

Cambridge University Press

978-1-107-43316-8 - Economic Problems of Peace After War (Second Series)

William Robert Scott

Excerpt

[More information](#)

---

## MARE LIBERUM—AER CLAUSUS?

S.

I.

Cambridge University Press

978-1-107-43316-8 - Economic Problems of Peace After War (Second Series)

William Robert Scott

Excerpt

[More information](#)

---

Men cannot conceive a state of things so fair that it cannot be realised... What can be expressed in words can be expressed in life.

H. D. THOREAU.

Dear Child, I also by pleasant streams,  
Have wander'd all night in the land of dreams,  
But though calm and warm the waters wide,  
I could not get to the other side.

WILLIAM BLAKE.

Cambridge University Press

978-1-107-43316-8 - Economic Problems of Peace After War (Second Series)

William Robert Scott

Excerpt

[More information](#)

## MARE LIBERUM—AER CLAUSUS?

THE change from peace to war has not only been reflected in military preparations and all the industrial processes which are consequent upon them, but it shows itself in a more subtle form in an alteration in the direction of mental activity. The mind turns inevitably to a changed adaptation of means to ends and also to consideration of more general issues which have arisen out of the new state. When people generalise, the diversion of human energy and its more immediate consequences invite, and even compel, reflection. The same situation may be noticed in previous wars; but, after the long peace, the old discussions, which re-emerge after a long interval, come to us as wholly new and as views or problems which must be dealt with afresh. An instance of this tendency is to be found in the revival in other countries of the contention, known as "the Freedom of the Seas." In the past almost every enemy that has felt the effects of naval power, has made similar claims. This is not to be wondered at. On the contrary, it is natural that a nation at war should endeavour by argument to depreciate, and if possible to weaken those means of offence which his adversary possesses and in which he himself is relatively weak. Dutch jurists made a case against us in this connection in the seventeenth century, largely in relation to fishing. In the Napoleonic Wars freedom of the seas was advocated by the French and supported by similar arguments, often with considerable emphasis—a polemic which made so little permanent impression upon British thought that Isaac Disraeli, writing soon after Waterloo, included it amongst literary curiosities<sup>1</sup>. It is almost brutal criticism to have noted such special pleading as a mere literary curio! From that point

<sup>1</sup> Disraeli, *Curiosities of Literature*, 1859, II. p. 79.

of view the former arguments, again revived, may have acquired greater interest through their greater age; though, necessarily, unless some new conditions have emerged, these arguments will be less, rather than more cogent. Still, in view of the renewal of this old controversy and particularly the form in which it has reached the general public of this country through many eloquent addresses from our kinsmen and allies in the United States, it may be worth re-stating the issue and examining it in the light of modern facts and possibilities.

In a lecture of the previous course I attempted to outline the conditions which have brought British sea-power into existence<sup>1</sup>. As long as the commonwealth of British peoples continues as a maritime state, security of intercommunication between its ports is unconditionally necessary. In war it becomes a cardinal part of the nation's strength, and one which, in the end, may be expected to justify to the full all that Mahan has said of its decisive character. Any type of thinking which would limit the use of the Navy in war, save under considerations of humanity, would be a great wrong not only to the people of this country and of the Dominions but to our Allies as well. To fail in making the most efficient use of an instrument bequeathed to us by our fathers and improved by the sacrifices of the present generation in preparation for the possibilities of defence, which have now become actual necessities, would be the fatal error for which there would be neither excuse nor forgiveness.

While the position during hostilities is perfectly unambiguous, it may be inquired whether, when we consider the prospects of the earlier years of peace, there has been any new condition which may conceivably modify our former views upon the nature, the necessity and the use of our sea power. British and Allied war aims have placed in the forefront their demand for the freedom of small nations. For close upon three quarters of a century Great Britain has stood for free enterprise and for freedom of trade. It may seem symmetrical to add to the ideals of freedom of nations and freedom of enterprise, a third freedom—that of the seas. As regards the first two the signification of

<sup>1</sup> W. R. Scott, *Economic Problems*, First Series, pp. 49, 50.

*Mare Liberum—Aer Clausus?*

5

the terms is known, but those who use the third have shrouded their meaning in obscurity. During peace not only has there been unrestricted freedom of navigation, but British sea power, so far from limiting that freedom, has extended it, first by repressing piracy, secondly by improving navigation and thirdly by making it more safe through charting various imperfectly surveyed waters, all of which activities have been for the common benefit of all sea-faring nations. It follows that no greater freedom of the seas can be conceived than that which existed during peace. Is it claimed, then, that a similar freedom can be maintained in time of war? Mr Woodrow Wilson pictures an “inviolable security of the highway of the seas for the common and unhindered use of all the nations of the world,” while many German writers have claimed during the last three years a freedom of the seas in time of war, which freedom Professor von Schulze-Gävernitz specifies as meaning the inviolability of private property at sea in time of war, as well as during peace. The latter claim is contrary to the practice of all maritime nations in the past. It would not only raise an infinity of confused legal questions, but it would deprive the proposed League of Nations of one important power which it has been suggested to give it. According to the methods to be described in the next lecture, that body would be able to bring pressure to bear upon any State which attacked a nation which had joined the League and also upon a signatory Power which refuses to submit a dispute to arbitration or does not carry out the award of the tribunal of the League. One form of the coercion exercised by the proposed League would be by interruption of the commerce of the recalcitrant State, and for this purpose it would be necessary that it should be able to control, and divert the sea borne commerce of its members. Thus if the thesis of freedom of the seas be accepted in the sense of the complete inviolability of private property at sea, the League of Nations either could not exist as a body with coercive powers, or else it would be compelled to rely exclusively upon military force.

This view, inadmissible as it is in the general interests of the seafaring nations, is refuted by the full claims of German

6 *Mare Liberum—Aer Clausus?*

ambition when it is allowed free expression. Lord Robert Cecil quoted in the House of Commons the following definition by Count Reventlow at a meeting which the latter addressed at Berlin in March 1917, "What do we Germans understand by the freedom of the seas? Of course, we do not mean by it that free use of the sea, which is the common privilege of all nations in time of peace—the right to the open highways of international trade. That sort of freedom of the sea we had before the war. What we understand to-day by this doctrine is that Germany should possess such maritime territories and such naval bases that at the outbreak of war we should be able with our Navy ready, reasonably to guarantee ourselves the command of the seas. We want such a jumping off place as would give us a fair chance of dominating the seas<sup>1</sup>." In this sense freedom avows itself, naked and unashamed, as freedom to dominate. It resembles the meaning which the Jacobins assigned to fraternity when they always thought of themselves as the elder brothers<sup>2</sup>.

Some light upon the conception of the freedom of the seas may perhaps be obtained by a study of the early ideas from which it has been evolved. Grotius published his tract, called *De Mare Libero*, in 1606. His object was to establish by argument a right which English seamen had partially justified by arms in the previous generation, namely, that in time of peace no nation was entitled to close the open sea to the ships of other countries. This controversy had special relation to the reservation of the trade to the East Indies by the Portuguese. Grotius was far removed from those who advocate freedom of the seas in the interests of peace. On the contrary the Elzevir edition of his treatise, printed in 1633, has an engraved title page exhibiting a heavily armed ship flying the flag of the United Provinces, and he declares that the refusal of free passage of merchandize by sea constitutes a just cause of war<sup>3</sup>. In expounding these ideas, Grotius enunciates certain general principles, and some of these, when taken apart from their context, have been used to support

<sup>1</sup> *Times*, February 15, 1918.

<sup>2</sup> *Guesses at Truth*, 1873, p. 31.

<sup>3</sup> *De Mare Libero*, XIII.; cf. *De Jure Belli*, ii. II. 13; iii. III. 12.

*Mare Liberum—Aer Clausus?*

7

conclusions which he did not accept and which, moreover, are contradicted either explicitly or implicitly elsewhere. That the sea should be free or common to all is defined as applicable to an unarmed navigation which does harm to none<sup>1</sup>, in which it resembles free passage for private persons in foreign countries. While, according to the *jus gentium*, there could not be “acquisition” of the open sea, there may be dominion (*imperium*) over it, to which he does not consider the *jus gentium* would offer any impediment<sup>2</sup>. Dominion of the sea is acquired when a fleet is able to command it. This requires an external act and only remains as long as that act continues. Gronovius makes this more precise by particularising the external act as the presence of the fleet which commands the sea and which lapses when that command ceases. Thus the conception of the *mare liberum* involves nothing which is inconsistent with British practice for many generations, nor when peace returns does there appear to be anything which, in principle, would preclude the former freedom from being restored. Indeed, when in 1750 Frederick the Great advanced the doctrine that “the sea is free,” the British law-officers were able to quote Grotius against him and in defence of the action of the fleet which had occasioned the protest and reprisals<sup>3</sup>.

We are prone to speak of peace as if it were a “stationary state,” whereas it has been hitherto a condition arising out of a series of tensions, some of which are always operating towards a disturbance of the equilibrium. It is to be hoped that the new peace can be established upon a basis which will provide self acting methods for checking and, if possible, in the end eliminating those tendencies which work towards disturbance of good relations between nations. Many earnest efforts have been made to discover those influences which seem to threaten discord. Enthusiasm for the prevention of future wars has discovered possible causes of friction in some unsuspected places, often

<sup>1</sup> *De Jure Belli*, ii. III. 13.

<sup>2</sup> *Ibid.* ii. III. 14. The phrase is *neque arbitror jus illud gentium, de quo diximus, ob stare*.

<sup>3</sup> *Law and Custom of the Sea* (Navy Records Society) 1915–16, II. p. 370.

Cambridge University Press

978-1-107-43316-8 - Economic Problems of Peace After War (Second Series)

William Robert Scott

Excerpt

[More information](#)8 *Mare Liberum—Aer Clausus?*

with more haste than discernment. One of these has been found in the British Navy. The argument may be summarised as follows. The Allies have declared that one of their chief objects is the freeing of the world from the menace of German militarism. The Germans, on their side, have complained of British "navalism." Thus to some it seems that a compromise is possible in a League of Nations, which, together with the growth of opinion in each country, would impose limits upon both forms of power. In an extreme form there are some who would bid for Germany's adherence to the League by advocating limitation of our sea power in advance of it<sup>1</sup>. It seems to me that this line of thought neglects the history and particularly the recent applications of the two forces. Militarism is a survival of the feudal age, and it is working out its own condemnation before the conscience of a disapproving world. The Prussian view of British and Allied sea power is that it is "naval militarism," which it is not, either in its object or its methods. To confound two things so different will not be, in the end, the way to peace:

Such handsome words  
Are now as if one bound up wounds with silk  
Or with fine knots, which do not help the cure,  
Or make it heal the sooner<sup>2</sup>.

In the forefront of peace conditions, as far as Great Britain is affected, must be security. Attention has already been directed to the importance of trade routes between the peoples that constitute the British Empire<sup>3</sup>. War upon land has perhaps distracted popular attention from the fundamental condition of the union of British peoples. For other countries with colonies the means of communication by sea are important, but to us they are the life nerve of the State. If these be endangered, the safety of the whole would be in jeopardy. Thus it was with a true insight that Pitt described "naval defence as our national passion<sup>4</sup>." No League which ignores or undervalues this prime necessity would be acceptable to Great Britain.

<sup>1</sup> H. N. Brailsford, *League of Nations*, 1917, pp. 187–209, 213–17.

<sup>2</sup> Suckling, *The Goblins*, Act II. Scene I.

<sup>3</sup> W. R. Scott, *Economic Problems*, First Series, p. 50.

<sup>4</sup> Pitt, *Works*, II. p. 299.



Cambridge University Press

978-1-107-43316-8 - Economic Problems of Peace After War (Second Series)

William Robert Scott

Excerpt

[More information](#)*Mare Liberum—Aer Clausus?*

9

The problem of the conditions of a durable peace will be found to be bound up more and more with trade routes and communication generally. These are of equal importance, whether upon sea or land, and both are becoming of greater interest to all trading nations. There is no question that traffic by sea is more free than that by land. In the case of the latter there are numerous impediments of various kinds which could be materially reduced. And it will not be long before the problem of communications by air must be considered. In the work of Grotius there is a suggestion which has lain dormant for over three hundred years, waiting on the progress of invention. He mentions that the air is common to all, like the sea, in so far as there is any use for it for which the earth is not necessary<sup>1</sup>. It is added that no such use had been discovered, but Gronovius suggests the *jus gentium* would ordain free passage through the air over the land *si homines possent volare aut versare in aere, sine tactu terrae vel molis quae a terra sustinetur*<sup>2</sup>, a remarkable provision for the developments in flying which have taken place recently or which are already in sight. Thus the problem of communication in the future is one which cannot be confined to that by sea and land but will embrace to a greater and greater extent the use of the air over both. It follows that the first question to be decided after peace will be the "freedom of the air." Even already there are indications that the postal service will be transferred in part from railways to the air. The gain in speed will compensate for the greater cost of the new service in its initial stages. It may not be long before some urgent passenger traffic will follow. The new air routes can be made more direct; but to those who have been trained in continental ways of thinking there will be difficulties. There may be a reluctance to permit the unrestrained use of the air within territorial limits to the air craft of foreign nations. Customs barriers, which will still exist, can no longer be enforced in the present form, nor could the service be efficient, if it worked by the transfer of mails and goods from the air-liners of one country to those of another at the frontier. Thus

<sup>1</sup> *De Jure Belli*, ii. II. 3.

<sup>2</sup> *Ibid.* ed. Gronovius, 1689, p. 186.

Cambridge University Press

978-1-107-43316-8 - Economic Problems of Peace After War (Second Series)

William Robert Scott

Excerpt

[More information](#)

there is a danger that Europe may be robbed of a great part of the fruits of recent progress in aerial invention by territorial exclusiveness. Accordingly the most urgent question is to provide for a freedom of the air in time of peace which will in some measure approximate to that which existed before the war in navigation upon the sea. A doctrine which resembles that of *mare clausum*, as applied to the air in time of peace, may have to be reckoned with. Yet it is one which is in danger of involving itself in endless contradiction. The air is one, and no distinction can be maintained between that part of it which is above the land as contrasted with the portion over the sea. For purposes of use in communication both are continuous except in so far as landing places will probably be provided in the former only. At this point there may be misunderstanding and no little real difficulty for countries whose system has been exclusively or mainly that of the land Power. No doubt it will happen that some of the air routes will pass over the territory of small nations or over corners of that of large ones without requiring to make use of landing facilities. In the event of some of the smaller goods of large value being carried by air, those of them which are subject to duties, would escape the inquisition of the respective Custom Houses, and the States concerned would lose revenue. Moreover navigation by water is largely confined to one plane, and probably for commercial purposes it will continue to be limited to that plane. But in the air, flying can be effected at widely varying altitudes. As its mechanism is perfected and traffic in the air becomes more dense, there would be great advantages in safety by assigning specific heights for incoming and outgoing traffic, while the craft could again be sub-divided according to their speed and separate strata of the air allocated to each class. This points to some degree of international agreement upon this and similar subjects. In a story published only a few years ago, Mr Kipling presents a wonderfully realistic picture of the aerial mail from London to Quebec in the year 2,000. It seems possible that, as a result of the importance of the air service in war, this vivid representation of the future may be realised, at least in part, much sooner than the author himself expected. That tale