The Colonising Ethic and Modern International Society

A Reconstruction of the Grotian Tradition of International Theory

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Abstract

This thesis develops a new ideal type of modern international society by exploring the affinities between certain solidarist features of the order that exists in contemporary world politics and the 'colonising ethic'. The purpose of this analysis is to reconstruct the Grotian tradition of international theory, by challenging Hedley Bull's representation of modern international society as an anarchical society of states, which has contributed to the view that the solidarist elements of Grotian thought are nostalgic 'neo-medievalism' or utopian prescriptions for the future. Bull's description of modern international society has three principal components: an absolutist interpretation of Hugo Grotius's international political theory; a 'Westphalian' account of the origins of modern international society; and an account of the expansion of international society through the imposition of the 'standard of civilisation' on non-European states. The thesis develops a different ideal type of modern international society by re-appraising these elements of Bull's argument. It offers a non-absolutist interpretation of Grotius's conception of the law of nations, highlighting his ideas of appropriation and divisible sovereignty. Then, to explain the origins of modern international society, the thesis demonstrates the affinity between these concepts and colonisation in the Netherlands, the Dutch East Indies and North America. This illustrates the ethical system embedded in the practice of colonisation: the 'colonising ethic'. To explain how this international society expanded to global extension, the thesis then shows how the Grotian concepts of appropriation and divisible sovereignty formed important parts of Dutch colonial administration in Indonesia and the westward expansion of the American states-union. This provides the basis for a novel interpretation of three elements of order in contemporary world politics: the apparent tension between state sovereignty and human rights; the partial centralisation of authority in international society; and the justification of resistance through international norms.

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Part 1

The Grotian Tradition of International Theory

Chapter 1

Solidarism in the 'Grotian Tradition' of International Theory

> All reasoning takes place within the context of some traditional mode of thought, transcending through criticism and invention the limitations of what had hitherto been reasoned in that tradition.
> - Alasdair MacIntyre, *After Virtue*, p. 222.

International relations are anarchic, but they are neither asocial nor chaotic. This proposition is the starting-point for a tradition of theoretical speculation about international relations that tries to uncover the character of the special kind of sociability and order that exists in world politics, in spite of international anarchy. It is sometimes known as the 'Grotian tradition' of international law or international theory.(Lauterpacht, 1946; Bull, 1977: 24 & 1991) In recent years, the Grotian tradition has come to be rather narrowly constructed, and the 'solidarist' elements of the tradition have come to be treated either as nostalgic expressions of 'neo-medievalism' or as utopian prescriptions for the future. The central purpose of this thesis is to recover these solidarist themes in the Grotian tradition, elucidate their meaning and illustrate their practical relevance to modern and contemporary world politics. Thus, the thesis will work within the context of the Grotian tradition, while trying to transcend through 'criticism and invention' some of the limitations that restrict attempts to think about international relations in the terms currently in vogue among members of the tradition.

The thesis will argue that the liberal idea that individuals have a right to resist the arbitrary exercise of power by the state, and the classical republican notion that sovereignty should be divided between different institutions or people within a political community, are important elements of the society and order that have existed in world politics since the seventeenth century. They were expressed in Hugo Grotius's original conception of the law of nations, and were developed internationally through the European (and latterly North American) practice of colonising 'vacant' lands. They thus constituted a 'colonising ethic' within the

broader normative framework and institutionalised practices of modern international society.[1] A proper grasp of the historical development of this ethic is essential to an understanding of the significance of individual rights, forms of international organisation and justification of resistance movements in contemporary world politics. However, this conception of modern international society contradicts the current orthodoxy that international society is composed of states that possess an externally absolute form of territorially-defined sovereignty, and within which "The basic compact of co-existence between states, expressed in the exchange of recognition of sovereign jurisdictions, implies a conspiracy of silence entered into by governments about the rights and duties of their respective citizens."(Bull, 1977: 83)

By way of an introduction, this Chapter will undertake three main tasks. First, it will pose the general question of the nature of international society, which is the focus of theorists working in the Grotian tradition. Secondly, it will argue that there are—or were—several different answers to this question within the Grotian tradition. Thirdly, it will identify an important respect in which the currently dominant formulation of Grotian international theory is relatively narrow. Thus, the Chapter will set out the purpose, context and area of enquiry

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1. In using the idea of an 'ethic' I am deliberately recalling Max Weber's 'Protestant ethic' thesis. Weber understands an 'ethic' to be more than 'simply a means of making one's way in the world', by virtue of the fact that "The infraction of [an ethic's] rules is treated not as foolishness but as forgetfulness of duty."(Weber, 1930: 51) An ethic is therefore not simply a set of moral principles or a way of acting. Rather, it implies a distinct code of conduct, and therefore, I believe, captures the various components that are usually seen as comprising the 'element of society in world politics', including normative principles, legal rules and institutionalised practices.(see Bull, 1977: 13) Thus, to identify an ethic is to identify a broad constellation of values, rules and institutions expressive of the character of international society and order. It is worth mentioning that when I speak of a particular ethic as 'embedded' in a practice, I mean that the ethic describes the code of conduct of that particular practice; it describes what 'right' behaviour is in the context of that practice. This does not mean that ethics precede practices, or are sets of ideas that are somehow external to practices and enforced against practitioners. Not all Protestants, for example, actually live their lives in strict observance of the 'Protestant ethic', and are punished for their lapses or moments of non-observance. However, one would have to question whether someone could properly be called a Protestant if they lived their life in complete and wilful disregard of the main ethical principles of their faith. In this sense, to participate in a practice means submitting oneself to the ethical code that governs that particular practice, even if only to the extent that one has to provide reasons to explain breaches of the ethic. Thus, I am supposing that when individuals, states or non-governmental organisations participate in international society they are taking part in practices and hence submitting themselves to particular ethics and recognising that this imposes duties on them to behave in particular ways.

of the thesis argument. Section 1 explains what the question of international society means and the issues that it raises. Section 2 provides a preliminary account of the diversity of the Grotian tradition in answering the question of international society, anticipating an argument that is made more extensively and in more detail in Chapter 3 of the thesis. Then, section 3 contends that the Grotian tradition is currently locked into a rather unequivocal and narrow understanding of the nature of modern international society, since one particular answer to the question of international society has been treated as ontologically prior to others. The Chapter concludes by outlining the structure of the argument as a whole that will seek to remedy this situation.

§1. The question of international society

Hedley Bull asserts that "the central question of the Theory of International Relations [is] 'What is the nature of international society?'"(Bull, 1991: xi) Here, he is echoing Martin Wight's view that "The primary questions of international theory concern the nature of international society and international law."(Wight, 1966b: 92) Although the question of international society is not the *only* question that can be asked about international relations, it is undeniably important, in the sense that it frames key background assumptions about the essential features of world politics and raises issues that are widely regarded as central to any proper grasp of the character of international relations. The literature that addresses this question will be the basic material of this thesis.

The question about the nature of international society and law can be taken to be the central, and indeed defining, concern of theorists working within the Grotian tradition. It demarcates an area of speculation about the character of order in world politics, and the way in which social institutions and practices uphold that order. As was mentioned earlier, the question of international society is primarily informed by the realisation that the condition of international anarchy does not necessarily imply that international relations are asocial or chaotic. Anarchy is simply the formal condition of international relations, in the sense that,

while orthodox political theory is concerned with politics within a state, "The central purpose of the political theory of international relations is the presentation of a philosophical account of the experience of living in and among a world of separate, sovereign states."(Linklater, 1990a: 3) The lack of a world government or international state thus both defines the difference between orthodox political theory and international relations theory, and establishes the centrality of the problem of anarchy in the latter.

Now, it is sometimes argued that the condition of anarchy implies that international relations lack any kind of sociability or order, and that this renders a political theory of international relations unthinkable. As Wight, for example, observed, there is

> a kind of recalcitrance of international politics to being theorized about. The reason is that the theorizing has to be done in the language of political theory and law. But this is the language appropriate to man's control of his social life. Political theory and law are maps of experience or systems of action within the realm of normal relationships and calculable results. They are the theory of the good life. International theory is the theory of survival. What for political theory is the extreme case (as revolution, or civil war) is for international theory the regular case.(Wight, 1966a: 33)

Thus, Wight identifies the crucial difference between political theory and international theory in terms of man's lack of 'control of his social life' in the extreme conditions of international anarchy. This is the view of international relations against which the Grotian tradition sets itself.

In light of the above comment it is perhaps not surprising that Wight is often associated with the provocative claim that international theory "does not, at first sight, exist."(Wight, 1966a: 18) This is because, in comparison with political theory, international theory is incapable of offering any prescriptions for living a morally valuable life. However, in the same essay, Wight made two other points about the 'paucity' of international theory that suggest a somewhat more programmatic understanding of the tasks facing international theorists: the lack of

international theory is the result of a questionable fixation on the state as the particular form of political community; and it is the result of an inadequate characterisation of different political theoretical constructions of the state of nature. These two points will serve as a useful introduction to the Grotian tradition.

First, Wight observed that attempts to develop a theory of international relations are bedevilled not simply by the condition of anarchy, but also by "the intellectual prejudice imposed by the sovereign state".(Wight, 1966a: 20) What Wight meant by this was that "Practical problems of international politics are often described in terms of building a bigger and better state.... Few political thinkers have made it their business to study the states-system, the diplomatic community *itself.*"(Wight, 1966a: 22, emphasis original) Thus, there is no international theory because political thinkers have not, by and large, appreciated the need to think about the distinct entity that would constitute the subject matter of such an enquiry: "the society of states, or the family of nations, or the international community."(Wight, 1966a: 18) In other words, most political theorists have not posed the question of international society. Wight's comments here recall Herbert Butterfield's more sustained criticism of orthodox political theory.

> Political Theory takes hold of man's duties to his fellows or to mankind and comprehends them in his duty to Society or the State. It may not explicitly assert that there is only one Society or State, but it often argues as though only one existed. And the result is that thought tends to stop there.... In so far as this is true, I still have a sort of feeling that 'Political Theory is the enemy'.(Butterfield, 1964: 2)

This obviously opens up a tremendous opportunity and challenge for international theorising, since, as Butterfield continues, "it would not be sufficient to make merely a few banal transpositions, with the idea of adapting such [Political]

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Theory to a world conceived as International."(Butterfield, 1964: 3)[2] Thus, the main point here is that there is no international theory because of the tyranny of the categories of orthodox political theory and the inadequacies of scholars in thinking beyond those categories. To rectify this, Wight later declared his own interest in producing "a comparative study of states-systems".(Wight, 1977: 22) By posing for ourselves the question of international society, we have located our enquiry within a similar realm of theoretical speculation.

This leads on to the second interesting aspect of Wight's discussion of international theory. He observed that the kind of anarchy that exists in international relations

> is theoretically odd. It introduces an ambiguity into the state of nature which becomes a persistent feature of international theory. For individuals, the state of nature...leads to the social contract. For sovereign states, it does no such thing. International anarchy is the one manifestation of the state of nature that is not intolerable.(Wight, 1966a: 31)

This line of argument was developed further by Hedley Bull, who described it as a criticism of the 'domestic analogy'.(Bull, 1977: 46-51) Bull observed that states are unlike individuals, in the important respect that they can provide for their self-defence without exhausting their energies to pursue the 'good life'. Consequently,

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2. Butterfield's argument, which is perhaps more explicit than Wight's remark about the 'intellectual prejudice imposed by the sovereign state', has an affinity with a literature that has grown up recently criticising Wight's major (and apparently skeptical) claim that there is 'no' international theory. As Andrew Linklater puts it, "To many writing in a more contemporary idiom, Wight's position may be thought to reflect a misleading and indeed outdated appraisal of the dominant forces at work within the modern international system; to others it bears witness to what is permanent in the states-system, to what ultimately must be recorded in our experience of it."(Linklater, 1990a: 5) For example, R.B.J. Walker criticises Wight as the pre-eminent representative of the position that "international relations theory [is] marginal to political theory, marginal, that is, to the specific form of political community celebrated in claims about a tradition of properly political thought."(Walker, 1993: 33) I agree that this line of argument can be detected in Wight's essay, but I submit that on this point, as was so often the case, Wight's argument was highly ambiguous. He could alternatively be read as himself trying to criticise the form of political community made sacrosanct by orthodox political theory. In effect, then, one can perhaps see Walker's criticism already contained within Wight's essay itself, and certainly as consistent with Butterfield's more robust formulation. This is why I believe that Wight's essay can be taken as a starting-point for understanding the concerns of the Grotian tradition, rather than as a denial of the possibility of such a tradition of speculation about international relations.

the order that exists in international relations is not simply a survivalist one, but one that contains certain moral principles, albeit in a less fully-developed way than the orders that exist within states.(Bull, 1977: 49-51) As John Vincent put it: order in the international anarchy should be seen as "a *different* moral order rather than an *inferior* one.... If the protection of the interests of individuals or groups is something which in general the state does more effectively than any more inclusive entity, then the interests of the state itself acquire thereby a moral dignity which is not automatically to be despised."(Vincent, 1978: 28, emphasis original) Robert Jackson explains why the international order of the society of states is morally valuable in terms of its role in protecting the state itself: "the point of the balance of power and similar arrangements among a plurality of Leviathans is to safeguard the civil and socio-economic goods of people organised into states."(Jackson, 1990: 265) Furthermore, there may be no good reason to think of the state of nature as intolerable, even for individuals: "we may choose not Hobbes's description of that condition but Locke's."(Bull, 1977: 48) In other words, we might see the state of nature not as a state of war, but as a quasi-social arrangement governed by natural law, since "The state of nature has a law of nature to govern it...and reason, which is that law, teaches all mankind...[that] no one ought to harm another in his life, health, liberty or possessions".(Locke, 1924: 119) Bull argues that this might provide a more suitable analogy with international relations, in which "justice...is crude and uncertain. But there is nevertheless a great difference between such a rudimentary form of social life and none at all."(Bull, 1977: 48)

One may summarise this line of argument in the following way. International relations are anarchic, since there is no world government. However, they are not asocial, since that is a misdescription of the international state of nature, which comprises a set of quasi-social arrangements; neither a fully-developed civil or political society, nor an ungoverned state of war of all against all. As this suggests, international relations are not chaotic. They exhibit their own special kind of order, which is not morally empty. Our task is to understand these phenomena by thinking about 'the society of states, or the family of nations, or

the international community' itself. This is a demanding and intellectually distinct task, since we cannot simply make 'a few banal transpositions' from orthodox political theory. Instead, we need to pose the question of international society: what is the 'rudimentary form of social life' that exists in international relations, what kind of order does it sustain, and what special concepts do we need to use in order to make sense of it? The Grotian tradition is the tradition of speculation about the possible answers to this question.

§2. Conceptions of international society in the Grotian tradition

At this point, a reader with a grounding in international relations theory would probably expect to find a rehearsal of Bull's well-known argument that international society is a society of states, and that there is a contrast between the fragile, minimal 'international order' of co-existence upheld by the institutions of the society of states and the morally prior, but less firmly institutionalised, category of 'world order'.(Bull, 1977: 8-22) Certainly, Bull's work is an important answer to the question of international society. It should not be neglected and we will come to it in due course. However, it is also important to realise that Bull's idea of the 'anarchical society' of sovereign states is only one of many different possible answers to the question of international society within the Grotian tradition. He takes up a position within that tradition; he does not comprehensively define its terms of reference.

Bull acknowledges as much, when he admits that he uses the term 'Grotian' in two different ways in his work: "(i)...to describe the broad doctrine that there is a society of states; [and] (ii) to describe the solidarist form of this doctrine, which united Grotius himself and twentieth-century neo-Grotians, in opposition to the pluralist conception of international society entertained by Vattel and later positivist writers."(Bull, 1977: 322, n3; see also Bull, 1966c) The key point here is that, by identifying these conceptions as complementary elements of the 'broad doctrine' that there is an international society, Bull recognises that there are at least two possible answers to the question of international society

within the Grotian tradition: a solidarist answer that is closely associated with Grotius himself; and a pluralist answer that is associated with Grotius's critics in the positivist school of international law such as Emerich de Vattel.

According to Bull, the primary distinguishing feature of the solidarist conception is the belief that the members of international society are capable of collective action in pursuit of shared purposes: "The central Grotian assumption is that of the solidarity, or potential solidarity, of the states comprising international society, with respect to the enforcement of the law."(Bull, 1966c: 52) The other main feature of the solidarist conception is its insistence that "the members of international society are ultimately not states but individuals."(Bull, 1966c: 68) In other words, this conception of international society "places the rights and duties of individuals at the centre of its ethical code."(Wheeler & Dunne, 1996: 95) It is thus not only purposive action that distinguishes solidarism; it is also collective action by the members of international society towards the realisation of the interests and needs of individuals, who are the ultimate bearers of moral value. It will be argued later that these two elements of the solidarist conception illustrate the importance of a liberal conception of the person and a republican conception of political community in the Grotian tradition of international theory (see Chapter 4 below).

By contrast, the pluralist conception of international society comprises the view that states "are capable of agreeing only for certain minimum purposes".(Bull, 1966c: 52) Because of the limited nature of states' agreement in the pluralist conception, the rules and institutions of modern international society are "appropriate to the relations among persons who are not necessarily engaged in any common pursuit but who nevertheless have to get along with one another. They are the very essence of a way of life based on mutual restraint and the toleration of diversity."(Nardin, 1983: 12) Thus, the pluralist conception is primarily oriented towards the toleration of the various cultural and political goals that are pursued within different independent states, rather than the promotion of collective goals. It may even be the case that attempts to promote common

purposes in international society run the risk of undermining the limited order of co-existence that exists in international society.(see Bull, 1966c: 70-71; 1977: 152-53; & 1983: 13) Furthermore, by concentrating on the toleration of diversity, the pluralist conception can be seen as hostile to the rights and duties of individuals that are promoted in the solidarist conception of international society. The importance attached to state sovereignty and nonintervention as mechanisms for protecting cultural and political independence takes individual rights off the agenda of international society and insulates illiberal regimes from criticism: "The resulting dispensation might not be attractive to Western liberal democracies, but Beijing can always quote Hedley Bull to retort that the one drawback of liberalism is that one has to put up with the irritating habits of one's neighbours."(Hughes, 1995: 442) Modern international society is thus held to be capable of recognising the rights of individuals "only in a selective and partial way".(Bull, 1977: 93)

We will return to the question of the diversity of the Grotian tradition in Chapter 3, where Bull's distinction between pluralist and solidarist conceptions will be criticised, in favour of the claim that there were at least *three* distinct answers to the question of international society within the Grotian tradition. For now, however, there is no need to make this further argument. Even on Bull's relatively narrow construction, we can see that there is no obviously correct single answer to the question of international society within the Grotian tradition. To be sure, Grotius himself can be associated with one particular answer, but this has always been part of an on-going argument about the proper way of answering the question of international society. Therefore, to work within the Grotian tradition is not to commit oneself unequivocally to a particular view of the nature of international society. It is a living tradition on Alasdair MacIntyre's terms: it embodies "continuities of conflict" around the question of international society, and it tells a "not-yet-completed narrative" about the rudimentary form of society and order that exists in international relations.(MacIntyre, 1985: 222, 223)

§3. The ontological priority of the pluralist conception

Although in principle the Grotian tradition contains these different answers to the question of international society, at present there is an overwhelming tendency within the tradition to assert the ontological priority of rules and institutions consistent with the pluralist conception of a *modus vivendi* within a society of sovereign states, even while many thinkers uphold the normative priority of the solidarist conception. In other words, Grotian thinkers often see the unity and individual rights described by the solidarist conception as a highly desirable state of affairs, but they see the pluralist conception as a more accurate description of the elements of society and order that actually exist in modern world politics. The values of the solidarist conception are then seen as potentially or actually 'emerging', in a way that will either reform, transform or replace the pluralist rules and institutions of the already-existing modern international society. We thus live at a 'Grotian moment', in the sense that "statist arrangements are gradually being superseded, and...a new system of world order will come into existence at some time in the course of the next century."(Falk, Kratochwil & Mendlovitz, 1985: 7) This way of distinguishing the relative priority of the two conceptions of international society was forcefully articulated by Bull, and the ontological priority of the pluralist conception in the contemporary Grotian tradition can be illustrated through a brief discussion of the way that he used these two conceptions to think about order in world politics.

To begin with, it should be noted that commentators often argue that Bull's work traced a line of development from an early pluralism to a more solidarist position in his later writings, like *The Hagey Lectures*.(Bull, 1983) For example, Nicholas Wheeler argues that, in *The Anarchical Society*,

> Bull had said that states were able to agree on the need for international order despite competing conceptions of justice, expressing doubt that there were grounds for privileging one conception of justice over another. In *The Hagey Lectures*, Bull suggested that the moral value of the society of states has to be judged in terms of what it contributes to individual justice; the

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implication being that if the society of states fails to protect individual justice, this would place in jeopardy its normative value.(Wheeler, 1992: 475)[3]

Andrew Linklater makes a similar point, arguing that Bull was increasingly sensitive in his later work to the requirement that international order be grounded in generally acceptable principles of justice, and that in this respect he "came nearer...to considering the rights and duties which might underpin a different form of universal political organisation."(Linklater, 1990b: 20; see also 1992: 81, 85-86) Thus, according to Linklater, Bull's formulation poses "Intriguing questions about the possibility of a progressivist interpretation of international society".(Linklater, 1996a: 104)

Certainly, it is true that in his later writings Bull began to express a stronger commitment to solidarist principles. In his earlier works, he had been keen to stress the positive contribution to international order made by the pluralist conception, and was outspoken in his worries about the ambitious demands of solidarism.

> It may be argued of the [solidarist] conception...not merely that it is unworkable but that it is positively damaging to the international order; that by imposing upon international society a strain which it cannot bear, it has the effect of undermining those structures of the system which might otherwise be secure. And it may be said of the pluralist doctrine that so far from constituting a disguised form of *Realpolitik*, it presents a set of prescriptions more conducive to the working of the international order than those of the [solidarists].(Bull, 1966c: 70)

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3. It should be noted that Wheeler does not see Bull's solidarist turn as being unqualified. Wheeler continues: "it is not clear whether Bull was endorsing the idea of universal human rights—a position which seems to contradict his realist and pluralist comments on the lack of universal agreement on human rights—or whether he was suggesting that Western human rights standards reflect a particular viewpoint, but that the West should not apologise for this, or be afraid of making it the basis for action."(Wheeler, 1992: 475) I agree with Wheeler on this point. It is hard to tell precisely what is the audience to which Bull is appealing at this crucial point in the argument. Is he offering human rights as a morally valuable principle for the world as a whole? Or is he directing his comments at foreign policy-makers within Western states? I think that a similar ambiguity can be detected in John Vincent's discussion of human rights.(Vincent, 1986)

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While he never came to regard the pluralist conception as redundant or morally vacuous, nor to regard the promotion of solidarism as without risk, in his later work Bull nevertheless demonstrated a much stronger attachment to the normative goals of solidarism, for example in his view that, within international society in the twentieth century, "the idea of the rights and duties of the individual person has come to have a place, albeit an insecure one, and it is our responsibility to seek to extend it."(Bull, 1983: 12) It seems to have been the case that Bull became less sure about the value of the order achieved through pluralist agreement, although he certainly did not dismiss this hard-won order of-co-existence out of hand, and began to regard the promotion of solidarist principles as a necessary part of the role of the international theorist.

However, while his views on the relative normative standing of pluralist and solidarist moral principles may have developed in favour of the latter, Bull's idea of the ontological priority of the institutions of the pluralist conception of international society did not substantially change. In his early work, Bull depicted the solidarist conception as growing in importance in the twentieth century, but nevertheless as still "premature" in terms of the institutionalised practices on which it could depend.(Bull, 1966c: 73) Similarly, in *The Hagey Lectures*, he argued that "The cosmopolitan society which is implied and presupposed in our talk of human rights exists only as an ideal, and we court great dangers if we allow ourselves to proceed as if it were a political and social framework already in place."(Bull, 1983: 13) Bull contended that "states remain the chief agents or actors in world politics"(Bull, 1983: 13), reiterating a position that he had set out in *The Anarchical Society*: "The fact is that the form of universal political organisation which actually prevails in the world is that of the states system."(Bull, 1977: 295-96) In other words, while the principles of solidarism may have appeared increasingly attractive to Bull, he still qualified his support for them by warning that the rules and institutions that actually uphold order in world politics are those which more closely conform to the pluralist conception.

Admittedly, Bull did canvass the possiblity that alternative rules and

institutions might be emerging in international relations, including, most interestingly, "a modern and secular equivalent of the kind of universal political organisation that existed in Western Christendom in the Middle Ages."(Bull, 1977: 254) This 'neo-medieval' order bears a strong resemblance to the solidarist conception of international society,[4] and Bull acknowledged that one might see it to be emerging through processes of regional integration, the disintegration of states into smaller local units, challenges to the state's monopoly of legitimate international violence, the rise of transnational organisations and various technological developments like the communications revolution.(Bull, 1977: 264-74) His reply to such a view was basically negative, arguing that "it would be going beyond the evidence to conclude that 'groups other than the state' have made such inroads on the sovereignty of states that the states system is now giving way to this alternative."(Bull, 1977: 275) Admittedly, this was not a telling criticism of the neo-medievalist idea, and it perhaps looks less compelling now than it did in the late 1970s. Indeed, as Linklater in particular has argued, the room that Bull's rather weak argument left for manoeuvre opens up an interesting line of enquiry into the nature of the rules and institutions of international society in contemporary world politics.(Linklater, 1996b)

We will return to Linklater's attempt to develop this line of enquiry in a moment. For now, the main point is that Bull himself consistently argued that order in modern world politics has historically been upheld by institutions consistent with the pluralist conception of international society. He therefore saw the pluralist conception as the best available description of the actually existing condition of world politics, in comparison with which the solidarist conception was either a nostalgic appeal to medieval Christendom or a utopian prescription for the future. Furthermore, as we will see later, he developed a profoundly

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4. Bull frequently attributed the solidaristic elements of Hugo Grotius's conception of international relations to the lingering medieval aspects of the world in which Grotius lived.(Bull, 1966c: 66 & 1992: 90; see also Cutler, 1991: 49 & Tadashi, 1993: 135) As is argued below, in Chapter 4, I regard Bull's claim as a misinterpretation of the political theoretical context of Grotius's thought. Grotian solidarism should be interpreted as an attempt to re-work medieval concepts to describe certain modern international practices, and as part of a theory of property, obligation and resistance that is emblematically modern.

influential synthesis of historical and theoretical analysis that made the pluralist conception seem like the *only* available answer to the question of international society in the modern period. Where Wight had kept up an ambiguous position to the effect that aspects of 'eclectic' or natural law thinking were not "entirely eclipsed by the orthodox doctrine of state-personality",(Wight, 1966b: 102) Bull held much more unequivocally that "natural law gave place to positive international law"(Bull, 1977: 33) and leant on an historical narrative that placed the system of territorial, externally sovereign states in continental Europe at the heart of modern history, systematically denying any international personality to individuals or to institutions above the state; a position with which, for a variety of reasons, nearly all his contemporaries agreed.(see Chapter 3 below)

Gradually, Bull's synthesis began to narrow down the options for thinking about international society within the Grotian tradition. Perhaps the most crucial moment in this process came when Bull equated the Grotian tradition *as a whole* with the pluralist idea of a society of states sustaining an international order of coexistence. Reasonably enough, he claimed that this tradition had developed in conscious opposition to a 'Hobbesian tradition' which denied the reality of international society. More importantly for our purposes, however, he also saw the Grotian tradition as arguing for the "acceptance of the requirements of coexistence and co-operation in a society of states", as against a 'Kantian tradition' offering a "universalist view of international morality" and demanding "the overthrow of the system of states and its replacement by a universal community of mankind".(Bull; 1977: 26, 27) In other words, he tied the Grotian tradition to the minimalist *modus vivendi* suggested by pluralism and effectively excluded the solidarist themes of universalism and individualism from the Grotian tradition, causing as perspicuous a commentator as Vincent to present the tradition in the following way:

> If all this amounted to what Bull conceded it was in the conclusion
> to *The Anarchical Society*—an implicit defence of the states-
> system—it was also a classical statement of the rationalist or Grotian
> position on world order. Against the realist deniers of international

society, and the revolutionary destroyers of it, Bull argued that order in world politics was dependent on the survival of international society.(Vincent, 1990: 58)

By some subterfuge, which we will investigate more closely in Chapter 3, the 'classical statement of the rationalist or Grotian position' has thus come to be bound up with 'an implicit defence of the states-system'. Suddenly, Grotianism is divorced from its concern with the *communis societas generis humani*; instead, at the ontological level, Bull offers an exceptionally pluralist and statist formulation of Grotian principles, which makes solidarism look like a nostalgic, idealistic and even antagonistic prescription. What we are left with, ironically, is a Grotian tradition which no longer has room for the Grotian conception of international society, except when it can be accomodated to the terms set down by the pluralists and positive international lawyers.

The reason for this commentary is not to suggest that Bull's answer to the question of international society was worthless, and that we need to return to some golden age of international theorising in the Grotian tradition. We cannot simply 'go back' to Wight, Lauterpacht or even Grotius himself. The force of Bull's argument, and especially his synthesis of international legal doctrine, historical analysis and state practice, must be conceded. Bull's is an exemplary account of the nature of modern international society. However, what we need is a version of the solidarist answer to the question of international society that can match the persuasiveness of Bull's defence of the ontological priority of the pluralist idea of a *modus vivendi* in a society of states. We need to show that the solidarist conception of international society (or something like it) is neither nostalgic nor utopian, but is a description of certain actually-existing elements of modern world politics. This is the project of the thesis: it will aim to demonstrate that modern international society has, since the seventeenth century, incorporated values, rules and institutions that embody those described by the solidarist conception of international society.

Before explaining how this is to be done, however, we need to clarify an

important point. In the years since Bull articulated his defence of the ontological priority of the pluralist conception, some theorists have attempted to work aspects of solidarism back into our understanding of the nature of sociability and order in world politics. The two most sophisticated attempts to do this have been made by Vincent and Linklater (although they might not describe their projects in these terms themselves), and it will be helpful to consider their arguments briefly before outlining the proposed argument of this thesis.

Vincent's early work was more or less in line with the idea of the ontological priority of the pluralist conception, as is evidenced by his study of the evolution of the principle of non-intervention.(Vincent, 1974) However, in his later works, he developed a response to Bull's 'cheerful skepticism' about the promotion of human rights as a principle of international order. We have already seen that Bull was worried that promoting human rights might jeopardise the fragile order of coexistence in the society of states, and Vincent saw his task as demonstrating that human rights could be upheld in international society without damaging that order, and might even serve to strengthen it. His key proposition to this effect was that the idea of human rights does not have to presuppose the existence of the institutional framework of the 'cosmopolitan society' that Bull saw as an ideal, because the principle of human rights is already embedded in the institutions of international society, and has indeed become part of the mechanisms within that society that states can use to legitimate their own authority. There is not, therefore, a necessary contradiction between the assertion of human rights and the principle of state sovereignty as the basis for international order.[5]

Vincent agreed with Bull's skepticism about the existence or emergence of a cosmopolitan society, and he recognised that advocates of human rights frequently do appeal to such a society, "which might unsettle the stability of

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5. Although his argument is quite different from Vincent's, Mervyn Frost defends a rather similar conclusion.(Frost, 1986) I will not discuss Frost's argument here, but the methodological approach of his 'constitutive theory' will be discussed and criticised in Chapter 2 below.

international order."(Vincent, 1986: 150) Such appeals are made because advocates of human rights typically "do not find complete satisfaction at the state or inter-state level and...have established some form of non-state moral constituency in which they are considered legitimate."(Vincent, 1978: 29) Like Bull, Vincent was skeptical of the claim that such 'non-state moral constituencies' constitute an empirically demonstrable social and political framework for upholding world political order. To justify his own skepticism on this point, he used a number of arguments that echo Bull's earlier defence of the continuing significance of the states-system. For example, Vincent noted that protests about human rights abuses are typically still channelled through states, using the special authority of states to lend such protests weight, and that non-state organisations' visions of a new world society are often little more than a partisan defence of western values, against which state equality offers otherwise weak non-European societies the chance to defend their cultural integrity.(Vincent, 1986: 100-102, & see Bull, 1982) Overall, Vincent agreed with Bull that the current prominence of human rights cannot be taken as conclusive evidence of the emergence of a new world society.[6]

Where Vincent went further, however, was to indicate a way in which moral account was taken of human rights within the traditional (*i.e.*, pluralist) international society of states itself. He thus came to occupy a sort of mid-way point between Bull and the world society perspective: "thinking that...world

6. Although I think that this general assessment stands, it is interesting to note that, in some of his last published pieces, Vincent seemed to oscillate between different positions on this issue. Sometimes, he took a skeptical line, arguing that "Individuals may now, for some purposes, be called subjects of international law, but they are hardly equal members with states in international society, and they cannot hope to *enforce* their rights in that society." (Vincent, 1992: 249, emphasis original). However, in one of his last pieces, published posthumously and edited and revised by Peter Wilson, he argued that "there is a need to go beyond non-intervention for the reason that the autonomous system of sovereign states...has now been replaced by a much more complex world."(Vincent & Wilson, 1993: 128-29) A fair assessment would probably be that Vincent's attitude towards this crucial question was gradually developing beyond the qualified skepticism of *Human Rights and International Relations*, and that he might have developed a more enthusiastic account of the emergence of a world society but for his early death. Nevertheless, this would only be speculation, and it remains the case that Vincent's most fully developed statement on this issue adopted a skeptical position. Therefore, I prefer to treat Vincent's argument as an attempt to revise Bull's conception of the anarchical society of states, rather than as a defence of an altogether different conception of the element of society in contemporary world politics.

society is not deeply entrenched, while not simply dismissing it."(Vincent, 1986: 106) What grounds did Vincent find for taking this alternative conception of international society seriously? In the first place, he noted that states have taken up the language of human rights, partly as a rhetorical device, but also as part of their traditional and sincerely felt responsibility to provide security for their own subjects or as an unavoidable consequence of the inclusion of human rights issues in the business of international organisations.(Vincent, 1986: 106 & Chapter 8) In addition, international law has established certain minimum standards of treatment and a body of customary rules which impose widely-recognised obligations on states to uphold human rights.(Vincent, 1986: 44-47) Thus, as Vincent concluded, international human rights law "does expose the internal regimes of all the members of international society to the legitimate appraisal of their peers. This may turn out not to have been a negligible change in international society."(Vincent, 1986: 152) However, the key point is that this opening up of internal regimes to international scrutiny does not, according to Vincent, jeopardise the order of co-existence in the society of states. To a degree, states control the process—they are not completely at the mercy of international human rights organisations—and states can use international humanitarianism as a further support for their claim to authority in international society.

Linklater's argument is quite different from Vincent's, and arguably more ambitious. While Vincent offered a novel account of contemporary international legal regimes in terms of the legitimation of state authority through international humanitarianism, Linklater tries to identify the conditions for the emergence of a new form of universal political organisation. In so doing, he defends an emancipatory agenda of human freedom through the reconstruction of history in terms of extensions of human community, "connecting a political theory of international relations with a theory of the history of human subjects."(Linklater, 1990a: 201) Linklater describes this project as "a sociological analysis of moral development in international relations",(Linklater, 1990a: 212) which he develops through an account of "a scale of social and political forms" including tribal organisation, the modern state and states-system, and "a set of universalistic

relations expressive of the human capacity to share the conditions of a free life."(Linklater, 1990a: 168) This project is related to a Marxist concern with the conditions of human emancipation, but Linklater regards conventional historical materialism as flawed and in need of reconstruction to respond to two specific requirements. First, Marxists should be more self-critical about the normative commitments behind their shared goal of emancipation. Secondly, instead of focusing overwhelmingly on changes in the mode of production, Marxists should pay more attention to a broader range of sociological, political and cultural developments.(Linklater, 1990b: 171)

The latter criticism of Marxism is one reason why Linklater finds Bull's and Wight's "comparative sociology of international systems" so interesting.(Linklater, 1990b: 171) He believes that the main goal of the Rationalist tradition (which one can, for the moment and with reservations, treat as similar to the Grotian tradition described earlier) is to strike "a balance between universalisable norms and particular cultures and interests."(Linklater, 1996a: 104) This interpretation indicates Linklater's concern with the conditions for offering different answers to the question of international society within the Grotian tradition, including the solidaristic theme of the universalisation of the conditions for human freedom. For Linklater, in keeping with the argument of this Chapter, the central problem is how to effect a *radicalisation* of the version of the tradition given by Bull, and he claims that this may be accelerated through a "Closer analysis of Kant's cosmopolitan approach to the society of states".(Linklater, 1996a: 111) This therefore locates Linklater's work on the intersection between 'Grotian' Rationalism and Kantian Revolutionism, calling into question the stark and problematic separation that Bull made between these two traditions. What Linklater tries to do is show how Bull's account of the nature of modern international society can be directed towards an interest in human emancipation by arguing that the rules and institutions of international society contain certain normative principles—beyond those considered by Bull—which indicate the immanence of a morally more inclusive form of international order. To make this argument, Linklater re-describes the normative structure of modern European

international society. His main point is that, in addition to the values, rules and institutions documented by Bull, one can detect a productive tension between two different conceptions of moral and political community. These are articulated in the internal and external theories of political obligation embedded in the modern state and in modern international society.

An 'internal' concept of political obligation describes the view that "members owe their most fundamental obligations to the society into which they were born, or to which they belong."(Linklater, 1990a: 39) Such a point of view denies or denigrates obligations to 'outsiders', who are not members of one's society. By contrast, an 'external' concept of political obligation affirms the existence of "a moral framework which extends beyond the one surrounding insiders, so necessitating ethical as opposed to merely pragmatic orientations towards relations with outsiders."(Linklater, 1990a: 40) The central proposition in Linklater's argument is that these two concepts of obligation have historically coexisted in modern European international society, "because the modern state recovered the values of political separateness and civic virtue while preserving the notion of a wider moral community to which men, as opposed to citizens, continued to owe obligations."(Linklater, 1990a: 41) According to Linklater, one can see this tension being expressed in theories of international ethics and law, which exhibit a development towards a better realisation of the universal political obligations inherent in the normative structure of the modern state and society of states. Linklater presents this as a progression from Samuel Pufendorf's excessive characterisation of the sovereign state's absolute independence, through Emerich de Vattel's argument that states are limited through their recognition of moral obligations to the society of states, towards Immanuel Kant's more fully developed articulation of the rationality of ethical universalism.[7] The problem, for Linklater,

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7. There is, alas, no extended discussion of the contrast between Grotius's and Pufendorf's different understandings of *appropriation* in the state of nature.(see Linklater, 1990a: 62-64 & Olivecrona, 1974a & 1974b) For reasons that will be outlined in Chapter 4 below, I regard this distinction as of the highest importance in understanding the principles of international personality and sovereignty in modern international law. Furthermore, Linklater notes that Vattel's "defence of the liberty of states ensures the prematureness of Grotius and the solidarist ideal",(Linklater, 1990a: 95) but he does not then investigate alternative eighteenth-century thinkers who might have more constructively developed

is to show how this fully-developed version of international ethics and law can be defended against subsequent historicist objections about the contingent, plural and anarchic character of modern international relations: how can the human freedom contained in Kant's ethical universalism be regarded as an authentic product of human historical development?(Linklater, 1990a: Part 2) Given Bull's attachment to a Rankean form of historicism, and the lingering influence of E.H. Carr's anti-utopianism, Linklater's desire to protect the universalist rationalism of the Enlightenment from such historicist criticisms is an especially pertinent concern.(see Carr, 1946 & Chapter 3, §2 below)

Linklater answers this question by representing the historical development of freedom in international relations as a process involving two major transformative moments: first, the consolidation and unification of tribal societies into distinct political communities; and secondly, the emergence of a universalistic community, "overcoming estrangement and opposition between states".(Linklater, 1990a: 169) Within this development, the emergence of the rules governing the society of states is an important step on the road from political to universal community, since these rules codify our external obligations, and thus "make determinate a distinct realm of human obligation, an understanding of what each man owes the rest, albeit not as individuals but as citizens of different communities."(Linklater, 1990a: 193) Thus, the international society of states figures as an important part of Linklater's story of the historical development of freedom in international relations. However, the consolidation and expansion of the society of states is understood as part of a broader process of the development of a more universalistic form of international political organisation, which is still in the process of becoming fully-realised through appropriate institutionalised practices. Nevertheless, it has always been present because, in carrying on a legalistic, rights-based discourse as part of the negotiation of norms in international society, states are implicitly accepting and furthering the external concept of obligation which underpins a Kantian understanding of just order in

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Grotius's ideas.

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world politics.(Linklater, 1990a: 196-97) With regard to the conventional understanding of the norms embedded in European international society, Linklater's argument thus exposes a deeper, internally contradictory and hence developing, ethical system that underlies the system of reciprocal sovereignty described by Bull. The particular interests of the pluralistic society of states can then be explained and justified in terms of the contribution they make to the subsequent development of an international society grounded in universalisable norms.

While Vincent and Linklater both develop inventive criticisms of Bull's conception of modern international society, there is an important respect in which their arguments are unsatisfactory. Neither looks closely enough at the way in which Bull's conception of modern international society, and his consequent marginalisation of the solidarist conception as 'premature', achieved its present dominant position in the Grotian tradition. Therefore, neither Vincent nor Linklater seeks to *match* Bull's argument with an equivalent defence of the ontological status of the values, rules and institutions of the solidarist conception of international society. In a way, their arguments are both parasitical on Bull's conception of international society as a pluralist society of states: their understandings of the historical development of modern international relations are refracted through the institution of territorial sovereignty and the idea of an international society divided into sovereign states, in which only states posess personality in international law. Because of this, neither Vincent nor Linklater mounts a serious challenge to the ontological priority of the pluralist conception of international society within the Grotian tradition. Their defences of the relevance of solidarist moral principles to modern international relations are consequently constrained by the need to demonstrate that these moral principles are consistent with (or, at least, not inconsistent with) the other moral principles that Bull shows are supported by the pluralist conception of international society, and, more importantly, that they are sustainable by the institutions of the pluralist conception of a society of states. Arguably, this is not a proper articulation of the relevance of the solidarist conception of international society to modern

international relations; it is no more than a defence of solidarist values within the terms already laid down by the pluralist conception. It contains no account of the historical development of the institutionalised practices uniquely associated with the solidarist conception. Vincent's and Linklater's arguments therefore do not offer a proper opportunity to re-establish the original diversity of debate within the Grotian tradition. What they do is establish a more limited debate within the narrower kind of Grotian tradition constructed by Bull. Admittedly, this is not a negligible achievement, but it does not go far enough towards re-establishing the Grotian tradition as a site for debating the question of international society.

In other words, the problem that we face is how to illustrate the modern relevance of the solidarist conception of international society in a way that really does challenge the ontological priority attributed by Bull to the pluralist conception. Instead of showing how the society of states and positive international law can accommodate solidaristic normative principles, what is important is to show how the normative principles and institutional framework of the solidarist conception have developed independently of the pluralist society of states. Solidarist principles, rules and institutions are not simply, as Bull supposes, aspects of the medieval international order of Christendom, perhaps re-emerging today through regional integration and other factors, but otherwise more or less in abeyance between the seventeenth and the twentieth centuries. Rather, one can identify the key elements of the solidarist conception of international society in certain modern practices and ideas completely outside of the rules and institutions of the pluralist conception of international society, and one can consequently trace their development and explain their current significance in contemporary world politics in a way that does not force them to be seen as 'emerging' out of pluralist practices, and hence risk being treated as 'premature'.

This is the task undertaken over the next six Chapters. First, we need to understand precisely how Bull's own argument about the nature of modern international society was put together. In other words, we need to examine the method that Bull used to develop his conception of international society, and we

need to examine the debates within the 'English school' of international relations theory through which Bull established the ontological priority of the pluralist conception of international society. This part of the argument is developed in Chapters 2 and 3. **Chapter 2** deals with the methodological issues, explaining why Max Weber's theory of the ideal type is relevant to concept formation in international relations theory and especially to the concept of international society. The argument explains what is involved in Weber's ideas of evaluative and historical interpretation, and shows how these ideas rest upon a notion of 'value-relevance' that is a useful contribution to current methodological debates in international relations theory. Some criticisms of Weber's theory are addressed, and one modification of Weber's approach is made, wherein his account of concept use is replaced by a less objectivist thesis of how to use concepts, derived from the theory of essentially contested concepts. **Chapter 3** carries this analysis forward into an examination of the formation and use of the concept of international society, identifying the moments of evaluative and historical interpretation in the research programme of the British Committee on the Theory of International Relations, and showing how and why Bull's work was such a decisive intervention in this research programme. It will be argued there that Bull's work comprises three main components: an interpretation of the Grotian tradition, an account of the origins of modern international society, and an account of the expansion of modern international society.

The remainder of the thesis is devoted to offering an alternative treatment of each of these three issues, in Chapters 4, 5 and 6, respectively. In **Chapter 4**, a reading of Grotius's work is given which identifies two normative or legal principles at the heart of Grotius's own understanding of the law of nations. First, he posited a property right based on individual occupation rather than social convention (in keeping with the subsequent liberal concept of appropriation); and secondly, he conceived of sovereignty as potentially divisible between different institutions (in keeping with previous and subsequent republican conceptions of political community). These two principles of appropriation and divisible sovereignty are therefore taken to be central to the 'Grotian conception of

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international society', and they form the basis for the subsequent account of the 'colonising ethic'. **Chapter 5** grounds this reading of Grotianism in a new historical narrative of the origins of modern international society, concentrating on the practice of colonisation rather than the practices of state-formation, positive international law and balance of power diplomacy. This is intended to echo Bull's attempt to tie his interpretation of Grotian thought to the emerging practices associated with the modern European states-system. In particular, the tenurial and constitutional forms of Dutch and British colonisation in the Netherlands, North America and the East Indies exhibit an affinity with Grotius's ideas of appropriation and divisible sovereignty. The development of the values, rules and institutions connected to this practice are then pursued through the expansion and consolidation of the American states-union and the Dutch empire in the nineteenth and early twentieth centuries, in **Chapter 6.** This leaves us at the end of the thesis with two different, historically-grounded conceptions of modern international society: Bull's, which selectively accentuates the values, rules and institutions associated with pluralism; and a new one, which selectively accentuates the values, rules and institutions associated with the colonising ethic and the solidarist Grotian conception of international society. **Chapter 7** concludes the argument with an interpretation of contemporary world political order in terms of the conception of modern international society developed in the thesis.

Chapter 2

Concept Formation and Use in International Relations Theory

To understand how the concept of international society has developed, it is first necessary to examine some logical points about how concepts are constructed and used by social scientists, as well as by international relations theorists in general and theorists in the Grotian tradition in particular. As will be argued here, the best way to think about the different conceptions of international society discussed in the previous Chapter is to see them as *ideal types*. Therefore, this Chapter will attempt to elucidate Max Weber's theory of the ideal type, and demonstrate its relevance to contemporary international relations theory and to conceptions of international society. The argument of the Chapter is in two broad stages. First, Weber's theory of the ideal type is explained and defended in terms of recent methodological and epistemological debates in international relations theory. In particular, two criticisms of realist theory will be highlighted: the historicist charge that realists use conceptual categories like 'sovereignty' or 'anarchy' in an over-generalised, ahistorical way; and the interpretivist or normative accusation that realists make an erroneous distinction between factual, descriptive statements and evaluative, normative ones. Therefore, a pressing issue for students of international relations is how to develop concepts that are both historical and evaluative. Weber's early methodological and historical sociological ideas offer one way of constructing concepts—or, rather, ideal-typical representations of concepts—that combine historical and evaluative interpretation.

The second, and rather shorter, stage of the argument seeks to demonstrate that the Weberian approach to concept formation exhibits certain important, albeit formally undeveloped, methodological affinities with Hedley Bull's idea of the 'classical approach' to international relations theory. This particular argument performs two functions. First, it supports the claim that the pluralist and solidarist conceptions of international society should be treated as ideal types. This point has an important consequence, since it means that the historical interpretation given by theorists like Bull cannot be relied on as an exhaustive description of the

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§1. Concept formation in international relations theory

A principal focus of recent methodological and epistemological criticisms of realist international relations theory has been the realist claim that anarchy is a natural condition of international relations. As Robert Gilpin puts it: "The major difference between political realism and much contemporary theorizing about international relations is that realism assumes the continuity of statecraft. Realism is based on practices of states, and it seeks to understand how states have always behaved and presumably will always behave."(Gilpin, 1981: 226) This continuity is founded upon the "enduring anarchic character of international politics", and the sense in which the struggle for power in international relations is "universal in time and space".(Waltz, 1977: 66 & Morgenthau, 1973: 34)

The proposition about the continuity of the anarchic and power-political character of international relations is closely related to the 'positivist bias' of conventional international relations theory,(see Frost, 1986: 15) because by saying that international relations exhibit an 'enduring anarchic character', realists can posit a methodological unity between international relations and the natural sciences. In this respect, realism uses the same logic as classic empiricist approaches to social science, which contend that

> any phenomena displaying regular patterns of behaviour were a fit subject for science, and all natural phenomena were presumed to display such regularities, human behaviour among them. There could not be two sorts of phenomena, one natural and one non-natural; all must eventually be amenable to causal explanation, inductively established.(Ryan, 1970: 13)

There is, it should be noted, room for disagreement about the last point, regarding the validity of an inductive method in scientific enquiry. Karl Popper, for instance, holds such an approach to be highly dubious, and argues that it should be replaced by a method of deductive hypothesis formation, and methodological falsificationism.(see Lakatos, 1970) However, with this modification, the empiricist argument is widely used in realist and neo-realist theories of international

relations, which suppose that, since international actors always behave in the same sorts of ways in response to particular situations, a nomological natural scientific model of explanation can be applied to the study of international relations. This involves the development and testing of falsifiable hypotheses about the covering-laws of cause and effect in international relations.(Waltz, 1977: Chapter 1)

There have been two main criticisms of this argument. One is essentially an *historical* objection, which claims that the above argument involves a reductionist over-generalisation of modern conditions of international relations. The second is a *normative* objection, which claims that the study of international phenomena always involves evaluative assumptions, which should first be subjected to a process of moral argument. These arguments derive from two different criticisms of the classical empiricist claim that there is a methodological unity between social and natural science: the first argues that social phenomena are non-natural in the sense of being historical; the second argues that social phenomena are non-natural in the sense of being meaningful.

In social theory, a very strong statement of the former view is the Marxist theory of commodity fetishism in capitalist societies, according to which "the definite social relation between men...assumes here, for them, the fantastic form of a relation between things."(Marx, 1976: 165) The theory of commodity fetishism proposes that social relations in modern capitalist societies appear as natural, abstract forms. However, this is a consequence of the general commodification of relations between people, and of the experience of alienation, in which, as Derek Sayer puts it, "Disembodied, the very forms of our sociality turn against us, and within them there is no place for humane values."(Sayer, 1991: 154) This 'mystification' of social relations between people extends to the analytical categories of political economy, which suppose the commodity form to be "as much a self-evident and nature-imposed necessity as productive labour itself."(Marx, 1976: 175) A principal task of social theory is therefore to uncover the 'definite social relations between men' that underpin these phenomenal forms.

To grasp these social relations, one must examine the historical processes by which individuals, acting collectively, have altered or reproduced social practices and institutions. "Ostensibly natural and universal 'self-understood forms of social life' are revealed as more or less mystified forms of historically specific relationships between people, and reconceptualised accordingly."(Sayer, 1987: 133) Thus, this argument calls for social theorists to acknowledge the essential historicity of the concepts that are used to theorise the social world, and a crucial part of the process of concept formation is to uncover the historical character of the relationships between people that makes sense of the apparently natural phenomena of modern social life.

The second, normative criticism of classical empiricism argues that the difference between the social and the natural world cannot be understood as a product of the peculiar nature of social relations under capitalism. Instead, this criticism of empiricism depends on the contention that:

> the phenomena of human behaviour differ essentially from those of inert matter in that they have a dimension of 'meaningfulness' which the latter do not.... [N]atural phenomena do not endow their own actions with meaning, as do human beings. In this way, the phenomena studied by the natural sciences are different in kind, not merely in degree of complexity, from those which the social sciences seek to understand.(Ryan, 1970: 16)

The implications of this position are pursued by interpretive social theorists, like Peter Winch. Winch points out that classical empiricism neglects the importance of rule-following behaviour as a characteristic feature of social action. Any proper understanding of social life "must necessarily presuppose, if it is to count as genuine understanding at all, the participant's unreflective understanding. And this in itself makes it misleading to compare it with the natural scientist's understanding of his scientific data."(Winch, 1990: 89) It should be noted that this still leaves room for considerable debate as to how such an interpretive approach should proceed. For example, it is arguable whether one should look at the subjective meanings that actors themselves give to their actions, or at the broader

frameworks of inter-subjective meanings that determine what counts as a reasonable or true belief about a particular action.(see MacIntyre, 1962: 62; Skinner, 1972; & Hollis & Smith, 1991: Chapter 4) Whichever specific approach is adopted, this challenge to the Humean conception of causality upon which classical empiricism relies generally serves to undermine the idea that the study of the social world can be conceived as a 'scientific' activity, at least on the model of the natural sciences.

In other words, in social theory there are two quite distinct lines of attack against the assumptions of classical empiricism. One stresses the historicity of concepts in social theory, and the other highlights the normativity of those concepts. Both of these are different versions of the claim that empiricists (and realists) are mistaken to claim that social (and international) phenomena are regular, behave similarly to natural phenomena and therefore are subject to nomological scientific analysis. First, let us briefly survey these criticisms as they have been elaborated by two international relations theorists, and then we can ask what sort of relationship exists between the two approaches.

The historicity of concepts in international relations theory

The observation that realist conceptual categories are ahistorical has been made by a number of different theorists, including some who are broadly oriented towards an interpretive approach.(see, for example, George, 1993) However, for a 'purer' form of historicism, we can look at Justin Rosenberg's historical materialist and 'classical social theoretical' criticisms of realist theory,(Rosenberg, 1994a & 1994b) similar arguments to which have been developed by, among others, Fred Halliday and Robert Cox. Halliday looks at the role for historical sociology more broadly conceived than Rosenberg's Marxist approach, and he pays particular attention to the historical development of the state-society complex in international relations.(Halliday, 1994 & see also Hintze, 1975) Like Halliday, Cox is also concerned about realism's naturalisation or formalisation of the concept of the state as an analytical concept, and argues for an approach that

"does not take institutions and social and power relations for granted but calls them into question by concerning itself with their origins and how and whether they might be in the process of changing."(Cox, 1981: 129) Cox's argument thus "takes the form of an interconnected series of historical hypotheses".(Cox, 1981: 139) For Cox, "the definition of a particular structure [is derived], not from some abstract model of a social system or mode of production, but from a study of the historical situation to which it relates, and secondly, by looking for the emergence of rival structures expressing alternative possibilities of development."(Cox, 1981: 137)

Similarly, in arguing for the essential historicity of concepts in IR theory, Rosenberg defines his project as "the wholesale transposition of IR theory out of this formal/legal problematic [of realism] which takes the condition of anarchy as its starting point, and into a historical problematic whose starting point is the identification of what is distinctive in the social forms of modernity."(Rosenberg, 1994a: 46) Rosenberg argues that both realism and international society theory survey the phenomena of modern international relations, and highlight the fragmented nature of the international; either as an inter-state anarchy, or as an anarchical, juristic society of states. In so doing, they highlight something that is genuinely important in modern international relations: "the distinctive social form of the modern state—expressed in its sovereign legal, territorial and violent aspects".(Rosenberg, 1994a: 31) However, "the sovereign individuality of the state is read back into the state of nature, hence suppressing the labour of its historical emergence".(Rosenberg, 1994a: 160) Realists, in other words, ignore the fact that "the meaning of sovereignty is historically specific."(Rosenberg, 1994a: 36)

Consistently with Sayer's account of the Marxist use of concepts, Rosenberg sets himself the task of identifying the social relationships of which this emerging sovereign state is a part: "when we conceive the modern international system...we need to understand how its political dimension—in this case the sovereign states-system itself—is of a piece with the basic social structures which distinguish modern societies."(Rosenberg, 1994a: 57) How are the historical

identities of these 'basic social structures' to be understood? Here, Rosenberg invokes an historical materialist conception of the relationship between social structures and international political forms: "It is always the direct relationship of the owners of the conditions of production to the direct producers...which reveals the innermost secret, the hidden basis of the entire social structure, and with it the political form of the relation of sovereignty and dependence, in short the corresponding specific form of the state."(Rosenberg, 1994a: 51, emphasis omitted) For now, there is no need to go into this last step in Rosenberg's historical scheme in detail.(see below, Chapter 6, §1) The key point is that, for him, the abstract, and therefore de-historicised, concepts of 'sovereignty' and 'anarchy' that are central to realism are descriptions that mystify the real relationships between people that constitute contemporary international relations. By recovering the historical processes behind these phenomenal forms, Rosenberg seeks to reveal their true content.

The normativity of concepts in international relations theory

With a very different critical agenda in mind, Mervyn Frost also seeks to take issue with a core principle of realism: "Scholars are supposed to provide analyses which are above all firmly grounded in the *facts*; they should not become involved in *normative* arguments."(Frost, 1986: 11, emphasis original) Once again, what is at issue here is the scientific status of realism, and the similarities between international and natural phenomena. Unlike Rosenberg, however, the problem for Frost is not that realist categories are ahistorical; it is that they claim to be impartial. This claim to impartiality is based on a distinction between descriptive and normative propositions about international relations, within which the former are privileged as the proper subject of IR theory. In other words, a quite different consequence of realism's claim about the methodological unity between the natural sciences, the social sciences and international relations is at issue.

Frost begins his argument by noting that the critique of positivist claims to

objectivity is already well established in most disciplines that concern themselves, in one way or another, with questions of the meaning and significance of social phenomena. His intention, then, is to assess the implications of these developments for the study of international relations.(Frost, 1986: 17) To do this, he rehearses the anti-positivist arguments of philosophers of social science like Winch that, in order to determine the character of a human action, "it would be necessary to understand the action from the participant perspective as well".(Frost, 1986: 20) This "precludes the social scientist from remaining an external observer in the way that positivists supposed social scientists to be."(Frost, 1986: 21) Furthermore, this approach is a form of normative analysis, since "all actions have an ineluctable normative element."(Frost, 1986: 23) However, according to Frost, this kind of interpretive approach does not properly set out the relationship between the value-commitments of the theorist and the social actor: "the *verstehen* method does not require the social scientist *qua* social scientist, to enter into normative argument about the values of the investigatees. A critical approach denies that it is possible for social scientists to proceed in this neutral way."(Frost, 1986: 27) Frost bases this criticism of *verstehen* on the point that there may be many plausible rival interpretations of a particular event from among the various actors involved in it: "there is no one clear understanding of the act, but rather several competing understandings."(Frost, 1986: 29) Consequently, "describing it in one way rather than another involves evaluating it one way rather than another.... It follows that social scientists, and scholars in international relations as well, cannot avoid becoming engaged in normative questions and must face up to the challenge of normative theory."(Frost, 1986: 30)

For Frost, 'facing up to the challenge of normative theory' means participating in a dialogue with the participants in a particular practice, where the social scientist attempts to persuade the participant of the rightness of the former's understanding of the practice: "the point is that for critical understanding the subject's considered reaction to the theory is of vital concern in determining its validity."(Frost, 1986: 35) In this characterisation of 'normative theory', Frost is implictly drawing upon Charles Taylor's conception of the proper role of social

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theory, which involves the clarification and questioning of participants' self-understandings within a particular practice, possibly resulting in the reform or 'purification' of the practice itself.(Taylor, 1985)[1] Thus, normative theory in international relations is very much a species of critical interpretive social science,(see Brown, 1992: 3) wherein the social scientist must engage in a normative argument with the participants in a social practice as a necessary part of the process of concept formation, rather than confronting those participants with a non-negotiable morally right judgement or with an objective scientific explanation of their actions, manufactured on the basis of deductively or inductively formed concepts.

The tension between historicist and normative approaches

One of the reasons for looking at the ways in which Rosenberg and Frost discuss the issues of the historicity and normativity of concepts, rather than at other like-minded theorists, is that Frost and Rosenberg have been involved in a dispute which very neatly illustrates the tension between these two challenges to realism's claim to uncover natural regularities in international relations that are analysable through a nomological natural scientific model.(Frost, 1994 & Rosenberg, 1994b)[2] The key point here is that, in order to expose the historical content of the real social relationships between people that are behind the phenomenal forms of modern social life, it is hard for Rosenberg to adopt an interpretive approach that would satisfy Frost's normative attack on positivism. However, for Frost to engage in moral argument with participants in contemporary practices risks taking the phenomenal forms of modern society as the real social relationships that the social theorist should be investigating, and thus replicating

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1. It should be noted that Frost himself frames his work as drawing on Ronald Dworkin's approach to political theory. The Taylorean elements of his normative theory are identified here only for purposes of elucidating the social theoretical roots of constitutive theory.

2. My reason for using Rosenberg and Frost is that they illustrate the poles of this debate. Arguably, some IR theorists, such as Andrew Linklater or R.B.J. Walker, to a greater or lesser degree combine elements of these two approaches. However, the Frost-Rosenberg debate is worth looking at, because it establishes the roots of the tension between these two elements of the attack on realism with exemplary clarity.

the fetishisation of the apparent forms of those social relationships.

Let us consider the latter point first. The problem here can be illustrated by looking at Frost's attempt to construct a substantive normative theory of contemporary international relations. Because of his insistence on the need to ground social theory in the self-understandings of participants, Frost argues that a necessary first step in the construction of a normative theory is the identification "of an area of agreement between people—a domain of discourse—which gives us a basis from which we might construct an argument towards a substantive normative theory."(Frost, 1986: 81) This helps Frost to specify the task of the normative theorist in international relations: "we are called upon to outline what is considered normal in the domain of discourse relating to the inter-state practice."(Frost, 1986: 85)

Now, this is not to say that Frost's normative theory cannot be critical of the ways in which particular practices are carried on in the 'modern state domain of discourse'. However, it does entail certain limitations on the ways in which the normative theorist can advocate changing particular practices. Frost makes this point quite clear:

> By having recourse to the ordinary language of international relations I am not thereby committed to argue that the state system as it exists is the best mode of human political organization or that people ought always to live in states as we know them.... [M]y argument is that whatever proposals for piecemeal or large scale reform of the state system are made, they must of necessity be made in the language of the modern state.(Frost, 1986: 99)

To explore the normative vocabulary of the modern state domain of discourse, Frost employs Hegel's philosophy of ethical life to show that, "individuals with the rights which we value are constituted within a system of mutual recognition which includes within it the institutions of family, civil society, the state and the system of sovereign states."(Frost, 1986: 183) Therefore, the key question that a normative theorist should try to answer concerns the *proper* way of understanding

the constitution of the person through the political institutions embedded in the modern state domain of discourse.

However, why is the language of the modern state domain of discourse the appropriate language for moral enquiry in contemporary international relations, and how can we be sure that locating our moral discussion in this particular domain of discourse does not constitute a fetishisation of the phenomenal forms of modern international relations?[3] To see why this is a problem, let us consider Frost's sequence of family, civil society, the state and the system of sovereign states, which is a particularly striking interpretation of Hegel's philosophy. It is worth noting that Marx offers an alternative schematisation: "in Hegel's philosophy of law...the family superseded equals *civil society*, civil society superseded equals the *state*, the state superseded equals *world history*."(Marx, 1975: 340, emphasis original) In particular, Hegel's philosophy culminates in the idea of *Weltgeist* as manifest in *world-historical* processes.(Hegel, 1991: 373) In Frost's formulation, then, the system (or, perhaps, society) of sovereign states is 'standing in' for world history, raising an interesting question: what is the particular historical narrative that would make this a plausible claim? Frost accepts that with regard to the historical emergence of the criteria of sovereignty and the sovereign claims made by particular states, there remains "a wealth of detail which needs to be filled in here."(Frost, 1986: 168, 184)

The question we need to ask is how Frost would set about 'filling this detail in', and whether he could do so without violating the methodological and epistemological presuppositions of his normative theory. It seems clear that this

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3. On this point it is worth noting R.B.J. Walker's remarks about the historically specific character of the statist domain of discourse, and about the desirability of effecting the "reconstruction of what we mean by political community under novel spatiotemporal conditions."(Walker, 1993: 156) With his argument about the importance of social movements in establishing a resolution of political questions on terms other than the statist formulation of political community,(see Walker, 1988) Walker takes an important historicist step beyond Frost's constitutive theory, which would help us to understand how the statist domain of discourse was constructed in the first place. Of course, one could in principle make this historicist move in other ways than Walker's substantive focus on social movements, and it would not necessarily imply such a negative attitude towards the potential of the state as a form of political community.

would involve making explicit the historical narrative and conception of international society which leads Frost to accord a world historical role to one particular condition of politically-organised human life: sovereign statehood. On this point, Rosenberg's implicit criticisms of normative theory begin to become interesting. First of all, the historical narrative that Frost needs cannot be constructed through an interrogation of the self-understandings of participants in contemporary practices, partly because contemporary social arrangements may be "very different in reality from how they appear to the naked eye."(Rosenberg, 1994b: 105) If the 'domain of discourse' contains fetishised categories that conceal their underlying social relationships, this can only be exposed historically, not through the direct contemporary experience of alienated social life. As we saw, such a point was made very forcefully by Marx's attack on the conceptual failings of political economy.

One answer to this challenge might be to use Frost's normative approach to investigate the historical emergence of these contemporary practices, as a way of uncovering latent structures of social power and historical configurations of human agency. However, this seems unlikely to work, since it would be impossible to establish a moral dialogue with long-dead participants in historical practices. How could we be sure what 'the subject's considered reaction' would be if we had no subject with whom to engage in moral argument? Thus, Frost cannot establish the validity of his *historical* interpretation of the significance and content of the modern state domain of discourse through the normative method that he uses to validate his interpretation of contemporary practices. In other words, Frost's normative theory is ultimately grounded in an implicit historical claim about the essential character of modern international society, but this historical claim must necessarily be defended through other means than his stated approach of 'entering into normative argument with the values of the investigatees'. Frost's normative theory lacks the ability to identify, in itself, the roots of possible contradictions in and alternatives to the contemporary inter-state moral domain of discourse. Ultimately, then, he is vulnerable to the charge that,

if a particular social world is reproduced through certain definite relations of power, then one would expect that the ethical dimension of those relationships would be encountered by the members of that world recurrently in particular ways, familiar moral dilemmas which are characteristic of that particular historical form of collective human agency. What systematic moral reasoning could do is explain why they recur in this form and what is at stake in them; what is their social content. What arguably it cannot do is to provide an intellectual resolution of those dilemmas—for the simple reason that those dilemmas are not at root intellectual: rather they reflect *real* tensions and contradictions in the characteristic social relations of the society in question.(Rosenberg, 1994b: 105-6, emphasis original)

Frost cannot expose these tensions because he has not properly worked the historicity of the modern domain of discourse into the concepts that he develops through moral argument with participants in practices.

Let us move on to consider the possible normative criticism of Rosenberg's critique of realist classic empiricism. This attack has been made more directly by international relations theorists, and is essentially that, although he challenges realism's naturalisation of sovereignty and anarchy, Rosenberg ignores other aspects of the wider (interpretive) social theoretical attack on positivism, and this seriously compromises his claims to be developing an alternative to realism. "Rosenberg sees empirical analysis as providing information about the structures that influence the choices that individuals make; thereby, empirical analysis exists prior to normative analysis, and, crucially, is separate from it."(Smith, 1994: 398)[4] In Frost's view, Rosenberg emerges as an empiricist, but, "In the light of

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4. Another criticism that Steve Smith directs against Rosenberg is that the latter adopts a 'pick and mix' attitude to epistemology, and consequently oscillates between a scientific/structuralist/explanatory approach and a hermeneutic/agent-centred/understanding approach.(Smith, 1994: 402) Although I agree with Smith that Rosenberg does not pay sufficient attention to the interpretivist attack on positivism, I do not accept this other criticism, because Rosenberg's account of the relationship between human agency and social structures seems to me to be quite consistent with the Sayerian version of Marxist theory discussed above. Within this form of Marxist epistemology, Rosenberg's treatment of the relationship between explanation and understanding, and structures and agents, is consistent. Smith's criticism of Rosenberg's failure to take epistemology seriously is a reflection of the important differences that exist between the way in which Smith and Rosenberg frame epistemological questions in social science, rather than of an absence of epistemology in Rosenberg's approach (although, admittedly, Rosenberg himself does not seek to engage in a debate with Smith's approach on this point).

developments in the philosophy of the social sciences over the past few decades this position is no longer tenable."(Frost, 1994: 115) This attachment to the fact/value distinction "is a surprisingly conservative view of the empirical/normative relationship, one that privileges science and social science and seriously limits the role and scope of emancipatory knowledge."(Smith, 1994: 399) This last charge depends on the claim that, by accepting a positivist formulation of the distinction between normative and descriptive statements and a Marxist account of the relationship between historical structures and contemporary social forms, Rosenberg is implicitly and uncritically advocating a normative agenda within the Enlightenment.(Campbell, 1994) He is thus vulnerable to Frost's interpretive attack on the fact/value distinction in international relations theory. As Frost comments, "Before tackling the structural questions, [Rosenberg] would have to decide which of [the possible, superficial] interpretations is the best.... [Rosenberg] will not simply be able to accept these interpretations (with the value judgements embedded in them), but will himself have to evaluate them in terms of his own normative commitments."(Frost, 1994: 117)

In other words, Rosenberg uncovers the historicity of the conceptual categories of realist thought; but at a price. In order to get to the historical relationships that underpin the phenomenal appearance of the modern social world, Rosenberg is forced to disengage from moral argument within the contemporary domain of discourse. Of course, this is not to say that Rosenberg's historical demystification lacks normative content. However, that normative content is unargued. Rosenberg's moral vocation of emancipation through reason and freedom supposedly emerges from the historical exposure of the substantive problems faced by the members of a society, rather than from a process of moral argument about the self-understandings of participants in contemporary practices.(Rosenberg, 1994b: 87) Yet, as Frost makes clear, normative commitments provide the only possible basis on which the historical analysis of the real social structures underlying phenomenal forms can take place, given the multiplicity of different possible interpretations of the true meaning and

significance of social phenomena. Even so, Frost's method does not provide a way of developing an historical awareness of the structural determinants of contemporary modes of international political discourse.

§2. Weber's theory of the ideal type

A slightly modified version of Weberian social theory can meet the challenge of combining the interpretive (or normative) and historical dimensions of concept formation in international relations theory.[5] In this section, Weber's theory of the 'ideal type' is presented as a way of constructing concepts through a combination of evaluative and historical interpretation. However, as will be explained in the next section, some modifications of Weber's basic theory need to be made which would make this kind of approach more useful in contemporary international relations theory, especially with regard to the question of how interpretive concepts should be *used* by theorists. This attitude towards Weber is formally similar to Susan Hekman's assessment that Weber's social theory is relevant to contemporary social theory, but that it is nevertheless helpful to effect a "reinterpretation of Weber's work from the perspective of contemporary problems."(Hekman, 1983: 193)[6]

At the outset, it should be noted that the decision to use Weberian social theory in this way immediately opens up a controversy in international relations

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5. This is not to say that *verstehen* is the *only* way of reconciling this tension. There are many other fruitful approaches that could be used to synthesise interpretive and historicist concerns: the social theories of Jurgen Habermas or Michel Foucault present obvious examples, which have attracted great interest in international relations theory. There are two reasons why I will focus exclusively on the potential contribution of *verstehen* sociology to this problem. First, and most importantly, this is the way of reconciling interpretive and historicist concerns that is most closely related to traditional theories of international society. It is therefore the most appropriate methodology for the specific argument of my thesis. Secondly, I feel that Weber's potential contribution has been unfairly neglected by international relations theorists, for reasons I will discuss later (see n6 below). Therefore, by talking about *verstehen* here, I hope to redress the balance somewhat.

6. Hekman is principally interested in the relationship between *verstehen* and anti-foundationalist and critical theoretical approaches to social theory. However, the argument for the current relevance of Weberian methodology can be more widely conceived; as, for example, in Stephen Kalberg's observation that Weber's work could make an important contribution to debates in contemporary historical sociology.(Kalberg, 1994)

theory. The theorists who have engaged in the attacks on realism that were described earlier might object to this intended use of Weber in two ways. First of all, it might be claimed that Weber's sociology is not interpretive enough, and remains too close to certain aspects of classical empiricist epistemology. This suggestion was made by Winch, who claimed that Weber gave away too much ground by conceding the methodological incompleteness of *verstehen* and by supplementing it "by a different method altogether, namely the collection of statistics."(Winch, 1990: 113) In international relations theory, a somewhat different version of this argument has been put by Jim George, who highlights the connection between Weber and the realist theorist Hans Morgenthau: "Weber gave to Morgenthau (and to a whole generation of Traditional Realists) a Verstehen-based synthesis that appeared to overcome the moralism of the liberals, the progressivism of the idealists and the crude inductivism associated with conventional scientific approaches."(George, 1994: 91) In the end, though, a similar conclusion to Winch's results: Weber is tarred with the positivist brush, and would-be interpretivists should look elsewhere for the tools with which to develop an alternative, non-positivist research programme in international relations theory.

The second objection has already been flagged, when we saw how Frost attacked the descriptive and uncritical dimension of *verstehen* sociology (understood by Frost to include both Winch and Weber). As has already been outlined, Frost accepts that there is a crucial difference between positivism and *verstehen*, but nevertheless maintains that Weber does not go far enough to provide a properly critical response to positivism and realism. In Frost's view, this is partly because *verstehen* refuses to 'finesse' the self-understandings of participants in practices, and partly because *verstehen* presumes a coherence in those self-understandings, and therefore risks ignoring contradictions within practices. This allegation of a tendency to uncritical descriptivism in Weber's social theory is made independently by Marxist theorists. Usually, these objections to Weberian sociology work in one or more of three ways: Weber's postulation of 'value-free' social science is a mask for an apologist account of

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bourgeois ideology; the abdication of an idea of historical progress is a pessimistic surrender to the imperfectly recognised contradictions and unfreedoms of capitalist society; and Weber's conceptual categories are idealistic abstractions that lack a real historical content.(see Weiss, 1981: Chapter 3) This is closely related to the suspicion that Weber's social theory is incapable of offering causal explanations of social change, as a basis for a critical theory of radical human agency in contemporary society.

These objections should be borne in mind throughout the subsequent discussion, as we see how Weber sought to combine historical and evaluative approaches in social scientific concept-formation. The criticisms of Weber can largely be answered from within Weber's theory of the ideal type, and especially so when Weber's earlier methodological essays are brought to the fore of the discussion.[7] Nevertheless, the main reason for modifying *verstehen* (a task attempted in section 3 below) is to try to take these complaints as seriously as possible. In general, Weber's solution to the problem of reconciling the normativity and historicity of concepts should be seen as a 'second-best' solution: it is imperfect from either a pure historicist or a pure interpretivist perspective. However, some relaxation of both pure approaches is necessary if a reconciliation is to be achieved, and useful non-empiricist, historically-grounded and interpretive theoretical concepts are to be developed in international relations theory. Hopefully, Weber's approach will reflect the best features of both Rosenberg's and Frost's criticisms of realism: some cannot be accommodated; in some cases, revision is necessary to reflect their methodological insights. However, in general,

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7. This is a very distinctive gap in much of the work on Weber in IR theory. Normally, most attention is paid to Weber's sociology of the modern state, and to his two lectures on Politics and Science as Vocations. In my view, this is not a proper treatment of Weber's methodological and epistemological ideas, a better understanding of which can be gained from reading his early essays on the logical problems of 'historical economics', 'objectivity' and historical knowledge. The aspect of Weber's more substantive historical sociology that is the most fully-developed working-through of these ideas is the sociology of religion, and especially the argument in the 'Protestant ethic' thesis.(Weber, 1930, 1949, 1975, & 1977) My discussion will be based on these works, and I hope it will become clear that these present a very different picture of *verstehen* sociology from the conventional reading. I make no apologies for this apparent selectivity, since these are a much more accurate reflection of Weber's core *methodological* presuppositions than are obtained anywhere else in his later works.(see Huff, 1984: 16-18)

Weber's social theory provides a good approximation of historical *and* interpretive concept formation.

Evaluative interpretation in concept formation: the idea of value-relevance

Weber is a central figure in the debate about the relationship between social and natural science. He argues that the object of social scientific research is significantly different from that of natural science, because of the former's concern with questions of the meaning of phenomena: "'Culture' is a finite segment of the meaningless infinity of the world process, a segment on which *human beings* confer meaning and significance."(Weber, 1949: 81, emphasis original) The sociality of an action is conferred by its meaningful quality. In other words,

> nature is the domain of the 'meaningless'. Or, more precisely, an
> item *becomes* part of 'nature' if we cannot raise the question: what
> is its 'meaning'?... [The] polar antithesis of 'nature' as the
> 'meaningless' is not 'social life', but rather the 'meaningful': that is,
> the 'meaning' ascribed to a process or object, the 'meaning' which
> *can* be found in it.(Weber, 1977: 110-11, emphasis original)

However, this does not imply that social science should not aspire to being 'objective'. Weber disputes the idea that scientific objectivity means only impartiality:

> The *objective* validity of all empirical knowledge rests exclusively
> upon the ordering of the given reality according to categories which
> are *subjective* in a specific sense, namely, in that they present the
> *presuppositions* of our knowledge and are based on the
> presupposition of the *value* of those *truths* which empirical
> knowledge is able to give us.(Weber, 1949: 110, emphasis original)

Thus, 'objectivity' in social science implies only that "the empirical data are always related to those evaluative ideas which alone make them worth knowing and the significance of the empirical data is derived from those evaluative ideas."(Weber, 1949: 111)

This understanding of 'objectivity' in natural and social science betrays the neo-Kantian, Rickertian origins of Weber's epistemology. In this approach, the main problem in concept formation is to establish an 'objective' method of abstraction by which evaluatively *significant* elements of social (*i.e.*, meaningful) phenomena can be identified.(Burger, 1976: 107) As Thomas Burger points out, in this method "the problem of 'objectivity' is not that of correctly establishing *what* the facts are.... Rather, the problem is that of the selection of the *same* facts by all scientists in their endeavour to present an account of empirical reality."(Burger, 1976: 17-18, emphasis original) 'Objective' knowledge is "knowledge which everybody wants to have, in which everybody is interested."(Burger, 1976: 12) 'Objectivity' in the formation of concepts therefore depends upon the possibility of consensus within the social-scientific community on which facts are significant: "A description is objective when it describes those phenomenon in which for human observers values are embodied which relate to a cultural concern of the collectivity of which they are members."(Burger, 1976: 80)

This forms the basis for Weber's defence of an 'objective' social science. It is not based on a positivist claim to value-freedom, as is often supposed, but on an application of the Rickertian principle of value-relevance: *Wertbeziehung*.(see Rossi, 1991) Concept formation *is* evaluative, in the sense that it is about identifying values which are shared in the community of social scientists, and are regarded as relevant by members of that community. An excellent example of this can be found in the famous opening lines of the 'Author's Introduction' to the *Protestant Ethic and the Spirit of Capitalism*:

> A product of modern European civilization, studying any problem of universal history, is bound to ask himself to what combination of circumstances the fact should be attributed that in Western civilization, and in Western civilization only, cultural phenomena have appeared which (as we like to think) lie in a line of development having *universal* significance and value.(Weber, 1930: 13, emphasis original)

The key here is the parenthesised comment: 'as we like to think'. The universal significance of Weber's enquiry is determined by an agreement upon its value-relevance by the academic audience to whom the work is addressed. This, rather than professional detachment or correspondence with reality, is the real basis for its 'objectivity'. Thus, what Weber is doing here is establishing the conditions for the 'objectivity' of his subsequent enquiry. He does not do this through an appeal to statistical regularities or historical laws, since these only throw up "the inexhaustible diversity to be found in all historical material."(Weber, 1930: 45) Instead, he appeals to the shared cultural values of his audience of social scientists, seeking to "elaborate in an explicit form the focal points for the *possible* 'evaluative' attitudes which the segment of reality in question discloses and in consequence of which it claims a more or less universal *'meaning'*".(Weber, 1949: 151, emphasis original)

Two points about this process of 'evaluative interpretation' and appeal to universal value-relevance can be made. First of all, it is consistent with a rejection of the use of nomological scientific covering-law analysis associated with classical empiricism and realist theories of international relations. It is not, therefore, surprising when Weber launches himself into a polemical attack on precisely this kind of approach to social scientific research. He argues, in an interesting contrast to Winch's claim that Weber adopts a statistical methodology, "there is *a priori* not the slightest reason to believe that the *meaningful* and essential aspects of concrete patterns would be identified by the abstract concepts of the correlations."(Weber, 1975: 65, emphasis original) Weber is strong in his insistence that social scientists always approach their subject with an evaluative point of view, through which they "select out those relationships which are significant for [them]."(Weber, 1949: 82) Weber's methodology is therefore conceived as a direct attack on nomological scientific approaches that seek to isolate general concepts as the basis for identifying patterns of causal correlations. It would be hard to think of a more direct way of establishing the anti-empiricist credentials of an approach to social science. Often, this attack veers towards polemics that match the intensity of the contemporary debate.

If the notion that those standpoints can be derived from the 'facts themselves' continually recurs, it is due to the naïve self-deception of the specialist who is unaware that it is due to the evaluative ideas with which he unconsciously approaches his subject matter, that he has selected from an absolute infinity a tiny portion with the study of which he *concerns* himself.(Weber, 1949: 82, emphasis original)

For Weber, then, knowledge of social, historical and cultural phenomena, because of its meaningful character, is conditioned by 'evaluative ideas',(see Weber, 1949: 81) because evaluation is essential to the selection of the culturally significant elements of complex historical phenomena. This process is 'objective' and therefore valid not because it corresponds to reality, but because it reflects 'general cultural values',(see Burger, 1976: 39) and is of universally-recognised cultural significance within a scientific community. "This way of being conditioned by 'subjective values' is...entirely alien...to those natural sciences which take mechanics as a model, and it constitutes, indeed, the distinctive *contrast* between the historical and natural sciences."(Weber, 1949: 160, emphasis original) This is why Toby Huff claims that "Virtually all the criticism levelled by post-empiricist philosophers of science against logical positivism can be found in Weber's early methodological writings".(Huff, 1984: 8)

Secondly, because a particular evaluative interpretation is essential, analysis is always undertaken from a specific point of view. This has important implications for the logical status and use of concepts. Certain features of a concept like 'capitalism' can be highlighted and abstracted to construct an 'ideal type'.

An ideal type is formed by the one-sided *accentuation* of one or more points of view and by the synthesis of a great many diffuse, discrete, more or less present and occasionally absent *concrete individual* phenomena, which are arranged according to those one-sidedly emphasized viewpoints into a unified *analytical* construct.(Weber, 1949: 90, emphasis original)

In consequence, ideal types are not invalidated through the discovery of events

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and circumstances that prove their 'predictions' (if such were made) to be mistaken: ideal types "cannot be 'refuted' by a case that contradicts the concept.... The only test of the accuracy of an ideal type is whether it *explains* the phenomena under investigation."(Hekman, 1983: 36, emphasis original)[8]

In keeping with this understanding of the construction and function of an ideal type, Weber points out that an ideal type is not intended to be an exclusive or exhaustive picture of social reality. For example, there could be a great many different ideal types of capitalistic culture: "Each of these can claim to be a representation of the 'idea' of capitalistic culture to the extent that it has really taken certain traits, meaningful in their essential features, from the empirical reality of our culture and brought them together into a unified ideal-construct."(Weber, 1949: 91) As this argument suggests, Weber is quite happy to accept, for example, the heuristic value of Marxist ideal-typical accentuations of certain features of contemporary society. What Weber objects to in Marxist approaches is the frequent claim that these Marxian ideal types in fact reveal some deeper, trans-cultural metaphysical truth about human relations in society and in nature.(Weber, 1949: 103 & see also Zaret, 1991: 202) There is not necessarily a single ideal-typical representation of, say, capitalism: different ideal types could illuminate different significant aspects of the meaning of capitalist cultural phenomena; different points of view attach significance to different phenomena.(Weber, 1930: 47-48)

This is an important point because it suggests a possible way out of a problem that arises with Weber's theory of evaluative interpretation. As we saw, Weber's argument makes the assumption that general cultural values exist, through which the subjective evaluations of the social scientist can be 'objectified'. This obviously begs an important question: what if these general

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8. Note the use of 'explanation' as the goal of an ideal type: this is consistent with the idea that explaining something means being able to tell why it is happening: in other words, it means exposing someone's reasons for acting in a particular way. Later, under the rubric of 'adequate causation' and axiological analysis, I will discuss this version of 'explanation', which is different from a Humean model of causal explanation.

cultural values do not exist? What if there are irreconcilable differences of opinion within the community of social scientists? The above discussion of the possibility of forming many different ideal types as ways of illustrating different significant aspects of social life suggests that Weber might be prepared to accept that, under certain circumstances, there might be genuine disagreements on the significance of particular cultural phenomena, and that therefore genuine contests might arise over the concepts used by social scientists. This would go a long way towards answering Frost's objection that *verstehen* theorists refuse to 'finesse' the self-understandings of participants in practices and that they fail to introduce a critical element into the process of concept formation. Weber's idea of 'evaluative interpretation' would need to be augmented through the identification of the characteristic features of those concepts that were likely to be contested in this way. The strong link to 'objectivity' through 'universal significance' and 'general cultural values' would be unsustainable, but Weber's identification of an interpretive element in the process of concept formation would otherwise be unaffected. This point will be pursued further in section 3.

Historical analysis and concept formation: the Protestant ethic thesis

As we have seen, *verstehen* social theorists can respond to the interpretivist charge that they are positivistic by pointing to the fundamental importance they attribute to 'evaluative interpretation' in concept formation. However, a somewhat different problem then arises: since ideal types are created by a process of 'idealizing abstraction', do they therefore lack historical concreteness? The above discussion might suggest that Weber's concepts are, indeed, reifications. They spring from evaluative agreement within a culture, and are then generally applied throughout history as abstract concepts.[9] However, such a representation would be mistaken, since Weber does appreciate the essential historicity of the ideal types that are created through 'idealizing abstraction'. Indeed, "An historically grounded procedure for generating concepts was central to Weber's work."(Zaret,

1991: 195) Ideal types, at least in early Weberian theory, are always seen as 'historical individuals', and the cultural values which inform the initial method of abstraction are themselves historically located, a fact that is revealed through the historical enquiry that is an essential part of sociological work. After this is explained, the general charge that Weber's work is necessarily uncritical and descriptive can be addressed.

As we saw above, Weber introduced the ideal type as a process of concept formation that was 'objective' without being nomological. The objection that Weber's concepts are unhistorical is based on the view that, by establishing the 'scientific' status of sociological enquiry in this way, Weber is over-generalising his concepts, and preventing them from being expressions of the unique, peculiar characteristics of an historical event. This issue is an old chestnut in debates about the coherence of 'historical sociological' research: the historian is concerned with the individual and specific features of a particular phenomenon, while the sociologist studies the general features that recur across different societies and cultures.(see Smith, 1991) Historical concepts are, therefore, individual; sociological concepts are general (although they are 'general' in a different way from nomological natural scientific concepts). An illustration might help to explain this point: the historical concept of 'the modern state' is a different, more individual, kind of concept from the sociological idea of 'domination', while both operate differently from the even more general natural scientific concept of 'energy'.

A similar debate can be found *within* Weber's social theory itself. As Burger points out, from the early essay on 'Objectivity' to the later work in *Economy and Society*, Weber changed from an historical to a relatively more sociological outlook, "by postulating a shift in the conception of 'ideal type' from the historicist's interest in historical wholes—'historical individuals'—to the sociologist's interest in the analytical elements of a general theory."(Burger, 1976: 119) However, even in his early work, Weber acknowledged a tension between 'philosophical' generalised abstractions, and 'historical' reproductions of

reality.(Weber, 1975: 55) The problem is that these must be balanced, rather than one being privileged over the other. As we saw, Weber pays a great deal of attention to the philosophical method of conceptual abstraction; how does he combine this with attention to the need for historical concreteness and specificity?

This dimension of concept formation can most clearly be seen in the structure of the argument of *The Protestant Ethic*, where the ideal type of the 'spirit of capitalism' is developed both through evaluative interpretation and historical analysis. This is worth quoting at length, since it is an exceptionally clear statement of the historicist elements of Weber's early methodological approach.

> What is to be understood by [the 'spirit of capitalism']?.... If any object can be found to which this term can be applied with any understandable meaning, it can only be an historical individual, *i.e.*, a complex of elements associated in historical reality which we unite into a conceptual whole from the standpoint of their cultural significance.
>
> Such an historical concept, however, since it refers in its content to a phenomenon significant for its unique individuality, cannot be defined according to the formula *genus proximum, differentia specifica*, but it must be gradually put together out of the individual parts which are taken from historical reality to make it up. Thus the final and definitive concept cannot stand at the beginning of the investigation, but must come at the end. We must, in other words, work out in the course of the discussion, as its most important result, the best conceptual formulation of what we here understand by the spirit of capitalism, that is the best from the point of view which interests us here.(Weber, 1930: 47)

This is not just an excuse for an incomplete definition of an important concept in Weber's historical enquiry. It is a clear statement that the meaning of the cultural phenomena is revealed historically as much as interpretively.

On its own, then, evaluative interpretation only serves to identify a culturally-significant 'historical individual'. The meaning of the social relationships and actions embodied in this individual is not immediately disclosed by the evaluative interpretation. A further process of historical interpretation is needed

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fully to understand the meaning of the relevant phenomena. Evaluative interpretation does not replace historical analysis; evaluative interpretation is only ever an incomplete preliminary step that must be supplemented through historical analysis.

> Insofar as it analyzes 'interpretively' what is *characteristic* of particular features of certain 'cultural epochs' or certain personalities...[evaluative interpretation] aids in the formation of historical concepts.... [I]t functions either as an auxiliary insofar as it aids in the recognition of the causally relevant components of a concrete historical complex as such; it functions, conversely, as a source of guidance and direction, insofar as it 'interprets' the content of an object...with respect to its possible relations to values. In doing the latter, it presents 'tasks' for the causal work of history and thus is its presupposition.(Weber, 1949: 160, emphasis original)

In part, then, the full meaning of a particular phenomenon is disclosed through empirical analysis of the causal regress disclosed by the initial interpretation. While this may admit a role for nomological, empirical analysis, in two ways Weber's account of the causal regress does not altogether collapse into a simple empiricism.

First, the analysis does not reveal determinate causes, but only 'adequate causes'. In other words, the 'causes' are relevant only to a categorically-formed mental construct; not to 'reality' as such. Here, it is important to remember that an ideal type is not intended to be a description of reality, far less a nomological hypothesis about how reality operates. The notion of 'adequate causality' is rather confusing, and an example might help. Fortunately, Weber's own historical sociology provides an excellent illustration: the Reformation did not 'cause' modern capitalism in the sense that it was decisive in producing all of the features of modern capitalist production and exchange. Hence, Protestantism cannot be regarded as a *determinate* cause of modern capitalism (in the form of an 'if P then Q' formulation). However, certain aspects of the religious beliefs that developed during the Reformation were responsible for the peculiarly methodical and vocational character of modern economic behaviour, which is an especially

significant part of modern capitalist culture as a whole. Therefore, modern capitalism does owe one of its most characteristic, unique and significant features to the Reformation, which can consequently be regarded as an *'adequate* cause' of modern capitalism. As we can see from this illustration, assessments of causal significance are made only by constructing *deliberately unreal* causal relationships, in order to identify the linkages between essential and characteristic components of a wider, causally plural, set of phenomena.(Weber, 1949: 164-88) As is clear from the illustrative example chosen here, a great deal of mistaken debate about *The Protestant Ethic* could have been foregone if only the limited character of 'adequate causality' were properly appreciated.

Secondly, for Weber, causal analysis must proceed *axiologically* as well as empirically. That is to say, one should study the relationships between systems of values and ethics, here regarded as motives for action: "historical interpretation is not concerned with our ability to subordinate 'facts' under abstract concepts and formulae.... On the contrary, it is concerned with...'understanding' concrete human action in terms of its motives."(Weber, 1949: 196) As Huff sums up, "'Motives', which can here be assimilated to 'reasons', serve as the 'causes' of social action."(Huff, 1984: 47) This is as close as Weber gets to a proper theory of interpretation. Interpretation should always be based on values and relationships between values, rather than upon subjective, emotional identification with the acting subject.(Weber, 1949: 181) The goal of historical analysis is to explore the ways in which significant value systems develop historically. Thus, the 'laws' with which the social scientist (or historian) operates, are not nomological, but axiological, it is "neither an empirical regularity nor a 'rule-governed' process. On the contrary, it is a norm which can be *conceived* as having 'axiological validity'".(Weber, 1977: 131, emphasis original) Axiological validity is established through examining the logical relationship between different systems of values, and the implications for behaviour that follow from these particular maxims, rather than through an empirical analysis of the qualitative differences between cause and effect. In this respect, *verstehen* rests on a non-Humean theory of causation.

This shows that Weber recognises, indeed highlights, the historical specificity of the cultural system of values within which an evaluative interpretation is made. Evaluative interpretation discloses those aspects of cultural life that are significant for members of a culture, and thus creates an area of historical interest. For example, we might identify as significant the cultural phenomenon that modern capitalism involves methodical, instrumentally rational economic conduct. However, this would be an incomplete formulation of the meaning of the 'spirit of the capitalism'. To gain a fuller understanding of the meaning of capitalism, the systems of values within which this ethic is historically located must also be brought into the concept. Thus, at the end, we can recognise that the 'spirit of capitalism' is not simply instrumentally rational economic conduct; it is "rational conduct on the basis of the idea of the calling", the meaning of which can only be understood through an examination of ascetic Protestantism, and the understanding of which illuminates the historical content of the contemporary cultural values on the basis of which the initial evaluative interpretation was conducted.(Weber, 1930: 180)

This is sufficient to illustrate the historicity of concepts in Weberian social theory, and to show that they do challenge reification, through the demystification—*i.e.*, revelation of meaning— of aspects of modern culture that are typically emptied of their underlying meaningful human relationships, such as modern economic conduct. *Verstehen* is, then, historical; but does this go beyond description, or even demystification, to provide a grounding for critique? Let us begin by noting that Frost is mistaken to claim that *verstehen* involves an empathetic identification with the acting subject, within which the subject's individual values cannot be finessed. The goal of *verstehen* is historically and evaluatively to interpret the meaning of the ethical systems within which individuals' behaviour is subjectively given meaning. This is quite consistent with the clarification and possible reform of a social practice (which, it will be recalled, was Frost's idea of the goal of normative theory). The difference is that *verstehen* provides a clear insight into the need to ground this interpretation in an historical analysis of the background of ethical ideas within which contemporary cultural

values are located, and provides a procedure for so doing.

Frost's second criticism can also be questioned, in three ways. First, *verstehen* sociology is not necessarily committed to seeing contemporary motivations as cohesive. Admittedly, Weber's substantive historical sociology of modern rational conduct does not expose an internal contradiction in that practice; but neither does it presuppose a consensus (except in the social scientific community). Weber's point is that the contemporary practice is marked by an *evacuation* of meaning from the idea of the calling.(Weber, 1930: 181) This may not identify an immanent alternative or dynamic, but it is hardly uncritical. Secondly, as we saw, Weber explicitly identifies Marx's analysis of capitalism as an example of an ideal typical analysis. This clearly indicates that contradictions can be identified within the broad methodological framework of *verstehen* and also renders Marxist criticisms of Weber's methodology less compelling. Thirdly, Weber's comments about the possibility of multiple ideal types suggest that *verstehen* does not exclude the possibility of different interpretations being developed, and contests between those rival interpretations could then arise. This would suggest that *verstehen*, understood as a method rather than as Weber's particular sociology of modernity, can accommodate ideas of contradictions in contemporary practices, which would come through as contests between rival evaluative interpretations of the significance of those practices. It would then be necessary to drop Weber's insistence on the Rickertian principle that subjective values can be 'objectified' through an appeal to 'general cultural values'. This latter point, insofar as it affects the way in which concepts should be used, is the subject of the next section.

§3. An agonistic theory of concept use

As we saw, Weber's claim to be both interpretive and 'objective' rested on the idea that 'general cultural values' exist, on the basis of which the researcher's subjective value-orientation can be objectified through the identification of cultural phenomena that are *universally* regarded as significant. However, the

different *reasonable* interpretations.(see Gallie, 1964: Chapter 8) Furthermore, it is argued that these conceptual disputes are not always signs of error or confusion, but might be an unavoidable, and even desirable, feature of academic enquiry. The continuing existence of disagreement about the 'real meaning' of such concepts, "far from being a cause of philosophical scandal, is rather a proof of the continuing need of philosophy and of vital, agonistic philosophy."(Gallie, 1964: 156)

W.B. Gallie gives a good explanation of how concepts come to be open to different reasonable interpretations. First, he observes that such a concept must be appraisive, in the sense that "it signifies or accredits some kind of valued achievement."(Gallie, 1964: 161) The idea of appraisive concepts has been most thoroughly developed by William Connolly, who maintains that some concepts "characterize arrangements and actions from a normative angle of vision."(Connolly, 1993: 29) In such cases, the point of using the concept is bound up with its connection to moral points of view. Nor can we reconstruct the concept in a non-normative way, since "a concept so cleansed would lay idle.... With no point or purpose to serve, the concept itself would fall into disuse."(Connolly, 1993: 29) By itself, however, the fact that a concept is appraisive does not explain why contests over its meaning should inevitably arise. In addition to being appraisive an essentially contested concept must also depict a particular kind of valued achievement: one that is internally complex, variously describable and open. In other words, "Any explanation of its worth must...include reference to the respective contribution of its various parts or features; yet...there is nothing absurd or contradictory in any of a number of possible rival descriptions of its total worth".(Gallie, 1964: 161) Andrew Mason summarises this point rather well: political theorists "disagree over how to *describe* values such as freedom, social justice, and democracy properly (and therefore over what counts as freedom, social justice, and democracy) because they can reasonably disagree over how much weight to attach to the elements that go to make up the achievement accredited by concepts such as these".(Mason, 1990: 83, emphasis original)

Beyond these four conditions of appraisiveness, internal complexity, variable describability and openness, Gallie also maintains that for a concept to be essentially contested, it must be used strategically and there must be a shared 'original exemplar', to which rival uses of the concept approximate.(Gallie, 1964: 161, 168) These further conditions are especially important if a disagreement is to be evidence of a contest, rather than simply being a case of confusion since, as Steven Lukes points out, "essentially contested concepts must have a common core; otherwise how could we justifiably claim that the contests were about the same concept?"(Lukes, 1974: 187) Furthermore, the various users of the concept must recognise the relevance of other interpretations than their own; otherwise they could not be said to be engaged in a contest at all, but would simply be talking past one another. Thus, while the combination of appraisiveness and complexity shows why questions about the proper use of concepts come to be involved with deep-seated philosophical and political disputes, the idea of a 'common core' or 'original exemplar' explains when such a dispute is a conceptual contest and not the result of a confused or vague misuse of a concept. Together, these two aspects of the overall argument provide us with grounds for identifying concepts which are properly contested, in such a way that the contest will not be resolvable through decisive rational arguments for one particular interpretation, nor through a more precise use of the concept in question.

It is important to be able to make distinctions between contested and confused concepts with reasonable authority, because they carry considerable implications for the way in which we should regard attempts to clarify or define the meaning of obscure concepts. In a nutshell, if a concept is simply confused or vague, we should welcome clarification through 'reconstruction' or better definition according to abstract, general principles.(Oppenheim, 1981) On the other hand, if a concept is contested, we should regard an attempted definition as no more nor less than an argument for a particular interpretation and explore its relationship to other reasonable interpretations of the concept within the context of the historical development of a tradition of academic enquiry. In this case, as the legal philosopher H.L.A. Hart puts it, "though theory is to be

welcomed, the growth of theory on the back of definition is not."(Hart, 1983: 25) Instead, any particular use of a contested concept should be advocated in an-open-minded and reciprocating way. One's defence of an interpretation should be "of the same contested character as the arguments it opposes, not claimed in advance by some pretense at hard-hitting empirical metaphysics."(Dworkin, 1986: 86)

Overall, then, the thesis that some concepts are essentially contested points towards an *agonistic* approach to political argument. Under agonism, moral and political disputes are carried on through arguments about the proper way of using particular concepts, rather than through arguments about which concept to use to describe the world. Such arguments are unlikely to lead to a decisive conclusion, but they will not be a free-for-all, since they should operate within the broadly defined, widely agreed and flexible parameters established by the concept's 'original exemplar' or 'common core'. If conducted properly, they will tend to be reciprocal and tolerant, gradually approximating towards a better shared understanding of the meaning of the core concept itself. This agonistic approach to political argument is rather similar to Alasdair MacIntyre's account of a 'living tradition', as one which "is an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition."(MacIntyre, 1985: 222) To engage in an agonistic political argument about the meaning of an essentially contested concept is precisely to acknowledge one's embeddedness in the "continuities of conflict"(MacIntyre, 1985: 222) that constitute such a living tradition of thought and practice, and to seek to sustain the tradition by preserving and enriching, rather than definitively resolving, that internal conflict.

Of course, agonistic arguments have some important negative features. Most obviously, the way in which a tradition of argument is constituted is in itself political, and not everyone is or can be part of a tradition. There is, if you like, a degree to which the openness of an essentially contested concept is limited or superficial. As David Miller points out, theorists make political judgements when

they identify the permissible uses of a shared concept, but then deny the efficacy of political judgements in deciding between different uses of the concept. This seems to suggest either the operation of a double standard or an abdication of responsibility: "Having set foot in the political arena to arrive at the list of permissible uses of a term, why is the philosopher reluctant to take the second step and argue for the correct use?"(Miller, 1983: 51)[10] Alternatively, if the virtue of an essentially contested concept is its openness to different points of view, and its capacity to accommodate value pluralism in political argument, the political decision about what goes into the common core surely rules certain perspectives out of the argument altogether. Thus, although the death of a tradition may be damaging to political argument by making it less reciprocal or cooperative, it may be liberating in other respects, in the sense that the tradition may have stifled argument among some people or silenced some perspectives. However, whether or not a particular tradition is positive or harmful, it is obviously important that, at the very least, philosophers (and theorists of international relations) understand the traditions in which they operate and understand how changes have taken place in the idiom of political discussion within which disputes between international relations theorists are carried on.

Concept formation and concept use

Weber's ideas of evaluative and historical interpretation principally refer to the way in which concepts are constructed; on the other hand, the idea of essential contestedness is concerned with the way in which concepts are used within an academic community. This is why the latter can be grafted onto the basic propositions about concept formation outlined by Weber. It deals with an interpretivist suspicion of Weber's claim to be able to pick out universally-relevant cultural phenomena, but it does not substantially alter the process of evaluative interpretation as antecedent to an historical interpretation. We could still construct ideal types, but we would have to acknowledge that the various ideal types that

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10. For a more extended discussion of this issue, see Swanton, 1985, and for a reply to this kind of objection about the incoherence of the essential contestedness thesis, see Connolly, 1993: 226-27.

we use to understand contemporary practices are part of a process of contesting the meaning of those practices.

The thesis of essential contestedness thus provides a new set of criteria for assessing particular instances of ideal type construction. Weber introduced 'value relevance' in order to provide a way of determining the quality of particular ideal types, in terms of their ability to disclose the possible significances of a set of cultural phenomena, and speak to the widest possible range of value-orientations of the members of an academic community. However, we should recognise that ideal-typical representations of concepts are not always formed in pursuit of this Rickertian 'objectivity', but rather they are sometimes constructed and used strategically as part of an effort to defend positions in political debates. Because of this, "there is a tendency to take sides, to applaud some of the practices of some of the participants, to identify dark areas in prevailing practice that might, if illuminated, allow a transcendant view to gain ascendancy."(Connolly, 1993: 181) This aspect of concept use should be recognised as part of the process by which we assess an evaluative interpretation. If it is, then we can see that a particular concept should not be assessed on the basis that it presumes to disclose features of 'universal significance' as Weber proposes. Rather, we should ask what sort of interpretation of contemporary practices is embodied in a particular formulation of a concept: what is the role that an evaluative interpretation—and a process of ideal type formation more generally—plays in debates within traditions of thought? Of course, this is not to suggest that a conceptual contest can eventually be closed. Instead, it implies that manifold evaluative interpretations of contemporary cultural phenomena should be carried out, and compared. Only then can the true character of any one interpretation be assessed.

Not only would this respond to any lingering suspicions that Weber is too positivist, it would also show how Weber's method of concept formation could potentially be part of a more critical approach to international relations. We saw that the claim that Weber is always looking for areas of consensus in society as a whole was wrong, but it holds at a smaller level, for an academic community.

However, by relaxing this assumption of general cultural values within an academic community, we can see how an essentially Weberian method of abstraction and historical enquiry can indeed be tied to a form of concept use that is more agonistic, through acknowledging and participating in conceptual contests. Thus, we can respond to Frost's worry about the inability of *verstehen* theorists to engage in political debate about participants' self-understandings in practices.

So far, this discussion has been conducted at a very general level. It sought to show that Weberian ideal types are both historically and evaluatively constructed. In other words, Weber's social theory gives us a clear and properly developed method for constructing concepts that will be useful for contemporary non-realist theories of international relations. An initial process of evaluative interpretation abstracts an 'historical individual', the meaning of which is then apprehended through an 'adequate causal' and axiological form of historical analysis. Once the meaning of this formulation of the concept has been properly grasped, we need to ask what relationship exists between this conception and our experience of contemporary practices: does it illuminate them, does it expose hitherto unrecognised meanings contained in those practices, and what judgement of the practice is made implicit in the conception?

§4. The classical approach and *verstehen* sociology

Now, we need to ask what are the implications of such an approach for the way that we think about the concept of 'international society', and to what extent this Weberian approach to the historicity and normativity of concepts really does afford an opportunity to get to grips with the traditional theory of international society. Here, it is interesting to note that a number of international relations theorists have commented on the similarities between Bull's conception of international society and Weberian ideal types. For example, Stanley Hoffmann takes the view that Bull's "blend of intelligent social science and humanism...takes a Weberian form."(Hoffmann, 1990: 18) Similarly, Terry Nardin comments that

international society should be regarded as an 'ideal type',(Nardin, 1983: 33-34) while Hidemi Suganami observes that Bull's concepts of "'international system', 'international society', 'a state of war', 'transnational solidarity and conflict', and 'world political system'...are, in my view, all ideal types."(Suganami, 1983: 2365n) More recently, Tim Dunne has observed that theorists of international society "drew from the well of an interpretative background social theory."(Dunne, 1995b: 373) Consequently, "the English school has always stood four-square in the constructivist camp."(Dunne, 1995a: 146 & see also Waever, 1992)

Admittedly, against these suggestions, we must set James Richardson's point of view. Richardson agrees that Bull's concepts look like Weberian ideal types, but argues that "while there are obvious affinities, in so far as [verstehen sociology] emphasises the unique case—the individual person, society, or culture—this is at odds with Bull's primary concern, the procedures by which general propositions about international relations may be established."(Richardson, 1990: 162) However, as was indicated in the above discussion of Weber's theory of the ideal type, whether or not he is right about Bull, Richardson's understanding of Weber seems mistaken here. The point of an ideal type is that it approximates towards the *combination* of the individual and general aspects of concepts together in a single whole, since it involves, as was noted earlier, 'the synthesis of a great many diffuse, discrete, more or less present and occasionally absent concrete individual phenomena, which are arranged according to those one-sidedly emphasized viewpoints into a unified analytical construct'.

Bull characterises his own 'classical' approach as one that "derives from philosophy, history and law, and that is characterised above all by explicit reliance upon the exercise of judgement."(Bull, 1966a: 361) Because of the centrality of judgement, "general propositions about [international relations] must...derive from a scientifically imperfect process of perception and intuition."(Bull, 1966a: 361) Three main points arise from this, which suggest certain affinities between this approach and *verstehen* social theory. First, Bull

denies the usefulness of nomological scientific methods in the processes of concept formation in IR theory: "strictly testable empirical generalisations can be established...but the steps from this to saying something significant about international relations...can be taken only if there is a self-indulgent lapse into the 'classical' style."(Bull, 1972: 259) In other words, scientific method can only be used after, and within a context previously defined by, an initially judgemental and unscientific process of normative reflection. As Bull revealingly characterised the work of the British Committee for the Theory of International Politics, of which he was a leading member: "our discussions reflect the outlook of a former great power and colonial power, and (despite everything) a presently still relatively rich one. We are not accustomed to looking at international relations from the perspective from which most of the world sees it, the perspective of the underdog."(Bull, n.d.: 1) Here Bull is using a typically Weberian formulation: concepts are constructed for a particular group that shares a particular area of historical interest and point of view. As another classicist puts it: "what could this higher ground be, this standpoint for theory, but some rickety platform of our own personal devising for our own personal morality?"(Donelan, 1978: 22) In other words, concept formation in the classical approach depends upon something very alike to Weber's process of evaluative interpretation and appeals to the principle of value-relevance.

Secondly, such normative reflection is not enough for Bull; it must be supplemented with historical analysis. Bull offers four reasons for this claim: it gives a feeling for the singular peculiarity of actors in world politics, it provides a feeling for the temporal sequence of events, it serves a pedagogical function, and it allows general theories to be tested.(Bull, 1972: 255-57) As the previous discussion of the unscientific nature of ideal types shows, the last of these reasons seems rather odd, in view of Bull's acceptance of the role of judgement in concept formation. This indicates, perhaps, that Bull had not completely thought through the logical implications of his argument. Nevertheless, the first point—where Bull identifies actors as 'historical individuals'—is quite consistent with a Weberian approach, and in general these comments show that Bull

recognised the need to combine evaluative and historical interpretation in concept formation.

Thirdly, this raises the question as to how Bull thought that the historical individual should then be analysed. Here, it is important to be clear about the scope of this rejection of scientific methods and advocacy of historical analysis. Bull's argument was directed as much against extreme classicists as against extreme scientists, and he maintains that the classical approach should seek to accommodate scientific methods.(Bull, 1966a: 375)[11] Indeed, it was characteristic of the arguments between classicists and scientists that progress lay "not in rejecting one approach and favouring the other, but in rendering each the servant of the other."(Knorr & Rosenau, 1969: 3; see also, Kaplan, 1969 & Singer, 1969) In other words, while arguing for an essentially evaluative, judgemental process of concept formation, Bull still maintains that scientific, empirical analysis can be carried on within given conceptual structures. In this regard, two points need to be made. First, Bull is silent on the question of the possibility and problems of causal explanation within an interpretive framework, he does not really develop any idea of adequate casuality. Secondly, Bull, along with other like-minded thinkers like Martin Wight, recognised the importance of axiological analysis in going beyond initial evaluative interpretations. For Wight (on Bull's description), international relations theory should be "pursued by way of an examination of the main traditions of thought about International Relations in the past."(Bull, 1991: x-xi) Once again, this is not exactly a perfect methodological correspondence, but it does seem to illustrate a certain affinity with *verstehen* sociology: what are studied historically are the axiological relationships between different systems of values and ethical principles.

As a final illustration of the affinities between Bull's idea of the classical approach and *verstehen* sociology, let us note that Suganami finds in Bull an

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11. For an even clearer statement of this line of argument, see Bull's first draft of the article on the classical approach, presented as a British Committee Paper, which was less polemically entitled: 'Recent American Contributions to the Theory of International Politics'.(Bull, 1965)

aspiration to value-freedom.(Suganami, 1983: 2364) Now, as was argued above, in his earlier writings at least, Weber was really arguing for the principle of value-relevance, rather than value-freedom. When this is recognised, an even stronger connection between Bull and Weber can be identified than Suganami's point that Bull abstains from 'categorical prescriptions'. Bull uses the concept of order to refer to goals of social life that are elementary, primary and *universal*,(Bull, 1977: 5-6) while the concept of world order refers to "those patterns or dispositions of human activity that sustain the elementary or primary goals of social life *among mankind as a whole.*"(Bull, 1977: 20, emphasis added) He then tries to justify his analytical focus on international order not simply on the grounds that it is an empirically demonstrable fact of life, but also on the grounds that international order stands in a relatively close relationship to world order. Thus, international order is significant, for Bull, because it moves us closer towards the universally-relevant goals of world order. In other words, the way in which Bull actually identifies the focus of his study—international order—is through a process of evaluative interpretation that is remarkably similar to Weber's procedure of identifying 'cultural phenomena...which (as we like to think) lie in a line of development having *universal* significance and value'.

For these reasons, it can be concluded that Hoffmann, Nardin and Suganami are correct that Bull's conception of modern international society is an ideal type. One can go further, however, to argue that, even though he makes no formal acknowledgement of the fact, Bull's procedure for constructing this conception is quite close to Weber's own procedure for constructing an ideal type of modern capitalism. In other words, it employs a procedure of evaluative interpretation based on the principle of value-relevance, followed by historical interpretation to reveal the meaning of contemporary phenomena by locating them in the context of the historical development of an ethical system. This assertion will be supported in the next Chapter, when Bull's substantive account of modern international society is examined in more detail.

The identification of the ideal-typical status of Bull's conception of modern

international society leads to two points. First, Bull's historical description of modern international society must logically be a selective abstraction, built on a deliberately unreal connection of phenomena that are adequately or axiologically related, but not related through patterns of determinate causation. Bull's historical account of the nature of modern international society should be treated as part of his overall interpretation of international order. If international order is no longer regarded as relevant (perhaps because it no longer approximates to the universally significant world order), then the associated historical interpretation should be discarded or radically reconsidered, not simply seen as having been superseded by a new 'stage in the development of the world community'.

The second point is that our more systematic appreciation of the Weberian principles according to which, broadly speaking, Bull constructed his interpretation of international order puts us in a position to appraise the way in which Bull used his conception of modern international society to settle contests about the meaning of the concept of international society in the Grotian tradition of thought. Here, the modification of Weber's own theory of concept use introduced in section 3 above will show its importance. What we need to do is look at the way in which contests about the concept of international society were carried on in the 'English school', and see through what means these conceptual disagreements were settled in Bull's favour: whether he settled them through an unarguable appeal to Weberian 'objectivity' and 'general cultural values'; or whether they were settled through assertions that leave room for other reasonable conceptualisations of modern international society to be formulated. This task—the theoretical appraisal of Bull's anarchical society thesis—is taken up in the next Chapter.

Chapter 3

The English School and the Concept of International Society

Hedley Bull's proposition that modern international society has, since around the seventeenth century, been a pluralistic 'anarchical society' of sovereign states was not formulated in a vacuum. Rather, his conception of modern international society was constructed to defend one particular position within a series of disputes about a research programme designed to make sense of contemporary world politics through political philosophical and historical reflection. This research programme was the core around which coalesced what is today generally known as the 'English school' of international relations theory. The purpose of this Chapter is to explore how Bull's 'anarchical society thesis' developed within the English school, and how Bull's arguments changed the way in which the disputes around this research programme, and thus about the concept of international society, were conducted within the school. This argument will be introduced through an account of the contested nature of the concept of international society and a discussion of the moments of evaluative and historical interpretation in the English school.

 Although Bull's work was and is enormously influential, for two reasons it is important not to accord too much independent weight to Bull's anarchical society thesis. First, Bull's arguments were often not especially original in and of themselves. His contribution primarily lay in synthesising theoretical ideas or historical propositions that were already part of the English school's research programme. What was different and special about Bull's work was the way he pulled these elements together into a unified and remarkably compelling thesis ✓ about the character of modern international society and its relationship to world political order. Secondly, the potency of Bull's work was in large part the consequence of a prior formulation of the concept of international society by scholars like Martin Wight, who had constructed the English school's research programme in the first place. Thus, the anarchical society thesis did not really introduce any new ideas about world politics into the English school debates, nor

did it offer up a new conception of modern international society. What it did was to synthesise established theoretical and historical propositions in such a way as to make the idea of an anarchical society of states appear as the only reasonable conception of modern international society on the terms of the research programme adopted by the members of the English school.[1]

To develop and defend this characterisation of Bull's work, this Chapter will make two main points. First, early disputes about the meaning of the concept of 'international society' suggest that it is an essentially contested or contestable concept, on the terms outlined in the previous Chapter. The contest over the meaning of 'international society' was carried on in a rather limited way within the English school, and Bull's ideal-typical representation of the concept proved to be an overwhelmingly compelling intervention in this contest not because it appealed to an 'objectively' significant evaluative interpretation of contemporary phenomena, but because of the structural limitations of the English school's research programme. Secondly, an alternative evaluative interpretation of the element of sociability and order in world politics was proposed within the English school itself by Bull's critics, but it was never successfully developed into a proper ideal type of modern international society, again because of the restricted structure of the school's research programme. The argument will proceed as follows. To provide a basic context for the subsequent analysis of the development of the concept of international society in the English school, section 1 will explain how the concept was used in early international political and legal thought, and will make some general points about the concept's essentially contested character. Section 2 will identify the members of the English school, set out the broad terms of its research programme, and show how this research programme involved rough procedures of evaluative and historical interpretation. The analysis emphasises the restrictions imposed on one particular evaluative interpretation of the concept of international society by the historiographical

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1. As will become clear later, in this respect Bull did make an original contribution through his redefinition of the idea of a Grotian tradition of thought, which he cast in terms of a conception of international society as a society of *states*. To a degree, this was a novel interpretation of Grotian international theory, but otherwise Bull's achievement was more synthetic than innovative.

limitations of the school's research programme. Section 3 will outline the main points of Bull's anarchical society thesis and explain why they were so decisive in the disputes within the English school. Finally, section 4 will conclude by identifying a starting-point for a new research programme, designed to construct an ideal type of modern international society on the basis of the hitherto neglected alternative evaluative position in the English school. Because this will challenge the dominance of Bull's interpretation it will allow for the reconstruction of the Grotian tradition of international theory on the broader terms that it used to have, before it came to be exclusively associated with a rather narrow conception of international society.

§1. International society as an essentially contested concept

We are now so used to the idea that modern international society is an anarchical society of sovereign states that it is hard to appreciate that once this was only one of several different conceptions of modern international society, albeit an especially dominant one. However, in order to understand the role and scope of Bull's anarchical society thesis it is vital to realise that the concept of international society was originally construed in a number of different ways. Recalling the methodological discussion in the previous Chapter, the main contention here is that international society is an essentially contested or contestable concept, and that this was recognised by international relations theorists before the concept came to be definitively formulated by Bull through his anarchical society thesis. In other words, there was a long-standing disagreement about the real meaning of international society, which was a genuine and essential conceptual contest rather than a sign that some users of the concept were either mistaken or confused. In accordance with the account of essentially contested concepts given in Chapter 2, this requires that disagreements about the concept of international society were possible because that concept is appraisive and complex, and hence that the disagreements were based on different reasonable interpretations of the concept. Furthermore, there must also have been a 'common core' or an 'original exemplar' of international society, to which all of these different interpretations

referred, and which provided a shared foundation upon which their mutual recognition and strategic interaction was established. First, the evidence for the disputed nature of the concept of international society in early international political and legal thought will be presented, then the concept's common core will be identified, and finally its appraisive and complex character will be illustrated.

Disputes about the concept of international society in early international theory

At first glance, there seem to be good grounds for supposing that the concept of international society is likely to be a contested one. As Wight observes, "Men have been arguing for centuries about what the state really is, what its purpose is, how it holds together and why it should hold together; there is far more scope for argument about the nature of the much more shadowy and insubstantial entity called international society."(Wight, 1991: 30) Wight himself analyses this disagreement in terms of three different traditions in 'international theory': Realism, Rationalism and Revolutionism. Each tradition has a distinctive broad answer to the question of the meaning of international society, and this difference of opinion is perfectly illustrated by their various ideas about the membership of international society. For Realists, "it is states that are the subjects of international law, and states alone are the units of the international juridical community."(Wight, 1991: 36, emphasis omitted) For Rationalists, "both states and individuals are capable of being members," while for Revolutionists, "the only true international society is one of individuals."(Wight, 1991: 36-37 & 45 & see Wight, 1966b: 101-102) As Wight sums up, "Are kings or peoples or individuals the members of this ambiguous society? exclaims the positivist in irritation. All were. Nor was this tradition entirely eclipsed by the orthodox doctrine of state personality."(Wight, 1966b: 102)[2]

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2. It should be acknowledged that Wight also frequently makes comments equating international society more exclusively with the idea of a society of states, and this was probably the major interpretation even before Bull.(see, for example, Wight, 1966a: 20-21) Nevertheless, the point stands that Wight acknowledges a *range* and *flexibility* in the different uses of the concept that is considerably ✓ reduced by Bull's narrower and more state-centric distinction between pluralist and solidarist

When one goes on to examine the three traditions' ideas about the basis of international legitimacy, it becomes even clearer that the meanings they attach to the concept of international society differ from one to the other, reflecting their different conceptions of the state of nature.(Wight, 1991: 30) For Realists, with their Hobbesian view of the state of nature, the only possible source for binding obligations in international society is the will of the member states themselves.(Wight, 1991: 36) This leads Realists to see the norms and rules that govern behaviour in international society largely as more or less hypocritical expressions of states' self-interest. While Rationalists recognise the importance of state volition, they prefer to regard international society as modelled on the Lockean state of nature, and hence as governed by the law of nature, manifested in God's will or human reason. Thus, the Rationalist argument "offers a different answer to the question about international society. Given this view, international society is a true society, but institutionally deficient; lacking a common superior or judiciary."(Wight, 1991: 39) Revolutionists see the essence of international society neither in the will of states, nor in the Rationalist version of a constitutionalist Lockean social contract. Instead, the basic Revolutionist claim is that "international society is none other than the community of mankind."(Wight, 1991: 39) To be sure, this description is highly aspirational; "'is' here means 'is essentially', 'ought to be' or 'is destined to be'".(Wight, 1991: 39) On this view, the mistake of the Rationalists is to suppose that there is no more to international society than the phenomenal appearance of an 'institutionally-deficient quasi-society', and to ignore the deeper bonds between human beings that really constitute the essence of international society.

Wight's taxonomy of the three traditions might seem to be rather a flimsy foundation upon which to build an authoritative account of an essential contest about the meaning of the concept of 'international society'. For example, it might be argued that Wight's scheme lacks weight since it was only ever a device for presenting the relevant material in the form of lectures; Wight himself did not

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conceptions of international society.(Bull, 1966c)

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prepare it for publication and it cannot be relied on as a fully worked-out treatment of the literature about the concept.[3] Against this objection, however, one could reply that, although Wight presents his scheme as a classification of international political thought, when he talks about these three different conceptions of international society he is really just using new labels to describe three old and well-established branches of international *legal* thinking. The ✓ Realist, Revolutionist and Rationalist conceptions of international society correspond to the classic tripartite distinction between positivist, naturalist and 'eclectic' theories of international law.(see, for example, Hershey, 1912: 59)

The interdependence of theories of international law and society is hardly surprising, when we remember that most accounts of international law begin from the maxim *'ubi societas ibi jus est'*: "Without society no law, without law no society."(Westlake, 1894: 3) This maxim indicates that any theory of the sources, content and enforcement of international law necessarily requires a prior conception of international society.(see, for example, Lauterpacht, 1970b: 28) Clearly, however, this leaves a great deal of scope for different accounts of what it is about society in world politics that makes it possible to speak of the existence of law. Furthermore, the existence of at least three different accounts of where international law comes from, what its guiding principles are, and how it actually affects international conduct can be taken as compelling evidence that there is a protracted disagreement about the concept of international society. These disputes about the nature of international law must, at root, be disputes about the nature of international society. Wight's contribution was to show how these different conceptions of international society sprang from, and contributed to, more general perspectives on international politics.[4]

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3. This objection was put to me by Nicholas Wheeler, as a discussant to my paper at the *Millennium 25th Anniversary Conference* panel on 'International Society'.

4. Showing how Wight's account of the Realist, Rationalist and Revolutionist conceptions of international society is related to these different branches of international law anticipates a further possible objection to my claim that international society is an essentially contested concept. As we saw in Chapter 2, W.B. Gallie's account of conceptual contests located such disputes *within* a tradition; Wight's account of a conceptual dispute *between* traditions might therefore seem not to be evidence of a proper conceptual contest (I would like to thank Joao Marques d'Almeida for making this point

The common core of the concept of international society

Even if it is agreed that different conceptions of international society do exist in international political and legal thinking, there are still two possible explanations for this phenomenon: either it could be a genuine conceptual contest about the proper use of the concept, or it could be that some people are using the concept of 'international society' incorrectly. Perhaps legal positivists, eclectics and naturalists are talking about different concepts, for which they are sloppily using the same word, thus creating conceptual confusion. If this latter possibility is to be ruled out, there must be some common core concept of international society to which all of these different uses refer.

One can construct a common core concept by negatively comparing the concept of international society with an alternative concept. Gallie himself uses this kind of procedure when trying to ascertain the original exemplar for the concept of art.(Gallie, 1964: 170) One option here is suggested by Chris Brown's summary of the distinction between the concepts of international society and international system: "An international society differs from an international system because it is a form of order which is normatively based, and not simply the outcome of an interplay of forces."(Brown, 1995: 186, emphasis omitted) What the concept of international society does, in other words, is to depict conduct in world politics as rule-governed and meaningful. At this point, it is helpful to recall that the different conceptions of international society we identified were each articulated within branches of international legal thought. What the concept of international society does is isolate those particular phenomena in world politics that are evidence of norm or rule-following behaviour. Obviously, this leaves open the question of the precise content of the rules in question. This makes the link between a *verstehen* approach, the concept of international society and the concept of order in world politics especially clear. To the extent that world

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especially clear to me). However, if it is true that Wight's three conceptions of international society are contained within a broad tradition of speculation and debate about the nature of international law, I submit that this objection loses a great deal of its force.

definition. However, this raises the question of the arguments that can be used in support of the claim that this conception is the *proper* use of the concept of international society; it cannot simply be assumed.

The valued achievement expressed by international society

Let us turn to the other features of an essentially contested concept: appraisiveness and complexity. Here, we can begin by recalling that a concept is appraisive if it 'describes from the moral point of view', and as Connolly noted, if the normative element is taken out of such concepts, there will be little point in using them. The use of the concept of international society does indeed seem to be contingent upon the need to describe international relations in normative terms. For example, James Mayall observes that the concept seems to have "fallen into disuse" at a time "When so much theorising has been concerned to avoid explicit argument of a normative or moral kind".(Mayall, 1978: 122) Further evidence for the broadly appraisive character of 'international society' can be found in Alan James' argument that, while it lacks some of the strength of the idea of community, the idea of society nevertheless has a certain warmth and intimacy, which he contrasts favourably with the "rather chilly, distant, and mechanical resonance" of the concept of 'international system'.(James, 1993: 280-81) Admittedly, talk of the appraisiveness of a concept at such a general level will always seem a little vague. The appraisiveness of international society is, however, more clearly confirmed when we ask what reasons people give for using the concept of international society. Then, it can be seen that people typically do use the concept of international society in order to describe a valued achievement.

As we have already seen, one reason for valuing international society is that it is seen to provide order in an otherwise disorderly world. This is perhaps the most widely celebrated aspect of international society, which is clearly appraisive since it makes order in world politics "the achievement of international society".(Vincent, 1990: 58, emphasis omitted) It is also quite consistent with the

idea that the core concept refers to the norm-governed character of international relations. We will recall that, when we unpack this idea of order in world politics even as it is used only within Bull's conception of international order, it is easy to see that the order supposedly achieved by international society consists of many different components: the 'preservation of the society of states itself', the protection of state autonomy, peace, the limitation of violence, keeping promises and stability of possession.(Bull, 1977: 16-19) Even while Bull's list is not exhaustive, it clearly indicates that, even if international society is valued only because it represents the achievement of order between states, we can still identify a number of different reasons why it is so valued. In other words, the concept of international society, even on this limited formulation, is both appraisive and complex.

If we broaden our discussion to embrace other aspects of Wight's account of disputes about the concept, we can see how other components of international society could be said to constitute part of its valued achievement. One such idea would be the propagation of 'Western values' of liberal tolerance, political rights or justice. For example, such a position comes through quite strongly in Herbert Butterfield's emphasis on the importance of the institutions of *cuius regio eius religio* and the balance of power in securing toleration in early modern European society.(Butterfield, 1959, 1962, 1965 & n.d.) Alternatively, one could plausibly claim that 'Western values' do not only concern toleration; rather, they are primarily concerned with "the development and organization of liberty, especially in the form of...constitutional government".(Wight, 1966b: 89) Notably, in this view, instances of intervention are quite consistent with international society, either because "the independence and separateness of states is less important than the homogeneity of international society"; or because "of the duty of fellow-feeling and cooperation."(Wight, 1966b: 113 & 116) This last claim begins to lead towards a slightly different reason for valuing international society, which would be emphasised within a cosmopolitan Revolutionist conception: the achievement of 'international society' in furthering the realisation of justice and human dignity. This is an achievement which, in Antonio Cassese's view, international society

has come closer and closer to realising through the United Nations Charter system of international law.(Cassese, 1986: 399)

Although this has not been a comprehensive discussion of possible reasons for valuing the achievement represented by international society, it is sufficient to demonstrate that the concept of international society is both appraisive and internally complex, in the sense that it describes an achievement that is valued for a number of different reasons. Thus, to sum up the argument of this section, there existed, at least in early international political and legal thought, a number of different interpretations of the concept of international society. The disagreement between these interpretations can be regarded as evidence that the concept is essentially contested, because it concerned a common core (norm-governed behaviour) that was both appraisive and internally complex. Thus, recalling Andrew Mason's words (cited in the previous Chapter), one can reasonably disagree over how much weight to attach to the various elements that go to make up the achievement accredited to international society.

§2. The English school and its research programme

These early debates in international political and legal thought notwithstanding, the concept of international society is now generally associated with the English school, and it is nearly always understood to refer exclusively to the idea of a society of states. This tendency has become so pronounced that international relations theorists currently feel compelled to use concepts like 'global civil society' or 'world society' to describe arrangements in world politics that look remarkably like the original Rationalist and Revolutionist conceptions of international society described by Wight.(see; for example, Shaw, 1994; & Lipschutz, 1992) To explain how this change in the usage of the concept of international society has come about we need to appreciate the way in which the members of the English school constructed their research programme, and then we can see how and why Bull's anarchical society thesis was effectively able to win the argument in the English school about the meaning of the concept of

international society.

Identifying the English school

To begin with, it will be helpful to define precisely what the 'English school' was, who its members were, and what characteristics made them describable as a 'school' of thought. The idea of an English school was popularised by Roy Jones as a way of identifying a particular current in mainstream international relations theory, based on the London School of Economics and mainly interested in the idea of an international society.(Jones, 1981) Jones named the principal members of the school as Charles Manning, Wight, Bull, Fred Northedge and Michael Donelan, and he grouped these theorists together as a school in order to criticise their holism, illiberalism, lack of attention to economic issues and unreasonable hostility to non-traditional methodologies. Despite Jones's polemical attack, the idea of an English school has become widely accepted, even by students of international relations who are more favourably disposed towards the approach criticised by Jones. The first point that needs to be established concerns the precise grounds upon which this school of thought coalesced: what attributes mark out the English school? Perhaps because his intentions were largely destructive, Jones did not pay a great deal of attention to the question of the exact criteria by which a school of thought can be identified, nor to the logical basis of his claim that the relevant thinkers actually did constitute a school. Consequently, Jones gave little indication of the general attributes that might be associated with an English school, as opposed to the specific features that he wanted to criticise, like a lack of attention to economics. More recently, however, the issue of the foundation of an English school has been the focus of a brief exchange between Sheila Grader and Peter Wilson.

Grader argues that "a 'school' could be expected to acknowledge certain common philosophical assumptions which relate to the study of international relations".(Grader, 1988: 31) Her main intention is to deny that the relevant theorists share sufficient philosophical assumptions that qualify them as members

of a school: "Their views of politics, and its relation to history and philosophy...show their individuality.... [E]ach scholar would fit differently into the three categories of philosophical, empirical and normative, which...[are] relevant to the understanding of a variety of approaches."(Grader, 1988: 35) Against Grader's position, Wilson contends that Grader's exploration of the broad methodological approaches of the theorists, while relevant to their various general attitudes towards international relations, should be distinguished from the idea of a school, because "a 'school' refers more specifically to substantive arguments."(Wilson, 1989: 52) Following this different idea of the criteria by which a school of thought is identified, Wilson points to four substantive positions within theoretical debates on which Manning, Wight, Bull, Northedge and Donelan agreed: the ordered nature of the state system, the existence of a normative framework through which international relations are ordered, anti-utopianism and hostility towards behavioural and scientific approaches.(Wilson, 1989; & see also Suganami, 1983) Thus, according to Wilson, these scholars can fairly be described as constituting a school of thought.

It is unfortunate that both Grader's and Wilson's discussions of the logical conditions for a 'school' are so abbreviated, and that relatively little attention is paid to the general features that constitute academic schools of thought. For instance, Grader accepts, with important qualifications, that the theorists in question share a general focus on 'international society', but she asserts that this "lacks the philosophical legitimacy to found a school."(Grader, 1988: 38) Unfortunately, this raises a key question: what constitutes 'philosophical legitimacy'; and, if attention to the concept of 'international society' is insufficient to found a school, how much attention to which concepts would be sufficient? Grader never properly answers this crucial question. Wilson's criterion, though, is equally vague: he gives no indication of a general process by which we can select the 'substantive arguments' upon which a school is based, and thus, like Grader, begs a crucial question: how strong an agreement on which substantive issues would be sufficient to found a school? It is clear that, if we are to clarify the intellectual context that structured Bull's conception of modern international

society, then we need a more detailed account of the basis of the tradition of speculation in which Bull was a participant than can be provided by either Grader's or Wilson's criteria. Unfortunately for the purposes of our enquiry, neither of the ideas of shared 'philosophical assumptions' nor common positions in 'substantive arguments' is detailed enough to enable us to make a clear assessment of the dynamic tradition shaping Bull's intentions in developing his particular conception of international society, and neither helps us to explore the way in which Bull developed his account of modern international society by simultaneously drawing on and challenging aspects of the work of scholars who were self-consciously involved in similar projects.

Instead of these broad, unspecified categories of 'philosophical assumptions' or 'shared substantive arguments', a more rigorous account of the logical conditions for the existence of a school of thought could be based on four requirements and would give us a great deal more analytical purchase on the relationship between the English school and Bull's anarchical society thesis. First of all, the idea of a school implies a degree of *institutional continuity*. The most obvious example of this is the Frankfurt school, where the identity of the school was quite literally constituted by a group of writers' shared membership of a particular institution. That a group of theorists formally belong to an institution seems to be a fairly straightforward requirement. It is especially important when we are considering the initial establishment of a school, before a clear, shared intellectual position has been fully established, but is more dispensable once such a coherent 'manifesto' has been worked out, and when school membership can arguably be gained by signing up to a particular intellectual programme, as discussed below. Of course, this requirement could easily be accommodated by Jones's original conception of the English school, with its institutional focus on the LSE.

Secondly, there is a lot of sense in Wilson's point that the adoption of *common positions in substantive arguments* is an important element in the establishment of a school of thought. However, it is important to qualify this

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general formulation in two ways. First, such interventions in substantive debates should be made in an inter-connected manner. It would not do to identify a school because a group of academics happen to defend similar positions on a range of issues, even if they defend those positions for very different reasons, or with very different goals in mind. To talk about a school, agreements on substantive arguments should be made with the deliberate intention of *sustaining a joint position* against rival arguments. As a second qualification, the range of issues on which members of a school make interventions should be carefully circumscribed. It would be odd to group theorists in a school if they worked in a wide variety of different areas, some of which overlapped and where there was common ground, but in some of which they expressed quite different interests or points of view. To speak of a school implies that the members of the school have roughly *similar hierarchies of interest*, and regard certain kinds of substantive arguments as being more important than others. This helps to identify which agreements are important, and which are irrelevant, when particular theorists agree on some issues and disagree on others, thereby lending more specificity to Wilson's category of agreement on 'substantive arguments'.

This leads into the third requirement, that a school should contain certain characteristic *themes of internal dissension*. The point here is that a school is not only constituted to defend a particular position against various opponents; a school is also established when a group of theorists regard a set of questions as being of primary importance, and when they share sufficient common ground that they regard an on-going debate between themselves on this issue as one of the most useful and productive academic activities available to them. This point addresses Grader's challenge that the members of the putative English school each have different conceptions of international society.(Grader, 1988: 38) Grader might be correct on this point, but this difference would not prevent them from constituting a school. On the contrary, it is highly significant that the various theorists in question are engaged in developing variations on a common theme: in a sense, this is one of the most distinctive characteristics of a school of thought.

Finally, the members of a school should self-consciously regard themselves as *sharing an intellectual project*: for theorists to constitute a school, they must demonstrate a common unity of purpose. This raises a problem for Jones's and Wilson's conception of the English school, because it is hard to see Manning, Wight, Bull, Northedge and Donelan as obviously engaged in any common projects or shared research activities. They do not self-consciously divide academic tasks between themselves, and they do not explicitly set themselves any generally applicable goals or research agenda. To be sure, they are all interested in theorising modern international society, but they do not regard theorising international society as a shared endeavour, they are not working towards any commonly agreed focus, and this decisively weakens their credentials for inclusion together in a school.[5]

This rather long digression into the conditions of identifying a school of thought has been worthwhile, because it allows us to make a much more precise assessment of the intellectual context within which the earlier contests about the meaning of international society were carried on after 1945, and within which Bull shaped his conception of international society. The key point here is that the claim of Jones's selection—Manning, Wight, Bull, Northedge and Donelan—to be a school of international relations theory is seriously undermined. These theorists possess some of the relevant attributes, like institutional continuity or agreement on key substantive issues, but they lack others. Crucially, they are not self-consciously engaged in a shared intellectual project and their discussions do not appear to exhibit characteristic themes of internal dissension. However, just because Jones' formulation is unsatisfactory does not deny the usefulness of placing Bull within a school of thought about international relations. It is possible to identify a group of theorists that possess all of these attributes, of which Bull is a member, and which is of crucial significance for gaining a proper understanding of Bull's conception of international society.

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5. This point would apply, a *fortiori*, to those representations of the school which include theorists from further afield, such as E.H. Carr.(Buzan, 1993) Certainly, Carr was influential in the thinking of the English school, but he was not a member of the school.

The group that most obviously meets the relevant criteria for being a school of thought is the *British Committee for the Theory of International Politics*.(Butterfield & Wight, 1966; Butterfield, 1975: 5-6; Watson, 1992: 2-7)[6] The British Committee, which first met in 1958, was a parallel project to the (similarly endowed) American *Rockefeller Committee*, which most notably included Kenneth Waltz among its members. The chairmen of the Committee were, respectively, Butterfield, Wight, Bull and Adam Watson. These four would, therefore, form the core of the English school so defined. Other important Committee members were Michael Howard, Geoffrey Hudson, Maurice Keens-Soper, Donald Mackinnon and Desmond Williams. The Committee met on a regular basis over an extended period of time, giving it an institutional solidity and consistency that is not shared by, for example, one-off events like the 1969 Aberystwyth conference. As well as the well-known edited collection *Diplomatic Investigations*, important monographs by Wight and Watson were also based upon contributory papers to the British Committee.(Wight, 1977 & Watson, 1992) The members of the Committee were also united to defend particular approaches against rival positions, especially the classical approach described in Chapter 2. As we will see in a moment, they had similar hierarchies of interests in their work on international relations, especially concerning themselves with moral philosophical and historical questions. In addition, certain key questions were the subject of recurring disagreement within the Committee; and finally the Committee members did, at least initially, set themselves shared intellectual tasks, especially in the comparative historical study of international relations. Thus, the Committee satisfies the four conditions for being a school of thought outlined above.

The research programme of the English school

This might seem to be labouring a rather trivial point, since to identify the English

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6. The cited works offer good introductions to the work of the Committee. It should be noted that the idea that the English school can be represented as the British Committee is also suggested by Nick Rengger and Chris Brown.(Rengger, 1992; Brown, 1992)

school with the British Committee involves only marginal changes in personnel and very few new insights into the importance of certain texts in the English school literature. The main change in these terms is probably the exclusion of Manning and Northedge from the English school, and a much increased emphasis on the importance of Butterfield and Mackinnon in the development of the school. However, although it only leads to a minor change in the personnel of the English school, defining the school as the British Committee offers a significant advantage in terms of clarifying the *research programme* of the school.

The strength of the Committee's shared agenda should not be overestimated, but there was a clear effort to establish a sense of unity out of the Committee members' diverse interests. Williams made clear at the outset of the Committee's work that the lack of identical viewpoints should not obscure the sense of a shared undertaking. He points out the areas which the Committee was, and was not engaged in.

> In my view the committee did not come together either for the purpose of arranging an agreed outlook on international relations in general or for the purpose of merely discussing current affairs. Its real function was to bring together a group of people with a common, though not a similar, interest in international relations from an historical and theoretical viewpoint. It is quite likely that, in the course of time, a certain harmony of attitude will develop and that, in fact, we shall reach a certain unity of purpose amid the diversity of viewpoints. In practice this is what normally happens, however wide the diversity.(Williams, 1959: 39)

In practice this is what did indeed happen: soon the Committee members felt themselves to be engaged in a coherent project. As Wight construed it in 'De Systematibus Civitatum', a paper originally presented to the Committee in 1967.

> My aim in the present paper is to offer some notes towards clarifying the idea of a states-system, and to formulate some of the questions or propositions which a comparative study of states-systems would examine. Some of them may be beyond the limits of our enquiry; many may be wrongly formulated. But they illustrate the kind of issue which I believe we should discuss

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systematically.(Wight, 1977: 22)

Therefore, the Committee "decided to make a prolonged study of States-Systems in various parts of the globe throughout the ages,"(Butterfield, 1975: 6, & see also 1965) with the initial intention of producing a common work on the subject, much in the manner of *Diplomatic Investigations*. Accordingly, "the committee set out to compare the historical evidence, and see what the systems in various parts of the globe have in common and how they differ."(Watson, 1992: 3) By the early 1970s it was quite clear that the task was too ambitious for a single volume (as noted in a letter of the British Committee in 1971) and so the responsibility for producing the work was left to the individual members to write separate treatises, with the encouragement and frequent assistance of the other members of the Committee.(Butterfield, 1975: 6; Watson, 1992: 2-5) The separate production of Wight's *Systems of States* and Watson's *The Evolution of International Society* reflect this realisation of the scale of the undertaking, and the individual parcelling out of an essentially communal task.

The school's research programme was not, however, exhausted by this monumental comparative-historical task. Wight also posed a key question that reveals their sensitivity to the normative issues raised by this choice of historical programme: "For what reasons are we inclined (as I think we probably are) to judge a states-system as *per se* a more desirable way of arranging the affairs of a great number of men than the alternatives, whatever these may be?"(Wight, 1977: 44) On this crucial normative question, although the school was principally interested in the modern states-system as an historical individual, it also was more generally interested in the meaning and role of 'Western values' in international relations.(see Wight, 1966b) This opened out the school's evaluative interpretation of modern international relations in ways that extended beyond their more restrictive historical focus on states-systems, and provides some grounds for believing that the school contained important evaluative disagreements about the concept of international society, albeit in a slightly restricted form compared with the earlier debates in international political and legal thought. Therefore, the

research programme that the school adopted embraced both evaluative and historical dimensions, which centred on the meaning of 'western values' and on an historiographical focus on the European states-system as a mechanism ensuring order and the toleration of difference in international politics.(see Dunne, 1995a: 131-32)

Evaluative interpretation in the English school: Grotian dualism

The idea that the members of the British Committee should concern themselves with the study of 'Western values' was very forcefully suggested by Butterfield in an early Committee paper. He argued that the major issue of the time, the Cold War, "has of necessity to be conducted henceforward as a war of ideas and ideals."(Butterfield, 1959: 15) As he saw it, "the stage is now set for a conflict of ideals in the world at large", and one in which the basic issue was the international spread of Western liberal-democratic values.(Butterfield, 1959: 12 & 17) Obviously, this made it important for the Committee to understand the meaning of 'Western values' and their place in international relations.

Wight provided a catalogue of those 'Western values' which he believed to be relevant to modern international relations: individual positive liberty, toleration or open-mindedness, constitutionalism, moderation, resistance and responsibility or prudence. (Wight, 1966b: 88, 89, 91, 122 & 128) In a sense, this illustrates the breadth of different evaluative interpretations possible in the English school. He seems to place most emphasis on the fact that "it is a characteristic of medieval and modern Europe that...it has cultivated [the] middle ground, and developed the conception of a political morality distinct equally from personal morality and from *Realpolitik*."(Wight, 1966b: 127) This middle ground rejects appeals to individual moral sentiment or articles of faith, and yet it nevertheless "upholds the validity of the ethical in the realm of politics", making, in effect, an "accommodation between moral necessity and practical demands."(Wight, 1966b: 128) This understanding of 'Western values', which is both tellingly different from *Realpolitk* and echoes E.H. Carr's earlier influential account of the need for a

balance between realism and utopianism,(Carr, 1946) is very closely associated with Wight's conception of the Rationalist tradition, which he also saw to be concerned to occupy the 'via media' in international relations theory, between the Revolutionist and Realist traditions, balancing the Revolutionists' moral sentiment with a characteristically Realist awareness of the role of power politics.

Therefore, in elaborating this initial normative interest in 'western values' in international relations, Wight was, to a degree, associating the English school with the Rationalist perspective on world politics, and locating their enquiry within the 'Grotian tradition' of speculation about world politics, including Grotius and "his offspring and descendants among Grotian writers on international law, together with Hooker, Althusius and John Locke, and the Founding Fathers of the American Republic, at least Washington, Madison and Hamilton, to say nothing of Jefferson."(Wight, 1991: 15) Through this rough affinity between 'Western values', 'Rationalism' and the 'Grotian tradition', one can identify the terrain on which the normative debates within the English school were prosecuted. Although it was not so broad as the original canvass of discussions on the concept of international society, this terrain nevertheless left plenty of room for disagreements because, as Wight himself remarked, "In Grotius's description of international society there is a fruitful imprecision."(Wight, 1966b: 102) This imprecision occurs as the result of the bifurcated purpose to which Grotius' political theory is dedicated. In the apt phrase of Richard Tuck: "Grotius was both the first conservative rights theorist in Protestant Europe and also, in a sense, the first radical rights theorist."(Tuck, 1979: 71) This dualism in Grotius's thought will be more fully explored in Chapter 4; for now, we are merely concerned with the way in which this dualism was played out in the English school, largely through a disagreement between Bull, Butterfield and Mackinnon.

Bull's contribution to this debate will be reviewed in more detail in the next section, since his account of the Grotian tradition forms a crucial element in his anarchical society thesis. Here, it will suffice merely to observe that Bull's conception of Grotian 'solidarism' offers a rather statist perspective on Grotian

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thought, arguing, for example, that "The central Grotian assumption is that of the solidarity...of the *states* comprising international society, with respect to the enforcement of the law."(Bull, 1966c: 52, emphasis added) As will be argued later, this is not a misreading of Grotian theory, but it is a partial account. While acknowledging some of the more 'Janus-faced' characteristics of Grotius' approach, for example in his discussion of the importance Grotius attributed to natural law or the status of individuals as subjects of international law,(Bull, 1966c: 67-68) Bull's account places a clear emphasis on the absolutist tendencies in Grotius' theory. This leads Bull, despite an acknowledgement of the significance of the Dutch Revolt as a political context for Grotian theory, to suggest that, "Grotius, in his view of the relationship between man and the state, was an 'absolutist' or 'Hobbesian'. The subjects of the state, he says, have no right of rebellion by natural law."(Bull, 1992: 85)

Among the members of the English school, Butterfield and Mackinnon were more sensitive to the liberal and republican elements in Grotian thinking. The cornerstone of this reading of Grotius in the English school was Hirsch Lauterpacht's celebrated earlier interpretation of Grotian international political thought. Lauterpacht identified no less than eleven components of the Grotian tradition of thought, of which the main elements from a liberal or republican perspective were the independent role of natural law and the law of nations, the analogy between states and individuals, the rejection of reason of state as the basis for political morality, and the assertion of the rights and freedoms of individuals.(Lauterpacht, 1946: especially 19-51) On the first point, Lauterpacht notes that Grotius combines together natural and positive themes, in the sense that "though a great deal of international law proper rests on consent, much, but not all, of it follows from the precepts of the law of nature."(Lauterpacht, 1946: 21) On the second point, Lauterpacht argues that the state-individual analogy means that "The individual is the ultimate unit of all law, international and municipal, in the double sense that the obligations of international law are ultimately addressed to him and that the development, the well-being, and the dignity of the individual human being are a matter of direct concern to

international law."(Lauterpacht, 1946: 27) With regard to the rejection of reason of state, Grotius's attitude was, according to Lauterpacht, one of "a challenging absence of recognition", in the sense that Grotius quite simply ignored the "flood of books and pamphlets on the 'Reason of State'" then current.(Lauterpacht, 1946: 30) Finally, with regard to the fundamental rights of individuals, Lauterpacht notes that "behind [Grotius's] facade of the general disapproval of the right of resistance there lay qualifications so comprehensive as to render the major proposition theoretical."(Lauterpacht, 1946: 45)

Picking up on some of these themes, Butterfield argued that the concepts of Christendom and ultimate individual responsibility were central to Grotian theory, rather than the assumption of solidarism *between states*. Butterfield argued that "those who hold that the development of *etatisme* has been responsible for some of our evils may feel that these two aspects of Grotianism need revival rather than suppression."(Butterfield, 1962: 12) He offered a plaintive, but nonetheless pointed, comment on Bull's rendition and criticism of the Grotian conception of international society. "When thought gets lost in abstract nouns and pretentious collectivities, I sometimes feel that we might find our way back to sanity if we could reduce all questions to their simplest terms, doing our thinking on the basis that nothing save human souls really counts or really exists in this world."(Butterfield, 1962: 14)[7] Mackinnon's contribution to this debate was more sustained than Butterfield's, and engaged more systematically with the distinction between natural law and natural rights, which (as Tuck shows) is central to Grotius's contribution to the radical branch of early modern European rights theory. Although Mackinnon did not acknowledge this as connecting directly to the dispute over the Grotian conception of international society, we can read Mackinnon's work as an attempt, by proxy, to intervene in the debate from the perspective of a liberal defence of the importance of natural rights.(Mackinnon, 1966) Immediately, we have moved towards the radical elements of Grotian political theory: "A natural right is a right that men claim to be theirs as men; they

7. It may be interesting to compare this comment with Bull's more solidarist remarks in the Hagey lectures, cited in Chapter 1.

demand recognition of their right to subsistence or freedom to associate, not as citizens...but as *men*."(Mackinnon, 1966: 80, emphasis original) This is, as Mackinnon argues, both individualist and naturalist, and implies a liberal (*i.e.*, voluntarist) conception of political obligation in international society. In particular, Mackinnon calls for a liberal theory of political obligation in international relations which, "must engage with the very difficult question of the individual's justification in challenging and indeed resisting decisions in the field of international relations, made by the executive."(Mackinnon, 1964: 7) In other words, Mackinnon in effect argues for a radical version of Grotian natural rights theory as the basis for a conception of international society constructed from a liberal, or at least individualist evaluative perspective, which would justify individual resistance against sovereign authority. Mackinnon's view of political obligation, resistance and natural law in international society might be called the apogee of solidarist Grotian thinking within the English school.

This debate could be seen as the result of a lack of clarity over how to understand a difficult and often contradictory thinker. This dualism derives from Grotius's articulation of two different political projects at different times in his life, for quite understandable political and personal reasons, and it creates the possibility of constructing the concept of international society from two very different evaluative perspectives. One of these would be consistent with individual rights, a republican conception of political community and a theory of obligation which includes a strong right of resistance, á *la* Mackinnon. The other is consistent with the idea of a society of externally absolutely sovereign states, aware of the need to account for state interest and deeply skeptical of the standing of individuals, á *la* Bull. Within the English school debates about the meaning of 'western values', Rationalism and the concept of international society were initially constructed along these lines. The former evaluative perspective was already, however, handicapped by the need to appeal to Grotius as a key thinker, since his is an early, weak and imperfect account of voluntarism or resistance theory compared with, for example, Locke's or Jefferson's. For it to be fully developed, it would have been necessary to give an account of the nature of

modern international society of equal sophistication and clarity to Bull's 'anarchical society'. This was made almost impossible by the second aspect of the English school's research programme: its attachment to Rankean historiography, and hence to the significance of the states-system as the institutional basis for order in modern world politics.

Historical interpretation in the English school: the modern states-system

As we saw earlier, the major historical task that the English school set itself was the comparative study of states-systems. This choice was informed by the work of the 'Gottingen school' or German 'Historical school', and was mainly carried on by Wight and Watson. Their focus here accorded a unique significance to the development of the continental European states-system. The idea of a 'states-system' was the basic analytical category that they employed, and the further explication of this system was the main goal of their historical research. It must be admitted that some of Wight's early work on juridico-constitutional developments in the British Empire and Commonwealth did not share this focus, but this seems to have played relatively little part in his work for the Committee.(Wight, 1946, 1947, & 1952) Watson gives an unequivocal statement of the goal of this project: "to bring [Heeren's *Handbuch der Geschichte des Europaeischen Staatensystems*] down to the present."(Watson, 1987: 150) Their project was, therefore, guided by the ways in which the Gottingen historians like Alexander van Heeren reworked Enlightenment universalist histories in favour of an historicist emphasis upon the pluralistic and power-political features of the modern European system.

In trying to identify the origins of the modern European system, Heeren attached a considerable importance to the Peace of Westphalia because he saw the Peace as "settling the leading political maxims" according to which the "subsequent policy of Europe" was conducted.(Heeren, 1873: 103) In particular, these maxims were embodied by the German constitution clarified in the Westphalian Treaties, which established the independence of the German states

with respect to the Holy Roman Emperor and thus helped to make the balance of power a principal object of state conduct.(Heeren, 1873: 101-103) The result of his emphasis on the independence of the German states under the Westphalian Treaties was that the "most important"(Heeren, 1873: vii) feature of modern European history came to be seen as the interaction of states in a system characterised by "*internal freedom*; that is, the stability and mutual independence of its members."(Heeren, 1873: 5, emphasis original)

In light of his fascination with the independence of seventeenth-century German principalities, it is perhaps understandable that Heeren's account of modern European history was profoundly hostile to, and dismissive of, republican ideas and institutions. This attitude towards republicanism was integral to his understanding of the European states-system, because he used the supposed predominance of monarchical institutions to argue that "the management of public affairs became more and more concentrated in the hands of princes and their ministers, and thus led to that cabinet policy which particularly characterizes the European states-system."(Heeren, 1873: 7) One can see Heeren's anti-republicanism most clearly in his treatment of the international role of the United Provinces of the Netherlands, especially in his assertion that Dutch republicanism "could tend to the propagation of no new ideas, and most certainly of no republican enthusiasm in the rest of Europe."(Heeren, 1873: 64) On this point, it is striking that Heeren does not pay proper attention to the role of republican ideas in the Dutch Revolt, the English civil war or the Glorious Revolution. Furthermore, Heeren blandly observes that the political arrangements of the North American colonies "were united with a considerable leaven of republicanism, which the state of society in these colonies naturally produced."(Heeren 1873: 116) He makes no connection between the republican character of colonial government and the existence of powerful European colonising regimes of a similar political disposition.

The lasting significance of this historiographical assumption lay in its implied valuation of the development of the European society of sovereign states

and balance of power diplomacy as the key mechanism of international order in the eighteenth century. This was predicated on three classically Rankean propositions: that Europe held predominance in the universal history of mankind since 1492; that European history between 1492 and 1798 could essentially be viewed in terms of the development of the modern state; and finally, that these European states formed a society, based on common culture, religion and moral outlook.(Butterfield, 1955: 110-111) The second and third of these were especially crucial to the further development of the English school's historical conceptualisation of modern international society. The historiography that the English school adopted therefore compelled a focus on the juridico-constitutional history of the absolutist, territorial state as the basis for the construction of the European, and subsequently international, society, leading to the basic proposition that "Among the regional systems into which the world was divided that which evolved in Europe was distinctive in that it came to repudiate any hegemonial principle and regard itself as a society of states that were sovereign or independent."(Bull & Watson, 1984: 6)

This explains the constitutive importance attached to the Peace of Westphalia within the English school's historical narrative of international society. Wight, despite his reservations, argued that the Peace represented, "the legal basis of the states system."(Wight, 1977: 113) That this is so is almost a signature of the English school. As we will see in a moment, Bull took 1648 to mark "the emergence of an international society as distinct from a mere international system."(Bull, 1992: 75) For Watson, "The concept of independence for a similar multitude of small states in our present international society...has evolved from the Westphalian settlement and bears an inherited resemblance to it."(Watson, 1992: 196) For his part, Butterfield concentrated on the importance of the Peace in defusing European religious conflict. He felt that this involved the creation of a new kind of international order:

> The concept of an international order that shall have room for both
> Catholic and Protestant, and shall limit the form of the warfare or
> rivalry between them, is once again a more specialised thing, and

> it is a necessary accompaniment of the development that is taking place. At this more refined level one ... claims to be fighting for the balance of power; and, in this new context, the principle begins to come into its own.(Butterfield, n.d.: 14)

Thus, the balance of power was the key mechanism of the 'new concept of an international order', which was grounded on the principle of *cuius regio eius religio* as the basis of tolerance. It is worth noting that Butterfield's argument for this principle and this mechanism is not predicated on the 'logic of anarchy', the universal struggle for power, or other conventional realist ideas, but upon his gloomy prognosis about the prospects for reconciliation otherwise of religious strife. Butterfield's understanding of how *cuius regio eius religio* came to underwrite the European society is based almost entirely on his assessment of the urgency of the need for a solution to the problem of the toleration of difference.

> The emergence of religious dissent that proved irrepressible must have been of momentous importance, since the principle of *cuius regio eius religio* meant that the *Respublica Christana* was itself splintered and multiplied, and the secular power was recognised by treaty as having what was tantamount to unprecedented authority over religion.(Butterfield, 1965: 6)

Here, Butterfield's more general research focus on history and religion seems to have drawn him away from the conclusion that his reading of Grotius should have indicated: this historiographical tradition, upon which the English school draws, overlooks the importance of natural rights or republican theories in contesting the more or less absolutist principle of *cuius regio eius religio* as the basis for seventeenth-century international organisation. The focus on the Peace of Westphalia as a fundamental constitutive moment in the development of the modern international society prevents any alternative focus upon the ways in which these natural rights or republican resistance theories developed into practical theories of government and institutions which were also constitutive of modern international society. With a deep but telling irony, then, the English school's exclusive focus on 'German school' historiography may ultimately have depended on Butterfield's efforts to try to understand the relationships between

The historical narrative which the English school developed, on the basis of the historiographical assumptions derived from Heeren, thus led them towards a particular account of the origins and expansion of the modern international society. Most tellingly, this was based on a rejection of naturalist arguments about the universal and progressive character of human reason, and instead concentrated on an historicist sensitivity to the differences and peculiarities of particular cultural formations. This led the English school to prioritise the principle of *cuius regio eius religio* as the desirable basis for international society, because it made possible the toleration of those cultural differences which were highlighted by the historicist approach. Those who, like Butterfield, had preferred a more liberal interpretation of the Grotian conception of international society nevertheless accepted this historiographical solution as the only possible basis for religious toleration. The idea that the expansion of European society illustrated the success of the principle of *cuius regio eius religio* and the related institutional mechanisms of absolutist states and balance of power politics supported this predisposition. The result was, as Watson puts it, "The European system since Westphalia—that is, during most of its existence—has theoretically been a society of independent states who all recognise each other as such. The committee accepted the theory."(Watson, 1990: 103)

The above analysis can be summarised as follows: the earlier contest about the meaning of the concept of international society *did* play a part in conceptual debates in the English school. It intruded into the process of conceptualising international society through the slender opening offered by Grotian dualism, and thus the contest was carried on in a limited, narrow and fragile form. This was an especially weak basis for the construction of a more liberal, republican or resistance-oriented evaluative perspective on international relations because Grotius' theories also contain a strong absolutist theme, and the ensuing version of the long-standing contest over the meaning of international society was further prejudiced by the school's commitment to the Gottingen historians' theory of modern European history.

§3. The anarchical society thesis

Bull's anarchical society thesis emerged within this already relatively narrow and biased conceptual contest. His argument was, in effect, a formidable synthesis of the two major elements of the English school's research programme. What Bull did was to take a relatively authoritarian reading of the absolutist or statist elements in Grotian theory, harness it to the Rankean historiography favoured by the English school, and thus develop a conception of modern international society as an anarchical society of sovereign states, grounded in a norm of absolute external sovereignty, a positivist legal doctrine of non-intervention and the institutional mechanism of balance of power diplomacy between states. Although this is not Bull's terminology, one might call this constellation of norms, rules and institutionalised practices the 'diplomatic ethic', since it describes a code of conduct within which diplomatic relations were (and are) carried on between representatives of sovereign states.

This furnished Bull with an argument that had three salient features. First, it combined evaluative and historical interpretation, to produce a methodologically-satisfactory account of a distinctive, significant and meaningful element of modern international relations. Secondly, it did so in a way that definitively settled the conceptual contests within the English school in favour of one particular formulation of 'Western values' and the Grotian tradition, excising the liberal, republican and resistance-oriented elements of the tradition. Thirdly, it offered a powerful interpretation of contemporary world political order, in terms of the ebb and flow of the institutions and consensual basis of the society of states. This was a formidable thesis, and it proved dominant within the English school at the time. There are three important steps to the construction of Bull's conception of modern international society. The first is an interpretation of Grotian international political theory, which has already been briefly outlined and will now be discussed in more detail; the second establishes a connection between this version of Grotianism and the diplomatic practice of the Peace of Westphalia; the third extends the Grotian-diplomatic affinity further by relating it

to the standard of 'civilisation' that governed the expansion of international society. Bull's most original, or at least distinctive, contribution was made through his interpretation of the Grotian tradition; from there, the other two parts of the argument fell into place rather easily, thanks to the previous establishment of this historical narrative in the English school's research programme. Therefore, the analysis here will devote most attention to this crucial first step in the anarchical society thesis.

Bull's interpretation of the Grotian tradition

In his interpretation of the Grotian tradition, Bull in effect practiced two sleights of hand. First, he developed what purported to be an account of Wight's three traditions, but in which, unlike in Wight's account, the concept of 'international society' was tied exclusively to the Grotian-Rationalist tradition. Then, Bull subtly changed the content of the Grotian-Rationalist conception of international society to emphasise its legal positivist and authoritarian statist dimensions, undermining the legal naturalist, liberal and republican themes that were also present in Grotius's thought, and that had been more fully acknowledged by Wight, Lauterpacht, and others.

On the first point, Bull faithfully recorded the principal doctrines of Realism, Rationalism and Revolutionism; but crucially, he stopped short of describing the different traditions' views as different conceptions of international society. Thus, Bull's description of 'Machiavellians' (*i.e.*, Realists) highlighted their view that "there is no international society; what purports to be international society...is fictitious."(Bull, 1991: xi-xii) He did not go on to discuss the Realist conception of international society that Wight had identified. Similarly, the 'Kantian' (*i.e.*, Revolutionist) assertion of an essential community of mankind was related by Bull to a concern with 'international morality'. He did not mention Wight's point that this was also a vision of the real essence of international society, although it is odd to suppose that one can meaningfully appeal to a particular version of international morality without having a distinct conception

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of international society.(Bull, 1991: xii) In the end, Bull acknowledged Wight's survey of the traditions' differences in terms of "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."(Bull, 1991: xii-xiii) It is telling that their various conceptualisations of the state of nature and international society are not on this list, even though they form a major part of Wight's treatment.

Bull's decision not to attribute conceptions of international society to the Machiavellian and Kantian traditions led him to the conclusion that only Grotians conceive of international relations in terms of an international society. Moreover, both Hobbesians and Kantians came to be seen as radically antagonistic towards the idea of international society.

> In place of the Hobbesian view that states are not limited by legal or moral rules in their relations with one another, and the Kantian view that the rules to which appeal may derive from the higher morality of a cosmopolitan society and enjoin the overthrow of international society, [Grotians assert] the duties and rights attaching to states as members of international society.(Bull, 1996b: 38-39)

It therefore seems only to be the Grotian tradition that "describes international politics in terms of...international society."(Bull, 1977: 26)

Furthermore, as the above quote suggests, Bull depicted the Grotian tradition as attached to a surprisingly statist account of the membership of 'international society'.

> The sovereign state, in Grotius's scheme, clearly has a privileged position in relation to other bearers of rights and duties in the great society of all mankind.... If there is a right of individuals and non-state groups to resort to private war, it exists only in abnormal circumstances; under normal conditions, the right to resort to force is the privilege of the sovereign state.(Bull, 1992: 84-85)

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However, for Wight, as we saw earlier, the Rationalist conception explicitly included states, individuals and non-state actors as members of 'international society'. In his early essays in *Diplomatic Investigations*,(Bull, 1966b & 1966c) Bull to a degree accepted this point (although always in a qualified way), but by the time of writing *The Anarchical Society*, he came to insist more outspokenly that "the Grotians accept the Hobbesian premise that sovereigns or states are the principal reality in international politics; the immediate members of international society are states rather than individual human beings."(Bull, 1977: 26) This is one aspect of the significance of Bull's dual use of the term 'Grotian' to refer both to the concept and to one particular conception of international society, which was noted in Chapter 1 above.(see Bull, 1977: 322n) By relating the Grotian tradition as a whole to the idea of a society composed more or less exclusively of states, the individualist, or at least non-statist, strands of Grotian thought, which re-emerge to an extent in the idea of a solidarist as opposed to a pluralist conception, are muted and are brought in only as qualifications to an essentially statist perspective.

It will be recalled that Wight developed his account of the Rationalist view of international society by showing how Grotius and Locke are connected; both blur "the antithesis between natural and social conditions...the transition to civil society is not a breach with the moral law of nature but a development of it."(Wight, 1991: 38) This argument, as Wight pointed out, was used by Locke against Hobbes (and Filmer) as a crucial part of the challenge to absolutist political obligations. "Just as the Realist doctrine that the state of nature is a state of war leads to an unlimited contract; so the Rationalist doctrine that the state of nature is a quasi-social condition, institutionally deficient, leads to a limited contract; a contract of the Lockian type."(Wight, 1991: 39) Thus, Wight notes that both Grotius and Locke share an understanding of the overlapping intersection between political society and the state of nature, and this is both a crucial part of the Rationalist understanding of international society and central to the defence of individual rights against absolutist theories of political obligation. This formulation of the state of nature underpins a *limited* contract, within which fairly

extensive rights to resist sovereign power can potentially be defended. The connection from here to Mackinnon's demand for a voluntaristic theory of international political obligation is not hard to see.

By contrast, Bull represented Grotius's 'institutionally deficient' view of international society simply as a medievalist hangover: it is a consequence of the fact that "In Grotius' time these institutions existed only in embryo; the international society he describes is an ideal or normative one, for which there was as yet little concrete historical evidence."(Bull, 1992: 90) There was little awareness on Bull's part of the political theoretical significance of this 'institutional deficiency', nor of the way in which Wight used this connection between Grotius and Locke to open the Rationalist tradition out to a more voluntaristic theory of political obligation. This connection made Wight's extension of the Grotian tradition to American revolutionaries like Jefferson plausible. Bull, on the other hand, insisted that "Grotius appears very remote from the doctrine of Locke and his disciples among the American and French revolutionaries".(Bull, 1992: 85) Through his identification of the Rationalist tradition with Grotius, coupled to his absolutist interpretation of Grotius, Bull changed the personnel of the Rationalist tradition.

Perhaps more significantly, Bull's argument also changed the political theory of the Rationalist conception of international society. Although Bull acknowledged the possibility of alternative readings and contextualisations of Grotian political thought, he denied that they were applicable to the Grotian conception of international society. This is because he denied that either the Dutch Revolt or Grotius' early works were effective in shaping the origins of modern international society. Bull described the Dutch Revolt as a movement of national self-determination, and thus made it fairly easy to characterise within a conventional conceptual framework.(Bull, 1992: 70 & 86) However, he nowhere acknowledged the importance of the Revolt as a site for the development of innovations in the political theory of resistance.(see below, Chapter 4, §2) Crucially, Bull also denied the international relevance of Grotius' early works,

which were unequivocally embedded in the political theory of the Dutch Revolt. Bull's first essay on Grotius was merely, as he himself admitted, "a treatment of *De Jure Belli ac Pacis*" rather than an overview of Grotius' work taken as a whole.(Bull, 1966c: 51) Later, Bull offered a defence of the decision to focus on the later work. He claimed that the historical and constitutional significance of the early works was limited to the Netherlands, and considered only two of Grotius' works to have any international significance whatsoever: *De Jure Praedae* and *De Jure Belli ac Pacis*.(Bull, 1992: 70-71) Even then, *De Jure Praedae* was reduced to its limited local significance as a treatment of a specific incident in the Dutch revolt: it was not regarded in the context of wider themes of political resistance, and its main importance was that "the material that went into this youthful work of advocacy was absorbed into the writing of the mature and systematic treatise: *De Jure Belli ac Pacis*."(Bull, 1992: 71) As we will see in the next Chapter, there is a strong connection between Bull's absolutist interpretation of Grotius and this limited focus only on the later work *De Jure Belli ac Pacis*. Because of this limitation, Bull underplayed the varieties of political theory created by Grotian ambiguity, and underestimated the significance for international political theory of certain themes that are most clearly articulated in Grotius's earlier works. The problems with this interpretation of Grotius are discussed in more detail in the next Chapter.

Thus, Bull developed an interpretation of Grotius that simultaneously narrowed the conceptual dispute about the nature of international society and acknowledged Grotian dualism in a rather grudging way. Crucially, Bull emphasised the statist and absolutist strands of Grotius's thinking, and thus made it seem as if the significance of Grotius's ideas for modern international society was that they served as a precursor of the subsequent scientific theories of international law in the society of states developed by positive international lawyers like Emerich de Vattel. As Bull put it,

> although Grotius's view of international relations concedes so much
> more to the domestic analogy than does that of [the legal positivist]
> Oppenheim, it may be argued that his own orignality, his

'contribution', was to have assisted the movement of thought in a direction quite opposite to this. The place of a domestic model in *De Jure Belli ac Pacis* may be seen as a medieval residue; its novelty as lying in the stirrings it contains towards the conception of international society as a unique society, that is fully defined only by the writers of the eighteenth and nineteenth centuries.(Bull, 1966c: 66)

Through these two sleights of hand, the concept of international society came to be associated exclusively with the Grotian-Rationalist tradition, and the Grotian tradition came to be associated with a more exclusively statist conception of modern international society than had previously been the case.

The origins and expansion of international society

This interpretation of Grotian political theory presented Bull with an excellent opportunity to develop an ideal type of modern international society through a methodologically unified evaluative and historical analysis of international relations that attributed ontological priority to the pluralist conception of international society. This achievement was unmatched in the rest of the English school, since alternative evaluative readings of the political theory of the Grotian-Rationalist tradition were not followed up in proper historical interpretations. Bull's argument here was based on the two further elements of the anarchical society thesis: an account of the origins and of the expansion of modern international society. The former is a straightforward version of the classic Westphalian focus and can be dealt with very quickly.

Here, the essential point that Bull picked out was the relationship between his reading of Grotian theory and the diplomatic practice of the Peace of Westphalia, which had already been highlighted by the Committee's attachment to Rankean historiography. While recognising that there were important differences between the two, Bull could still claim that Grotian political theory was "given concrete expression in the Peace of Westphalia" and that, "in their broad impact on the course of international history the theory of Grotius and the

practice of the Peace of Westphalia marched together."(Bull, 1992: 75 & 77) The combination between Grotian political theory and the diplomacy and substance of the Peace of Westphalia therefore provided a conjuncture of great *methodological* significance for Bull's theory of international society. In one convenient package, Bull could identify a tradition of political theoretical speculation about the constitutional principles at the heart of modern international society, which was broadly consistent with a set of diplomatic practices that were open to historical investigation. He could therefore construct a methodologically satisfactory account of the origins of modern international society, that combined evaluative interpretation with historical and axiological analysis. The juxtaposition of absolutist Grotianism as the forerunner of positive international law and the Westphalian system of sovereign, territorial states thus provided the core of Bull's ideal type of modern international society.

Having established this affinity between Grotian international legal thought and the diplomatic practice of the Peace of Westphalia, Bull subsequently rounded off his account of the nature of modern international society with an account of the process by which this seventeenth century international society developed into the contemporary international society. This story was told in terms of a process of *expansion* because the essential features of modern international society—the principle of state sovereignty, positive international law and balance of power diplomacy—were held to have originated in Europe, and to have been originally conceived to apply only to European states. The current global coverage of international social rules and institutions thus raised a crucial question: how was modern international society transformed "from a society fashioned in Europe and dominated by Europeans into the global international society of today, with its nearly two hundred states, the great majority of which are not European"?(Bull & Watson, 1984: 1)

This question is conventionally answered by drawing attention to the extension of membership in international society to embrace states that Europeans considered to be 'civilised'. As Bull put it, "The standard European view of this

emergence of a universal international society was that non-European states entered an originally European club of states as and when they measured up to criteria of admission laid down by the founder members."(Bull, 1984a: 123)[8] In outline, Bull's story of international social expansion, which was extended and deepened by Gerrit Gong, concentrated on three main steps: the definition of a standard of 'civilisation' by European diplomats and positive international lawyers (and some naturalist lawyers too); the initial imposition and subsequent fulfilment of this standard in non-European countries; and, finally, the recognition by Europeans of the 'civilised' character of certain non-European countries, and their formal admission into international society as more or less equal and independent sovereign states. By examining the working through of this process in different parts of the world, Bull was able to chart the development of the modern international society up to the early twentieth century.

According to Bull and Gong, international society began to be opened out to the possibility of admitting non-European members when "the international society which had earlier identified itself with Christendom and then with Europe came gradually to characterise itself as 'civilised'."(Gong, 1984: 4 & see also Bull, 1977: 34) The point of this change was that it extended the scope of positive international law, if only potentially, "according to secular, non-geographically bound, universal principles".(Gong, 1984: 54) Thus, it introduced a new and more flexible way of categorising political communities. Hitherto, a state had either been European or non-European. Now, a new, relatively fluid distinction became possible, between 'civilised', 'semi-civilised', 'barbarous' and 'savage' societies, each of which enjoyed a particular status with respect to the society of states.(Gong, 1984: 55) Such was the power of this distinction, especially in

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8. It should be noted that Bull recognised that this 'standard European' account has met two main challenges.(Bull, 1984a: 123) First, from the thesis that a universal and egalitarian 'family of nations' already existed on the basis of sixteenth and seventeenth-century natural law, and was unilaterally changed from within by the rise of European legal positivism.(Alexandrowicz, 1967) Secondly, the 'standard European' account has been challenged by the thesis that non-European practices had an impact on the ways in which European states conducted themselves in international society, and that it is Eurocentric to see non-European states as having had no influence on the values, rules and institutions of modern international society.

conjunction with other intellectual developments in European thinking, that even those international lawyers with naturalist inclinations, such as James Lorimer, succumbed to this way of thinking about the distinction between societies.(Bull, 1977: 38 & Gong, 1984: 49)

Of course, such a profound change in the identity of modern international society raised a crucial question: what did it mean to be 'civilised'? According to Gong, the standard of 'civilisation' emerged through a two-step process: first, through codification in treaties between European and non-European societies, which established certain rough benchmarks and patterns of expectation as to what constituted 'civilised' behaviour; and secondly, through articulation by legal publicists as a more precise set of legal requirements.(Gong, 1984: 25-33) Paying most attention to the latter part of the process, Bull located the core of the standard in "certain formal criteria of statehood, e.g. that there must be a government, a territory, a population, and a capacity to enter into international relations or fulfil international obligations."(Bull, 1984a: 121) Like Bull, Gong recognises that the 'civilised' state was supposed to possess an organised bureaucracy, obey international law, maintain proper diplomatic relations, and "by and large [conform] to the accepted norms and practices of the 'civilised' international society".(Gong, 1984: 14-15)[9] However, largely thanks to his greater emphasis on the role of the principle of extra-territoriality in early treaties, Gong identifies a further feature of the standard of 'civilisation' in modern international society: the 'civilised' state was also supposed to guarantee certain basic rights, such as life, dignity or property. This point comes out only rather imperfectly and vaguely in Bull's version of the cultural principles behind the standard,(see, for instance, Bull, 1977: 39) but is an important feature of the way in which the

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9. This is rather similar to Robert Jackson's idea of an 'old sovereignty game', in which states consist of "a bordered territory occupied by a settled population under effective and at least to some extent civil – that is 'civilized' – government." Jackson's account is interesting, because it places more emphasis on a slightly different aspect of sovereign statehood: "they are organized, equipped and prepared for war even if they only wish to avoid it."(Jackson, 1990: 38) Thus, within this view, there are two paradigmatic accounts of the international personality of states: as a war machine, and as a subject of international law. The latter of these seems to me to be the main focus of the account of the standard of 'civilisation', although the former should not be ignored.

standard of 'civilisation' transformed the internal organisation of non-European societies.

Thus, there are two main components to the standard of 'civilisation', relating to the internal social, political and legal organisation of a society, and to the external conduct of a society in its relations with others. In terms of the internal organisation of a society, the standard does not simply concern the capacity of a state to control its territory and defend itself against possible challengers, although this is an important element. It also regulates the way that a state can treat individuals, whether its own citizens or foreign nationals with regard to certain areas, especially judicial, penal and commercial. In terms of its external conduct, the standard entailed proper participation in diplomatic protocols and observance of international law. It also, as Gong notes, contained a more subjective element, in the sense that an aspirant to membership had to adhere to 'accepted norms and practices'.(Gong, 1984: 15) The latter feature of the standard gave a powerful role to established members of international society (that is to say, Europeans, at least initially), in determining whether or not the standard had been satisfied in the sense that accepted practices were being properly observed.(Gong, 1984: 55-56) Of course, it could be turned against European powers just as easily after World War Two and was a factor in the process of decolonisation.

The initial imposition of the standard of 'civilisation' was typically attendant on European displays of military superiority, and is often illustrated with reference to the 'capitulations' imposed on the Ottoman Empire, or the 'unequal treaties' imposed on China or Japan. The capitulations began to be imposed on the Ottoman Empire following its military decline, especially after the treaty of Carlowitz in 1699, "the first treaty signed by the Ottoman Empire as a defeated power."(Gong, 1984: 108) The subsequent defeat of the Empire by the Habsburgs led to the treaty of Passarowitz in 1718, in which "the Austrians dictated terms entirely to their own advantage and extracted profitable capitulations which served as a model for such treaties later in the century."(Naff, 1984: 150) In

China, the Opium War of 1839 and the subsequent treaty of Nanking in 1842 are key moments, marking " the start of...a hundred years of unequal relations due to the imposition of 'unequal treaties' and of European standards of 'civilisation'."(Gong, 1984: 137) They were followed in 1858 by the Tientsin treaties, which extended the process that "forced China to open its ports, to trade on Western terms, and to conduct its relations according to the patterns of international law and diplomatic representation familiar to the West."(Gong, 1984: 140) The case of Japan is slightly different, in the sense that the treaties with the Americans of 1854 and 1858 were not the outcome of defeat in war. However, as Hidemi Suganami argues, the Tokugawa central administration was "intimidated by [Commodore Perry's] show of superior force [and] concluded that there was little it could do to avoid accepting some of his demands, at least temporarily."(Suganami, 1984: 190)

These were all early aspects of the process of international social expansion, and they did not involve the imposition of an already fully worked-out standard of 'civilisation'; indeed, they were themselves part of the process whereby the idea 'of what 'civilisation' actually meant in international law was properly established. Perhaps the most important features of this part of the story concern the way in which the various treaties established commercial access to non-European countries, diplomatic contact and protocol, and the principle of extra-territoriality. The establishment of commercial links led to profound changes within the non-European countries, especially in the areas of the 'treaty ports'. Under the rubric of ensuring free trade, the provisions gradually transformed the judicial, administrative and fiscal systems of the non-European countries in regard to commercial affairs.(see, for example, Gong, 1984: 142 and 168-69). With regard to diplomatic relations, the 'unequal treaties' systematically dismantled the non-Europeans' conceptions of proper diplomatic conduct, and instituted a more European set of diplomatic formalities. For instance, in the case of China, the Europeans insisted on "diplomatic equality in official correspondence, the abolition of the word 'barbarian' from Chinese treaty texts, the assertion that Western-language texts of the treaties be authoritative, and the demand for

permanent residence in Peking".(Gong, 1984: 43) Perhaps the most important aspect of the imposition of the standard was the development of the principle of extra-territoriality, under which European states extended their legal control over their own citizens into foreign countries. To retain their formal territorial integrity, non-European countries were thus forced either to treat Europeans as exceptions to the law or to reform their legal systems as a whole, so as better to conform to European expectations of 'civilised' treatment. While the first inroads of the standard of 'civilisation' into non-European countries were made through the European imposition of 'capitulations' and 'unequal treaties', the complete fulfilment of the standard of 'civilisation' was achieved only after reformist movements emerged within certain non-European countries, and sought to introduce the principles embodied in the standard.

To sum up the argument of this section: the anarchical society thesis represents the connection of the English school's work on the history of the modern states-system to one side of the evaluative debates that were simultaneously prosecuted in the school. Mackinnon's quite justified appeal for an international theory of political obligation which would incorporate a theory of individual resistance against sovereign authority was never acted upon. This would have involved exploring how the radical Grotian conception of international society was picked up, extended and more firmly grounded by subsequent thinkers like Locke or Jefferson. It would also involve the identification of an 'historical individual' associated with these views, the empirical-causal and axiological relationships of which could then be traced. Bull's thesis, by synthesising and codifying the conventional absolutist perspective, in effect prevented such alternative avenues from being explored, by resolving the conceptual contest about the meaning of international society on his own terms. What had once been one conception of international society (albeit an extremely important one) now became a generally-accepted definition.

§4. Reconceptualising modern international society

The above analysis of the English school and the anarchical society thesis provides both the justification and the starting-point for the reconceptualisation of modern international society. It provides a justification because it is clear that Bull's conception of modern international society was compelling *on the terms of the English school's research programme*, and specifically on the terms of the school's restrictive historiographical assumptions. In other words, Bull's conceptualisation of modern international society resolved the contest about the concept only with regard to a very narrow field of enquiry, defined by the intersection between absolutist Grotian political thought and 'German school' historiography. There is, however, nothing sacrosanct about this particular research programme, and there are therefore no grounds to suppose that Bull's idea of the 'anarchical society' of sovereign states is the only conception of international society that can reasonably be upheld as relevant to modern international relations. On its own, Bull's conception does not demonstrate the unreasonableness of the alternative Revolutionist or non-absolutist Grotian conceptions of modern international society. Just as Max Weber observes, for example, that there may be many different ideal types of capitalism, each selectively accentuating a particular significant feature of capitalist culture, so there may be many different ideal types of modern international society, each selectively accentuating a significant aspect of the way in which modern international relations are norm-governed.

Secondly, this Chapter has paid special attention to the debate in the English school about Grotian political thought, because this debate offers a 'ready-made' starting-point for the reconceptualisation of modern international society, from a different evaluative perspective than that adopted by Bull. This is not to say that the English school offers the only prospect for such a reconceptualisation; that would be to conceive the tradition of international society theory very narrowly indeed. However, by accentuating the legal naturalist, liberal and republican themes in Grotian international political thought, we can identify a set

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of normative principles in international society quite different from those accentuated by Bull. These principles would then need to be historically grounded in modern international practices, in order to provide a counter-point to Bull's conjunction between state sovereignty, legal positivism and balance of power diplomacy, which can be described as a kind of 'diplomatic ethic' in international society. This project will be pursued in Part 2 of the thesis: Chapter 4 will discuss the Grotian tradition, Chapter 5 will identify a conjunction between Grotian principles and the early modern practice of colonisation, and Chapter 6 will extend this conjunction through a new story of the process of the 'expansion of international society'.

Part 2

An Ideal Type of Modern International Society:
The Colonising Ethic and the Spirit of Modern Solidarism

Introductory remarks: a solidarist evaluative interpretation of world politics

The following Chapters are devoted to the task of constructing a new ideal type of modern international society, through a reappraisal of the three main components of Hedley Bull's conception of the anarchical society of sovereign states: the political theoretical content of the Grotian tradition, the origins of modern international society, and the expansion of international society. Each of these areas is examined in turn, and an alternative position to Bull's is developed, offering a new synthesis of theory and practice in modern international society in terms of the 'colonising ethic': the system of ethical principles that governed the practice of the colonisation of supposedly vacant lands or of colonial administration. The central purpose of this historical analysis is to develop a new interpretation of the solidarist elements of society and order in contemporary world politics.

Mutatis mutandis, the overall structure of the argument resembles Max Weber's Protestant ethic thesis, in which a significant aspect of contemporary capitalist culture is historically interpreted in terms of its relationship to the ethical system of ascetic Protestantism, thus enabling Weber to present modern economic conduct as "rational conduct on the basis of the idea of the calling".(Weber, 1930: 180) As Chapter 2 explained, constructing such an ideal type involves two related procedures: evaluative and historical interpretation. Essentially, this means that one must first identify a significant aspect of contemporary social or international relations, and then explore its historical emergence, principally through an analysis of the axiological relationships between contemporary norms and older systems of ethical principles.

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The historical interpretation developed in the next three Chapters will aim to build upon an evaluative interpretation of international relations contained in the Grotian tradition, but which has been neglected following the coming to dominance of Bull's conception (or ideal type) of modern international society. In Chapter 1, we saw that one formulation of this evaluative interpretation is the idea of 'solidarism', in the sense of collective action for common purposes and the recognition of individual rights and moral personality in international society. In Chapter 3, we saw that this idea could be related to Martin Wight's account of the classical Rationalist or eclectic conception of international society, which sees international society as comprising both states and individuals; or to certain components of the 'Western values' discussed by Wight, Herbert Butterfield and Donald Mackinnon, such as individual liberty, constitutional government and natural rights of resistance. The central task of the next three Chapters is to develop an historical interpretation of Grotian international theory and modern international relations that will illuminate the practical meaning of this solidarist, Rationalist or Western conception of international society.

This rather blunt way of fixing on the solidarist conception might seem to be an abdication of the need to justify this evaluative starting point through normative argument. Such a criticism might, for example, be suggested by Mervyn Frost's attack on *verstehen* sociology discussed in Chapter 2 above. However, this criticism would be mistaken. In the first place, since Weber's version of *verstehen* was modified through the thesis of essentially contested concepts, the identification of a solidarist evaluative starting point for historical enquiry is designed merely to re-open a debate that was previously closed down for the reasons explained in Chapter 3 above. In this context, it is necessary to articulate the solidarist position in a properly meaningful way before the kind of normative debate that Frost envisages can be undertaken. Furthermore, the focus here on solidarism does not imply a commitment to this position as a normatively desirable basis for world political organisation. Rather, solidarism is being explored because the primary intention is to loosen the grip of Bull's anarchical society thesis on the way in which we currently conceptualise international

society. Since this solidarist conception is the one most firmly embedded in the 'old' Grotian tradition, it seems most sensible to try to 'revive' this conception rather than to try and articulate a completely new idea of the values, rules and institutions of modern international society. This recalls Alasdair MacInytre's view of the proper way of arguing within a tradition which opened out the thesis as a whole. Indeed, as will become clear when the historical interpretation unfolds, while the solidarist conception of international society is significant, it is normatively problematic or ambiguous in many respects, especially through its association with the practice of colonisation. This is similar to the way in which Weber has a rather ambiguous normative attitude to the instrumentally rational form of conduct he regards as significant to modern capitalist culture.

Not least because it goes under a number of different names, and has many different possible referents, this complex conception of international society may appear a little confusing or under-specified to some readers. However, as Weber explained at the beginning of *The Protestant Ethic and the Spirit of Capitalism*, this is an unavoidable aspect of the process of constructing an ideal type: our ideal type of modern international society "must be gradually put together out of the individual parts which are taken from historical reality to make it up. Thus the final and definitive [conception] cannot stand at the beginning of the investigation, but must come at the end."(Weber, 1930: 47) At the end of the historical-axiological analysis of Grotian ideas and the practice of colonisation, we will then be in a position to give a proper account of the meaning of the solidarist conception of modern international society, and illustrate its relevance to contemporary problems in international relations.

Nevertheless, it may be helpful to offer a more detailed, but still preliminary, account of what solidarism, Rationalism or 'Western values' might mean in the context of contemporary international relations. To put this enquiry into a Weberian form, one might ask what features of contemporary world politics would lead one to have an interest in the solidarist conception of international society in the first place? Here, it is instructive to look at recent work on human

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rights and the democratic conception of 'self-determination' in international society, and at the emergence of relatively centralised international organisations like the United Nations. Together, these developments have given rise to what Richard Falk calls a 'UN Charter system of legal order',(Falk, 1985b) and it is this that seems to be the most interesting contemporary expression of solidarist principles; of 'Western values' of individual liberty, constitutional government and natural rights; and of the Rationalist idea that states, individuals and non-state organisations all share moral and legal personality in international society.

To begin with, it is helpful to review the changes that have taken place since 1945 in the meaning of 'self-determination' as a principle of international law. The problem here is that the concept of self-determination is inherently subjective, since it requires a prior definition of the 'self' to which it refers. In particular, the concept was originally formulated by western liberals as part of the broader democratic proposition that government should be based on consent, thus giving the idea of self-determination an 'internal' focus. However, developments like the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States helped to construct a 'new UN law of self-determination'.(see Pomerance, 1982: 12) Here, the internal aspects of the principle of self-determination were largely ignored by non-European states, who concentrated on asserting an 'external' concept of self-determination, connected to the positive-legal idea of sovereignty and the principle of non-intervention. In other words, "while refusing...to recognise any right of self-determination directed against themselves, States of the Third World have eagerly joined in collective legitimation of the 'right' of self-determination directed against others."(Pomerance, 1982: 61 & see also Mayall, 1991: 421-22)

This may simply be grist to the pluralist mill.(see, for example, Bull, 1983) However, the excision of the liberal or democratic elements of the doctrine of self-determination may now be in process of being reversed, especially since the 1975 Helsinki Declaration, which

essentially embodies the idea that self-determination means a continuing possibility for a people to choose a new social and political regime. Self-determination, therefore, necessarily presupposes full respect for all the basic rights and freedoms of individuals. Thus, the Helsinki doctrine of self-determination to a great extent upholds some basic tenets of the Western conception, while the United Nations texts...tend to embody the gist of the socialist and Afro-Asian philosophy of self-determination.(Hannum, 1990: 158-59)

The Western conception has been further elaborated and affirmed by subsequent actions of states, such as the 1976 Algiers Declaration of the Rights of Peoples, until ultimately one can say that not only has more attention been focused on the 'internal' concept of self-determination, but "there has been a shift from an all-embracing and generic concept of 'internal' self-determination [centred on the nation] to a notion that closely links the collective right to the human rights and fundamental freedoms of individuals".(Hannum, 1990: 160, emphasis omitted) The present legal situation is such that Thomas Franck has gone so far as to speak of an emerging 'democratic entitlement' in international law, through which internationally generated and regulated rules and processes are increasingly determining the legitimacy of regimes within states according to democratic principles.(Franck, 1992) In the view of another international lawyer, W. Michael Reisman, the fundamental change that has driven this development in legal thinking about self-determination and sovereignty has been the rise of the idea that individual human beings have certain legally protected rights in international society: "By shifting the fulcrum of the system from the protection of sovereigns to the protection of people, it works qualitative changes in virtually every component.... Precisely because the human rights norms are constitutive, other norms must be reinterpreted in their light".(Reisman, 1990: 872-73)

These changes have given rise to the very interesting distinction between two broad patterns of international legal order: the 'Westphalian' and 'UN Charter' systems.(Falk, 1985b; & Cassese, 1986) The Westphalian system "constitutes the classic framework of legal constraint postulated to regulate a highly decentralised world of sovereign states".(Falk, 1985b: 116) In the

Westphalian system,

> Jurisdictional ideas about the reciprocal allocation of authority to govern territorially distinct units of space achieved great prominence.... Mutual respect for territorial supremacy within well-defined boundaries provided a formal basis for international peace and a mutually beneficial endorsement of authority to govern the internal life of national societies.(Falk, 1985b: 121)

Thus, in this system, as in Bull's pluralist conception of international society, "national governments are the basic sources of order in international society."(Falk, 1985b: 135)

The system of international law symbolised and partly codified by the United Nations Charter is quite different from Michla Pomerance's view of the 'new UN law of self-determination'.[1] Instead, Richard Falk's idea of the UN Charter system of legal order is that it "complements [the Westphalian system] by centralising some cooperative activities and contradicts [the Westphalian system] to the extent that community-oriented procedures come to displace sovereignty-oriented procedures."(Falk, 1985b: 123) The similarity between this system of legal rules and solidarism is hard to ignore. In practice, the UN Charter system involves a number of distinct phenomena in contemporary world politics:

> (1) the mushrooming of international organisations...(2) the granting of a limited role to single human beings or to groups of people in the international arena...(3) the assignment of a fairly extensive role to organised peoples subject to such oppressive Powers as colonial States, racist regimes or foreign occupants...(4) restrictions on resort to military and even economic force by States; (5) the gradual

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1. This reflects, of course, the famous tension in the UN Charter between Article 2, which states among other things that "The Organization is based on the principle of the sovereign equality of all its Members.... Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State", and Article 55 which states the intention of promoting "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."(see Brownlie, ed., 1995: 3-4 & 19) In this regard, the UN Charter has been a useful vehicle for the assertion of both the 'external' and 'internal' doctrines of self-determination. It is my contention that this is a reflection of a more profound ambiguity in the Grotian conception of international personality, and I will return to this dichotomy within the UN Charter in the concluding Chapter of the thesis.

emergence of values designed to limit at least the broad import of force as the exclusive legitimizing criterion in international relations...(6) the establishment of a set of devices calculated to facilitate the fulfilment of the three 'legal functions' of the international community...(7) [universal principles] which represent the backbone of the whole corpus of international rules...(8) a concern for the rights of individuals....and (9) certain values have emerged which States have decided to invest with pre-eminent legal force: peace, and the protection of human dignity from outrageous manifestations of human cruelty....(Cassese, 1986: 398-99)

Amongst other things, then, the UN Charter system of international legal order represents a rough consensus on a series of issues and values, especially restrictions on the use of force and the protection of human dignity; the partial centralisation of rule-making authority through the formation of new international organisations; the justification of some rights of resistance, especially against colonial authorities; and the attribution of a limited form of international personality to non-state organisations and individuals. In these respects, we can take it as a more concrete, codified form of the vague solidarist *cum* Rationalist conception of international society previously outlined.

Redefining solidarism in terms of the UN Charter system is not, however, a sufficient answer to the broader question of international society posed in Chapter 1. Unfortunately, Falk does not offer a proper *historical interpretation* of the UN Charter system. His account looks rather like Bull's in the sense that he attributes ontological priority to the Westphalian system of legal order, as reflected in his comment that, "In the contemporary international system the Charter conception is far from fully realized, the Westphalia conception is far from fully displaced."(Falk, 1985b: 116) This point of view is also a feature of Antonio Cassese's claim that there are two stages in the development of the 'world community' (which, in this instance, can be taken to be synonymous with the international society). The first of these extends from 1648 to 1918 and the second from 1918 to the present. The political and legal developments associated with the UN Charter system are located by Cassese exclusively within the 'second stage' of the international community. He argues that "a main turning-point in the

world community occurred in 1917", and then argues that the scope and pace of this change in the international legal order widened and accelerated after 1945, with the increased salience of arms control and human rights after the use of the atom bomb and the discovery of the Nazi concentration and extermination camps.(Cassese, 1986: 4n & 64; see also Donnelly, 1993: 6) Thus, Cassese tends to see order in world politics in terms of an historical progression through different eras of world political organisation: from Christendom, to the 'modern international society' of sovereign states, to the contemporary era "which gradually evolved after the First World War (and especially the Second World War) [and] has the hallmark of novelty".(Cassese, 1986: 397) In this respect, he effectively re-affirms the ontological priority of the pluralist conception of international society.

Even though it does not supply us with a proper historical interpretation of the ethical system out of which the norms, rules and institutions of modern solidarism developed, Falk's idea of the UN Charter system still helps to specify and concretise the area of enquiry with which our historical investigation is concerned. The challenge, then, is to uncover the meaning of the 'rudimentary form of social life' embodied in the UN Charter system of international legal order. In particular, how can we make sense of the key features of this system, such as the partial centralisation of rule-making authority in international organisations, the justification of resistance, and the attribution of a limited form of international personality to individuals? The following Chapters will try to demonstrate that these contemporary international phenomena are intelligible in terms of the 'colonising ethic' embedded in Hugo Grotius's conception of the law of nations and the practice of colonisation.

Chapter 4

A Reappraisal of the Grotian Tradition

The Grotian tradition finds its seminal expression in Hugo Grotius's account of the content, scope and efficacy of the law of nations, or *jus gentium*. It is worth making this simple observation because current students of international relations pay far too little attention to the actual substance and circumstances of Grotius's work. The present situation is well summed up by C.G. Roelofsen's complaint:

> The majority of those authors who mention things like the 'Grotian system of international relations', 'Grotian eurocentrism', 'the Grotian state' or that well-known combination 'the Grotian law of nations and the Westphalian international sytem' are using these expressions as a convenient short-hand, transferred by one textbook to another.(Roelofsen, 1990: 8)

There is a problem with taking a 'convenient short-hand' or 'textbook' reading of Grotius. As Martin Wight famously commented: "Trying to pick a path once again through the baroque thickets of Grotius's work, where profound and potent principles lurk in the shade of forgotten arguments like violets beneath overgrown gigantic rhododendrons, I find that he does not say what I thought he said."(Wight, 1977: 127) If only to the extent that Grotius is an obscure, difficult and ambiguous author, whose work is open to many different interpretations, Roelofsen is quite justified in drawing our attention to the possible inadequacies of the conventional textbook reading. His challenge raises a series of thought-provoking questions: which elements of Grotius's thinking are included in and excluded from the conventional reading; what other interpretations of Grotius might alternatively make sense of his international political and legal ideas; and how might a different account of the Grotian conception of the law of nations change our understanding of the nature of modern international society?

As we saw in Chapter 3, one especially influential interpretation of Grotius and Grotianism emerged from the English school, through the work of Hedley Bull. Bull interpreted Grotius's view of the law of nations by analysing *De Jure*

Belli ac Pacis (*JBP*) in the context of diplomatic activity towards the end of the Thirty Years War. His conclusion was that the book helps to demarcate the boundary between medieval and modern international society, because it combines a nostalgic affection for the unified structures of medieval Christendom with some suggestions of a more modern awareness of the practicalities and possibilities of state policy and the need for a scientific approach to the identification of international legal rules. Thus, for Bull, Grotius's work serves as an important way-station in the gradual transition from medieval naturalist to modern positivist international legal thinking. Unfortunately, although Bull's reading captures certain elements of Grotius's work, it ignores or misrepresents two of Grotius's most important and influential contributions to modern political theory: his account of the historical development and meaning of the *legal concept of ownership,* and his modification of the classical *republican concept of sovereignty.* The burden of the argument of this Chapter is to show how and why these elements of Grotius's thinking should be regarded as central to his contribution to international theory. The Chapter develops this argument by analysing Grotius's account of the law of nations in terms of the political theory of the Dutch resistance movement against Philip II.

In section 1, the general problem of Grotian ambiguity is introduced, with a more detailed discussion than that already given in Chapter 3. *JBP* is open to the interpretation given in this Chapter because the book incorporates several different themes, which have the potential for development in contradictory directions. To begin with, then, the plausibility of Bull's reading must be admitted, but attention is drawn to the elements of Grotian thinking that were either ignored or pejoratively treated by Bull. Section 2 then examines an intellectual *milieu* within which these neglected aspects of Grotius's ideas can be more fully appreciated: early modern European theories of resistance, and especially those arguments used to justify the Dutch Revolt against Philip II. The political theory of the Dutch Revolt was founded by adapting existing 'monarchomachic' Huguenot resistance theories to suit the unique circumstances of the Netherlands; a project in which Grotius played an important role, especially thanks to his post

as official historiographer for the United Provinces. Section 3 is an exposition of Grotius's account of the law of nations. It posits that Grotius's accounts of ownership through occupation and of the divisibility of sovereignty both make sense within the terms of the resistance theory that was central to the Dutch Revolt. Section 4 extends this analysis by looking at the further development of these Grotian concepts in American Revolutionary political and legal thinking, especially in the context of the 'Jeffersonian approach' to international relations.(see Lang, 1985)

§1. Coping with Grotian dualism: the case for an holistic approach

As was asserted in the previous Chapter, Grotian political thought is characterised by ambiguity and dualism. For this reason, Grotius's writings have offered a sort of *tabula rasa* for later political theorists. "Every age, every school of thought has its own Grotius interpretation, so it seems."(Willems, 1985: 106) Most pertinently, as Richard Tuck has pointed out, Grotius's works provided the foundation for two quite different theories of political rights and obligations. On the one hand, Grotius explicitly supported an absolutist theory of political obligation, in which individual and collective rights to resist authority were severely curtailed. On the other, he helped to establish a framework for theories of property and resistance in a republican idiom, within which a voluntaristic theory of obligation could subsequently be defended. This explains Tuck's comment, cited earlier, that "Grotius was both the first conservative rights theorist in Protestant Europe and also, in a sense, the first radical rights theorist."(Tuck, 1979: 71)

As Benedict Kingsbury and Adam Roberts have argued, it is impossible to separate these different political ideas from Grotius's international theory.(Kingsbury & Roberts, 1992: 61-62) This makes it seem very likely that the dualism of Grotian political theory might also apply to Grotian international theory, or, more precisely, to Grotius's account of the law of nations, as was recognised by Hirsch Lauterpacht.(Lauterpacht, 1946 & 1970a: 12-15) Similarly, John Vincent has made the political ambivalence of Grotius's ideas about

international law explicit, noting that Grotius can be "called up in support of both the positivist doctrine of state sovereignty and the naturalist notion of the rights of individuals."(Vincent, 1992: 246) One of the most suggestive features of Vincent's comment is his recognition that it is not simply due to a confusion of medieval and modern elements of international law that Grotius offers an uneasy combination of legal naturalism and positivism; it is just as important that the tensions in Grotius's thought imply two different sorts of theory of rights and obligations in international society, concerning the alternative claims of states and individuals to be bearers of international personality.

For a first cut at understanding why Grotius's work contains this dualism, it is helpful to recall the colourful and varied nature of Grotius's career. Christian Gellinek has identified three stages in Grotius's intellectual career, which are demarcated by the different political activities in which he was engaged.(Gellinek, 1984) Thus, the first period of Grotius's work extends from 1599-1618, described by Gellinek as the "poet/scholar in office". The second, 1621-34, was a period of "unimpeded scholarship" for the "humanist-in-exile"; and during the third, 1635-45, Grotius combined work on *JBP* with tenure of the post of Swedish ambassador to France (the hiatus between 1618-21 is explained by Grotius' imprisonment in Louevestein castle, during which time he principally worked on two books, *Of the Truth of the Christian Religion* and the *Introduction to Dutch Jurisprudence*). Across these three stages there is a considerable change in the tone of Grotius's writings, as his early enthusiasm for the republican institutions of the Netherlands gradually came to be more qualified.

Initially, Grotius was engaged in helping to provide arguments justifying the Dutch revolt, especially in his capacity as official historiographer of the revolt (a crucial post in the circumstances of the methodological revolution inaugurated by Jean Bodin, which is discussed below); as advocate fiscal of Holland, Zeeland and Friesland; and in offering legal arguments in defence of the actions of the Dutch trading companies, especially Piet Heyn's infamous seizure of the Spanish silver fleet, which was the principal inspiration for *De Jure Praedae*.(see Knight,

1925: 36-149) Often, this work was so partisan as to verge on propaganda. After all, as Hamilton Vreeland has pointed out, Grotius had deliberately been chosen to write "a history of the exploits of marvellous courage displayed by the people of these tiny Provinces of the north, in the war to maintain their liberty against the tremendous attack of Spain".(Vreeland, 1917: 39) Putting aside Grotius's theological and poetical writings, the principal works of this early period are *De Antiquitate Reipublicae Batavicae, Annales et Historiae, De Republica Emendanda, Parallelon Rerumpublicarum, Commentarius in Theses XI* and *De Jure Praedae* (or *De Indis*).[1] As is made most explicit in the *Commentarius*, the general orientation of these works was the justification of Dutch resistance against the Spanish. Within the terms of this project, Grotius was prominently involved both in the development of a republican political ideology through a Bodinesque comparative legal-historical method (especially in *Parallelon Rerumpublicarum* and *De Republica Emendanda*), and in the defence of Dutch liberties through both historical (*De Antiquitate* and *Annales et Historiae*; on this point, see Eyffinger, 1984) and more exclusively natural-legal (*De Jure Praedae*) arguments. As we will see, the early political, historical and jurisprudential works of Grotius fit extremely well into the general framework of the purpose, ideology and argumentation of the political theory of the Dutch revolt as a whole. Through these works, as one commentator puts it, Grotius "tended to manifest himself as a partisan and a patriot....an intellectual for Dutch republican law, order, and authority."(Wiersma, 1991\2: 70)

While Grotius therefore seems quite favourably disposed to Dutch republicanism and resistance in this early period, there was a substantial change of tone in his later writings.(Tuck, 1979: 63ff & see also Vermeulen, 1985a: 9, &

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1. It is noteworthy that no good collection of Grotius' early works exists in publication. In part, this is because many of the works (such as *De Republica Emendanda* or the *Commentarius*) have only recently been rediscovered, and because in some cases the correctness of the attribution to Grotius is still questionable. Excerpts from *De Antiquitate, Annales et Historiae* and *De Republica Emendanda*, with a complete English translation of the third, are all in *Grotiana*.(Grotius, 1984) The *Commentarius* has recently been published with an excellent introduction by Peter Borschberg.(Grotius, 1994) The contemporaneously published excerpt from *De Jure Praedae* ("Mare Liberum"), can be found in Grotius, 1916. For excellent summaries of most of Grotius' early works, see Tuck, 1993: 154-79.

1985b) His enthusiasm for resistance and challenges to political order had always been lukewarm or, more likely, circumstantial, but in his later work, especially in his masterpiece *JBP*, Grotius expressed a number of views that were hostile to resistance theories. Thus, as E.H. Kossmann observes, "in his *JBP* [Grotius] held monarchy in higher regard than he had in 1610; indeed in the 1640s he admitted that the views which he had expounded in the *De Antiquitate* were exaggerated."(Kossmann, 1991: 289) This change has led to a view of Grotius that sees him as an unreserved supporter of absolutist theories of sovereignty; by extension, they lead to the supposition among students of world politics that Grotius dismissed the idea that individuals could possess personality in international society and instead regarded "the national sovereign state as the effective unit of international relations."(Wilson, 1984: 8) Certainly, on this crucial point of the individual's obligations to obey the ruler, Bull, as we saw in Chapter 3, views Grotius in terms of an absolutist, rather than a Lockean, tradition of thought, contending that "Grotius appears very remote from the doctrine of Locke and his disciples among the American and French revolutionaries", and, by contrast, "was an 'absolutist' or 'Hobbesian'."(Bull, 1992: 85) In political theoretical terms, Bull is in good company here: Jean-Jacques Rousseau similarly finds a justification of slavery in *JBP*, which he interprets as a straightforward defence of absolutism and which forms one of the main targets of his essay on the social contract.(Rousseau, 1947)

More generally, in light of the earlier remarks about the change in tone of Grotius's writings during his career, there is a fairly obvious connection between Bull's exclusive focus on *JBP* and his absolutist interpretation of Grotius. When Grotius's works are read together, it becomes much clearer that even in *JBP* Grotius does not support absolutism without significant reservations, and other aspects of his theory (especially his theory of the divisibility of sovereignty), which are developed throughout his various works (including *JBP*), often work *against* absolutist theories of political obligation. It is important to point out that this is not to say that there is a complete discontinuity between an early set of resistance-oriented works and later absolutist ones. Rather, the above argument

suggests that *JBP* should be read *in conjunction with* the earlier works; not to do so risks misinterpreting the later, certainly more comprehensive, book, which, when put into the context of the complete Grotian *oeuvre*, reveals a thorough working-out of many of the radical themes of Grotius's earlier writings. This is precisely the error made by Bull: by discounting the earlier works as lacking relevance to international relations, he underestimates the significance for Grotian international political theory of certain themes that are most *stridently* articulated in Grotius's earlier works, but which are *more comprehensively* developed in *JBP*. To be sure, Bull's account is not, in any absolute sense, 'wrong'; but his interpretation is inaccurate and misleading. It is inaccurate because Grotius's apparent support for absolutism in *JBP* was carefully qualified, in such a way as to allow justification for the principal resistance movement of the period: the Dutch Revolt. Further, Bull's interpretation is misleading because to focus on the defence of the public authority of states in Grotius's work neglects the fact that a great deal of the argument of *JBP* is concerned with the conditions under which private individuals may justly engage in war, and with the defence of a republican conception of political community.

The problem, then, is not that Grotius has been ignored, neglected or marginalised by theorists of international relations. The problem is rather that Grotius, perhaps like Machiavelli,(see Walker, 1993: 41ff) has been read in a narrow and unsophisticated way, so as better to conform to a pre-conceived notion of the nature of modern international society. In response to this problem, Roelofsen makes the excellent suggestion that we can reappraise the Grotian conception of the *jus gentium* and international society by looking at the evolution of Grotius's ideas in the context of the pre-Westphalian European system.(Roelofsen, 1990: 19 & see also Roelofsen, 1989 & 1992) In other words, by temporarily forgetting all that we presume to know about the origins of the modern international society, and by instead asking ourselves what was the immediate context of Grotius's work, we can come to a better understanding of the diverse themes in his thought.

§2. Theories of political obligation and resistance in early modern Europe

How, then, are we to grasp the immediate, pre-Westphalian context of Grotian political theory? On precisely this issue, Quentin Skinner's views have been enormously influential in helping to shape contemporary understandings of Grotius, so let us first turn to Skinner's work on modern European political theory. As a methodological principle, Skinner argues that historians of ideas should not look exclusively either at the social context or the textual content of political theoretical works. Instead, he maintains that texts should first of all be placed in a "wider *linguistic* context as a means of decoding the actual intention of the given writer."(Skinner, 1969: 49, emphasis original) In other words, this approach emphasises the importance of authorial intentions within an antecedent language of political theory.(see Pagden, 1987)[2] In working out the parameters of early modern political thought, and following Skinner's lead, many recent historians of ideas have concentrated on the ways in which absolutism was attacked by theorists eager to justify resistance. These innovations formed the basis for the subsequent development of voluntaristic theories of obligation and modern liberal contractarian political theories.(Tuck, 1979 & 1993; Tully, 1993) This forms an interesting counter-point to Bull's reading and contextualisation of Grotius' work. Obviously, it demands that we amend Roelofsen's suggestion somewhat, from a focus on the institutional circumstances of the pre-Westphalian system, to emphasising the prevailing language of political theory within which Grotius worked. To do this, we first of all need to understand the terms of the debate between theorists of princely absolutism, like Bodin, and the Huguenot 'monarchomachic' theorists of resistance.

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2. For slightly different approaches, but which are still suggestive of many similar themes, see Dunn, 1980 and Pocock, 1972. I choose to concentrate on Skinner's account of modern political thought because historians explicitly working within a Skinnerian framework have paid most attention to the work of Hugo Grotius and other Dutch political theorists.(Tuck, 1979 & 1993; van Gelderen, 1992) Nevertheless, it should be noted that both Dunn and Pocock have produced work that echoes and complements much of the analysis presented below.

Skinner describes the emergence of a distinctively modern form of resistance theory in Europe in terms of a change from ideas about a *religious* duty to resist ungodly commands, to the justification of a *political* right to resist tyrannical rulers. In the Reformation, Lutherans, and subsequently Calvinists, needed to respond to St. Paul's doctrine that temporal authorities were sanctioned by God and should therefore be obeyed: "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation."(Romans: 13.1-2) In response to this doctrine, early Protestants either argued from magistrates' specific constitutional responsibilities to defend God's laws, or from individual rights in private law. The latter, more radical, approach was linked by some Calvinists to the idea that all individuals had participated in a covenant with God, to produce a relatively populist justification of individuals' religious duties to disobey.(Skinner, 1978: 192-238)

French Huguenots needed to secularise these religious justifications of resistance for two reasons. First, they were a religious minority in France, although they enjoyed the support of a number of nobles and influential political figures. Therefore, to attract broader support, or to neutralise active hostility, they needed a less overtly Protestant justification of resistance. Secondly, and more importantly in a wider European sense, temporal authorities began to find new arguments, and no longer relied exclusively on the Pauline doctrine to demand obedience. Instead, Bodin's absolutist theory of sovereignty provided a novel political justification of temporal authority, on the basis of a new comparative legal and historical methodology. Bodin's innovation was to move away from arguments based purely on religion or Roman law, towards an argument deriving legal principles from 'universal history'. This involved "three methodological departures of profound importance for the future: an exposition of *jus gentium* in the sense of a common law of nations, a system of comparative jurisprudence,

and a sociological theory of legal history."(Franklin, 1963: 69) Bodin used this new approach to provide a novel foundation for absolutist political theories of obligation.

It cannot be emphasised too strongly that Bodin's innovation provided a key part of the methodological backdrop for Grotius's arguments.(Grotius, 1925: 29; *JBP*, Proleg. §55)[3] Indeed, it is because of his engagement with these background methodological arguments that many current scholars treat Grotius as a key thinker in the evolution of modern political thought, in that he thereby helped to found a modern scientific approach to the study of law, partly based upon what Tuck describes as a "descriptive ethical sociology".(Tuck, 1987: 115, & 1992) For our enquiry, it is noteworthy that the Bodinian methodological innovation helps to explain why Grotius devoted such attention to the question of the content of the law of nations, as part and parcel of his general political theoretical and legal enquiries: appeal to the common law of nations was a key part of early modern debates about resistance and obligations to obey. Of course, this suggests that it is anachronistic to make a strong distinction, as Bull does, between Grotius's 'domestic' resistance theories and his 'international' legal works. After Bodin, early modern political theorists saw the content of the *jus gentium* as having great bearing on their views regarding the proper organisation of a political community. A conscientious political theorist like Grotius would therefore feel bound to offer support for his views on domestic political authority with reference to the law of nations. There is, in other words, a strong methodological connection between the resistance-oriented and the international-legal elements of Grotius's work; *contra* Bull, they should not be read separately.

Leaving aside, for the moment, the implications of this point for Bull's reading of Grotius, the main political theoretical consequence of the sixteenth-century methodological revolution was that in the late sixteenth and early

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3. To make it easier for readers interested in exploring Grotian ideas more closely, I will not only give page references to the edition of *JBP* that I have found most useful (the Carnegie edition), but will also give references by book, chapter and section.

seventeenth centuries, resistance movements needed to find political, jurisprudential and historical justifications, as well as arguments based on accounts of the law of nations. In response to the new Bodinian arguments for absolutism, the Huguenots developed 'monarchomachic' political theory: a secularised constitutionalist theory of resistance, the most celebrated example of which was the *Vindiciae contra Tyrannos*.(Brutus, 1994; & Franklin, 1969) Two important features of monarchomachic theory concern us here. First, the theory departs from religious arguments by placing men and women in a condition of natural liberty. The doctrine of natural liberty was built upon a novel theory of property, modern theories of property thus being "part of a larger political theory which includes a right of resistance, and which is formulated in self-conscious opposition to absolutism."(Buckle, 1991: 3-4) According to Skinner, the Huguenots based their resistance theory on: "the inalienable and natural rights of the people to their lives and liberties—these being the fundamental and natural properties which everyone may be said to possess in a pre-political state."(Skinner, 1978: 328) This kind of argument was a staple of resistance theories of the period, and, as we will see, figures prominently in *JBP*.

Secondly, the Huguenots restricted some of the more populist implications of the natural liberty argument by putting it within the constitutional context of French society. Thus, the political right of resistance in defence of the peoples' liberties was placed exclusively in the hands of inferior magistrates. This provides the really distinctive core of monarchomachic resistance theory: "the magistrates and representatives of the people have the moral right to resist tyrannical government by force, a right which is founded on the prior and natural right of the sovereign people to treat the commonwealth as a means for security and improving their own welfare."(Skinner, 1978: 376-77) This gave the Huguenots a political theory which could appeal to non-Protestants through its invocation of popular sovereignty rather than religious duty, and which also conveniently emphasised the role of their principal constituency: inferior magistrates. The theory was thus tailor-made to suit the circumstances and needs of the Huguenot resistance movement.

In this way, Skinner identified an important stage in the history of modern political theory in the emergence of a theory of resistance based upon a novel theory of property and natural liberty as well as a revised form of constitutionalism. He explained this largely in terms of the adaptation of the religious language of late medieval resistance theory to fit the specific circumstances faced by the French Huguenots. In so doing, he placed an overwhelming emphasis on the role played by the Huguenots in developing modern political thought, and claimed that Dutch political theorists deployed monarchomachic arguments that were essentially identical to those developed by the French.(Skinner, 1978: 337-38) Incidentally, in terms of the history of international relations theory, a similar account was offered by Wight, who identified early Revolutionist theories with monarchomachism. Again, like Skinner, Wight did not investigate the relationship between monarchomachism and early modern Dutch political thinkers like Grotius in any detail, thereby missing an extremely interesting and suggestive moment of contact between the Revolutionist and Rationalist traditions.(Wight, 1991: 8)[4]

In terms of our understanding of Grotius, this is a potentially critical omission. Using a Skinnerian methodology, Martin van Gelderen has recently shown that Dutch political theorists were more innovative than Skinner allows, and were important to the emergence of the modern political theory of resistance in their own right.(van Gelderen, 1992) Admittedly, there were some important general similarities between monarchomachism and the defence of Dutch resistance against Philip II. However, in certain key respects the Dutch revolt was justified by significantly different arguments compared with Huguenot resistance, and in large part this was a consequence of the peculiar legal and political circumstances within which resistance to Philip II was carried on, echoing

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4. This offers an interesting counter-point to Andrew Linklater's argument that a radicalisation of the Rationalist tradition should be effected through a study of Kant's contribution to international theory. It suggests that one does not have to go to Kant to reconstruct Rationalism; one can do so simply through an engagement with Grotius's work in its Dutch Revolt context.

Skinner's explanation of the sources of the innovations introduced by the Huguenots. Four differences in particular demand our attention: the relatively more popular nature of the Dutch resistance movement, compared with the Huguenots' stronger reliance on inferior magistrates; the different historical traditions of the Netherlands, allowing a stronger and, on Bodinian terms, methodologically more sophisticated case for the defence of contemporary political liberties; the more pronounced international dimension of the Dutch conflict with Spain; and, finally, the decidedly republican character of Dutch political theory, in contrast with the more monarchical tone of Huguenot thought.

First of all, the constituency of the Dutch Revolt was quite different from that of the Huguenots. Where the Huguenots enjoyed limited popular support, but could appeal to certain nobles and inferior magistrates, the Dutch revolutionaries could take a wide base of support more or less for granted. This is not to deny the importance of nobles like the Prince of Orange or Egmont in the revolt, nor is it to deny that the Dutch borrowed constitutionalist arguments from the Huguenots. However, it explains why Dutch authors were much more eager to adapt private law and radical Calvinist arguments to justify a more populist movement where, "the inhabitants [of the Netherlands] had the right actually to resist the forces Philip had sent to the Netherlands."(van Gelderen, 1992: 119) In this vein, the Dutch revolutionaries could turn the covenant argument of the radical Calvinists into a striking secularised contractarian defence of popular resistance: "The princes as well as the subjects of the country have always had to commit themselves by a formal contract...that they would maintain these rights and realise them. The inhabitants therefore owe obedience to the rulers only on condition that the freedoms are maintained".(Prince of Orange, 1974: 84) Thus, it is quite understandable that there was in the Dutch Revolt a much firmer insistence on the rights of ordinary people "to have recourse to what both divine and secular right allows...what nature commands, what reason prescribes and law permits, that is to taking up arms and providing for their prosperity and safety".(States General, 1974: 152) In sum, in justifying the Dutch Revolt, theorists employed a much more individualistic and populist theory of resistance than French

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monarchomachic political theory, wherein the implications of the natural liberty argument were less restricted by constitutionalist qualifications.

Secondly, and relatedly, the account of 'natural liberties' given in the Dutch Revolt drew upon historical and jurisprudential arguments to support the attribution of individual properties in life and liberties, in a way that Huguenot theorists did not or could not. The key point here is that both Huguenot and Dutch political theorists could use natural liberty arguments as the theoretical basis for resistance. However, whereas in France constitutional, legal and historical arguments tended to support absolutist theories of obligation, and thus restricted the populist implications of natural liberty arguments, the reverse applied in the Netherlands. Arguments about natural liberty and self-possession in the Netherlands could be, and were, given an historical context in terms of the supposed ancient liberties and constitution of the Dutch. In other words, even where constitutionalist arguments were used, they proved less restrictive of the populist implications of the natural liberties argument than in the French case. As one example, "toleration, rationalised in political terms, was supposed to flow from the ancient constitution".(Kossman & Mellink, 1974: 29) In general, this allowed the Dutch Revolt to be portrayed as a defence of ancient liberties which were specific to the historical experience of the Dutch people. Therefore, in the Dutch Revolt, historical-jurisprudential arguments worked to enhance rather than mute natural liberty arguments. The political theorists of the Dutch Revolt could thus produce arguments that incorporated Bodin's methodological revolution, but which justified resistance against authority rather than absolutism, a remarkably robust and influential combination.

A third difference between the Dutch and the Huguenot resistance movements was that the Dutch Revolt was international in a way that the Huguenot movement was not.(see Israel, 1990 & Parker, 1976) In part, this rested on the importance of foreign intervention in the Revolt, such as the involvement of Leicester, and also on the situation of the Dutch at the heart of the international Protestant Reformation. However, more importantly for our purposes, the Dutch

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needed to develop a political right of resistance that was acceptable beyond Dutch society, and independent of the historical and constitutional traditions of Dutch society, because they needed to defend colonial settlements and commercial activity against Spanish and Portugese authorities. They needed to justify acts of resistance in places, like new colonies or the high seas, which lacked historically-identifiable constitutional privileges as the foundation for resistance. Consequently, the Dutch needed to extend the justification of resistance beyond the boundaries of the historical traditions of Dutch society. This is one powerful reason why accounts of natural law and the law of nations were so central to the Dutch Revolt, with Grotius's extract from *De Jure Praedae, Mare Liberum*, assuming special prominence.(Grotius, 1916) This was much more than a Bodinian methodological nicety; it was absolutely essential to the continuing security and prosperity of the United Provinces.

Finally, unlike monarchomachic theory, "the political thought of the Dutch Revolt should be qualified as republican."(van Gelderen, 1992: 281 & see also Bouwsma, 1968) The Huguenots did not substantially challenge the emergence of a discourse of reason of state in France, whereas the Dutch continued to cling to the older republican political vocabulary. Of course, this constitutes a significant difference between the Huguenot and Dutch conceptions of politics, and hence of resistance, to the extent that republican and statist political philosophies involve radically different understandings of the proper way of living in and governing a political community, involving "the distinction between politics as the art of preserving a *res publica*, in the sense of a community of individuals living together in justice, and politics as the art of the state—the art of preserving a state, in the sense of a person's or group's power and control over public institutions".(Viroli, 1992: 2-3) This can be seen very clearly in cases where, even when they did use constitutionalist arguments, the Dutch tended to subscribe to a republican goal of, "defending the right of resistance on behalf of the States as a fundamental principle of the art of politics, whose principal aim was to serve the common good of the *res publica*."(van Gelderen, 1992: 135) It should be noted that this defence of republicanism was to a degree circumstantial,

in the sense that it followed on from the exhaustion of opportunities to install a suitable monarch.(Kossmann, 1991: 287-89) Nevertheless, whether from choice or necessity, the use of republican political language by the theorists of the Dutch Revolt constitutes a clear point of departure from monarchomachic theories, and one of great significance in terms of future resistance theories, especially in North America. This is a significant qualification to Maurizio Viroli's view that, by the end of the sixteenth century, an "ideological and linguistic 'revolution'" had taken place, at the end of which republicanism was "a sort of language of nostalgia or utopia—a language apt to dream about republics of the past or to long for a republic to come."(Viroli, 1992: 270, 9) While this may have been true for the French or Italians, for the Dutch, republicanism was a living political language.

In general, then, while the Huguenots made an "epoch-making move from a purely religious theory of resistance...to a genuinely political theory of revolution,"(Skinner, 1978: 335) "a similar 'epoch-making move', to the articulation of a 'genuinely' political ideology of resistance was made by the political thinkers of the Dutch Revolt."(van Gelderen, 1992: 275) Although monarchomachism was the main driving force behind the emergence of a modern *language* of rights in political theory, the theory of the Dutch Revolt diverged from monarchomachism in certain significant respects, to produce a specific *dialect* within which some theorists discussed these issues. This idiosyncrasy of the Dutch Revolt should be interpreted in four ways. First, the Dutch theory of resistance was more individualistic and less constitutionalist than monarchomachic theory. It was thus closer to the later, more voluntaristic, theories of, *inter alia*, Locke. Secondly, the idea of natural liberty was, in the Dutch Revolt, linked to historical-jurisprudential forms of argument, because of the strong association between traditional political rights in Dutch history and the 'natural liberties' invoked by monarchomachic resistance theorists. This produced an exceptionally powerful justification of the political right of resistance, and this way of arguing, combining natural and historical analysis, was of profound importance in terms of later theories; Locke and other British empiricists like Hume spring to mind.(see Buckle, 1991 & Westerman, 1988) Thirdly, the

international character of the Revolt made some defence of resistance in the context of the law of nations a practical and immediate necessity, and explains why the Dutch theorists produced more significant accounts of the law of nations than the Huguenots. Fourthly, the Dutch ideology embraced a republican conception of politics, and thus contrasted with the emerging reason of state discourse. In general, then, "the political thinkers of the Dutch Revolt seemed to merge the language of jurisprudence with elements of the Republican language"(van Gelderen, 1992: 286), producing a more popular individualistic republican theory of resistance than monarchomachism, justified primarily through reference to natural law, the law of nations and historical freedoms.

The most obvious reason why the political theory of the Dutch Revolt is the appropriate context for making sense of the radical strands of Grotian political theory, is that Grotius was, as we have seen, a direct contributor to precisely this approach to justifying resistance, at least in his early works. Furthermore, this intellectual context makes clear how and why Grotius's work was so relevant to the concerns of resistance theorists, whether working in the Dutch or the fairly similar English and North American circumstances. In effect, Grotius pulled all of the threads of the specifically Dutch resistance theory together and articulated each of them in an unusually compelling way. He offered a highly sophisticated account of the theory of property required by the natural liberty argument, a seminal treatment of the relationship between the ancient and contemporary liberties of the inhabitants of the Netherlands, a celebrated version of the *jus gentium* that supported these claims (among others), and a powerful republican theory of sovereignty that rivalled both monarchomachism and absolutism. Quite simply, when one understands the content of the political language of the Dutch Revolt, Grotius's work, despite its many ambiguities and changes of tone, begins to make some sense *as a whole*, in that one can begin to see the relationships between apparently distinct parts of his political, legal and historical writings. One can also more easily appreciate why Grotius's work was held in such high regard by his contemporaries and successors as a significant contribution to seventeenth-century political and legal theory.

§3. Grotius's account of the law of nations

The thrust of the above argument is that one should not try to make sense of Grotius's account of the law of nations as part of an emerging legal positivist appreciation of the realities of European diplomacy and state practice, but rather as part of an emerging discourse about rights and political obligations, conceived originally in direct opposition to absolutism, but ending up as a significant departure from monarchomachic ways of justifying resistance. This discourse did not embrace the language of reason of state, whether under the rubric of absolutist monarchical or popular sovereignty; instead it tried to keep alive or re-develop republican conceptions of political community, to make them more consistent with the emerging legal, political and economic structures of modern societies. The discourse in which Grotius operated also offered a distinctive way of constructing the natural liberty argument, with a much stronger emphasis on the historical evolution of property rights. Admittedly, in Grotius's later works, this was offered only as a fairly minimal and unremarked right of resistance; other theorists were to enlarge on this basic structure to produce a more far-reaching and useful justification of resistance. Grotius, nevertheless, made important contributions to both of these elements of the discourse: he articulated a republican theory of sovereignty, and made its connections to resistance evident; and he gave a seminal account of the 'natural history'(Buckle, 1991) of property through his treatment of the concept of ownership. Let us now look more closely at *JBP* and see how these arguments were developed by Grotius.

Grotius's criticisms of monarchomachism

At first glance, however, Grotius's arguments seem like a blunt rejection of the possibility of resistance. He does not even see as arguable the point that "arms may be taken up against subordinates by those who are armed with the authority of the sovereign power."(Grotius, 1925: 138; *JBP*, I.iii.1.ii) He simply accepts it as given that sovereigns have the authority to engage in war against their subjects in this way. Furthermore, in the reverse case, he argues that "as a general rule

rebellion is not permitted by the law of nature", nor by Hebraic law, nor by the law of the Gospel, nor by early Christian practice.(Grotius, 1925: 139-46; *JBP*, I.iv.2-6) Beyond these very general and, as we will see, carefully qualified comments, the primary reason why Grotius is so often regarded as an absolutist political theorist is his outspoken criticism of monarchomachic resistance theory in *JBP*. Certainly, Grotius attacked both of the planks of monarchomachic theory: the use of the idea of inalienable natural liberties to argue for popular sovereignty, and the constitutionalist argument for inferior magistrates' right of resistance. However, although Grotius was definitely opposed to monarchomachism, he should not, by that token alone, be regarded as an absolutist. Rather, he elaborates a concept of ownership which permits the natural liberty argument to be used to justify individual rights in the law of nations without the need for appeal to the proposition that popular rights of self-government are inalienable, and he develops a different kind of constitutionalist argument for resistance.

As a point of preliminary clarification, it will be helpful to note Grotius's fundamental distinction between public, private and mixed wars. "A public war is that which is waged by him who has lawful authority to wage it; a private war, that which is waged by one who has not the lawful authority; and a mixed war is that which is on one side public, on the other side private."(Grotius, 1925: 91; *JBP*, I.iii.1.i)[5] If we were to put the monarchomachic justification of resistance in these terms, we might say that the Huguenots offered accounts of resistance either as a just mixed war or as a just public war. The natural liberty argument offers a defence of private individuals waging a mixed war against public authorities, and the constitutionalist argument presents resistance as a kind of justified 'quasi-public' war. What Grotius does is dispute each of these ways of thinking about and arguing for resistance, but not in such a way as to rule out legitimate resistance, nor private war, altogether. Incidentally, it is clear from this rather broad understanding of the concept of war that *JBP* is not intended to be exclusively about the just prosecution of war between sovereign entities; by

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5. Note, just because private wars are waged by those who lack lawful authority does *not* mean that such wars are inevitably unjustifiable. See the discussion of 'private war' below.

writing a book about the laws of war under this definition of different categories of warlike activity, Grotius is able to address practically all of the questions about obligation and resistance that were at issue in early modern political thought.

First, Grotius denies that the condition of natural liberty endows people with an inalienable set of rights for self-government. Thus, he denies that the condition of natural liberty *necessarily* leads to an *ineradicable* core of popular sovereignty. It is, so Grotius argues, legally possible for a people's natural freedoms to be entirely alienated.

> To every man it is permitted to enslave himself to any one he pleases for private ownership.... Why, then, would it not be permitted to a people having legal competence to submit itself to some one person, or to several persons, in such a way as plainly to transfer to him the legal right to govern, retaining no vestige of that right for itself?(Grotius, 1925: 103; *JBP*, I.iii.8.i)

This claim is later bolstered by a version of the natural slavery argument, that "some men are by nature slaves...so there are some peoples so constituted that they understand better how to be ruled than to rule."(Grotius, 1925: 105; *JBP*, I.iii.8.iv) According to this proposition, not only is it legally possible for a people to give away their entire right to govern, it is indeed *natural* for this to happen in certain cases. Although this adds force to the argument, it does not substantially change the basic proposition that it is legally possible for a people to give away all of their rights to self-government, resulting in the creation of a patrimonial sovereign authority. Thus, for Grotius, merely to assert the existence of a condition of natural liberty is not to provide an unanswerable defence of the right of resistance in the face of all particular claims to absolute sovereign authority, as the monarchomachs supposed.

Grotius follows this attack on theories of popular sovereignty with a strong rejection of the monarchomachic proposition that inferior magistrates have a constitutional right of resistance. To such a claim, Grotius gives the reply that

from the point of view of those possessing higher authority [subordinate officials] are private persons. All governmental authority possessed by public officials is in fact so subordinated to the sovereign power that whatever they do contrary to the will of him who holds it is divested of authority and is, accordingly, to be considered as a private act.(Grotius, 1925: 146; *JBP*, I.iv.6.i)

In other words, there is nothing so special about the legal status of inferior magistrates that it permits them to engage in resistance. This indicates Grotius's shrewd understanding of the intentions of the monarchomachs in adapting constitutionalist arguments to their own purposes. Supposing that the natural liberty argument on its own was insufficient, the Huguenots sought to bolster their position by suggesting that resistance was not really a 'mixed' war at all, but was rather a kind of public war, since it could only be engaged in by public officials. Grotius recognises that this is a plausible interpretation of the category of 'public war', but nevertheless contends that "if the word public is understood in a higher sense as characterizing that which is done with due formality, as beyond question the word often is, such wars are not public, for the reason that both the decision of the sovereign power and other conditions are necessary for the fulfilment of the legal requirements involved."(Grotius, 1925: 98-99; *JBP*, I.iii.5.i) Therefore, he concludes that "a public war ought not to be waged except by the authority of him who holds the sovereign power".(Grotius, 1925: 100-101; *JBP*, I.iii.5.vii)

Obviously, this is a rejection of monarchomachic resistance theory. However, it is not sufficient reason to label Grotius as an absolutist, who denies a right of resistance altogether, since all Grotius has said up to this point is that the particular monarchomachic justifications of mixed and 'quasi-public' wars are ineffective: the monarchomachic version of the natural liberty argument assumes that which has to be demonstrated, while the constitutionalist argument rests on a misunderstanding of the concept of 'public' war itself. These are criticisms of monarchomachic arguments, but they are not endorsements of the contrasting absolutist position. Indeed, having dispensed with monarchomachism, Grotius goes on to construct an account of natural law and the law of nations which justifies resistance in a different way from the monarchomachic argument.

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Let us begin by noting that Grotius's criticism of the monarchomachic version of the natural liberty argument is carefully limited so as not to deny the idea of natural liberty itself. In challenging the connection between natural liberty and popular sovereignty, Grotius makes it quite clear that he is only arguing that it is legally *possible* for a people to alienate all of their rights to govern to one individual. Although he is not so outspoken in his criticisms of absolutists as of monarchomachs (for fairly obvious circumstantial reasons), this open-ended proposition operates just as effectively against over-generalised arguments about political obligation that support princely absolutism. Grotius is not ruling the idea of natural liberty out of order altogether, but merely demonstrating its limitations as a tool of argument. As a lawyer, he seems understandably concerned about the monarchomachic attempt to use natural liberty arguments as a kind of trump card that would obviate the need for a painstaking examination of the precise legal situation that obtains in each particular case. In his view, whatever the status of natural liberty, one still has to ask questions about the historical development of the existing set of legal arrangements: had a people altogether ceded their right of self-government in the past, thus creating an absolute patrimony; or had they reserved any rights of government to themselves?

This is precisely what Grotius does, pointing out a number of cases in which sovereign authority is not held absolutely at all. Indeed, he argues against not only a blanket absolutism, but even against a *presumption* of absolutism in many cases, contending rather that, "In cases of kingships which have been conferred by the will of the people the presumption is, I grant, that it was not the will of the people to permit the king to alienate the sovereign power."(Grotius, 1925: 119; *JBP*, I.iii.13.i) In other words, in cases where there is doubt about claims to absolute patrimony over a previously free people (as in the Netherlands), the burden of proof lies with would-be princely absolutists. In other cases, "it may happen that a people, when choosing a king, may reserve to itself certain powers but may confer the others on the king absolutely."(Grotius, 1925:

123; *JBP*, I.iii.17.i) Thus, the king might have an absolute hold over certain elements of sovereign power, but not others. Grotius's position on this point may be summarised as follows. He does not accept the monarchomachs' easy transition from natural liberty to popular sovereignty, but this does not mean that he is necessarily endorsing an absolutist theory of political obligation. All it means is that he is leaving the question open, to be answered through case-specific legal and historical analysis. Furthermore, given the examples that Grotius uses, this gives us grounds for believing that he might still have been prepared to treat the Dutch Revolt as a justifiable act of resistance.

The ways in which Grotius uses his legal-historical analysis to support a non-monarchomachic constitutionalist justification of Dutch resistance as public war will be discussed later. First, however, it is important to explore some of the ways in which Grotius developed the natural liberty argument, through his discussion of just *private* war. It will be recalled that in his initial definition of terms, Grotius described private war as being 'waged by one who has not the lawful authority', and it might seem that this means that private wars are necessarily illegitimate. Grotius's answer to this problem is that private war is justifiable under two sets of circumstances: to ward off injury, and where no recourse to judicial proceedings is available. Both of these circumstances are in some senses independent of civil society. The former "would hold even if private ownership (as we now call it) had not been introduced; for life, limbs, and liberty would in that case be the possessions belonging to each, and no attack could be made upon these by another without injustice."(Grotius, 1925: 54; *JBP*, I.ii.1.v) The latter might arise "if one finds himself in places without inhabitants, as on the sea, in a wilderness, or on vacant islands, or in any other places where there is no state".(Grotius, 1925: 92; *JBP*, I.iii.2.i) Here, Grotius is invoking the Roman concept of property as *occupatio*, which had in the past primarily been used to establish rights of ownership over wild beasts.(Buckland, 1947: 139)

Two points are worth noting about this depiction of just private war. First, it is a development of the natural liberty argument, to the extent that it appeals

to the natural possession of 'life, limbs and liberty'. Here, however, there is something very distinctive about Grotius's formulation. For Grotius, these liberties in the state of nature extend by virtue of the principle of *occupatio* so that "each man could at once take whatever he wished for his own needs, and could consume whatever was capable of being consumed."(Grotius, 1925: 186; *JBP*, II.ii.2.i) As Karl Olivecrona sums up, "According to Grotius, means of subsistence could be appropriated in the state of nature without any preceding compact."(Olivecrona, 1974b: 223) Subsequently, according to Grotius, this right of appropriation was superseded by *dominium*, in the sense of a consensual institution of private property, which was primarily arrived at through the acceptance of existing occupations of land.

> This happened not by a mere act of will, for one could not know what things another wished to have, in order to abstain from them—and besides several might desire the same thing—but rather by a kind of agreement, either expressed, as by a division, or implied, as by occupation. In fact, as soon as community ownership was abandoned, and as yet no division had been made, it is to be supposed that all agreed, that whatever each one had taken possession of should be his property.(Grotius, 1925: 189-90; *JBP*, II.ii.2.v)

Thus, in his account of individuals' natural liberties, Grotius introduced a distinction between the civil institution of *dominium* and the more 'natural' practice of appropriation based on *occupatio*. Admittedly, he is very cautious about the extent to which this constitutes a right of resistance in human society: appropriation does not guarantee rights into civil society, since it is over-ridden by the formation of a civil society and *dominium* does not necessarily permit resistance. He does allow a small space for a naturalist justification of resistance, contending that "laws are formulated by men and ought to be formulated with an appreciation of human frailty."(Grotius, 1925: 149; *JBP*, I.iv.7.ii) However, this is in itself a very limited right of resistance, and strict constraints are specified as to how far such resistance may proceed, even when one is facing death.(Grotius, 1925: 151; *JBP*, I.iv.7.vi; see also Tuck, 1979: 80) In Grotius's own hands, then, this story of natural liberty does not go very far: soon enough *dominium* is

instituted and effectively supersedes the rights of appropriation, depending on the precise legal principles adopted. However, the distinction proved highly influential among subsequent political theorists. As Olivecrona notes: "Grotius allowed appropriation without the consent of others only in the earliest stage of the world and presumably for very limited purposes; it lost its importance with the introduction of *dominium* by way of convention. Locke, on the contrary, made appropriation the beginning and foundation of the right of property."(Olivecrona, 1974a: 223; see also Zuckert, 1994)

The second interesting point about Grotius's formulation is that it gives the natural liberty argument more contemporary relevance not by positing the inalienability of one's natural freedoms and rights (as under monarchomachism or Lockean political theory), but rather by identifying a specific set of legal circumstances in which natural liberties continue to hold good: namely, in 'any places where there is no state'. To this extent, Olivecrona seems slightly mistaken to suppose that Grotius only allowed appropriation 'in the earliest stage of the world', and this is one respect in which Grotius's account of property as appropriation rather than *dominium* is even closer to Locke's than Olivecrona allows. The overlap even extends to their common use of America as a metaphor for a place in which appropriation might legitimately take place.(Grotius, 1925: 187; *JBP*, II.ii.2.i; Locke, 1924: Chapter 5) For our purposes, this is immensely significant, since it introduces a distinctively *international* strand into Grotius's account of property; indeed, it seems to represent colonisation as a species of just private war. This is the basis for Grotius's argument concerning the occupation of "many places hitherto uncultivated [and] islands in the sea".(Grotius, 1925: 192; *JBP*, II.ii.4) So long as such lands exist, appropriation on the basis of *occupatio* could proceed indefinitely and need never be superseded by *dominium*. What is even more fascinating about his account of the precise way in which such occupation takes place is that Grotius posits a distinction between sovereignty and ownership, wherein the former belongs to kings and the latter to individual settlers. On this point the link to colonisation is explicit. Grotius illustrates his point with a quotation from the classical author Siculus:

When the lands assigned to colonies proved to be insufficient, those who were in charge of the allotment and division assigned to future citizens lands which they had taken over from neighbouring territories. The jurisdiction over the lands which were assigned nevertheless remained under the control of those from whose territory they were taken.(cited in Grotius, 1925: 207; *JBP*, II.iii.4.ii)

As we will see later, this description has a striking similarity with the practice of colonising reclaimed land in late medieval Europe and with the scheme eventually adopted for Dutch and English settlement in North America.

Thus, although he rejects the monarchomachic argument from natural liberty to ineradicable popular sovereignty, Grotius does not reject the idea of natural liberty itself, and he makes some interesting moves within that argument which proved to be of great significance for the future development of resistance theory. In the first place, Grotius uses the well-established distinction in Roman Law between *occupatio* and *dominium* to model the natural liberty argument; in the second place, he identifies the practice of colonisation as a way in which appropriation through *occupatio* can continue even despite the existence in the contemporary world of the institution of *dominium*. While this is hardly a fully-developed natural rights theory of resistance, especially when it is compared with Locke's, it would be fair to say that it contains many of the elements of such a theory. Before exploring the legal and political basis of Grotius's description of ownership, however, let us first consider a different aspect of his theory, in which he developed a non-monarchomachic constitutionalist justification of resistance as just public war.

Grotius's theory of divided sovereignty: a republican justification of resistance

One of the most interesting aspects of Grotius's work is his attempt to show that some instances of resistance—including the Dutch Revolt—are, in fact, just *public* wars. This argument is based on a theory of the divisibility of sovereignty, which lies, as Peter Borschberg has pointed out, between theories of absolute princely and absolute popular sovereignty; that is to say, between absolutism and

monarchomachism.(in Grotius, 1994: 126) Thus, while Grotius does not accept the constitutionalist argument that inferior magistrates have a right of resistance against a ruler, he nevertheless recognises that this does not translate into a general constitutional ban on resistance. Indeed, here his qualifications of the general rule are so extensive that, as Hersch Lauterpacht has observed, they "render the major proposition [that resistance is unjustified] almost theoretical."(Lauterpacht, 1946: 45) Grotius's arguments on this point fall into two categories.[6]

The first kind of qualification is theoretically unexceptional, and concerns cases where the king has abdicated the sovereign power or shown himself to be the enemy of the people.(Grotius, 1925: 157-58; *JBP*, I.iv.9, 11) These are, for Grotius, in practice the same thing, since "the will to govern and the will to destroy cannot coexist in the same person. The king, then, who acknowledges that he is an enemy of the whole people, by that very fact renounces his kingdom."(Grotius, 1925: 158; *JBP*, I.iv.11) Although, in a practical sense, this proved a very important way of justifying resistance, it is unexceptional in terms of its consequences for constitutionalist theory, because here the king simply reduces himself to the status of a private person, and the question of resistance against an authority does not really arise.

The second category of qualification of the general rule against resistance is more interesting. It connects back to the earlier point that legally there are several different ways in which a people may alienate some or all of its rights of self-government to a ruler, making some or no reservations on the absoluteness of that alienation. Grotius specifies three instances of this: where rulers are "responsible to the people"; where "sovereign power is held in part by the king, in part by the people or senate"; and where "in the conferring of authority it has been stated that in a particular case the king can be resisted".(Grotius, 1925: 156, 158; *JBP*, I.iv.8, 13, 14) In all of these cases it is clear that the king's sovereign

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6. This division into two categories is my scheme, and departs from the manner of Grotius's own presentation of the argument.

authority is not absolute. On the contrary, either certain sovereign powers have been reserved by the people, and the king is thus accountable to them (as in the first case); or some sovereign powers have been granted by the people to other representative institutions than the king (as in the second case); or some sovereign powers have not been granted in an absolute way, but only conditionally (as in the third case). In each of these cases, resistance is justifiable as a form of just *public* war, since sovereignty is divided within the political community, and in which case "whoever possesses a part of the sovereign power must possess also the right to defend his part".(Grotius, 1925: 158, *JBP*, I.iv.13) Thus, even though, as we saw earlier, Grotius denied the monarchomachic argument about inferior magistrates on the grounds that 'a public war ought not to be waged except by the authority of him who holds the sovereign power', this did not rule out all resistance, because of the divisibility of the sovereign power itself.

Grotius gives these three points a very cursory treatment in *JBP*. However, there is an extended discussion of this line of argument in the earlier *Commentarius in Theses XI* (*CiT*), where Grotius uses the second qualification (that sovereign power is divided between different representative institutions) explicitly to justify the Dutch Revolt. In *CiT*, as in *JBP*, Grotius states that in principle "it is possible for some marks [of sovereignty] to reside with...persons or assemblies, while others do not."(Grotius, 1994: 227) Further, his example of such an instance is the right of the States of Holland to raise taxes.(Grotius, 1994: 219) This consideration is then used to justify the Dutch Revolt, on the grounds that the Duke of Alba unjustly removed this mark of sovereignty by levying taxes himself, and therefore the Dutch are entitled to defend that mark by waging a just public war.(Grotius, 1994: 281-83) The complete independence of the United Provinces is then justified by arguing that the States General legitimately acquired the other marks of sovereignty from Philip II through the successful prosecution of this just war.(see Grotius, 1994: 159-60)

We can therefore go beyond Lauterpacht's cautious suggestion that "It is unlikely that one or more of [Grotius's] exceptions [to the general principle of

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non-resistance] did not recall to the mind of the reader the various articles of the Dutch Act of Abjuration against Philip II of Spain."(Lauterpacht, 1946: 45-46) In fact, these exceptions clearly reflected the way in which Grotius had deliberately set out to produce an account of resistance as just public war that was more acceptable than the logically dubious Huguenot argument from the quasi-sovereign status of inferior magistrates, and which was part of the project of justifying the Dutch Revolt. This account was predicated on the claim that it was legally possible for the various powers of sovereign authority to be divided amongst several different institutions within a political community, which is, as Borschberg argues in his introduction to *CiT*, "directed against Bodin, as well as other exponents of princely, or royal absolutism, who see 'full princely' sovereignty' as an inalterable and therefore universally applicable foundation of all political power."(Grotius, 1994: 122)

It is worth dwelling on this idea of 'divisible sovereignty' a moment longer. We have seen that Grotius's argument is negatively directed against theories of both princely and popular sovereignty; but does he have a more positive vision of the proper form of a political community, grounded on divided sovereignty? In answer to this question, Grotius's reflections on the appropriateness of a *republican* constitution become important. In *De Republica Emendanda (RE)*, he makes clear how this is both a *via media* between and an improvement on the extremes of monarchical or popular absolutism:

> Some support the idea of monarchy.... Some insist on investing the people with autonomy and assert that nature itself strongly suggests that all men are equal. But then there are men to whom neither the rule of a single man nor that of all men together is pleasing, and they maintain that it is inherent in human destiny that the best way always turns out to lie in the middle. Most sensible, indeed, are they who insist on a certain combination of these, in the sense that a single state embraces the majesty of a prince, the authority of a senate and the freedom of a people.(Grotius, 1984: 79-81; *RE*, §14)

Explaining this view, Grotius points out that absolute monarchy implies "a permit for all sorts of injustice", and it is therefore desirable to use "the innate strength

of the people to keep a king in check acting at variance with the law."(Grotius, 1984: 89, 91; RE, §§25,26) Although, as E.H. Kossmann notes, this enthusiasm was qualified later in Grotius's life,(Kossmann, 1991: 289) in JBP Grotius still maintains the idea of divided sovereignty against its many critics, observing in its defence that "in matters of government there is nothing which from every point of view is quite free from disadvantages; and a legal provision is to be judged not by what this or that man considers best, but by what accords with the will of him with whom the provision originated."(Grotius, 1925: 124; JBP, I.iii.17.ii) Admittedly, this is rather a weak argument, but since in most cases Grotius talks about the people as having made the original grant of sovereign authority, it seems likely that this is a roundabout way of asserting the republican proposition that the organisation of government should be in the public, rather than the particular, interest.[7]

Arguably, this attachment to a republican conception of political community and divisible sovereignty is the correct way of making sense of Grotian solidarism, since it is in talking about divided sovereignty that Grotius offers his most distinctively solidarist comment on international relations: "not only did the peoples bind themselves to the kings, and kings to their peoples, but also the kings bound themselves to one another, and peoples to one another. Further, the kings bound themselves to neighbouring peoples, and peoples to neighbouring kings, and they promised to render aid, each to the other."(Grotius, 1925: 124; JBP, I.iii.18.i) The point is that, when this is understood as part of Grotius's conception of divided sovereignty, it is clear that it is not simply a nostalgic appeal to medieval Christendom, either in Bull's or Viroli's senses. What Grotius is doing is using an idiom for arguing about the proper way of organising a political community which had not died out at the end of the seventeenth century, but which had flourished in the context of Dutch resistance theory. Grotius's combination of a theory of individual rights on the basis of

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7. This feature of Grotius's thought is noted by Tanaka Tadashi, who treats it as a reflection of "the reality since the European Middle Ages."(Tadashi, 1993: 135) He does not, however, appreciate how this feature of Grotian political theory was related to the project of constructing a modern (i.e., post-Bodinian) political and comparative-legal justification of resistance.

appropriation and a republican conception of divided sovereignty are the proper theoretical basis for the solidarist conception of international society.

By changing our understanding of the antecedents, context and content of Grotian thought, we also change our idea of who his successors were. If Grotius is seen as emblematic of the transition from natural to positive law, his eighteenth-century successors are those international lawyers like Emerich de Vattel and Christian Wolff, who elaborated the positive science of law in the society of states. This, certainly, is Bull's position, and he sees these lawyers as finally succeeding in shaking off Grotius's lingering nostalgia for the great republic of Christendom, and freeing themselves for a more realistic and practical account of the membership, norms, rules and institutions of the European society of states. If, on the other hand, we see Grotius as a participant in the discourse of property and sovereignty that evolved in the Netherlands in opposition to absolutist sovereignty and reason of state, our view of his successors is more likely to focus on Locke, as has been indicated in the foregoing discussion, and the political theorists of the American revolution.

§4. The Grotian tradition after Grotius

The connection between the Grotian theory of property and the subsequent work of Locke has already been mentioned above. However, a more complete illustration of how Grotius's ideas influenced subsequent thinkers can be found in attempts to justify the American Revolution. The concepts of ownership through appropriation (*occupatio*) and the possibility of distributing the marks of sovereignty within a political community conceived as a *res publica* were both used by American political theorists to justify the revolution, and in so doing, remarkably similar formulations were used to those developed by Grotius. In the first place, the old concept of *occupatio* was asserted to be a principle of natural law, and the links between that concept and the colonisation of 'vacant islands' were emphasised ever more strongly. Secondly, in the same way as Grotius, the Americans faced the problem of justifying resistance within a discourse of

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absolute sovereignty. They ended up not simply asserting a background right of popular sovereignty (although they certainly used that idea more enthusiastically than Grotius had done), but also claiming that sovereignty was divisible.

Appropriation and the justification of the American Revolution

An especially illuminating discussion of the concept of appropriation in the context of revolutionary American thought can be found in Thomas Jefferson's famous 1774 pamphlet, 'A Summary View of the Rights of British America', the argument of which is closely related to previous European notions of ownership through occupation.(Jefferson, from 1950: i, 121-37 & see also Hargrove, 1980) Jefferson sought to justify resistance against the British on a number of grounds, one of the foremost of which was the nature of land ownership in the colonies. He explained the nature of the American tenurial system by comparing it with the Saxon colonisation of Britain, which was, significantly, similar to a 'vacant island', at least to the extent that it was "then less charged with inhabitants".(Jefferson, from 1950: i. 122) In establishing settlements, the Saxons established a land system under which they "held their lands, as they did their personal property, in absolute dominion, disencumbered with any superior, answering nearly to the nature of those possessions which the Feudalists term Allodial".(Jefferson, from 1950: i, 132) It was only after the Norman invasion that the feudal system of tenure was introduced, but nevertheless, under the common law, allodial tenure predominated, and "Feudal holdings were...but exceptions out of the Saxon laws of possession, under which all lands were held in absolute right."(Jefferson, from 1950: i, 133) With grinding logic, Jefferson went on to observe that, since "America was not conquered by William the Norman, nor it's [*sic*] lands surrendered to him or any of his successors, Possessions there are undoubtedly of the Allodial nature."(Jefferson, from 1950: i, 133) The British were, therefore, unjustified in levying charges or imposing duties, which by definition presupposed feudal tenures.

This vision of the allodial landholding system of Saxon England and

colonial America, and the consequent identification of tyranny with claims on individuals' property, was not peculiar to Jefferson, but was widely shared by both Americans and sympathetic Europeans.(Bailyn, 1967: 80-84) In terms of his understanding of the status of this right of appropriation in the law of nations, it is worth noting that Jefferson went further than this purely historical account, to claim the right of appropriation as a right given to men by nature, "of departing from the country in which chance, not choice has placed them, of going in quest of new habitations, and of there establishing new societies"; indeed, the Saxons had colonised Britain, so Jefferson claims, "under this universal law".(Jefferson, from 1950: i, 122) Going beyond Grotius, but not Locke, Jefferson then extended this right to include unappropriated land within already constituted civil societies. He argued that a society may allot land according to its own inclinations, but if this option is not taken "each individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title."(Jefferson, from 1950: i, 133) Thus, the political theory of the American revolution made extensive use not just of the idea of individual natural liberty, but of the extensions to that doctrine made by Grotius and his successors in terms of the theory of legitimate appropriation under the law of nature and in the law of nations.

Divisible sovereignty and the justification of the American Revolution

Let us now turn to the concept of sovereignty in revolutionary American political thought. As Bernard Bailyn shows, the dominant Whig doctrine of absolute parliamentary sovereignty posed an exceptionally difficult problem for those colonial political theorists who wanted to justify the revolution. If Parliament was indeed the repository of the theoretically ultimate supremacy of the people, how could the right of Parliament to impose taxation in the colonies be denied? Consequently, "How to qualify, undermine, or reinterpret this tenet of English political theory was the central intellectual problem that confronted the leaders of the American cause".(Bailyn, 1967: 202) As in the Dutch Revolt, the *de facto* circumstances of political authority in America offered a possible solution to the problem faced by the political theorists. The actual situation was that the powers

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exercised by the formally sovereign British Parliament and Crown

> were far from total powers; together they did not constitute
> governance in depth, nor did they exclude the exercise of real
> power by lesser bodies or organs of government. They touched
> only the outer fringes of colonial life; they dealt with matters
> obviously beyond the competence of any lesser authority; they
> concerned the final review of actions initiated and sustained by
> colonial authorities. All other powers were enjoyed, in fact if not
> in constitutional theory, by local, colonial organs of
> government.(Bailyn, 1967: 203)

Bailyn summarises the situation that actually existed in the colonial societies as "extreme decentralisation of authority within an empire presumably ruled by a single, absolute, undivided sovereign."(Bailyn, 1967: 204)

Given the similarities in the nature of political authority in the sixteenth-century Netherlands and eighteenth-century North America, it is perhaps unsurprising that political theorists of the American revolution began to treat the concept of sovereignty in much the same way as had Grotius in his theory of resistance as just public war. Their key move in this respect was to propose a qualitative distinction between the nature of sovereignty over a single nation, and that of sovereignty in an empire. In the case of the latter, it was argued that the "sovereign body need not be supreme everywhere and in all matters in the territory it controlled, but only on some issues and in some ways, and that other, lesser bodies might exercise absolute and arbitrary powers—sovereign powers in effect—within spheres specifically allotted to them."(Bailyn, 1967: 216) As with the concept of appropriation, the principal difference between the Grotian position and American political thinking about sovereignty was that American theorists took the idea of the divisibility of sovereignty much further and elaborated it into an idea of "an imperial federation of sovereign states",(Bailyn, 1967: 224) in a way that had not been anticipated by Grotius's much more humble conception of a mixed republican constitution. However, the similarities of these two anti-absolutist conceptions of sovereignty are far more significant than the differences. As with the concept of appropriation, it makes sense to see

the theory of sovereignty of the American revolution as an extension or consolidation of certain themes that were present in Grotius's conception of the law of nations.[8]

Thus, while the main achievement of the European positivist international lawyers following Grotius was to reconstruct international legal concepts to accord with established state practice in continental Europe, which meant dispensing with many of the tenets of medieval natural law or of the *res publica* of Christendom, the American revolutionaries saw the law of nations as a much more dynamic vehicle, with more potential for leading change in state practice. They continued to employ naturalist and republican concepts to that end. Their point of view is well illustrated by the following remark of John Adams, Benjamin Franklin and Jefferson:

> By the original Law of Nations war and extirpation was the punishment of injury. Humanizing by degrees, it admitted slavery instead of death. A farther step was the exchange of prisoners instead of slavery. Another to respect more the property of private persons under conquest, and be content with acquired dominion. Why should not this Law of Nations go on improving?(Jefferson, from 1950: vii, 491)

This classically Grotian attitude to the historical development of the law of nations is an important reason why the American states-union was devoted to the realisation of quite different normative principles from those pursued by the framers of the Westphalian system. While the architects of the Westphalian system accepted the existence of independent sovereign states and merely tried to promote peaceful coexistence between them, the American system was directed towards the more ambitious goal of organising territory and political administration, in order, as Jefferson put it, "to produce the greatest degree of

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8. I should note that Daniel Deudney disagrees with this interpretation of the American understanding of sovereignty. He prefers to use William Blackstone's definition of sovereignty as indivisible, and argues that to see sovereignty as divisible is merely to confuse sovereignty with authority.(Deudney, 1995: 198) However, I think that this misses the point that both the Grotian and American revolutionary conceptions of sovereignty were worked out in conscious opposition to the absolutist or unitary doctrine asserted by Blackstone, and many others.

happiness to their inhabitants".(Jefferson, from 1950: xviii, 164) In large part, of course, such an optimistic point of view was made possible by the opportunity for territorial and political manipulation offered by the western territories. It was the existence of these vast, supposedly unappropriated and ungoverned lands that allowed international society to be conceived of as "an expanding union of self-governing commonwealths, joined as a group of peers."(Dumas Malone, cited in Jefferson, from 1950: vi, 582) Jefferson was certainly aware of the distinctiveness of this '*Jus gentium* of America',(Jefferson, from 1950: vi, 487) and it may have been part of the reason behind his comment that "our geographical peculiarities may call for a different code of natural law to govern relations with other nations from that which the conditions of Europe have given rise to there."(cited in Beloff, 1948: 257)

It should be noted that this constitutes only one, albeit very influential, strand of international political and legal thought in early American political theory. On this point, Daniel Lang has identified a distinction between what he calls the 'Hamiltonian' and 'Jeffersonian' approaches to early American foreign policy-making and, as the above discussion suggests, the Grotian ideas of appropriation and divisible sovereignty principally relate to the latter of these.(Lang, 1985) Lang gives an excellent analysis of the influence of Vattel on American thinkers, and the notion of the balance of power and sovereign equality more generally. Unfortunately, he does not undertake any extensive analysis of the relationship between specifically Grotian concepts and early American international political or legal thought, preferring simply to adapt Bull's idea that "Vattel is part of...the 'Grotian tradition' in international relations theory which describes international politics as a society of states".(Lang, 1985: 25) Broadly speaking, Lang describes the Hamiltonian approach as oriented towards military-strategic concerns, and as justified through an appeal to the realistic character of Vattel's ideas about international law. However, "While Hamilton generally stopped with Vattel in his interpretation of the law of nations, the Jeffersonians strove to go beyond him."(Lang, 1985: 128-29) In this regard, it is perhaps ironic that the Jeffersonians went 'beyond' Vattel only to return to more classically

Grotian categories. The principal feature of the Jeffersonian approach that Lang identifies is their concern with the internal regimes of other states, in the sense of their correspondence with principles of republican and democratic government. Moreover, Jefferson held to the classically Grotian belief that "between society and society the same moral duties exist as did between the individuals composing them while in an unassociated state".(cited in Lang, 1985: 139) Although Lang does not go further to explore connections between Jefferson's democratic-republican attachment to the American yeoman and Grotian ideas of property and political community, Lang's account of these disagreements with Hamilton's Vatellian approach illustrates the importance of ideas of private property and republicanism in the Jeffersonian understanding of international law.

In other words, Jefferson did not reject Grotian naturalist ideas, and could instead be seen as adapting elements of Grotian legal naturalism to suit the peculiar demands of the American situation. Furthermore, his thinking about international relations inevitably compromised the rule of non-intervention, to the extent that it sought to build certain principles regarding domestic political and legal regimes into the rules of international law. In addition, the concept of ownership was defined through a natural right of private appropriation, thus allowing individuals a much more extensive form of international personality than was available under positive international law. This figured most obviously in the unique model treaties which Jefferson (among others) drafted, including unprecedented recognition of individual rights during wartime, as well as a project for reciprocal citizenship.(Jefferson, from 1950: vii, 463-90 & viii, 318)

§5. Two Grotian conceptions of international society

We have then, two Grotian conceptions of international society, each of which is based upon one of the strands within Grotius's political and legal thought. As Bull was well aware, one of Grotius's lasting achievements was to provide a relatively scientific basis for international legal scholarship, by showing how the principles of the law of nations were based on natural reason, rather than divine

revelation. This was allied to Grotius's partial awareness of the importance of state practice in determining the content of the law of nations. Although this remained in rather a confused state in Grotius's own work, it anticipated the subsequent development of a positive science of international law by Vattel and others. Thus, we have a 'Grotian tradition' of international law cast in terms of the development of positive international law in the society of states. This lends support to Bull's claim that the Grotian conception of international society is really an idea of a society of states, within which a relatively rich notion of solidarity could perhaps be posited, but which can nonetheless be seen as an anticipation of the more pluralistic modern European 'anarchical society' of sovereign states.

On the other hand, another of Grotius's achievements was to provide a compelling reformulation of early modern resistance theories, taking full account of the methodological revolution in political theory inaugurated by Bodin. Here, Grotius introduced two arguments that were picked up by subsequent resistance theorists, especially in the context of the American Revolution: a theory of private property based on appropriation, instead of consent; and a theory of political authority based on a modernised republican conception of political community. Jefferson was probably the most important thinker to use both of these notions to provide a comprehensive understanding of international society as an 'expanding union of self-governing commonwealths', or, in true Rationalist fashion, as a society comprising individuals, states and a number of different political institutions, within a general republican idiom and dedicated to protecting the rights and freedoms of the individual.

Chapter 5

A Reappraisal of the Origins of Modern International Society

It is obvious that Hedley Bull's reading of Grotian international political and legal thought has the advantage of being associated with a well-known story of the historical origins of modern international society. As we saw in Chapter 3, this story is focused on the Peace of Westphalia of 1648 as the founding moment of modern legal principles and diplomatic protocols, established on the basis of the. mutual recognition of the 'internal freedom' of sovereign states. By contrast, to the extent that it lacks association with an historical narrative, the more individualist and republican reading of Hugo Grotius presented in Chapter 4 might be seen as ungrounded in any concrete international practices, and might therefore be dismissed by theorists interested in the mechanisms that actually did uphold order in modern world politics. The concepts associated with this reading of Grotius, such as the idea of divisible sovereignty, therefore appear as part of a fanciful, perhaps nostalgic, perhaps idealistic, account of international society, either looking back to Christendom, or looking forward to a utopian vision of a great commonwealth of mankind. The purpose of this Chapter is to present an alternative historical narrative of the origins of modern international society, in order to demonstrate the relevance of the liberal and republican themes in Grotius's thought to modern world politics. In other words, the aim of this Chapter is to identify the sixteenth and seventeenth-century international practices within which the legal and political concepts of appropriation and divisible sovereignty were developed. This will show that Grotius's view of the law of nations was neither nostalgic nor idealistic. Rather, it was, like Bull's conception of a society of states, an expression of normative, legal and institutional forms embedded in actual modern international practices.

The main thrust of the argument is that Grotius's ideas of appropriation and divisible sovereignty exhibit an affinity with the forms of land tenure and constitutional arrangements embedded in the practice of *colonisation*. This should not be surprising, since the sixteenth and seventeenth-century Netherlands was

a colonial society *par excellence*: partly in the sense that Dutch prosperity in the 'Golden Age' was built on colonial adventures in the East and West Indies, but also in the deeper sense that the legal and political basis of Dutch society was itself influenced to a considerable degree by the establishment of communities through the colonisation of reclaimed land. Thus, the normative, legal and institutional *milieu* within which Grotius developed his ideas was steeped in the practice of colonisation, almost as a way of life. After identifying the distinguishing features of colonisation in the Netherlands, the Chapter then examines how the practice was carried forward within another quintessential early modern colonial society: pre-revolutionary North America. In the context of Dutch and British colonial settlements in North America, one can see the replication and consolidation of the tenurial and political forms of the practice of colonisation previously established in medieval Europe. Since the practice of colonisation described here was an undeniably important part of modern international relations, this demonstrates that Grotius's ideas of appropriation and divisible sovereignty are important features of the element of society in modern world politics.

As section 1 explains, the argument of this Chapter thus sheds new light upon an old controversy about the significance of natural law conceptions of international society in the sixteenth and seventeenth centuries, between Bull and Gerrit Gong on one side and Charles Alexandrowicz on the other.(Bull, 1977 & 1984a; Gong, 1984; Alexandrowicz, 1967) Alexandrowicz thought that a universal international society had formed in the sixteenth and seventeenth centuries on the basis of natural law and early commercial or diplomatic contacts between European and Asian societies. Against Alexandrowicz's account of early modern European-Asian trade and treaty relations, Bull and Gong questioned the extent to which the universalist conceptions of international society contained in natural law theory really did find a practical embodiment in sixteenth and seventeenth-century world politics. The argument of this Chapter suggests that Alexandrowicz's broad position can be defended, but only on the terms of a rather different account of the normative, legal and institutional components of

the naturalist international society in the sixteenth and seventeenth centuries. To identify these features of early modern international relations, the rest of the Chapter examines the tenurial and political dimensions of the practice of colonisation: section 2 looks at the colonisation of reclaimed land in the medieval Netherlands, section 3 looks at Dutch colonisation in the East Indies, and section 4 looks at Dutch and British colonisation in pre-revolutionary North America. The conclusion will then return to the debate between Alexandrowicz and Bull and offer a new perspective on the relationship between the Grotian law of nations and the sixteenth or seventeenth-century origins of modern international society.

§1. Problems with the Westphalian focus: the Alexandrowicz-Bull debate

The conventional account of the origins of modern international society, which draws attention to the foundational significance of the Peace of Westphalia in 1648, has already been explained in Chapter 3. Here, then, there is no need to go into this historical narrative in any detail. It will suffice merely to recall Alexander van Heeren's claim that the Peace inaugurated a system of states characterised by "*internal freedom*; that is, the stability and mutual independence of its members."(Heeren, 1873: 5, emphasis original) As we saw earlier, this was developed by the members of the English school into two main propositions. The first identified the distinctiveness of the European society of sovereign states: "Among the regional systems into which the world was divided that which evolved in Europe was distinctive in that it came to repudiate any hegemonial principle and regard itself as a society of states that were sovereign or independent."(Bull & Watson, 1984: 6) Secondly, this society of states expanded to its current global proportions through a process whereby "non-European states entered an originally European club of states as and when they measured up to criteria of admission laid down by the founder members."(Bull, 1984a: 123) This affirms Bull's idea of the Grotian tradition against the alternative account, to the extent that "in their broad impact on the course of international history the theory of Grotius and the practice of the Peace of Westphalia marched together."(Bull,

As several international relations theorists have pointed out, the focus on the two Westphalian Treaties between France, Sweden and the Empire leads to certain important lacunae in the conventional historical narrative. For example, Justin Rosenberg notes that "one major state was not represented at [the negotiations for the Peace of Westphalia]...England. And yet it was Hobbes's England, not Bodin's France, which was to go on to play the leading role in extending the sovereign form of rule beyond Europe and defining the institutional form of the global states-system of today".(Rosenberg, 1994a: 138) One might add that, as well as Hobbes's England, Grotius's United Provinces and Jefferson's United States also had something to do with this process. Daniel Deudney has offered a further illustration of how modern world politics may contain dimensions ignored by the conventional historical narrative, pointing out that the 'Philadelphian' system of the pre-Civil War American states-union was "an alternative to the European Westphalian system rather than an oddly constituted state within it."(Deudney, 1995: 193) For the most part, Rosenberg explores England's place within the broader social formation of capitalist combined and uneven development, while Deudney's analysis juxtaposes the Philadelphian and Westphalian systems as different kinds of security systems. However, one could equally well ask how they compare as international societies.

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1. It should be noted that agreement on the significance of the Peace of Westphalia was neither universal nor unqualified in the English school. Indeed, many of the members of the school would probably agree with Stephen Krasner's objection that the Westphalian Treaties did not produce all of the changes that are sometimes attributed to them.(Krasner, 1993) As Martin Wight observes, "the Westphalian starting point is itself eroded by the historiographical desire to establish continuity and the tendency for 'origins' to slide ever backwards in time."(1977: 114) Keeping track of this backwards drift, Wight draws attention to the emergence of the regional states-system in northern Italy during the renaissance, the point being that this marks the emergence of a system of power politics between territorially-consolidated states, a crucial prerequisite of the emergence of the diplomatic and legal practices that mark the emergence of international society. Alternatively, some theorists prefer to delay the origin of the modern international society until the French Revolution, which is perhaps a more conventional demarcation of the origin of modern terms of political discourse.(Hinsley, 1986) The point is that the Peace of Westphalia should be seen as no more than a part of a broader process of historical development, expressing only some of the wider changes that gradually constituted modern international society. Nevertheless, the English school's main point was that the Peace retains a crucial role in the legal and diplomatic consolidation of international society, and is therefore deserving of study as part of a broader comparative-historical research programme. This is, in other words, less a criticism and more a refinement of the Westphalian focus of the English school.

Furthermore, to continue this point about the lacunae of the conventional narrative, the focus on the two Westphalian Treaties between France, Sweden and the Empire ignores a third, roughly contemporaneous, treaty between the Netherlands and Spain, which also had profound international implications. The conventional perspective therefore risks ignoring the Dutch Revolt altogether as a formative influence on early modern European politics, and this is obviously significant from the point of view of the relationship between Grotian thought and modern international society. To this one might also add the point that conventional treatments of the Peace, which emphasise the formation of the balance of power and the emergence of the principle of *cuius regio eius religio*, neglect other important aspects of the Peace settlement itself. For example, it is true to say that one of the most distinctive achievements of the Peace of Westphalia was the development of a detailed and systematic application of *cuius regio eius religio*, taking the 1st January 1624 as the decisive date for this religious partition of Europe.(Osnabruck V, Munster XXVIII) However, the Peace went beyond simply stating this principle, and urged understanding for those who "embrace a Religion different from that of the Lord of the Territory," asking that they be, "tolerated, without any Hindrance or Impediment to attend their devotions in their Houses and in private".(Osnabruck, V) This strikes a very different, more individualistic note from Heeren's principle of 'internal freedom', suggesting the existence of an internationally supported normative principle of individual rights and freedom of conscience in the Westphalian settlement. In other words, the Westphalian Treaties themselves do not offer unequivocal historical evidence for the emergence of a society composed exclusively of sovereign states.

Alexandrowicz has given perhaps the most sustained account of the shortcomings of the Westphalian focus. His argument relates directly to the question of the practical context of Grotius's thought, and will therefore be accorded most attention here. The centrepiece of Alexandrowicz's argument is the complaint that "to consider the European nucleus of states as the founder group of the family of nations was to view the origin and development of that family in

the light of positivist conceptions which were only born at the turn of the eighteenth and nineteenth centuries."(Alexandrowicz, 1967: 11) The trouble with this widely-held but misconceived view of the origins of modern international society, according to Alexandrowicz, is that it ignores the existence of a universal system of ethical and legal principles based on natural law, which regulated inter-state dealings from as early as the sixteenth and seventeenth centuries. One of the main implications of this point is that the development of international society in the nineteenth century is not a story of expansion at all; in fact, quite the reverse is true.

> Paradoxical as it may seem, [international society] started contracting into a regional (purely European) legal system, abandoning its centuries-old tradition of universality based on the natural law doctrine. While European-Asian trade was still expanding, European egocentricity left the sovereigns of the East Indies, which had largely contributed to the prosperity of the European economy, outside the confines of 'civilisation' and international law shrank to regional dimensions though it still carried the label of universality.(Alexandrowicz, 1967: 2)

In other words, the geographical focus on the formation of a *European* society of states is the result of a chronological error, superimposing a nineteenth-century system of classifying sovereignty onto sixteenth and seventeenth-century practices. This error causes conventional theorists to misinterpret normative, legal and institutional structures in the early modern period, under-estimating the practical significance of naturalist ideas and the universal scope of intenational society.

This re-interpretation of the origins of modern international society led Alexandrowicz to offer a different assessment of the importance of Grotius in early modern international legal thought. According to Alexandrowicz, Europeans initially met Asians on roughly equal, or sometimes inferior, terms, and were consequently forced to agree treaties acknowledging this fact. The universalist and often egalitarian terms of these treaties were well-suited to the precepts of natural law, and thus there emerged a relatively robust treaty system between European and Asian states, grounded in both legal theory and diplomatic practice. In part,

this involved Grotius's attempt to open up access to the Indian Ocean to Dutch traders, which rested on his natural-legal argument about the impossibility of appropriating the sea.(Alexandrowicz, 1967: 61-82) More interestingly, however, it also related to questions about how to conduct relations with East Indian rulers. Here, Alexandrowicz depicts Grotius's position as follows:

> [Grotius] eliminates the possibility of conceiving the East Indies as a legal vacuum as far as the law of nations is concerned. What he stresses most emphatically is the existence of organised political entities in the East Indies which he considers independent and sovereign.... The immediate consequence to be drawn from this statement was that European powers coming to this part of the world could not acquire territorial or other rights by discovery, occupation of *terra nullius*, by papal donation or any other unilateral act carried out in disregard of the sovereign authorities governing the countries of the East Indies. They could consider themselves sovereigns only over territories acquired by cession or conquest in accordance with the rules of the law of nations.(Alexandrowicz, 1967: 45-46)

In other words, Grotius treated the East Indian rulers as the *de jure* equals of European sovereigns. In order to ensure access to trade with the East Indian rulers, Grotius appealed to the natural right of freedom to trade.(Alexandrowicz, 1967: 45-46) Thus, Grotius "classified East Indian rulers as sovereigns in the meaning of the law of nations and...opened to them the doors of the universal and natural family of nations."(Alexandrowicz, 1967: 229) However, the nineteenth century saw a widening disparity between European and Asian societies, partly military, but also partly commercial as East Indian rulers were drawn into a web of monopolistic commercial relations, isolating the rulers and increasing their dependency on European sovereigns.(Alexandrowicz, 1967: 129) The legal prescriptions of the natural lawyers slowed down the eventual process whereby the East Indian rulers were robbed of their equal sovereign status and forced to petition for admission into the new, much smaller society of 'civilised' states, but they could not stand against the rise of positivist European legal orthodoxy in the nineteenth century, based as it was on the military and economic dominance of the European states.(Alexandrowicz, 1967: 156)

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Bull and Gong both take issue with Alexandrowicz's claim that a universal international society existed on the basis of trade and treaty relations and natural law in the sixteenth century. According to Bull:

> A pattern of economic, military, and political interaction had grown up in which not only European states and their colonies of settlement but Asian, African, and Amerindian rulers and peoples were involved – in different ways and to different degrees. But they were not united by a perception of common interests, nor by a structure of generally agreed rules setting out their rights and duties in relations to one another, nor did they co-operate in the working of common international institutions.(Bull, 1984a: 117)

In other words, Alexandrowicz mistakes a universal international *system* for a universal international *society*. Even if Alexandrowicz's argument is seen to be making a more limited claim about European-East Indian relations, "there was no single, agreed body of rules and institutions operating across the boundaries of any two regional international systems...such as we imply when we speak of an international society."(Bull & Watson, 1984: 6) Gong's criticism of Alexandrowicz is based on the even more sweeping claim that before the nineteenth century "the countries of the world did not behave as related parts of a single international system prior to that time."(Gong, 1984: 4)

Although this reply does raise a very real concern with Alexandrowicz's rather ambitious claims, it misses one of the main points of Alexandrowicz's argument: his claim that the naturalist approach to international law had a practical embodiment through the sixteenth and seventeenth centuries, not in Europe, but beyond Europe. Whether or not this provides the basis for the existence of a genuinely universal international society in the period, it calls the conventional account of the medievalism of natural law into question. Bull and Gong do not appear to realise the extent to which Alexandrowicz's argument provides a completely different historical way of contextualising the diverse themes of Grotian thought, compared with the simplistic affinity between 'the Grotian law of nations and the Westphalian international system' upon which C.G. Roelofsen poured such scorn.(Roelofsen, 1990: 8 & see Chapter 4 above)

The point is that what is important about Alexandrowicz's argument is not its attempt to establish the existence of a sixteenth-century universal international society; its importance lies in the interpretation it suggests of early modern international thought and practice, in terms of the significance of the naturalist conception of equality in the law of nations.

This is not to say that Alexandrowicz's argument is beyond reproach. On the contrary, he does not engage in a detailed study of Grotian thought in its intellectual context. He merely sets it in terms of the debate about dealing with East Indian rulers, and neglects to put it into its wider political theoretical context in European debates about resistance, as was discussed in the previous Chapter. The problem with this is that, although Alexandrowicz correctly recognises the importance of looking at sixteenth century ways of classifying East Indian rulers as sovereigns, he does not appear to appreciate the importance of looking at the meaning given to the concept of sovereignty itself by early modern international lawyers like Grotius. Nor does Alexandrowicz canvass the possibility that Grotius's account of the law of nations contains concepts other than sovereignty; although in the previous Chapter we saw the importance of a concept of appropriation in Grotius's views about the legitimacy of private war, a key aspect of the legal basis of European activities beyond Europe. Therefore, while Alexandrowicz's account illustrates the inadequacy of the conventional Westphalian focus, it does not then go on to offer a proper alternative treatment of the norms, rules and institutions in which the naturalist themes of Grotian thought were realised in the sixteenth and seventeenth centuries. His work therefore sets us a challenging historical task, which we are now, thanks to the analysis of the previous Chapter, in a better position to attempt.

§2. Tenure and political authority in Dutch reclamation agreements

To begin with, it is interesting to reflect on what it was about early modern Dutch society that encouraged the particular political theoretical innovations of the Dutch revolt and Grotius's work. Why were the Dutch generally able to reinforce

the standard natural liberty argument with references to ancient liberties, and why were they so committed to a republican political language? Why did Grotius develop an account of appropriation in the contemporary law of nations through an idea of the occupation of uncultivated wildernesses; why did he posit such a strong distinction between the rights attendant on sovereignty and those derived from private ownership; and why did he come to see sovereignty in the Netherlands as divided between different individuals and institutions, so justifying the Dutch revolt as a just public war? The best single answer to these questions is that the sixteenth and seventeenth-century Dutch legal and political systems were powerfully influenced by the practice of the colonisation of reclaimed land. The forms of land tenure and political authority generated by this practice furnished the basic legal and political materials for the distinctively Dutch version of resistance theory and for these elements in Grotius's account of the law of nations.

Probably the most momentous feature of the colonising activities practiced in the medieval Netherlands was the ability of colonists to secure exceptionally free land tenures for individual occupiers and extensive political rights and privileges for local communal institutions. This combination of permissive tenurial and political rights provided both the means and the justification needed to undertake resistance successfully. Certainly, the prevalence of settlements on reclaimed land in the Netherlands helps to explain why Dutch political theorists were in an unusually good position to produce relatively robust and sophisticated justifications of resistance by connecting natural liberty arguments to appeals to customary liberties. In effect, what they were doing was invoking a legal concept of ownership rooted in a long-standing tradition of reclamation and settlement, which was especially resonant in the circumstances of the early modern Netherlands. Furthermore, by looking at the unusual character of the political systems established in communities founded on colonised land, especially in the northern and western districts of the Netherlands, one can discern certain features that go some way towards explaining the predisposition to a republican conception of politics demonstrated by the political theorists of the Dutch revolt,

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and hence Grotius's idea of divisible sovereignty.

The non-feudal character of early modern Dutch society

Probably the most striking feature of sixteenth and seventeenth-century Dutch society was the sheer extent of its divergence from the conventional picture of medieval European agrarian society as a society of oppressed tenants, holding their land under heavy obligations and capricious landlords. In the Netherlands, by contrast, "The peasants as a class owned a considerable portion of the land and the privileged classes...rarely possessed the power to hold them in subjection."(de Vries, 1974: 55) Indeed, "feudal institutions were either never established or attained only a precarious existence in the first place."(de Vries, 1973: 194) This raises an important question: given that medieval peasants were not always in as miserable a condition as is often supposed, what is the historical background to the freedoms and rights that they did actually possess; and why were these freedoms and rights so widespread, pronounced and long-lasting in Dutch society?

This question calls to our attention a debate between classical political economists and historical materialists, which has an echo in international relations theory. Classical political economists often represented medieval Europe as a world of forced labour services, of lands held as fiefs by seigneurial elites and worked by legally-unfree peasants, bound by numerous obligations to a variety of overlapping political authorities. Although this picture of feudal society is very familiar, there is, as Karl Marx perceptively observed, something rather dubious about it: "It is far too easy to be 'liberal' at the expense of the Middle Ages."(Marx, 1976: 878n) What he meant by this remark was that classical political economists extolled the purported relationship between capitalist market economics, private property, 'free' labour and political freedom by deliberately presenting an over-simplified and historically inaccurate picture of property and political relations in medieval Europe, which exaggerated the unfreedom of the medieval peasant. This fiction allowed the eventual commutation of labour

services *via* the cash nexus to appear as a moment of emancipation, rather than expropriation and proletarianisation. The story told by classical political economists obscured the way in which proto-capitalists systematically and deliberately ignored or trampled on the previously existing rights and freedoms of the medieval peasantry.[2] The point is that medieval peasants often held extensive rights over the land on which they worked, and often enjoyed

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2. Unfortunately, although the Marxist critique of classical political economy is very useful in highlighting the inadequacy of the classical view of the feudal system, its historiographical focus on the rise of capitalist social relations does not help us in exploring the roots of Grotius's conception of the law of nations. This is because Marxists' exclusive concentration on the origins of the capitalist mode of production prevents them (and us) from achieving a proper understanding of the tenurial and political forms that served as the background to the Dutch Revolt. The crucial point here is that Marxists generally do not investigate the role of land-reclamation in helping to establish certain of the freedoms enjoyed by the peasantry in some areas during the early Middle Ages, and do not pay sufficient attention to the role of reclamation and colonisation in societies like the Netherlands where the sixteenth-century feudal reaction was more or less successfully resisted. This can be seen in the way that Marxist historians have often been quick to dismiss the salience of colonisation and reclamation in medieval Europe; as, for example, in Maurice Dobb's casual assertion that in response to European population growth up to 1300, "There were some brave efforts at colonisation and land-reclamation.... But generally there was little incentive or means to improve the land".(Dobb, 1963: 47) Admittedly, Dobb's claim might well stand up for feudal Germany, and it might well apply to France, or even to England, although there some local historians would suggest that it should be treated with caution for particular regions, such as Kent.(Everitt, 1986) I submit, however, that its applicability to the Netherlands is highly questionable. Of course, Marx does theorise colonisation, but only in its nineteenth-century context, to the extent that it posed a limiting problem for capitalist development through the availability of free land in colonies like Australia.(Marx, 1976: Chapter 33; & see Chapter 6 below) This is, in itself, a fair point, but it ignores the consideration that colonisation had posed this sort of challenge to both absolutist and bourgeois attempts to establish control over the peasantry (through political or military means in the former case and through economic or social means in the latter) from a much earlier date, and that it developed unique, non-capitalist legal and political forms out of itself. A very good example of this point is North American economic history. Here, Allan Kulikoff has drawn attention to the very peculiar and awkward relationship between colonial settlement and the emergence of capitalist political economy in England, observing that "Settlers in the English colonies left [behind them] a dynamically growing capitalist economy but rejected the commodification of labour already occurring there. Controlling their own labour, they became independent producers, the sturdy yeomanry".(Kulikoff, 1992: 59) Thus, as he points out, "The British North American colonies were born in a capitalist Atlantic economy. However antagonistic to capitalism they were, they should not be called *precapitalist* but *noncapitalist* social formations."(Kulikoff, 1992: 7, emphasis original). The same problem of categorisation arises for early modern Dutch society: it was neither feudal, nor capitalist; not pre-capitalist, but non-capitalist. It might be replied that this is explicable in terms of Marx's distinction between commercial and industrial capital.(Marx, 1981: Part 4) The capitalist mode of production depends upon the domination of the latter over the former, while "a striking example [of the domination of commerical capital] is given not only by colonial trade in general (the so-called colonial system), but quite particularly by the operations of the Dutch East India Company."(Marx, 1981: 446-47) However, it seems to me that the problem with this is that it is an explanation of one social system entirely in terms of another. It does not really investigate the alternative, possibly non-capitalist, logic by which a 'commercial capitalist', and hence colonial, system operates. Because of this, a Marxian form of historical materialist analysis has serious shortcomings in analysing early modern Dutch rural society, North American colonial society, or the Dutch colonial system in the East Indies.

considerable protection against the over-exercise of seigneurial power. These rights, protections and freedoms were systematically dismantled by early capitalists, thereby creating the mass of landless people that would come to constitute the urban proletariat. The outcome of this process of expropriating the medieval peasantry was determined by the relative power resources of peasants and landlords, both in terms of their own means and organisation, and in terms of their relative abilities to appeal to other actors or institutions in society.(see Marx, 1976: Part 8 & Brenner, 1985)

These Marxian criticisms of classical political economy have important implications for conventional historiographies of international relations, which see feudalism as the basic organising principle of medieval European international relations. The classical view here is that "The political map of thirteenth century Europe revealed not a clearly demarcated set of territorial units, but a tangle of overlapping feudal jurisdictions, plural allegiances and asymmetrical suzerainties."(Holzgrefe, 1989: 11) Therefore, the transition to modern international relations supposedly involves "the consolidation of all parcelized and personalized authority into one public realm."(Ruggie, 1993: 151) As with classical political economy, the worry here is that an over-simplified view of medieval international relations is presented as the basis for justifying one particular theoretical approach to modern international relations: it is, one might adapt Marx's phrase, far too easy to be 'Realist' at the expense of the Middle Ages. Land reclamation and colonisation were significant practices in medieval and early modern international relations, and they offer a different way of conceiving of the relationship between territoriality and political authority in both medieval and early modern international relations.

To begin with, it is important to note that a truly dramatic change in the scope of agricultural activity in Europe was effected during the middle ages through colonisation. As William TeBrake puts it,

As late as the tenth century large portions of the Continent

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consisted of what might be termed wilderness, where the imprint of human culture, if it existed at all, was fleeting and slight. This was true particularly of temperate Europe, north of the Mediterranean basin, where vast areas remained unaffected by human activity, largely covered by deciduous forest but including enormous tracts of freshwater swamp and salt marsh as well. By the early fourteenth century, in contrast, this situation had been dramatically reversed. Only small patches of wilderness remained in a landscape that had become characterized by pastures, fields, and villages.(TeBrake, 1985: 10-11)

This is often held to be relevant to the existence of areas of relatively unencumbered land ownership in 'feudal' Europe, in contravention of the normal story of the encumbered peasant. For example, Bryce Lyon observes that "the vast land reclamation characterizing the eleventh and twelfth centuries in western Europe contributed to the emancipation of the common man."(Lyon, 1957: 47) Similarly, but speaking more generally about Europe as a whole, Richard Koebner argues that, "the economic advancement of the labouring man served to promote his social advancement—and that through the colonizing process."(Koebner, 1966: 5) Admittedly, Koebner goes on to maintain that the ultimate significance of this development is questionable, because "The gains which the settlement movement had brought to [the peasant] class were gradually nullified by fresh applications of governmental and seigneurial pressure."(Koebner, 1966: 5) In this regard, however, and of great significance for our present discussion, the Netherlands seems to have been an outstanding special case that defied the general European trend.

Before looking at the practice of reclamation in the Netherlands in more detail, it should first be noted that international relations theorists have typically ignored the practice of the *colonisation* of reclaimed land within Europe. Of course, this is not to say that international relations theorists have ignored *colonialism*. On the contrary, we have already seen that Alexandrowicz has looked at the links between sixteenth century international law and European-Asian contacts, while a great deal of work has explored the significance of colonialism in America for the development of European political thought and

modern international law.(see Green & Dickason, 1989; & Wight, 1991: especially Chapter 4) Typically, however, such work investigates the impact of the *colonial encounter* on European thinking, and pays very little, if any, attention to the ways in which unoccupied wastelands were *colonised within Europe*, and later beyond Europe. This latter practice began well before the colonial encounter in the Americas or Indies took place, and, as will be argued later, it was this chronologically prior practice of reclamation within Europe that furnished the basic legal and political framework within which English and Dutch colonial settlements in North America or the East Indies were subsequently made. To be sure, the colonial encounter was significant in the development of modern international society. However, it is from the practice of the occupation and cultivation of reclaimed land that we can trace the development of the main features of the legal and political concepts that were integral to Grotius's account of the content of the law of nations.

Reclamation agreements in the Netherlands

Let us begin with Koebner's observation that coastal reclamations in the Netherlands produced "a class of economically independent farmers."(Koebner, 1966: 75) Disappointingly, but perhaps because of the extraordinarily ambituous scale of his historical survey, he does not go on to offer a proper analysis of the rather unusual legal and political circumstances in which these farming communities found themselves. Furthermore, contrary to Koebner's view that seigneurial authorities reasserted their prerogatives over such settlements, in the Netherlands (especially in the northern and western regions) seigneurial claims were always seriously compromised by the exceptionally weak material and political basis of feudal elites. Typically, as de Vries observes, seigneurs had very limited claims to tithe or excise rights and played only a very minor governmental or judicial role. Ultimately, the "concentration of weak seigneuries in the hands of distant lords engendered a purely businesslike relationship between the rural population and the seigneur."(de Vries, 1974: 39)

The primary reason for the weak seigneurial system in the Netherlands was that, even in those regions that were relatively well-integrated into the European seigneurial system, the sheer extent of reclamation and colonisation assumed such proportions that seigneurial claims to lordship and authority were simply outweighed by other forms of traditional tenurial practice. For example, "The dozens of peat reclamation settlements in Holland outnumbered the villages of the old land and were a dominating factor in the political system.... In Holland it proved customary for a farming community to be free."(van de Ven, 1994: 61) The relative extent of colonisation in more outlying parts of the Netherlands was even more dramatically pronounced. For example, in Rijnland, a district in the western Netherlands, by 1369 no less than *two-thirds* of the households occupied reclaimed land.(TeBrake, 1985: 205 & see also van de Ven, 1994: 41-43) This was strikingly different from reclamation projects elsewhere in Europe, where the evidence supports Koebner's argument. For example, in cases where reclamations were carried on in Germany, the colonists received the exemptions and freedoms included in what was revealingly known as the 'Dutch' or 'Flemish Right'.(Masselman, 1963: 10)[3] However, those German communities then often subsequently lost their privileges because "they [were] surrounded by feudal relationships; unlike the Netherlands, where reclamation [was] more normal."(van de Ven, 1994: 87)

It is fairly easy to see that the Netherlands was unique by virtue of the sheer proportion of land settled through colonisation, but it is not yet clear why this qualitatively altered the legal and political customs of the society. To understand why colonisation had far-reaching implications for the legal and political status of peasants, we need to look a little more closely at the practice itself. In Europe as a whole, the process of reclamation and colonisation that

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3. Incidentally, it is interesting to note that many of these reclamation projects were carried on by Dutch people, not Germans.(van de Ven, 1994: 84) This adds an intriguing dimension to Bernard Bailyn's point about the ultimately Dutch origin of many of the supposedly German 'Pennsylvania Dutch (or Deutsch)'.(Bailyn, 1986: 34) Not only were the 'Pennsylvania Dutch' actually wandering Dutch people, as Bailyn points out, they may well have been Dutch people who had previously been involved in reclamation projects in Europe, and were probably therefore familiar with the tenurial and political rights therewith associated.

drove the profound changes in medieval agrarian society took place in two, very broad phases. In the first place, between ca. 650 and 950, reclamation was carried on more or less within existing agricultural settlements. This involved turning *saltus*—woodlands already used for "noncrop forms of environmental exploitation"(TeBrake, 1985: 35)—into *ager*, or permanent fields. To a certain extent, this meant a change in the manner and intensity of cultivation of lands that were already integrated into a system of cultivation. The second phase, between ca. 950 and 1350, was quite different, during which previously completely uncultivated wilderness areas (*silva*) were converted into permanent fields. "Towards the end of the tenth century Europeans began to spread on a large scale into the still-massive wilderness areas between and especially beyond their traditional areas of settlement and agriculture."(TeBrake, 1985: 47) The second of these two phases was more momentous, because it involved the creation of 'new' cultivable land, and thus opened up the opportunity to establish new forms of tenure over the 'new' land. In the Netherlands, this dual process intersected with a further, geographical distinction. Reclamations in the northern Netherlands were generally undertaken by farming communities acting on their own account, and this remained the case right through even the late middle ages. Initially, this was also the case in the South, in Utrecht and Holland. However, after about 1000 in the southern regions, the reclamations began to be led, or at least coordinated, by local counts and monasteries.(van de Ven, 1994: 45)

The legal and political form of the count-led colonisation of wilderness or *silva* is quite fascinating. According to TeBrake, by and large, political lordship over the wildernesses was claimed by princes, counts and other authorities within existing social structures. These seigneurial elites then allotted the wilderness in parcels to particular groups of colonists, who undertook to reclaim the land and prepare it for cultivation. This was the procedure followed in the reclamations carried out in Utrecht and Holland after 1000. Often, "the wilderness would be staked out in parcels of identical size and shape", each of which was "designed to be reclaimed, occupied, and exploited by a single household".(TeBrake, 1985: 225, 207) This homogeneity was achieved by virtue of the fact that "not only the

width of the reclamation farms was agreed upon, but also the rear boundary up to which reclamation was allowed, was determined."(van de Ven, 1994: 59) In the case of the Netherlands, this can be seen in the 'parcellized' nature of the agrarian landscape: "In the newly-colonized areas of the polders, the countryside became covered with large numbers of medium-sized farmhouses...on small parcels of land, of standard size, deemed sufficient to support individual families."(Israel, 1995: 106; see also de Vries, 1974: 55-70) The normal size for one of these farms was just over fourteen hectares.(TeBrake, 1985: 227)

However, this parcellization of land did not involve the consolidation of political authority, as most international relations theorists suppose. Of course, the reclamation, settlement and cultivation of wildernesses was an exceptionally arduous and unpleasant activity, even compared with the exactions of the everyday agricultural work of a medieval European peasant.

> To secure the needed colonists, the new rulers often drew up agreements with representatives of prospective colonists, offering them very favourable terms that stood in sharp contrast to the restrictions placed on peasants in the old population centres. In exchange for the payment of a very small tax per homestead and about 10 per cent of everything they produced, colonists in the frontier areas usually received ownership of the land they reclaimed, the right to dispose of such land, and complete personal freedom.(TeBrake, 1985: 50)

These agreements were known as 'copes'. They typically imposed limited duties, especially in the form of taxation rather than labour services, and granted rights to adminster low justice and self-government, normally through a sherriff system.(van de Ven, 1994: 60; see also Koebner, 1966: 75-76; Lyon, 1957: 52-55) Thus, the local counts, while claiming sovereignty over the wastelands, typically abandoned 'normal' feudal land-holding arrangements and instead moved to a new set of less encumbered tenurial arrangements, granting "settlers the right to acquire the land they reclaimed on a perpetual leasehold against payment of a yearly rent."(Masselman, 1963: 10) While claiming formal sovereignty, then, they also in practice accepted a very considerable diminution of the 'normal' rights

enjoyed by a feudal sovereign, by granting the land to its actual occupants on extremely generous terms. This situation of *de facto*, and partly *de jure*, political independence allied to more or less allodial land tenures was also predominant in the northern Netherlands, where reclamation projects had been carried out on the initiatives of local farming communities themselves. Here, however, there was an interesting additional feature of the emergent political systems. These reclamations were even further outside of the feudal system, and often took place in the absence of feudal sovereign claims on the reclaimed lands altogether, "peasant republics developed in these regions, which were governed by the people from the farmsteads, who were entitled to the lands."(van de Ven, 1994: 43)

A further intriguing feature that is peculiar to Dutch reclamation and colonisation concerns the character of the wildernesses that were settled. In the first instance, the Dutch reclaimed peat bogs or areas of clay on peat, by cutting and removing the peat. Naturally, the eventual result of this was a general lowering of the land in the Netherlands relative to sea level, in some cases "the surface level was lowered some metres as a result of reclamation.... Due to this lowering of the surface level, large areas fell prey to tidal forces."(van de Ven, 1994: 33)[4] Thus, having reclaimed the lands, the inhabitants were then forced to construct dikes and drainage systems to protect their new farmlands from flooding and to make them productive. This imposed considerable demands on the administrative organisation of the relevant communities, which served by and large to enhance the voice of freeholders in their government, especially in non-cope peat reclamation areas, *i.e.*, especially those areas in the northern and western Netherlands.(de Vries, 1974: 36 & see also Dekker, 1975) The point of this is that, as a consequence of the practicalities of sustaining land productivity

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4. Note that this goes against the commonsense view that these lands were reclaimed from the sea, and that large areas of the Netherlands have always been below sea level. It is also worth noting that this contradicts the account of Netherlandish colonisation given by Koebner. He seems to suppose that the coastal reclamations were prey to tidal forces from the outset, although admittedly this point is rather unclear in his account.(see Koebner, 1966: 75) G.P. van de Ven convincingly demonstrates that this was not the case, and that the activity of peat-reclamation in these areas actually caused these lands to become subject to extensive innundation.(van de Ven, 1994: 33)

after reclamation in these low-lying regions of the Netherlands, colonial settlements did not just develop a surprising degree of self-government, but they also combined a practice of strongly individualistic freeholder representation with a philosophy of local government and collective responsibility for the common weal.

Let us conclude this discussion with TeBrake's description of Netherlandish society in the late middle ages, which will serve as a good summary of the tenurial and political system associated with colonisation in the Netherlands, and which formed the backdrop for subsequent justifications of Dutch liberties against Philip II's absolutism. The colonisation of reclaimed land "shaped a new society of free and equal agriculturalists who decided many of their own affairs themselves in the context of their communes and exploited their own property without the intervention of landlords."(Tebrake, 1985: 226) This society was simultaneously individualistic and communal, an apparent paradox largely explained by the administrative necessities of maintaining the productivity of reclaimed land and by the homogeneity of the tenures under which land was held in these areas. Representation in these political systems was based on property ownership: "the individual peasant exercised a voice in local affairs through sole possession and use of a farmstead, In fact, originally there were no nonlandowners in the reclaimed areas.... If they were to leave their lands, they would lose their voice in this new society."(TeBrake, 1985: 228) This illustrates the extent to which legal and political institutions in early modern Dutch society were profoundly influenced by the practice of colonisation, with obvious implications for the justification of the Dutch Revolt: these aspects of colonisation were probably one source for the 'ancient liberties' of the Dutch people and their contractarian view of the ruler's authority. Another crucial respect in which the Netherlands of Grotius's time was a colonial society was in its expansion and settlement beyond Europe, and it is to these activities in the East Indies that we now turn. The discussion of Dutch colonisation in the Americas under the West India Company is continued in the subsequent section.

§3. Seventeenth-century Dutch colonisation in the East Indies

The earliest territorial settlements of the Dutch in Asia were in Amboina around 1604 to 1609, and began more generally after 1612, when the East India Company (VOC) permitted families of Company workers to settle in the East, on plots of land granted to them by the Company with some limited trading privileges. The main point of this (rather unsuccessful) policy was to establish a loyal population in the region, especially to assist in the defence of trading stations and factories against hostile local rulers.(Goonewardena, 1959: 203) This policy was given its most ambitious formulation by the early seventeenth-century Governor-General of Batavia, Jan Pieterszoon Coen. Coen's idea was to establish a "society of *vrij burghers* (free citizens) in the Dutch stations in the East, trading side by side with the Company, their function being to supplement the Company's commercial activities, and thus share in reaping the benefits of trade in the East."(Arasaratnam, 1958a: 195) Although Coen's plan called for free citizens to be Dutch settlers, this was not always the case. In Malacca, for example, the *vrij burghers* were "often descendents of the old Portuguese families that had intermarried with local families of similar rank" as well as ex-VOC employees.(Lewis, 1995: 140)

In his first attempt, Coen initiated such a scheme in Banda. Under a rather flimsy pretext (the local peoples' failure to fill their contracts to deliver nutmegs to the Company), Coen invaded and massacred or enslaved the population, extinguishing their claims on the land. "Thus, nearly the whole population of Banda, numbering about 15,000 inhabitants, was exterminated, whereafter the land was divided into allotments, called *perken*, i.e. plots of nutmeg-trees, which were assigned to Dutch private persons who were pledged to plant nutmegs and sell their products to the Company at fixed prices."(de Klerck, 1938: i, 229-30). Whether out of disgust at his brutal practices, or out of a desire to prevent private trade from undermining their monopoly on European-Asian and inter-Asian trades, Coen's ideas were only applied to other Dutch trading stations in a very limited way, and were decisively rejected by the Directors of the VOC in their

Regulations of 1631.(Arasaratnam, 1958a: 195; de Klerck, 1938: i, 230; Goonewardena, 1959: 205-206)

More concerted efforts by the VOC to establish a colony in Ceylon arose not as the result of deliberate colonising projects such as Coen's, but rather as the by-product of the VOC's monopolising commercial activities. As Sinnappah Arasaratnam puts it: "The territorial expansion of the Dutch in Asia was a direct result of their commercial policy. The attempt to monopolise spices by controlling the areas which produced them logically resulted in the conquest and administration of land."(Arasaratnam, 1958a: xx; see also Grossholtz, 1984: 37-38; & Vandenbosch, 1944: 52) To a certain degree, this had been recognised even as early as 1602, when the Charter of the VOC was granted, and which included rights to conclude treaties, wage wars, build fortresses and so forth. "It was the expressed intention that these clauses were for the promotion of trade only but, considering the conditions in the East Indies, it was almost inevitable that they would pave the way for territorial acquisitions."(Masselman, 1961: 460) This fact was even more explicitly acknowledged in the 1621 Charter of the Dutch West India Company (WIC), where the "Colonisation of suitable regions was specifically envisaged".(Boxer, 1965: 49)[5] However, early Dutch acquisitions of territory, at least in Ceylon, and their dealings with local rulers were generally rather ad hoc, and did not follow any clearly laid down legal or ethical codes, beyond very general and rather disingenuous injunctions to trade fairly and not to impinge on the sovereignty of indigenous rulers.(see, for example, Boxer, 1965: 23 & Gonnewardena, 1958: 33)

There are two outstanding features of Dutch colonisation under the VOC in Ceylon. First, the way in which colonial settlements were established is reminiscent of many of the features of the practice of colonising reclaimed land reviewed above. This resemblance is especially marked with regard to the form

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5. Colonisation under the WIC was very minor, because of the commercial considerations involved. Put bluntly, access to the fur trade did not require a great deal of territorial control, in the same way that access to cinnamon did.(see Bachman, 1969) Nevertheless, colonisation under the WIC was undertaken through the patroonship system, which is discussed in the next section.

of land tenure adopted: because of the undesirability of colonial settlement, grants were made by the VOC under very liberal conditions to individual settlers, thus establishing ownership rights on the basis of occupation and separating them from the political obligations owed to the formal sovereign of the region. Secondly, the Dutch attitude towards the sovereignty of local rulers reflected the concept of divisible sovereignty. In establishing themselves as a territorial power, what the Dutch in effect did was to try to reserve for themselves as many marks of sovereignty as possible, leaving other aspects of the indigenous ruler's sovereignty intact but diminishing his competence in certain areas. Their practice in this regard only made legal sense if one granted the assumption that the marks of sovereignty could potentially be distributed between different institutions.[6] Relations between the VOC and East Asian sovereigns were thus practical instances of the Dutch (and Grotius's) rejection of the theory of indivisible and absolute princely sovereignty. It should be stressed that these features of Dutch colonisation were not instituted in order to correspond with an established set of rules for conducting relations with foreign powers; they were practical responses to the circumstances in which the Dutch found themselves in the East Indies. Nevertheless, the point is that they developed as the Dutch found themselves engaged in a practice with a direct continuity with the earlier practice of colonising reclaimed land. They should therefore be seen as part of the ongoing practice of colonisation through which an international society was emerging in the seventeenth century.

Dutch colonisation and land tenure in Ceylon under the VOC

One of the main reasons why the Dutch monopolisation of trade in Ceylon involved territorial expansion was that production was rooted in territorial control prior to the arrival of the Dutch, or the Portuguese for that matter. In the seventeenth century, the King of Kandy had a monopoly over trade, by virtue of

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6. As a suggestion for further work on this point, it might prove to be interesting to explore the similarities and differencies between this aspect of early Dutch practice and the way in which the British insinuated themselves into hierarchical networks in India. I am grateful to Sudipta Kaviraj and David Taylor for pointing this out to me, in a presentation to the SOAS Department.

the indigenous system of land tenure, which vested all ultimate rights to land in the sovereign and thus imposed obligations on individual peasants.(Goonewardena, 1958: 1; Grossholtz, 1984: 11-26; Masselman, 1961: 457) This system of land tenure was not an ancient feature of Kandyan society. Rather, it had gradually evolved between the twelfth and seventeenth centuries, from an early, relatively loose system based on a produce tax (which persisted in the northern and eastern Tamil regions), to "one where service replaced [the tax] as a connecting link. The principle which...evolved was that every plot of land had some obligatory service attached to it, which the owner had to perform to the sovereign."(Arasaratnam, 1958a: 128) Thus, for the Dutch to take over the King's monopoly privileges, they needed to weaken, or ideally take over, the King's control and authority over the regions where the relevant products were produced.

In Ceylon, an excellent opportunity to insinuate Dutch control over the spice-producing territories was created by the weakness of King Raja Sinha II, especially in terms of sea-power, and his consequent need for allies against the Portuguese. The Dutch offered their services to Raja Sinha in this regard, and, after securing a victory over the Portuguese at the battle of Gannoruwa, a treaty between the Dutch and Raja Sinha was concluded in May 1638. As K.W. Goonewardena drily observes, "it appears that this treaty was a most advantageous one for the Dutch."(Goonewardena, 1958: 18) In terms of establishing the Dutch territorial presence, the most important parts of the treaty were Articles 3 and 4, which allowed the Dutch to garrison forts captured from the Portuguese at the King's expense, a right of which the Dutch promptly took advantage.(Goonewardena, 1958: 18) This was a hotly disputed part of the treaty, with Raja Sinha's version of the treaty permitting Dutch garrisons in the forts "only if his Majesty thought it fit."(Goonewardena, 1958: 33, emphasis omitted) After this disagreement was made evident and their own interpretation of the treaty undermined, the Dutch began to rely instead on Article 8, concerning the repayment by Raja Sinha of their expenses incurred in the war with the Portuguese. Here, the Dutch were in a much stronger, if hardly more moral,

position. In the first place, the VOC controlled the statements of the King's level of debt, which unsurprisingly proved to be "very much of a concoction, turned out by the commission, which was specially appointed for that purpose."(Goonewardena, 1958: 43) Secondly, the Dutch refused to be paid off in cash, and instead insisted on payment in cinnamon for which they offered a lower and lower price. Thus, "the Dutch could not only get the cinnamon...for a mere song, but they could also keep the king in their debt as long as they wanted to."(Goonewardena, 1958: 45) Although this was an effective strategy, the VOC desired more cinnamon than it could get through these means alone, and thus retained an interest in establishing control over the cinnamon producing regions.

Having initially established a territorial presence in the old Portuguese forts on Ceylon through their manipulation of the treaty of 1638, the Dutch subsequently converted this into a broader control of the spice-producing areas through conquest from the Portuguese in an expedition of 1644. Having gained control from the Portuguese of the land around the key strategic fort of Galle, the Dutch agreed a truce with the Portuguese, wherein the latter recognised the former's control over Galle. Raja Sinha's response to the Dutch-Portuguese truce and Dutch *de facto* control over these lands was simple, but far-reaching: he withdrew the people from the lands, resettling them on his own lands in the interior. This posed a serious problem for the Dutch, since, in the absence of the indigenous farmers, no cinnamon could be obtained at all. In desperation, they declared war on Raja Sinha. The ensuing conflict resulted in serious military reversals for the Dutch, and they were forced to agree terms with Raja Sinha on a revision of the 1638 treaty in the latter's favour, especially in terms of the erosion of the Dutch cinnamon monopoly. On the pretext that Raja Sinha still had outstanding debts to the VOC, however, some of the cinnamon-producing territory around Galle was retained by the Dutch.(Goonewardena, 1958: 96-124)

For our purposes it is highly significant that, by depopulating the lands under Dutch control, Raja Sinha had in effect turned the areas around the Dutch

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strongholds into 'vacant islands', recreating the classic situation of the practice of colonisation we saw earlier in the case of the reclaimed lands: "What was lacking...was not land but men."(Arasaratnam, 1958a: 130-31) More through circumstance than design, and more through necessity than desire, the Dutch were now in a position to plant a colony in the area, and began to do so in 1646 under the leadership of Jean Maetsuijcker. The previous objections to Coen's grandiose schemes fell away, in light of the simple fact that "the Dutch had become a big territorial power for the first time and it was but natural that their lands should be populated by some of their own people."(Arasaratnam, 1958a: 196) So began a new phase of colonial consolidation and expansion in Ceylon, which followed the classic tenurial logic of reclaiming and colonising empty land outlined above: "Land belonging to the state was lavishly distributed to those who agreed to cultivate it. Thus 'free-burghers' and Dutch officers were encouraged to undertake agriculture on their own and given large grants."(Arasaratnam, 1958a: 131) As with reclamation in Europe, this involved hard work, privation and no little danger, and "Some really promising bait had to be held before the men to make more of them accept the idea of 'becoming free'."(Arasaratnam, 1958a: 198) The government "was prepared to grant any amount of land on very favourable terms in hereditary possession to anyone who would accept it and cultivate it."(Arasaratnam, 1958a: 203)

What was different about the situation in Ceylon was that, unlike in the medieval Netherlands, free land itself proved not to be enough of an attraction: "Most of the land offered was waste land which had to be cleared and prepared for cultivation. This involved much labour and the burghers did not come forward to accept such land."(Arasaratnam, 1958a: 203) To have any hope of attracting settlers, the VOC had to go even further, and this meant allowing burghers to engage in private trade, diminishing the Company monopoly. In 1659 certain trading privileges were extended to the Burghers, and they were offered more opportunities after 1670. By then, however, it was too late for the colony, which had never grown larger than 500 people anyway,(Arasaratnam, 1958a: 212) and the Company itself was beginning to run into financial difficulties under pressure

from the English. The colonists were never able to earn a proper living, since their participation in private trade was limited, and their agricultural produce had to be sold at fixed prices to the Company. The colony also had a serious gender imbalance, with few Dutch women emigrating, and the result was an emerging mestizo colonial culture of Dutch men marrying Sinhalese women that was unappealing to the Directors of the VOC; this feature, incidentally, was echoed in all the Dutch colonies, including Batavia.(Boxer, 1965; 224-25; Goonewardena, 1959: 239; Taylor, 1983) The result of this particular attempt to found a colony was thus a more or less unmitigated failure. It did, however, have at least one powerful implication. As Jean Grossholtz puts it: "the Dutch in the maritime regions [of Ceylon]...*created* 'ownership of property'".(Grossholtz, 1984: 56, emphasis original) In their effort to establish a colony, the VOC had inadvertantly recreated the classic conceptual structure of the theory of property embedded in the Grotian law of nations, in the sense of a right of appropriation distinct from the reach of political authority.

Divided sovereignty in seventeenth-century Ceylon

The second striking feature of Dutch colonisation in Ceylon was the attitude of the VOC towards the sovereignty of Raja Sinha. As we have already seen, the Dutch had acquired their ports and territories in Ceylon through their manipulation of the provisions of the treaty of 1638, conquest over the Portuguese, and accomodations with Raja Sinha. In this respect, the Dutch faced a tricky legal problem. Throughout all of their colonising activities, the Dutch continued to observe, if only formally, Raja Sinha's sovereignty over the whole of Ceylon, however, they needed to acquire as strong a legal title as possible to the lands under their control, "in order to uphold it both against the intrusions of other European rivals, and the claims of the indigenous authorities."(Arasaratnam, 1958b: 105)

The representatives of the VOC in Ceylon suggested that they should secure "a new contract with Raja Sinha, where he would recognise the new

changes [after the final expulsion of the Portuguese in 1658] and give a *de jure* sanction to what was already a *de facto* sovereignty of the Dutch over the lowlands."(Arasaratnam, 1958a: 5) However, as far as the Directors of the VOC were concerned, such a new contract was unneccesary, and in the end the Company simply fell back on the argument that the lands were held in trust from Raja Sinha, who remained the formal sovereign, until such time as their expenses had been fully paid.(Arasaratnam, 1958a: 5-6) As we have already seen, this was an ingenious device, which could be extended at the Company's desire more or less indefinitely, but as a legal argument it fell well short of having full authority over the land. Consequently, "Dutch power found it difficult to shake off the stigma of usurped authority over the lowlands."(Arasaratnam, 1958b: 110) As pressure on the cinnamon trade increased from other European powers, notably the English and the French, so the Dutch began to introduce other arguments, such as length of occupation and conquest, to justify their control, and they began to assert their claims in an increasingly exclusive manner, denying Raja Sinha any rights in the coastal regions. Although these arguments were much more far-reaching than had hitherto been the case, they still stopped short of declaring Dutch sovereignty. This continued well into the eighteenth century. Arasaratnam cites Baron van Imhoff, Governor-General in Ceylon from 1736-1740:

> The great number of years during which we have been in exclusive possession gives us the right to maintain our right, if necessary even by force. Our rights have been legalised by the undisputed exercise of them by the Company's possession of West and east, and this will serve also as proof of proprietorship, of other parts, so far as it concerns a third party, although *the King is and remains the sovereign.*(in Arasaratnam, 1958b: 117, emphasis added)

It was not until after a further war with the Kandyans that the Dutch managed to gain a treaty, in 1766, formally recognising their sovereignty over the coastal lands. The point to notice is that, even well into the eighteenth-century, the Dutch did not claim sovereignty over the coastal regions, but they nevertheless claimed certain rights, including the right to dispose of unoccupied cultivable waste land as they saw fit. These prerogatives were, on any early modern understanding, part

of the sovereign power over the lands. In effect, then, the VOC were arguing that they possessed certain marks of sovereignty, but simultaneously maintained that this did not compromise the King's sovereignty. This position could only have made sense within a legal framework that permitted sovereignty to be so divided.

The Dutch did not merely assert their rights as creditors of the sovereign lord of Ceylon, nor as long-standing occupiers. Another important feature of the Dutch strategy was that the coastal lands that they occupied were vital to communications between the Kingdom of Kandy and the outside world, and "it was their intention to channel all foreign intercourse and commerce of the Kandyans through Dutch sources and maintain the Kandyan Kingdom in subordinate isolation—a *sovereign entity but deprived of the right of foreign control*."(Arasaratnam, 1960: 114, emphasis added) Thus, overall, the attitude of the Dutch was to accede to the formal sovereignty of the Kandyans, but chip away at the marks of sovereignty contained therein, until they were in a position to begin to claim complete sovereignty for themselves. Arasaratnam gives a good overall summary of the policy:

> The indigenous state claimed total *de jure* sovereignty and this claim was not challenged. But it was not allowed the full exercise of all attributes of sovereignty in view of the superior power of the Dutch. In actual practice, the Kandyan Kingdom though exercising all aspects of internal sovereignty within its own dominions was externally dependent on the Dutch. It could not carry on freely its trade, its foreign relations or its foreign contacts without the tacit consent of the Dutch power.(Arasaratnam, 1958b: 121)

Once again, as we saw in the case of the political institutions in the medieval Netherlands, the marks of sovereignty were divided between different institutions. This could be used to justify waging war against the Kings of Kandy, since, as we saw in Chapter 5, Grotius had pointed out that, according to the law of nations, "whoever possesses a part of the sovereign power must possess also the right to defend his part".(Grotius, 1925: 158, *JBP*, I.iv.13) This constitutes an important revision of Alexandrowicz's claim of the equality of sovereign rights granted to East Indian rulers under the law of nations. While they may have been treated as

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equals with European sovereigns, this still left them vulnerable (as was also the case for European rulers) to the *division* of their powers with respect to different issues.

To sum up thus far: both the colonisation of reclaimed land in the medieval Netherlands and the establishment of the VOC as a territorial and colonising power in the East Indies in the seventeenth century were part of a single practice of colonisation that was expressed in distinctive tenurial and political forms. The main aspect of land tenure in colonisation was that grants of unoccupied wasteland were made under exceptionally free and easy terms, unencumbered with the 'normal' obligations of feudal land tenure. This meant that individual settlers held their property in such a way that it gave them rights that were, in effect, untouchable by the sovereign authority in the region. In political terms, the sovereignty of East Indian rulers was respected, as Alexandrowicz pointed out. However, their sovereignty was treated as *divisible*, and thus a political dynamic was introduced which would lead to a considerable erosion in the authority of the East Indian sovereigns.

§3. Dutch and British colonisation in North America

In the context of colonial settlement in North America, it is also important to begin by noting the significance of the legal and political forms assumed by medieval European reclamation. For example, Marshall Harris observes that "The early grants to the colonial trading and colonizing companies [in North America] were similar to those granted by the Crown for drainage and irrigation schemes in England."(Harris, 1953: 73) As in the medieval practice of colonisation, sovereign title over North American lands was claimed by distant rulers. However, when it came to establishing settlements, grants of land were made under exceptionally free and easy terms, and local proprietors and settlers were often given extensive rights to self-government and to administer justice. The tendency towards relatively extensive communal local self-government was enhanced by the peculiar needs of colonial settlements: the difference from the

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Netherlands case is that the American settlers' need for self-defence was against the indigenous inhabitants of the continent, or for ideological reasons of religious doctrine, rather than against flooding. At the outset, it should be noted that colonisation in North America was much more diverse than the medieval practice of colonising reclaimed land. It is impossible to offer anything approaching a complete survey here, and all that can be given is an outline of some general features of the systems of granting land and establishing political and judicial administration, to show how ownership rights and the organisation of political authority followed certain patterns in the course of colonial settlement that were similar to those described above.

Land tenure systems in the North American colonies

In British North America, all settlement agencies and many proprietors held their land under a tenure described as of the Manor of East Greenwich, in free and common socage, the exceptions being the grants of Maryland in 1632, Pennsylvania in 1681 and Georgia in 1732.(Cheyney, 1906: 29) In seventeenth-century England, this particular formula of 'the Manor of East Greenwich' was an increasingly common way of establishing tenurial rights and obligations.(Cheyney, 1906: 30)[7] Its primary importance was that it represented "a neat way in which traditional feudal obligations—such as feudal marriage clauses and Knight service *in capite*—could be excluded from the contractual duties of the tenant."(Hamilton, 1976: 23) In other words, the East Greenwich formula was an especially unencumbered kind of land grant, and it was used in colonial land grants for very

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7. It should be noted that Edward Cheyney dismisses the significance of this way of wording the original land grants, maintaining that "So far as the colonial charters are concerned, East Greenwich was merely an empty name."(Cheyney, 1906: 35) His argument is based on the claim that the use of this formula merely signified that the American lands were viewed as "simply an extension of the soil of England. Actual conditions and the logic of events brought about a very different relation between the colonies and the mother country from that which was anticipated in the forms used in the royal grants of land."(Cheyney, 1906: 34-35) As will become clear, I agree with Cheyney that tenurial and political arrangements on the ground in America moved on considerably from the original grants. However, I would make a quite different assessment of the significance of the original grants. In terms of the specific obligations that were imposed on grantees, and the degree of independence they could enjoy under the terms of the grants, I would concur with Marshall Harris that the comparison between reclamation projects and colonial settlement is a very instructive one.

similar reasons to the grants made in the cope reclamations of medieval colonisation: to wit, "the English were greatly interested in encouraging emigration, and this could best be accomplished by granting the land under the easiest of English tenures."(Harris, 1953: 148) This was how agencies and proprietors held their lands. However, the logic of colonisation also had an impact on the tenures under which actual settlers held their lands. Here, it is helpful to distinguish between systems adopted in colonies settled under the auspices of corporate settlement agencies (like the Massachusetts Bay Company), and royal colonies or those settled by the efforts of individual proprietors (like William Penn or Lord Baltimore).

In New England, the corporate settlement agencies which were granted tracts of land organised settlement according to a system of establishing townships. Beyond this official system, however, colonies were also established by squatting (as at Plymouth) and by unauthorised purchases from the local Indians (as at the Rhode Island and Providence Plantations). In the townships, and in many of the unofficial settlements, land was held by settlers under exceptionally free tenures, and with considerable homogeneity of landholdings. On the first point, colonial practice antedated the freeing of tenures in England. In other words, before equivalent developments in England (except in areas of extensive reclamation, like Kent or the Fens), the general tenurial arrangement of individual land-holding by New England settlers "could be called allodial, and it was in most essentials very similar to present fee simple absolute tenures."(Harris, 1953: 116) On the second point, as Kenneth Lockridge observes, "differences in landholdings were small, and were chiefly related to the size of the family a man and his sons had to feed."(Lockridge, 1981: 20) In general, then, despite certain very large tracts of land in New England being held by individual proprietors, ultimately "New England granting was characterized by small grants to actual settlers."(Harris, 1953: 287) These small grants led to a society composed of townships rather like the Netherlands farming communities of 'free and equal agriculturalists', with allodial and homogenous land holdings.

The situation in the proprietorial colonies was different, in that "the settlers were in a distinctly secondary position, being subject at every turn to the proprietary forms of holding land".(Harris, 1953: 117) What this means is that in the proprietary colonies the owners were initially in a position to establish more or less whatever scheme of granting land they desired. Indeed, some large-scale English proprietors tried to use their original grants to establish feudal land systems within their domains; this was the case in Maryland (held by Lord Baltimore under a palatine fief from the King) and in the Carolinas (in which John Locke himself played an important constitutional role). However, they quickly discovered "that feudal tenures were not adapted to the planting of a colony."(Harris, 1953: 135) This was not simply, as had been the case in the medieval Netherlands, because settlers were not attracted by offers of land bound by feudal tenures, but also because the availability of free land in the colony and non-feudal land systems in other colonies made it difficult to sustain feudal tenures in the face of these rival attractions.(Harris, 1953: 214) Sometimes these rival systems were even within the same colony, as in the contradictory land system of the Carolinas after 1663, where around two-fifths of the land were held as feudal estates and three-fifths owned by settlers under freehold.(Harris, 1953: 135) Thus, in the proprietorial English colonies, one can detect a process by which the land was granted and gradually re-granted under free and easy terms, increasingly ensuring that ownership rights eventually came to be held by the settler, the actual occupier of the land, with fewer and fewer reservations. The basic logic of this—as was made clear by the headright system, under which proprietorial land grants were made in direct proportion to the number of settlers—was to ensure land ownership was established on the basis of occupation. Nevertheless, this was not so systematic or methodical as the process of land distribution under the settlement agencies, and it did not produce the homogenous and compact settlements of New England. Rather, it led to a much more scattered mode of settlement, but one in which, as in New England, occupation came to count for a great deal in establishing ownership rights.

Although Dutch settlement was small compared with British endeavours,

"In the field of land tenure the contribution of the Dutch was significant."(Harris, 1953: 208) The *patroons*, who financed large settlements on tracts, received extensive grants of land from the West India Company which, under the 1629 Charter of Freedoms and Privileges, came in the form of perpetual leaseholds. As in the headright scheme, the *patroons'* title to the land was contingent on their establishing occupation of it. Strictly speaking, this was a feudal kind of fee tail estate, but still a very free kind of tenure, which implied practically no feudal duties at all.(Nissenson, 1937: 21, 54, 62-63; Rink, 1986: 98-101) In 1641, the terms of *patroons'* holdings were altered, so that the minor restrictions on alienation were watered down even more, and "the domain became in effect an ordinary allodial holding".(Nissenson, 1937: 331-32) In addition, from the outset of Dutch colonisation in New Netherland, "family-sized freeholds were supposed to occupy the land not granted to *patroons.*"(Harris, 1953: 94) Again, as with the English proprietorial colonies, the *patroons'* grandiose attempts to establish feudal estates proved unworkable in the face of alternative opportunities for settlement in North America. Ultimately, ownership of land tended to devolve to those who were actually occupiers.

Political institutions in pre-revolutionary North America

Politically and judicially, the New England townships were in a very similar position to farming communities in the Netherlands, being characterised by weak seigneurial control and a high degree of local self-government with widespread popular participation. Indeed, Harris's description of them is reminiscent of the Netherlandish system outlined above: "an outstanding example of looseness of control from the viewpoint of the colonizing agency and strictness of control by the local proprietors".(Harris, 1953: 285) Here the term 'local proprietors' refers to the individual settlers in the townships. The ultimate location of sovereignty was not particularly clear-cut. The formal title was held by the monarch, but the marks of sovereignty—the powers to tax, organise relations with the Indians or with other foreign powers, organise military defense of the colony and make judicial decisions—were distributed between the Crown, the proprietary agencies

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and the settlers' local institutions. This confused situation was exacerbated by the formation of a settlement agency actually based in the colony, the Massachusetts Bay Company: "this meant that the colony would be governed, under the municipal rights and full legislative authority of the Charter, by the local people rather than by a 'foreign' group resident in England."(Harris, 1953: 106) Sovereign title was still held by the Crown; but the crucial legal and political question of who possessed which marks of sovereignty was much more convoluted, and became even more so when the Charter of the Massachusetts Bay Company was withdrawn. This confused situation was put to use in the revolt against Governor Andros, echoing the resistance theories of Grotius and the Dutch revolt: in a celebrated 1691 pamphlet, *The Revolution in New England Justified*, the rights in property through occupation and the marks of sovereignty granted under the Charter were both used to justify resistance.(in Force (ed.), 1836-46: iv, 15 & 18)

The proprietary colonies and the estates held by the Dutch *patroons* generally exhibited more feudal, or, perhaps more accurately, 'mock-feudal', political and judicial forms. In these cases, an unusually wide range of sovereign powers were delegated by the Crown to the proprietors, or by the West India Company to the *patroon*. For instance, Baltimore was "given all the rights of government" and so, with a few more reservations (including rights of taxation), was Penn.(Harris, 1953: 120-24) The *patroons* were, in a manner deliberately reminiscent of feudal institutions, granted full powers of jurisdiction in the colony.(Nissenson, 1937: 24) In short, the proprietors and *patroons* were formally not sovereigns; they held their grants as fiefs. However, they were explicitly granted several marks of sovereignty, often far more than was usual under a normal feudal arrangement. In itself, this obviously treated sovereignty as divisible. Furthermore, attempts by proprietors and *patroons* to exercise these sovereign powers to the detriment of the settlers met much the same fate as attempts to settle the land under feudal tenures. It led to the loss of tenants to more congenial colonies, and anyway, their "customary attitude was simply to disregard this political skeleton in livery and to prosecute their own ends in their own way."(Nissenson, 1937: 109) The result in New Netherland, unlike in New

England, however, was not so much the construction of local institutions of governance, but a less formal system similar to "the limited popular participation found in the closed-corporate...hamlets of the United Provinces."(Rink, 1986: 228; Nissenson, 1937: 153-65)

To sum up: one may say that there was a strong sense in which ownership rights to land in the North American colonies depended on occupation, and in many cases, the logic of the system of granting land ensured that the actual occupiers ended up holding their tenures under the sorts of free and easy terms familiar from medieval European settlements on reclaimed land. By making such generous grants of land, the political authorities in North America effectively discharged their claims on the property of individual settlers. Thus, they reproduced the distinction between sovereignty and ownership, in the sense that sovereignty became a purely political or juridical matter, and embraced only minimal claims on individual property. In this critical sense, the possession of sovereignty no longer dominated individual rights derived from ownership, as Thomas Jefferson was later to point out. Furthermore, in terms of political administration and jurisdiction, the holder of formal sovereign title (the King) again gave considerable ground to the colonial agencies, proprietors and, ultimately, settlers. However, here we do not witness the fairly clear distinction according to which the sovereignty-ownership relation was worked out. Instead, we see a confused distribution of the marks of sovereignty: some marks fell to local settler self-governance, some were held by the proprietors and colonising agencies, some were retained by the Crown. There was no one pattern by which this distribution was made. It differed from colony to colony, and it needed a revolution, and perhaps even a civil war, to establish any coherence at all in this division of the sovereign power.

§4. The Grotian law of nations and modern international society

The best way to make sense of the liberal and republican strands of Grotian thought discussed in Chapter 4 is to see them as an attempt to make moral, legal

and political sense out of the sixteenth and seventeenth-century practice of colonisation in the Netherlands, in the East Indies and in North America. It should be noted that this is not intended as a comprehensive historical description of the ethical system of colonisation as a whole. Rather, it is a selective analysis of a few elements of that practice with the specific purpose of identifying the practical embodiment of the Grotian principles discussed in the previous Chapter. The purpose of this argument is to provide a counter-point to Bull's posited affinity between the statist or absolutist elements of the Grotian conception of the law of nations and the practice of diplomacy in early modern Europe. What we have seen is that the point of Grotius's naturalist, individualist and republican ideas was not to express a nostalgic and idealistic affection for the solidarism of medieval Christendom. Rather, these aspects of Grotius's account of the law of the nations were firmly grounded in the international relations of his time. Moreover, Grotius's ideas did not simply reflect the last, tired vestiges of a soon to be outdated medieval practice in continental Europe, but were part of a much more dynamic practice beyond Europe, with considerably more implications for international relations in the future.

To an extent, this argument was prefigured by Alexandrowicz's account of the importance of Grotian concepts in establishing a proper legal framework for diplomatic relations between European sovereigns and East Asian rulers. Alexandrowicz showed that a very interesting new perspective on Grotian thought could be achieved by locating Grotius's ideas in the historical context of European-Asian relations, rather than in the specifically European context of the emerging society of sovereign states. Unfortunately, Alexandrowicz left several key Grotian categories of thought uninvestigated, and consequently failed to develop a proper situation for the Grotian law of nations, over-ambitiously positing the existence of a 'universal international society' which could easily be dismissed by Bull and Gong. With the insights into Grotian thought developed in the previous Chapter, however, we were able to adapt Alexandrowicz's core argument within the context of an extended account of the practice of colonisation, examining its European origins and North American development,

Chapter 6

A Reappraisal of the Expansion of International Society

As we saw in Chapter 3, the 'expansion of international society' is conventionally supposed to have involved the conversion of independent non-European societies into 'civilised' members of the society of states. In this historical narrative, as set out by theorists like Hedley Bull or Gerrit Gong, the legal, diplomatic and military imposition of the European 'standard of civilisation' is seen as central to the transformation of international society "from a society fashioned in Europe and dominated by Europeans into the global international society of today, with its nearly two hundred states, the great majority of which are not European."(Bull & Watson, 1984: 1) Of course, this conventional historical treatment does not attempt to capture all of the features of the interaction between European and non-European societies in the nineteenth and twentieth centuries. On the contrary, it analyses only those aspects of European expansion that are deemed to be relevant to the spread of the values, rules and institutions of the European society of states, since the society of states is held to define the characteristic feature of the element of society in modern world politics. Therefore, other features of European expansion are ignored, because they are seen as irrelevant to the question of the changing nature and geographical scope of modern international society, *ex hypothesis*.

However, as we saw in the previous two Chapters, the hypothesis on which this conventional account is based is questionable. International society in the sixteenth and seventeenth centuries was both institutionally and normatively more complicated than is appreciated by the conventional conception of a society of sovereign states. It was argued that, in addition to the 'diplomatic ethic' of 'internal freedom' and indivisible external sovereignty, international society in the seventeenth century included a set of values, rules and institutions consistent with the Grotian account of the law of nations and the practice of colonisation: the 'colonising ethic' of appropriation and divisible sovereignty. Therefore, other features of the broad process of European expansion become relevant to the story

of the expansion of modern international society and the construction of the contemporary global international society. In particular, our recognition of the importance of the practice of colonisation in the origins of modern international society provides us with a framework to integrate nineteenth-century European and American colonisation into the historical narrative of the expansion of international society.

After a brief preliminary investigation of the concept of 'expansion', explaining the historiographical significance of the practice of colonisation in European and American expansion, this Chapter will examine two theatres of the expansion of international society: American westward expansion, and Dutch colonial administration in the East Indies. These particular theatres have been chosen for two related reasons. First, they carry further the argument of Chapter 5. Thus, they show how the international society emerging in Dutch colonisation in the East Indies and in settlement in North America developed through the eighteenth, nineteenth and early twentieth centuries. Secondly, they offer the clearest possible illustration of the significance of the Grotian concepts of appropriation and divisible sovereignty in modern international society. This is not to say that other instances of colonial or imperial expansion, like the British in India, would not illustrate these points. It is simply to say that American and Dutch colonial expansion are exemplary and unusually pure instances of this kind of international practice, and therefore have a special heuristic utility. Furthermore, this is not to say that all European expansion through colonialism or imperialism was oriented partly or exclusively to the Grotian concepts of appropriation and divisible sovereignty. The purpose of this Chapter is not to develop a general theory of either European expansion or colonialism; the purpose of the Chapter is to augment the conventional account of the expansion of international society with reference to the values, rules and institutions discussed in previous Chapters.

§1. The historiography of European expansion

Although the spread of the European notion of 'civilised' behaviour through international law and diplomacy was undoubtedly part of the process of European expansion, it is clear that it was only a part of a wider and more complex whole. For example, it is arguable that European expansion was effected, as Justin Rosenberg claims, "not through the widening interaction among pre-existent sovereignties, but rather through the construction of the greatest colonial empires the world had ever seen."(Rosenberg, 1994a: 163, emphasis omitted) Because of their focus on legal and diplomatic relations between independent (but unequal) political communities, conventional international society theorists almost completely disregard the significance of these colonial empires as theatres for the internal reconstruction of non-European societies and their incorporation into a global international society.

According to Rosenberg, "The dynamo here...was the capitalist industrialisation of Europe."(Rosenberg, 1994a: 164) One of the most striking features of the capitalist mode of production is the way it generated three different kinds of mass population movement of which the expansion of international society was one part: within Europe, from the countryside to the cities; from Europe to the non-European world; and between non-European societies, under European direction.(Rosenberg, 1994a: 161) Each of these population movements was evidence of a moment in the "historical process of expropriation which reconstitutes [peasants] as propertyless individuals compelled to sell their labour."(Rosenberg, 1994a: 160) The expropriation of the peasant leads to the emergence of 'free' labour, separated from the means of production; that is to say, the relations of production through which modern capitalism is constituted. One of the features of this arrangement is a strong formal distinction between the political and economic spheres, since the surplus value produced by the labour of peasants is extracted by capitalists through purely economic means of compulsion: the wage-labour system. This separation between the political and the economic is replicated in the power-political form assumed by international

relations through the purely political realm of the states-system. Thus, Rosenberg comes to regard "the world of independent 'nation-states'" as the outcome of "the historical movement of 'geopolitical' expropriation (imperialism)".(Rosenberg, 1994a: 171-72) Accordingly, he regards the concept of 'expansion' as rather unhelpful. First, it does not convey the fact that capitalism wrought transformative changes in European societies as well as in the non-European world. Secondly, the idea of expansion does not quite capture the extent to which "the Europeans sought either to transform the social order directly (sometimes by abolishing traditional forms of land-ownership and replacing them with private property) or at least to reorientate production in order to integrate it directly or indirectly with the needs of European industry."(Rosenberg, 1994a: 167)

While Rosenberg's argument calls attention to the significance of the *imperialist* expropriation and proletarianisation of non-European peasants as the basis for the formation and expansion of the modern states-system, the relationship between capitalism and *colonisation* is rather more complex. Because of the unique circumstances of "true colonies, *i.e.*, virgin soil colonized by free immigrants",(Marx, 1976: 931n) the capitalist project of expropriation is especially difficult to bring about. The basic problem posed by colonial societies for capitalists can be understood as follows:

> The expropriation of the mass of the people from the soil forms the basis of the capitalist mode of production. The essence of a free colony, on the contrary, consists in this, that the bulk of the soil is public property, and every settler on it can therefore turn part of it into his private property and his individual means of production, without preventing later settlers from performing the same operation.(Marx, 1976: 934)

In other words, the peculiar geographical context of colonisation subverts the basis of modern capitalism: the separation between the direct producers and ownership of the means of production. This is not to say that capitalism plays no role in social relations in colonies. On the contrary, because this obstacle stands in their way, capitalists must resort to unusually extreme tactics in order to

establish their exclusive control over the means of production. Consequently, unlike in European societies, efforts at expropriation are exhibited with unusual clarity and unconcealment in plans for 'systematic colonisation'.

> The trick is to kill two birds with one stone. Let the government set an artificial price on the virgin soil, a price independent of the law of supply and demand, a price that compels the immigrant to work for a long time for wages before he can earn enough money to buy land and turn himself into an independent farmer. The fund resulting from the sale of land at a price relatively prohibitory for the wage-labourers, this fund of money extorted from the wages of labour by a violation of the sacred law of supply and demand, is to be applied by the government...to the importation of paupers from Europe into the colonies, so as to keep the wage-labour market full for the capitalists.... This is the great secret of 'systematic colonisation'.(Marx, 1976: 938-39)

According to Karl Marx, this kind of policy was adopted in Australia, but in North America such elaborate plans were overtaken by events: the sheer scale of immigration into the United States flooded the labour market (at least in the Eastern cities), and the extent of speculative acquisition of land by capitalists produced a high land price that nullified the challenge posed to capitalism by the colonial land situation.(Marx, 1976: 940)

However, as we will see in a moment, what is interesting about the instances of colonisation discussed in this Chapter, and American westward expansion in particular, is that they violate the capitalistic programme of 'systematic colonisation' quite dramatically in other ways. Indeed, as a leading American historian of western settlement observed in a paper originally published in 1905:

> those who agree with Mr. Wakefield, the English student of colonial questions [and the architect of 'systematic colonisation'], would maintain that the terms proposed [for the settlement of the west] were too reasonable, that too much land was placed on sale, that our country would have been more prosperous if less inducement had been offered for the dispersion of our then scanty population.(Treat, 1963: 13)

Accordingly, it seems hard to regard 'systematic colonisation' as an appropriate description of the practice of colonisation in the expansion of international society. Put bluntly, as will become evident later, colonisation does not seem to exhibit a capitalist logic, because it violates the fundamental principle of the expropriation of direct producers. If we want to understand the practice of colonisation in European expansion it may therefore prove to be instructive to look at other aspects of colonial historiography, especially the work of members of the Leiden Centre for the History of European Expansion and of North American 'frontier historians'.

Historians from the Leiden Centre for the History of European Expansion, who also base their work on colonial and imperial historiography, see the process of expansion in terms much closer to those used by the conventional theorists of international society, looking at "the history of the encounters between diverse systems of civilisation, their influence on one another and the gradual growth towards a global, universal system of civilisation."(Wesseling, 1978: 4) However, the Leiden historians depart from conventional international relations theory, in that they argue that the 'encounter between civilisations' should be seen not simply in terms of diplomatic bargaining between independent political entities, but rather as "a process of...*internal expansion*. The key to the understanding of this process lies in the relationship between colony and coloniser and not in the rivalry between the colonial powers themselves."(Wesseling, 1978: 6, emphasis added) Nor, one might add, does it lie in *diplomatic* relations between European and non-European independent political communities. Consequently, the Leiden historians look more at the development of *legal and political* institutions in the specific context of particular colonial societies, rather than purely at the writings of international lawyers and diplomatic relations between independent states. This then provides an opportunity to re-frame the English school's idea of the expansion of international society, to take into account the 'internal expansion' within colonial societies in the sense of the process of legal and political change in those societies.

It is interesting to note that, like Justin Rosenberg, the Leiden historians identify a problem with the concept of 'expansion': "the simple pattern of Western penetration and...[non-Western] reaction is lost...in a multiplicity of complete and partial influences".(Zürcher, 1978: 77) J.C. Heesterman's study of Indian history comes to a similar conclusion about the "fragmentation inherent in the expansion-reaction paradigm."(Heesterman, 1978: 32) For this reason, the Leiden historians toyed with a broader concept of 'overseas history', which "deals not only with the encounters between Europeans and non-Europeans, but also with the economic, social, political and cultural systems of the non-Europeans themselves."(Emmer & Wesseling, 1979: 3) In other words, we should pay more attention to the internal organisation of non-European societies, and their reconstruction not through the rather indirect means of extraterritoriality, nor even through the dynamic of capitalist expropriation, but through the overall legal, political and economic mechanisms of colonial administration.

Another view, mainly put forward by North American historians, focuses on the geographical context of 'expansion', in particular through the idea of the 'frontier'. Here, an interesting observation has been made by Ray Allen Billington, which helps to illustrate the difference between this form of expansion and that analysed by conventional theorists of the society of states:

> the term 'frontier' has been endowed with a new meaning in the United States. Suggest the word to a European or Asian or African and you conjure up in his mind a vision of customs barriers, passport controls, and other troublesome hindrances to his freedom of movement. Propose the term to an American and he thinks at once of beckoning opportunity.(Billington, 1968: 76)

Expansion is thus understood in direct contrast to the conventional idea of diplomatic and legal bargaining between independent political communities. It signifies instead "the *absorption* of contiguous areas."(Irwin, 1983: 64, emphasis added) Furthermore, the point of the alternative focus on American westward expansion is that, in the particular geographical context created by the American frontier, European expansion was transformed into something quite different and

uniquely American.[1]

> The peculiarity of American institutions is the fact that they have
> been compelled to adapt themselves to the changes of an
> expanding people—to the changes involved in crossing a continent,
> in winning a wilderness, and in developing at each area of this
> progress out of the primitive economic and political conditions of
> the frontier into the complexity of city life.(Turner, 1986: 2)

The homogenising, absorbing aspect of American expansion is perhaps most dramatically encapsulated in the following lines from Walt Whitman's well-known poem, *By Blue Ontario's Shore*: "A Nation announcing itself, I myself make the only growth by which I can be appreciated, I reject none, accept all, then reproduce all in my own forms."

Now, while it is clear that the conventional history of the 'expansion of international society' is inadequate as a story of the broader process of European expansion (or 'explosion', as Rosenberg puts it; or 'overseas history' as the Leiden Centre prefer), it is nonetheless important to recognise why conventional international society theorists limited their historiographical focus in the way that they did. They looked at diplomatic and legal interactions because they were interested in understanding the changing structure of international law and diplomacy as mechansisms that sustain order in world politics, in other words, as institutions of modern international society. Therefore, if an alternative history of the 'expansion of international society' is to be developed, we need to show how these other aspects of the process of European expansion contributed to the changing and expanding structure of modern international society. To put this another way: if one wants to understand the general process of European expansion, it may be necessary to examine imperialism or frontier history; but it remains to be demonstrated that these alternative historiographical foci are

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1. It should be noted that Justin Rosenberg recognises the significance of North America in the broad process of European 'expansion' or 'explosion', commenting that both Max Weber and Karl Marx saw North America as the emblematically modern society.(Rosenberg, 1994a: 166-67) However, Rosenberg chooses to see American westward expansion not as a distinct process, but rather as the less exceptional "child of the industrial-capitalist transformation of Europe."(Rosenberg, 1994a: 166)

relevant to understanding the specific process of the expansion of international society.

One problem here is that none of the above accounts attempts to relate its historical work on the broad process of European expansion to the changing normative content and institutional structure of modern international society. The Leiden historians do not offer any insights into the 'global, universal system of civilisation', since they remain immersed in the historical study of development within colonial societies, unrelated to categories of international law or society. The North American 'frontier historians' are dedicated to debating the question of American exceptionalism, and therefore have not paid much attention to the question of how the unique form of American westward expansion has been a part of an integrated global international society. Even Rosenberg, who has come closest to this problem, focuses on the "historical path to the modern global *states-system*".(Rosenberg, 1994a: 163, emphasis added) He does not see the distinction between a states-system and an international society as having great force, and therefore does not offer an historical re-interpretation of the values, rules and institutions through which contemporary international society (as opposed to the contemporary states-system) operates.[2]

Here, the argument of the previous Chapter shows its merit. That Chapter

2. A similar criticism can be levelled at the historical materialist analysis presented in Mandy Turner's paper on 'Demystifying the Expansion of International Society' (presented to the *International Studies Association* Conference in March 1997). Turner makes four criticisms of the international society approach: it has an obscurantist method; its assumption of the domestic-international separation is question begging; it contains an inadequate conceptualisation of the state-society nexus; and it interprets from an official point of view, but treats its conclusions as objective knowledge. I believe that I have answered the first and last of these criticisms earlier in the thesis. Indeed, Turner's criticism of the objectivist character of the international society approach works more effectively against her historical materialist approach than it does against the international society theorists' admittedly incomplete version of *verstehen* sociology. Furthermore, I would contend that the analysis presented in this and the previous Chapter answers Turner's other criticisms. The point is that Turner confuses current international society theory with the concept of international society itself. Thus, she provides a fair criticism of the actual historical analysis of Bull *et al.*, but she does not then go on to provide an alternative account of the values, rules and institutions that comprise contemporary modern international society. Like Rosenberg, her historical account merely offers an interpretation of the contemporary global states-system and world market. This does not constitute a 'demystification' of the expansion of international society; if anything, it is a demystification of the expansion of the states-system.

extended our historical understanding of the origins of modern international society to include the practice of colonisation, and it therefore puts us in a position to see how the construction of colonial empires and American westward expansion might have contributed to the broad process of the expansion of modern international society. To be more precise: in the previous Chapter, we saw how the values, rules and institutions of early modern international society were not just those described by Bull's notion of a European society of territorially-defined sovereign states, managing their affairs through positive international law and balance of power diplomacy. Rather, we discovered that an important part of early modern international society was its incorporation of the broadly naturalist account of the law of nations given by Hugo Grotius, which included a liberal concept of appropriation and a republican concept of 'divisible sovereignty'. These legal ideas were grounded in the practice of late medieval reclamation and early modern colonisation, especially in the tenurial and political forms of that practice. The historiographical point that European expansion involves the extension and consolidation of this practice in the 'internal expansion' of the colonial empires of the nineteenth century or American westward expansion therefore offers an excellent opportunity to develop the account of the origins of modern international society given in the previous Chapter into an account of the expansion of international society.

§2. American westward expansion

In general, the process of American westward expansion was marked by a continual simplification of cultural, social and political life, as "Highly developed political forms gave way to simple associations of settlers or rudimentary representative bodies."(Billington, 1950: 2) The complex forms of European society were continually broken down into more simple modes of interaction, and were then reconstituted in a uniquely American democratic-republican formulation. For our purposes, the main point about this process of institutional simplification and re-consolidation is the way it continually reasserted two basic principles, which lay at the heart of the Jeffersonian vision of the American union:

the unencumbered nature of individual land tenure; and the division of political authority in the western territories between the local, state-level and federal institutions. In this respect, for the Jeffersonians, "the West was the foundation of the 'Empire of Liberty'. An endless recreation of an agrarian world of independent farmers across the North American continent would allow Americans to preserve the personal independence and public virtue that the Jeffersonian gentry believed was so crucial to the success of republican government."(Cayton, 1986: 12) Thus, in the process of American westward expansion, we can see an example of one route taken by the expansion of international society: the absorption of territory into a republican system of equal states within a relatively centralised federal system. Politically, this was organised through a complicated system of divided sovereignty, within which individual rights were guaranteed through the local and federal states' formal renunciation of their claims over the persons and property of individual citizens. Eventually, as Harold Hyman puts it, "By the time the Age of Jackson merged into that of Lincoln, Americans boasted with good reason that, better than any other, their nation knew how to transform subservient territories into equal states".(Hyman, 1986) The following discussion will trace the development of this process from the post-revolutionary decision about what to do with the western territories, through the regulation of the actual process of westward expansion, to the beginnings of an extra-continental application of some of the core Jeffersonian principles in the Philippines.

The post-revolutionary land ordinances

Jeffersonian principles can be discerned in the founding acts of American policy towards the western territories: the ordinances of 1785 and 1787. The 1785 ordinance established the basic framework within which the public lands were to be distributed. The 1787 Northwest ordinance confirmed the allodial character of all land tenures derived from the federal government, making "the individual absolutely independent of the State".(Donaldson, 1970: 157) It also insisted that the western territories should eventually be accepted as equal states within the

American union, on meeting certain requirements.[3]

To understand the significance of these ordinances, one must first appreciate the nature of the problem of the public lands in the western territories. Claims to the western territories had originally been part of the colonial land grants to proprietors or colonising agencies, which had seldom posited a western boundary. After the revolution, these claims were generally ceded to the federal government by the states.(see Hibbard, 1965: 7-14) The public domain was also created through purchases by the federal government, such as the Louisiana purchase from France in 1803, the Florida purchase from Spain in 1819 or the Oregon purchase from Britain in 1846.(see Hibbard, 1965: 14-20) Unlike the *national* domain, over which the government exercised only political jurisdiction, in the *public* domain the federal government actually owned the land as well. Thus, "the difference between the public domain and the national domain is one of property rights in the land itself and not one of sovereignty."(Hibbard, 1965: 7)

In ceding the lands to the federal government, the states had insisted that they be disposed of for the common benefit of the United States as a whole, and "there were two forms of 'bona fide' dispensation which merited discussion....should the land be used as a source of revenue, or should it be disposed of with especial reference to the proper spread of population?"(Treat, 1963: 8) As Alexander Hamilton put it at the time:

> in the formation of a plan for the disposition of the vacant lands of the United States there appear to be two leading objects of consideration: one the facility of advantageous sales, according to the probable course of circumstances; the other the accommodation of individuals now inhabiting the western country, or who may hereafter emigrate thither.(cited in Hibbard, 1965: 2)

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3. To focus on the Constitution would probably give a rather different story, perhaps with less emphasis on Jeffersonian principles, since in the debates about the Constitution the idea of popular sovereignty was used to much greater effect to centralise political authority on the federal government.(see Onuf, 1983) I would like to thank Nicholas Onuf for drawing my attention to the significance of these jurisdictional controversies in the early republic.

In his characteristic fashion, Hamilton went on to argue that "The former as an operation of finance claims primary attention".(cited in Hibbard, 1965: 2) Initially, this was also the view of Congress, especially since it was argued that the costs of the revolutionary war should be at least partly met by the present and future inhabitants of the western territories.

To this end, a Commission was appointed in 1784 to determine the best way of disposing of the lands then in the public domain, which included Thomas Jefferson among its members. At the time, there were basically two options left over from the colonial system of distributing land: the New England township system, or the Southern warrant system. The key element of the New England system was that

> When more land was needed, a township was laid off, generally 6 miles square, and it was settled as a whole, the land surveyed before settlement, and the details of granting left to the town itself. This resulted in a compact spread of settlement, in a colony of townships, in each of which the citizens had small holdings, carefully surveyed before settlement.(Treat, 1963: 9)

As we saw in Chapter 5, the Southern system was more haphazard: "Land was taken up by warrants. These could be located on any unappropriated land."(Treat, 1963: 10) In other words, one would simply buy a warrant for so much land, and then use that warrant to settle on any tract that had not yet been taken up.

The first report of the Commission on the land question, in 1784, suggested "a combination of the survey feature of the New England system with the administrative features of the southern system".(Treat, 1963: 10-11) Thus, the original plan was to survey the land in townships, but then allow settlement to proceed in a more flexible way, without requiring settlement to fill up one township after another. The second Commission report, in 1785, changed the plan for the territories slightly in favour of the New England system, proposing that the land should be sold off not through individual warrants, but instead as complete townships, at $1 per acre. The representatives of Southern states in

Congress protested this plan, making "repeated attempts to provide for a more general sale of small lots. Believing, as they did, in the propriety of the widest choice in the selection of land, they attempted to free themselves from the compact-settlement idea so stoutly insisted upon by New England."(Treat, 1963: 12) The final 1785 ordinance moved back slightly in the direction of the Southern system, but only slightly: "The New England system triumphed for the time. The accurate public surveys, the careful recording, the rectangular townships...were all parts of that system.... The most the southern members could secure was a provision that in half the townships a person might purchase a [single] section—640 acres".(Treat, 1963: 12)

The terms of sale having been established by the 1785 ordinance, the 1787 Northwest ordinance was largely concerned with defining the form of tenure under which public lands would be owned, and with the political status of the western territories. On the first point, echoing Jefferson's earlier plans for the State Constitution of Virginia,(see Jefferson, from 1950: i, especially 362) the ordinance insisted that these sales should result in the ownership of the land passing to freeholding occupiers. Tenure in fee simple was mandated, rather than the more feudal form of tenure in fee-tail. The plan was that "Fee-simple ownership by large numbers of smallholders would transform the frontier, where civilization was at risk, into settlements where morality and laws...would be honoured and national cohesion maintained."(Hyman, 1986: 23-24) Thus, the 1787 Ordinance made it explicit that the government's rights over the public lands would be discharged entirely: the lands would be sold in the most unencumbered form of tenure possible.(Donaldson, 1970) It is also notable that the idea of fee-simple ownership and township settlement was to be "applied to all parts of the national domain – those already acquired as well as *those to be acquired in the future*".(Editorial note, in Jefferson, from 1950: vi.582, emphasis added) In effect, then, the 1787 ordinance extended the principle of private property as a general principle, even for territories not yet part of the jurisdiction of the United States.

The intended constitutional and political incorporation of the territories

into the states-union was originally set out in Jefferson's constitutional and legislative plans, and was preserved into the Northwest ordinance. The central principle of the ordinance was "that the goal of all territorial acquisition eventually was to be Statehood."(Leibowitz, 1989: 6) In essence, this was an egalitarian rejection of the doctrine of colonialism. Congress was to assume responsibility for and authority over the territories, to carve them up into suitable regions, but then not to exploit the territory as a colony but to oversee the process of state-formation, determining the moment at which the territory could be accepted into the Union as an equal state.

This was partly enacted through the Constitution, Article 4 of which allowed Congress to establish governments in territories outside the Union and eventually allow the admission of new States into the Union. In the Northwest ordinance, this plan was set out in more detail and rested on three planks: the establishment of a government in the territories, prior to the latter assuming control over their own affairs; the mechanism for creating new states; and the provisions for internal governance of those new states. The establishment of territorial government rested on the federal appointment of governors who would have complete responsibility for the territory. In the first instance, then,

> The Northwest Ordinance...attempted to promote the power of the United States by establishing a hierarchical government with power firmly concentrated in the hands of nationally appointed officials. The governor, who virtually had dictatorial powers, and three judges were to govern the Northwest Territory, a vast region that included the present-day states of Ohio, Indiana, Illionois, Michigan, and Wisconsin, until it achieved a population of five thousand free male inhabitants.(Cayton, 1986: 26)

The creation of new states was envisaged to follow a very straightforward formula. According to Article 5 of the 1787 Ordinance: "whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatsoever".(Donaldson, 1970:

156) Jefferson had intended this to be the culmination of a steady progression of forms of constitutional government, from a first temporary constitution made by an assembly of all settlers, through a permanent constitution devised when the territory's population reached 20,000.(Jefferson, from 1950: vi, 614) One cannot but be struck by the simplicity of this cumulative population requirement, compared with the requirements of sovereign statehood in European positive international law and the standard of 'civilisation', such as an organised bureaucracy, capacity for control of territory, self-defence and so on. This was largely because, thanks to the broader division of sovereignty, the new states would not be required to undertake such activities anyway.

However, although the requirements for qualification as a State were very low by the standards of positive international law, the ordinance was much more intrusive with regard to the internal constitution of the new states than any positive international lawyer would ever have dreamed. In the first place, the right of individual private appropriation of the public lands was guaranteed. In spite of their supposedly equal and independent status, the new states were not allowed to "interfere with the primary disposal of the soil by the United States in Congress assembled".(Jefferson, from 1950: vi. 614) In other words, the territories were allowed to devise even a permanent constitution for themselves without being able to make any prescriptions whatsoever concerning the system of tenure on their public lands (which was by far the largest part of their territory). It would be hard to think of a more gross violation of the indivisible and territorial principle of state sovereignty that is conventionally supposed to rest at the heart of modern international society. In addition, the inhabitants of the new States were at liberty to devise their own Constitution. However, the proviso was added that the inhabitants had to be protected by *habeas corpus*, trial by jury, common law procedure, proportionate political representation, no arbitrary deprivation of liberty or property (all Article 2); that there be no slavery (Article 6); and that their adopted State Constitution be republican.(Article 5; see Donaldson, 1970: 155-56) In other words, the states formed by the people moving into the Western territories were permitted to develop any constitution they liked, so long as it was

republican. Furthermore, the new states founded in the western territories would automatically be equal parts of the American states-union, and would consequently become part of the broader constitutional division of powers between the individual states and the federal government: for example, the new states' relations with foreign powers would be managed by the federal government of the United States. The process of state formation set out in the 1787 ordinance thus presents a clear case of the application of the principle of divided sovereignty:

> Few Americans advocated full jurisdictional autonomy for the states.... On the other hand, most Americans were too attached to their states to make any consolidationist scheme possible.... The limits of what was politically acceptable as well as theoretically conceivable thus pointed to the creation of a 'complicated' government for the United States that was, as Madison put it, neither an 'absolute consolidation' nor a 'mere confederacy'.(Onuf, 1983: 173)

In general, then, the 1787 ordinance was remarkably unconcerned with the positive legal standards according to which international social expansion is conventionally supposed to have operated, in the sense of asserting the basic requirements for the possession of territorially defined, absolute external sovereignty. Instead, it was much more interested in establishing certain individual freedoms and republican modes of governance within the states that were to be constructed on the Western territories. The manner in which this was done replicated the classic normative and institutional features of the practice of colonisation, with attention devoted to ensuring that ownership was held by private settlers under the most unencumbered forms of tenure possible, and that the political institutions that would develop in the new States would harmonise with republican ideas about the proper way of organising a political community through the division of political authority between local, state-level and inter-state (federal) institutions. Now, let us examine the ways in which these two themes—the principles of private appropriation by individuals and of the establishment of republican state governance—were carried on through the

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nineteenth century.

The legal regulation of frontier settlement after 1787

In terms of the application of the ordinances, the main problem that arose concerned the policy of 'advantageous sales' set out in the 1785 ordinance. The trouble with this financial plan was that, as Jefferson himself put it, "By selling land you will disgust [the settlers] and cause an avulsion of them from the common union. They will settle the lands in spite of everybody."(cited in Hibbard, 1965: 4) The point was that the actual practice of frontier settlement was to treat the land as a free good, in which ownership was established through occupation. Furthermore, among Jeffersonians and westerners this view was reinforced by the belief in the desirability of distributing the land to settler farmers on the freest possible terms, partly inspired by the belief in the natural right of appropriation, and partly through republican sentiment. A speech from Thomas Hart Benton, Senator of Missouri and the leading advocate of the western interest in Congress, captures this line of thinking very well:

> Tenantry is unfavourable to freedom.... The tenant has, in fact, no country, no hearth, no domestic altar, no household god. The freeholder, on the contrary, is the national supporter of a free government, and it should be the policy of republics to multiply their freeholders as it is the policy of monarchies to multiply tenants. We are a republic, and we wish to continue so: then multiply the class of freeholders; pass the public lands cheaply and easily into the hands of the People; sell for a reasonable price to those who are able to pay; and give without price to those who are not.(cited in Hibbard, 1963: 142-43)

As Daniel Feller puts it, "Benton played brilliantly on the agrarian strain in Jeffersonian Republican ideology.... Fairly distributed, the public domain could guarantee a farm to every willing settler. And as every good Jeffersonian knew, the security of republican government lay in its freehold farmers."(Feller, 1984: 75 & see also Kulikoff, 1992: 147) This strikes, it hardly needs saying, a considerable contrast with the programme of 'systematic colonisation'.

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Driven by the yeoman and republican sensibilities of the Jeffersonians, and later assisted by President Andrew Jackson's sympathetic attitude, after 1787 the policy towards the western territories developed gradually closer towards freeing up the system of allocating land. At first, there was very little movement in the government policy before 1812, largely because settlement in the West was not particularly extensive and land sales were slow: the indigenous Indian inhabitants were seen as a threat to settlements, and there were still good opportunities for settlement in the Eastern states.(Hibbard, 1965: 41-42) However, as fears of the Indian threat diminished after 1812, there was a sharp increase in Western land settlement: "The old Northwest nearly tripled in population in ten years, from 272,000 in 1810 to 792,000 in 1820."(Feller, 1984: 15) This rapid increase put the 1785 system of surveying land into townships and then selling at public auction under increasing and eventually unbearable strain.

In addition, as Western migration increased, frontier society was becoming complicated far beyond the simple Jeffersonian ideal of yeoman farmers. In particular, two new kinds of actor became prominent in westward expansion: the squatter and the speculator. Squatters settled on unsurveyed land, making it impossible to recognise their claims without breaching the New England system of the 1785 ordinance for surveying before sale. Nevertheless, "Congress, deciding as in the past to accept what it could not prevent, duly authorized squatters to remain as temporary tenants if they secured permission from local land officers."(Feller, 1984: 17) The plan of most squatters was simple, they would establish themselves on a tract, improve it, and then, when the lands were put up for sale by the government:

> arrange for the purchase of their lands—made valuable by their improvements—before the opening of the auction or run the risk of losing them to speculators. Claim clubs and special preemption laws gave them protection against speculators only to the date of the sale. Squatters were inclined to put their meagre capital into stick, housing, fencing, and clearing which seemed the most essential for the moment and to hope that the land sale would be postponed until they could accumulate money with which to purchase their claims.(Gates, 1963b: 356)

In all of this activity, the key problem was seen as how to keep speculators from acquiring ownership of the land, and how instead to ensure that genuine settlers, including squatters, could be settled on their land. Nevertheless, although the settler-speculator contrast became a staple of policy-making, it was always something of a false dichotomy. For example, Paul Wallace Gates cites an English view of 1862: "Speculation in real estate...has been the ruling idea and occupation of the Western mind.... The people of the West became dealers in land, rather than its cultivators."(Gates, 1963b: 351) In other words, to put it bluntly, most settlers were speculators as well. As the speculative frenzy increased, fuelled by sales of land on credit, a colossal land debt problem developed: by 1819 settlers owed no less than $22m to the federal government.(Feller, 1984: 22) The land debt crisis forced the federal government to allow easier terms of repayment, through the 1821 Relief Act, which rapidly reduced the level of debt.(Feller, 1984: 37)

Although it solved the immediate financial crisis, the Relief Act did not end the problems. Indeed, it merely increased speculation, to the dismay of the Jeffersonians: "Huge tracts were passing not to Western farmers but to Eastern capitalists, and for speculation rather than cultivation. Instead of being given away to yeomen, the domain was being plundered by financiers."(Feller, 1984: 184) To counter-act this problem, President Andrew Jackson introduced his 'specie circular' of 1836, which effectively ended (for the time being) the speculative boom. The circular allowed only gold or silver for land purchases, and thus "brought down the whole bloated structure.... Land purchases by speculators stopped immediately; only the business of lending money to squatters remained."(Gates, 1963b: 358) For the time being, this led to a "decided lull" in speculation, although the activity picked up again in the 1850s.(Hibbard, 1965: 221) More lastingly, beyond these attempts to manipulate the terms under which land was purchased, government also began to legislate more and more rights for the actual settlers of the land, the ultimate goal being "to make the public-land system function in a democratic way by assuring the small man the right to acquire a piece of the national domain."(Gates, 1996: 108) This effort was carried

on across three issues: pre-emption, graduation and homesteading.

Pre-emption rights were introduced from the 1830s, culminating in the 1841 Pre-emption Act. Their main purpose was to ensure the rights of settlers and squatters against speculation, under a rationale set out by the Public Lands Committee in 1828, tantalising close to the practice of reclamation discussed in the previous Chapter: "It is right and proper that the first settlers, who have made roads and bridges over the public lands at their own expense and with great labour and toil, should be allowed a privilege greater than other purchasers."(cited in Hibbard, 1965: 151) The essence of the Pre-emption Act was that it "gave settlers the right to move upon and improve [160 acres of] surveyed public land from which they might...make the necessary funds to purchase it without competitive bidding for $1.25 an acre."(Gates, 1996: 104) 'Graduation' refers to the graduation of the price of land offered for sale in public auctions. This was the focus of Benton's campaign, arguing that "The United States is a great land seller, and she should follow the practice of all other sellers; she should apportion her price to the quality of her land."(cited in Hibbard, 1965: 291) In essence, it was hoped that graduation would make it easier for settlers to acquire cheaper cultivable land, below the fixed government price at which land sales had hitherto operated. Homesteading was introduced rather later than pre-emption or graduation, in the 1862 Homestead Act. Unlike the other two policies, which merely favourably altered the position of the settlers within the general framework of public auctions for land, homesteading introduced the principle of free land in the West. The act offered up a quarter section (160 acres) of public land to any who would settle on it and improve it for at least five years.(see Gates, 1996: 41 & Hibbard, 1965: 347-85)

It must be admitted that the Homestead Act did not comprehensively replace the 1785 sales system with a free land system. Indeed, as Gates has pointed out: "more government land was sold between 1862 and 1891 than was successfully homesteaded and patented between 1862 and 1899."(Gates, 1996: 42-43) Furthermore, the various pre-emption, graduation and homesteading

policies did not eliminate speculation. As was noted earlier, the settler-speculator dichotomy was always a false one, and the reforms "in practice...meant an open field for speculators and town promoters as well as farmers".(Feller, 1984: 191) Nevertheless, despite the possibilities of abuse, these acts unquestionably provided opportunities for individual settlers to establish themselves on farms.(see Gates, 1996: 46 & 52) Therefore, to put the above analysis in very general terms, the development of policy through the nineteenth century revealed a steady movement in the direction of a free land system, with rights to land increasingly based on occupation, and with such rights increasingly being codified and institutionalised through the principles of pre-emption and homesteading.

The political process of the incorporation of the western territories into the Union followed the lines of the Northwest ordinance rather more faithfully, but even so not without incident. In the first case, the initial assertion of the authority of the federal government in the western territories aroused considerable ire. As we saw, in the Northwest ordinance, Congress initially assumed absolute political authority over the western territories, if only as a temporary measure intended to lead to the eventual incorporation of the states as equal members of the Union on satisfying a basic population requirement. The extensive, even dictatorial, gubernatorial authority permitted by this system of territorial government was the object of much anger among settlers in the west. Far from being grateful for the relatively minor population requirements laid on them before being granted statehood (minor, that is, compared with colonies under European domination), the settlers "did not anticipate graduating from some territorial school of republicanism; rather, they looked forward to a restoration of rights unjustly taken away."(Etcheson, 1996: 20)

The national electoral success of the Jeffersonian democratic-republicans in 1801 combined with a strong movement in the Northwest Territory for statehood. The aspiration for statehood was bound up with republican sentiment, since the governor formed the target of popular criticism, and the territorial government attracted hostility for being, as Michael Baldwin claimed in 1802,

"aristocratic in its principles, and oppressive and partial in its administration."(cited in Cayton, 1986: 69) This culminated in the meeting of a Convention in November 1802 to draw up a constitution for the proposed new state of Ohio, which

> reversed the flow of power [to the national government's appointees] as it had existed under the Ordinance of 1787. Sovereignty now rested with people in local areas and their biennially elected representatives in the legislature; the executive and appointed officials had been made subject to the will of the people they governed.(Cayton, 1986: 77-78)

Thus, the abhorred system of territorial government through federally appointed governors and officals saw its role dramatically reduced, and a proper republican constitution was established in line with Jeffersonian thinking. Congress accepted Ohio as a state under this constitution in 1803.

For our purposes, the interesting point to note here concerns the location of sovereignty in this new state. The constitution drawn up by the 1802 Convention had asserted the local sovereignty of the inhabitants of the territory. It was, in this sense, a clear statement of the democratic strand of Jeffersonianism, presented in opposition to the Federalist assertion of the national prerogative. Subsequently, however, this democratic assertion of popular sovereignty was tracked back somewhat, both through a stronger assertion of the role of the judiciary and through an increasing reliance on schemes for internal improvements funded by the federal government.(see Cayton, 1986: especially Chapters 7 & 9) Gradually, in other words the more *republican* sentiments of the Jeffersonians and the nationalist ideas of the Federalists began to re-assert themselves, partly through an increasing division of sovereign powers between institutions within the state, partly through a non-Grotian assertion of popular sovereignty, but also through a recognition that some functions were best performed by the federal government, and that these areas of sovereign authority should consequently be alienated to the federal level. Thus,

> the debates of the early 1820s...revealed a growing consensus
> about government and society which drew from both Jeffersonian
> and Federalist legacies.... The success of the public school and
> canal movements committed the power of the state government to
> guiding Ohio and its citizens into responsible roles as parts of a
> national system. After the 1820s, few could deny for long that the
> residents of Ohio were independent only to the extent that their
> interdependence with the rest of the American and European
> worlds allowed them to be.(Cayton, 1986: 150)

In other words, the establishment of states in the western territories illustrates the classic constitutional features of the practice of colonisation, in the sense that the marks of sovereignty came to be divided between different institutions at different levels. In the specific case of Ohio, the division was both *de jure* and *de facto*. The state constitution located sovereignty in the people and their elected representatives, however, through the US Constitution foreign relations were all conducted through the US Congress, and it was even the case that "in the end, it was an act of the United States Congress, not an election, that enabled Ohio to become a state".(Cayton, 1986: 80) *De facto*, things were even messier, as the need for orderly administration and for federal assistance in certain areas (notably education and 'internal improvements') made further qualifications to local popular sovereignty inevitable.

Westward expansion beyond America: the case of the Philippines

To conclude this analysis of American westward expansion, let us look at the attitude of the Americans towards the Philippines. It should be noted at the outset that there is something rather suspect about the conventional wisdom that extra-continental American involvement simply began with the acquisition of the Philippines in 1898. James Gould has pointed out that there were a series of forceful interventions in the affairs of other countries through the later part of the nineteenth century, even though the predominant stance of American policy in Southeast Asia was anti-imperialist.(Gould, 1972) It should also be acknowledged that colonial intervention in the Philippines was partly a response to policy interests that had not played a significant part in the development of land or

constitutional policy in the western territories. For example, the views of Alfred Mahan on the American national interest, or of Benjamin Kidd on the American responsibility for economic development in the tropics, were both influential among policy-makers.(see McHale, 1962: 30) Nevertheless, it is worth examining American activity in the Philippines, not so much as the first example of a new American jingoistic imperialism, but rather as a further continuation of American westward expansion.

The Americans acquired the Philippines through an odd mixture of conquest and purchase. Despite their military successes they paid $20m to Spain as part of the final settlement, and were ceded the Philippines in return for this cash settlement.(McHale, 1962: 36) As with the post-revolutionary situation in America, they immediately faced the problem of the disposal of the newly-acquired public domain (the Spanish crown lands in the Philippines), over which the United States government had now acquired direct property rights. In addition, in a census carried out in 1903, they discovered that the Philippine population was very unevenly distributed across the country, and that "In the densely settled areas...an agrarian structure of large haciendas farmed in small lots by impoverished tenants had created endemic unrest, expressed in sporadic revolts and millenarian movements.... Since farming techniques were poor and productivity low, these areas too exhibited extreme poverty."(Krinks, 1974: 2)

The solution the Americans adopted reflected the developments their own policy had undergone through the process of westward expansion. Thus, the 1903 Philippine Public Land Law

> introduced the homestead system into the Philippines, prescribed regulations for the sale and lease of public lands, and provided for the confirmation of the titles that were still unestablished and the granting of free patents to occupants and cultivators of public land who had cultivated its land for a certain length of time.(Pelzer, 1945: 106)

In addition, considerable assistance was leant to colonising projects to establish

settlement in the sparsely-populated regions. Admittedly, the homestead system in the Philippines was not a great success. In the first instance, the intention of improving the lot of indigenous Filipinos was jeopardised by an influx of capital and speculators, although it is debatable how extensive this was.(see May, 1980: 153-54) Nevertheless, in 1919, the United States responded to worries about speculation by making it "virtually impossible for aliens to acquire public lands legally",(Pelzer, 1945: 107) and individual Filipinos were allowed to take up larger personal homesteads, of up to 24 hectares, the 1903 Act having allowed for homesteads of only 16 hectares.(Krinks, 1974: 2)

More generally, however, the system was undermined by the existing customs of land tenure and economic distribution. As Peter Krinks observes, in a detailed study of new settlements on the island of Mindanao:

> The operation of lowland Filipino customs, together with Spanish codification of landholding, had previously led to subdivision of farms and to the unequal, oligarchic conditions of Luzon and the Visayas [well settled areas]. There was no reason to assume that the provision of homesteads would alone lead to a new agrarian structure in the areas of colonisation.... Even without the early mistakes, the long term result would have been the same—namely, the twin processes of subdivision and concentration.(Krinks, 1974: 16)

Furthermore, "the populace showed relatively little interest in acquiring homestead land. Most of the public land was located in remote regions, and Filipinos proved to be unwilling to leave the surroundings with which they were familiar and to sever ties with their families."(May, 1980: 155) In short, then, the homesteading programme in the Phillipines did not produce results similar to the western United States, largely because the broad tenurial framework created by the 1787 ordinance was not replicated in the Philippines, and because the practice of colonisation was not carried on with enthusiasm by the local population.

Politically, one of the most interesting features of American policy was the

way in which "the Americans placed far greater emphasis on the preparation of their subjects for self-government than did European policy-makers."(May, 1980: 17) This relative political benevolence reflects the economically less-exploitative attitude of the Americans to the Philippines, for example as compared with the Dutch culture policy discussed below.(see Maddison, 1990: 326) However, as Glenn May notes, the original political ideas of the Philippines Commission were that outright independence would not be the end-goal of this process of self-government. Rather, it was envisioned in the typical American sense of democratic republican self-government within the broad framework of US 'sovereignty', although not as a full member of the states-union. According to May, President Taft "reasoned that if the United States provided good government, Filipinos would eventually recognize the advantages of continued US sovereignty (protection against external threats by the US armed forces, stable internal conditions, a preferential tariff) outweighed those of independence."(May, 1980: 14) The Philippines, in other words, were to be integrated into a system of divided sovereignty: self-government, implying local popular sovereignty; but with certain powers delegated to a more 'appropriate' level. Ultimately, May's assessment of the American attitude to the Philippines can stand for westward expansion as a whole and recalls Whitman's lines cited earlier: it was "an experiment in self-duplication."(May, 1980: 17) This is the essence of Jefferson's vision of the American future as an expanding commonwealth of equal, republican states, held together by a complicated structure of divided sovereignty and guaranteeing individual rights through the state's renunication of its authority over individuals' property.

§3. Dutch colonial administration

Like the Americans, the Dutch saw two different kinds of opportunity in their territorial possessions. On the one hand, the East Indies offered an immense possibility for raising revenue for the Dutch treasury. Consequently, a great many Dutch took the view that, as Johannes van den Bosch, the Governor General from 1828 to 1839, bluntly put it, "The Indies is a Dutch territory of exploitation."(cited

in Fasseur, 1992: 56) However, the Dutch also acquired a reputation (at least among European powers) for prosecuting an exemplary form of high-minded 'ethical policy' with regard to their colonial dependencies. This was based on a deliberate Dutch policy of using their colonial status to offset their rather lowly position within European affairs. "This paradox provided Dutch burghers in the colonial diaspora...with an urgent sense of mission....many among them saw their primary role as one of governing their districts with more anthropological learning, greater cultural sensitivity, and better political skills than any other imperial power in Asia."(Gouda, 1995: 41) Indeed, some doubted whether the 'ethical policy' of the Dutch could be considered as 'expansionistic' or 'imperialistic' in a pejorative sense: "It was said that the borders of the East Indies had already been defined internationally before the emergence of modern imperialism, and within these borders the Dutch government was bringing order, welfare and civilisation."(Kuitenbrouwer, 1991: 19) It is noteworthy that one of the leading figures in the attempt to present the Dutch as a leading ethical international actor in this respect, C. van Vollenhoven, made an explicit parallel between the Dutch and the United States on precisely these grounds. Van Vollenhoven observed that the Dutch, like the United States, tried to keep out of European balance of power machinations, and instead dedicated themselves to the organisation of "a splendid empire of fifty millions of inhabitants".(van Vollenhoven, 1919: 194) This contrast between the activities of the Dutch and the United States on the one hand, and the European great powers on the other is an interesting illustration of the broader differences between the 'diplomatic' and 'colonising ethics'.

It is therefore perhaps not especially surprising that the parallel with the Americans should extend also to the tenurial and political features of the way in which this 'splendid empire' in the Dutch East Indies was organised. Admittedly, since one of the primary goals of Dutch colonial administration was to secure revenue from their territories, Dutch colonial policy included projects like the infamous system of forced cash-crop cultivation. However, revenue-raising was not the only motivation behind Dutch colonial policy through the nineteenth and

early twentieth centuries. The Dutch were not simply interested in securing as much revenue from their colonial possessions as possible; they also had quite definite ideas about the *right* way of organising and administering a colonial society, and it is in this respect that the archetypally 'Grotian' features of Dutch colonial administration in the period can be identified. This feature of Dutch colonial policy is evidenced partly in the 'dualistic' system of administration they developed, in which political authority was divided between different institutions: some in the Netherlands, some in the Batavian colonial government and some local popular institutions. It can also be seen in the Dutch attitude to land tenure during and after the collapse of 'cultivation system', with their eventual demonstration of respect for appropriate customary indigenous practices in Indonesian *adat* law.

The end of Company rule and the land-rent policy

The East India Company (VOC) Charter was revoked in 1799, and control over the VOC's territorial possessions was assumed by the new government of the Batavian Republic. After several years of declining profits and influence, however, the VOC's assets were considerably diminished: "the greater part of the Indian Archipelago was in the power of England....only the posts at Palembang, Banjermasin, Makassar, Timor and Java were left to the Dutch."(de Klerck, 1938: ii, 1) The situation deteriorated even further through the Napoleonic Wars, as the Netherlands came under French sway, with the Batavian Republic being transformed by Napoleon into the Kingdom of Holland in 1806. Under this new regime, the Governor Generalship of the East Indies passed to Marshall Herman Daendels, "invested with almost unlimited power to govern the estate of the late Company, and to protect the remainder of the Dutch colonial dominion against the threatening assaults of Napoleon's bitterest enemy, England."(de Klerck, 1938: ii, 12) To this end, Daendels turned the indigenous system of labour service to his own ends, freeing the native Javanese from their obligations to indigenous elites, "only to lay still heavier ones upon them in the name of the government."(Day, 1966: 159) Daendels's rapid programme of military fortification had little success

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in repelling the British, however, who invaded in 1811, bringing Java into their imperial system of government centred on Calcutta and formally ruled by Lord Minto. The *de facto* ruler of Java under the British, however, was the Lieutenant Governor Sir Thomas Stamford Raffles, whose great contribution to subsequent colonial policy was his introduction of the land-rent system to Java.

To understand the significance of Raffles's land-rent system, we must first look briefly at the alternative ways of securing revenue open to the Dutch, Daendels and the British. The expiration of the VOC's Charter had thrown open the question of the ends that Dutch administration should serve in its remaining colonial possessions, and of the means by which these ends should be pursued. The goals of colonial administration had previously been set by the VOC's Charter and shareholders, and had more or less revolved around the aim of revenue maximisation through the exploitation of traditional Javanese commercial and fiscal mechanisms. After the expiration of the Charter, the question was posed anew: should the old VOC system of exploitation through traditional Javanese mechanisms be preserved; or should a new system of direct Dutch administration be introduced, extracting revenue through systematic taxes rather than indigenous forms of tribute or service? In other words, should the old VOC 'system of trade' be maintained, or should a new 'system of taxation' be introduced?(Day, 1966: 131-32)

One of the most interesting figures in the debate that emerged around this question in the Netherlands immediately after the end of company rule was the colonial official Dirk van Hogendorp, who put forward a series of proposals that were later to become staple features of the liberal approach to colonial policy-making in the Netherlands. Van Hogendorp argued that the VOC's old system had been based upon a quasi-feudal system of tribute and compulsory service. His criticisms primarily concerned the way that the VOC had retained the traditional system of local administration, based on a group of Javanese officials called *bupati* who derived their authority largely from control over land. All that the VOC had done was rename them in a more Western fashion as *regenten*, and the only

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change in their status was that "they were made responsible for the cultivation and delivery of certain products for the European market."(Kuitenbrouwer, 1986: 84) In place of the VOC system, van Hogendorp proposed that the status of the indigenous *regenten* should be reduced, a more direct Dutch administration system should be established and the Dutch should "transfer the lands to the common people, in property or in hereditary lease."(cited in Day, 1966: 135) He further argued for "the introduction of assured individual property rights and an equitable system of taxation."(Day, 1966: 140) The trouble with van Hogendorp's proposal was that it raised a simple but devastating question: "who was going to attend to the allotment of four hundred thousand pieces of land, scattered over an area far exceeding that of the Netherlands; and to that question there was no answer."(Day, 1966: 140) The sheer impracticality of van Hogendorp's plan appeared to render the question about the different ways of raising revenue null and void: the only way to proceed was by working with the existing system of revenue collection, simply inserting the Dutch into this system at an appropriate point over and above the *regenten*, much as the VOC had done, "to supervise rather than exercise direct control over the people."(Bastin & Benda, 1977: 22)

What the policies of Daendels and Raffles did was to change the circumstances surrounding van Hogendorp's original proposal. Although Daendels's substantive policy had been quite different from van Hogendorp's liberal approach, Daendels had nevertheless demonstrated that it was at least possible to adopt a more interventionist and reformist line with regard to indigenous systems of rule, and that a European administration system could exercise relatively direct control over the Javanese population, even bypassing the local *regenten* if necessary. Raffles took this further, with a sustained attempt to enact van Hogendorp's scheme for revenue-raising through a system of taxation. The centre-piece of Raffles's policy was a new, Java-wide, systematic land tax "which was to absorb all the multiform dues and services paid by the people under native rule".(Day, 1966: 174) Raffles began from the proposition that in Java the indigenous ruler had always been the owner of the soil, and that the Europeans had taken over this right, owning "the sole right of property in the land

of the island."(Day, 1966: 176) Therefore, while individual farmers would be allowed to work the land relatively free of labour services to local elites, they nevertheless were tenants of the government, and therefore had to pay a land-rent for the use of the lands. In effect, this also allowed the government freely to dispose of the uncultivated waste lands, whether to Javanese or Europeans. Thus, while claiming that the government enjoyed the sole right of property, Raffles also established a commercial relationship directly with the individual settlers, ignoring intermediaries in the form of local village chiefs and the *regenten*. This policy of dealing directly with individual farmers was primarily instigated to answer political concerns about the arbitrary rule of native elites. As Raffles himself put it:

> The agency of intermediate renters [*i.e.*, the *bupati* or *regenten*] is considered as quite unnecessary to be adopted in the future. It is deemed that such a plan of settlement will leave the bulk of the people entirely at the mercy of a numerous set of chiefs, who, however well they may have hitherto conducted themselves, would certainly, in such case, possess an ability of injury and oppression, against which the ruling [European] power would have left itself no adequate means of prevention or redress, and which cannot therefore be permitted consistently with the principles of good government.(cited in Day, 1966: 178-79)

The East Indies were returned to the Dutch following the Treaty of London of 1814, and initially the Dutch attempted to make the land-rent system work for themselves. Even under Raffles, however, the system had operated under a considerable deficit,(Day, 1966: 191) and, despite the intentions of the Commissioners from the Netherlands to persevere with a reformed version of the system (which involved increasing the colonial administrative personnel considerably), they "failed to make Java profitable to the Dutch treasury...in the short term, because the Javanese peasant did not have any inclination to cultivate export crops like coffee or sugar voluntarily."(Fasseur, 1992: 23) Consequently, in an attempt to improve the colonial finances, the heads of the local colonial administration, especially the new Governor General Baron van der Capellen and his successor van den Bosch, drifted towards the familiar old 'system of trade'

adopted by the VOC as a way of increasing revenue. What they introduced, from the late 1830s, was a system of forced cultivation of designated crops.

The cultivation system, the liberal response and 'adat law'

Despite drawing its inspiration from the old VOC system as a contrast to the land-rent system, the new 'cultivation system' was actually a considerable development on the old VOC commercial system, being both more elaborate and based on a much more active and interventionist role for Dutch colonial administration. The thinking behind the cultivation system was that the only way to make Java a profitable colony was to increase the production of goods like coffee or sugar that could be sold on the European market, and, as van den Bosch argued, "insofar as this colony still yields significant produce for transport to Europe, this is wholly and exclusively the consequence of forced labour".(cited in Elson, 1994: 42) The cultivation system was an attempt to extend and systematise this forced labour to ensure the maximisation of the production of suitable crops, which would then be sold by the Netherlands Trading Company on behalf of the treasury. Essentially, under the cultivation system the Javanese peasants were required to produce crops for the Dutch in lieu of payment of land-rent. The peasant-farmers would also receive payments for their crops, and even though these were not large, in some areas, especially those under sugar cultivation, "most growers obtained sufficient by way of crop payments to clear their land rent debts".(Elson, 1994: 62)

Although it undoubtedly fulfilled its goal of gaining revenue for the Dutch treasury, "The system went into decline because it came into conflict with the political views which came to dominate in the Netherlands after 1850."(Fasseur, 1978: 157) The culture system increasingly came under attack from liberals in the Dutch parliament, especially after crop failures in 1844 resulted in severe famines persisting into 1845 and 1846. Famine struck again in 1849. While it is unclear whether these famines can be directly attributed to the burdens on the peasants imposed by the cultivation system,(see Elson, 1994: 114-18; & Elson, 1990) it

certainly presented the Dutch with an uncomfortable paradox. As one of the leading spokesmen of the liberals, W.R. van Hoevell, succinctly put it: "we have in Java the strange phenomenon that this island annually produces almost 40 million guilders in profit, but that the people of this same island are unable to provide for their own needs."(cited in Elson, 1994: 102)

Administrative changes in the Netherlands in 1848 also contributed to the liberal backlash against the cultivation system. Prior to 1848, in the Constitutions of 1806 and 1815, control over colonial policy had been vested exclusively in the monarch; after 1848, the States-General was given a role in colonial policy, especially in terms of supervision of the budget. The new role for the Dutch legislative body simultaneously increased the liberals' awareness of the acuteness of the problems associated with the cultivation system, and also gave them the means to do something about them. However, the liberals in the States-General faced a dilemma posed by the fiscal success of the cultivation system, which has been neatly summarised by Cornelis Fasseur: "The central issue was how the system of agricultural enterprise on government account could gradually be transformed into a system of free agricultural enterprise for private account, while retaining, as much as possible, the Indies millions that were for the time being indispensable to the Dutch treasury."(Fasseur, 1992: 160) Therefore Dutch colonial policy only gradually began to move in a liberal direction, painfully slowly and with considerable qualification, since new ways of raising revenue had to be found to replace those secured by the cultivation system.

There were two main strands to the liberal plan. On the one hand, they believed that the customary Javanese *adat* land use practices should be respected, and this concern was built into the new Colonial Constitution (*Regeerings Reglement*) of 1854. While it permitted the continuation of the cultivation system, it insisted in Article 56 that "so far as the cultures occupy land cleared by the native population for its own use, this land be disposed of with justice and with respect for existing rights and customs".(cited in Day, 1966: 328; & see also Fasseur, 1992: 133-34) On the other hand, the liberals believed that the revenues

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of the cultivation system could be preserved, and more satisfactorily raised, if the forced government cultivations were to be replaced by cultivations managed by private enterprise and worked by 'free labour'. This policy was included in Article 62 of the Colonial Constitution, stating that "The Governor General can let land according to rules which are to be established by general ordinance."(in de Kat Angelino, 1931: ii, 438) However, two principal restrictions were placed on this governmental right to dispose of waste lands: only letting was permitted, outright sale of the lands was not (for fear of creating quasi-feudal private estates); and, as noted above, the adat rights of the Javanese were to be respected. A Royal Decree of 1856 extended these restrictions on hiring out waste land to private enterprise, capping the leases at 20 years, imposing restrictions on the goods that could be produced and mandating the planters not to interfere with indigenous village administration.(Fasseur, 1992: 165-67)

The main problem with the liberal plan was that its two components were in direct contradiction with each other, and this considerably restricted the capacity of the government to establish 'free' cultivations on a liberal market-oriented model. As A.D.A. de Kat Angelino points out, "[Article 62] seems...to have been intended to exclude from cession all uncultivated land upon which Indonesian communities could make any kind of valid claim...[but since] in the [eighteen] thirties already an impression had been gained that practically all uncultivated soil belonged by Adat law to some community, one was confronted here with an apparent contradiction".(de Kat Angelino, 1931: ii, 441) This contradiction was also embedded in the 1870 Agrarian Law and Domain Declaration, under which

> all lands not held in private ownership formed part of the public domain.... Under the decree, the Government acquired only such rights as remained after the deduction of all native rights to the land.... [However] if all the active and dormant rights of the population were respected, no free lands would remain for leasing to Western entrepreneurs.(Vandenbosch, 1944: 245)

To an extent, this contradiction sprang from a legal uncertainty among Dutch

colonial experts, reflected in the difference between the Leiden and Utrecht school's views of the content of *adat* law. The former assumed an extensive village right of disposal over the waste-lands, in which "the concept of sovereignty and of a sovereign right is lacking. The state and its ruler are fitted into the total and conflictuous *adat* order of rights";(Heesterman, 1986: 193) on the other hand, the latter assumed the 'domain right' of government, meaning that the government as sovereign was owner of the land. Raffles's land-rent system, the cultivation system and the liberal plan of 'free cultivations' managed by private enterprise had all depended on the 'domain right' theory.(Fasseur, 1992: 30-31) However, if the Leiden scholars, such as van Vollenhoven, were correct in their assessment of *adat* law, and there was increasing recognition that they were, then the whole property right structure of the cultivation and liberal system would be unworkable as a system of revenue-raising.(see Slaats, 1994: 105-109)

The result of this uncertainty over land rights was that, as Fasseur notes, "under these circumstances, hiring of 'waste' land seldom occurred".(Fasseur, 1992: 167) Thus, the late nineteenth-century liberal alternative to the cultivation system was essentially a failure, the main result of which was a steady budget deficit with regard to the Indies from the mid 1880s on with very little progress in the establishment of private cultivations worked by 'free' labour.(see Booth, 1990: 239) For our purposes it is interesting to note that, despite van Vollenhoven's recognition of the unique and non-western character of land 'rights' under *adat* 'law', there was a gradual development towards trying to codify the basic principles of *adat* law as a single system. This was largely carried on by B. ter Haar at the Law School in Batavia.(Slaats, 1994: 107) This drift exacerbated a tendency to treat *adat* rights to land as if they were communal rights on a more western formulation, which had initially arisen as "a rather desperate response of the *adat* to the pressure of the cultivation system."(Heesterman, 1986: 196-97) The key point here is that the system that emerged in effect acknowledged *the property rights of the indigenous occupants of the land*, even at the expense of projects of direct imperial exploitation or of liberal private enterprise. What emerged, in short, was a reworked version of *adat*

A large amount of legislative authority was granted to the Indies. To governmental organs established in the Indies was delegated the power to regulate East Indian internal affairs, while to the Crown was reserved the right to regulate only such subjects and on such occasions as the law might specify. However, the Crown received the right to suspend all ordinances passed by East Indian organs when judged in conflict with the Constitution, the law, or the general interest, while the right of vetoing East Indian ordinances on the same grounds was left to the States General, And, finally, though Parliament retained the right to legislate on colonial subjects, it must first consult the representative body of the territory concerned.(Vandenbosch, 1944: 76-77)

Where, then, did 'sovereignty' over the Netherlands Indies lie? Formally, of course, sovereign authority lay with the main legislative and executive institutions in the Netherlands; but in practice, the authority to decide policy on specific issues was increasingly delegated to colonial institutions, both in the Batavian administration and in more locally representative bodies.[5] An interesting further complication to this already bewildering constitutional picture concerns the position of the 'Outer Territories': *i.e.*, the other islands in the Indonesian

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5. A rather similar question could be asked of the position of the dependencies in the British Empire. In a survey of the problem of sovereignty in this context, Arthur Berriedale Keith argued that "it is necessary to admit that sovereignty can be divided, and that in any country both internal and external sovereignty may be shared by various authorities."(Keith, 1929: 1) Here, it may also prove interesting to reflect on Fred Northedge's comments on the doctrinal or theoretical basis of the League Mandates system: "who, in reality, was the actual sovereign in the mandated territories?.... The question was hardly relevant in the case of A mandates. They would shortly be independent sovereign states in their own right.... But sovereignty in the case of B and C mandates was a different matter.... The mandatory Powers, especially those responsible for C mandates, tended to argue that they were the sovereign, or at least that they exercised sovereign powers..... South Africa, for instance, contended throughout the League's life that South West Africa was as much part of her domains as Cape Town or Johannesburg.... The Mandates Commission repudiated the claim, its chairman, the Marquis Theodoli, contending that South Africa merely 'exercised sovereign powers' in the territory.(Northedge, 1986: 196-97) However, as Northedge continues, no-one really took seriously the possibility that the League as a confederation might be in a position to possess sovereignty over a territory or a population. How, then, should this peculiar configuration of authority be understood? To this question, Northedge effectively admits defeat: "Perhaps the most that could be said about sovereignty within the mandates system was that the exact position was never precisely defined. The mandates system was entirely unique and old categories of international law did not fit the situation."(Northedge, 1986: 197-98) As should be evident from the argument of this Chapter, the situation of the mandates was not especially new, and the solution to it was hardly 'unique' or unprecedented. Rather, the structure of sovereignty under the mandates system—as described by Northedge—was wholly in line with the already well-established way of integrating external territories into the international society through the application of the principle of divisible sovereignty. Perhaps, echoing James Madison and Peter Onuf (cited earlier), one might say that the League was neither an 'absolute consolidation' nor a 'mere confederacy'.

archipelago. Here, the Dutch claimed sovereignty over the various islands, but acknowledged the quasi-independent status of the three governments of the islands (Sumatra, Borneo and the Great East), and also for those states in areas not under established colonial administrative control, which constituted around half of the area of the Outer Territories.(Vandenbosch, 1944: 139-40, 147) Here, as Charles Alexandrowicz's analysis suggests, an initial relationship of equality had gradually given way to a situation wherein these native states were effectively in a position of vassalage. However, the process by which this had happened, and the current *de facto* situation, reflected the fact that the native states actually enjoyed considerable latitude, and "There were in the Outer Territories a number of small states which had not been brought formally under Dutch jurisdiction at all."(Vandenbosch, 1944: 148-49)

The decentralisation produced by the 'ethical policy' in the main territories of the Dutch East Indies was accompanied by the spread of Dutch authority into the Outer Territories, through the 'Short Declarations', by which the rights of the local peoples to self-government were granted in exchange for a formal recognition of Dutch sovereignty. This allowed the Dutch a justification for direct intervention in the affairs of the native states, "But it was soon felt that the process of penetration had gone too far; that the native states should be strengthened in order that they might be used as priceless historical aids in bringing about a sound and much needed decentralisation upon an Indonesian basis."(Vandenbosch, 1944: 150) In the 1919 Native States Regulations the independence of the self-governing territories was shored up, with three restrictions being formally imposed: the self-governing native states had no control over foreign affairs, and some internal issues were delegated to the Dutch colonial administration; the native rulers had to accept Dutch administrative guidance; and extra-territoriality was introduced for Europeans and Indonesians from areas under proper Dutch administration.(Vandenbosch, 1944: 152-53)

In general, then, the system of administration in the Dutch East Indies had always been 'dualistic', in the sense that the Dutch had worked with native

systems of rule. Hence, it was always a constitutionally more ambiguous structure than prevailed in, for example, British India. It is telling that the only sustained attempt to replace the indigenous system with a comprehensive Dutch system of colonial administration had been introduced not by the Dutch themselves, but by the British during the interregnum. As the ethical policy developed, this dualism became more and pronounced, especially as ideas of local self-government began to play a more prominent role in Dutch notions of the purpose of colonial administration. These were not, as in the case of the United States, developed into a theory of eventual equality within an overall federal system, although such ideas were mooted. Rather, the Dutch tried to operate a system of delegated authority across different issues, parcelling out authority between the Netherlands, Batavia, Indonesian and 'native state' institutions. What emerged was a classic illustration of the Grotian colonial principle of divisible sovereignty, although perhaps with a more paternalistic-developmental sheen to it, compared with the more egalitarian democratic-republicanism of the American approach.

§4. The dualistic character of the emerging global international society

To sum up thus far: the expansion of international society in the nineteenth and early twentieth centuries did not simply depend on the conversion of independent political communities into 'civilised' states, on the terms laid down by European diplomats and international lawyers. In addition, the expansion of international society involved the increasingly widespread application of the classical Grotian principles of appropriation and divisible sovereignty. In the United States of America, this was made quite explicit in the original ordinances designed to regulate expansion and became even more pronounced through the nineteenth century. Individuals were accorded certain rights in the process of territorial expansion to appropriate property through pre-emption and homesteading. Furthermore, the new states were worked into a constitutional scheme of divided sovereignty, in the context of a relatively (and increasingly) centralised federal system. In the Netherlands Indies, the process was complicated by other factors of imperialistic and capitalistic exploitation, but the basic features of appropriation

and divisible sovereignty came through very strongly once again. This can be seen in a variety of ways, especially through the reconstruction of Indonesian 'adat law' by scholars like van Vollenhoven, and the decentralising political reforms introduced under the rubric of the 'ethical policy'. These developments point to the expanding scope of the sixteenth, seventeenth and eighteenth-century international society centred on the practice of colonisation.

Thus, just as we had two stories of the origins of modern international society, so we now have two stories of the expansion of international society to global extension. Because the conventional account given in Bull's 'anarchical society thesis' sees international society as a society of states, it concentrates on the way in which more and more independent entities came to acquire recognition as members of the society of states. The alternative conception, however, saw the element of society in world politics as residing primarily in the way in which the practice of colonisation shaped individuals' rights under natural law and the law of nations, and the way in which complex consitutional structures developed in colonial societies, with authority being divided between different institutions, overlapping the boundaries of states which were only ever quasi-independent. Its expansion corresponds to the increasing territorial scope of these acts of appropriation and the spread of the constitutional arrangements characteristic of divisible sovereignty, conducted in an exemplary manner in Northwest America and the Dutch East Indies.

If we were to look back at the argument of this and the previous two Chapters, we would see that we have a direct counter-point to the 'anarchical society thesis' discussed in Chapter 3. Bull's argument offered an absolutist and legal positivist interpretation of the Grotian tradition of thought, which was juxtaposed with an historical account of the emergence of the society of states in Europe and its expansion to worldwide extension. Against this, we have seen how the two concepts of appropriation and divisible sovereignty were central to Grotius's thought and were carried forward in a Grotian tradition extending to the American revolutionaries. This more liberal and republican interpretation of

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Grotius was juxtaposed with the practice of colonisation, as conducted by the Dutch in the East Indies and the British and Dutch in North America. The initial formation of these colonial societies was therefore posited as an alternative moment of the origin of modern international society. The expansion of international society was then depicted in terms of the process of 'internal expansion' in the Dutch East Indies, and 'absorption' of the western territories into the American states-union.

In the next, and final, Chapter, the interpretive implications of this new conception or ideal type of modern international society will be discussed. To conclude this Chapter, however, we might note that the emerging global international society was therefore not simply given over to the positivist legal orthodoxy of state sovereignty and the standard of civilisation. Instead, the process of the expansion of international society—like the origins of modern international society—involved a complex combination of phenomena that corresponds to the existence of different broad systems of values, rules and institutions in modern world politics, and includes the 'colonising ethic', as well as those features highlighted by conventional theorists like Bull or Gong. Thus, it seems appropriate to treat the emerging global international society as having a *dualistic* structure, some aspects of which are accentuated by Bull's ideal type. However, Bull's ideal type does not, indeed should not be expected to, capture the entire structure of this bifurcated international society. Therefore, to make sense of contemporary international society, we also need to use the ideal type developed here, from a solidarist evaluative perspective and based on the historical interpretation of the 'colonising ethic' given in the preceding Chapters.

Chapter 7

Conclusion: The Spirit of Modern Solidarism

This thesis has set out an evaluative and historical interpretation of the special kind of sociability and order that exists in world politics. The evaluative interpretation was initially drawn from the solidarist elements within the Grotian tradition, as defended, for example, by Hersch Lauterpacht or Herbert Butterfield, and stated in opposition to Hedley Bull's more pluralist interpretation of the nature of international society. Bull's assertion of the ontological priority of the pluralist conception of international society was challenged through a theoretical demonstration of the contested nature of the concept, and through an historical account of the normative and institutional complexity of the modern international society. The historical interpretation outlined the principal features of the 'colonising ethic' contained in Hugo Grotius's conception of the law of nations and in the practice of the colonisation of 'vacant' lands, the 'absorption' of the western territories by the American states-union and the 'internal expansion' of Dutch colonial administration in Indonesia. Thus, with regard to the central purpose of this thesis, we now have a new answer to the question of international society, working within the context of the Grotian tradition, but transcending the limitations that have restricted that tradition because of the narrow philosophical and historiographical assumptions on which the research programme of the 'English school' was based.

By way of a conclusion, it might be interesting to see how this solidarist ideal type of modern international society would suggest new interpretive insights into certain phenomena in contemporary world politics. First, let us recall Max Weber's use of his 'Protestant ethic' thesis to redescribe the spirit of modern capitalism. Weber's enquiry begins by identifying a significant feature of the unique modern Western form of capitalism: it is "sober bourgeois capitalism with its rational organization of free labour."(Weber, 1930: 24) Weber's task is to explain how and why Western capitalism assumes this peculiar cultural form. He does so by showing how capitalist economic conduct is related to the ascetic

Protestant conception of vocation or 'calling', since "the religious valuation of restless, continuous, systematic work in a worldly calling, as the highest means to asceticism, and at the same time the surest and most evident proof of rebirth and genuine faith, must have been the most powerful conceivable lever for the expansion of that attitude toward life which we have here called the spirit of capitalism."(Weber, 1930: 172) Thus, he concludes, "One of the fundamental elements of the spirit of modern capitalism, and not only of that but of all modern culture: rational conduct on the basis of the idea of the calling, was born...from the spirit of Christian asceticism."(Weber, 1930: 180)

In a similar way, some significant features of contemporary world politics exhibit an affinity with the 'colonising ethic', and especially with Grotius's ideas of appropriation and divisible sovereignty, as well as his theory of resistance. In particular, the three aspects of the contemporary international legal order that were noted in the introduction to Part 2 can be given a new interpretation in terms of the 'colonising ethic': the tension between external and internal self-determination, or between state sovereignty and human rights; the partial centralisation of authority in the United Nations and through regional integration; and the justification of resistance by international norms as part of the process of decolonisation. Let us now look at each of these features of contemporary world political order in turn.

§1. External and internal conceptions of self-determination

On the issue of the tension between external and internal self-determination, or between state sovereignty and human rights, we might begin by noting that it is already well-established that international personality can be seen as part of a broader theory of property. For example, as Lauterpacht observed, positive international lawyers like Emerich de Vattel "assimilated state territory to private ownership of land".(Lauterpacht, 1946: 29) In positive international law, this was part of the broader process of constructing the state as the primary bearer of rights and personality in international society through the analogy between the public

persona of the state and the 'natural person' of the individual.(see Dickinson, 1916-17 & Hughes, 1995) However, we are now in a position to offer a different, and more nuanced, account of the relationship between property and international personality.

As we saw in Chapter 4, Grotius operated with a *dualistic* understanding of property, based on the distinction between *dominium* and *occupatio*. *Dominium* refers to the civil societal institution of property, while *occupatio* is the basis of ownership in the state of nature or in areas where no civil society has been constituted. In the main, Grotius saw the civil institution of *dominium* as having superseded the natural practice of *occupatio*, although the former generally confirmed the latter since "it is to be supposed that all agreed, that whatever each one had taken possession of should be his property."(Grotius, 1925: 190) Thus, *occupatio* is a rather awkward, limited way of gaining property rights, despite the extensions made to the idea of appropriation by theorists like John Locke or Thomas Jefferson. However, it remains important, especially in the context of the existence of lands within which no civil society has yet been constituted and which are consequently regarded as available for occupation through appropriation.

This dualistic theory of property therefore offers two different ways of obtaining international personality: through reciprocal agreement, or through 'natural' occupation. The former seems appropriate to the international personality of states, since that arises from a reciprocal agreement between states to treat each other as sovereign members of international society. The latter seems more closely related to the way in which individuals claim personality and rights in international society, in the sense that individual human rights are grounded in natural features of humanity: for example, the Universal Declaration of Human Rights begins by asserting that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."(Brownlie, ed., 1995: 257) To put this into the terms of the dualistic Grotian theory of property, states enjoy

international personality through the concept of property as *dominium*, while individuals enjoy international personality through the concept of property as *occupatio*, and this latter concept may in practice mean that individuals' rights extend only to that over which they have 'natural' property rights, meaning, usually, their persons.

Two points follow from this account of the relationship between international personality and property. First, international lawyers like W. Michael Reisman are incorrect to see human rights as resting on a constitutional principle of international legal order that is fundamentally at odds with the principle of sovereign statehood, and which "[shifts] the fulcrum of the system from the protection of sovereigns to the protection of people".(Reisman, 1990: 872) The kind of international personality that individuals enjoy under the UN Charter system and the kind of international personality that states enjoy under the Westphalian system of legal order are both parts of a single, albeit dualistic, theory of property, which was articulated in Grotius's original conception of the law of nations. This explains, even if it does not entirely defuse, the tension within the UN Charter itself between the equal sovereign rights of states and the universal human rights of individuals. The Charter is, in this respect, reflecting a long-standing feature of modern international society and is implicitly invoking a dualistic theory of property and international personality. The question of the status of human rights is therefore no more than a question of the relative scope of the reciprocal agreement on the *dominium* of states as a supersession of the rights of *occupatio* enjoyed by individuals.

Secondly, this explains why individuals enjoy a rather limited and fragile kind of personality and set of rights in international society: in the Grotian conception of the law of nations *occupatio* is inherently limited and can always be over-ridden by *dominium*. This goes against the widely-held view that the limited nature of human rights is attributable to the relative novelty of such rights in international society, as expressed, for example, in Jack Donnelly's view that "Today...human rights provide a standard of moral legitimacy that has been

partially (although very incompletely) incorporated into the rules of the international society of states."(Donnelly, 1993: 30) However, we have seen that there is nothing especially new about attributing rights to individuals in international law and society. Rather, the principal reason why human rights look weak or undeveloped in comparison with states' rights is that the justification of individual rights in international law is inherently restricted in comparison with the more robust and extensive institution of *dominium*, on which states' rights are based. Arguably, what is new in contemporary international human rights law is a movement from the Grotian idea that the civil institution of *dominium* simply supersedes *occupatio*, to the more Lockean idea that natural rights of appropriation continue to exist even in spite of the subsequent construction of a civil societal institution of property. Of course, this does not mean that human rights are not worth pursuing or developing in international society. However, it does indicate that it might be necessary to find a different account of international personality, perhaps one that does not depend on a theory of property at all, if any further development in international humanitarian law is to be effected, in order to provide a surer foundation for individual rights and make further inroads into the sovereign independence of states. It may be the case that rights language will not be an appropriate forum for such an extension of the personality of individuals as members of international society.

§2. The partial centralisation of authority in international society

Authority in international society is partially centralised in two different respects: through global institutions that exercise authority over a few issues, in a rather limited way; and through regional institutions that exercise a more robust kind of authority over a wider range of issues, but within geographical limits. The UN is an example of the former, enjoying a limited kind of authority with respect to a particular set of issues, such as "defusing regional conflicts, advocating self-determination, assisting decolonization, codifying international law, protecting human rights, and providing a possible framework for social and economic improvement, even for redistribution of wealth on a global scale."(Roberts &

Kingsbury, 1993: 19) In general, the key issue here concerns the ability of the UN to determine the scope of domestic jurisdiction, and to assert that certain issues are properly dealt with at the international level, rather than simply being questions that must be left up to the state in question. In so far as this involves a contest over the meaning of Article 2(7), as Rosalyn Higgins observes, "interpretation should be in favour of the efficacy of the Organization, and in favour of rendering states accountable for their behaviour in areas of international concern. It must therefore be a cardinal principle that a state may not judge for itself what falls within its own domestic jurisdiction."(Higgins, 1963: 62) Especially, this relates to 'Chapter VII' activities, where the UN takes "action with respect to threats to the peace, breaches of the peace, and acts of aggression".(Brownlie, ed., 1995: 14) However, it also relates more broadly to questions where an 'international concern' is involved, and while the scope of this is not clear, at the least "the practice of the UN does indicate that states may be concerned about events happening within another state even if their own interests are not directly involved or jeopardized".(Higgins, 1963: 81)

The most developed example of an authoritative regional organisation is the European Union. In the context of the EU, we are primarily interested in the principle of subsidiarity, which "implies a need to determine the decision-making tier on which each problem can be tackled *most effectively*, the possibilities ranging from local, regional, or national through to the European or world level."(European Parliament, 1996: 5, emphasis original) This is clearly a much more far-reaching way of conceiving of the authority of different institutions, even if its rationale is essentially the same as that by which the authority of global institutions is justified. In the European Union competence has been extended to community-wide institutions on a number of issues. The Single European Act was especially important in extending community competence on economic issues and other areas of 'low politics', while the 'three pillar' structure introduced by the Maastricht Treaty on European Union has developed rather weaker intergovernmental regimes with regard to 'high politics' issues of foreign and security policy and justice and home affairs.(see Wallace, 1996: 52-57) One of the

central purposes of the 1996 Intergovernmental Conference has been to develop these two pillars of European Union policy-making and generally encourage a more systematic application of the subsidiarity principle, which view has been especially evident in German contributions to the Conference. In addition, the TEU introduced an idea of 'European citizenship', which the Intergovernmental Conference has sought to develop further.(see European Commission, 1995: Chapter 1)

As we saw in Chapter 1, Bull saw these developments as questionable evidence of the emergence of a 'neo-medieval' form of international order, which has some similarities with the solidarist conception of international society. Perhaps more specifically, as Andrew Linklater comments, "What is at issue here is the unitary conception of sovereignty developed by Bodin and bolstered in the subsequent literature."(Linklater, 1996b: 95) The new configurations of authority emerging through the centralisation of authority and new forms of citizenship violate the principle of the absolute external sovereignty of states. They seem to suggest that sovereignty actually consists of authority over a series of distinct areas, and that these 'marks of sovereignty' are therefore in principle capable of being distributed between different institutions. Thus, international institutions can play limited roles in international society, taking on authoritative functions without violating the authority of states in other areas.

In other words, in challenging the 'unitary conception of sovereignty', the partial centralisation of authority in international society seems to be invoking a divisible conception of sovereignty. However, as we saw in Chapters 5 and 6, this idea of divisible sovereignty was not medieval, and it was not eclipsed by the emergence of absolutist political discourse following Bodin: not all the 'subsequent literature' bolstered Bodin's unitary conception of sovereignty; some thinkers, like Grotius, strove to keep other conceptions of sovereignty alive and to re-work them in an appropriate modern context. Their efforts were grounded in modern world politics in the context of federal and colonial societies like the United States of America or the Dutch East Indies. Thus the idea of the divisibility

of sovereignty is a salient feature of the normative and institutional structure of both modern and contemporary international society. It is a mistake to see its contemporary expression as the re-emergence of a medieval form of international order; divided sovereignty, like the poor, is always with us.

To understand how and why this is connected to the 'democratic entitlement' (Franck, 1992) and ideas of democratic citizenship in contemporary international organisation, it is instructive to recall that the idea of divisible sovereignty is intimately related to a classical republican conception of political community, and that this is the ground upon which solidarists reject reason of state as the basis for international morality. Lauterpacht noted that *De Jure Belli ac Pacis* was marked by a significant lack of engagement with the key reason of state authors like Machiavelli,(Lauterpacht, 1946: 30-35) but he did not go on to explore how Grotius was not simply making an idealistic objection to *Realpolitk*, but was rather concerned with preserving a republican conception of politics, as had been the case more generally in the Dutch revolt. As we saw in Chapter 4, this distinction between republicanism and reason of state is all about different ways of conceiving of political community: as a commonwealth, which exists for the welfare of individual people; or as a state, control of which is the goal of competition between self-interested individuals and groups.(see Viroli, 1992) By seeing solidarism as concerned with collective action between essentially self-interested states, and hence as contingent on the existence of a consensus between those states, Bull is mixing up these two different conceptions of politics and political community. However, properly understood, solidarism is inseparable from the idea that the international society is a *res publica*: a public space in which people work out how best to pursue their collective and individual welfare. The idea of divisible sovereignty is an expression of this, since it asserts that the authority to govern with respect to different issues is contingent on the effectiveness of different institutions—state, non-state and international—in contributing to the general welfare of the members of the *res publica*. This is one reason why there is an individualist and democratic focus built into contemporary international institutions, evidenced both in the UN's concern with human rights

and democratic governance or in the EU's concern with accountability and citizenship rights. These institutions do not simply consist of agreements between states that share democratic regimes; rather, they embody a distribution of sovereignty, the rationale for which is inseparable from the idea of maximising individual welfare within an international society conceived as a *res publica*. It would therefore be hard to conceive of a way in which institutions like the UN or the EU could not primarily be concerned with a conception of politics that is fundamentally republican, rather than statist.

Another point worth noting concerns the way in which this idea of divisible sovereignty and the partial centralisation of authority in international society need not necessarily imply a fundamental attack on the role of the state in international society. This most obviously relates to concerns about the possible emergence of a European 'super-state', which are especially pronounced in the debate about European integration in the United Kingdom. Seeing the institutions of the EU as part of a broader system of divisible sovereignty suggests that these fears are to some extent misconceived, since they rely on the assumption that authority in international society can *only* be expressed through a unitary conception of sovereignty, either located in a nation-state or in a supra-national institution. One is reminded here of Martin Wight's comment (cited in Chapter 1) about "the intellectual prejudice imposed by the sovereign state", such that "Practical problems in international politics are often described in terms of building a bigger and better state".(Wight, 1966a: 20, 22) The state, however, has typically been a part of broader structures of authority, within which the key question concerns the effective level at which the welfare of members of the *res publica* can be served. Rather ironically, the UK has either been part of such a system for some time itself or has expected other states to submit themselves to such a system, in the context of the Act of Union, the British Empire and the British Commonwealth. When we realise how global and regional institutions depend on a divisible conception of sovereignty which echoes these earlier, but hardly medieval, structures of authority in international society, it is harder to see them as either threatening or promising some eventual replacement of the state

with new absolutely sovereign international institutions.

§3. Justifying resistance in international society

One of the other salient features of the post-1945 international legal order has been the degree to which resistance movements have been able to seek legitimation through appeal to international norms. This was an important part of the broader process of decolonisation, and the new ideal type of international society developed in this thesis allows us to add a nuance to Bull's account of the meaning of this process in terms of the 'revolt against the West'.(see Bull, 1983 & 1984b)

First, however, it should be noted that Bull's discussion of the revolt against the West is already very carefully qualified and contains a rather subtle mediation between the issues of change and continuity in international society. Bull's main contention is that the entry of non-European societies into international society challenged European dominance and thus enlarged the agenda of normative issues in international society. While European countries established a normative framework for international society consisting of positive international law and the 'standard of civilisation', the norms of contemporary international society now comprise a wider range of issues including equal sovereignty, decolonisation, racial equality, economic justice and cultural liberation.(Bull, 1984b: 220-22) These issues have now been put on the agenda of world political order within the society of states itself, such that, for example, "distributive justice...has now become established as a theme of international debate that may be expected to endure."(Bull, 1983: 16) Although these issues are still the object of struggle and have certainly not become uncontested or primary goals of the international society, they have nevertheless come to constitute part of the normative content of the order that currently exists in world politics.

However, Bull also argues that this change in the norms, rules and institutions of international society has not completely erased the traditional norms

supported by European countries or positive international law. That much is obvious from the fact that he includes equal sovereignty on the list of the concerns of non-European states. In a sense, the revolt against the West reinforces the traditional mechanisms of the society of states since, as Bull observes, while arguing for economic redistribution, non-European states "have demonstrated their adherence to the international society and...cooperate in the working of its institutions".(Bull, 1983: 33) Indeed, they often actually use the traditional mechanisms of international society to advance their cause.

One way of thinking about this blend of change and continuity has been suggested by Robert Jackson: the meaning and implication of the norm of equal sovereignty has changed with the emergence of a new category of 'quasi-states'.(Jackson, 1990a) According to Jackson, decolonisation called into question the classic tests of state sovereignty: "a delimited territory, a stable population, and most importantly, a reliable government with the will and capacity to carry out international obligations."(Jackson, 1990a: 61) Instead, colonial, or rather ex-colonial, political entities that would have failed these tests nevertheless successfully claimed sovereign status as of right, and began to articulate a new set of interests as members of the society of states. This changed the rules of the 'sovereignty game', introducing "two normative innovations: self-determination of ex-colonies, and development entitlements of impoverished countries."(Jackson, 1990a: 40) The result is, on the one hand, "a strong democratic desire to incorporate all ex-colonies as sovereign states regardless of their level of empirical statehood", by extending the traditional doctrine of external self-determination to colonies.(Jackson, 1990a: 48) On the other hand, it also generates a tension between the traditional negative rights of sovereign independence (i.e., the right to be free from foreign intervention) and new positive rights derived from principles of distributive justice.(Jackson, 1990a: 180) For Jackson, in essence "Quasi-statesmen do not desire something radically new. They merely want what others already possess: positive sovereignty."(Jackson, 1990a: 180) What is new is that they use this traditional attribute to secure goals like economic redistribution. In this way, the revolt against the West has broadened the agenda

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of international society to include new issues. It may therefore threaten to weaken the international society, to the extent that it disrupts the agreement between states on common interests and values that Bull saw as essential to the existence of an international society in the first place. In this sense, the revolt against the West may have made contemporary international society more pluralistic and less solidaristic, in comparison with the relatively more cohesive European society of states.

Using our new ideal type of modern international society, we are now in a position to add two further points to Bull's analysis, which suggest that certain revisions need to be made to his interpretive conclusions about contemporary international order. First, we can now more readily appreciate how the idea of legitimate resistance was itself embedded in the modern international society, and therefore how and why decolonisation was supported by international norms and institutions. The point here is that, as we saw in Chapter 4, the original Grotian conception of the law of nations was oriented to the question of the conditions for legitimate resistance, understood not in the classically liberal form of the natural rights of individuals to resist the state, but rather as the right of political institutions to engage in a just public war. Grotius's re-working of the monarchomachic idea that 'inferior magistrates' could legitimately carry on resistance was cast in terms of the republican idea of divided sovereignty and the consequent possibility of there being a just public war between different bearers of sovereign rights within a *res publica*.

This poses an interesting conundrum, in the sense that it suggests that decolonisation has been supported by the 'colonising ethic' in international society. This represents a different way of dealing with the issue of the relationship between change and continuity in international society, which Bull explained in terms of the decolonisers' use of the principle of equal sovereignty in positive international law. Instead, it would suggest that decolonisers were able to use a wider range of normative and legal principles embedded in the more complex structure of modern international society, some of which had actually

been part of the practice of colonisation itself. Thus, as Bull argues, decolonisation was not a process of over-turning the European international society; it was a process by which non-European states entered into the European international society and *partly* changed the norms, rules and institutions of that society, often in ways that made use of other traditional components of the European society of states. With a more solidarist understanding of the normative and institutional structure of the European international society, it is possible to see how this dynamic was played out across a wider range of aspects of the process of decolonisation, including the actual legitimation of acts of resistance in the first place. Furthermore, this insight into the norm of resistance in modern international society provides a possible reason why the new states were prepared to accept certain limitations on their external sovereignty, while simultaneously arguing for their independence with respect to imperial authorities. In carrying on anti-colonial resistance, they were not simply asserting their rights to be independent sovereign states and hence completely free from intervention by other states. Rather, they were asserting their sovereign rights within a broader international *res publica*. This is one sense in which decolonisation was not an activity carried on in opposition to international law, but was rather an activity that used and upheld international legal rules to its own advantage, thereby offering a rather solidarist conception of the place of international law in international society. It would also indicate how ex-colonial states can simultaneously assert positive rights of economic re-distribution and negative rights of sovereign independence.

Secondly, this suggests that we should not necessarily conclude that the revolt against the West has rendered international society relatively more pluralist and less solidarist. Certainly, the degree of consensus on common purposes may have been eroded by the decline of European dominance. However, European dominance in the nineteenth century, at least as expressed in positive international law, was primarily oriented towards maintaining pluralist values, rules and institutions in international society. If solidarism is understood as a specific set of Grotian values, rules and institutions, rather than simply as a

consensus between states, then it seems to be the case that the actions of non-European states may have upheld and reinforced a solidarist conception of international society, rather than the other way around. The problem with Bull's interpretation is that it does not pay sufficient attention to the specific normative meaning of the solidarist conception of international society, preferring to emphasise its procedural element in terms of the strength of the agreement that is possible between states. If, however, there are distinctively solidarist norms, rules and institutions in international society, which may be advanced in opposition to pluralist ones, consensus itself is neither a necessary nor sufficient indicator of whether or not a given structure of international relationships is either pluralist or solidarist. The fact that some non-European states, the United States of America being a prime example, are advocates of a broadly solidarist conception of international society, makes it hard to see their relatively more influential role as evidence of a decline in the solidarist nature of international society.

§4. Concluding remarks

A great deal more could be said about all three of these interpretive conclusions and it would undoubtedly be necessary to qualify them with regard to other possible interpretations of these various phenomena. However, the above comments are sufficient to illustrate how changing our conception of modern international society might lead to changes in our understanding of sociability and order in contemporary world politics. They can therefore stand as hypotheses suggested by the argument of this thesis, which would hopefully provide fruitful and interesting questions for future research. It is not the intention of this thesis to carry out this research and provide a detailed account of these various contemporary phenomena. Rather, the goal of the thesis has been to show how the Grotian tradition, conceived in a less-restricted way, may help us to think about these different aspects of world politics. In other words, the Grotian tradition can still be a 'living tradition' of speculation about international relations, and these illustrations of possible new interpretations of contemporary

phenomena are intended to do no more than show what kinds of insights might be possible within the reconstructed tradition.

In this respect, it is necessary to clarify an important point about the status of the ideal type developed in this thesis. While having argued for a new version of the solidarist conception of international society, this thesis has also argued that the concept of international society is 'essentially contested'. Therefore, the ideal type presented here cannot claim to be the definitive description of the normative and institutional structure of modern or contemporary international society. Indeed, it is not the intention of the thesis to replace the pluralist conception with a solidarist conception as the only available description of society and order in international relations. Rather, the intention is to show that the pluralist conception is only one conception of modern international society, the solidarist conception is another, and there may be many other reasonable conceptions of international society. It is hoped that by showing how the ontological priority of the pluralist conception rested on questionable historiographical assumptions, this thesis will have indirectly assisted in the development of other reasonable conceptions of international society. It has therefore invited others to develop their own accounts of the nature of society and order in world politics, conceived from their own evaluative perspectives.

Finally, this raises the question of the status of Bull's own efforts to give an answer to the question of international society, and of the work of theorists like R.J. Vincent or Linklater who have sought to re-work Bull's conception. Here, it is important to note that, while this thesis has been critical of many aspects of Bull's argument, it recognised that Bull's work is an exemplary treatment of the question of the nature of international society. No part of this thesis has suggested that Bull's conception of the values, rules and institutions of modern international society is worthless and can be forgotten or ignored. On the contrary, by seeking to match Bull's defence of his conception of international society, this thesis has implicitly accepted the strength and utility of his account of the nature of international society; imitation is, after all, the sincerest form of flattery. Certainly,

Furthermore, interesting and important interpretive insights into contemporary world politics can be gained through an engagement with Bull's conception of international society, as both Vincent and Linklater have shown. The point is not to dismiss these insights, but rather to locate them within a broader, and agonistically conceived, tradition of speculation about international relations.

This why it is so important to emphasise how Bull's conception of modern international society is limited in certain respects, and thus serves to prevent us from gaining a proper grasp of some important features of modern international society. This is in the nature of the selective abstraction involved in constructing an ideal type. There is nothing wrong with the selectiveness of Bull's conception of international society. The only mistake is to ignore its selectiveness and treat it as if it were a comprehensive description of the world, or as a definition of the meaning of the core concept of international society. Of course, precisely the same *caveat* should be applied to the ideal type of modern international society presented in this thesis. Nevertheless, it is hoped that it will still serve a useful heuristic function in illuminating certain features of contemporary international relations, and that, by challenging some of the assumptions which underpin Bull's conception, this thesis will have made it easier for alternative conceptions of international society to be developed in the future. Echoing Weber, we might conclude by observing that this thesis has no intention to substitute a one-sided solidarism for a one-sided pluralist conception of society and order in world politics: "Each is equally possible, but each, if it does not serve as the preparation, but as the conclusion of an investigation, accomplishes equally little in the interest of historical truth."(Weber, 1930: 183)

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