

Introduction

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After 400 years, Hugo Grotius (1583–1645) and his writings still animate debates over a wide range of disciplines. For political and moral philosophers, theologians, intellectual historians and historians of political thought, and international relations and international law scholars, Grotius remains a foremost figure in the history of their disciplines.

In the age of Grotius, these fields had not yet developed into distinct, let alone separate, academic disciplines and were not yet clearly demarcated from the mother and father of all disciplines in early modern Europe, theology and law. The intimate relationship of Grotius' best-seller theological work *De veritate religionis Christianae* (1627) to his major juridical endeavour *De jure belli ac pacis* (1625) testifies to how, for Grotius, theology and jurisprudence were both intertwined and in a process of separation. The period Grotius lived in was one of fundamental changes in the political and legal organisation of Christian Europe and – related to this – in the way Christian Europe thought about the universe and the place of humanity and the individual human being within it. It is no exaggeration to consider Grotius as one of the intellectual trailblazers of modernity, understood as a secular and liberal order premised on conceptions of equality, liberty, tolerance and representative government, and on a much debated relation between self-preservation and universal justice.¹ The theological origins of modern (lega–political) thought,² and Grotius' own deep and prolonged involvement with theology and biblical philology, are, however, traditionally overlooked in many of the secular academic disciplines.³ Recognising these origins is crucial for understanding Grotius and his role in early modern thought. Rendering Grotius his rightful place in intellectual history cannot be done by cutting his writings loose from the fundamental changes that marked his age, or his personal life and career. That said, such a historically contingent approach does not preclude discussions about his manifold contributions to contemporary debates on politics and law, religion and theology, and on humans and their capacity for knowledge and truth.

1.1 Politics and Law

The revolt in the Netherlands against the Spanish monarchy and the formation of the Republic of the United Provinces in the north as an independent state from the 1580s onwards determined the context of much of Grotius' early career and writings. It confronted him with the turmoil that the final collapse of the old order of the *respublica Christiana* and the emergence of the sovereign state brought to much of Europe between the middle of the sixteenth and the middle of the seventeenth centuries, and did so in the most radical of manners.⁴

Grotius contributed to the development of the new Republic as both a legal and political practitioner and a scholar. He plied himself to the cause for the Republic by providing the young polity with its own history and, rooted in that narrative, its own identity. While imprisoned at Loevestein, Grotius wrote the *Inleidinge tot de Hollandsche rechts-geleerdheid* – published a decade later in 1631 – which, more than any other work of legal scholarship, laid the foundations for the Roman-Dutch law that was to dominate the jurisprudence of the Republic until the end of the eighteenth century. The relationship between law and politics in both the domestic and international sphere was subject to debate, as it continues to be to this day. Grotius' legal and political theories made a crucial contribution to later debates on the rule of law, within as well as among states.⁵ Amid an international society of emerging sovereign states, Grotius built on the inheritance of patristic writers and late-medieval moral theologians, canonists as well as civilians, and on more recent writers – Spanish neo-scholastics and humanist jurists – in redefining the Roman law notion of *jus gentium* into a modern law of nations, or public international law, which applied to sovereign rulers and states. His account of natural law and natural rights has since been at the centre of debates in the history of international thought. Grotius' career and work as an official, as well as his writings until his conviction, imprisonment and exile from the Republic, were very much determined by the Republic's political agenda in the war against Spain and its extra-European maritime and commercial expansion.⁶ After his escape from Loevestein, Grotius' political agenda split across his sustained ties through his family with the Republic and its colonial companies, his need to find patrons in France and Sweden, and his desire to foster international and religious peace between the European powers and confessions.

1.2 The Place of Religion

With the Reformations and Counter-Reformation, Christian unity came to an end during the sixteenth century. The confessional struggles dominated many of the societal and political debates in the Dutch Republic and much of Europe. In the Dutch Republic, the confessional rivalry between moderate Arminians and Gomarian Calvinists had deep political consequences. City regents, such as Grotius himself, generally preferred the Erasmian Reformation over Calvinism and sympathised with Jacobus Arminius (1560–1609) and Johannes Wtenbogaert (1567–1644) and their followers. The clash between the two groups provoked discussions about the relationship between Church and state, between religious and political authority. In an attempt to break free from the indurating hermeneutical or exegetical conflicts, Grotius turned to classical philology and ‘right reason’ as ultimate authority. Grotius’ Bible criticism was surely ground-breaking. The historical contextualisation of biblical texts – as if interpreting ‘pagan’ Roman or Greek texts – that Grotius propagated led him to approach the texts as reflections of ancient Israelite and early Christian thought. This approach paved the way for Baruch Spinoza (1632–77) to redefine Bible exegesis altogether.⁷ As a humanist, Grotius took up the position that biblical texts could not be interpreted in contradiction with right reason. Moreover, he contributed to the heated confessional disputes with a mild, non-dogmatic and irenic agenda and a plea for toleration.⁸ Socinian and Pelagian slander was, however, the result. Grotius’ humanism was manifested in his views on individual liberty in matters of religion and conscience, which was to be protected by secular authority rather than by Church officials, yet within a strong public Church. But, as the identity of this public Church was the object of strife between Arminians and Gomarians, this humanist position did not allow him to bridge the gap.

However much conventional history holds up the myth of religious tolerance within the Dutch Republic, as a statesman Grotius was confronted with the consequences of the criminalisation of heterodoxy at the age of thirty-five. His attempts to carve out a space for a unifying natural religion and a latitudinarian, non-dogmatic Christendom was borne by the importance of toleration also for public peace in the Republic. Time and again, he promoted consistently, both as a public official and a scholar, a limited toleration for the Dutch Republic. Grotius argued for a degree of economic and social autonomy for Amsterdam

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Jews, though the 1615 draft Remonstrance did not mean to confer equal formal legal status.⁹ He did not speak out against the transatlantic slave trade or slavery.¹⁰ However, he may have contributed to the move of religious belief from the centre of the public to the private realm and, in that sense, to the long-term process of secularisation.

Nevertheless, championing Grotius as the ‘great seculariser’ is an unhelpful exaggeration when discussing his thought. With *De veritate* and *De jure belli ac pacis*, the humanist Grotius moved beyond neo-scholasticism. He aimed to find common ground amid the confessional struggles in order to point a way towards peace in the Republic and Europe at large. The ongoing scholarly discussion about the relative influence of humanism and scholasticism in Grotius’ work is related to this. When Grotius is characterised as a ‘modern’ jurist who carries the deep imprint of humanist innovation and political thought, it goes to the style and method of his argumentation and to the subjects he addressed in his work: the sovereigns and emerging states as political and legal actors, his conception of natural law in which human nature replaces God as the explicit – though surely not as the ultimate – source of authority, and therewith to his development of the idea of individual rights. Other scholars, however, building on Peter Haggenmacher, emphasise how Grotius drew from late-medieval scholastic thought and was indebted to Spanish neo-scholastic theologians such as Francisco de Vitoria (c. 1483–1546) and Francisco Suárez (1548–1617).¹¹ To this day, the debate is overtly construed on a narrow distinction between scholastic/theological and humanist/legal–political spheres, which overlooks the obvious fact that neo-scholastics, as well as humanist jurists and political thinkers, were heavily dependent on the legal inheritance of late-medieval civil and canon lawyers. No less than 40 per cent of Grotius’ legal sources in *De jure belli ac pacis* date from the eleventh to fifteenth centuries.¹² It also threatens to cloud the eclectic nature of Grotius’ use of sources, which flowed from his acceptance, as a humanist, of the historical contingency and the relative authority of the classical text canon of the learned disciplines.¹³

1.3 Human Nature, Epistemology and Methodology

Grotius’ influence on the early stages of the European Enlightenment is undisputed.¹⁴ His *De jure belli ac pacis* became the foundational text for a new, ‘modern’ tradition of natural law in the seventeenth and eighteenth

centuries.¹⁵ The idea of human nature, with its defining features of sociability and reason, became the basis for the development of a novel political, moral and legal philosophy. This methodological innovation enabled Grotius to humanise natural law, leading it away from divine command, and to give ethics, morality and law an epistemological foundation in the social and rational human self. The discovery and conquest of the ‘New World’ by the Europeans contributed moreover to the development of the ‘modern’ mindset, consciousness and worldview. In *De origine gentium Americanarum dissertatio* (1642), Grotius examined the origins of the native Americans. He seemed fascinated by ‘the more highly-refined minds of the Peruvians’ for example and suggested that ‘their capacity for just and extended government, testif[ied] to a[n] origin, which [. . .] can be no other than from the Chinese, a race of equal elegance and equal ability’.¹⁶ The little tract actually also reads as an examination of how the peoples of the world relate to each other as one human family.¹⁷ While Grotius’ approach is interesting to get a sense of his mindset in the turn to the modern, it sold short in terms of the emerging standards of the ‘new science’.¹⁸

New scientific insights coming with, for example, Galileo Galilei’s (1564–1642) heliocentrism caused tensions with traditional theological thought and contributed to a profound transformation of prevailing worldviews. With the changing perceptions about the place of the earth, and thus of humankind, in the universe came a shift in the place of religious belief and God in human thought. With the new science came new doubts about how to generate knowledge and how to find truth. Grotius’ argument that scripture has to be read in accordance with reason and not as the revelation of the truth was a far-reaching epistemological point too. The early modern European revolution in both the sciences and humanities would invigorate modernity and its rationality. It fuelled the modern worldview with the concept of the rational agent or subject, which became crucial in morality, law and politics.

Grotius lived, worked and thought amid these three major and inter-related fundamental changes – the secession of the northern Netherlands, the religious strife within Christianity and the new scientific outlook – carrying the move from the medieval to the modern world. As a very active member of the Republic of Letters, Grotius was visibly influenced by and in turn influenced these changes and the debates they provoked. The word most often used through the ages to characterise the multifaceted nature of

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Grotius' work is 'eclectic'. The 'ambivalence' of his thinking – also often marked – gives room to debate.

In international law, reading and interpreting Grotius has become 'political'. For over a century, since the emergence of modern public international law as an autonomous and established academic discipline in the late nineteenth century, its historiography has been framed as a self-congratulatory narration of (liberal) progress. Recent scholarship, following the seminal work by Richard Tuck, has illuminated the complexity of understanding Hugo Grotius in the context of international law's history. One of today's major discussions on Grotius' ideas on politics and law beyond the state concentrates on his contributions to international law as empire.¹⁹ Among international lawyers, Grotius remains one of the canonical thinkers, yet the images of the Dutch humanist as 'Prophet of Peace' or 'great seculariser' have now – largely – been left behind.²⁰ The interests behind the 'origins myth' of Grotius as 'father of international law' – or that of his major competitor for the title, Vitoria – have been disclosed.²¹ This has liberated Grotius from the concern of international lawyers and international legal historians of overweighing his value for modern international law. Aided by the enduring scholarly interest in the life, thought and work of Grotius by scholars from a variety of disciplines and – by its extension – beyond international law and Grotius' most seminal juridical treatise, international lawyers and other scholars are now able to consider Grotius in his own time and in the 'long pasts' of the various intellectual traditions to which the Dutch humanist contributed. Thereby, we hope the place of Grotius in the tradition of European thought about international order and justice becomes better grounded. At the same time, Grotian studies taking inspiration from Grotius' own use of innovative method and epistemology are not limited to historians. Scholars with a wide variety of methodological leanings may bring the relevance of his thought to contemporary debates nurtured by non-contextualised or more anachronistic readings.²²

1.4 Scope and Design of the Companion

The Cambridge Companion to Hugo Grotius does not come with the aspiration to bring an end to what has been termed 'the enigma Grotius'.²³ The riddle that Grotius still is to most of us is not due to the

absence of a collective synthesis; the surge of research and writing on Grotius in the past few decades has, after all, not solved it either. Everyone has her own Grotius(es), so to speak. And, yet, in spite of this surge, we do think it is time for a *Companion*.

Of the various disciplines and epistemologies to which Hugo Grotius contributed, international law and political thought stand out as those in which his legacy is most acknowledged and debated to this day. Nevertheless, in recent years, his historical, theological and, somewhat less, literary writings and thought have become the subject of revived interest. In the tradition of *Cambridge Companions*, this volume is designed to survey the 'whole Grotius'. This not only means that his theological, historical and literary works are given their rightful place. It also invites questioning of Grotius' views from the totality of his oeuvre, trying to find the entanglements between the different epistemologies and discussing the relations between his life and works, between his *vita activa et contemplativa*.

In order to achieve this, the structure of this volume has been designed in five parts. The first part, 'Grotius in context', covers the biography of Hugo Grotius, in no less than three chapters. Henk Nellen, Grotius' most recent and important biographer, offers a brief survey of Grotius' life whereby he places his major works in the context of his intellectual influencers and his dramatic political, legal and diplomatic careers. Edwin Rabbie traces the rise and fall of Grotius as a Dutch official in the first half of his adult life, unpacking the intertwinement of constitutional and religious tensions that speeded him towards his downfall. Peter Borschberg likewise focuses on the period before Grotius' downfall, but on his engagement to the Dutch commercial and imperial expansion to the Indies. He raises the question what were Grotius' sources of information about the Indies, a crucial key to understanding his political and intellectual involvement with the Dutch undertaking.

The second part, 'Concepts', offers an attempt to tease out the general lines of Grotius' views, throughout his oeuvre, with regards to some key concepts. Making a selection always invites scholarly discussion, and rightly so. Arguably, the concepts selected for this part of the *Companion* play a significant role in Grotius' vast body of work and often ground and shape his arguments in various polemics and scholarly discussions. These chapters are all very rich and introduction here can only be reductive and unjust. But, is it, for example, at all possible to understand Grotius' theological, political and legal ideas without taking his profound

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reflections on ‘virtue’ and ‘trust’ into account? Mark Somos distils Grotius’ theory of virtues from various places in his oeuvre as there is no single one work in which Grotius unfolded this theory. The chapter shows the fundamental role of virtues within all of his thinking. Peter Schröder discusses the equally central – though varied – role trust (*fides*) played in Grotius’ work in general and in his work on international relations in particular. Also, Meirav Jones’ examination of ‘natural law as true law’ demonstrates how closely entangled law and theology are in Grotius’ work. Jones maps the debate about Grotius’ contribution to natural law theory, but also points to how God’s ‘ordered plan of nature’ precedes the ‘state of nature’ in his thinking. She argues that, through Philo, Grotius was able to reconcile voluntarism and rationalism within his conception of natural law. Sociability, of course, then plays a decisive role in Grotius’ theory of natural law. Benjamin Straumann puts forward a Ciceronian account of Grotius’ conception of ‘sociability’, which enabled Grotius to argue a legalised, rule-based doctrine of natural law when answering Carneades’ denial. For the entry on ‘sovereignty’, Gustaaf van Nifterik takes a turn to Grotius’ ideas on ‘internal’ sovereignty in *De jure belli ac pacis* to lay bare his constitutional theory and a conception of the people as *persona ficta* with their own rights under natural law. Grotius’ Erastian conception of relations between ‘Church and state’ as expressed in *Ordinum pietas* and *De imperio* is then examined by Harm-Jan van Dam. He shows how, throughout his legal, political, historical and theological work, Grotius argued for a concept of absolute and indivisible sovereignty of state over Church. For Grotius, Van Dam explains, Erasmus had led the Dutch Reformation and he came to draw heavily on Erasmus’ irenicism and thinking about toleration and free will. Camilla Boisen examines the relationship between divine will and human freedom in Grotius’ work through the lens of ‘predestination’. For Grotius, the predestination controversy was a matter of high social and political importance. Boisen shows how a pragmatic Grotius, vested in the Arminian perspective, gave priority to social peace and unity when engaging with theological hot potatoes such as predestination. Not the latter doctrine but natural sociability figured as the foundation for his theory of natural law and natural rights. The concept of ‘rights’ together with the corollary notion of duties inhabits the heart of Grotius’ political and legal philosophical project of peace. The present companion offers two perspectives on this concept of ‘rights’ so central to current debates on Grotius. Francesca

Iurlaro sheds light on Grotius' use of perfect and imperfect rights from a philosophical perspective. She situates Grotius' theory of subjective rights in particular in relation to the long tradition of Aristotelian commentators and to Michael of Ephesus in particular. She emphasises the fundamental role of *aptitudo* (or moral fitness) and of attributive justice in Grotius' thinking. Another chapter offers a legal-historical perspective; Laurens Winkel provides a Roman law reading of Grotius' theory of rights, and connects the latter to the important debates in intellectual history on the origins of subjective rights. Finally, Andrew Fitzmaurice examines how Grotius reinterpreted 'property, trade and empire' through the changing understanding of human sociability. Drawing on human nature, Grotius claims regulation of trade and property comes naturally and empire of commerce is desirable from the perspective of the sovereign and the principle of self-preservation. This chapter also underscores again how Grotius' conceptual thinking – and the development or reinterpretation of the notions he used in his arguments – was contextual and political. In the course of the editing process, regrettably some chapters fell out of this collection. Yet, concepts so important to Grotius' thinking as charity, liberty, peace and toleration do feature throughout several chapters and the index will assist the reader in savouring these concepts.

The third part, 'Grotius as a man of letters, theologian and political writer' does the opposite of the prior part by carving up Grotius' oeuvre along the lines of modern genres and disciplines, except for the legal works that are saved for the fourth part. The four chapters survey the literary (Arthur Eyffinger), historical (Jan Waszink), theological (Oliver O'Donovan) and political (Hans Blom) works and contributions of Grotius. They introduce numerous, published and unpublished, works by Grotius in chronological order. They situate them against the backdrop of his life and intellectual trajectory, and render a brief account of their major content and contribution to the field.

The fourth part, 'Grotius as a legal scholar', purposely unbalances the holistic approach by singling out Grotius' forays into domestic and international law. This is, however, warranted by the fact that both his *Inleidinge tot de Hollandsche rechts-geleerdheid* and his *De jure belli ac pacis* reached canonical status before the century was out and had an enduring impact on later developments. These two works, together with *De jure praedae commentarius* and its spin-off *Mare liberum*, form the object for the analysis of Grotius' legal thought and methodologies. In the

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opening chapter, Alain Wijffels reframes the humanist/scholastic-debate by focusing on the legal sources, methodologies and style of discourse of Grotius. Wouter Druwé offers an overview of the major doctrinal views of Grotius with relations to Hollandic-Roman private law in the *Inleidinge*. The next three chapters focus on the international law dimensions of *De jure praedae* and *De jure belli ac pacis*. The first and third leg of the tripod *jus ad bellum/jus in bello/jus post bellum* are discussed by Randall Lesaffer, the second by Stephen Neff. The freedom of the sea, and the legacy of Grotius, is the subject of a chapter by William Butler. In *De jure belli ac pacis*, Grotius fleshed out the notion of just war as an instrument for the enforcement of rights to render a comprehensive overview of natural rights. This led him to discuss major parts of private law, with an expansion into criminal law. Bart Wauters and Paolo Astorri deal with two major themes from private law: property (Wauters) and contract (Astorri). The latter chapter also includes a brief discussion of Grotius' application of contract law – or not – to interstate treaties. Dennis Klimchuck discusses 'crime and punishment' in Grotius.

The fifth part, 'The reception of Grotius', concerns later scholarly receptions, revivals and appropriations of Grotius in different eras and by different disciplines. Marco Barducci revisits the debate on the impact of Grotian thought on the Enlightenment of the later seventeenth and eighteenth centuries, in particular with regards to religion. Ignacio de la Rasilla surveys the different appropriations of Grotius by international lawyers and international legal historians since the late nineteenth century, while William Bain explores Grotius' place in International Relations theory.

1.5 Editions, Translations and References to Grotius' Works

Grotius' published works, both during his life and posthumous, are numerous and many went through several historic and modern editions. A great number of his works still lack critical editions, while a massive amount of manuscripts remain undisclosed in print form in the archives.²⁴ For the purpose of this volume, a standard edition and/or translation has been selected. References to works of Grotius are in general to these editions and translations, unless it is indicated otherwise at the bottom of the chapter. References are, generally, to books, chapters, sections, paragraphs (so DJBP 1.1.2.1 for *De jure belli ac pacis* Book 1, Chapter 1, Section 2, Paragraph 1)