536.
32. M. Wight, "Western Values in International Relations", in H. Butterfield and M. Wight (eds.), Diplomatic Investigations: Essays in the Theory of International Politics, George Allen & Unwin, London, 1969 (first published in 1966), pp. 89 - 131.
33. Wight, Systems of States, pp. 38 - 39.
34. Wight, "An Anatomy of International Thought", pp. 221 - 227.
35. Bull, "Martin Wight and the Theory of International Relations", pp. 101 - 116. B. Porter, "Patterns of Thought and Practice: Martin Wight's 'International Theory'", in M. Donelan (ed.), The Reason of States: A Study in International Political Theory, George Allen & Unwin, London, 1978, pp. 64 - 74. Martin Wight's lectures were published late in 1991 - M. Wight, International Theory: The Three Traditions, edited by G. Wight and B. Porter, Leicester University Press, Leicester/London - but the book was received too late to be included in the discussion in the text of the thesis. Where possible, references to it have been added to the notes. These lectures, as the editors point out, were given in the 1950s, hence predate Wight's contributions to Diplomatic Investigations.
36. H. Bull, "Introduction", Wight, Systems of States, p. 7.
37. Wight, "Western Values", p. 92.
38. Ibid., p. 93.
39. Translated: community of mankind. Note the different meaning that Gierke ascribes to civitas maxima. See above, p. 4 and note 30.
40. Wight, "Western Values", p. 93.
41. Ibid., p. 94. The political organization advocated by universalists is discussed by Wight only in his 1960 lecture, "An Anatomy of International Thought", pp. 225 - 226.
42. Wight, "Western Values", p. 91. Translated: middle way. See also his reference to it as "the broad middle road of European thinking", in Wight, International Theory, pp. 14 - 15.
43. Wight, "Western Values", p. 95.
44. Ibid., pp. 96 - 97.
45. H. Bull, "The Grotian Conception of International Society" and "Society and Anarchy in International Relations", both in Butterfield and Wight, Diplomatic Investigations, pp. 53 and 37 - 39. A further brief account is contained in his chapter "The Importance of Grotius in the Study of International Relations", in H. Bull, B. Kingsbury and A. Roberts (eds.), Hugo Grotius and International Re-

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lations, Clarendon Press, Oxford, 1990, pp. 71 - 72.

46. Bull, The Anarchical Society, pp. 24 - 27.
47. Ibid., p. 24.
48. Ibid., pp. 24 - 25.
49. Ibid., p. 25.
50. Ibid.
51. Ibid., pp. 25 - 26.
52. Ibid., p. 26. Bull does not discuss the question of political organization in relation to universalism.
53. Ibid.
54. Ibid., p. 27.
55. Ibid.
56. See above, note 18.
57. C.T. Onions (ed.), The Shorter Oxford English Dictionary on Historical Principles, 3rd ed., vol. 1, Clarendon Press, Oxford, 1967, p. 1030.
58. Wight, "Western Values", p. 92. A dissenting voice comes from G. Schwarzenberger: "To (Henry Sumner) Maine, and to subsequent continental sociologists, we owe a distinction between models of 'society' and 'community'". See "The Grotius Factor in International Law and Relations: A Functional Approach", in Bull, Kingsbury and Roberts, Hugo Grotius and International Relations, pp. 309 - 310.
59. M. Wight, Power Politics, edited with an introduction by H. Bull and C. Holbraad, Pelican, Harmondsworth, 1979 (first published in 1946), p. 105.
60. Ibid. See also Wight, Systems of States, pp. 21 - 22, 110 - 152; and Butterfield and Wight, Diplomatic Investigations, p. 12.
61. Bull, The Anarchical Society, p. 10.
62. Ibid., p. 13.
63. G. Berridge, "The Political Theory and Institutional History of States Systems", British Journal of International Studies, vol. 6, 1980, p. 87.
64. For the continued application of this distinction, see H. Bull and A. Watson (eds.), The Expansion of International Society, Clarendon Press, Oxford, 1984, p. 1. See also A. Watson, "Hedley Bull, States Systems and International Societies", Review of International Studies, vol. 13, 1987, pp. 147 - 152.

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65. Bull, "Martin Wight and the Theory of International Relations", p. 104; Porter, "Patterns of Thought and Practice: Martin Wight's 'International Theory'", p. 65.
66. Even in his 1960 lecture "An Anatomy of International Thought", the use of a certain set of names in conjunction with the "three patterns" is implied rather than explicit. See pp. 222 - 223, 227. Since the publication of Wight, International Theory, this no longer holds true. See, for example, pp. viii, 7, 162 - 163.
67. Wight, "Western Values", p. 90.
68. Bull, "Martin Wight and the Theory of International Relations", p. 104, and Bull, The Anarchical Society, p. 24.
69. Gierke, Das Deutsche Genossenschaftsrecht, vol. 1, p. 2.
70. Wight, "Western Values", p. 90.
71. Ibid., p. 91. See also Wight's discussion "Varying Relative Strength of Traditions", International Theory, pp. 162 - 163, which includes words such as "dominant", "rival", "recessive" and "destroy". See also the phrase "the erosion of Rationalism", Ibid. p. 260.
72. Bull, The Anarchical Society, p. 24.
73. Ibid., p. 38.
74. Bull, "Society and Anarchy in International Relations", pp. 36, 40.
75. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 535.
76. Gierke, Johannes Althusius, pp. iii - vi.
77. O. v. Gierke, Das Deutsche Genossenschaftsrecht, vol. 3, Akademische Druck- und Verlagsanstalt, Graz, 1954 (first published in 1881), p. 627.
78. Gierke never completed the fourth volume of Das Deutsche Genossenschaftsrecht. As he himself put it in the Introduction, p. x: "The total work would have been greatly enriched if the planned discussion of the theory of corporations by the publicists would have been realized".
79. Ibid., vol. 1, p. 5.
80. Wight, "Western Values", p. 91.
81. Wight, Systems of States, p. 33.
82. Ibid., pp. 35 - 36.
83. Ibid., p. 38.
84. Ibid.

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85. Wight, "Western Values", p. 96.
86. Wight, Systems of States, pp. 110 - 152.
87. Wight, "An Anatomy of International Thought", pp. 221 - 222.
88. According to a comment received from Carsten Holbraad, one of Wight's students, there was no context other than "the theory of international relations". For confirmation see, for example, Wight, International Theory, pp. 7 - 24, 30 - 48, 259 - 268.
89. Bull, "Martin Wight and the Theory of International Relations", pp. 105 - 106.
90. Ibid., p. 111.
91. Bull, "Society and Anarchy in International Relations", p. 36.
92. Ibid., p. 50
93. Ibid.
94. Bull, "The Grotian Conception of International Society", p. 51.
95. Ibid., p. 73.
96. Bull, The Anarchical Society, p. xi.
97. Ibid., p. 74.
98. Ibid., p. 319.

CHAPTER II

1. "Beginning with the sixteenth century, it became customary to base the binding force of the jus gentium on a societas gentium ...". See Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 361. "A familiar aspect of the intellectual history of the modern European states-system has been the way in which its theory has fallen into three main traditions". See Wight, Systems of States, p. 38. The first thinker whom Wight mentions as a representative of the via media is Vitoria. See also Wight, International Theory, pp. 162, 260. "In the fifteenth, sixteenth and seventeenth centuries, when the universal political organisation of Western Christendom was still in process of disintegration, and modern states in process of articulation, the three patterns of thought purporting to describe the new international politics, and to prescribe conduct within it, first took shape". See Bull, The Anarchical Society, p. 27.
2. A perfect presentation of this view can be found in J. Ter Meulen, Der Gedanke der Internationalen Organisation 1300 - 1800 (The Idea of International Organization 1300 - 1800), Martinus Nijhoff, The Hague, 1968 (first published in 1917), pp. 3 - 9; it reappeared, almost unchanged, in the course of a lively seminar given by R.J. Vincent in the Department of International Relations, at The Aus-

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- tralian National University, in 1983; and a trace of it survived in the published version. See R.J. Vincent, "Edmund Burke and the Theory of International Relations", Review of International Studies, vol. 10, 1984, p. 212.
3. J. Hashagen, Europa im Mittelalter: Alte Tatsachen und neue Gesichtspunkte: Eine Einfuehrung mit besonderer Beruecksichtigung der nichtdeutschen Staaten (Europe in the Middle Ages: Old Facts and New Points of View: An Introduction with Particular Consideration of the non-German States), F. Bruckmann, Muenchen, 1951, p. 334.
 4. W. Kienast, Deutschland und Frankreich in der Kaiserzeit (900 - 1270): Weltkaiser und Einzelkoenige (Germany and France During the Time of the Emperors (900 - 1270): Universal Emperor and Individual Kings), vol. 2, Anton Hiersemann, Stuttgart, 1975 (first published in 1943), p. 255.
 5. O. Hintze, "Staatenbildung und Verfassungsentwicklung" (The Formation of States and Constitutional Development, first published in 1902), in G. Oestreich (ed.), Staat und Verfassung: Gesammelte Abhandlungen zur Allgemeinen Verfassungsgeschichte (State and Constitution: Collected Papers in General Constitutional History), Vandenhoeck & Ruprecht, Goettingen, 1970 (first published in 1962), p. 42.
 6. G. Barraclough, History in a Changing World, Basil Blackwell, Oxford, 1955, p. 102.
 7. Cited by J. Moreau-Reibel, "Le Droit de Societé Interhumaine et le 'Jus Gentium': Essai sur les Origines et le Développement des Notions jusqu'à Grotius" (The Law of Interhuman Society and the 'Jus Gentium': An Essay on the Origins and Development of Concepts Up To and Including Grotius), Recueil des Cours, vol. 77, 1950, p. 527.
 8. A.B. Bozeman, Politics and Culture in International History, Princeton University Press, Princeton, N.J., 1960, p. 499.
 9. L.R. Loomis (tr.), J.H. Mundy and K.M. Woody (eds.), The Council of Constance: The Unification of the Church, Columbia University Press, New York, 1961, p. 209.
 10. Ibid., pp. 84 - 531. The three Chronicles are: (a) Richental's Chronicle of the Council of Constance (The Council as seen by a Townsman), pp. 84 - 199; (b) Fillastre's Diary of the Council of Constance (The Council as seen by a Cardinal), pp. 200 - 465; and (c) Cerretano's Journal (The Council as seen by a Papal Notary), pp. 466 - 531.
 11. Ibid., pp. 212 - 213.
 12. Ibid., pp. 213 - 214.
 13. Ibid., p. 214.
 14. Ibid., p. 316.
 15. Ibid., pp. 343 - 344.

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16. Ibid., pp. 344 - 345.
17. Ibid., pp. 347 - 349.
18. E. Nys, Les Origines du Droit International (The Origins of International Law), Castaigne, Brussels, and Thorin & Fils, Paris, 1894, pp. 149 - 150.
19. Loomis, Mundy and Woody, The Council of Constance, p. 139.
20. Ibid., pp. 142 - 143.
21. Ibid., p. 444.
22. S.F. Belch, Paulus Vladimiri and His Doctrine Concerning International Law and Politics, 2 vols., Mouton, London/The Hague, 1965.
23. Ibid., vol. 1, p. 87.
24. Ibid., p. 412.
25. Ibid., vol. 2, p. 886.
26. Ibid., vol. 1, pp. 394 - 399.
27. Ibid., p. 399.
28. C.L. Lange, Histoire de l'Internationalisme: I. Jusqu'à la Paix de Westphalie - 1648 (History of Internationalism: I. To the Peace of Westphalia - 1648), Publications de l'Institut Nobel Norvégien, vol. 4, Aschehoug (W. Nygaard), Kristiania, 1919, p. 125.
29. H. Bonet, The Tree of Battles, translated with an introduction by G.W. Coopland, University Press, Liverpool, 1949, p. 19.
30. Ibid., p. 126.
31. Ibid.
32. F.H. Russell, The Just War in the Middle Ages, Cambridge University Press, Cambridge, 1977 (first published in 1975), pp. 3 - 15.
33. Bonet, The Tree of Battles, p. 191.
34. Ibid.
35. N. Oresme, "Traictie de la Première Invention des Monnoies" (Treatise on the First Invention of Money), in A.E. Monroe (ed.), Early Economic Thought: Selections from Economic Literature Prior to Adam Smith, Harvard University Press, Cambridge, Mass., 1930, p. 81.
36. M.L. de Mas Latrie, Traité de Paix et de Commerce et Documents Divers Concernant les Relations des Chrétiens avec les Arabes de l'Afrique Septentrionale au Moyen Age (Peace Treaties and Commercial Treaties and Various Documents Concerning the Relations of

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Christians with the Arabs of North Africa During the Middle Ages), vol. 2, Burt Franklin, New York, 1963 (first published in 1866), for example, pp. 29, 45, 46, 47, 90, 94, 123, 161, 188, 194, 196, 197, 302 and 318.

37. According to its editor, "(t)his is the very earliest representation of the flags of all the nations". See Sir Clements Markham (tr. and ed.), Book of the Knowledge of all the Kingdoms, Lands, and Lordships That Are in the World, and the Arms and Devices of Each Land and Lordship, or of the Kings and Lords Who Possess Them, The Hakluyt Society, London, 1912 (first published in 1877), p. xii.
38. Sir William Rattigan, "Bartolus", in Sir John Macdonell and E. Manson (eds.), Great Jurists of the World, John Murray, London, 1913, p. 51.
39. O. v. Gierke, Das Deutsche Genossenschaftsrecht, vol. 2, Akademische Druck- und Verlagsanstalt, Graz, 1954 (first published in 1873), p. 720.
40. Translated: of the law of nations. Regarding the difficulty of translating this word into English, see also above, Ch. I, n. 18.
41. Gierke, Das Deutsche Genossenschaftsrecht, vol. 2, p. 727.
42. C.N.S. Woolf, Bartolus of Sassoferrato: His Position in the History of Medieval Political Thought, Cambridge University Press, Cambridge, 1913, pp. 112 - 207. See also Q. Skinner, The Foundations of Modern Political Thought: I. The Renaissance, Cambridge University Press, Cambridge, 1978, pp. 9 - 12.
43. This is Gierke's introduction to John Quidort of Paris. See Das Deutsche Genossenschaftsrecht, vol. 3, p. 544.
44. Translated: On Royal and Papal Power.
45. John of Paris, On Royal and Papal Power, translated with an introduction by A.P. Monahan, Columbia University Press, New York, 1974, pp. 13 - 15. See also Friedrich August Freiherr von der Heydte, Die Geburtsstunde des souveränen Staates: Ein Beitrag zur Geschichte des Völkerrechts, der allgemeinen Staatslehre und des politischen Denkens (The Hour of Birth of the Sovereign State: A Contribution to the History of the Law of Nations, of the General Theory of the State and of Political Thought), Josef Habel, Regensburg, 1952, pp. 103 - 104.
46. John of Paris, On Royal and Papal Power, p. 43.
47. Translated: law of nature.
48. Engelbert of Volkersdorf, De Ortu et Fine Romani Imperii (On the Beginning and End of the Roman Empire), cited by Heydte, Die Geburtsstunde des souveränen Staates, p. 155.
49. Ramón Lull, Arbre de Sciencia, Del Arbre Imperial (The Tree of Knowledge, Of the Imperial Tree), cited in Ibid., pp. 97 - 98.

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50. Translated: the prince or supreme ruler.
51. Kienast, Deutschland und Frankreich in der Kaiserzeit, pp. 473 - 474.
52. Marino da Caramanico, Glosse zu den Konstitutionen Friedrich II (Comments on the Constitutions of Frederick II), cited in Ibid., p. 474.
53. Ibid., pp. 474 - 475.
54. Translated: On the Laws and Customs of England.
55. Kienast, Deutschland und Frankreich in der Kaiserzeit, pp. 466 - 467.
56. See, for example, F. Copleston, A History of Philosophy, vol. 2, Part II, Image/Doubleday, New York, 1962 (first published in 1950), pp. 55 - 143.
57. Ibid., p. 141.
58. Thomas Aquinas, Summa Theologica (The Whole of Theology), cited by Heydte, Die Geburtsstunde des souveränen Staates, pp. 257 - 258.
59. The Decretals are collections of papal decrees forming part of canon law.
60. Innocent IV, Apparatus ... Super Quinque Libris Decretalium (Comments ... on Five Books of the Decretals), cited by Heydte, Die Geburtsstunde des souveränen Staates, p. 260.
61. Raymond of Peñafort, Summa Casuum (All Cases), cited in Ibid., pp. 260 - 261.
62. Cited by Kienast, Deutschland und Frankreich in der Kaiserzeit, pp. 456 - 457.
63. This is the beginning of the text of the Bull, hence difficult to translate. Venerabilis means revered.
64. Translated: common place.
65. Cited by Kienast, Deutschland und Frankreich in der Kaiserzeit, p. 435.
66. A view forcefully presented by Barraclough, History in a Changing World, p. 99.
67. Onions, The Shorter Oxford English Dictionary on Historical Principles, vol. 2, p. 2005.
68. Heydte, Die Geburtsstunde des souveränen Staates, pp. 41 - 43.
69. H. Mitteis, Der Staat des Hohen Mittelalters: Grundlinien einer vergleichenden Verfassungsgeschichte des Lehnszeitalters (The State

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of the High Middle Ages: Foundations of a Comparative Constitutional History of the Feudal Age), Herm. Boehlaus Nachfolger, Weimar, 1940, p. 3.

70. Onions, The Shorter Oxford English Dictionary on Historical Principles, vol. 2, p. 1311.
71. Loomis, Mundy and Woody, The Council of Constance, pp. 84 - 85.
72. Ibid., p. 107.
73. Ibid.
74. Ibid., p. 344.
75. Ibid., p. 9.
76. Bozeman, Politics and Culture in International History, pp. 434 - 435.
77. Heydte, Die Geburtsstunde des souveränen Staates, pp. 209 - 210.
78. Bonet, The Tree of Battles, for example, pp. 115, 128, 164, 165 and 191.
79. According to Heydte, the Middle Ages distinguish between gens - (a) people linked by common descent - and populus - a people at the origin of which is an act of the will. See Die Geburtsstunde des souveränen Staates, p. 209.
80. D. Hay, Europe: The Emergence of an Idea, Harper & Row, New York, 1966 (first published in 1957), p. 51.

CHAPTER III

1. Gierke mentions Omphalus (1500 - 1567), Connanus (1508 - 1551), Gregorius (1540 - 1591), Suárez (1548 - 1617), Winkler (1579 - 1648) and Gryphiander (publ. 1618). See Das Deutsche Genossenschaftsrecht, vol. 4, p. 361n. Wight: Vitoria (1480? - 1546), Suárez and Gentili (1552 - 1608). See "Why Is there no International Theory?", p. 22; "Western Values", pp. 95 - 102; and Systems of States, pp. 52, 125 - 126, 148, 164. And Bull, like Wight: Vitoria, Suárez and Gentili. See The Anarchical Society, p. 28.
2. See, for example, J.R. Hale, Renaissance Europe: 1480 - 1520, Fontana/Collins, London, 1979, p. 12 and passim; and G.R. Elton, Reformation Europe: 1517 - 1559, Fontana/Collins, Glasgow, 1977 (first published in 1963), p. 24 and passim.
3. See, for example, Meulen, Der Gedanke der Internationalen Organisation, pp. 124 - 127; F.M. Stawell, The Growth of International Thought, Thornton Butterworth, London, 1936 (first published in 1929), pp. 76, 87 - 91, 96, 135; F.H. Hinsley, Power and the Pursuit of Peace: Theory and Practice in the History of Relations between States, Cambridge University Press, Cambridge, 1963, pp. 16,

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- 18, 22; H. Gollwitzer, Geschichte des weltpolitischen Denkens: I. Vom Zeitalter der Entdeckungen bis zum Beginn des Imperialismus (History of World-Political Thought: I. From the Age of Discoveries to the Beginning of Imperialism), Vandenhoeck & Ruprecht, Goettingen, 1972, p. 72; F. Parkinson, The Philosophy of International Relations: A Study in the History of Thought, Sage Publications, London, 1977, p. 21; M. Howard, War and the Liberal Conscience, Temple Smith, London, 1978, pp. 13 - 16, 27, 130, 132; and R. Meyers, Weltpolitik in Grundbegriffen: I. Ein lehr- und ideengeschichtlicher Grundriss (World Politics in Basic Concepts: I. A Historical Outline of Theories and Ideas), Droste, Duesseldorf, 1979, pp. 36, 39.
4. J. Brown Scott, The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations, Clarendon Press, Oxford, and Humphrey Milford, London, 1934, pp. 33 - 47.
5. See, for example, his two references (to The Tales of Arthur and Lancelot and to St Bernard (1090 - 1153) in The Education of a Christian Prince, translated with an introduction by L.K. Born, Columbia University Press, New York, 1936, pp. 200, 251; or his criticism in his letter of 14/8/1518 to Paul Volz, in J.C. Olin (ed.), Christian Humanism and the Reformation: Selected Writings of Erasmus, with the Life of Erasmus by Beatus Rhenanus, Fordham University Press, New York, 1980 (first published in 1965), p. 112. Erasmus' negative attitude towards authors of the Middle Ages has been noted by many scholars. See, for example, J. Huizinga, Erasmus of Rotterdam, Phaidon Press, London, 1952 (first published in 1924), p. 24; F. Geldner, Die Staatsauffassung und Fuerstenlehre des Erasmus von Rotterdam (Erasmus of Rotterdam: His Conception of the State and Theory of the Prince), Emil Ebering, Berlin, 1930, pp. 137, 140; Olin, Christian Humanism and the Reformation, pp. 68n, 107; C.R. Thompson, "Erasmus and Tudor England", and C. Reedijk, "Erasmus' Final Modesty", both in Académie Royale Néerlandaise des Sciences et des Sciences Humaines, Actes du Congrès Erasme: Rotterdam 27-29 Octobre 1969 (Records of the Erasmus Conference of 27-29 October 1969, Rotterdam), North Holland Publishing Co., Amsterdam/London, 1971, pp. 32, 183.
6. See, for example, J. Vernau (ed.), The British Library General Catalogue of Printed Books to 1975, vol. 102, K.G. Saur, London/Muenchen, 1981, pp. 7 - 62; R.H. Bainton, Erasmus of Christendom, Fontana/Collins, Glasgow, 1977 (first published in 1969), pp. 371 - 388; J.C. Margolin, Douze Années de Bibliographie Érasmiennne: 1950 - 1961 (An Erasmus Bibliography Covering Twelve Years: 1950 - 1961), J. Vrin, Paris, 1963, pp. 23 - 177; ---, Quatorze Années de Bibliographie Érasmiennne: 1936 - 1949 (An Erasmus Bibliography Covering Fourteen Years: 1936 - 1949), J. Vrin, Paris, 1969, pp. 13 - 384; ---, Neuf Années de Bibliographie Érasmiennne: 1962 - 1970 (An Erasmus Bibliography Covering Nine Years: 1962 - 1970), J. Vrin, Paris, and University of Toronto Press, Toronto, 1977, pp. 11 - 712; Geldner, Die Staatsauffassung und Fuerstenlehre des Erasmus von Rotterdam, pp. 181 - 189.
7. For accounts of Erasmus' life and publications see, for example, "The Compendium Vitae of Erasmus of Rotterdam" (1524) and "The Life

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- of Erasmus by Beatus Rhenanus" (1540), both in Olin, Christian Humanism and the Reformation, pp. 22 - 30 and 31 - 54; J.A. Froude, Life and Letters of Erasmus: Lectures Delivered at Oxford 1893-4, Charles Scribner's Sons, New York, 1927 (first published in 1894), Huizinga, Erasmus of Rotterdam; A. Hyma, The Youth of Erasmus, Russell & Russell, New York, 1968 (first published in 1931); S. Zweig, Triumph und Tragik des Erasmus von Rotterdam (Triumph and Tragedy of Erasmus of Rotterdam), Herbert Reichner, Wien, 1935; Bainton, Erasmus of Christendom; and Historisches Museum Basel, Erasmus von Rotterdam: Vorkaempfer fuer Frieden und Toleranz: 26. April - 7. September 1986 (Erasmus of Rotterdam: An Early Champion of Peace and Tolerance: 26 April - 7 September 1986), Werner Druck, Basel, 1986.
8. Bainton, Erasmus of Christendom, p. 20.
 9. Hale, Renaissance Europe, p. 55.
 10. Ibid., pp. 320 - 321.
 11. Ibid., p. 321.
 12. Ibid., p. 322.
 13. S. Dresden, "Présence d'Érasme" (Presence of Erasmus), in Académie Royale Néerlandaise des Sciences et des Sciences Humaines, Actes du Congrès Érasme, p. 11.
 14. Erasmus to Servatius Rogerus, 16/11/1506, in Collected Works of Erasmus, vol. 2, translated by R.A.B. Mynors and D.F.S. Thomson, annotated by W.K. Ferguson, University of Toronto Press, Toronto, 1975, p. 125.
 15. Erasmus to Andrea Ammonio, 26/11/1511, in Ibid., pp. 204 - 205.
 16. Erasmus to Antoon van Bergen, 14/3/1514, in Ibid., p. 279.
 17. Erasmus to Thomas Wolsey, 9/9/1517, in F.M. Nichols, The Epistles of Erasmus: From His Earliest Letters to His Fifty-First Year, vol. 3, Longmans/Green & Co., London, 1918, p. 51. The same page contains the following note by the editor: "Erasmus certainly cannot be said to have been mistaken, but it is not easy to say how far the revolution in affairs of state and religion, which actually took place, was in accordance with his gloomy forebodings". E. Krieger seems to be able to provide part of the answer, as he mentions that, late in 1516, Erasmus received a letter from Spalatin, secretary to Frederick the Wise, Duke of Saxony, on the suggestion of Martin Luther. It raised the question of justification by faith alone, an important point in their respective positions. Grosse Europaeer heute: Erasmus von Rotterdam, Carl J. Burckhardt, Richard Graf Coudenhove-Kalengi, Albert Camus, Verlag das Viergespann, Frankfurt am Main, 1964, p. 37.
 18. The original version (1526) of this sentence was: "Charles wants a new monarchy comprising the whole world" (Carolus molitur nouam totius orbis monarchiam), but the word "new", as Erasmus writes to

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- Alfonso Valdes, the Imperial Chancellor's secretary, produced a "chicanery" against him on the part of those who upheld the imperial cause. See Erasmus to Alphonse Valdes, 21/3/1529, in A. Gerlo (ed.), La Correspondance d'Érasme (The Correspondence of Erasmus), vol. 8, University Press, Brussels, 1979, p. 121. For the original Latin text, see A.G. Weiler, "Einleitung" (Introduction), "Vtilissima Consvltatio de Bello Tvrcis Inferendo ..." (A Valued Discussion of War against the Turks ...), Opera Omnia Desiderii Erasmi Roterodami (The Complete Works of Desiderius Erasmus of Rotterdam), V-III, vol. 15, North Holland Publishing Co., Amsterdam, 1986, p. 9. There are two earlier editions of the Opera Omnia: Basel 1538 - 1540 and Leyden 1703 - 1707.
19. "The New Mother", 1526, in C.R. Thompson (tr.), The Colloquies of Erasmus, University of Chicago Press, Chicago/London, 1965, pp. 269 - 270.
 20. Erasmus to Jacobus Sadoletus, 1/10/1528, in J.C. Margolin, Guerre et Paix dans la Pensée d'Érasme (War and Peace in the Thought of Erasmus), Aubier Montaigne, Paris, 1973, p. 309. Subsequent ages have identified this event as the end of the Italian renaissance.
 21. Erasmus to Bartholomeus Latomus, 24/8/1535, in R.L. DeMolen (ed.), Erasmus, Edward Arnold, London, 1973, p. 182.
 22. Froude, Life and Letters of Erasmus, p. 420; see also "Preface", Ibid.
 23. J.D. Tracy, The Politics of Erasmus: A Pacifist Intellectual and His Political Milieu, University of Toronto Press, Toronto, 1978, pp. 103, 105, 125, 129. See also R.W. Scribner, "The Social Thought of Erasmus", Journal of Religious History, vol. 6, 1970, pp. 25, 26; C.R. Thompson, "Foreword", Olin, Christian Humanism and the Reformation, p. ix; and M.P. Gilmore, Humanists and Jurists: Six Studies in the Renaissance, The Belknap Press of Harvard University Press, Cambridge, Mass., 1963, pp. 92 - 93.
 24. Erasmus to Dukes Frederick and George of Saxony, 5/6/1517, in Collected Works of Erasmus, vol. 4, translated by R.A.B. Mynors and D.F.S. Thomson, annotated by J.K. McConica, 1977, p. 375.
 25. Machiavelli's The Prince existed in manuscript form from 1513; it was printed in 1532. There is no mention in Erasmus' works that he saw either version. This, however, does not necessarily mean that he did not see it or that, as C.R. Thompson suggests, he would not have understood it if he had seen it. "Erasmus as Internationalist and Cosmopolitan", Archiv fuer Reformationsgeschichte, vol. 46, 1955, p. 194. Machiavelli's name, as Thompson mentions on the same page, appears in a letter by John Angelus Odonus of March 1535 to Erasmus. See P.S. Allen and H.M. Allen (eds.), Opus Epistolarum Desiderii Erasmi Roterodami (The Letters of Desiderius Erasmus of Rotterdam), vol. 11, Clarendon Press, 1947, p. 93.
 26. "But the majority of his contemporaries and most modern scholars attribute the dialogue to the pen of Erasmus", M.J. Heath writes in his "Introductory Note", "Julius Excluded from Heaven: A Dialogue", Collected Works of Erasmus, vol. 27, edited by A.H.T. Levi, 1986, p. 156, adding that "external circumstances" as well as "the con-

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tents of the dialogue point very clearly towards Erasmus as its author", p. 157. Earlier scholars to attribute the work to Erasmus include, for example, Nichols, The Epistles of Erasmus, vol. 2, 1904, pp. 448 - 449; Allen, Opus Epistolarum, vol. 2, 1910, pp. 418 - 420; Huizinga, Erasmus of Rotterdam, p. 85; Geldner, Die Staatsauffassung und Fuerstenlehre des Erasmus, pp. 70 - 71; P. Mesnard, L'Essor de la Philosophie Politique au XVIe Siècle (The Development of Political Philosophy in the Sixteenth Century), J. Vrin, Paris, 1951, pp. 103, 113; P. Pascal (tr.) and J.K. Sowards (introduction and critical notes), The Julius Exclusus of Erasmus (hereafter Julius Exclusus), Indiana University Press, Bloomington/London, 1968, pp. 14 - 23, 97 - 98; and Historisches Museum Basel, Erasmus von Rotterdam, p. 174.

27. Julius Exclusus, p. 53.
28. Ibid., p. 52
29. Ibid., p. 58.
30. Ibid., pp. 58 - 59.
31. Ibid., p. 59.
32. That is, people born outside Italy.
33. Julius Exclusus, pp. 71 - 72.
34. Ibid., p. 76.
35. Ibid., p. 77.
36. The reference is to the League of Cambrai. See above, Section One, p. 41.
37. This passage suggests that Erasmus might include "balance of power politics" in the realist approach to international politics.
38. The reference is to the Holy League. See above, Section One, p. 41.
39. Julius Exclusus, pp. 77 - 78.
40. Ibid., p. 60.
41. Ibid., p. 61.
42. Ibid.
43. Ibid., p. 64.
44. Ibid., pp. 64 - 65.
45. Ibid., p. 65.
46. See the comparison "Erasmus und Machiavelli", H. Muenkler, Im Namen des Staates: Die Begrueudung der Staatsraison in der Fruehen Neuzeit (In the Name of the State: Origins of Reason of State in Early

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- Modern Times), Fischer Verlag, Frankfurt am Main, 1987, pp. 46 - 64.
47. Erasmus was not alone among his contemporaries in perceiving a connection between expansionism and universalism. See, for example, R. Menéndez Pidal, "Formación del Fundamental Pensamiento Político de Carlos V" (Formation of the Basic Political Ideas of Charles V), in P. Rassow and F. Schalk (eds.), Karl V: Der Kaiser und seine Zeit (Charles V: The Emperor and His Times), Boehlau Verlag, Koeln/Graz, 1960, pp. 144 - 166, esp. p. 158.
 48. Erasmus to Robert Gaguin, ?/10/1495, in Collected Works of Erasmus, vol. 1, translated by R.A.B. Mynors and D.F.S. Thomson, annotated by W.K. Ferguson, 1974, p. 91.
 49. J.M. Headley, "Gattinara, Erasmus and the Imperial Configurations of Humanism", Archiv fuer Reformationsgeschichte, vol. 71, 1980, p. 83n.
 50. Tracy, The Politics of Erasmus, p. 17.
 51. "Le Panégyrique de Philippe Le Beau" (The Panegyric of Philip the Fair), 1504, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 43.
 52. See above, Section One, pp. 41 - 42.
 53. Erasmus to Antoon van Bergen, 14/3/1514, in Collected Works of Erasmus, vol. 2, p. 281.
 54. Erasmus to Dukes Frederick and George of Saxony, 5/6/1517, in Ibid., vol. 4, p. 378.
 55. Ibid., pp. 381 - 382. The view which Erasmus expresses here is interesting, as it supports the findings presented above, Ch. II.
 56. Erasmus to Dukes Frederick and George of Saxony, 5/6/1517, in Collected Works of Erasmus, vol. 4, p. 382.
 57. Erasmus to Duke Ernest of Bavaria, 4/11/1517, in Nichols, The Epistles of Erasmus, vol. 3, p. 130.
 58. Translated: On Monarchy.
 59. The Latin text reads: "Nactus sum his diebus libellum Dantis, cui titulum fecit Monarchia, suppres(s)um, vt audio, ab his qui eam vsurpare contendunt". See Allen, Opus Epistolarum, vol. 6, 1926, p. 470.
 60. Mercurino Gattinara to Erasmus, 12/3/1527, in A. RenouDET, Études Érasmiennes: 1521 - 1529 (Studies of Erasmus: 1521 - 1529), E. Droz, Paris, 1939, p. 96.
 61. Allen, Opus Epistolarum, vol. 6, p. 470.
 62. As RenouDET remarks, De Monarchia was not published until 1559. Études Érasmiennes, p. 97.

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63. Erasmus to Sigismund I, 15/5/1527, in Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 301 - 302.
64. Erasmus to Alphonse Valdes, 21/3/1529, in Gerlo, La Correspondance d'Érasme, vol. 8, p. 121. See also above, Section One, p. 42 and note 18.
65. Erasmus to Alphonse Valdes, 21/3/1529, in Gerlo, La Correspondance d'Érasme, vol. 8, p. 122.
66. Neither Allen, Opus Epistolarum, vol. 8, 1934, pp. 382 - 385, nor Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 328 - 374, nor Gerlo, La Correspondance d'Érasme, vol. 8, pp. 489 - 493, reproduces the whole of "A Valued Discussion on War against the Turks", 1530. The passage here quoted is from Hinsley, Power and the Pursuit of Peace, p. 18, who, on p. 368 (note 10), refers to Stawell, The Growth of International Thought, pp. 89 - 90; the latter, p. 247, acknowledges his debt to Lange, Histoire de l'Internationalisme: I. Jusqu'à la Paix de Westphalie; Lange, pp. 174 - 175, finally gives the primary source: Op. V, 366 - 67. According to the new edition of the Opera Omnia, the passage reads as follows: "Terret nonnullos vniuersalis monarchiae vocabulum, quo videntur spectare quidam ... Optima quidem est monarchia, si princeps detur Deo similis, verum ut sunt hominum mores, tutissima sunt moderata imperia christianis foederibus inter se connexa". See "Vtilissima Consvltatio de Bello Tvrcis Inferendo ...", edited by A.G. Weiler, Opera Omnia, V-III, vol. 15, 1986, pp. 80 - 81.
67. The opposite conclusion is formulated by Geldner: (A)bove all, universalism influenced Erasmus: with him, as with the Stoics, it deprived the individual state of its basis and demanded the world state which should encompass all peoples". It is a conclusion which is "postulated" rather than "reached", for there is no evidence offered in support of it, or similar statements. See Die Staatsauffassung und Fuerstenlehre des Erasmus von Rotterdam, pp. 137, 168, 172. On the other hand, one meets with the statement that Erasmus considers "the establishment of a Christian universal monarchy" as "impossible and also not desirable". See Ibid., p. 97. And for the latter, as this section has shown, there is ample evidence in Erasmus' writings.
68. "War Is Sweet to Those Who Do not Know It", 1515, in M. Mann Phillips, The Adages of Erasmus: A Study with Translations, Cambridge University Press, Cambridge, 1964, pp. 322 - 323.
69. The Education of a Christian Prince, p. 238.
70. Erasmus to Dukes Frederick and George of Saxony, 5/6/1517, in Collected Works of Erasmus, vol. 4, p. 382; Erasmus to François I, 16/6/1526, in Gerlo, La Correspondance d'Érasme, vol. 6, 1977, p. 432.
71. See above, Section Three, p. 50 and note 66.
72. Erasmus to Adolph of Burgundy, ca. March 1499, in Collected Works of Erasmus, vol. 1, p. 182.
73. Ibid.

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74. The Education of a Christian Prince, p. 158. See also "The Sileni of Alcibiades", 1515, in Mann Phillips, The Adages of Erasmus, p. 280. The word "silenus", as Erasmus explains, was used by the Greeks "either with reference to a thing which in appearance ... seems ridiculous and contemptible, but on closer and deeper examination proves to be admirable, or else with reference to a person whose looks and dress do not correspond at all to what he conceals in his soul". See Ibid., p. 269.
75. The Education of a Christian Prince, p. 133.
76. Ibid., p. 174.
77. Ibid., p. 148.
78. Ibid., p. 157.
79. Ibid., p. 158.
80. "Kings and Fools Are Born, not Made", 1515, in Mann Phillips, The Adages of Erasmus, p. 217.
81. Enchiridion: Handbuechlein eines christlichen Streiters (Enchiridion: The Handbook of a Christian Soldier), translated and edited by W. Welzig, Herm. Boehlaus Nachf., Graz/Koeln, 1961, p. 38. See also "The Fabulous Feast", 1524, in Thompson, The Colloquies of Erasmus, p. 260.
82. "Kings and Fools Are Born, not Made", in Mann Phillips, The Adages of Erasmus, p. 221.
83. Ibid. See also The Education of a Christian Prince, pp. 233, 236; and "The Complaint of Peace", 1517, in J.P. Dolan, The Essential Erasmus: Selected and Translated with Introduction and Commentary, Meridian/The New American Library, New York/Scarborough, Ontario, 1964, p. 194.
84. "The Sileni of Alcibiades", in Mann Phillips, The Adages of Erasmus, p. 280.
85. The Education of a Christian Prince, p. 158.
86. Ibid., p. 212.
87. Ibid.
88. Ibid., p. 187.
89. Ibid., p. 221.
90. Ibid., p. 212.
91. "Make Haste Slowly", 1508, in Mann Phillips, The Adages of Erasmus, p. 183. See also The Education of a Christian Prince, pp. 173, 180 - 181.
92. The Education of a Christian Prince, p. 207.

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93. Ibid., pp. 212 - 213.
94. Ibid., p. 217.
95. Ibid., p. 234.
96. Ibid., pp. 235 - 237.
97. See below, Section Six, pp. 55 - 57.
98. The Latin text reads: "(T)ria potissimum requiri videntur in eo qui tantos rerum humanarum motus sit compositurus ...". See Allen, Opus Epistolarum, vol. 7, 1928, p. 61.
99. Erasmus to Sigismund I, 15/5/1527, in Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 297 - 301.
100. Erasmus to Leo X, 21/5/1515, in Collected Works of Erasmus, vol. 3, translated by R.A.B. Mynors and D.F.S. Thomson, annotated by J.K. McConica, 1976, p. 102.
101. Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 277.
102. "A Fish Diet", 1526, in Thompson, The Colloquies of Erasmus, pp. 326 - 327.
103. "The Sileni of Alcibiades", in Mann Phillips, The Adages of Erasmus, pp. 286 - 288.
104. Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 270.
105. Ibid.
106. "The Sileni of Alcibiades", in Mann Phillips, The Adages of Erasmus, p. 290.
107. Ibid., p. 293.
108. Erasmus to Antoon van Bergen, 14/3/1514, in Collected Works of Erasmus, vol. 2, p. 281.
109. Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 267. See also Erasmus to Willibald Pirckheimer, 8/2/1524, in Gerlo, La Correspondance d'Érasme, vol. 5, 1976, p. 500.
110. "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 329. See also "The Antibarbarians", in Collected Works of Erasmus, vol. 23, edited by C.R. Thompson, 1978, pp. 59 - 61.
111. See above, Section Four, p. 52.
112. The Education of a Christian Prince, p. 220.

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113. Ibid., p. 240. See also "A Valued Discussion on War against the Turks", in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 351.
114. Erasmus to Damião de Gois, 25/7/1533, in E. Feist Hirsch, Damião de Gois: The Life and Thought of a Portuguese Humanist: 1502 - 1574, Martinus Nijhoff, The Hague, 1967, p. 73.
115. The Education of a Christian Prince, p. 256; Erasmus to Sigismund I, 15/5/1527, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 299.
116. "A Valued Discussion on War against the Turks", in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 354.
117. Ibid., p. 350. Erasmus' displeasure with Christian conduct in relation to the Turks finds ready expression in this treatise. As he writes on the same page: "Through our dissension, our ambition, our perfidy" (such as violating an oath and poisoning the enemy's prince) "we have always opened the path to the most serious disasters".
118. "On Mending the Peace of the Church", 1533, in Dolan, The Essential Erasmus, p. 386.
119. The Education of a Christian Prince, p. 249. See also below, Section Ten, "The Question of War".
120. The Education of a Christian Prince, p. 240.
121. Ibid., p. 239.
122. Ibid., p. 248.
123. Ibid., pp. 256 - 257.
124. "A Valued Discussion on War against the Turks", in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 340.
125. "You Have Obtained Sparta, Adorn It", 1515, in Mann Phillips, The Adages of Erasmus, p. 302.
126. Ibid., p. 308. When Erasmus uses the term "the whole world", he usually means the Christian world. On this point, see also J. Beumer, Erasmus der Europaeer: Die Beziehungen des Rotterdammers zu den Humanisten seiner Zeit unter den verschiedenen Nationen Europas (Erasmus the European: The Relations of the Man from Rotterdam to the Humanists of His Time from among the Various Nations of Europe), Dietrich Coelde, Werl, Westf., 1969, p. 10.
127. The Education of a Christian Prince, p. 248.
128. Erasmus to Nicholas Beraldus, 25/5/1522, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 264.
129. "A Valued Discussion on War against the Turks", in Ibid., pp. 339 - 340.

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130. The Education of a Christian Prince, p. 238.
131. Ibid.
132. Ibid., pp. 241 - 243. See also "The Complaint of Peace", in Dolan, The Essential Erasmus, p. 194.
133. The Latin text in Allen is: "... sive dum iustis bellis profligant hostem publicamque tuentur tranquillitatem, sive dum ...", that is "just wars" and not "necessary and just wars". See Opus Epistolarum, vol. 3, 1913, p. 368.
134. Erasmus to Paul Volz, 14/8/1518, in G. Kisch, Erasmus und die Jurisprudenz seiner Zeit (Erasmus and the Jurisprudence of His Time), Helbing & Lichtenhahn, Basel, 1960, pp. 126 - 128. See the slightly different version in Olin, Christian Humanism and the Reformation, pp. 118 - 121. Erasmus' image of the "Three Circles" seems to find a mention mainly in German sources. Apart from Kisch, Erasmus und die Jurisprudenz seiner Zeit, it is referred to, for example, by Geldner, Die Staatsauffassung und Fuerstenlehre des Erasmus, pp. 80 - 81, and E. v. Koerber, Die Staatstheorie des Erasmus von Rotterdam (The Theory of the State of Erasmus of Rotterdam), Duncker & Humblot, Berlin, 1967, p. 29. But see also J. Hillerbrand (ed.), Erasmus and His Age: Selected Letters of Desiderius Erasmus, Harper & Row, New York, 1970, p. 128.
135. "A Fish Diet", in Thompson, The Colloquies of Erasmus, p. 339.
136. Ibid., pp. 324 - 325.
137. For a statement of the philosophy of Christ see, for example, Enchiridion: Handbuechlein eines christlichen Streiters, referred to above, note 81; "The Paraclesis", Erasmus' preface to the Greek and Latin edition of the New Testament, and "Letter to Paul Volz", both in Olin, Christian Humanism and the Reformation, pp. 92 - 106, 107 - 133.
138. Erasmus to Paul Volz, 14/8/1518, in Olin, Christian Humanism and the Reformation, p. 113.
139. Erasmus to Martin Dorp, May 1515, in Ibid., pp. 84 - 88.
140. Ibid., p. 73.
141. Ibid., pp. 84 - 90; and "The Paraclesis", in Ibid., pp. 96 - 97.
142. Erasmus to Martin Dorp, May 1515, in Ibid., p. 73. See also "Ratio seu Compendium Verae Theologiae" (An Account or Compendium of True Theology), 1519, in Koerber, Die Staatstheorie des Erasmus von Rotterdam, p. 82.
143. "A Fish Diet", in Thompson, The Colloquies of Erasmus, p. 324.
144. Erasmus to Paul Volz, 14/8/1518, in Olin, Christian Humanism and the Reformation, p. 117.
145. For Erasmus' understanding of "equitable" see, for example, Erasmus

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to Nicolas Everard, 26/7/1524, in Gerlo, La Correspondance d'Érasme, vol. 5, pp. 635 - 636; and Erasmus to Alphonse Valdes, 21/3/1529, in Ibid., vol. 8, pp. 121, 121n, 128.

146. The Education of a Christian Prince, p. 229.
147. Ibid., pp. 229 - 230.
148. Ibid., pp. 230 - 231.
149. Ibid., p. 229. See also his suggestion to Christian princes, in response to "this constant change of empire", that "limits" be laid down for "every jurisdiction" by "specific treaties", and that these "limits", once established, should remain inviolable. Erasmus to Dukes Frederick and George of Saxony, 5/6/1517, in Collected Works of Erasmus, vol. 4, pp. 382 - 383; and "The Complaint of Peace", in Dolan, The Essential Erasmus, p. 194.
150. R. Tuck, Natural Rights Theories: Their Origin and Development, Cambridge University Press, Cambridge, 1979, pp. 33, 34.
151. "(T)he precepts of Christ do not abrogate the law of nature", Bainton records Erasmus as saying. Erasmus of Christendom, p. 145. "And the philosophers", Erasmus writes in his treatise On Free Will, "without the light of faith, and without the assistance of Holy Scripture, drew from created things the knowledge of the everlasting power and divinity of God, and left many precepts concerning the good life, agreeing whole-heartedly with the teachings of the Gospels ...". See E.G. Rupp and P.S. Watson (eds.), Luther and Erasmus: Free Will and Salvation, SCM Press, London, 1969, p. 49. "But grace, the grace of the Gospel, is more efficacious than (the precepts of the law of nature)", Erasmus submits to the reader in "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 338.
152. Mesnard, L'Essor de la Philosophie Politique au XVIe Siècle, pp. 137 - 138.
153. "Make Haste Slowly", in Mann Phillips, The Adages of Erasmus, p. 183.
154. "Kings and Fools Are Born, not Made", in Ibid., pp. 220 - 221. Suggested first readings include the Proverbs of Solomon, Ecclesiasticus, the Book of Wisdom, the Gospels, the Apophtegmata of Plutarch and his Morals; also his Lives; then Seneca, the Politics of Aristotle, and the Offices of Cicero. And last but not least Plato, "the most venerable source of such things - in my opinion at least". See The Education of a Christian Prince, pp. 199 - 201.
155. "The Godly Feast", 1522, in Thompson, The Colloquies of Erasmus, p. 65. See also "The Antibarbarians", in Collected Works of Erasmus, vol. 23, pp. 59 - 61. As Kisch explains, the idea of Logos (which identifies the word of God with Christ) taken from ancient Christian theology made it possible for the humanists to hold that the workings of Christ did not commence with the Christian era, but that "his wisdom pervaded the world from the beginning". Kisch, Erasmus und die Jurisprudenz seiner Zeit, p. 150.

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156. Allen, Opus Epistolarum, vol. 12, 1958, pp. 78 - 80.
157. Ibid., vol. 3, p. 14.
158. Ibid., vol. 6, p. 410.
159. Ibid., p. 134.
160. Erasmus to Henry VIII, 9/9/1517, in Nichols, The Epistles of Erasmus, vol. 3, p. 45.
161. Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 267. Both Margolin and Mesnard interpret this act as signifying the realization of the first society of nations. See Ibid., p. 16, and L'Essor de la Philosophie Politique au XVIe Siècle, p. 116.
162. "Make Haste Slowly", in Mann Phillips, The Adages of Erasmus, p. 179. The famous printing house Aldus of Venice adopted the symbol of the anchor and dolphin as its trademark.
163. "The Antibarbarians", in Collected Works of Erasmus, vol. 23, pp. 55 - 59.
164. Erasmus to Jacob Batt, ca. 12/12/1500, in Ibid., vol. 1, p. 303.
165. Erasmus to Mexia, 30/3/1530, in Froude, Life and Letters of Erasmus, pp. 377 - 378.
166. Ibid., p. 378. See also Erasmus to Antoon van Bergen, 14/1/1518, in Nichols, The Epistles of Erasmus, vol. 3, p. 224.
167. There is no satisfactory English translation, as Wissenschaften comprises all branches of knowledge.
168. Zweig, Triumph und Tragik des Erasmus von Rotterdam, p. 16.
169. See, for example, "The Antibarbarians", in Collected Works of Erasmus, vol. 23, pp. 42, 43.
170. F. Schalk, "Erasmus und die Res Publica Literaria" (Erasmus and the Literary Republic), in Académie Royale Néerlandaise des Sciences et des Sciences Humaines, Actes du Congrès Érasme, p. 15.
171. See, for example, Erasmus to Nicholas Beraldus, 25/5/1522, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 264.
172. See, for example, Erasmus to Guolfangus Fabritius Capito, 26/2/1517, in Nichols, The Epistles of Erasmus, vol. 2, p. 506.
173. See, for example, Erasmus to Raffaele Riario, 15/5/1515, in Collected Works of Erasmus, vol. 3, p. 86.
174. See, for example, Erasmus to Nicholas Beraldus, 25/5/1522, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 264.
175. See, for example, Erasmus to Raffaele Riario, 15/5/1515, in Collec-

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- ted Works of Erasmus, vol. 3, p. 91.
176. Erasmus to Thomas More, ca. 10/7/1517, in Nichols, The Epistles of Erasmus, vol. 2, p. 576.
 177. Translated: the Christian Republic or Christendom.
 178. Zweig, Triumph und Tragik des Erasmus von Rotterdam, p. 114.
 179. J.A.K. Thomson, "Desiderius Erasmus", in F.J.C. Hearnshaw (ed.), The Social and Political Ideas of Some Great Thinkers of the Renaissance and the Reformation, Barnes & Noble, New York, 1949, p. 156.
 180. Erasmus to Martin Dorp, May 1515, in Olin, Christian Humanism and the Reformation, p. 80. Here Erasmus reacts to the attitude shown by theologians to the "new" learning.
 181. "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 343.
 182. "If a disagreement arises between princes, why not go to arbiters? There are plenty of bishops, abbots, and learned men, or reliable magistrates, by whose judgment the matter could better be settled than by such slaughter, despoliation, and calamity to the world". The Education of a Christian Prince, pp. 252 - 253.
 183. Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 274 - 275.
 184. Erasmus to Sigismund I, 15/5/1527, in Ibid., p. 300. Arbitration and mediation are the ideas which secured Erasmus a place in Meulen's study, Der Gedanke der Internationalen Organisation, pp. 124 - 127.
 185. Erasmus to Conrad Peutinger, 9/11/1520, in Froude, Life and Letters of Erasmus, p. 268. See also Erasmus to Campeggio, 6/12/1520, in Ibid., pp. 270 - 271. There is an interesting study by P. Kalkhoff, "Die Vermittlungspolitik des Erasmus und sein Anteil an den Flugschriften der ersten Reformationszeit" (The Politics of Mediation of Erasmus and His Share in the Pamphlets of the First Period of the Reformation), Archiv fuer Reformationsgeschichte, vol. 1-2, 1903-1905, pp. 1 - 83, concerning Erasmus' attempt at translating his idea of moderation into practice during the weeks preceding the Diet of Worms.
 186. Froude, Life and Letters of Erasmus, p. 383.
 187. Erasmus to Campeggio, 18/8/1530, in Ibid., pp. 383 - 384.
 188. One of Erasmus' ways of referring to the Christian princes of his time.
 189. "On Mending the Peace of the Church", in Dolan, The Essential Erasmus, p. 388.
 190. Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 331.

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191. "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, pp. 344 - 347. See also Erasmus to Leo X, 21/5/1515, in Collected Works of Erasmus, vol. 3, p. 105.
192. "A Valued Discussion on War against the Turks", in Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 373 - 374.
193. Erasmus to John Carondelet, 5/1/1523, in Hillerbrand, Erasmus and His Age, p. 168. See also Erasmus to Pope Paul III, 23/1/1535, in Ibid., pp. 283 - 284.
194. "It will be easier to reach agreement on a few things, and concord will be more easily maintained if on most questions each is free to understand things in his own way, so long as it is without contention". See "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 348; also "A Fish Diet", in Thompson, The Colloquies of Erasmus, p. 324.
195. The Education of a Christian Prince, p. 239.
196. Hinsley, Power and the Pursuit of Peace, p. 16.
197. Howard, War and the Liberal Conscience, p. 16. There have been a few writers, mainly not specialists in international relations, who have qualified these general statements. For example, Thomson, "Desiderius Erasmus", p. 162: "Erasmus was not in the complete sense a pacifist, for he believed that some things would justify a war"; and Koerber, Die Staatstheorie des Erasmus von Rotterdam, p. 97: "But Erasmus did not stop with an absolute and rigid pacifism ..."; but little evidence is offered in support of these statements. A more extensive study crediting Erasmus with the idea of the just war is offered by J.A. Fernández, "Erasmus on the Just War", Journal of the History of Ideas, vol. 34, 1973, pp. 209 - 226; but this author leaves out evidence which would not only strengthen his argument, but also render it more balanced, and perhaps more faithful to the sources.
198. "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 310.
199. Erasmus to Antoon van Bergen, 14/3/1514, in Collected Works of Erasmus, vol. 2, p. 280. See also "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 338.
200. See, for example, "Le Panégyrique de Philippe Le Beau", in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 41; Erasmus to Antoon van Bergen, 14/3/1514, in Collected Works of Erasmus, vol. 2, p. 280; "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, pp. 312 - 314, 320; and Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 268.
201. See, for example, "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, pp. 339 - 340; "The Complaint of Peace", in Dolan, The Essential Erasmus, p. 194; and The Education of a Christian Prince, p. 253.

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202. See, for example, "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, pp. 341 - 343; "The Complaint of Peace", in Dolan, The Essential Erasmus, p. 195; and The Education of a Christian Prince, pp. 253 - 254.
203. See, for example, "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 343; The Education of a Christian Prince, pp. 250, 254; and Bainton, Erasmus of Christendom, p. 114, quoting Erasmus arguing against Pope Julius.
204. "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 309.
205. Ibid., p. 333. See also above, Section Nine, pp. 65 - 66.
206. The Education of a Christian Prince, p. 249. See also "A Valued Discussion on War against the Turks", in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 352.
207. Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 269.
208. The Education of a Christian Prince, p. 187.
209. Erasmus to the Sorbonne, 1526, in Bainton, Erasmus of Christendom, p. 244. It is interesting to note that this statement is not part of the letter as published in Gerlo, La Correspondance d'Érasme, vol. 6, pp. 317 - 319, but see the editor's reference to a "Prologue" which accompanied the letter when it was first published in 1526. See Ibid., p. 317. One can find the statement, for example, in the "unchanged, reprographical reprint" of the Leyden edition of the Opera Omnia, vol. 9, Georg Olms, Hildesheim, 1962, p. 841 A.
210. "A Valued Discussion on War against the Turks", in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 351.
211. "Le Panégyrique de Philippe Le Beau", in Ibid., p. 42.
212. Erasmus to François I, 1/12/1523, in Ibid., p. 269.
213. "A Valued Discussion on War against the Turks", in Ibid., p. 370.
214. "The Complaint of Peace", in Dolan, The Essential Erasmus, pp. 188, 192; "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, pp. 336, 341, 343, 348 - 350; and The Education of a Christian Prince, pp. 251 - 252.
215. Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 268 - 269; "A Fish Diet", in Thompson, The Colloquies of Erasmus, p. 326; Erasmus to Sigismund I, 15/5/1527, in Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 301, 297; Erasmus to Antoon van Bergen, 14/3/1514, in Collected Works of Erasmus, vol. 2, p. 282; "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 348; "The Complaint of Peace", in Dolan, The Essential Erasmus, p. 195; and "Paraphrase on St Luke", 1523, in Koerber, Die Staatstheorie des Erasmus von Rotterdam, p. 99.

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216. Julius Exclusus, pp. 57 - 58; "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 341.
217. "Paraphrase on St Luke", in Koerber, Die Staatstheorie des Erasmus von Rotterdam, p. 99.
218. "War Is Sweet to Those Who Do not Know It", in Mann Phillips, The Adages of Erasmus, p. 337.
219. Ibid., p. 331. Erasmus points here to the existence of a different "tradition" of thought on what constitutes a just war, which returns in Grotius. See below, Chapter VI, pp. 224 - 225.
220. The Education of a Christian Prince, p. 155.
221. This idea appears, for example, in the context of the religious dispute within Christendom (see Erasmus to Conrad Peutinger, 9/11/1520, in Froude, Life and Letters of Erasmus, p. 267); of the war between Francis I and Charles V (see Erasmus to François I, 1/12/1523, in Margolin, Guerre et Paix dans la Pensée d'Érasme, p. 268); and of the conflict between Christian states and the Turkish empire (see "A Valued Discussion on War against the Turks", in Ibid., p. 373).
222. See above, Section Six, p. 58.
223. Erasmus to Paul Volz, 14/8/1518, in Olin, Christian Humanism and the Reformation, pp. 123 - 124; "A Valued Discussion on War against the Turks", in Margolin, Guerre et Paix dans la Pensée d'Érasme, pp. 350 - 352.
224. See, for example, Meyers, Weltpolitik in Grundbegriffen, p. 36; Hinsley, Power and the Pursuit of Peace, p. 16; and Parkinson, The Philosophy of International Relations, p. 21.
225. See, for example, J.N. Figgis, Political Thought: From Gerson to Grotius: 1414 - 1625: 7 Studies, Harper Torchbooks/Harper & Bros., New York, 1960 (first published in 1923), p. 72; and G.H. Sabine, A History of Political Theory, 3rd ed., George G. Harran, London, 1959 (first published in 1937), p. 355.
226. Noted by Born in his introductory chapter "The Political Theories of Erasmus", in The Education of a Christian Prince, p. 25n. Born's reference is to J.W. Allen, A History of Political Thought in the Sixteenth Century, New York, 1928. The reference does not include the publisher. The book was published the same year in London by Methuen.
227. Thomson, "Desiderius Erasmus", p. 155. See also Skinner's mention of Erasmus the humanist in The Foundations of Modern Political Thought, vol. 1, p. 194 and passim; vol. 2, p. 4 and passim.
228. Thucydides (ca. 460 - 395 B.C.) is said to have ascribed the same preference to "his own troubled times". See Thomson, "Desiderius Erasmus", p. 170.
229. The Education of a Christian Prince, p. 233.

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230. For Erasmus' comments on differences in peoples see, for example, "The Praise of Folly" and "The Complaint of Peace", both in Dolan, The Essential Erasmus, pp. 132 and 179; and The Education of a Christian Prince, pp. 239 - 240.
231. Erasmus to Jodocus Jonas on Vitrier and Colet, 13/6/1521, in Olin, Christian Humanism and the Reformation, p. 183.

CHAPTER IV

1. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 362.
2. Wight, "Why Is there no International Theory?", p. 22; ---, "Western Values", p. 96; and ---, Systems of States, p. 125.
3. Bull, The Anarchical Society, p. 28.
4. Translated: state or community.
5. Gierke, Das Deutsche Genossenschaftsrecht, p. 362.
6. Translated: re-readings. According to Beltrán de Heredia, a relectio was a dissertation on a topic or point treated in the ordinary lectures. "Personalidad del Maestro Francisco de Vitoria y Transcendencia de su Obra Doctrinal" (Personality of Master Francisco de Vitoria and Transcendency of His Doctrine), in L. Pereña and J.M. Pérez Prendes (eds.), Francisco de Vitoria: Relectio de Indis o Libertad de los Indios (Francisco de Vitoria: Relectio on the Indians or the Liberty of the Indians), Consejo Superior de Investigaciones Científicas, Madrid, 1967, pp. xxiii - xxiv. J. Soder throws some light on the significance of these "re-readings" when he says that their raison d'être was the obligation, on the part of professors, to give special lectures on "current, real problems"; and further, when he quotes the Spanish historiographer E. de Hinojosa, who wrote towards the end of the last century: "I do not know anybody who would have chosen as the topic of his lectures such delicate and burning questions of the day as did the famous Dominican ... Usually only the typical 'school questions' were discussed. Die Idee der Voelkergemeinschaft: Francisco de Vitoria und die philosophischen Grundlagen des Voelkerrechts (The Idea of the Community of Nations: Francisco de Vitoria and the Philosophical Bases of the Law of Nations), Alfred Metzner, Frankfurt am Main/Berlin, 1955, pp. 22, 19.
7. E. Nys (edited with an introduction), Francisci de Victoria De Indis et De Iure Belli Relectiones (Relectiones on the Indians and the Law of War by Franciscus de Victoria), The Classics of International Law, Carnegie Institution, Washington, D.C., 1917, reprinted by Oceana Publications, New York, 1964, p. 104.
8. T. Urdánoz (edited with introductions), Obras de Francisco de Vitoria: Relecciones Teológicas (Works by Francisco de Vitoria: Theological Relectiones), Autores Cristianos, Madrid, 1960.
9. Scott, The Spanish Origin of International Law, pp. 68 - 172, 195

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- 288; or any of his other works dealing with the subject-matter, for example, J. Brown Scott, Law, the State and the International Community, vol. 1, Greenwood Press, Westport, Connecticut, 1970 (reprint of the original publication of 1939, Columbia University Press, New York), pp. 310 - 323; ---, The Spanish Conception of International Law and of Sanctions, Carnegie Endowment for International Peace, Washington, D.C., 1934, pp. 1 - 48. For other authors see, for example, M. Barbier (introduction, translation and notes), Francisco de Vitoria: Leçons sur les Indiens et sur le Droit de Guerre (Francisco de Vitoria: Lessons on the Indians and the Law of War), Droz, Geneva, 1966, pp. vii - lxxxii; L. Pereña (ed.), Francisco de Vitoria: Escritos Políticos (Francisco de Vitoria: Political Writings), Ediciones Depalma, Buenos Aires, 1967, pp. ix - xxiii; and R. Hernández, Un Español en La O.N.U.: Francisco de Vitoria, Autores Cristianos, Madrid, 1977. One of Scott's most severe critics is A. Nussbaum, A Concise History of the Law of Nations, rev. ed., Macmillan, New York, 1954 (first published in 1947), esp. pp. 296 - 300.
10. A proponent of the year 1480 is, for example, C. Phillipson, "Franciscus A Vitoria (1480 - 1546): International Law and War", Journal of the Society of Comparative Legislation, New Series, vol. 15, 1915, p. 176. The year 1483 is favoured by Scott, The Spanish Origin of International Law, pp. 70, 77; Beltrán de Heredia, "Personalidad del Maestro Francisco de Vitoria", p. xiii, and many following him are committed to the year 1492; a particular advocate for the year 1486 has not been found, but Urdánoz mentions it as one given by some scholars. "Introducción Biográfica" (Biographical Introduction), Obras de Francisco de Vitoria, p. 5.
 11. Those who have opted for the earlier years tend to assert that he was born in Vitoria in the Basque province of Alava; whereas those who have decided in favour of 1492 claim Burgos as his place of birth. Uncertainties over dates and places are also noted in "Principal Events in Vitoria's Life", in A. Pagden and J. Lawrance (eds.), Francisco de Vitoria: Political Writings, Cambridge University Press, Cambridge, 1991, pp. xxix - xxx. Published in late 1991, this book was received too late to be used as a primary source in this study.
 12. Regarding Burgos, all that seems to be established is the year when Vitoria made his profession: 1506. See Beltrán de Heredia, "Personalidad del Maestro Francisco de Vitoria", p. xv. Concerning his time in Paris, sources suggest any year from 1506 to 1510 as the year of arrival and the years 1521 to 1523 as possible years of departure. Regarding his doctorate, the sources give two precise dates: 24/3/1521 and 21/6/1522. See Nys, "Introduction", Francisci de Victoria, p. 66, and Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, p. 17, respectively.
 13. Translated: master.
 14. Meaning "first" (lectures starting at 6 a.m.).
 15. For the "agreed" facts, see Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, pp. 18 - 22.
 16. Translated: lectures.

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17. Parts of these lectiones were published by Beltrán de Heredia in six volumes between 1932 and 1952 under the title Comentarios a la Secunda Secundae de Santo Tomas (Commentary on the Secunda Secundae of St Thomas) at Biblioteca de Teólogos Españoles, Salamanca. See Soder, Die Idee der Voelkergemeinschaft, pp. 17 - 18. Of the fifteen relectiones which Vitoria is said to have given, thirteen have been preserved. Urdánoz, "Indice General" (General Index), Obras de Francisco de Vitoria, pp. vii - viii. Approximately ten letters and a few opinions have survived. See "Introducción Biográfica, Ibid., p. 82. Nys mentions two further writings: Summa Sacramentorum Ecclesiae (The Sum of the Sacraments of the Church) and Confesionario, a manuel in Spanish for confessors, which appeared at Valladolid in 1566 and at Salamanca in 1562 respectively. See "Introduction", Francisci de Victoria, p. 83.
18. Beltrán de Heredia is regarded as the authority on the "facts" of Vitoria's life. See Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, pp. 1 - 107.
19. The approximately seventeen pages are: Ibid., pp. 108, 196, 328, 410, 491 - 492, 727 - 728, 859 - 861, 937, 995, 1070 - 1071, 1131, 1223, 1292 - 1293. The changes which he suggests concern Vitoria's letter to M. Arcos, Ibid., pp. 57 and 505 - 506n, and Vitoria's relectio "Del Homicidio" (On Homicide), Ibid., pp. 1070 - 1071.
20. There is one entry by Urdánoz which may be interpreted as meaning that Vitoria died in 1548. See Ibid., p. 66.
21. Nys, "Introduction", Francisci de Victoria, p. 81.
22. Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, p. 38.
23. Vitoria wrote prologues to: Peter Crockaert's Comments on the Secunda Secundae of the Summa of St Thomas, Paris, 1512; The Sermons of Pedro de Covarrubias, Paris, 1520; The Sum of Moral Theology of St Antonio of Florence, Paris, 1521; and Dictionary or Moral Repertory of Pedro Bersuine, Paris, 1521 - 1522.
24. Urdánoz reports that the university of Salamanca called a meeting with the members of the Convent of San Esteban in 1548, in order to talk about the writings left by Vitoria. In the course of this meeting a committee was appointed, which was to examine the writings and to select those which were to be printed. But the members of the committee, "distracted by other things", turned out to be little concerned with giving effect to the resolution of the university. See Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, p. 75.
25. See Ibid., p. 102.
26. Ibid., p. 88.
27. The story of the editions is told in Ibid., pp. 75 - 96. It seems to be unknown to Skinner, for he writes: "(Vitoria's) views are only known directly from a series of manuscript relectiones which happen to have survived". The Foundations of Modern Political

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- Thought, vol. 2, p. 136.
28. H.F. Wright, "Prefatory Remarks Concerning the Text", in Nys, Francisci de Victoria, p. 194.
 29. Ibid., p. 195.
 30. Ibid., p. 199.
 31. Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, p. 105. For a different response to the question of authenticity of Vitoria's writings, see "Critical Note on Texts and Translation", in Pagden and Lawrance, Francisco de Vitoria: Political Writings, pp. xxxiii - xxxviii.
 32. A point made by Urdánoz, Obras de Francisco de Vitoria, p. 1225. To give an example: in his relectio "On the Indians Lately Discovered" Vitoria proposes to deal with three questions; the relectio, however, contains the treatment of only the first. See "On the Indians Lately Discovered", translated by J. Pawley Bate, in Scott, The Spanish Origin of International Law, Appendix A, p. ii.
 33. Urdánoz, Obras de Francisco de Vitoria, pp. 1294 - 1295.
 34. Reported in Ibid., pp. 89 and 93. Getino's main evidence seems to be a letter said to be written by Charles I (V) to the Prior of San Esteban on 10/11/1539. See Pereña and Perez Prendes, Francisco de Vitoria: Relectio de Indis o Libertad de los Indios, pp. 152 - 153.
 35. The records, in this case, consist of the few letters by Vitoria that have survived. See Pereña and Pérez Prendes, Francisco de Vitoria: Relectio de Indis o Libertad de los Indios, pp. 137 - 139 and 152 - 156; Scott, The Spanish Origin of International Law, pp. 78 - 87.
 36. Urdánoz mentions his brother Diego a few times. For example, on p. 6, "Introducción Biográfica", Obras de Francisco de Vitoria, he writes: "Later to become a famous preacher, he was Prior of the convent of Burgos in 1527, having become well-known from 1526 onward for his campaigns against Erasmianism in Spain".
 37. Translated: meeting, committee of inquiry. According to J.H. Parry, the junta "was a familiar device for settling points of theological difference". The Spanish Theory of Empire in the Sixteenth Century, Octagon Books, New York, 1974, p. 32.
 38. Erasmus' letter of 29/11/1527 to Vitoria is contained in Allen, Opus Epistolarum, vol. 7, 1928, pp. 254 - 261.
 39. Nys, "Introduction", Francisci de Victoria, p. 79. Mesnard calls Vitoria "a friend and disciple of Erasmus", L'Essor de la Philosophie Politique au XVIe Siècle, p. 455.
 40. Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, p. 15.
 41. Barbier, "Introduction", Francisco de Vitoria: Leçons sur les In-

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diens et sur le Droit de Guerre, p. xii.

42. Urdánoz, "Introducción Biográfica", Obras de Francisco de Vitoria, p. 34.
43. "Si se puede obligar a los infieles a convertirse" (Whether One Can Force the Infidels to Convert (to Christianity)), in Pereña and Pérez Prendes, Francisco de Vitoria: Relectio de Indis o Libertad de los Indios, p. 124. Urdánoz mentions another reference by Vitoria to Erasmus. It is said to date from his lectiones of 1539 - 1540 in which he refutes "the errors of the humanist". "Introducción Biográfica", Obras de Francisco de Vitoria, p. 34.
44. J.H. Elliott, Imperial Spain: 1469 - 1716, Edward Arnold, London, 1963, Chs. I - VI, especially III.3, VI.1 and VI.2. Urdánoz mentions in passing that after the death of the Archbishop of Toledo, Alfonso de Fonseca, in 1528, and the banishment from the Court of the Inquisitor Manrique (both of whom were prominent Erasmians), the Inquisitional trials against the Erasmians began. "Introducción Biográfica", Obras de Francisco de Vitoria, p. 34. Vitoria's "illness" which scholars refer to as gout is said to have begun in 1529. See Ibid., p. 36.
45. Hernández, Un Español en la O.N.U., p. 126.
46. Translated: reconquest. The last Moslem kingdom on Spanish soil - Granada - fell in 1492.
47. One of the rare occasions during this period when Spaniards and French were allies rather than adversaries.
48. One of the famous pirates of this period was Caccia Diabolo.
49. Elliott, Imperial Spain, p. 43.
50. R.T. Davies, The Golden Century of Spain: 1501 - 1621, Macmillan, London, 1961, p. 92.
51. Phillipson, "Franciscus A Vitoria (1480 - 1546): International Law and War", p. 176.
52. According to Elton, "(p)apal decrees are called Bulls after the lead seal (bullae) attached to them, and are named after their initial words". Reformation Europe: 1517 - 1559, p. 22n. For a meaningful translation one would need more than the two words inter cetera with which the Bull begins.
53. L. Hanke, Bartolomé de Las Casas: An Interpretation of His Life and Writings, Martinus Nijhoff, The Hague, 1951, p. 36. According to Urdánoz, the Spanish kings asked for this Bull in order to resolve differences with and protests from the Portuguese. By the Treaty of Tordesillas of 1494, the two powers agreed to demarcate a line 370 miles to the east of the Azores. Obras de Francisco de Vitoria, p. 528.
54. B.M. Biermann, "Bartolomé de Las Casas and Verapaz", in J. Friede

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and B. Keen (eds.), Bartolomé de Las Casas in History: Toward an Understanding of the Man and His Work, Northern Illinois Press, DeKalb, Illinois, 1971, p. 443.

55. L. Hanke, The Spanish Struggle for Justice in the Conquest of America, Little Brown & Co., Boston, 1965, p. 25.
56. Ibid., p. 26.
57. Hanke, Bartolomé de Las Casas, p. 17.
58. According to Hanke, the laws of Burgos form "the first comprehensive code of legislation. It represents the Court's conception at that time of the ideal relationship between the Indians and their Spanish masters". It covers aspects ranging from "the diet of the Indians" to "the Holy Sacraments". The Spanish Struggle for Justice, pp. 24 - 25.
59. Ibid., pp. 27 - 30.
60. Ibid., p. 33. Requerimiento means requirement.
61. M.M. Martínez, "Las Casas on the Conquest of America", in Friede and Keen, Bartolomé de Las Casas in History, p. 335.
62. The Council of the Indies was the principal governing body resident in Spain to advise the monarch on matters relating to the New World. It consisted of a president and eight councillors. Elliott, Imperial Spain, p. 161.
63. Reports from the New World in the 1530s read like this: "This whole land is in turmoil and the Indians greatly aroused because of the cruelties and maltreatment of the Christians. Wherever they go their feet scorch the grass and the ground over which they pass. Their hands are bloody with slaying ...". See J. Comas, "Historical Reality and the Detractors of Father Las Casas", in Friede and Keen, Bartolomé de Las Casas in History, p. 491.
64. Translated: Sublime God.
65. Martínez, "Las Casas on the Conquest of America", p. 316.
66. The New Laws were an attempt to revoke or limit "the right of Spaniards to service and tributes from Indians, who would ultimately be put under the crown ...". See Hanke, The Spanish Struggle for Justice, pp. 83 - 105.
67. A letter of 1550 reads: "One could not believe that such cruel and savage inhumanity could dwell in a Christian heart ... Some Indians they burned alive; they cut off the hands, noses, tongues ...; they threw others to the dogs ...". See Comas, "Historical Reality and the Detractors of Father Las Casas", p. 494.
68. M. Giménez Fernández, "Fray Bartolomé de Las Casas", in Friede and Keen, Bartolomé de Las Casas in History, p. 109.
69. Juan Ginés de Sepúlveda: the imperial chronicler and learned Latin-

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ist who, as far as his political views were concerned, would qualify as a universalist.

70. "Concerning the Power of the Church" (One), translated by G.L. Williams, in Scott, The Spanish Origin of International Law, Appendix D, p. ci.
71. "Concerning Civil Power", translated by G.L. Williams, in Ibid., Appendix C, p. lxxxii. See also "On the Indians, Or on the Law of War Made by the Spaniards on the Barbarians" (hereafter "On the Law of War"), translated by J. Pawley Bate, in Ibid., Appendix B, p. lxi.
72. "On the Indians", in Ibid., p. xliii; see also p. xliv.
73. Translated: justification.
74. A point interesting to note, for it suggests that the original relectio consisted of no more than two parts, whereas today it is presented in three parts.
75. The Spanish word for the Latin relectio: re-reading.
76. A. Losada, "The Controversy between Sepúlveda and Las Casas in the Junta of Valladolid", in Friede and Keen, Bartolomé de Las Casas in History, p. 304.
77. "On the Indians", in Scott, The Spanish Origin of International Law, p. xiii. The word "politics" rather than "polities" in Scott's text seems to be a misprint, as the Latin is civitates. See "De Indis", in Nys, Francisci de Victoria, p. 231.
78. "On the Indians", in Scott, The Spanish Origin of International Law, p. xxx.
79. Vitoria to the Constable of Castile (1539), in Ibid., p. 82.
80. Antonio Leiva, the Spanish general. See above, p. 82.
81. Vitoria to the Constable of Castile (1536), in Scott, The Spanish Origin of International Law, p. 82.
82. Ibid., p. 83.
83. Ibid., pp. 83 - 84.
84. Vitoria to Arcos (8/11/1534), in Pereña and Pérez Prendes, Francisco de Vitoria: Relectio de Indis o Libertad de los Indios, pp. 137 - 138. There does not seem to exist a complete translation of this letter in the English language. Scott discusses it at some length without mentioning sentences such as "And although the Emperor may have just titles to conquer them, the Indians do not know it nor can they know it". The Spanish Origin of International Law, pp. 78 - 82. The point in question is important. See below, Sections Five and Six of this chapter, pp. 97 - 108.
85. See above, introduction to this chapter, p. 76.

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86. "On the Indians", in Scott, The Spanish Origin of International Law, pp. xvi - xxiv.
87. "Concerning the Power of the Church" (One), in Ibid., pp. xciv - xcvi.
88. "On the Indians", in Ibid., p. xvii.
89. Ibid.
90. Ibid., p. xviii.
91. Ibid., p. xx.
92. Ibid.
93. "Concerning the Power of the Church" (One), in Ibid., p. xcv.
94. Ibid.
95. Hugo, according to Urdánoz, was the Canonist Huguccio de Pisa (d. 1210).
96. "Concerning the Power of the Church" (One), in Scott, The Spanish Origin of International Law, p. xcv.
97. Ibid., p. xcvi.
98. Ibid. Innocent's pronouncement was mentioned in Chapter II. See above, p. 32.
99. "On the Indians", in Scott, The Spanish Origin of International Law, p. xxii.
100. Ibid.; see also p. xxiii.
101. The Latin word is respublica and, as the quotation indicates, Vitoria uses it in the sense of communitas (community). He also defines the word "people" as "the association based on the consent of the law and the community of interest". "De la Sedición o de la Guerra Civil" (On Sedition or Civil War), in Pereña, Francisco de Vitoria: Escritos Políticos, p. 290.
102. "On the Law of War", in Scott, The Spanish Origin of International Law, p. liii.
103. Ibid.
104. "On War", translated by G.L. Williams, in Ibid., Appendix F, p. cxvii.
105. Ibid. Vitoria never explains his concept of "the superior lord", perhaps, because he thinks that there is no need to do so. Thus he speaks of "the well-worn distinction drawn by the jurists between dominion high and low, dominion direct and available, dominion pure and mixed" ("On the Indians", in Ibid., p. xvi). And he does not use it often. When he does, it usually is in relation to the

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emperor, for example, when he says that "some kings have the emperor over them" (Ibid.), or that "the Emperor is superior to certain kings" ("Concerning the Power of the Church" (One), in Ibid., p. xcvi). The superior lord has certain rights, but rather than discussing these, he speaks of those which he does not have, as when he states that the perfect temporal community "can make war of itself" without "the authorization of its superior lord" ("On the Law of War", in Ibid., p. liii), or that the superior lord is not entitled to convert lands to "his own use" or to give towns away "at his own pleasure" ("On the Indians", in Ibid., p. xx). See also the requirement to rule in accordance with existing laws, mentioned in this section, p. 92. The superior lord is not from within the perfect temporal community, that is, he does not belong to that which it regards as its own ("On the Indians", in Scott, The Spanish Origin of International Law, p. xvii). The perfect temporal community is self-sufficient, that is, "nothing is wanting from it" ("On the Law of War", in Ibid., p. liii). The superior lord appears as an entity which is compatible with Vitoria's idea of political plurality.

106. "On War", in Scott, The Spanish Origin of International Law, p. cxvii.
107. For Vitoria, it is a way of arriving at a definition of civil power, following Aristotle's assumption that one knows a thing if one knows its causes.
108. Urdánoz adds Almain and Occam as sources used but not mentioned by Vitoria. Obras de Francisco de Vitoria, p. 112.
109. "Concerning Civil Power", in Scott, The Spanish Origin of International Law, pp. lxxv - lxxvi.
110. Ibid., p. lxxv.
111. Ibid.
112. In Ibid., p. lxxxii, Vitoria defines "public power" as "the faculty, authority, or right to govern the civil state". In "De la Potestad de la Iglesia" (One), he mentions that "according to St Thomas, power, in addition to the faculty of operation, comprises a certain pre-eminence and authority". See L. Getino (tr.), with an introduction by E. de Hinojosa, Francisco de Vitoria: Derecho Natural y de Gentes (Francisco de Vitoria: Natural Law and the Law of Nations), Ernecé Editores, Buenos Aires, 1946, p. 49. The Spanish text has been used in addition to the English, as the latter renders only part of the first of the two relecciones "Concerning the Power of the Church".
113. "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. lxxvi.
114. Ibid.
115. Ibid., p. lxxvii.
116. Ibid., p. lxxviii.

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117. Ibid., p. lxxxiii.
118. See, for example, Ibid., p. lxxxii, and "On the Indians", in Ibid., p. xvi.
119. This proposition has been omitted from both the English and the Spanish translation. For the Latin text, see Urdánoz, Obras de Francisco de Vitoria, p. 167.
120. "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. lxxxiii.
121. Ibid., p. lxxxii.
122. "De la Temperancia" (On Temperance), in Pereña, Francisco de Vitoria: Escritos Políticos, p. 267.
123. "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. lxxxii.
124. See below, Section Six of this chapter. Survival is so important that Vitoria, who normally insists that "faith is always to be kept with the enemy", relaxes this condition in circumstances where "to do so would be in the highest degree detrimental to the state, with the result that it would perish; for in that case it would not be just ... to have kept faith ...". "On War", in Scott, The Spanish Origin of International Law, p. cxxx.
125. "On the Law of War", in Scott, The Spanish Origin of International Law, p. lii.
126. "De la Temperancia", in Pereña, Francisco de Vitoria: Escritos Políticos, pp. 259 - 262. See also "Concerning the Power of the Church" (One), in Scott, The Spanish Origin of International Law, pp. xciv, c.
127. It is interesting to know that Vitoria explicitly rejects the idea that virtue can be exercised only in the Christian context. See his relectio "De la Obligación de Convertirse a Dios al Llegar al Uso de Razón" (On the Obligation to Convert to God when Attaining to the Use of Reason), in Urdánoz, Obras de Francisco de Vitoria, p. 1342.
128. Intervention is discussed below, Section Six.
129. "De la Sedición o de la Guerra Civil", in Pereña, Francisco de Vitoria: Escritos Políticos, p. 290.
130. Ibid., p. 292.
131. Ibid. Vitoria distinguishes two kinds of tyrant: (i) a ruler who is not entitled to the territory he occupies. It is not his state but he seizes it; (ii) a legitimate ruler, but one who governs the state to his own advantage. "¿Es lícito con autoridad privada matar al tirano?" (Is it lawful to kill the tyrant on private authority?), in Ibid., p. 323.

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132. B. Hamilton misses the point when he says that Vitoria "inclines to the contemporary view of religious conformity". Political Thought in Sixteenth-Century Spain: A Study of the Political Ideas of Vitoria, De Soto, Suárez and Molina, Clarendon Press, Oxford, 1963, p. 113. It may well have been his inclination, but when discussing this point he always insists on considering what is lawful and what is advisable. See Section Seven, below.
133. "On the Law of War", in Scott, The Spanish Origin of International Law, p. lxx.
134. An idea borrowed from Aristotle. See "De la Temperancia", in Pereña, Francisco de Vitoria: Escritos Políticos, p. 261.
135. Ibid., p. 269.
136. Elliott refers to this state of affairs as the "patrimonial concept" and mentions that it was practiced by Castile and Aragon in Vitoria's times: "The union of the crowns did not imply that their legal and constitutional systems should be brought in line ... Each state remained in its own compartment, governed by its traditional laws". Imperial Spain, p. 66. He also attributes it to the empire of Charles V. Ibid., pp. 157 - 158. Interesting on this point is also W. Naef, "Strukturprobleme des Reichs Karls V" (Structural Problems of the Empire of Charles V), in Rassow and Schalk, Karl V: Der Kaiser und seine Zeit, pp. 167 - 172.
137. Elton, Reformation Europe: 1517 - 1559, pp. 302 - 303.
138. "On the Indians", in Scott, The Spanish Origin of International Law, p. xviii.
139. "De la Potestad de la Iglesia" (One), in Getino, Francisco de Vitoria: Derecho Natural y de Gentes, p. 51.
140. "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. lxxx.
141. Ibid., p. lxxvi.
142. "De la Temperancia", in Pereña, Francisco de Vitoria: Escritos Políticos, p. 259.
143. "De la Potestad de la Iglesia" (One), in Getino, Francisco de Vitoria: Derecho Natural y de Gentes, p. 48.
144. "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. lxxxiii.
145. "Concerning the Power of the Church" (One), in Ibid., p. xciv.
146. "De la Potestad de la Iglesia" (One), in Getino, Francisco de Vitoria: Derecho Natural y de Gentes, p. 75.
147. Ibid., p. 76.
148. The former, according to Barbier, was seen to extend from Adam to

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Moses; the latter from Moses to Christ. Francisco de Vitoria: Leçons sur les Indiens et sur le Droit de Guerre, p. 113.

149. "De la Potestad de la Iglesia" (One), in Getino, Francisco de Vitoria: Derecho Natural y de Gentes, p. 78.
150. "De la Temperancia", in Pereña, Francisco de Vitoria: Escritos Políticos, p. 260.
151. "¿Es lícito mantener relación con infieles?" (Is it lawful to maintain relations with infidels?), in Pereña and Pérez Prendes, Francisco de Vitoria: Relectio de Indis o Libertad de los Indios, p. 131.
152. "Concerning the Power of the Church" (One), in Scott, The Spanish Origin of International Law, p. xcvi.
153. Ibid., p. xcix.
154. Ibid., p. c.
155. "De la Potestad de la Iglesia" (One), in Getino, Francisco de Vitoria: Derecho Natural y de Gentes, p. 55.
156. Ibid., p. 51.
157. Ibid.
158. "Concerning the Power of the Church" (One), in Scott, The Spanish Origin of International Law, p. xciv.
159. Ibid., p. c.
160. Ibid., p. ci.
161. Ibid.
162. Ibid., pp. c - ci.
163. "De la Potestad de la Iglesia" (Two), in Urdánoz, Obras de Francisco de Vitoria, p. 361.
164. Ibid., pp. 367 - 368.
165. "Concerning the Power of the Church" (One), in Scott, The Spanish Origin of International Law, p. xciii.
166. Ibid., p. xcix.
167. Ibid., pp. xcvii - c.
168. Ibid., p. cii.
169. Ibid., p. civ.
170. Ibid., p. ciii.

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171. "Concerning Civil Power", in Ibid., p. lxxxiii. The word "sole" before "monarch" in Scott's text has been added by the English translator and does not exist in the Latin original. See Urdánoz, Obras de Francisco de Vitoria, p. 180.
172. "On the Indians", in Scott, The Spanish Origin of International Law, p. xli.
173. Ibid., p. xliii.
174. "Concerning Civil Power", in Ibid., p. lxxxiii.
175. "Concerning the Power of the Church" (One), in Ibid., p. ciii.
176. Ibid.
177. "Concerning Civil Power", in Ibid., p. xc.
178. "On the Law of War", in Ibid., p. li.
179. "Concerning Civil Power", in Ibid., p. xc. The word "persons" in Scott's text has been added by the English translator, even though the context does not necessarily suggest it. For the Latin (and Spanish) text, see Urdánoz, Obras de Francisco de Vitoria, p. 191. See also below, pp. 99 - 100.
180. "On the Law of War", in Scott, The Spanish Origin of International Law, p. lvi.
181. "Concerning Civil Power", in Ibid., p. lxxxii. The Latin text has the word respublica and not gens or natio. See Urdánoz, Obras de Francisco de Vitoria, p. 168.
182. "Cuestión sobre el Derecho de Gentes" (Question regarding the Law of Nations), in Pereña, Francisco de Vitoria: Escritos Políticos, p. 300.
183. "De la Potestad de la Iglesia" (One), in Getino, Francisco de Vitoria: Derecho Natural y de Gentes, p. 72.
184. "Cuestión sobre el Derecho de Gentes", in Pereña, Francisco de Vitoria: Escritos Políticos, pp. 301 - 302.
185. Urdánoz, Obras de Francisco de Vitoria, pp. 553 - 554. Urdánoz interprets this as meaning that Vitoria allowed for natural law to change, attributing "progressive contents" to it (p. 555). Yet Vitoria himself, when commenting on this point, speaks of the immutability of natural law. See, for example, "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. lxxviii.
186. "De la Temperancia", in Pereña, Francisco de Vitoria: Escritos Políticos, p. 260.
187. "On the Indians", in Scott, The Spanish Origin of International Law, p. xxxii.
188. Ibid., p. xxxiii.

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189. Ibid., p. xl.
190. "On the Law of Nations and Natural Law", translated by F. Crane Macken, in Ibid., Appendix E, p. cxi.
191. Ibid., p. cxii.
192. Ibid. See also "Concerning Civil Power", in Ibid., p. xc.
193. "On the Law of Nations and Natural Law", in Ibid., pp. cxii - cxiii.
194. Ibid., p. cxiii.
195. Ibid.
196. Scott, "Francisco de Vitoria", The Spanish Conception of International Law, pp. 1, 11 - 12, 48.
197. See above, note 179.
198. "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. xc.
199. "On the Indians", in Ibid., p. xxxvi.
200. On this point see Urdánoz, Obras de Francisco de Vitoria, p. 568.
201. "On the Indians", in Scott, The Spanish Origin of International Law, p. xxxvi. It is the Roman jurist Gaius' formula in which Vitoria replaces the word homines (men) by the word gentes (peoples or nations).
202. Ibid., p. xxxviii.
203. Ibid. It is also worth noting that in the same section of this relectio Vitoria uses natural law and the law of nations as two separate sources to support statements asserting a right or an obligation, but does not cite natural law when he presents his argument relating to the violation of a right. In the light of a careful examination of the sources, then, it is not possible to agree with E.B.F. Midgley who expresses the view that "Vitoria's strength lies in the fact that he firmly secures the status of international society upon natural law ...". The Natural Law Tradition and the Theory of International Relations, Paul Elek, London, 1975, p. 92. Skinner, on the other hand, pays hardly any attention to Vitoria's interpretation of the law of nations as natural law. The Foundations of Modern Political Thought, vol. 2, pp. 152, 154.
204. "On the Law of Nations and Natural Law", in Scott, The Spanish Origin of International Law, p. cxii.
205. "On the Indians", in Ibid., pp. xvi - xx.
206. Ibid., pp. xx - xxiv.
207. Ibid., p. xxv.

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208. Ibid., pp. xxv - xxix.
209. Ibid., pp. xxxi - xxxiii.
210. Ibid., p. xviii.
211. Ibid., pp. xxxvi - xxxvii.
212. Ibid., p. xxxvi.
213. Ibid., p. xxxvii.
214. Ibid., xxxvii - xxxviii.
215. Ibid., p. xxxviii.
216. Ibid., p. xxxix.
217. Ibid.
218. Ibid., pp. xli - xliii.
219. Ibid., p. xli.
220. Ibid., p. liv.
221. Ibid., p. xxxvi.
222. Ibid.
223. Ibid., p. xli; "Concerning Civil Power", in Ibid., p. xc; "On the Law of Nations and Natural Law", in Ibid., p. cxiii.
224. "On the Law of Nations and Natural Law", in Ibid., p. cxiii.
225. "On the Law of War", in Ibid., p. 1.
226. "On War", in Ibid., p. cxvi.
227. Ibid., p. cxvii. From the point of view of the whole world, offensive war as defined by Vitoria may equally well be called defensive war (defending the common good of "society at large").
228. "On the Law of War", in Ibid., p. li.
229. Ibid.
230. "On the Indians", in Ibid., p. xxix.
231. "On the Law of War", in Ibid., pp. liii - lix.
232. See above, Section Five, pp. 101 - 102.
233. "On the Law of War", in Scott, The Spanish Origin of International Law, p. liv.
234. "On War", in Ibid., pp. cxvi - cxvii.

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235. "On the Law of War", in Ibid., p. liiii.
236. Ibid., p. lvi.
237. Ibid., p. lvii.
238. Ibid., p. lv.
239. Ibid., p. lvii.
240. "Concerning Civil Power", in Ibid., p. lxxxii. See also "On the Law of War", in Ibid., p. lxi. This clause or condition may explain why writers on the just war never seem to suggest that a just war may be lost - a possible explanation which Lange does not seem to have entertained, for he criticizes Vitoria for not even imagining "the case of a victory for the party which violated the law". Histoire de l'Internationalisme, vol. 1, p. 279.
241. "On the Law of War", in Scott, The Spanish Origin of International Law, p. lxi.
242. Ibid., p. li.
243. Ibid.
244. "On the Indians", in Ibid., p. xxxix.
245. Ibid., p. xli; "Concerning Civil Power", in Ibid., p. xc.
246. "On the Indians", in Ibid., p. xlv.
247. Ibid., p. xliii.
248. "On War", in Ibid., p. cxvii.
249. Ibid., p. cxviii.
250. "On the Indians", in Ibid., p. xlv.
251. "Si se puede obligar", in Pereña and Pérez Prendes, Francisco de Vitoria: Relectio de Indis o Libertad de los Indios, pp. 123 - 124.
252. "On the Indians", in Scott, The Spanish Origin of International Law, p. xlv.
253. Ibid., p. xlv.
254. Ibid., pp. xlv - xlvi.
255. "On the Law of War", in Ibid., p. lv.
256. Ibid., pp. lv - lvi, lxi - lxx; "On the Indians", in Ibid., p. xl.
257. See above, Section Three, p. 92, and Section Six, pp. 107 - 108.
258. "De la Temperancia", in Pereña, Francisco de Vitoria: Escritos Políticos, p. 267.

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259. Ibid., pp. 267 - 268.
260. Ibid., p. 269.
261. Las Casas also attached great importance to this point. Giménez Fernández reports that Las Casas "sought (March 1541) and obtained (1 December 1541) from the theologians of the University of Salamanca (headed by Fray Francisco de Vitoria) a parecer or opinion approving his thesis that the baptism of Indians had to be preceded by adequate instruction in the truths of the Christian religion ...". "Fray Bartolomé de Las Casas", p. 94.
262. "De la Temperancia", in Pereña, Francisco de Vitoria: Escritos Políticos, p. 269.
263. "Si se puede obligar", in Pereña and Pérez Prendez, Francisco de Vitoria: Relectio de Indis o Libertad de los Indios, p. 121.
264. Ibid., p. 122.
265. Ibid.
266. Ibid.
267. Ibid., p. 125.
268. "On the Indians", in Scott, The Spanish Origin of International Law, p. xxviii. See also "De la Obligación de Convertirse a Dios", in Urdánoz, Obras de Francisco de Vitoria, p. 1368.
269. "On the Indians", in Scott, The Spanish Origin of International Law, p. xxix.
270. Vitoria believes that "(i)f the Christian faith be put before the aborigines with demonstration, that is, with demonstrable and reasonable arguments, and this be accompanied by an upright life, well-ordered according to the law of nature ... and this be done not once only and perfunctorily, but diligently and zealously, the aborigines are bound to receive the faith ...". Ibid., p. xxx.
271. Ibid., p. xxxi.
272. Ibid., p. xlii.
273. Ibid., p. xliii.
274. Nys, "Introduction", Francisci de Victoria, p. 69.
275. "On the Law of War", in Scott, The Spanish Origin of International Law, p. lxx.
276. Ibid.
277. Ibid., pp. lxii - lxiii.
278. Ibid., pp. lxv - lxvi.

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279. Ibid., p. lxix.
280. Ibid., pp. lxix - lxx.
281. Ibid., p. lxv.
282. Ibid., p. lxvi.
283. "On the Indians", in Ibid., p. xl.
284. Lange, Histoire de l'Internationalisme, vol. 1, p. 270.
285. Ibid. The French text reads: "Le meilleur règne est celui qui est exercé par une seule personne, comme si tout le monde était gouverné par un prince et maître très sage".
286. The English text reads: "The best rule, therefore, is the rule of one, just as the whole world is governed by one all-wise King and Master". See "Concerning Civil Power", in Scott, The Spanish Origin of International Law, p. lxxxii. This translation is superior to Lange's, as it leaves no doubt that Vitoria's all-wise prince and master is God and not a human being. The Latin text reads: "Optimum ergo regnum est unius, sicut totus orbis ab uno principe et domino sapientissimo gubernatur". See Urdánoz, Obras de Francisco de Vitoria, p. 167.
287. See above, Section Three, p. 91 and note 119.
288. Lange's text reads: "Comme la plus grande partie d'un État peut constituer un roi sur l'État tout entier, même contre la volonté des autres, ainsi la majorité des chrétiens, même si les autres s'y opposent, peut de plein droit créer un Monarque, à qui tous les princes et les provinces seront tenus de prêter obéissance". L'Histoire de l'Internationalisme, vol. 1, pp. 270 - 271. Regarding the third example, see Ibid., p. 271.
289. Compare with the English text in Scott, The Spanish Origin of International Law, p. lxxxii, and the Latin in Urdánoz, Obras de Francisco de Vitoria, pp. 178 - 179. The English translation is again superior to the French.
290. Bozeman, Politics and Culture in International History, p. 293.

CHAPTER V

1. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 362.
2. Wight, Systems of States, p. 148; Bull, The Anarchical Society, p. 28.
3. Translated: On the Law of War.
4. The Latin word is congregatio, a difficult word in the present context. Usually it is translated as "assembling together", "union", "society".

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5. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 362n. The year 1588 in the quoted passage suggests that Gierke used the three commentaries rather than the three books of Gentili's De Jure Belli. See below, Section One, p. 121.
6. P. 11 of the Latin text. See A. Gentili, De Jure Belli Libri Tres (Three Books on the Law of War), vol. 1, A Photographic Reproduction of the Edition of 1612, The Classics of International Law, Clarendon Press, Oxford, and Humphrey Milford, London, 1933.
7. A. Gentili, De Jure Belli Libri Tres, vol. 2, The Translation by J. C. Rolfe, With an Introduction by C. Phillipson, The Classics of International Law, Clarendon Press, Oxford, and Humphrey Milford, London, 1933, reprinted by Oceana Publications, New York, and Wildy & Sons, London, 1964, p. 8.
8. P. 13 of the Latin text. See Ibid., vol. 1.
9. Ibid., vol. 2, p. 9.
10. Wight, Systems of States, p. 164.
11. Regarding references to Erasmus see, for example, A. Gentili, De Legationibus Libri Tres (Three Books on Embassies), vol. 2, The Translation by G.J. Laing, With an Introduction by E. Nys, The Classics of International Law, Oxford University Press, New York, 1924, reprinted by Oceana Publications, New York, and Wildy & Sons, London, 1964, p. 161; and De Jure Belli, vol. 2, pp. 28, 29, 38, 135, 157, 261. Regarding references to Vitoria see, for example, Ibid., pp. 31, 39, 55, 89, 122, 126, 332.
12. De Jure Belli, vol. 2, p. 29. This is perhaps Gentili's "revenge" for the rather unflattering view which Erasmus expresses when he suggests that there should be as few laws as possible, and that these be as just and as clear as possible, for then "there will be no need for that most grasping type of man who calls himself 'jurisconsult' and 'advocate'". See The Education of a Christian Prince, p. 234.
13. De Jure Belli, vol. 2, p. 39. For K. Ehrlich's assertion, however, that "(t)he arrangement of Gentili's work on the law of war follows the four questions of Vitoria ...", this study has found no support in Gentili's text. "The Development of International Law as a Science", Recueil des Cours, vol. 105, I, 1962, p. 204.
14. A point also made by his translators J.C. Rolfe, De Jure Belli, vol. 2, p. 52a; and F.F. Abbott, in A. Gentili, Hispanicae Advocationis Libri Duo (Two Books of Spanish Advocacy), vol. 2, The Translation by F.F. Abbott, The Classics of International Law, Oxford University Press, New York, 1921, reprinted by Oceana Publications, New York, and Wildy & Sons, London, 1964, p. 9a.
15. G.H.J. van der Molen, Alberico Gentili and the Development of International Law: His Life, Work and Times, 2nd rev. ed., A.W. Sijthoff, Leyden, 1968 (first published in 1937). All the more noteworthy is M.G. Forsyth, H.M.A. Keens-Soper and P. Savigear (eds.), The Theory of International Relations, George Allen & Unwin, London,

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- 1970, which begins its "Selected Texts" with excerpts from Gentili, pp. 15 - 35. More recently, a comparison of Gentili with Grotius has been offered by P. Haggenmacher, "Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture", in Bull, Kingsbury and Roberts, Hugo Grotius and International Relations, pp. 133 - 176.
16. Regarding details of Gentili's life and writings see, in addition to Molen, Alberico Gentili and the Development of International Law, P. Bayle, "Gentilis (Albéric)", Dictionnaire Historique et Critique (Historical and Critical Dictionary), 11th ed., vol. 7, Desoer, Paris, 1820 (first published in 1696), pp. 65 - 67; T.E. Holland, "Alberico Gentili", Studies in International Law, Clarendon Press, Oxford, 1898, pp. 1 - 39; T.W. Balch, "Albericus Gentilis", American Journal of International Law, vol. 5, 1911, pp. 665 - 679; F.F. Abbott, "Alberico Gentili and His Advocatio Hispanica", American Journal of International Law, vol. 10, 1916, pp. 737 - 748; and E. Nys, "Introduction", in A. Gentili, De Legationibus Libri Tres, vol. 1, A Photographic Reproduction of the Edition of 1594, The Classics of International Law, Oxford University Press, New York, 1924, pp. 11a - 38a. An English translation of Nys' "Introduction" is contained in vol. 2 of De Legationibus, pp. 11a - 37a.
 17. According to Molen, Alberico Gentili and the Development of International Law, p. 37, the office of praetor combined the duties of mayor and judge.
 18. This Chair was established by Henry VIII in 1540. See Nys, "Introduction", De Legationibus, vol. 2, p. 26a. According to the same source, the annual salary attached to it was forty pounds sterling.
 19. For information on the London Court of Admiralty, see Molen, Alberico Gentili and the Development of International Law, pp. 193 - 195.
 20. For details regarding Wood, see J.O. Thorne and T.C. Collocott (eds.), Chambers Biographical Dictionary, vol. 2, Chambers Paperback Reference Books, Edinburgh, 1975, p. 1377.
 21. L. Markowicz (translated with an introduction), "Latin Correspondence by Alberico Gentili and John Rainolds on Academic Drama", in J. Hogg (ed.), Elizabethan and Renaissance Studies, no. 68, Institut fuer Englische Sprache und Literatur, Salzburg, 1977, p. 6.
 22. T.E. Holland, "Gentili, Alberico (1552 - 1608)", in L. Stephen and S. Lee (eds.), The Dictionary of National Biography, vol. 7, Oxford University Press/Humphrey Milford, London, 1937 - 1938, p. 1004.
 23. Molen, Alberico Gentili and the Development of International Law, pp. 330 - 331.
 24. Holland, "Gentili, Alberico (1552 - 1608)", p. 1005.
 25. See, for example, G.R. Elton, England under the Tudors, Methuen, London, 1956; and J.H. Elliott, Europe Divided: 1559 - 1598, Fon-

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- tana/Collins, Glasgow, 1977.
26. This is the view expressed by Elton, England under the Tudors, p. 357.
 27. It is mentioned in Ibid., p. 328, and by Elliott, Europe Divided, p. 303.
 28. Elliott, Europe Divided, p. 303.
 29. Jean Hotman, French jurist, teacher in civil law at Oxford, and secretary to the Earl of Leicester. See also Nys, "Introduction", De Legationibus, vol. 2, p. 37a.
 30. Translated: assembly. Here: the annual graduation ceremony at Oxford University.
 31. The Latin text reads as follows: "In quo tractatu diversae illustres quaestiones maritimae secundum jus gentium & hodiernam praxin quam nitide perlustrantur et deciduntur". See A. Gentili, Hispanicae Advocationis Libri Duo, vol. 1, A Photographic Reproduction of 1661, The Classics of International Law, Oxford University Press, New York, 1921, title-page.
 32. One of the few of Gentili's commentators to mention this discrepancy between title and contents of the work is K.R. Simmonds, "Alberico Gentili at the Admiralty Bar, 1605 - 1608", Archiv des Voelkerrechts, vol. 7, 1958 - 1959, pp. 3 - 4.
 33. De Legationibus, vol. 2, pp. 57 - 58.
 34. Ibid., pp. 112 - 113.
 35. De Jure Belli, vol. 2, p. 20.
 36. Ibid., p. 267.
 37. Ibid.
 38. Ibid., pp. 76 - 77.
 39. Ibid., p. 77.
 40. Ibid., p. 116.
 41. On this point see also F.F. Abbott, "Introduction", Hispanicae Advocationis, vol. 1, p. 19a.
 42. Hispanicae Advocationis, vol. 2, p. 119.
 43. For example, De Legationibus, vol. 2, pp. 153, 156; and De Jure Belli, vol. 2, pp. 114, 199, 401.
 44. De Legationibus, vol. 2, p. 156.
 45. Ibid.

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46. De Jure Belli, vol. 2, p. 5.
47. See, for example, De Legationibus, vol. 2, p. 67.
48. See, for example, De Jure Belli, vol. 2, p. 349.
49. Ibid., p. 66.
50. Ibid., p. 65.
51. Ibid., pp. 112 - 119.
52. Ibid., pp. 112 - 113. See also the preceding chapter "On not Reviving Old Causes for War", Ibid., pp. 105 - 111. Even in relation to the German states, the Roman emperor is not "a ruler of unlimited power". Ibid., p. 50.
53. Gentili entitles this chapter "Of Defence on Grounds of Expediency", Ibid., pp. 61 - 66; but here as elsewhere - see, for example, Ibid., pp. 71, 211, 349, 350, 351 - he does not separate expediency from the idea of justice, a fact which does not prevent Midgley from condemning in Gentili's thought the causa utilis as "a pernicious notion ...". The Natural Law Tradition, p. 116. See also below, "Some Reflections in Conclusion", p. 157.
54. De Jure Belli, vol. 2, p. 64.
55. Ibid.
56. Ibid., p. 65.
57. Translated from the Latin text which reads: "Etiam perseverantia concordiae inter elementa sic ab aequa partitione est; et dum in nullo aliud ab alio vincitur". De Jure Belli, vol. 1, p. 104. It is not quite clear why the translator renders elementum as "atom" and also as "molecule". See Ibid., vol. 2, p. 65.
58. The Latin text reads: "... res Italorum paribus libratae ponderibus forent", Ibid., vol. 1, p. 104, which a verbal translation might render as: "... the states of the Italians should be well-poised by equal weights". Parkinson does not mention Gentili in his discussion of the balance of power and relegates the formulation of this "difficult concept" to the seventeenth and eighteenth centuries. The Philosophy of International Relations, p. 44.
59. De Jure Belli, vol. 2, p. 65.
60. Ibid.
61. The institution of the embassy is discussed below, Section Seven, pp. 141 - 147.
62. See also K.R. Simmonds, "Gentili on the Qualities of the Ideal Ambassador", The Indian Year Book of International Affairs, vol. 13, II, 1964, pp. 47 - 58.
63. De Legationibus, vol. 2, p. 135.

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64. Ibid., p. 7.
65. Ibid., p. 158.
66. Ibid., p. 169.
67. Ibid., p. 139.
68. The "sacred embassy" is discussed by Gentili in Ibid., pp. 9 - 10. See below, Section Seven, p. 144.
69. De Legationibus, vol. 2, p. 7.
70. For example, Ibid., pp. 53, 170.
71. Ibid., p. 178; De Jure Belli, vol. 2, p. 237.
72. P. de Comines, Memoirs, translated and annotated by Mr. Uvedale, 2nd ed., vol. 1, Bettsworth & Pemberton, London, 1723 (first published in 1524), p. 270.
73. On this aspect of Gentili's life and work, see Markowicz, "Latin Correspondence by Alberico Gentili and John Rainolds on Academic Drama", p. 62; J. Rainolds, The Overthrow of Stage-Plays by the Way of Controversy between D. Gager and D. Rainolds, 1599, Johnson Reprint, New York/London, 1972; J.W. Binns, "Alberico Gentili in Defense of Poetry and Acting", Studies in the Renaissance, vol. 19, 1972, pp. 224 - 272.
74. De Legationibus, vol. 2, p. 198.
75. Ibid., p. 141. Gentili applies the term "barbarians" to "uncivilized" peoples.
76. Ibid., p. 143.
77. Ibid., p. 148.
78. Ibid., p. 151.
79. Ibid., p. 156.
80. Ibid., p. 161.
81. Ibid., pp. 162, 164, 166, 169.
82. Ibid., p. 172.
83. Ibid., pp. 173 - 174.
84. Ibid., pp. 182 - 185.
85. Ibid., pp. 189 - 191.
86. Ibid., p. 194.
87. Ibid., p. 197.

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88. Ibid., p. 201.
89. Translated: On the State of the English.
90. Sir Thomas Smith, De Republica Anglorum: A Discourse on the Commonwealth of England, edited by L. Alston, with a Preface by F.W. Maitland, Cambridge University Press, Cambridge, 1906, p. 20. Composed in 1565, De Republica Anglorum was first published in 1583. Regarding its author Thomas Smith, see "Sir Thomas (1514 - 1577)", in Thorne and Collocott, Chambers Biographical Dictionary, vol. 2, p. 1190; also Nys, "Introduction", De Legationibus, vol. 2, p. 26a.
91. This statement is based on Gentili's three works on the law of nations.
92. See, for example, his attempts at defining "ambassador", in De Legationibus, vol. 2, pp. 5 - 8; "law of nations", in De Jure Belli, vol. 2, pp. 8 - 11; "war", in Ibid., pp. 12 - 14; or "peace", in Ibid., p. 290.
93. The Latin word is civitas, and a more appropriate translation in the present context would be "state".
94. De Jure Belli, vol. 2, p. 3.
95. Ibid., p. 4.
96. Ibid., p. 72.
97. Ibid., p. 15.
98. De Legationibus, vol. 1, p. 9. Gentili's translator Laing translates liber as "independent". See Ibid., vol. 2, p. 11.
99. "The term territory", as Gentili explains in De Jure Belli, vol. 2, p. 384, "is used both of land and water", that is, "(t)he adjacent part of the sea belongs to one's dominion ...". However, the prince's dominion over this part of his territory is limited, as, according to Gentili, the sea is open to all as far as its use is concerned. See Ibid., pp. 90 - 92.
100. See, for example, De Legationibus, vol. 2, p. 11; and De Jure Belli, vol. 2, pp. 20 - 21. Those who do not enjoy the status of princeps internally are identified by Gentili as dependent states, subject states, subject peoples or petty sovereigns.
101. See, for example, De Jure Belli, vol. 2, pp. 15, 68, 102.
102. Ibid., pp. 15 - 21.
103. De Legationibus, vol. 2, pp. 59 - 95; pp. 96 - 126.
104. De Jure Belli, vol. 2, pp. 360 - 366.
105. Ibid., pp. 67 - 73.
106. See, for example, De Legationibus, vol. 2, p. 108; and De Jure Bel-

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- li, vol. 2, p. 92.
107. See, for example, De Jure Belli, vol. 2, pp. 117 - 119.
108. Ibid., p. 20.
109. Ibid., p. 111.
110. Ibid., p. 227.
111. De Legationibus, vol. 2, p. 76.
112. De Jure Belli, vol. 2, p. 372.
113. Ibid., p. 76.
114. Ibid., p. 349.
115. See, for example, Ibid., pp. 100 - 102, 289 - 290, 353 - 355.
116. Ibid., p. 47. See also Ibid., p. 413.
117. The Latin word is principatus, the meaning of which is identified by the context as "state".
118. De Jure Belli, vol. 2, pp. 349 - 350.
119. Ibid., p. 358.
120. Ibid., p. 378.
121. Ibid., p. 263.
122. See, for example, De Legationibus, vol. 2, p. 85.
123. De Jure Belli, vol. 2, pp. 50 - 52.
124. Ibid., p. 52.
125. Ibid., pp. 114, 371.
126. Ibid., pp. 78, 114 - 115, 371, 412.
127. Ibid., p. 114; see also p. 20.
128. Ibid., p. 364.
129. De Legationibus, vol. 2, pp. 76 - 77; De Jure Belli, vol. 2, pp. 23 - 24.
130. De Jure Belli, vol. 2, pp. 69, 74 - 78. See also below, Section Eight, p. 149.
131. De Jure Belli, vol. 2, p. 74.
132. Translated: society of peoples or nations.

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133. For example, C. Phillipson, "Albericus Gentilis", in Macdonell and Manson, Great Jurists of the World, p. 116; also his "Introduction", De Jure Belli, vol. 2, p. 20a; Simmonds, "Alberico Gentili at the Admiralty Bar", pp. 7, 8; and Molen, Alberico Gentili and the Development of International Law, p. 115.
134. De Legationibus, vol. 2, p. 51.
135. There is no evidence in Gentili's work to support P. Guggenheim's assertion that "Alberico Gentili (sic) sees the obligatory basis of the law of nations in the fact that, although the peoples have never been united, the evolution goes in the direction of a 'supernational community' (communauté superétatique)". "Contribution à l'Histoire des Sources du Droit des Gens" (Contribution to the History of the Sources of the Law of Nations), Recueil des Cours, vol. 94, II, 1958, p. 23.
136. De Jure Belli, vol. 2, p. 414.
137. See, for example, Ibid., p. 75.
138. See, for example, De Legationibus, vol. 2, p. 12.
139. See, for example, De Jure Belli, vol. 2, pp. 38 - 41.
140. Ibid., p. 74.
141. Ibid., pp. 75, 323.
142. Hispanicae Advocationis, vol. 2, p. 105.
143. Ibid., pp. 105 - 106.
144. De Jure Belli, vol. 2, p. 15.
145. Ibid., p. 12.
146. Ibid., p. 387.
147. Ibid., pp. 387 - 388.
148. Ibid., p. 402.
149. Ibid.
150. "On the Indians", in Scott, The Spanish Origin of International Law, p. xlv.
151. Regarding enemies, see, for example, De Jure Belli, vol. 2, p. 267; friends, p. 69; and "neutrals", pp. 392 - 393.
152. Ibid., p. 41.
153. Ibid.
154. See, for example, Ibid., p. 72.

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155. Ibid., p. 67.
156. Ibid., p. 3.
157. Ibid., p. 291.
158. Ibid., p. 67.
159. Ibid.
160. Ibid., p. 68.
161. Ibid., p. 22.
162. Hispanicae Advocationis, vol. 2, p. 18.
163. De Legationibus, vol. 2, p. 79.
164. As he explains in De Jure Belli, vol. 2, p. 321: "Such rebels cannot be discussed in a few words; but I am not treating that subject, which belongs to civil law".
165. Ibid., p. 24.
166. Ibid., pp. 23 - 24.
167. Ibid., p. 345.
168. Ibid., p. 263.
169. The Latin word is jus gentium, which should be translated as "law of nations", not as "international law", which appears in the translation.
170. De Legationibus, vol. 2, p. 59.
171. De Jure Belli, vol. 2, p. 22.
172. Ibid., p. 124.
173. Ibid., p. 8.
174. Ibid., pp. 9 - 10.
175. Translated from De Nuptiis (On Marriage), Latin text in Molen, Alberico Gentili and the Development of International Law, p. 115.
176. De Legationibus, vol. 2, p. 94.
177. The same comment applies as above, note 169.
178. De Jure Belli, vol. 2, pp. 7 - 8.
179. Ibid., p. 11. Included in this category is Justinian I (483 - 565), Emperor of the East, of whose work Corpus Juris Civilis (The Whole of Civil Law) Gentili says: "(T)he law which is written in those books of Justinian is not merely that of the state, but also that

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of the nations and of nature ...". Ibid., p. 17.

180. Ibid., p. 11.
181. Ibid., p. 9.
182. Ibid., p. 8.
183. Ibid. The English text reads "to all men" - a translation which is not necessarily suggested by the context. For the Latin text, see Ibid., vol. 1, p. 11.
184. Ibid., vol. 2, p. 8. This is a point emphasized by C.L. Lange, "Histoire de la Doctrine Pacifique et de son Influence sur le Développement du Droit International" (History of the Doctrine of Peace and Its Influence on the Development of International Law), Recueil des Cours, vol. 13, III, 1926, p. 225.
185. De Jure Belli, vol. 2, p. 9.
186. Gentili's "lack of clarity" in his "general definition of the law of nations" is underlined by a scholar such as C. von Kaltenborn, Die Vorläufer des Hugo Grotius auf dem Gebiete des Jus naturae et gentium sowie der Politik im Reformationszeitalter (The Predecessors of Hugo Grotius in the Study of the Law of Nature and of Nations as well as Politics in the Age of the Reformation), Gustav Mayer, Leipzig, 1848, reprinted by Sauer & Anvermann, Frankfurt am Main, 1965, p. 231; nevertheless Kaltenborn is prepared to credit Gentili with the distinction of being "the first more important author of the modern law of nations". See Ibid., p. 228.
187. Gentili attributes immutability to the law of nations. "Our principles are not established from facts but from their reasons". De Jure Belli, vol. 2, p. 165. "They are immutable because they are based on truth". Ibid., p. 330.
188. Translated from Lectiones et Epistolae ... (Readings and Letters ...), Latin text in Molen, Alberico Gentili and the Development of International Law, p. 114.
189. Ibid. See also De Jure Belli, vol. 2, p. 331.
190. Translated from Lectiones et Epistolae ..., in Molen, Alberico Gentili and the Development of International Law, p. 115.
191. See, for example, De Jure Belli, vol. 2, pp. 191, 361.
192. See, for example, De Legationibus, vol. 2, p. 162; and De Jure Belli, vol. 2, p. 145.
193. De Legationibus, vol. 2, p. 87. See also De Jure Belli, vol. 2, p. 361. On the principle of good faith in Gentili's writings, see L. Ehrlich, "L'Interprétation des Traités" (Interpretation of Treaties), Recueil des Cours, vol. 24, IV, 1928, pp. 12 - 15.
194. De Jure Belli, vol. 2, p. 290.

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195. De Legationibus, vol. 2, p. 51.
196. De Jure Belli, vol. 2, p. 89.
197. Ibid., p. 88.
198. Ibid.
199. Ibid.
200. Ibid., p. 89.
201. De Legationibus, vol. 2, p. 119.
202. De Jure Belli, vol. 2, p. 88.
203. An important city-state from the 8th century B.C., with Sicilian and Black Sea colonies.
204. De Jure Belli, vol. 2, p. 88.
205. Ibid.
206. Ibid., p. 401.
207. Ibid., p. 89.
208. Ibid., p. 86.
209. Ibid., pp. 90, 91.
210. Ibid., p. 88.
211. Ibid., p. 87.
212. Ibid., pp. 89 - 90.
213. Ibid., pp. 101 - 103, 267.
214. Ibid., pp. 86, 90.
215. The person representing the institution of the embassy, the ambassador, is discussed above, Section Three, pp. 125 - 129.
216. Onions, The Shorter Oxford English Dictionary on Historical Principles, vol. 1, p. 514. According to the same source, the term "diplomacy" was coined in 1796.
217. De Legationibus, vol. 2, p. 14.
218. Ibid., p. 18.
219. H. Nicolson, Diplomacy, 3rd ed., Oxford University Press, London/ New York, 1965 (first published in 1939), p. 13.
220. De Legationibus, vol. 2, p. 51.

221. Ibid., p. 52.
222. Ibid., p. 51.
223. Ibid., p. 14.
224. Ibid., p. 18.
225. Ibid., p. 19.
226. Ibid.
227. Ibid., p. 52.
228. Ibid., p. 21.
229. Ibid., p. 20.
230. Ibid.
231. Ibid., p. 14.
232. For example, Nicolson, Diplomacy, p. 26; Molen, Alberico Gentili and the Development of International Law, p. 88; and Wight, Systems of States, p. 141.
233. De Legationibus, vol. 2, pp. 52 - 53.
234. Ibid., p. 53.
235. Ibid., p. 99.
236. Ibid., p. 9.
237. Ibid., p. 52.
238. Ibid., p. 10.
239. Gentili's translator Laing translates jus legationum for most of the time as "right of embassies", occasionally as "law of embassies".
240. De Legationibus, vol. 2, p. 58.
241. Ibid., p. 90.
242. Ibid., p. 87.
243. Ibid., p. 88. See the whole chapter, Ibid., pp. 85 - 89.
244. Ibid., pp. 76, 79.
245. Ibid., p. 82. Gentili never explains whether he sees a link between "the rebel" and "civil war".
246. Ibid., p. 70.
247. The same comment applies as above, note 169.

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248. De Legationibus, vol. 2, p. 69. This is a good example of the importance of "the context" in Gentili's work.
249. Ibid., pp. 94 - 95. Gentili mentions that Henry VII, for example, did not allow resident ambassadors into his realm for fear that they were spies. Ibid., p. 170.
250. Ibid., pp. 58, 96.
251. Ibid., p. 101.
252. Ibid., pp. 103 - 104.
253. Ibid., pp. 65 - 68.
254. Ibid., pp. 113 - 114.
255. Ibid., p. 108.
256. Ibid., pp. 97, 106, 111, 113, 123.
257. Ibid., pp. 107, 108 - 110, 125.
258. Ibid., pp. 98, 122.
259. Ibid., p. 113.
260. Ibid., pp. 72 - 74.
261. De Jure Belli, vol. 2, p. 12.
262. De Legationibus, vol. 2, p. 52.
263. De Jure Belli, vol. 2, p. 15.
264. Ibid., pp. 15 - 16.
265. Ibid., p. 13.
266. Ibid., p. 5.
267. Ibid., p. 35.
268. Ibid., p. 15. See also above, Section Four, p. 130.
269. De Jure Belli, vol. 2, p. 20.
270. Ibid., p. 37.
271. Ibid., p. 41.
272. Ibid.
273. Ibid., p. 56. See also above, Section Five, p. 136.
274. De Jure Belli, vol. 2, p. 54.
275. Ibid., p. 58.

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276. Ibid., p. 59.
277. Ibid.
278. Ibid., p. 61. See also above, Section Three, pp. 124 - 125.
279. De Jure Belli, vol. 2, p. 64.
280. Ibid., p. 67.
281. Ibid.
282. Ibid., pp. 71 - 73.
283. Ibid., pp. 75 - 76. See also above, Section Four, p. 133.
284. De Jure Belli, vol. 2, p. 74.
285. Ibid., pp. 76 - 78.
286. Ibid., p. 78.
287. Ibid., pp. 79 - 82.
288. Ibid., pp. 83 - 85.
289. Ibid., pp. 86 - 92. See also above, Section Six, p. 141. It is not clear why Gentili presents pp. 86 - 92 in De Jure Belli, vol. 2, under the heading "Of Natural Reasons for Making War", when this goes against his classificatory system of material causes of war outlined in Ibid., pp. 35, 58 and 79.
290. Ibid., pp. 122 - 127. According to Gentili's classificatory system, this chapter should precede rather than follow his discussion "Of Human Reasons for Making War", pp. 93 - 98.
291. Ibid., p. 93.
292. Ibid., p. 95.
293. Ibid., pp. 31 - 32.
294. Ibid., p. 32.
295. Ibid., pp. 32 - 33. The example is taken from Ibid., p. 101. Midgley's reaction to Gentili's idea of the just war on both sides is as follows: "A major defect in Gentili's thought on war is his doctrine that war may be objectively just on both sides. He argues that it may be (objectively) just on one side and, at the same time, still more (objectively) just on the other side. Having uttered this absurdity, Gentili lamely refers to a most true kind of justice according to which a war cannot be objectively just on both sides. He then argues that men have little knowledge of this kind of justice. Of course, this last consideration, even if it were valid, would not have bearing upon the question of objective justice". The Natural Law Tradition, p. 116. See also below, "Some Reflections in Conclusion", p. 157.

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296. De Jure Belli, vol. 2, p. 33.
297. Ibid., p. 131.
298. Ibid., p. 132.
299. Ibid., p. 158.
300. Ibid., p. 216.
301. Ibid., pp. 262 - 263.
302. Ibid., pp. 262, 266 - 267.
303. Ibid., p. 279.
304. Ibid., p. 290. See also above, Section Five, p. 139.
305. De Jure Belli, vol. 2, p. 290.
306. Ibid., p. 291.
307. Ibid., p. 353.
308. Ibid., p. 293.
309. Ibid., p. 296.
310. Ibid., p. 354.
311. Ibid., p. 357.
312. Ibid., p. 359.
313. Ibid., p. 361.
314. Ibid., p. 294 (quoting St Bernard).
315. De Legationibus, vol. 2, pp. 65 - 66.
316. Ibid., p. 166. See also above, Section Three, p. 128.
317. De Jure Belli, vol. 2, p. 228.
318. Ibid., p. 295.
319. Ibid., pp. 15 - 16.
320. Ibid., pp. 255, 261 - 263.
321. Ibid., p. 270.
322. Ibid.
323. Ibid., p. 278.
324. Ibid., p. 239.

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325. Ibid., p. 292.
326. Ibid., p. 313.
327. The same comment applies as above, note 169.
328. De Legationibus, vol. 2, p. 112.
329. De Jure Belli, vol. 2, p. 322.
330. Ibid., pp. 324 - 325.
331. Ibid., p. 325.
332. Hispanicae Advocationis, vol. 2, pp. 87 - 98.
333. The sources which Gentili mentions are: civil law, canon law, the law of nations, and the peace treaty with Spain.
334. Hispanicae Advocationis, vol. 2, pp. 95 - 96.
335. De Legationibus, vol. 2, pp. 203 - 208; De Jure Belli, vol. 2, pp. 437 - 459; and Hispanicae Advocationis, vol. 2, pp. 276 - 284.
336. See above, Sections Eight and Nine, pp. 147, 154.
337. De Jure Belli, vol. 2, p. 12. The context: Gentili presents his definition of war.
338. See above, Sections Seven and Nine, pp. 146, 155.
339. De Jure Belli, vol. 2, p. 409. The context: a state is planning to attack another state.
340. See above, Chapter I, pp. 2 - 4.
341. Midgley, The Natural Law Tradition, p. 116.
342. Ibid.
343. See above, Section Two, pp. 124 - 125.
344. Midgley, The Natural Law Tradition, p. 116. See also above, Section Eight, p. 150.
345. See above, Chapter III, p. 54.
346. See above, Chapter IV, pp. 93 - 94.
347. De Jure Belli, vol. 2, pp. 38 - 39.
348. See above, Section Five, p. 135.
349. See above, Section Four, pp. 129 - 130.
350. Gentili usually refers to these as dependent states or subject states. See above, note 100.

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351. See above, Section Five, p. 138.

352. See above, Section Four, p. 133.

CHAPTER VI

1. See above, Chapter I, p. 3.
2. II, c 8, § 26; II, c 15, § 5; II, c 15, § 12; II, c 20; II, c 21, § 3; II, c 3, § 6. See Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, pp. 361 - 362. The edition of De Jure Belli ac Pacis (On the Law of War and Peace) to which Gierke refers is identified as Amstel. 1702. Das Deutsche Genossenschaftsrecht, vol. 4, p. 277n.
3. H. Grotius, De Jure Belli ac Pacis Libri Tres, vol. 2, The Translation of the Latin edition of 1646 by F.W. Kelsey, with the collaboration of others, The Classics of International Law, Clarendon Press, Oxford, 1913 - 1927, reprinted by Oceana Publications, New York, and Wildy & Sons, London, 1964, p. 309.
4. Ibid., p. 393.
5. Ibid., p. 403.
6. Ibid., p. 508.
7. Ibid., p. 514.
8. Ibid., p. 526.
9. Ibid., p. 208.
10. Wight, "Western Values", p. 91. Wight does not identify the edition of De Jure Belli ac Pacis to which he refers. His translation differs in detail from that in The Classics of International Law. See De Jure Belli ac Pacis, vol. 2, p. 20.
11. Wight, "Western Values", p. 95.
12. Translated: the universal society of the human race, that universal society comprising the human race, human society, that great society, that great whole, that great society of nations, the mutual society of nations, that world state, world society.
13. Wight, "Western Values", p. 102.
14. Ibid., p. 104.
15. H. Grotius, De Jure Praedae Commentarius (Commentary on the Law of Prize and Booty), vol. 1, A Translation of the Original Manuscript of 1604 by G.L. Williams, with the collaboration of W.H. Zeydel, The Classics of International Law, Clarendon Press, Oxford, and Geoffrey Cumberlege, London, 1950, reprinted by Oceana Publications, New York, and Wildy & Sons, London, 1964, p. 1, quoted by Wight, "Western Values", pp. 104 - 105.

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16. Wight, "Western Values", p. 105.
17. Ibid., p. 116.
18. De Jure Belli ac Pacis, vol. 2, p. 508, quoted by Wight, "Western Values", p. 116. As noted above, p. 160, Gierke also refers to this passage.
19. Wight, "Western Values", p. 119.
20. Ibid., pp. 126 - 127.
21. Wight, Systems of States, p. 39.
22. Wight, "Why Is there no International Theory?", p. 20.
23. Bull, The Anarchical Society, p. 24.
24. Ibid., pp. 26 - 27.
25. Ibid., p. 322.
26. Ibid., pp. 28 - 31.
27. De Jure Belli ac Pacis, vol. 2, p. 547, quoted by Bull, The Anarchical Society, p. 45.
28. Bull, The Anarchical Society, p. 109.
29. Bull, "The Grotian Conception of International Society", pp. 51 - 73.
30. Ibid., p. 53.
31. Ibid., p. 51.
32. Ibid., p. 54.
33. De Jure Belli ac Pacis, vol. 2, p. 20, quoted by Bull, "The Grotian Conception of International Society", p. 54.
34. Bull, "Society and Anarchy in International Relations", pp. 35 - 50.
35. H. Bull, "The Importance of Grotius in the Study of International Relations", in Bull, Kingsbury and Roberts, Hugo Grotius and International Relations, p. 71.
36. Ibid., pp. 78 - 91.
37. See above, pp. 163 - 164.
38. De Jure Belli ac Pacis, vol. 2, p. 20. Is this perhaps the origin of the image of Erasmus as the pacifist par excellence?
39. Ibid., p. 618n.

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40. See, for example, his letters to Salmasius of 23/6/1630 and to Episcopius of 15/12/1630, in H. Grotius, Briefwisseling (Correspondence), vol. 4, edited by B.L. Meulenbroek, Martinus Nijhoff, 'S-Gravenhage, 1964, pp. 234, 297; to Wtenbogaert of 26/1/1632, in Ibid., vol. 5, edited by Meulenbroek, 1966, p. 15; and to Willem de Groot of 14/4/1640, in Ibid., vol. 11, edited by Meulenbroek and P.P. Witkam, 1981, p. 203. Grotius' twentieth-century biographer W.S.M. Knight does not seem to have had access to all of Grotius' letters, for, while identifying Grotius as Erasmus' "immediate heir", he notes "the remarkable fact" that "Grotius has left nothing, express or explicit, from which it may be concluded that he was himself conscious of his relationship to the great humanist". The Life and Works of Hugo Grotius, The Grotius Society Publications No. 4, Sweet and Maxwell, London, 1925, p. 252.
41. See, for example, De Jure Praedae, vol. 1, pp. 25, 29, 46 - 49, 57, 62 - 64, 67, 69 - 70, 77 - 78, 82 - 84, 108 - 109, 111 - 112, 114, 116, 119 - 121, 134, 161, 219, 221 - 224, 226, 245, 260, 267, 271, 283 - 285, 294, 301, 308, 315, 343 - 344, 363.
42. Ibid., pp. 221, 284.
43. De Jure Belli ac Pacis, vol. 2, p. 745.
44. See, for example, Ibid., pp. 22, 98 - 99, 103, 159, 201, 204, 249, 387, 506, 540, 553, 556, 558, 560, 563 - 565, 567, 581, 584, 590, 592, 599 - 600, 628, 696, 723, 730, 735 - 736, 740, 743, 745, 757 - 758, 760 - 761, 770.
45. Ibid., p. 22. For formulations of disagreement see, for example, Ibid., pp. 98, 178, 506, 592.
46. Extracts from these letters are given by C. van Vollenhoven, "On the Genesis of De Iure Belli ac Pacis (Grotius, 1625)", Verspreide Geschriften (Various Writings), vol. 1, Tjeenk Willink & Zoon, Haarlem, and Martinus Nijhoff, 'S-Gravenhage, 1934, pp. 361 - 363.
47. See, for example, De Jure Praedae, vol. 1, pp. 109, 114 - 115, 118, 218 - 219, 243, 249, 267, 273, 293; and De Jure Belli ac Pacis, vol. 2, pp. 22 - 23, 184 - 185, 213n, 443n, 565, 639, 647n, 667n - 668n, 830.
48. De Jure Praedae, vol. 1, p. 218.
49. De Jure Belli ac Pacis, vol. 2, pp. 184 - 185, 639.
50. Ibid. p. 22. For a more extensive discussion of Grotius' reaction to Gentili, see Haggemacher, "Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture", pp. 133 - 176. Brief and to the point is Schwarzenberger, "The Grotius Factor", in Ibid., p. 305.
51. Grotius' Dutch name Hugo de Groot or Huig(h) de Groot is sometimes used by scholars and libraries. See, for example, the entry "Groot (Hugo de)", in Vernau, The British Library General Catalogue of Printed Books to 1975, vol. 133, 1982, pp. 313 - 330.

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52. P. Bayle, "Grotius (Hugo)", Dictionnaire Historique et Critique, vol. 7, p. 270.
53. See, for example, J. Basdevant, "Préface", in Institut Néerlandais, La Vie et l'Oeuvre de Grotius (1583 - 1645): Exposition 15 Mars - 15 Avril (The Life and Works of Grotius: Exhibition 15 March - 15 April), Paris, Institut Néerlandais, 1965, p. 14; C.S. Edwards, with an introduction by R.A. Falk, Hugo Grotius: The Miracle of Holland: A Study in Political and Legal Thought, Nelson-Hall, Chicago, 1981; and the "Preface" to Netherlands International Law Review, vol. 30, 1983, p. 3. A dissenting voice has been recorded by Knight, who quotes a letter from Archbishop Abbott to the English ambassador at The Hague, of 1613, which transmits the following opinion on Grotius: "(L)ike a smatterer he had studyed some two or three Questions, whereof when he came in Company he must be talking to vindicate his skill; but if he were put from those, he would shew himself but a simple Fellow". The Life and Works of Hugo Grotius, p. 144. Another dissenting voice is mentioned by H.F. Wright who, in his study of "The Controversy of Hugo Grotius with Johan de Laet on the Origin of the American Aborigines", includes a letter which de Laet, "a geographer, historian, philologist and naturalist of no little skill", writes to Grotius wishing him "a better mind and greater modesty". "Some Less Known Works of Hugo Grotius", Bibliotheca Visseriana, vol. 7, 1928, pp. 211 - 228. For a third dissenting voice from the past, see Filmer's "Observations Upon H. Grotius De Jure Belli ac Pacis", in J.P. Sommerville (ed.), Sir Robert Filmer: Patriarcha and Other Writings, Cambridge University Press, Cambridge, 1991, pp. 208 - 234. Filmer's "Observations ..." was first published in 1652.
54. In the category "worth notice" Knight includes five biographies which appeared between 1679 and 1772 and which he describes as "unprocurable" and "out-of-date": Vita, prefaced to the edition of the Opera Omnia Theologica, 1679; Bates, Vitae Selectorum Virorum, 1681; Lehmann, Manes Grotii, 1727; Brandt and Cattenburgh, Historie van het leven de heeren Huig de Groot, 1727; and Levesque de Burigny, Vie de Grotius, 1752. See Knight, The Life and Works of Hugo Grotius, pp. v - vi.
55. For example, he does not mention the Anglo-Dutch negotiations of 1615, although he discusses those of 1613 at great length; nor does he refer to or make use of the regular reports on political events which Grotius sent to his brother-in-law N. van Reigersberch, in Holland, after 1621.
56. See, for example, his reaction to Grotius' writings - Knight, The Life and Works of Hugo Grotius, pp. 79 - 89, 112, 163 - 164, 186, 191 - 223, 276 - and to situations in which Grotius finds himself - Ibid., pp. 162 - 163, 167, 189 - 190, 238, 274 - 275, 287.
57. A point made by some scholars. See, for example, J.C.M. Willems, "Grotius and Grotius Research in the Netherlands", Netherlands International Law Review, vol. 30, 1983, p. 97; and C.G. Roelofsen, "Some Remarks on the Sources of the Grotian System of International Law", Ibid., p. 73.
58. For a beginning, see A. Eyffinger, "In Quest of Synthesis: An At-

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tempted Synopsis of Grotius' Works according to their Genesis and Objective", Grotiana, New Series, vol. 4, 1983, pp. 76 - 88.

59. Examples that come to mind include: H. Vreeland, Jr., Hugo Grotius the Father of the Modern Science of International Law, Oxford University Press, New York, 1917; C.L. Lange, "Le Droit International de Grotius" (Grotius' International Law), in A. Lysen (ed.), Hugo Grotius: Essays on His Life and Works Selected for the Occasion of the Tercentenary of His De Jure Belli ac Pacis: 1625 - 1925, with a Preface by J. Ter Meulen, Sythoffs Publishing Co., Leyden, 1925; C. van Vollenhoven, "Grotius and Geneva", Bibliotheca Visseriana, vol. 6, 1926, pp. 5 - 81; ---, The Framework of Grotius' Book De Jure Belli ac Pacis (1625), Noord-Hollandsche Uitgeversmaatschappij, Amsterdam, 1931; E. Wolf, Grosse Rechtsdenker der deutschen Geistesgeschichte (Great Legal Thinkers of German Intellectual History), Mohr (Paul Siebeck), Tuebingen, 1963 (first published in 1939), pp. 253 - 310. For an earlier example, see W. Whewell, "Preface", Hugonis Grotii De Jure Belli et Pacis Libri Tres (Hugo Grotius' Three Books on the Law of War and Peace), vol. 1, Cambridge University Press, Cambridge, 1853, pp. iii - xvi. Exemplifying a searching approach is P. Haggemacher's study Grotius et la Doctrine de la Guerre Juste (Grotius and the Doctrine of the Just War), Presses Universitaires de France, Paris, 1983.
60. See, for example, H. Lauterpacht's reaction to criticisms voiced by Pufendorf, Barbeyrac and Stewart. "The Grotian Tradition in International Law", in E. Lauterpacht (ed.), International Law Being the Collected Papers of Hersch Lauterpacht, vol. 2, I, Cambridge University Press, Cambridge, 1975, pp. 330, 308. But nineteenth-century scholarship may not have been different. See, for example, Whewell's reaction to Stewart's criticism. "Preface", Hugonis Grotii De Jure Belli et Pacis, vol. 1, pp. ix - x. Political theorists seem to be more mindful of past criticisms. See, for example, A.C. 't Hart, "Hugo de Groot and Giambattista Vico", Netherlands International Law Review, vol. 30, 1983, pp. 12, 23; D.F. Scheltens, "Grotius' Doctrine of the Social Contract", Ibid., pp. 43 - 44; and R. Tuck, "Peter Haggemacher, Grotius et la Doctrine de la Guerre Juste", Grotiana, New Series, vol. 7, 1986, pp. 87 - 88.
61. D.P. O'Connell, Richelieu, Weidenfeld & Nicolson, London, 1968, p. 303.
62. Referred to above, notes 35 and 50. Not to be neglected either is J. den Tex, Oldenbarneveldt, 2 vols., translated from the Dutch by R.B. Powell, Cambridge University Press, Cambridge, 1973 (first published in Dutch, 5 vols., 1960 - 1972).
63. For brief accounts of Grotius' life see, for example, Bayle, "Grotius (Hugo)", pp. 270 - 287; R.W. Lee, "Hugo Grotius: 1583 - 1645", The Law Quarterly Review, vol. 62, 1946, pp. 53 - 57; W.J.M. van Eysinga, "Grotius, Hugo", in Encyclopaedia Britannica, vol. 10, William Benton, Chicago/London, 1969, pp. 944 - 946; E. Dumbauld, The Life and Legal Writings of Hugo Grotius, University of Oklahoma Press, Norman, Okla., 1969; H.J.M. Nellen, Hugo Grotius: 1583 - 1645: Geschichte seines Lebens basierend auf seiner Korrespondenz (History of His Life Based on His Correspondence), Presse- und Kulturabteilung der Kgl. Niederlaendischen Botschaft, Bonn, 1984; and C.G. Roelofsen, "Grotius and the International Politics of the Sev-

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- enteenth Century", in Bull, Kingsbury and Roberts, Hugo Grotius and International Relations, pp. 95 - 131. The most comprehensive account is Knight's biography.
64. As Knight points out, it is not "quite accurate" to say that Grotius studied law at the university. Knight, The Life and Works of Hugo Grotius, pp. 27 - 28, 38. See also Roelofsen, "Grotius and the International Politics of the Seventeenth Century", p. 100, note 23.
 65. The Landsadvocaat is also referred to in the literature as Advocate-General or Chief Counsellor or, after 1618, Grand Pensionary.
 66. As Knight indicates, there were "doctors by favour" and "effective doctors", and Grotius must have been one of the former, unless "the university had ceased to observe its old conditions". Knight, The Life and Works of Hugo Grotius, p. 38. Den Tex records: "Continuing their journey" (the embassy had put to sea on 18 March 1598) "the envoys attended the promotion of the youthful Hugo Grotius to doctor utriusque juris (doctor of both laws) in Orleans on 5 May and reached Paris on 8 May". Oldenbarneveldt, vol. 1, p. 272. For a different interpretation of Grotius' visit to France, ascribing "significance" to it for his understanding of jurisprudence, see Haggemacher, "Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture", pp. 142, 161.
 67. Translated: The Court of Holland (and West Friesland).
 68. Translated: The Supreme Court (of Holland, Zeeland, and West Friesland).
 69. Advocaat-Fiscaal or Advocate-General of the Fisc. According to Dumbauld, "(t)his position combined the duties of prosecutor in criminal cases with oversight (sic) of the state's property interests". The Life and Legal Writings of Hugo Grotius, p. 9.
 70. The Pensionary was "the recognized representative and negotiator of the city". Knight, The Life and Works of Hugo Grotius, p. 136.
 71. The Stadhouder or Stadholder was the representative of the sovereign whom the United Provinces had rejected in 1581.
 72. For an account of the events leading to the arrest of Oldenbarneveldt, Grotius and others see, for example, Knight, The Life and Works of Hugo Grotius, pp. 151 - 157; Vreeland, Hugo Grotius the Father of the Modern Science of International Law, pp. 68 - 84; and den Tex, Oldenbarneveldt, vol. 2, pp. 554 - 645.
 73. Vreeland, Hugo Grotius the Father of the Modern Science of International Law, p. 104.
 74. It seems to be more than a coincidence that Grotius' famous escape from prison took place less than a month before the end of the twelve-year truce; yet the literature does not ask any questions.
 75. There is a near-complete silence regarding these approximately three years in Grotius' life. C. van Vollenhoven speaks of Grotius'

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"profound moral depression" and "intellectual sterility". "Sophomaneas", Verspreide Geschriften, vol. 1, p. 244. Eysinga informs the reader that "Hamburg was then the great diplomatic centre of the two allies (France and Sweden)". "Grotius, Hugo", p. 945.

76. According to Eyffinger, Grotius father Jan contributed to the following publications: Martianus Capella, Aratea, Parallela Rerumpublicarum (Comparisons of States), De Jure Praedae and De Antiquitate Reipublicae Batavae (On the Antiquity of the Batavian Commonwealth). Regarding "this most intriguing co-operation of father and son", see A. Eyffinger, "Some Marginal Notes to Wolfgang Fikentscher: De Fide et Perfidia - Der Treuegedanke in den 'Staatsparallelen' des Hugo Grotius aus heutiger Sicht" (On Faith and Perfidy - The Idea of Good Faith in Hugo Grotius' 'Comparisons of States' from Today's Point of View), Grotiana, New Series, vol. 2, 1981, pp. 119 - 121; and, by the same author, "Exemplum Pietatis: Patriotism in Grotius' Early Verse", Grotiana, New Series, vol. 8, 1987, p. 105.

Regarding the assistance of D. Graswinckel (1600 - 1666: juriconsult, advocate, secretary, and a relative of Grotius) in the writing of De Jure Belli ac Pacis, see the cryptic references by Bayle, "Grotius (Hugo)", p. 285; R. Fruin, "An Unpublished Work of Hugo Grotius", Bibliotheca Visseriana, vol. 5, 1925, p. 55; C. van Volenhoven, "Le Livre de 1625" (The Book of 1625), in Lysen, Hugo Grotius: Essays on His Life and Works, p. 9; J. Ter Meulen and P.J.J. Diermanse, Bibliographie des Écrits sur Hugo Grotius Imprimés au XVIIe Siècle (Bibliography of the Writings Printed in the Seventeenth Century on Hugo Grotius), Martinus Nijhoff, The Hague, 1961, p. 36. Hearnshaw also finds a role for Grotius' brother Willem in connection with the De Jure Belli ac Pacis. See "Hugo Grotius", F.J.C. Hearnshaw (ed.), The Social and Political Ideas of Some Great Thinkers of the Sixteenth and Seventeenth Centuries, Barnes & Noble, New York, 1949 (first published in 1926), p. 136. Willem is also credited with assisting with The Jurisprudence of Holland. See Wolf, Grosse Rechtsdenker der deutschen Geistesgeschichte, p. 276.

In connection with True Religion Knight writes: Du Plessis-Mornay's work "looks as if it were the direct inspiration of the work of Grotius, even as a publication of which the De Veritate was little else than a summary digest". The Life and Works of Hugo Grotius, p. 180.

77. See "Appendix", Knight, The Life and Works of Hugo Grotius, pp. 291 - 293, which may be extended to include De Republica Emendanda, published for the first time only recently. See below, Section Three, note 148.
78. Regarding the Netherlands see, for example, P. Geyl, The Revolt of the Netherlands: 1555 - 1609, 2nd ed., Ernest Benn, London, and Barnes & Noble, New York, 1980 (first published in 1932); ---, The Netherlands in the Seventeenth Century: I. 1609 - 1648, Ernest Benn, London, 1961 (first published in 1936 as The Netherlands Divided); R.B. Merriman, Six Contemporaneous Revolutions, Clarendon Press, Oxford, 1938; J. Huizinga, Dutch Civilization in the Seventeenth Century and Other Essays, selected by P. Geyl and F.W.N. Hugenholtz, translated by A.J. Pomerans, Collins, London, 1968;

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den Tex, Oldenbarneveltdt; and J.L. Price, Culture and Society in the Dutch Republic During the Seventeenth Century, Charles Scribner's Sons, New York, 1974.

Regarding the wider context see, for example, T. Aston (ed.), Crisis in Europe: 1560 - 1660: Essays from Past and Present, Routledge & Kegan Paul, London, 1965; H.G. Koenigsberger, The Habsburgs and Europe: 1516 - 1660, Cornell University Press, Ithaca/London, 1971; M. Roberts (ed.), Sweden's Age of Greatness: 1632 - 1718, Macmillan, London, 1973; C. Wilson, The Transformation of Europe: 1558 - 1648, Weidenfeld & Nicolson, London, 1976; and G. Parker, Europe in Crisis: 1598 - 1648, Fontana, Glasgow, 1979.

79. De Jure Belli ac Pacis, vol. 2, p. 20. As other possible initial sparks, the secondary literature suggests (and on the whole rejects) Nicolas Claude Fabry de Peiresc, the great patron of letters, Le Nouveau Cynée by Émeric Crucé, and personal ambition on the part of Grotius. See C. van Vollenhoven, "On the Genesis of De Jure Belli ac Pacis (Grotius, 1625)", Verspreide Geschriften, vol. 1, pp. 352 - 361. Knight, however, does not hesitate to see De Jure Belli ac Pacis as a bid for a place of influence in public affairs, and Roelofsen as "at least partly that". See Knight, The Life and Works of Hugo Grotius, pp. 191 - 192, and Roelofsen, "Grotius and the International Politics of the Seventeenth Century", pp. 122 - 123.
80. De Jure Belli ac Pacis, vol. 2, pp. 29 - 30. Nevertheless, the text contains a number of references to Grotius' own time. See, for example, pp. 205, 337, 436, 603 - 604 and 715. They were added, according to J.S. Reeves, in the edition of 1642. "Grotius, De Jure Belli ac Pacis: A Bibliographical Account", The American Journal of International Law, vol. 19, 1925, pp. 254 - 255.
81. H. Grotius, The Jurisprudence of Holland, translated with brief notes and a commentary by R.W. Lee, vol. 1, Clarendon Press, Oxford, 1926.
82. De Jure Praedae, vol. 1, pp. 4 - 5.
83. See Ibid., Chs. I, XII, XIII, XIV and XV, pp. 1 - 7, 216 - 366.
84. Ibid., p. 365.
85. Ibid., Ch. XI, pp. 168 - 215.
86. Fruin, "An Unpublished Work of Hugo Grotius", p. 48. A similar, though less harshly formulated, reproach for unreliability is levelled by another historian against Grotius on the latter's reporting of his interviews with James I in 1613. See den Tex, Oldenbarneveltdt, vol. 2, p. 563.
87. H. Grotius, Mare Liberum, Sive de Iure Quod Batavis Competit Ad Indicana Commercium Dissertatio (Dissertation on the Freedom of the Seas or the Right which Belongs to the Dutch to Take Part in the East Indian Trade), translated with a revision of the Latin text of 1633 by R. van Deman Magoffin, edited with an introductory note by J. Brown Scott, The Classics of International Law, Oxford University Press, New York, and Humphrey Milford, London, 1916. Some-

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- times the original date of publication is given as 1608. See, for example, Scott, "Introductory Note", Ibid., p. v. Mare Liberum is subdivided into thirteen chapters. For an informative account of "The Genesis of Grotius's Mare Liberum", see F. de Pauw, Grotius and the Law of the Sea, translated by P.J. Arthern, Éditions de l'Institut de Sociologie, Université de Bruxelles, Brussels, 1965, pp. 14 - 22.
88. Mare Liberum, p. 6.
 89. W. Welwood, An Abridgement of all Sea-Lawes; Gathered Forth of all Writings and Monuments, which are to be found among any people or Nation, upon the coasts of the great Ocean and Mediterranean Sea: And specially ordered and disposed for the use and benefit of all benevolent Sea-farers, within his Maiesties Dominions of Great Britanne, Ireland, and the adjacent Isles thereof, Theatrum Orbis Terrarum, Amsterdam, 1972 (first published in 1613), pp. 61 - 72.
 90. H. Grotius, Defensio (Defence), written between 1613 and 1617, in Wright, "Some Less Known Works of Hugo Grotius", pp. 154 - 205.
 91. Ibid., p. 190.
 92. Ibid.
 93. H. Grotius, A Treatise of the Antiquity of the Commonwealth of the Battavers, which is now the Hollanders, translated by Thomas Woods, John Walker, London, 1649.
 94. Ibid., pp. 127 - 130.
 95. Fruin, "Some Less Known Works of Hugo Grotius", p. 47.
 96. G.N. Clark and W.J.M. van Eysinga, "The Colonial Conferences between England and the Netherlands in 1613 and 1615", Part I, Bibliotheca Visseriana, vol. 15, 1940, pp. 1 - 270, and Part II, Bibliotheca Visseriana, vol. 17, 1951, pp. 1 - 155.
 97. Knight, The Life and Works of Hugo Grotius, p. 142.
 98. This is the title-page of the London edition of 1632. See H. Grotius, True Religion, Theatrum Orbis Terrarum, Amsterdam, 1971.
 99. Ibid., pp. 4 - 5.
 100. H. Grotius, Annales et Histoires des Troubles du Pays-Bas (The Annals and History of the Low-Countries), Jean Blaev, Amsterdam, 1662.
 101. Knight, The Life and Works of Hugo Grotius, p. 276.
 102. See above, note 40.
 103. Grotius to Nicolaes van Reigersberch, Briefwisseling, vol. 3, edited by P.C. Molhuysen and B.L. Meulenbroek, 1961, pp. 83 - 85.
 104. Grotius to Nicolaes van Reigersberch, Ibid., pp. 231 - 233.

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105. Grotius to Maria van Reigersberch, Ibid., vol. 4, pp. 411 - 413.
106. Grotius to Israel Jasky, Ibid., vol. 7, edited by B.L. Meulenbroek, 1969, pp. 441 - 442.
107. Grotius to Nicolaes van Reigersberch, Ibid., vol. 11, pp. 117 - 120.
108. Grotius to Nicolaes van Reigersberch, Ibid., pp. 574 - 575.
109. Ibid., vol. 3, pp. 465 - 466.
110. Ibid., p. 466.
111. De Jure Belli ac Pacis, vol. 2, p. 24.
112. Ibid., pp. 551 - 552.
113. Ibid., pp. 553 - 554.
114. De Jure Praedae, vol. 1, pp. 247 - 248.
115. Ibid., pp. 222 - 224, 257 - 258.
116. Ibid., p. 258.
117. The complete title of this work is Apologeticus eorum qui Hollandiae, Westfrisiaeque et vicinis quibusdam nationibus ex legibus praefuerunt ante mutationem quae evenit anno 1618 (The Defence of Those Who Lawfully Governed Holland, West Friesland and Certain Neighbouring Nations before the Change in 1618), in Dumbauld, The Life and Legal Writings of Hugo Grotius, pp. 83 - 122. Grotius wrote it in Paris in 1622.
118. Ibid., p. 98.
119. In contrast to Charles Marini, one of his correspondents. See, for example, Briefwisseling, vol. 11, pp. 170, 329.
120. Reproduced in part by C. van Vollenhoven, "The Growth of Grotius' De Jure Belli ac Pacis as It Appears from Contemporary Correspondence", Bibliotheca Visseriana, vol. 8, 1929, p. 167.
121. De Jure Belli ac Pacis, vol. 2, pp. 9 - 10.
122. De Jure Praedae, vol. 1, pp. 12 - 13.
123. De Jure Belli ac Pacis, vol. 2, pp. 10 - 15.
124. Ibid., p. 15.
125. Translated: The public worship of the States of Holland and West Friesland ... defended ...
126. True Religion, p. 4.
127. Vreeland, Hugo Grotius the Father of the Modern Science of Inter-

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- national Law, p. 104.
128. Briefwisseling, vol. 5, no. 1727, of 14/1/1632.
129. Annales et Histoires des Troubles du Pays-Bas, p. 4.
130. Huizinga, Dutch Civilization in the Seventeenth Century, p. 74n.
131. Geyl, The Revolt of the Netherlands, p. 292.
132. De Jure Praedae, vol. 1, p. 169.
133. A Treatise on the Antiquity ..., p. 11.
134. Ibid., p. 12.
135. Ibid., p. 84.
136. Ibid., p. 85.
137. Ibid., p. 141.
138. De Jure Praedae, vol. 1, p. 341.
139. A Treatise on the Antiquity ..., p. 34.
140. Ibid., pp. 6 - 8.
141. Ibid., p. 148.
142. Ibid., p. 43.
143. De Jure Praedae, vol. 1, pp. 171, 365, 180, 210, 178.
144. A Treatise on the Antiquity ..., p. 46.
145. True Religion, p. 4.
146. De Jure Praedae, vol. 1, p. 365.
147. A Treatise on the Antiquity ..., pp. 104 - 107.
148. There is one piece of writing, only recently published under the title De Republica Emendanda, which - if Grotius is the author, as its editors are inclined to think - would mean that in 1598/1600 Grotius was prepared to argue against particularism, provincial sovereignty, and the independence of Holland, and for unification, a central government, and "a true republic". See A. Eyffinger, P.A.H. de Boer, J.T. de Smidt, L.E. van Holk (eds.), "De Republica Emendanda: A Juvenile Tract by Hugo Grotius on the Emendation of the Dutch Polity", Grotiana, New Series, vol. 5, 1984, pp. 3 - 135.
149. De Jure Praedae, vol. 1, p. 20.
150. Ibid., pp. 92, 20; De Jure Belli ac Pacis, vol. 2, pp. 149, 14 - 15.

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151. De Jure Praedae, vol. 1, p. 19.
152. The Jurisprudence of Holland, vol. 1, p. 7.
153. De Jure Belli ac Pacis, vol. 2, p. 15.
154. Ibid., p. 16; see also p. 149.
155. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 284. Wolf also sees it this way: "The contract which binds the community is ... a necessary covenant, a holy tie of divine and natural law". Grosse Rechtsdenker der Deutschen Geistesgeschichte, p. 283.
156. Midgley, The Natural Law Tradition, p. 164.
157. De Jure Praedae, vol. 1, p. 20; De Jure Belli ac Pacis, vol. 2, p. 53.
158. De Jure Belli ac Pacis, vol. 2, pp. 139, 141.
159. The Jurisprudence of Holland, vol. 1, p. 17.
160. De Jure Praedae, vol. 1, p. 19.
161. De Jure Belli ac Pacis, vol. 2, p. 44.
162. De Jure Praedae, vol. 1, p. 63.
163. Ibid., p. 284.
164. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 286.
165. De Jure Belli ac Pacis, vol. 2, pp. 310 - 311.
166. Translated: the state, that is I.
167. See below, this section, p. 183 and note 179.
168. The "absence of philosophical reflection" in Grotius regarding the state is the subject-matter of a critical literature on the part of political theorists. See, for example, Scheltens, "Grotius' Doctrine of the Social Contract", pp. 43 - 60.
169. De Jure Belli ac Pacis, vol. 2, p. 101.
170. See, for example, De Jure Praedae, vol. 1, pp. 25 - 26, 283 - 284.
171. Ibid., p. 135; see also De Jure Belli ac Pacis, vol. 2, p. 207. This goes against the view held by some scholars that "(t)he identity of states and individuals is one mark of the Grotian system". See, for example, C.F. Murphy, Jr., The Search for World Order: A Study of Thought and Action, Martinus Nijhoff, Dordrecht, 1985, p. 9.
172. De Jure Belli ac Pacis, vol. 2, pp. 101 - 102. The right of eminent domain is the right of the state or ruler, in case of "need" or "public advantage", to confiscate the property of subjects. See,

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for example, Ibid., p. 807.

173. An exposition displaying some of its traits appears in De Jure Praedae, vol. 1, pp. 22 - 25.
174. As Dunning observes, "with the art of government - the questions of organization and of administrative policy - (Grotius) had nothing to do". See W.A. Dunning, A History of Political Theories: From Luther to Montesquieu, Macmillan, New York/London, 1949 (first published in 1905), p. 179.
175. De Jure Belli ac Pacis, vol. 2, p. 102.
176. See below, this section, pp. 185 - 186.
177. See, for example, De Jure Praedae, vol. 1, pp. 283 - 289, 25 - 26, 63, 299 - 301. The term Grotius uses here is sometimes sovereign power; at other times civil power or simply power.
178. De Jure Belli ac Pacis, vol. 2, p. 103.
179. Ibid., pp. 103 - 109.
180. Ibid., pp. 123 - 130.
181. See his whole discussion of this point, Ibid., pp. 103 - 130.
182. Ibid., p. 104.
183. Ibid., pp. 121 - 122.
184. Ibid., p. 138; see also p. 384.
185. Ibid., p. 584.
186. Ibid. It is a right which he does not present without attaching qualifications to it. See below, Section Nine, p. 229.
187. De Jure Belli ac Pacis, vol. 2, pp. 139 - 140.
188. Ibid., pp. 140 - 146.
189. Ibid., p. 208.
190. Ibid., p. 139.
191. De Jure Praedae, vol. 1, p. 289; De Jure Belli ac Pacis, vol. 2, p. 156.
192. De Jure Praedae, vol. 1, pp. 170 - 171, 286 - 289, 299 - 301.
193. De Jure Belli ac Pacis, vol. 2, pp. 157 - 159. Grotius grants the right of resistance in three further cases, all of which relate to a "usurper" of sovereign power. See Ibid., pp. 160 - 161.
194. True Religion, p. 36; see also De Jure Belli ac Pacis, vol. 2, pp. 310 - 312.

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195. Grotius does not, in this context, discuss what happens if the sovereign power resides in the ruler, In fact, Grotius does not raise this question in this form at all. What he does discuss, in a different context, is the "diversity of laws about succession". See De Jure Belli ac Pacis, vol. 2, pp. 278 - 294.
196. Ibid., pp. 312 - 314.
197. Ibid., pp. 314 - 315, 103, 130 - 137.
198. De Jure Praedae, vol. 1, p. 28.
199. De Jure Belli ac Pacis, vol. 2, pp. 130 - 137; see also pp. 103, 505.
200. Ibid., p. 132.
201. De Jure Praedae, vol. 1, pp. 63, 283 - 284; De Jure Belli ac Pacis, vol. 2, pp. 100 - 101, 164; 804 - 805; 504 - 505; Defensio, p. 176.
202. Haggenmacher suggests that Grotius' idea of civil power refers to the public power in its entirety, whereas sovereign power relates to only a part of the public power, the "part décisive", that is, the part which belongs to the supreme organ in the state. Grotius et la Doctrine de la Guerre Juste, p. 540. It is an interpretation which Grotius explicitly rejects. See De Jure Belli ac Pacis, vol. 2, p. 123. See also his definition of the state, Ibid., pp. 310 - 311. Following this interpretation, Haggenmacher further suggests that Grotius is not concerned with the independence of the state at the international level. Grotius et la Doctrine de la Guerre Juste, p. 540. However, this idea is not supported by Grotius either. See above, pp. 185 - 186 and notes 198 - 201, and below, Section Six, p. 197.
203. De Jure Praedae, vol. 1, pp. 61 - 62; De Jure Belli ac Pacis, vol. 2, p. 165, and Ch. XVI of Book Two, pp. 587 - 595.
204. De Jure Praedae, vol. 1, p. 144.
205. De Jure Belli ac Pacis, vol. 2, p. 578.
206. De Jure Praedae, vol. 1, p. 76 (quoting Tacitus); see also pp. 79, 125, 128.
207. De Jure Belli ac Pacis, vol. 2, p. 140.
208. Ibid., p. 143.
209. Ibid., pp. 587 - 590; De Jure Praedae, vol. 1, pp. 77 - 78.
210. De Jure Belli ac Pacis, vol. 2, pp. 253 - 254.
211. De Jure Praedae, vol. 1, p. 92; see also p. 231; and Mare Liberum, pp. 1 - 2.
212. De Jure Belli ac Pacis, vol. 2, p. 11.

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213. De Jure Praedae, vol. 1, p. 9; see also pp. 21, 29, 45, 103; and De Jure Belli ac Pacis, vol. 2, pp. 142, 173, 186 - 190. This side of Grotius' view of man is often not discussed by the secondary literature. See, for example, Lauterpacht, "The Grotian Tradition in International Law", pp. 333 - 336.
214. See, for example, De Jure Praedae, vol. 1, pp. 11 - 19; and De Jure Belli ac Pacis, vol. 2, pp. 186 - 188; also above, Section Four, p. 180.
215. See, for example, De Jure Praedae, vol. 1, pp. 14, 19, 265; 13, 16, 50; 13; 93; 248, 261; De Jure Belli ac Pacis, vol. 2, pp. 25, 197, 309, 504, 584; 17, 45, 799; 15; 510. The corresponding Latin terms are: societas hominum, societas humana; genus humanum; illa hominum societas; illa mundi civitas; respublica orbis; totius generis humani societas; magna illa universitas; magna illa communitas.
216. Defensio, p. 169.
217. See, for example, De Jure Praedae, vol. 1, pp. 13, 315; De Jure Belli ac Pacis, vol. 2, pp. 793 - 794, 373 - 374.
218. De Jure Praedae, vol. 1, p. 33; see also pp. 8 - 11.
219. Ibid., pp. 11 - 12. This is an example of the word gens or nation being used in the non-political sense, that is, as not referring to distinct political entities. See also below, p. 196.
220. De Jure Praedae, vol. 1, p. 12. There are other passages where he does not distinguish between the two laws. See, for example, pp. 145, 157, 227.
221. Ibid., pp. 8 - 9, 11 - 12.
222. De Jure Belli ac Pacis, vol. 2, p. 41.
223. For example: "(T)he law of nature, which is also frequently called the law of nations, ... is ... common to all nations". Ibid., p. 44. For other examples, see pp. 192, 196, 208, 222, 309, 329, 338, 374, 450, 510, 757, 801, 851.
224. Ibid., pp. 38 - 39; see also p. 468. For a reaction to Grotius' conceptions of the law of nature as a product of the divine will and of man's reason derived from God's reason see, for example, D.P. O'Connell, "Rationalism and Voluntarism in the Fathers of International Law", The Indian Year Book of International Affairs, vol. 13, II, 1964, pp. 3 - 32; and Haggemacher, Grotius et la Doctrine de la Guerre Juste, pp. 466 - 470, 496 - 523.
225. The Jurisprudence of Holland, vol. 1, p. 5.
226. De Jure Praedae, vol. 1, pp. 33 - 34; see also pp. 219, 246.
227. Ibid., p. 255.
228. De Jure Belli ac Pacis, vol. 2, p. 40.
229. Ibid., pp. 40, 297.

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230. Ibid., pp. 57, 178 - 179, 478.
231. Ibid., pp. 192, 205, 207, 250 - 251, 269, 295, 296, 298, 310, 334, 335, 353, 354 - 355, 360.
232. The Jurisprudence of Holland, vol. 1, p. 7.
233. Ibid.
234. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 282.
235. De Jure Belli ac Pacis, vol. 2, p. 23.
236. Grotius presents the two lines of reasoning - proof a priori and proof a posteriori - in Ibid., pp. 42 - 44. See also De Jure Praedae, vol. 1, p. 59. For a discussion of his method see, for example, B.P. Vermeulen, "Grotius' Methodology and System of International Law", Netherlands International Law Review, vol. 30, 1983, pp. 376 - 378; and, more briefly, Schwarzenberger, "The Grotius Factor", pp. 305 - 306.
237. De Jure Belli ac Pacis, vol. 2, p. 328.
238. Ibid., p. 472.
239. For some further illustration of this point see, for example, Ibid., pp. 295 - 309, 529, 538, 606.
240. Ibid., p. 360; see also pp. 450, 454, 624, 692; De Jure Praedae, vol. 1, p. 6; Mare Liberum, p. 9.
241. De Jure Belli ac Pacis, vol. 2, p. 210; see also pp. 299, 507; De Jure Praedae, vol. 1, pp. 142, 244 - 255; Mare Liberum, p. 52.
242. See below, Section Six, p. 198; also De Jure Praedae, vol. 1, pp. 142, 162, 244 - 255; and Mare Liberum, p. 52.
243. See, for example, Mare Liberum, pp. 7, 9, 28, 29, 43, 61. Grotius himself points to the "confusion" (in other authors) regarding the law of nature and the law of nations. See, for example, De Jure Belli ac Pacis, vol. 2, p. 24, and Ch. VIII of Book Two, pp. 295 - 309. But see, for example, Filmer's reaction to Grotius. Somerville, Sir Robert Filmer: Patriarcha and Other Writings, pp. 208 - 212; and, more recently, O'Connell, "Rationalism and Voluntarism in the Fathers of International Law", pp. 20 - 21.
244. De Jure Praedae, vol. 1, pp. 10 - 15; see also p. 75.
245. Ibid., pp. 21, 29, 45, 103.
246. De Jure Belli ac Pacis, vol. 2, pp. 12 - 13.
247. Ibid., p. 52.
248. The Jurisprudence of Holland, vol. 1, p. 7.
249. De Jure Belli ac Pacis, vol. 2, p. 196.

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250. Ibid.
251. Ibid., p. 201.
252. Ibid.
253. Ibid., p. 202.
254. Ibid., p. 186.
255. Ibid., p. 196; see also p. 195. The law of nature did in fact change, as Grotius notes in a later passage, p. 295, from "its original state" to "the state which followed the introduction of property ownership".
256. Ibid., p. 192.
257. Ibid., pp. 203 - 205.
258. Ibid., p. 384.
259. Ibid., p. 139; see also above, pp. 183 - 184. For further examples of the will of man interfering with the law of nature or primary law of nations, see De Jure Belli ac Pacis, vol. 2, pp. 253, 296, 297, 298, 334, 335, 354 - 355.
260. De Jure Praedae, vol. 1, p. 257.
261. Ibid., p. 227.
262. Clark and Eysinga, "The Colonial Conferences between England and the Netherlands in 1613 and 1615", vol. 15, p. 188. See also below, Section Seven, p. 211.
263. De Jure Praedae, vol. 1, p. 232; Mare Liberum, p. 29.
264. Defensio, p. 194.
265. De Jure Belli ac Pacis, vol. 2, pp. 209, 211.
266. See, for example, De Jure Praedae, vol. 1, pp. 117, 302; De Jure Belli ac Pacis, vol. 2, p. 331.
267. De Jure Belli ac Pacis, vol. 2, pp. 800 - 802.
268. See below, Section Six, p. 200.
269. See below, Section Nine, pp. 219 - 231.
270. De Jure Praedae, vol. 1, pp. 107, 237. For the idea that "nature knows no sovereigns", see also Ibid., pp. 133, 217; Mare Liberum, p. 23; and Defensio, pp. 167, 168.
271. See above, Section Four, p. 182 and note 171.
272. See above, this section, p. 193, and Section Four, p. 184; and below, Section Seven, p. 211.
273. See above, this section, p. 193.

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274. De Jure Belli ac Pacis, vol. 2, p. 461.
275. Ibid., pp. 651 - 652. See also below, Section Nine, pp. 224 - 225.
276. See below, Section Seven, pp. 209 - 210.
277. See below, Section Nine, p. 229; also Section Six, pp. 201 - 202.
278. See below, Section Seven, pp. 210 - 213.
279. De Jure Belli ac Pacis, vol. 2, p. 582; see also below, Section Nine, p. 229.
280. De Jure Belli ac Pacis, vol. 2, p. 121.
281. Relevant to this finding is Grotius' advice in the "Prolegomena", Ibid., pp. 16, 17, 18. Supportive of this finding is Roelofsen's observation that "Grotius' natural law, though theoretically predominant, actually only has a slight influence". Roelofsen, "Some Remarks on the 'Sources' of the Grotian System of International Law", p. 77.
282. De Jure Praedae, vol. 1, p. 13.
283. De Jure Belli ac Pacis, vol. 2, p. 715.
284. Ibid., p. 9.
285. Ibid., p. 15
286. Ibid., p. 295.
287. Ibid., p. 860.
288. De Jure Praedae, vol. 1, p. 26.
289. "... et nata apparet, quae utilitatem respicerent non coetum singulorum sed magnae illius universitatis". Hugonis Grotii De Jure Belli et Pacis, edited by W. Whewell, vol. 1, p. 1.
290. "Hoc autem non est jus illud gentium proprie dictum; neque enim pertinet ad mutuam gentium inter se societatem ...". Ibid., p. 395. In this context, the term societas gentium may be interpreted to mean "society of nations" or "society of peoples" in the sense of "international society".
291. "Fide enim non tantum respublica quaelibet continetur ... sed et major illa gentium societas ...". Ibid., vol. 3, p. 405. In this context, the term societas gentium means "human society" rather than "international society".
292. "... ita cum sit aliquod commune rerumpublicarum inter se bonum ...". H. Grotius, De Iure Praedae Commentarius, vol. 2, The Collo-type Reproduction of the Original Manuscript of 1604, The Classics of International Law, Clarendon Press, Oxford, and Geoffrey Cumberlege, London, 1950, p. 12'.
293. Haggemacher mentions four passages in the "Prolegomena" of De Jure

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- Belli ac Pacis (§§ 2, 17, 32 and 39 - 41) which he thinks may have given rise to "the extensive interpretations which the work has received and hence to the title itself of founder of international law commonly attributed to its author". Grotius et la Doctrine de la Guerre Juste, pp. 618 - 619, 451 - 452.
294. Gens may be translated as clan, family tribe, race, nation or people. Hence, depending on the context, societas gentium may be rendered as "society of nations" or "society of peoples" in the sense of "international society", or as "society of nations" in the sense of "human society". See above, notes 290 and 291.
295. De Jure Praedae, vol. 1, p. 20.
296. De Jure Belli ac Pacis, vol. 2, pp. 92, 506; De Jure Praedae, vol. 1, p. 88. However, Grotius' writings do not support P.R. Remec's assertion that "his conception of sovereignty did not totally subdivide the sphere of the world ... The concept of sovereignty was a European one, applicable to Christian states and perhaps also to those that were organized on similar lines". The Position of the Individual in International Law according to Grotius and Vattel, with a Preface by Q. Wright, Martinus Nijhoff, The Hague, 1960, p. 82. In particular De Jure Praedae depicts the East Indies as a world of sovereign states and rulers. See, for example, Ibid., vol. 1, pp. 185, 219 - 226.
297. True Religion, pp. 35 - 37; see also De Jure Belli ac Pacis, vol. 2, p. 310.
298. De Jure Praedae, vol. 1, p. 27.
299. De Jure Belli ac Pacis, vol. 2, pp. 504 - 505; see also pp. 33, 316.
300. Ibid., p. 130. For further evidence, see his whole argument, pp. 130 - 137; also his comment on "What Rank Is to Be Observed among Equals, even Kings", p. 252. In spite of the presence of this idea in Grotius' writings, Haggenmacher insists on its absence. See Grotius et la Doctrine de la Guerre Juste, p. 546, and his paper "On Assessing the Grotian Heritage", in T.M.C. Asser Instituut (ed.), International Law and the Grotian Heritage: A Commemorative Colloquium Held at The Hague on 8 April 1983 on the Occasion of the Fourth Centenary of the Birth of Hugo Grotius, T.M.C. Asser Instituut, The Hague, 1985, pp. 155 - 165.
301. De Jure Belli ac Pacis, vol. 2, p. 15; see also above, Section Two, p. 177.
302. De Jure Praedae, vol. 1, p. 26.
303. Ibid., p. 121.
304. Ibid., p. 26. As he also formulates it on the same page: "Whatever all states have indicated to be their will, that is law in regard to all of them".
305. De Jure Belli ac Pacis, vol. 2, p. 44, as against p. 15.
306. Ibid., p. 44.

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307. Ibid.
308. The Jurisprudence of Holland, vol. 1, p. 7.
309. Gierke, Das Deutsche Genossenschaftsrecht, vol. 4, p. 283. Gierke bases his reading of Grotius on De Jure Belli ac Pacis.
310. De Jure Praedae, vol. 1, p. 26.
311. Ibid., p. 250.
312. Ibid., pp. 26 - 27. Regarding judicial procedure, Grotius states the following rule: "Neither the state nor any citizen thereof shall seek to enforce his (sic) own right against another state or its citizen save by judicial procedure". See Ibid., p. 27.
313. Ibid. p. 27.
314. Ibid.; see also p. 162.
315. See, for example, De Jure Belli ac Pacis, vol. 2, pp. 24, 28 - 29, 208, 260, 295, 309, 608.
316. Ibid., p. 461.
317. Ibid.
318. The Jurisprudence of Holland, vol. 1, p. 7.
319. See below, Section Seven, pp. 206 - 214.
320. De Jure Belli ac Pacis, vol. 2, pp. 438 - 442; also De Jure Praedae, vol. 1, p. 291; and below, Section Eight, pp. 214 - 219.
321. De Jure Praedae, vol. 1, pp. 33, 319.
322. Ibid., pp. 27 - 29, 95 - 103, 121, 123, 124, 311.
323. See, for example, De Jure Belli ac Pacis, vol. 2, pp. 735, 736, 738, 740.
324. Ibid., pp. 15, 57, 97, 259, 295, 435, 644 - 645, 649 - 650, 658, 660, 662, 665, 667, 668, 690, 691, 693, 697, 699, 794, 808. In some places Grotius even refers to his whole treatise not as "the law of war and peace", but as "the law of war". See, for example, pp. 34, 567.
325. See below, Section Nine, "The Question of War", pp. 219 - 231.
326. De Jure Belli ac Pacis, vol. 2, pp. 450 - 461.
327. De Jure Praedae, vol. 1, pp. 216, 245, 248 - 249, 258.
328. De Jure Belli ac Pacis, vol. 2, p. 226.
329. Ibid., pp. 690 - 696; see also p. 259.
330. See below, Section Nine, pp. 224 - 225.

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331. De Jure Belli ac Pacis, vol. 2, p. 696.
332. Ibid., pp. 761 - 769; see also below, Section Nine, p. 230.
333. De Jure Belli ac Pacis, vol. 2, pp. 391 - 408.
334. Ibid., p. 360.
335. Ibid., pp. 805 - 820.
336. Ibid., pp. 278 - 294.
337. Ibid., p. 624. But see page 757 where Grotius relates reprisals to a "law of nations of a different kind".
338. De Jure Praedae, vol. 1, pp. 276, 107 - 108.
339. De Jure Belli ac Pacis, vol. 2, pp. 504 - 506, 508 - 510, 514, 526.
340. This is clear less from the way Grotius defines the secondary or volitional law of nations in De Jure Belli ac Pacis than from the context within which he places his definition. See Ibid., pp. 38 - 44.
341. See Ibid., pp. 623 - 629, 757, relating to "a law of nations of a different kind".
342. See, for example, Ibid., pp. 211 - 213, 232, 639.
343. See, for example, Ibid., pp. 485, 514, 550.
344. See, for example, Ibid., p. 639.
345. See, for example, Ibid., pp. 828, 843.
346. See, for example, De Jure Praedae, vol. 1, pp. 26 - 27, 100, 145 - 147, 155; and De Jure Belli ac Pacis, vol. 2, pp. 210, 299, 507. See also that which is subsumed under the law of nations "improperly so-called". Ibid., pp. 49, 208, 295; 628 - 629, 634, 637, 701.
347. See above, this section, p. 198.
348. See above, Section Five, pp. 190.
349. De Jure Belli ac Pacis, vol. 2, p. 439. The critical attitude which Lauterpacht displays in relation to Grotius' law of nature is absent when he discusses the latter's jus gentium or law of nations. "The Grotian Tradition in International Law", pp. 313 - 317, as against pp. 329 - 330.
350. De Jure Praedae, vol. 1, p. 26; De Jure Belli ac Pacis, vol. 2, p. 15; The Jurisprudence of Holland, vol. 1, p. 7.
351. De Jure Belli ac Pacis, vol. 2, p. 860; see also De Jure Praedae, vol. 1, p. 331.
352. See above, Section Five, pp. 194 and note 267.

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353. De Jure Belli ac Pacis, vol. 2, p. 860; see also De Jure Praedae, vol. 1, p. 287.
354. See, for example, De Jure Praedae, vol. 1, pp. 330 - 331, 117; and De Jure Belli ac Pacis, vol. 2, pp. 20, 832 - 844.
355. See, for example, De Jure Praedae, vol. 1, pp. 117, 302; and De Jure Belli ac Pacis, vol. 2, pp. 792, 798 - 799.
356. See, for example, De Jure Praedae, vol. 1, pp. 194 - 202; and De Jure Belli ac Pacis, vol. 2, pp. 814 - 820, 838.
357. As W. Fikentscher puts it in his study of an early Grotius' work: "Fides is described and demanded, but it is not philosophically substantiated". "De Fide et Perfidia - Der Treuegedanke in den 'Staatsparallelen' des Hugo Grotius aus heutiger Sicht", Sitzungsberichte der Bayerischen Akademie der Wissenschaften, vol. 1, 1979, p. 51.
358. De Jure Praedae, vol. 1, p. 277.
359. De Jure Belli ac Pacis, vol. 2, pp. 798 - 799. The context within which Grotius places this idea is the formal war. See below, Section Nine, p. 225.
360. De Jure Belli ac Pacis, vol. 2, p. 860.
361. Ibid., pp. 860 - 861.
362. Ibid., p. 510.
363. Ibid., p. 509 (quoting Cicero).
364. De Jure Praedae, vol. 1, pp. 283, 315 - 317, 345 - 348.
365. De Jure Belli ac Pacis, vol. 2, pp. 397 - 403.
366. Ibid., p. 403.
367. True Religion, pp. 4 - 5. The text reproduced here is the amended text. The original version reads as follows: "... that they might try ... and make incursions either upon the Pagans ... or upon the Mahumetans ... or ... upon the Iewes and such as at this day are professed enemies of Christianity ...". Ibid. Wolf credits Grotius with "tolerance vis-a-vis all religions and forms of worship", but he does this without revealing the evidence on which he bases his view. Grosse Rechtsdenker der deutschen Geistesgeschichte, p. 260.
368. True Religion, p. 131.
369. Ibid., p. 128.
370. Ibid., pp. 347 - 348.
371. Mare Liberum, p. 1. This is a more literal translation of the Latin text than that given by the official translator. See Ibid.
372. De Jure Belli ac Pacis, vol. 2, p. 862.

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373. De Jure Praedae, vol. 1, pp. 168 - 215; De Jure Belli ac Pacis, vol. 2, p. 20.
374. De Jure Belli ac Pacis, vol. 2, pp. 623 - 700. For an exception, see above, pp. 200 - 201.
375. See, for example, De Jure Belli ac Pacis, vol. 2, pp. 208, 624, 42 - 43, 738, 266, 652, 657.
376. See, for example, Ibid., p. 507.
377. Ibid., p. 266.
378. Ibid., p. 653.
379. De Jure Praedae, vol. 1, Ch. XII, pp. 216 - 282.
380. "Freedom of trade ... springs from the primary law of nations, which has a natural and permanent cause, so that it cannot be abrogated", Ibid., p. 257. This statement is preceded by another, Ibid., p. 227, which says: "There was no private property under the primary law of nations, to which we also give the name of natural law, from time to time, ... and ... no commercial transactions". These two statements are only compatible with one another if one allows for the changeability of the law of nature or primary law of nations. See the discussion above, Section Five, pp. 188 - 189, 192 - 195.
381. Ibid., p. 218.
382. Ibid.
383. Ibid., pp. 220 - 226.
384. Ibid., p. 232. De Pauw mentions that the principle of the freedom of the seas was already proclaimed by Pope Alexander III in 1169. Grotius and the Law of the Sea, p. 8. Part of de Pauw's treatise (pp. 46 - 76) is reproduced in L.E. van Holk and C.G. Roelofsen (eds.), Grotius Reader: A Reader for Students of International and Legal History, T.M.C. Asser Instituut, The Hague, 1983, pp. 145 - 175.
385. De Jure Praedae, vol. 1, pp. 244 - 255.
386. Ibid., p. 261.
387. Ibid., p. 1.
388. Ibid., Ch. XV, pp. 338 - 366.
389. Ibid., p. 340.
390. Ibid.
391. Ibid.
392. Ibid., p. 341.

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393. Ibid., p. 345.
394. Ibid., pp. 283, 311. For indirect evidence against the idea that the war in the East Indies is a private war see, for example, Ibid., pp. 217, 273 - 274, 340.
395. Ibid., Ch. XIII, pp. 283 - 317.
396. Ibid., p. 290.
397. Regarding the date of publication, see also above, note 87. In his comments on Grotius, it is interesting to note, Gollwitzer refers only to Mare Liberum. Geschichte des weltpolitischen Denkens, vol. 1, pp. 67 - 70, 111.
398. Mare Liberum, pp. 3 - 4.
399. Ibid., p. 4.
400. Ibid., p. 7.
401. Ibid., p. 5. This does not mean that the terms primary law of nations and secondary or volitional law of nations do not occasionally appear in the text. See, for example, pp. 23, 53, 55, 57, 63.
402. Ibid., pp. 11 - 71.
403. Ibid., p. 72.
404. Ibid., p. 73. This passage, as also the opening chapter, suggest to this reader that Mare Liberum was meant to lend support to the policies of the Stadhouder, Prince Maurits, rather than to those pursued by Oldenbarneveldt. If this were the case, it might help to explain why it was published anonymously in 1609.
405. Ibid., p. 3.
406. Clark and Eysinga, "The Colonial Conferences between England and the Netherlands in 1613 and 1615", vol. 15, p. 85.
407. Both editors emphasize that Grotius was the spokesman on the Dutch side at both conferences. See Ibid., vol. 15, pp. 1, 13 - 14, 26; vol. 17, pp. 19 - 20, 100.
408. Ibid., vol. 15, p. 118.
409. As mentioned above, Section Six, p. 202, there are indications that Grotius has the idea of a law of nations not covered by any of his definitions. See De Jure Belli ac Pacis, vol. 2, pp. 623 - 629, 757. But that law of nations is also different from "the laws of nature and nations" to which he refers the reader here.
410. Clark and Eysinga, "The Colonial Conferences between England and the Netherlands in 1613 and 1615", vol. 15, p. 101; see also pp. 118 - 119.
411. Ibid., p. 119.

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412. Ibid., p. 188.
413. Ibid., p. 189.
414. Ibid., pp. 181 - 182; see also pp. 192 - 193.
415. Ibid., pp. 193 - 194; see also pp. 182 - 183.
416. Ibid., p. 194.
417. Ibid., p. 120.
418. Ibid., pp. 212 - 214.
419. De Jure Belli ac Pacis, vol. 2, p. 196.
420. See above, Section Five, p. 192.
421. De Jure Belli ac Pacis, vol. 2, p. 199.
422. Ibid.
423. Ibid., p. 200 (quoting Florus). In presenting his evidence, Grotius does not seem to be concerned that some of his sources suggest that commerce is the result of a "natural desire" on the part of men "to maintain a social relationship", while others present the view that, as a result of commerce which derives from human needs, a social relationship and friendliness are fostered. See Ibid., pp. 199 - 200.
424. Ibid., p. 205.
425. Ibid.
426. Ibid., pp. 393 - 394.
427. Ibid., p. 394.
428. Ibid., p. 395.
429. Ibid., pp. 396 - 397.
430. Ibid., p. 439.
431. Ibid., pp. 439 - 440.
432. See, for example, De Jure Praedae, vol. 1, pp. 26, 96, 201 - 202, 291 - 292, 334.
433. De Jure Belli ac Pacis, vol. 2, pp. 438 - 449.
434. Ibid., p. 442.
435. Ibid., p. 440.
436. Ibid., pp. 440 - 441.
437. Ibid., p. 441.

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438. Ibid., p. 442.
439. Ibid.
440. Ibid., pp. 442 - 443.
441. Ibid., p. 443.
442. Ibid., pp. 443 - 444.
443. Ibid., p. 444.
444. Ibid., p. 446.
445. Ibid., p. 445.
446. Ibid.
447. Ibid., pp. 445 - 446.
448. Ibid., p. 442.
449. Ibid., p. 446.
450. Ibid., pp. 560 - 561.
451. De Jure Praedae, vol. 1, p. 346.
452. Clark and Eysinga, "The Colonial Conferences between England and the Netherlands in 1613 and 1615", vol. 15, p. 148.
453. De Jure Praedae, vol. 1, p. 26.
454. De Jure Belli ac Pacis, vol. 2, pp. 440 - 445.
455. Ibid., p. 442.
456. Ibid., pp. 196 - 199.
457. De Jure Praedae, vol. 1, p. 30.
458. De Jure Belli ac Pacis, vol. 2, p. 33; see also p. 832. Haggemacher compares and contrasts the two definitions and concludes that the change from the first to the second definition, "as radical as it appears at first sight, is only superficially radical; fundamentally it hardly modifies Grotius' views". Grotius et la Doctrine de la Guerre Juste, pp. 457 - 462.
459. De Jure Praedae, vol. 1, p. 62.
460. De Jure Belli ac Pacis, vol. 2, p. 34.
461. Ibid., p. 33.
462. De Jure Praedae, vol. 1, p. 68; see also De Jure Belli ac Pacis, vol. 2, p. 184.
463. De Jure Praedae, vol. 1, p. 31; De Jure Belli ac Pacis, vol. 2, p.

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464. De Jure Praedae, vol. 1, p. 42; De Jure Belli ac Pacis, vol. 2, pp. 20, 51 - 90.
465. For an interpretation which discerns three "images of war" in Grotius, see M. Donelan, "Grotius and the Image of War", Millennium: Journal of International Studies, vol. 12, 1983, pp. 233 - 242.
466. The ingredients of this idea are also present in De Jure Belli ac Pacis, though in part less well developed (see below, notes 468 - 482), but Grotius does not integrate them nor does he provide a means by which to do so.
467. De Jure Praedae, vol. 1, p. 59; although Grotius also says that "(a) war is said to be just if it consists in the execution of a right". Ibid., p. 30. Aristotle's idea of the four causes does not reappear in De Jure Belli ac Pacis.
468. De Jure Praedae, vol. 1, p. 62; see De Jure Belli ac Pacis, vol. 2, p. 164.
469. De Jure Praedae, vol. 1, p. 60; see De Jure Belli ac Pacis, vol. 2, pp. 164 - 165, 578.
470. De Jure Praedae, vol. 1, pp. 61 - 62; see De Jure Belli ac Pacis, vol. 2, p. 165.
471. De Jure Praedae, vol. 1, p. 66. In De Jure Belli ac Pacis, vol. 2, p. 164, Grotius refers to them as "principal agents" and "auxiliary agents".
472. De Jure Praedae, vol. 1, pp. 67 - 68, 70; see De Jure Belli ac Pacis, vol. 2, pp. 171 - 172.
473. De Jure Praedae, vol. 1, p. 67. Grotius uses the word "right" (jus) here, even though two of the precepts to which he refers the reader - Laws I and II - are formulated in terms of what is permissible, while the other two - Laws V and VI - give expression to that which is required. See above, Section Five, p. 191.
474. De Jure Praedae, vol. 1, pp. 70 - 75; see De Jure Belli ac Pacis, vol. 2, pp. 52 - 53, 170 - 172.
475. De Jure Praedae, vol. 1, p. 80; see De Jure Belli ac Pacis, vol. 2, pp. 587 - 595.
476. De Jure Praedae, vol. 1, p. 83. In De Jure Belli ac Pacis Grotius looks at this question only from the point of view of the "prime movers". See Ibid., vol. 2, pp. 565 - 566.
477. De Jure Praedae, vol. 1, pp. 76 - 77.
478. Ibid., p. 87; see De Jure Belli ac Pacis, vol. 2, p. 92.
479. De Jure Praedae, vol. 1, pp. 87 - 88, 135 - 137; see De Jure Belli ac Pacis, vol. 2, p. 92.

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480. De Jure Praedae, vol. 1, p. 104. Grotius' chapters on moderation in war in Book Three of De Jure Belli ac Pacis, pp. 716 - 782, refer to public rather than to private war. See below, this section, pp. 229 - 230.
481. De Jure Praedae, vol. 1, pp. 108, 118.
482. Ibid., pp. 66, 113, 118, 126 - 129, 277, 295. With the exception of a brief mention on p. 52, vol. 2, the purpose or final cause of war hardly figures in De Jure Belli ac Pacis, which is perhaps compatible with the view mentioned above, p. 219, that war is "a condition" rather than "an execution". Regarding the chapter "On Good Faith in Ending War", which relates to public war, see below, p. 230.
483. See above, Section Seven, p. 208 and note 394.
484. De Jure Praedae, vol. 1, p. 59; although Grotius, referring to Bartolus, also says that a public war is just "when waged between two free states". See Ibid., p. 63.
485. Ibid., pp. 68, 125 - 129. At the less abstract level, as Chs. XII and XIII demonstrate, the material causes of a private war differ from those of a public war. See Ibid., pp. 216 - 317.
486. Ibid., p. 68.
487. Ibid., pp. 62 - 63.
488. Ibid., p. 64.
489. Ibid., p. 65.
490. Ibid., p. 69. The better translation would seem to be "a matter not so much of law as of discretion". See Ibid., vol. 2, p. 30.
491. Ibid., vol. 1, p. 69.
492. Ibid., p. 98.
493. Ibid., p. 28.
494. Grotius calls this "judicial procedure", mentioned above, Section Six, p. 199 and note 312, or, following the jurists of Antiquity, clarigatio or rerum repetitio. As the translator explains, clarigatio is "a demand for redress and a declaration of war if redress (is) not received within thirty-three days", and rerum repetitio means "reclamation of goods or rights". De Jure Praedae, vol. 1, p. 98.
495. De Jure Praedae, vol. 1, pp. 98 - 103; see also pp. 28 - 29.
496. Ibid., pp. 96 - 97.
497. Ibid., p. 104.
498. Ibid., pp. 108 - 118.
499. Ibid., p. 124.

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500. Ibid., p. 144. For the whole argument, see pp. 142 - 156. In his extensive discussion of this point, Haggemacher seeks to limit its significance. Grotius et la Doctrine de la Guerre Juste, pp. 310 - 398.
501. See, for example, De Jure Belli ac Pacis, vol. 2, pp. 57, 97, 630, 633. The corresponding Latin terms are: bellum plenum, bellum publicum solenne, bellum justum sive solenne, bellum solenne. Hugonis Grotii De Jure Belli et Pacis, vol. 1, pp. 39, 104; vol. 3, p. 53.
502. De Jure Belli ac Pacis, vol. 2, pp. 97, 630 - 634.
503. Ibid., pp. 643 - 644.
504. The Latin word is solenne, which should be translated as "formal". Hugonis Grotii De Jure Belli et Pacis, vol. 3, p. 108.
505. De Jure Belli ac Pacis, vol. 2, p. 664; see also pp. 565, 630.
506. Ibid., p. 566; see also pp. 435 - 436, 630, 639, 641.
507. Ibid., p. 799.
508. Ibid., Chs. IV - IX, pp. 641 - 715. According to Haggemacher, fourteen chapters of Book Three, Chs. III - XVI, are concerned with the effects of the formal war (Ch. III is strictly speaking not about the effects of the formal public war but about its prerequisites). Grotius et la Doctrine de la Guerre Juste, p. 571. Yet the Latin text makes it clear that only Chs. III - IX relate to the formally just public war (bellum solenne jure gentium or bellum jure gentium), and that Chs. X - XVI relate to the materially just/unjust war (bellum justum/injustum). See, for example, Hugonis Grotii De Jure Belli et Pacis, vol. 3, pp. 53, 70, 97, 105, 148, 165; 188, 196, 248, 254, 269, 281.
509. De Jure Belli ac Pacis, vol. 2, pp. 646 - 651.
510. Ibid., pp. 658 - 662.
511. Ibid., p. 664.
512. Ibid., p. 691.
513. Ibid., p. 697 (quoting Caesar).
514. Ibid., p. 654.
515. Ibid., pp. 651 - 657. Another exception relating to provisions concerning servitude was mentioned above, Section Six, pp. 200 - 201.
516. De Jure Belli ac Pacis, vol. 2, pp. 792, 798 - 799. For other references to the principle of good faith, see above, Section Five, p. 194, and Section Six, pp. 203 - 204.
517. The Latin term is bellum justum, which should be translated as "just war". Hugonis Grotii De Jure Belli et Pacis, vol. 3, p. 75.
518. De Jure Belli ac Pacis, vol. 2, p. 644.

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519. Ibid., pp. 651, 654.
520. See, for example, Ibid., pp. 57, 97, 164. The corresponding Latin terms are: bellum justum, bellum minus solenne, bellum publicum. Hugonis Grotii De Jure Belli et Pacis, vol. 1, pp. 39, 104, 198. That Grotius distinguishes between two kinds of just war in De Jure Belli ac Pacis is obvious not only from what he says, for example, in Ibid., vol. 2, pp. 57, 97, 639, 664 and 689, but also from his presentation of the formal cause of war in Book Three. See above, note 508, and below, note 558.
521. De Jure Belli ac Pacis, vol. 2, p. 164; see also pp. 97 - 101.
522. Ibid., p. 97.
523. Ibid.
524. The Latin word is solenne, which should be translated as "formal". Hugonis Grotii De Jure Belli et Pacis, vol. 3, p. 192.
525. De Jure Belli ac Pacis, vol. 2, pp. 718 - 719; see also pp. 170, 547 - 549.
526. Ibid., p. 719.
527. Ibid., pp. 169 - 172, 546 - 547.
528. Ibid., pp. 546 - 547.
529. Ibid., p. 169.
530. Ibid., pp. 546 - 547; see also p. 169.
531. Ibid., pp. 549 - 556, 516 - 517.
532. Ibid., p. 169.
533. See Chs. I - XXI of Book Two, in Ibid., pp. 169 - 545, of which Chs. X and XVII, pp. 320 - 327 and 430 - 437, are about obligations.
534. Ibid., p. 206.
535. Ibid., p. 220.
536. Ibid., p. 231.
537. See, for example, Ibid., p. 449, the ill-treatment of ambassadors; p. 460, the denial of burial; p. 518, cruelty to Christians.
538. Ibid., pp. 260 - 266.
539. Ibid., pp. 328 - 342.
540. Ibid., p. 405.
541. Ibid., p. 438.
542. Regarding Grotius' identification of these "natural" rights with

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- that which is permissible according to the law of nature see, for example, Ibid., pp. 54, 172, 179, 184, 201, 207. See also the point made above, note 473, when presenting Grotius' idea of the just private war in De Jure Praedae. For a more general discussion of Grotius' "theory of natural rights", see Tuck, Natural Rights Theories, pp. 58 - 81.
543. De Jure Belli ac Pacis, vol. 2, p. 21. For a different reading of Grotius' materially just cause of war, see Haggenmacher, "Grotius and Gentili: A Reassessment of Thomas E. Holland's Inaugural Lecture", pp. 163 - 167.
544. De Jure Belli ac Pacis, vol. 2, p. 171. More general and abstract than this is the statement in the "Prolegomena": "War ought not to be undertaken except for the enforcement of rights". See Ibid., p. 18.
545. Ibid., pp. 172 - 173, 599. This weakens his other statement that "(n)o other just cause for undertaking war can there be excepting injury received". Ibid., p. 170. It also differs from what he says in De Jure Praedae, vol. 1, pp. 67 - 75. It prompts Schwarzenberger to speak of "the elasticity of just causes to resort to war". "The Grotius Factor", p. 307.
546. De Jure Belli ac Pacis, vol. 2, p. 184; see also pp. 503 - 504.
547. Ibid., p. 184. But see his argument in De Jure Praedae, vol. 1, pp. 329 - 330.
548. De Jure Belli ac Pacis, vol. 2, p. 624.
549. Ibid., pp. 449, 460 - 461, 601 - 603.
550. Ibid., p. 578. Grotius does not seem to mind treating the subject as "a part of the state" or "a part of the ruler" on the one hand, and as someone distinct from the state or ruler, on the other. See Ibid.
551. Ibid., p. 581.
552. Ibid., p. 582; see also p. 504.
553. Ibid., pp. 504 - 505.
554. Ibid., pp. 583 - 584, 505 - 506.
555. Ibid., p. 514; see also pp. 508 - 510.
556. Ibid., pp. 578 - 580; 581; 582 - 583; 507 - 508; 514 - 517, 518 - 521.
557. Ibid., pp. 132 - 133, 527, 647; for an exception, see Ibid., p. 584.
558. Chs. X - XVI, Ibid., pp. 716 - 782; see also above, note 508. To be quite correct, two of the seven chapters, X and XVI, are concerned with the materially or morally unjust war. To add a more general observation: Grotius' seven chapters on moderation occupy an ill-

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defined position in De Jure Belli ac Pacis. They are not mentioned at the beginning of Book Three, even though its first chapter, p. 599, announces what is to be discussed in this book. Moreover, their opening paragraph, p. 716, invites the reader to forget what has been said in the preceding chapters about the formally or externally just public war, even though both kinds of public war are introduced alongside one another as early as Book One, pp. 57 and 97, the formal war even being given the stronger position. Finally, following the chapters on moderation, Grotius returns in Chs. XX and XXI to that which applies according to the "strict" law of nations. See, for example, Ibid., pp. 813, 824, 827 - 828, 843.

559. Ibid., pp. 733 - 743.
560. Ibid., pp. 746 - 754.
561. Ibid., p. 757.
562. Ibid., p. 763.
563. Ibid., p. 772.
564. De Jure Praedae, vol. 1, pp. 103 - 104, 108 - 119, especially p. 110. See also above, this section, p. 223.
565. De Jure Belli ac Pacis, vol. 2, pp. 716 - 782.
566. Ibid., pp. 38, 39.
567. See above, note 482.
568. De Jure Belli ac Pacis, vol. 2, pp. 804 - 831.
569. Ibid., p. 809.
570. Ibid., p. 719.
571. A Treatise on the Antiquity ..., pp. 6 - 7; see also p. 27.
572. De Jure Praedae, vol. 1, p. 3; see also pp. 2, 69.
573. De Jure Belli ac Pacis, vol. 2, p. 20. A reference to this idea is found in both Wight and Bull. See above, pp. 161, 164.
574. De Jure Belli ac Pacis, vol. 2, p. 26.
575. De Jure Praedae, vol. 1, pp. 97 - 98; De Jure Belli ac Pacis, vol. 2, pp. 560 - 561; see above, Section Eight, p. 218.
576. De Jure Belli ac Pacis, vol. 2, pp. 561 - 563.
577. De Jure Praedae, vol. 1, p. 98; see above, Section Nine, p. 222.
578. De Jure Belli ac Pacis, vol. 2, p. 563.
579. Ibid., p. 644; see above, Section Nine, p. 225.
580. De Jure Praedae, vol. 1, p. 110; see above, Section Nine, pp. 221, 223.

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581. In Ch. I of Book Three Grotius discusses that which is permissible in war according to the law of nature, presenting the principle of proportionality not as moderate but as just. De Jure Belli ac Pacis, vol. 2, pp. 599 - 605.
582. See above, Section Nine, p. 230.
583. De Jure Belli ac Pacis, vol. 2, pp. 754 - 756; see also p. 20.
584. Ibid., pp. 138 - 156; see above, Section Four, pp. 183 -184.
585. De Jure Belli ac Pacis, vol. 2, p. 143.
586. De Jure Praedae, vol. 1, pp. 119 - 124, 142 - 156; see above, Section Nine, p. 223.
587. De Jure Belli ac Pacis, vol. 2, pp. 641 - 715; see above, Section Nine, pp. 224 - 225.
588. De Jure Belli ac Pacis, vol. 2, p. 651.
589. And this declaration is by implication only. See Ibid., p. 643.
590. See above, Ch. I, pp. 2, 4.
591. Ibid., pp. 5, 8.
592. Bull, "The Grotian Conception of International Society", p. 68.
593. See above, Ch. I, p. 3.
594. Ibid., p. 4.
595. Ibid., p. 7.
596. Ibid., p. 5.
597. Ibid., p. 7
598. Ibid.
599. Roelofsen, "Grotius and the International Politics of the Seventeenth Century", pp. 95 - 131. As that author puts it: "(Grotius) never considered himself as an author, but continually aspired to public office". Ibid., p. 97.

CHAPTER VII

1. Ch. IV above, p. 90.
2. Ch. V above, p. 130.
3. Ch. VI above, p. 183.
4. Ch. III above, pp. 50 - 53.

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5. Ch. IV above, p. 89.
6. Ch. V above, p. 130.
7. Ch. VI above, pp. 182 - 185.
8. Ch. III above, p. 51.
9. Ch. IV above, pp. 89, 90.
10. Ch. V above, p. 130.
11. Ch. VI above, pp. 181 - 182.
12. Ch. III above, pp. 51 - 53.
13. Ch. IV above, p. 91.
14. Ch. V above, p. 130.
15. Ch. VI above, p. 183.
16. Ch. III above, p. 52.
17. Ch. IV above, p. 92.
18. Ch. V above, p. 131.
19. Ch. VI above, pp. 183 - 184.
20. Ch. IV above, p. 92.
21. See above, pp. 132 - 133; 183.
22. Ch. VI above, pp. 184 - 185.
23. Ch. III above, p. 57.
24. Ibid., p. 71.
25. Ch. IV above, pp. 107 - 108.
26. Ibid., p. 108.
27. Ch. V above, pp. 133, 149.
28. Ch. VI above, pp. 183 - 184.
29. Ibid., pp. 186, 229.
30. Ch. IV above, p. 95.
31. See above, pp. 60 - 61; 102; 134, 136, 137; 186, 208 - 211.
32. Vitoria, "On the Law of War", in Scott, The Spanish Origin of International Law, pp. 1 - li, lxiv; Gentili, De Jure Belli, vol. 2, pp. 83, 95, 99 - 104, 134; Grotius, De Jure Belli ac Pacis, vol. 2, pp. 523 - 526, 578, 624 - 625.

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33. Ch. VI above, p. 221.
34. See above, pp. 51, 92, 132.
35. Ch. III above, p. 57.
36. Ibid., pp. 61 - 65.
37. Ibid., pp. 60 - 61.
38. Ibid., p. 56.
39. Ibid., pp. 69 - 72.
40. Ibid., pp. 56 - 57.
41. Ibid., pp. 54 - 55.
42. Ibid., pp. 65 - 68.
43. Ch. IV above, pp. 99 - 100.
44. Ibid., p. 100.
45. Ibid., p. 93.
46. Ibid., pp. 101 - 102.
47. Ibid., pp. 102 - 103.
48. Ibid., pp. 104 - 108.
49. Ibid., pp. 93 - 97.
50. Ibid., pp. 108 - 113.
51. Ch. V above, pp. 135 - 136.
52. Ibid., pp. 137 - 139.
53. Ibid., p. 139.
54. Ibid., pp. 139 - 141.
55. Ibid., pp. 141 - 147.
56. Ibid., pp. 147 - 150.
57. Ibid., pp. 151 - 153.
58. Ibid., p. 139.
59. Ibid., p. 130.
60. Ibid., pp. 153 - 156; see also pp. 150 - 151.
61. Ch. VI above, pp. 187 - 188; 209.

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62. Ibid., pp. 191 - 194.
63. Ibid., pp. 197 - 198.
64. Ibid., pp. 214 - 219.
65. Ibid., pp. 224 - 225.
66. Ibid., pp. 225 - 230; see also pp. 221 - 223.
67. Ibid., pp. 201, 227.
68. Ibid., pp. 203 - 206.
69. This is true not only of the law of nature or primary law of nations, but also of the secondary or volitional law of nations. See Ibid., pp. 200 - 201.
70. De Jure Praedae, vol. 1, pp. 340 - 344.
71. Ch. VI above, pp. 203 - 204.
72. Ibid., pp. 231 - 234.
73. Ch. III above, p. 58.
74. Ibid., p. 62.
75. Ibid., pp. 60 - 61.
76. Ch. IV above, p. 97.
77. Ibid., pp. 99 - 100.
78. Ibid., p. 94.
79. Ch. V above, pp. 135 - 136, 138.
80. Ibid., p. 138.
81. For Grotius' answer relating to the law of nature or primary law of nations, see above, Ch. VI, pp. 187 - 189, 190 - 191.
82. Ibid., pp. 197 - 198. Even this statement may be seen as being weakened by the further statement that the law of nations is "the creation of time and custom", especially since Grotius does not make it clear what his understanding of "custom" is. See Ibid., pp. 190, 202.
83. Ch. III above, p. 58.
84. See, for example, Ibid., pp. 43 - 46.
85. See, for example, Ibid., pp. 46 - 50.
86. Ibid., pp. 69 - 72.
87. Ibid., p. 62.

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88. Ch. IV above, pp. 99 - 100.
89. Ibid., pp. 86, 87 - 88, 98 - 99, 112 - 113.
90. Ibid., pp. 108 - 111; see also p. 96.
91. Ibid., p. 104.
92. Ibid., pp. 112 - 113.
93. Ibid., p. 88.
94. Ibid., pp. 95 - 96.
95. Ch. V above, p. 137.
96. See, for example, Ibid., pp. 122, 125, 155.
97. Ibid., pp. 140, 145, 149.
98. Ibid., pp. 145 - 146.
99. Ch. VI above, pp. 197 - 198.
100. There is his observation that the wars fought among Christians are "ruthless". Ibid., p. 205. But wars fought according to the secondary or volitional law of nations may be ruthless. Ibid., pp. 224 - 225. There is his admonition to rulers that, for the sake of their conscience, they should "cherish good faith". But he deprives it of its force by what he says about the principle of good faith and the law of nature or primary law of nations more generally. Ibid., pp. 187 - 195, 203 - 204.
101. Ibid., pp. 228 - 229.
102. Ibid., p. 224.
103. Ch. IV above, p. 92.
104. Ch. V above, p. 138.
105. Ibid., pp. 138 - 139.
106. Ibid., pp. 138, 142.
107. Ibid., p. 135.
108. Ch. IV above, pp. 89 - 90.
109. Ch. III above, p. 51.
110. Ch. IV above, p. 89.
111. Ch. V above, p. 145.
112. Ch. VI above, p. 182.
113. See above, pp. 71; 104, 106; 148; 220, 222, 228.

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114. Erasmus, Vitoria and Grotius make this point explicitly. See above, pp. 72, 106, and De Jure Belli ac Pacis, vol. 2, pp. 573 - 574. In the case of Gentili, it may be inferred from his general position that "the principle on which states are governed is to avoid suffering harm". See above, p. 141, and De Jure Belli, vol. 2, pp. 44, 82, 87, 102.
115. Ch. III above, pp. 56 - 57.
116. Ch. IV above, pp. 102 - 103, 106 - 108, 95 - 96.
117. Ch. V above, pp. 140, 142, 145, 149 - 150.
118. Ch. IV above, pp. 95 - 96.
119. See above, pp. 106; 149.
120. Ch. VI above, p. 229.
121. See, for example, above, pp. 52, 56, 60; 92, 98, 111; 132, 137, 151 - 153.
122. Ch. III above, p. 56.
123. See above, pp. 102 - 103, 106 - 108; 140 - 141; 141 - 146, 149 - 150. There are two principles of justice, Gentili writes, "to do no harm and not to attack another, and to render aid when you can". De Jure Belli, vol. 2, p. 69.
124. Ch. III above, pp. 53, 56 - 57.
125. Ibid., pp. 70 - 71.
126. See above, pp. 104 - 105; 148 - 150.
127. Ch. VI above, pp. 215 - 219, 224 - 225, 233 - 234.
128. Ch. III above, p. 50, note 68.
129. Ch. IV above, p. 92; see also pp. 104, 111, 112.
130. Ch. V above, p. 139.
131. See above, pp. 105; 147.
132. See above, pp. 72; 106. In relation to Gentili, the same comment applies as above, note 114.
133. Ch. VI above, p. 230. For Grotius' definition of peace, see De Jure Belli ac Pacis, vol. 2, p. 816.
134. Ch. III above, p. 65.
135. Ch. IV above, pp. 108 - 112.
136. Ch. V above, p. 153.
137. Vitoria grants one exception: in case of necessity, Christian tempo-

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ral power may be required to serve Christian spiritual power, even if this proves detrimental to its interests. See above, p. 95.

138. See above, pp. 112 - 113; 146.

CHAPTER VIII

1. See above, pp. 37 - 39; 41 - 43; 83 - 86; 120 - 123; 170 - 173. A different interpretation of the relationship between thinkers before the middle of the seventeenth century and the events of their time is offered by J.L. Holzgrefe, "The Origins of Modern International Relations Theory", Review of International Studies, vol. 15, 1989, pp. 11 - 26, esp. pp. 22 - 23.
2. Ch. III above, p. 43.
3. Ch. IV above, p. 76.
4. Ch. VI above, pp. 174 - 175.
5. Ibid., p. 171 and note 86.
6. Ch. V above, p. 123.
7. Ibid., p. 119.
8. R.N. Berki, On Political Realism, Dent & Son, London, 1981, pp. 1 - 36.
9. Ch. III above, p. 50.
10. Ch. IV above, pp. 87 - 88, 93.
11. Ch. V above, p. 125.
12. Ch. VI above, pp. 175 - 175.
13. De Jure Praedae, vol. 1, p. 351.
14. Ch. III above, pp. 43 - 46.
15. Ch. IV above, p. 104.
16. Ch. V above, p. 124.
17. Ch. VI above, p. 176.
18. Ibid., p. 236.
19. Ch. I above, p. 10. There is a passage where Wight questions the appropriateness of the word "tradition" in relation to "the revolutionists". International Theory, p. 12. For a different attempt at categorizing thinkers across time, see D. Kennedy, "Primitive Legal Scholarship", Harvard International Law Journal, vol. 27, 1986, pp. 1 - 98. The latter distinguishes between "primitive" (prior to 1648), "traditional" (1648 - 1900) and "modern" (1900 - 1980) scholars.

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20. Ch. IV above, p. 79.
21. Ibid.
22. Ch. V above, p. 118.
23. De Jure Praedae, vol. 1, p. 59.
24. Ibid., p. 7.
25. Ch. VI above, p. 175.
26. Ibid., pp. 165 - 166.
27. For discussions of "tradition" see, for example, J.G. Gunnell, "The Myth of the Tradition", in P. King (ed.), The History of Ideas, Croom Helm, London/Canberra, and Barnes & Noble, Totowa, N.J., 1983, pp. 233 - 255; R. Williams, Keywords: A Vocabulary of Culture and Society, Flamingo/Fontana, London, 1985, pp. 318 - 320; R.B.J. Walker, "The Prince and 'The Pauper': Tradition, Modernity, and Practice in the Theory of International Relations", in J. Der Derian and M.J. Shapiro (eds.), International/Intertextual Relations: Post-modern Readings of World Politics, Heath & Co., Lexington, Mass./Toronto, 1989, pp. 25 - 48; and B. Kingsbury and A. Roberts, "Introduction: Grotian Thought in International Relations", in Bull, Kingsbury and Roberts, Hugo Grotius and International Relations, pp. 51 - 64.
28. Nys, "Introduction", De Legationibus, vol. 2, pp. 22a - 23a. Hotman describes this process of borrowing in response to the accusation of plagiarism.
29. For a brief but instructive discussion, see Williams, "Rational", Keywords, pp. 252 - 256. Regarding Wight's reasons for choosing and perhaps later abandoning the word "rationalist" in favour of "Grotian", see International Theory, pp. 13 - 14.
30. See, for example, F. Meinecke's study Machiavellism: The Doctrine of Raison d'État and Its Place in Modern History, translated by D. Scott, with a General Introduction to Friedrich Meinecke's Work by W. Stark, Praeger, New York/Washington, 1965 (first published in German in 1922 under the title: Die Idee der Staatsraison in der neueren Geschichte).
31. See, for example, Onions, The Shorter Oxford English Dictionary on Historical Principles, vol. 1, p. 378.
32. Ibid., p. 1030.
33. Herz, Political Realism and Political Idealism, pp. 129 - 251.
34. Herz, Vom Ueberleben, pp. 166; 164.
35. É. Crucé, The New Cyneas, edited with an Introduction and Translation by T.W. Balch, Allen, Lane & Scott, Philadelphia, 1909 (first published in French in 1623).
36. See above, pp. 65, 72; 93; 153.

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37. See above, pp. 46 - 50; 87 - 88; 124 - 125.
38. See, for example, H.J. Morgenthau, Politics among Nations: The Struggle for Power and Peace, 4th ed., Alfred A. Knopf, New York, 1967, pp. 50 - 53.

APPENDIX

1. A formulation found in R. Williams, Politics and Letters: Interviews with New Left Review, N.L.B., London, 1979, p. 178. The phenomenon of "discontinuity" was first observed and commented on in Ch. II above, pp. 32 - 35.
2. The following four texts in Latin have been used: "De Indis Recenter Inventis: Relectio Prior" (On the Indians Lately Discovered: First Relectio), hereafter "De Indis" (On the Indians), and "De Indis, Sive de Iure Belli Hispanorum in Barbaros: Relectio Posterior" (On the Indians, Or on the Law of War Made by the Spaniards on the Barbarians: Second Relectio), hereafter "De Iure Belli" (On the Law of War), both in Nys, Francisci de Victoria, pp. 217 - 268 and 269 - 297; "De Potestate Civili" (Concerning Civil Power) and "De Potestate Ecclesiae: Relectio Prior" (Concerning the Power of the Church: First Relectio), hereafter "De Potestate Ecclesiae, I", both in Urdánoz, Obras de Francisco de Vitoria, pp. 150 - 195 and 290 - 316.
3. Unless otherwise indicated, the information in this Appendix on the etymology of words is from Onions, The Shorter Oxford English Dictionary on Historical Principles.
4. "De Potestate Civili", p. 156.
5. "De Iure Belli", p. 277.
6. "De Indis", p. 235.
7. Ibid., p. 240.
8. "De Potestate Civili", p. 168.
9. Ibid., p. 191.
10. Ibid., p. 180.
11. Ibid., p. 168.
12. "De Potestate Ecclesiae, I", p. 308.
13. See above, Ch. II, p. 33.
14. "De Iure Belli", p. 277.
15. Ibid.
16. Ibid., p. 276.

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17. "De Potestate Ecclesiae, I", p. 302.
 18. "De Potestate Civili", p. 158.
 19. "De Indis", p. 260.
 20. See above, Ch. IV, note 101.
 21. "De Indis", p. 249.
 22. "De Potestate Ecclesiae, I", p. 307.
 23. "De Indis", p. 257.
 24. The Middle English period extends from ca. 1150 - ca. 1450.
 25. "De Iure Belli", p. 284.
 26. "De Indis", p. 218.
 27. Ibid., p. 262.
 28. Ibid., p. 261.
 29. The Old English period: before the middle of the twelfth century.
 30. "De Indis", p. 257.
 31. "De Potestate Civili", p. 191.
 32. "De Indis", p. 268.
 33. Ibid., p. 262.
 34. D. Hume, "Of the Balance of Power", in P. Seabury (ed.), Balance of Power, Chandler Publishing Co., San Francisco, 1965, p. 32.
 35. Parkinson, The Philosophy of International Relations, p. 45.
 36. "Power", Onions, The Shorter Oxford English Dictionary on Historical Principles, vol. 2, p. 1559.
 37. L. v. Ranke, "The Great Powers", in G.G. Iggers and K. v. Moltke (eds.), The Theory and Practice of History by Leopold von Ranke, Bobbs-Merrill, Indianapolis/New York, 1973, p. 99.
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