

A GROTIAN TRADITION OF THEORY AND PRACTICE?:
GROTIUS, LAW, AND MORAL SKEPTICISM IN THE
THOUGHT OF HEDLEY BULL

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Hugo Grotius (1583-1645) occupies a prominent position in the canon of those who have argued, against the grain established by many of the most distinguished contemporary historians of political thought and international law, that it is possible and valuable to explore the history of problems of international order through identification of, and counterpoint among, enduring traditions of thought. An inquiry into efforts to connect Grotius to ideas and approaches current more than three centuries later thus seems well fitted to this symposium on *Traditions of Thought About International Order*. This article will examine the uses of Grotius and the idea of a "Grotian tradition" in the work of Hedley Bull (1932-85), one of the most incisive and historically-minded modern theorists of international relations. Bull was an intellectual heir of Martin Wight (1913-72),¹ whose approach to elucidation of fundamental problems in international relations rested upon the heuristic interplay

* Professor of Law, Duke University School of Law. For helpful discussions of ideas set forth in this article, special thanks to Philip Allott, Ian Clark, Andrew Hurrell, Lewis Kornhauser, Liam Murphy, and the participants in the Quinnipiac Symposium that formed the basis for the papers published in this symposium issue. An earlier version of this article is included (by kind permission) under the title *Grotius, Law, and Moral Scepticism: Theory and Practice in the Thought of Hedley Bull* in the collection CLASSICAL THEORIES OF INTERNATIONAL RELATIONS, *infra* note 2. This book was conceived as a memorial for the late R.J. Vincent, a colleague and friend who enriched the contemporary approaches to international relations discussed in this article, and who contributed directly to the literature on Grotius and the "Grotian tradition": *Grotius, Human Rights, and Intervention*, in the collection HUGO GROTIUS AND INTERNATIONAL RELATIONS, *infra* note 2.

1. Wight and Bull were both active from 1959 onward in the British Committee on the Theory of International Politics. Something of the approach of this group is represented in the contrast two of its leaders, Herbert Butterfield and Martin Wight, drew with a U.S. counterpart group: "The British have probably been more concerned with the historical than the contemporary, with the normative than the scientific, with the philosophical than the methodological, with principles than policy." DIPLOMATIC INVESTIGATIONS 12 (Herbert Butterfield & Martin Wight eds., 1966).

among contending but interdependent traditions of thought.² Wight's favored division was three-fold: a "Machiavellian/Hobbesian" tradition of realpolitik, a "Kantian" progressivist or cosmopolitanist tradition, and a "Grotian tradition" which represented a middle way between the two.³ Wight's elaboration of a "Grotian tradition," like Hedley Bull's work on Grotius, drew upon and engaged critically with the manifestations of varying but increasing interest in Grotius among international lawyers from about the middle of the nineteenth century,⁴ and especially the efforts of Van Vollenhoven and Lauterpacht in the wake of the two world wars to expound a "Grotian tradition" of international law for the twen-

2. On the different concepts of "traditions" of thought in international relations, see for example Benedict Kingsbury & Adam Roberts, *Introduction: Grotian Thought in International Relations*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS 1, 51-64 (Hedley Bull et al. eds., 1990); TRADITIONS OF INTERNATIONAL ETHICS 1-21, 297-322 (Terry Nardin & David Mapel eds., 1992); and Ian Clark's Introduction to CLASSICAL THEORIES OF INTERNATIONAL RELATIONS (Ian Clark & Ivor Neumann eds., 1996). See generally ALASDAIR MACINTYRE, *AFTER VIRTUE* (1981); ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* 326-88 (1988); MEANING AND CONTEXT: QUENTIN SKINNER AND HIS CRITICS (James Tully ed., 1988); SUDHIR HAZAREESINGH, *POLITICAL TRADITIONS IN MODERN FRANCE* 5-32 (1994); Anthony Kronman, *Precedent and Tradition*, 99 *YALE L.J.* 1029 (1990); Katharine Bartlett, *Tradition, Change, and the Idea of Progress in Feminist Legal Thought*, 1995 *WIS. L. REV.* 303.

3. The approach is elegantly employed in Martin Wight, *Western Values in International Relations*, in *DIPLOMATIC INVESTIGATIONS*, *supra* note 1, at 89. The most wide-ranging use of these approaches is MARTIN WIGHT, *INTERNATIONAL THEORY: THE THREE TRADITIONS* (Gabriele Wight & Brian Porter eds., 1991), a manuscript based principally on influential lectures given in the 1950s and published 19 years after the author's death, by Leicester Univ. Press. See also Martin Wight, *An Anatomy of International Thought*, 13 *REV. OF INT'L STUDIES* 221 (1987). Wight acknowledged the artificiality of approaches based on traditions and their interplay—see for example Wight, *Western Values in International Relations*, in *DIPLOMATIC INVESTIGATIONS*, *supra* note 1, at 90—but he was disposed more to experiment with sub-traditions or alternative traditions than to question the basic approach.

4. The renewal of international legal interest in Grotius from about the middle of the 19th century is exemplified by the treatment of Grotius in HENRY WHEATON, *HISTORY OF THE LAW OF NATIONS IN EUROPE AND AMERICA* (New York, Gould, Banks & Co. 1845); BARON CARL KALTENBORN VON STACHAU, *DIE VORLÄUFER DES HUGO GROTIUS AUF DEM GEBIETE DES IUS NATURAE ET GENTIUM SOWIE DER POLITIK IM REFORMATIONSZEITALTER* (Leipzig, G. Mayer 1848); HUGO GROTIUS, *DE JURE BELLI AC PACIS* (Pradier-Fodéré trans., Paris 1865-7) (1625); the obeisances paid to Grotius in conjunction with the 1899 Hague peace conference, as to which see for example the introduction to the English translation of HUGO GROTIUS, *DE JURE BELLI AC PACIS* (A. C. Campbell trans., 1901) (1625); Jules Basdevant, *Hugo Grotius*, in *LES FONDATEURS DU DROIT INTERNATIONAL* (A. Pillet ed., 1904); LASSA OPPENHEIM, *INTERNATIONAL LAW* (1905); the Carnegie Endowment's 1913 reprint of the 1646 edition of *De Jure Belli ac Pacis*; and the deluge of material published around the time of the tercentenary of *De Jure Belli ac Pacis* in 1925.

tieth century.⁵ Bull adopted from Wight much of the language of the three traditions, while pointing explicitly to their limitations, but Bull's systematic rigor caused him to distinguish sharply between the writings of Grotius and the tenets of a "Grotian tradition." He was decidedly cautious as to the senses in which any such *tradition* could usefully be said to exist.⁶ Bull, more than Wight, produced close and thoughtful analyses of particular works of Grotius that were intended to demonstrate, quite apart from any connections with neo-Grotians or a "Grotian tradition," their intrinsic interest for modern students of international relations. This article aims to show, however, that Bull's reflective modern outlook on the contemporary states-system and the universal but pluralist international society, was so far from Grotius' understanding of his world as to render Bull unable to follow Grotius' views on the nature of law and the possibilities of moral commitment in the face of moral skepticism. It is unsurprising that no direct bond of tradition transcends the gulf between Grotius and Bull in these key respects. Grotius nevertheless held a powerful appeal for Bull. This appeal rested not only on Grotius' much-discussed conception of an incipient international society and his equally noted concern with the central problem of war, but also on Bull's appreciation of Grotius' distinctive approach to the relations of theory and practice. It will be argued in the final section of this article that Bull's approach to the problem of theory and practice is both a wrongly-neglected and notably Grotian feature of his intellectual project. Consideration of Bull's approach to this problem provides insight into a recurrent issue for international relations theorists, and illuminates an undervalued aspect of the contribution to international relations of the

5. Cornelis van Vollenhoven, *Grotius and Geneva*, 6 BIBLIOTHECA VISSERIANA 1 (1926); Cornelis van Vollenhoven, *The Framework of Grotius' Book De Jure Belli ac Pacis (1625) in Verhandelingen der koninklijke Akademie van Wetenschappen*, 30 AFD. LETTERKUNDE (1931); Cornelis van Vollenhoven, *Grotius and the Study of Law*, 19 AM. J. OF INT'L L. 1 (1925); Cornelis van Vollenhoven, *Het Theorema van Grotius*, in 1 VERSPREIDE GESCHRIFTEN 461-68 (1934); Hersch Lauterpacht, *The "Grotian Tradition" in International Law*, 1946 BRIT. Y. B. OF INT'L L. 1.

6. Hedley Bull, *The Grotian Conception of International Society*, in DIPLOMATIC INVESTIGATIONS, *supra* note 1, at 51; HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* (1977), especially chapter 2; Hedley Bull, *The Importance of Grotius in the Study of International Relations*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS, *supra* note 2, at 65. For Bull's comments on Martin Wight's use of traditions of thought, see Hedley Bull, *Martin Wight and the Theory of International Relations*, 2 BRIT. J. OF INT'L STUDIES 101 (1976). Bull's position is characterized as "ambiguous" by Jens Bartelson, *Short Circuits: Society and Tradition in International Relations Theory*, 22 REV. OF INT'L STUD. 339, 347 (1996). Bartelson's article appeared while the present work was in press, so regrettably is not here discussed.

discipline of international law.

I. CONTEXTS OF GROTIUS' THOUGHT ABOUT INTERNATIONAL ORDER

Writings about Grotius in international law and relations have treated Grotius primarily, although not exclusively, through analysis, against the background of his biography and the history of his period, of a small though important subset of his extensive *oeuvre*. Vastly the most important of these has been *De Jure Belli ac Pacis* [*On the Law of War and Peace*] (*hereinafter JBP*),⁷ completed in 1624 and first published in 1625. That *JBP* received significant attention is evident from the numerous subsequent editions (Grotius himself worked on editions published in 1631, 1632, 1642, and 1646) and translations,⁸ although a comprehensive study of its intellectual impact has not yet been produced. Grotius also had an impact on contemporaries and subsequent generations through *Mare Liberum* [*Freedom of the Seas*],⁹ which was published (anonymously at first) in 1609, apparently with a view to providing juridical support for positions taken by Grotius' patron, Oldenbarnevelt, in the domestic and international political maneuvering leading to the 1609 truce between the United Provinces and Spain.¹⁰ The main lines of *JBP*, and the entirety of *Mare Liberum*, were anticipated in *De Jure Praedae* [*The Law of Prize*] (*hereinafter JP*),¹¹ written in the period 1604-6 as a work of legal advocacy connected with the seizure by a vessel of the Dutch East India Company (the VOC) of the Portuguese carrack *The Catharine*.¹² Because *JP* was substantially unknown until the rediscovery of the manuscript in 1864 and its publication four years

7. HUGO GROTIUS, *DE JURE BELLI AC PACIS* (n.p. 1625).

8. JACOB TER MEULEN & P.J.J. DIERMANSE, *BIBLIOGRAPHIE DES ÉCRITS IMPRIMÉS DE HUGO GROTIUS* (1950).

9. HUGO GROTIUS, *MARE LIBERUM* (Paris 1609).

10. C.G. Roelofsen, *Grotius and the International Politics of the Seventeenth Century*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS, *supra* note 2, at 109-12. Elements in the VOC encouraged publication of *Mare Liberum*, although Grotius' text also provided a basis for arguments inconsistent with the VOC's interest in establishing monopolies in the East Indies.

11. HUGO GROTIUS, *DE JURE PRAEDAЕ* (n.p. 1868).

12. The eminent Dutch historian Robert Fruin suggested that Grotius had acted as advocate in the proceedings before the Prize Court. Robert Fruin, *An Unpublished Work of Hugo Grotius*, 5 *BIBLIOTHECA VISSERIANA* 1 (1925). Later scholars have found the evidence for this insufficient and unconvincing, leaving the exact reasons for the writing of *De Jure Praedae* unclear. See, e.g., W.J.M. van Eysinga, *Mare Liberum et De Jure Praedae*, in *SPARSA COLLECTA: EEN AANTAL DER VERSPREIDE GESCHRIFTEN* 324 (1958); and Roelofsen, *supra* note 2, at 104 n.41. *Mare Liberum* proved to be a chapter from *De Jure Praedae*.

later, *JP* had little direct impact on the development of ideas, although it has attracted considerable scholarly attention as evidence of Grotius' thought in the milieu of the period, and it is of great value in understanding the structure and arguments of *JBP*.

The work of Quentin Skinner, J.G.A. Pocock, Richard Tuck, and others of the *historiens historisants* represents a methodological reproach both to the decontextualized analysis of historic texts of western political theory, and to loose assertions about the existence of four hundred year traditions of thought. These writers have sought to locate each author in close intellectual context, recovering the normative vocabulary available to the author from earlier writings then accessible, tracing the author's intellectual formation and inheritance, and connecting the author's texts with the political, theological, social, and intellectual debates or circumstances that seem to have affected them.¹³ For the *historiens historisants*, as Pocock once put it, "history of theory cannot be written as that of a dialogue between figures in a canonical tradition"—the organization of history into a canonical dialogue is to reduce history to historical drama, in which the canonical actors are isolated in each other's company and can be interacting with each other only in accordance with the ideal of the author.¹⁴ The canonical dialogue may be theory, but it is not history of theory.

The text as the theorist reads it is not the same thing as the text as event, or part of an event, reconstituted by historians. If the historian must abstain from deconstructing the theorist's encounter, the theorist must abstain from trying to reconstruct history. . . . If the two are combined, the result must be pseudohistory, myth-as-history, or Popperian historicism.¹⁵

For a historian of the Pocock/Skinner school, Grotius "demands assignation to contexts: to his own, which we must recover if we are to understand him, and to our own, in which we must read him if we are to

13. QUENTIN SKINNER, 1 *THE FOUNDATIONS OF MODERN POLITICAL THOUGHT* x-xv (1978); Quentin Skinner, *Meaning and Understanding in the History of Ideas*, 8 *HIST. & THEORY* 3 (1969); J.G.A. Pocock, *The History of Political Thought: A Methodological Enquiry*, in *POLITICS, PHILOSOPHY AND SOCIETY* 183 (Peter Laslett & W.G. Runciman eds., 2d series, 1962). Other leaders in this approach include John Dunn and James Tully.

14. J.G.A. Pocock, *Political Theory, History, and Myth: A Salute to John Gunnell*, in *TRADITION, INTERPRETATION, AND SCIENCE: POLITICAL THEORY IN THE AMERICAN ACADEMY* 21-42, 27, 29 (John S. Nelson ed., 1986). Pocock was here endorsing the argument in chapter 3 of JOHN GUNNELL, *POLITICAL THEORY: TRADITION AND INTERPRETATION* (1979).

15. Pocock, *supra* note 14, at 39.

interpret him."¹⁶

The "recovery" of Grotius' context, assuming such a project is intelligible after its confrontations with critical theory, must be a highly specialist enterprise.¹⁷ The recent specialist contributions concerned with the assignation of Grotius to his own context have added a great deal to the understanding of Grotius advanced by Bull, but it will be argued that they do not undermine the basic tenets of his interpretation. One approach to the problem of understanding Grotius in his own context is represented by Peter Haggemacher's examination of the major "international" texts, *JP* and *JBP*, by reference to patterns of ideas discernible in a vast range of prior texts—not all of which Grotius had necessarily read even at second hand. Haggemacher argues that Grotius represents the culmination of a long tradition of writing on just war in which scholastic authors, especially the Iberian *seconda scholastica*, were of central importance. Haggemacher's thesis that *JBP* is only a book about *justitia belli*, and that it contains no recognizable system of "international" law in any modern sense,¹⁸ is a sharp challenge to much of the received wisdom about the place of Grotius in a "Grotian tradition" of international law, not least the major premises of Van Vollenhoven and Lauterpacht.¹⁹ The attack this thesis makes on anachronistic readings of Grotius does not apply to Hedley Bull, who did not treat

16. Transposing Pocock's remark about Machiavelli. Pocock, *Machiavelli in the Liberal Cosmos*, 13 *POL. THEORY* 559 (1985).

17. Much important scholarly work on Grotius is not discussed because it does not relate directly to the lines of argument pursued in this article. Above all, nothing is said about recent scholarly editions of various of Grotius' works and correspondence, the most notable of which for present purposes is the invaluable reprint of the 1939 edition major of *JBP*, a variorum edition based (in accordance with Van Vollenhoven's views of Grotius thought) on the 1631 edition. The 1993 edition includes (pages 919 to 1074) an important set of additional notes, prepared by R. Feenstra and C.E. Persenaire, concerning in particular verification of several categories of sources used by Grotius and their connection to the text. HUGO GROTIUS, *DE JURE BELLI AC PACIS* (B.J.A. De Kanter-Van Hettinga Tromp ed., Aalen: Scientia Verlag 1993) (1625).

18. PETER HAGGENMACHER, *GROTIUS ET LA DOCTRINE DE LA GUERRE JUSTE* (1983).

19. Standard accounts of international law have gradually internalized enough history to abandon descriptions of Grotius as the father of international law. See, e.g., Maurice Bourquin, *Grotius est-il le père du droit des gens?*, in *GRANDES FIGURES ET GRANDES OEUVRES JURIDIQUES* (1948); Wilhelm Grewe, *Grotius—Vater des Völkerrechts?*, 23 *DER STAAT* 176 (1984). Cf. Karl-Heinz Ziegler, *Hugo Grotius als "Vater des Völkerrechts,"* in *GEDÄCHTNISSCHRIFT FÜR WOLFGANG MARTENS* 851-58 (Peter Selmer & Ingo von Münch eds., 1987). However, the view that *JBP* is a preeminent work of international law retains wide currency. Lauterpacht expressed the totemic view of generations of international lawyers that the most important theme of *JBP* was the subjection of the totality of international relations to the rule of law. Lauterpacht, *supra* note 5, at 19.

Grotius as a general theorist of international law, and indeed (for quite independent reasons) eschewed any direct modern use of his accounts of the normativity of law and morality.

The *historien historisant*, Richard Tuck, has begun, as have, in different ways, other historians such as C.G. Roelofsen, methodically to place works such as *JP* and *JBP* in the structure and evolution of Grotius' thought as represented in his writings on theology, political church/state issues, Dutch and comparative constitutionalism, and Dutch law, taking account of the currents of ideas with which he was imbued and the context of particular controversies in which he was engaged or interested.²⁰ Tuck's rich and detailed work analyzes Grotius as an opponent of the moral relativism inherent in the skepticism of Montaigne, and as laying foundations for a new science of morality or modern natural law leading to Pufendorf and above all, Hobbes.²¹ It will be argued that this account is important in helping to fill in, or perhaps shore up, the under-specified or inadequate foundations on which Wight and Bull built the solidarist theory of international society.

The assignation of Grotius to modern contexts has been greeted with skepticism by specialists on Grotius where, as is not uncommon in works on the "Grotian heritage" or the "Grotian tradition," Grotius is utterly displaced from his own context.²² As Haggenmacher points out,

20. Roelofsen, *supra* note 2, focuses particularly on the political context and its relationship to Grotius' ideas. A useful recent biographical outline is HENK NELLEN, HUGO DE GROOT (1583-1645): DE LOOPBAAN VAN EEN GELEERD STAATSMAN (1985). Roelofsen has advocated "a reappraisal of Bull's 'Grotian system' . . . by an analysis of the workings of the European system in the first half of the seventeenth century as perceived by Grotius." C.G. Roelofsen, *Grotius and the "Grotian Heritage" in International Law and International Relations: The Quatercentenary and its Aftermath (circa 1980-1990)*, 11 *GROTIANA* 19 (1990). Bull had in fact moved some way in this direction, with a full but unpublished lecture series on the Peace of Westphalia and an unpublished work on the Thirty Years War.

21. RICHARD TUCK, *PHILOSOPHY AND GOVERNMENT 1572-1651* (1993); Richard Tuck, *The "Modern" Theory of Natural Law*, in *THE LANGUAGES OF POLITICAL THEORY IN EARLY MODERN EUROPE* 99 (Anthony Pagden ed., 1987); RICHARD TUCK, *HOBBS* (1989). RICHARD TUCK, *NATURAL RIGHTS THEORIES: THEIR ORIGIN AND DEVELOPMENT* (1979) attributes to Grotius a significant place in the development of such theories.

22. The question how to treat the "Grotian heritage" was a theme of numerous internationally-minded authors in conjunction with the 1925 and 1983 anniversaries. See, e.g., Cornelis Van Vollenhoven, *Grotius and Geneva*, *supra* note 5, at 1; P.H. Kooijmans, *How to Handle the Grotian Heritage: Grotius and Van Vollenhoven*, 30 *NETHERLANDS INT'L L. REV.* 81 (1983). One of several recurrent patterns of use of the Grotian heritage is illustrated by C.D. Ehlermann's analogy between the evolution of EC fisheries policy after 1970 and the evolution of Grotius' own views on freedom of fishing. C.D. Ehlermann, *Grotius and the European Community's Common Fisheries Policy*, in *INTERNATIONAL LAW AND THE GROTIAN HERITAGE* 294 (T.M.C. Asser Institute ed., 1985).

the clichéd but heavily-subscribed internationalist account of Grotius, confronted with the emergence of separate sovereign states from the wreckage of the medieval order, heroically staving off lawless chaos by formulating a comprehensive legal order of interstate relations based on mutual respect and equality of sovereign states, “utterly fails to give a correct idea of Grotius’ real endeavour and accomplishment.”²³ (In mitigation, some of the internationalist references to Grotius scarcely claim to be more than purely emblematic, conveying little beyond a spirit or sense long received into the culture and lexicon of legal internationalism, as in the notion of a “Grotian moment” of opportunity for transformation popularized by Richard Falk and endorsed by Boutros Boutros-Ghali.²⁴)

If modern international relations writers have often not met the first part of Pocock’s challenge, it is notable that writers such as Tuck, Haggemacher, and Roelofsen have been cautious in responding to calls for explicit assignation of Grotius to “our own context.”²⁵ Beyond the truism that everyone writing about the past, necessarily by that act, connects the past to the context of the present, the explicit projects of theorizing about the present and future of international relations through reflection on distant texts or perceived traditions have been left by historians of ideas (with notable exceptions, such as Isaiah Berlin) to specialists in contemporary international law and international relations. Hedley Bull sought to understand Grotius in historical context while connecting him to issues confronting modern international relations theorists. While Bull refers frequently to Grotius or Grotian positions in developing his theory of order and justice in international society, he

23. Haggemacher, *On Assessing the Grotian Heritage*, in INTERNATIONAL LAW AND THE GROTIAN HERITAGE, *supra* note 22, at 150-51.

24. Falk, *Introduction: The Grotian Quest*, in CHARLES EDWARDS, HUGO GROTIUS, THE MIRACLE OF HOLLAND xiii (1981); Boutros-Ghali, *A Grotian Moment*, 18 FORDHAM INT’L L.J. 1609 (1995) (asserting *en passant* that Grotius is “the father of international law”).

25. Tuck indicates in passing that he believes the basic structure of modern politics was in place by 1651 (the publication of *Leviathan*), and that the:

description of modern politics we find both in the *ragion di stato* writers and in Grotius and Hobbes, with standing armies paid for out of taxation, with self-protective and potentially expansionist states, and with citizens very unsure of the moral principles they should live by, looks like an accurate description of a world still recognizable to us.

TUCK, PHILOSOPHY AND GOVERNMENT, *supra* note 21, at 348. But his commitment is to placing Grotius in the close intellectual context of Grotius’ own time. Roelofsen cautions that “the search for historical analogies is not always easy . . . and is sometimes better omitted.” Roelofsen, *Grotius and the “Grotian Heritage,” supra* note 20, at 13. Haggemacher’s views are discussed below.

also chooses *not* to incorporate important elements of Grotius' thought dealing with the normative system of law and the possibilities of overcoming moral skepticism. In these respects Bull did not seek to assign Grotius to any contemporary context, and perhaps believed that as to these matters such an assignation was impossible in a world so different. The reasons for and implications of these fundamental differences between Bull and Grotius are considered later in this article.

II. GROTIUS AND BULL ON THE NATURE AND ROLES OF LAW

For Grotius law provided both a language and a mechanism for the systematic application of reason to problems of social order and conflict. It is possible to read *JBP*, as Pufendorf did, as the application to law and morality, and through these to society, of the new scientific methods associated with Francis Bacon. Not only is the scheme based on reason, but its major component, the law of nature, is a dictate of right reason [*recta ratio*].²⁶ In these senses Grotius is a rationalist, and he has been much admired for his apparent commitment to bringing the violence and injustice of international affairs within the domain of reason.²⁷ It is not accurate to describe Grotius as a rationalist in the Cartesian sense: he professes an intention to emulate the approach of geometers,²⁸ but he does not seek to maintain a truly "mathematical" scheme in *JBP*.²⁹ The rationalist/empiricist dichotomy does not shed much light on the contemporary interest of international relations writers in Grotius. Martin Wight's use of the term "rationalist" to describe the "Grotian tradition" is puzzling insofar as he intended it to identify a fundamental break with the Hobbesian and Kantian traditions; in a broad sense, the international relations ideas of Hobbes, Grotius, and even Kant are all "rationalist."³⁰

26. GROTIUS, *JBP*, *supra* note 7, at I.x.1. This is discussed further in the next section.

27. In Roelofsen's opinion, "to Grotius" contemporaries, the idea in itself of the rule of law in international relations can hardly have come as a surprise . . . it is the general respect paid to legal considerations that strikes the modern observer of early seventeenth-century state practice." Roelofsen, *supra* note 2, at 123-24.

28. GROTIUS, *JBP*, *supra* note 7, at Proleg. 58. Haggemacher points out that the Kelsey translation of "mathematici" as "mathematicians" is wrong. Haggemacher, *supra* note 23, at 152 n.8.

29. See Tadashi Tanaka, *Grotius' Method: With Special Reference to Prolegomena*, in *A NORMATIVE APPROACH TO WAR: PEACE, WAR, AND JUSTICE IN HUGO GROTIUS* 11, 11-29 (Yasuaki Onuma ed., 1993).

30. See also Bartelson, *supra* note 6, at 354. On Kantian approaches, see for example PHILIP ALLOTT, *EUNOMIA: NEW ORDER FOR A NEW WORLD* (1990); Richard Ashley, *The Powers of Anarchy: Theory, Sovereignty, and the Domestication of Global Life*, in *INTERNATIONAL THEORY: CRITICAL INVESTIGATIONS* 94 (James Der Derian ed., 1995).

The structure of *JBP* makes plain Grotius' most central concern, the regularization and control of social conflict.³¹ The book is organized around questions bearing on just war; who may be a belligerent; what causes of war are just, doubtful, or unjust; and what procedures must or should be followed in the inception, conduct, and conclusion of war. War is understood broadly as coercive conduct. The formal scheme extends to war involving parties other than states or sovereigns, although the greater part of the material deals with public war. Grotius makes a major contribution to the just war tradition in attempting to state exhaustively the grounds for waging a just war, so that wars waged on other grounds are unjust or at least of doubtful justice. He contributes also by his commitment to extending the ambit of just war from issues as to parties and causes of war to issues relating to the conduct of war, a major theme of Book III of *JBP*. Bull was undoubtedly right to identify the relation of war to justice, and the control of war, as the core of the Grotian conception.

Haggenmacher goes beyond this interpretation, arguing that *JBP* is a preeminent book about the *justitia belli*; that it is indeed the crowning achievement of the scholastic just war tradition; but that Grotius had no vision of "international law" in the sense that the concept was subsequently to be understood. By "international law" Haggenmacher intends a body of rules, comprising an autonomous and homogeneous juridical sphere, having as its specific object the whole of the relations between a limited group of subjects of law, and of which the law of war is merely one special part.³² He argues that no one had such a view until after the publication of *JBP*, although he accepts that such a conception began to crystallize very shortly afterwards and was evident already in Hobbes' *De Cive* (1642), which Grotius had read by 1643,³³ and in Zouche's *Juris et Iudicii Feccialis* (1650). The passages in *JBP*, and particularly in the Prolegomena which were written at the end with the benefit of an overview of the text, often cited as evidence that Grotius had a concept of international law in such a modern sense, are analyzed by Haggenmacher as consistent with Grotius' just war scheme but fortuitously capable of having modern concepts read back into them. This applies, for

31. For a comparable approach see Haggenmacher, *supra* note 23.

32. HAGGENMACHER, *supra* note 18, at 622, 616 n.11.

33. Grotius' letter of 11 April 1643 to his brother Willem de Groot comments on *De Cive*. The letter is printed in GROTIUS, *EPISTOLAE QUOTQUOT REPERIRI POTUERUNT* 951-52 (Amsterdam 1687), and in the definitive Molhuysen, 14 BRIEFWISSELING VAN HUGO GROTIUS 199 (Henk Nellen & Cornelia Ridderikhoff eds., 1993).

example, to the opening passages of *JBP* (Proleg 1 and 2) in which Grotius refers to the need to systematize "[t]hat body of law . . . which is concerned with the mutual relations among states or rulers of states, whether derived from nature, or established by divine ordinances, or having its origin in custom and tacit agreement,"³⁴ and to the importance of "a knowledge of treaties of alliance, conventions, and understandings of peoples, kings, and sovereign nations . . . in short, of the whole law of war and peace." Abstracted from context, these appear to promise a recognizable notion of international law, but they are explained by Haggenmacher as simply mapping the range of controversies with which a comprehensive theory of just war must deal.³⁵

Haggenmacher argues that *JBP* manifests not a concept of international law, but of extra-national law, that is, the law applicable outside the bounds of the municipal law of any particular polity.³⁶ Grotius was conversant with the distinction between *jus inter gentes* and *jus gentium*, but Haggenmacher's view is in accord with Grotius' consistent position in *JBP* that the erection of civil authority within a polity has the practical effect of transforming the legal regime. For example, subjects are generally expected to tolerate even unjust laws emanating from their properly constituted sovereign.

Haggenmacher's thesis is radically opposed to anachronistic readings of subsequent ideas back into Grotius, but it is clear that Grotius transmitted and systematized many ideas that were to remain important as international law developed, and that the appreciative reception of *JBP* had a significant influence on the way in which structures and inchoate ideas in *JBP* became part of the emerging subject of international law. In conformity with Haggenmacher's general approach, however, it is possible to identify at least five central concepts of modern international law that are not to be found, certainly not in anything resembling their high modern forms, in *JBP*.³⁷ First, Grotius' account of sources is a theory of sources of law in general rather than a specific hierarchy of

34. GROTIUS, *JBP*, *supra* note 7, at Proleg. 1: "ius illud, quod inter populos plures aut populorum rectores intercedit, sive ab ipsa natura profectum, aut divinis constitutum legibus sive moribus et pacto tacito." The reference to divine ordinances in this passage does not appear in the 1625 text, but was inserted by Grotius in the 1631 edition, a fact treated by both Tuck and Haggenmacher as evidence that such ordinances were referred to only as an afterthought in Grotius' formulation of his scheme.

35. HAGGENMACHER, *supra* note 18, at 448-57.

36. This is the sense of *JBP*, I.i.1.

37. This discussion of legal concepts follows HAGGENMACHER, *supra* note 18, *passim*; the succinct recapitulation in Haggenmacher, *supra* note 23; and some points made in A NORMATIVE APPROACH TO WAR (Yasuaki Onuma ed., 1993).

formal or material sources, the types found in modern international law. Grotius discusses in systematic fashion the law of nature (divided in *JP* into primary natural law, common to all beings, and secondary natural law, applicable only to humans through the power of reason), divine volitional law, and human volitional law (ranging from the power of the *paterfamilias* or the slaveowner, through the *jus civile*, to the *jus gentium*).³⁸ In *JBP* he indicates that both divine positive law and the *jus gentium* are in effect subordinate to natural law, although the actual use of these different sources in relation to particular substantive issues of law is much more variable than this simple formal hierarchy implies.³⁹

Second, Grotius does not have a closely defined concept of "the state" in the senses subsequently developed in western legal theory. *Civitas*, *respublica*, *populus*, *regnum*, and *imperium* are all used in *JBP* in ways that touch on the modern concept of "state," but only "*civitas*" is defined, and Grotius does not employ a taxonomy that feeds into later analytic usages.⁴⁰

Third, Grotius does not have a theory of subjects of law of the sort that became a central feature of theories of public international law, although he applies law to a range of sovereign and non-sovereign entities, including individuals.

Fourth, while Grotius does have a concept of sovereignty, "[t]hat power is called sovereign whose actions are not subject to the legal control of another,"⁴¹ he does not systematically distinguish the legal personality of the sovereign state from that of the ruler or other governing power within the state,⁴² and so does not present a theory of state re-

38. The basic catalogue of sources is laid out in Tadashi Tanaka, *Grotius' Concept of Law*, in *A NORMATIVE APPROACH TO WAR: PEACE, WAR, AND JUSTICE IN HUGO GROTIUS*, 38-56 (Yasuaki Onuma ed., 1993).

39. It is true, as Ian Harris suggests, that Grotius' primary focus was on laws of nature and concurrent rights, and that he pointed out that *jus gentium* varied from place to place and cast doubt on the importance of general agreement going beyond the law of nature, but he does in fact use *jus gentium* as a basis for legal opinions in a large number of specific instances. Ian Harris, *Order and Justice in The Anarchical Society*, 69 *INT'L AFFAIRS* 734 (1993). There is on this point (as on several others) some difference between his system as expounded in the abstract, and his actual application of it in matters of legal doctrine.

40. Fritz Münch, *Staat und Völkerrecht: Zur Terminologie bei Grotius*, in *STAAT UND VÖLKERRECHTSORDNUNG: FESTSCHRIFT FÜR KARL DOEHRING* 625 (1989).

41. GROTIUS, *JBP*, *supra* note 7, at I.iii.7.

42. HAGGENMACHER, *supra* note 18, at 539-46. On Grotius' use of such concepts as *imperium*, *dominium civile*, and *dominium privatum*, and the absence of the systematic modern distinction between public authority and private right, see Masaharu Yanagihara, *Dominium and Imperium*, in *A NORMATIVE APPROACH TO WAR: PEACE, WAR AND JUSTICE IN HUGO GROTIUS*, *supra* note 29, at 169-72.

sponsibility in the modern sense.

Fifth, Grotius had no general doctrine of the equality of sovereign entities.⁴³ *JBP* itself makes clear that his world was one of vast differences in political systems, power, values, and units of authority, with individuals and a variety of political units existing in numerous different legal relations with one another.

Hedley Bull independently reached similar conclusions about characteristics of the thought of Grotius (characteristics he identified also in Vitoria, Suarez, Gentili, and Pufendorf). These included: the values of international society were Christian, even though social bonds extended to non-Christians; membership of the society was not clearly defined and was not based on a notion of "state"; the most significant source of obligations was natural law; and, the international society was predicated on universalistic assumptions more than on a conception of separate sovereignties, let alone equal sovereign entities.⁴⁴ Bull's assignation of Grotius to his own context carefully avoids anachronisms which have beset some internationalist writing on Grotius. In dealing with the assignation of Grotius to contemporary contexts, Bull rightly emphasized that the positions of Grotius and of the twentieth century neo-Grotians are quite distinct.

Grotius stands at the birth of international society and is rightly regarded as one of its midwives. For him the terminology of a universal state is what is still normal, and the language of international relations can be spoken only with an effort. The neo-Grotians, however, have three more centuries of the theory and practice of international society behind them; their novelty lies not in moving away from the domestic model in international relations, but in moving back towards it.⁴⁵

The possibilities of connecting Grotius to current concerns arise for

43. In *Mare Liberum*, ch. 1, Grotius argues: "Every nation is free to travel to every other nation, and to trade with it." The reference is to "gentes," which does not necessarily signify "states" in abstracto, and in any event this assertion of equality of rights is exceptional in Grotius' writing on international matters. GROTIUS, *supra* note 9. See generally E.D. DICKINSON, *THE EQUALITY OF STATES IN INTERNATIONAL LAW* 34-67 (1920); and Haggenmacher, *supra* note 23, at 155.

44. See BULL, *THE ANARCHICAL SOCIETY*, *supra* note 6, at 28-33, a work not cited in Haggenmacher's magnum opus. In *The Importance of Grotius in the Study of International Relations*, *supra* note 6, Bull, preoccupied with a broader set of concerns about universality, the place of individuals and non-state groups, and the role of natural law, does casually suggest (page 74, presumably following Lauterpacht) that Grotius aimed to systematize the whole of the law of war and peace, but this passage is unrepresentative.

45. Bull, in *DIPLOMATIC INVESTIGATIONS*, *supra* note 1, at 66.

Bull not through attribution to Grotius of later ideas he did not have, but through recognition that Grotius engaged thoughtfully with recurrent issues in ways that made it possible for subsequent readers to connect the open structures of Grotius' thought with their contemporary concerns. These open structures are sometimes described in terms of Grotius' "ambivalence"⁴⁶ but this suggests a rather simple indecision across dualities which does not capture the best elements of Grotius' writing. The dichotomized image of many modern problems, for example, the perceived opposition in theories of sources of law between natural law and positivism, has made "ambivalence" the major strategy of reconciliation. Where such narratives have prevailed, challenging or reproducing this ambivalence has come to seem a dominant motif of international law scholarship. For those committed to such a narrative of international legal history, Grotius and Grotianism have come to stand for both the challenging and the reproduction of such "ambivalence" or, in the same way, for pragmatism or eclecticism.⁴⁷ On the issues he addresses, Bull's approach to Grotius is much more subtle than standard "ambivalence" narratives.

Bull said very little, however, about Grotius' concept of law or the importance of particular legal concepts in the scheme of Grotius' thought. He recognized, of course, that the works of Grotius with which he was principally concerned are juridical, and that legal reasoning is central to the purposes and system of *JBP*. *JP*, *Mare Liberum*, and *JBP* are couched as expositions of law, even if the doctrine is often more open-textured, the sources and evidence less tight than in works by Grotius on other aspects of law, particularly *Inleidinge tot de Hollandse Rechts-Geleerdheid* [*Introduction to the Jurisprudence of Holland*]. Bull and Wight both numbered many international lawyers in the ranks of Grotians, and recognized a broad correspondence between the professional exposition of international law and adherence to the "Grotian tradition."⁴⁸

46. Cf. the approach of Roelofsen, *supra* note 2, at 125.

47. Cf. Onuma, *supra* note 37, at 7; and Edwin D. Dickinson, *Changing Concepts and the Doctrine of Incorporation*, 26 AM. J. INT'L L. 239 (1932).

48. Both acknowledged some exceptions. Wight famously lamented that "when diplomacy acquires a certain habit of cooperation, international law crawls in the mud of legal positivism." Wight, *Why Is There No International Theory?*, in *DIPLOMATIC INVESTIGATIONS*, *supra* note 1, at 29. Bull noted that "in the writings of late nineteenth-century positivist international lawyers the elements of a Realist outlook are sometimes strong." Bull, *Hans Kelsen and International Law*, in *ESSAYS ON KELSEN* 323 (Richard Tur & William Twining eds., 1986).

Yet several features of Grotius' legal thought germane to international relations issues are scarcely mentioned in Bull's extensive and careful treatment of Grotius. The first and perhaps most significant of these omissions is Grotius' central role in the transformation of *jus* from an essentially objective character to the subjective character embodied in the modern idea of rights.⁴⁹ Grotius was not the first to see the idea that *jus* might be something a person *has* rather than something an action or state of affairs *is*,⁵⁰ but his contribution to developing and transmitting this idea was of great importance in the natural rights tradition.⁵¹

Second, Grotius' theory of moral action is one in which legal rights play a central part in defining what is required, permissible, or impermissible; but it is not exhausted by his account of perfect rights. The idea of imperfect rights, and the propriety of pursuing these without legal entitlement to their vindication, is emphasized repeatedly. This socially beneficial theory of morality in society was further developed by Pufendorf as the distinction between perfect and imperfect duties. The law of love, as Grotius calls it, is important to the scheme of *JBP*.⁵²

Third, Grotius was deeply committed to constitutionalism, expending vast amounts of intellectual and political energy on historical and comparative constitutional analysis bearing on Dutch constitutional controversies,⁵³ and the subordination of religious to secular authority as a means of protecting liberty against religious extremism.⁵⁴ He was at the same time opposed to any general right of resistance for subjects confronted even with tyranny, which was one of the grounds for Rousseau's bitter denunciation of him, and caused Lauterpacht much agony.⁵⁵

49. On uses of *jus* in *JBP* and other works of Grotius, see Tanaka, *supra* note 38, at 32-37; and HAGENMACHER, *supra* note 18, at 61-62, 462-70.

50. See, e.g., Knud Haakonsen, *Hugo Grotius and the History of Political Thought*, 13 POL. THEORY 239 (1985).

51. TUCK, NATURAL RIGHTS THEORIES, *supra* note 21.

52. See GROTIUS, *JBP*, *supra* note 7, at II.xii.16, II.xxiv.2, III.xiii.4. This element is stressed in Onuma, *supra* note 37, at 48-50, 296-97, 302-03.

53. See, e.g., HUGO GROTIUS, PARALLELON RERUMPUBLICARUM LIBER TERTIUS (Haarlem, 1801-3) (c. 1602); HUGO GROTIUS, DE REPUBLICA EMENDANDA (Grotiana, 1984) (c. 1598-1600).

54. See, e.g., HUGO GROTIUS, DE IMPERIO SUMMARUM POTESTATUM CIRCA SACRA (Harm-Jan Van Dam ed., forthcoming) (1647); HUGO GROTIUS, ORDINUM HOLLANDIAE AC WESTFRISIAE PIETAS (Edwin Rabbie ed., Leiden: E.J. Brill, 1995) (1613). See generally TUCK, PHILOSOPHY AND GOVERNMENT, *supra* note 21, at 179-90.

55. See, e.g., GROTIUS, *JBP*, *supra* note 7, at I.iii; ROUSSEAU, THE SOCIAL CONTRACT, bk I, ch. 2-5 (1762); TUCK, NATURAL RIGHTS THEORIES, *supra* note 21, at 77-81. Lauterpacht, *supra* note 5, provides a lengthy exegesis of the exceptions Grotius allows to the general prohibition on civil resistance.

Grotius was a theorist of liberty based on active rights, although not a theorist of liberalism.⁵⁶

Fourth, *JBP* is about disputes represented above all as lawsuits.⁵⁷ Recourse to a lawsuit is required where possible.⁵⁸ War, whether public or private, is the extension of a lawsuit.⁵⁹ As Schneewind puts it,

If we ask why the project of the Grotians was to establish a law-like code of morals [and hence eventually to undermine the role of virtue], the answer must be that they took the central difficulties of life to be those arising from disagreement—disagreement involving nations, religious sects, parties to legal disputes, and ordinary people trying to make a living in busy commercial societies. It is not an accident that the very first word in the body of Grotius's text is 'controversiae.'⁶⁰

As is to be expected in a book about the law of disputes, a considerable part is devoted to legal procedures.

For Grotius law played a range of important roles, normative, communicative, and procedural, in the ordering of society. Elucidating these roles was an important task of the theorist, and entailed intimate connections of theory and practice. By contrast, Hedley Bull's treatment of international law is not probing, and shows little interest in the foundations or the normativity of law. The reasons for this have some parallels with Bull's treatment of morality and ethics, as is discussed below and considered further in the concluding section. The general function of law in Bull's theory was astutely summarized by John Vincent:

The function of international law in relation to international order, according to Bull, was not itself to produce it, as some progressivist thought asserted, but to identify the constitutive principle of the political organization of humankind—the society of states; then to state the basic rules of coexistence between them; and then to provide a language in which their formal relations could be carried on. . . . The interest in international law, then, was not for what it was, but for what it signified. It provided evidence for existence of

56. TUCK, *PHILOSOPHY AND GOVERNMENT*, *supra* note 21.

57. On the power of this image, see Michael Donelan, *Grotius and the Image of War*, 12 *MILLENNIUM* 223 (1983). Haggemacher takes only mild literary license in suggesting that in one sense Grotius always has the controversy about *The Catharine* in view. HAGGENMACHER, *supra* note 18, at 619.

58. An especially clear formulation is GROTIUS, *JP*, *supra* note 11, at ch. 2, Law XII: "Neither the state nor any citizen thereof shall seek to enforce its own right against another state or its citizen, save by judicial procedure."

59. GROTIUS, *JBP*, *supra* note 7, at Prolegomena 25; *id.* at II.i.2.

60. J.B. Schneewind, *The Misfortunes of Virtue*, 101:1 *ETHICS* 42-63 (1990).

society, not the reason for its existence. It was in this regard a very useful instrument for Bull, locating society like a miner's lamp locating gas: *ubi societas ibi jus est*.⁶¹

In unpublished lectures on international law, Bull adopted Oppenheim's division of international lawyers into natural lawyers, positivists, and "Grotians," a group concerned with both natural and voluntary or positive law.⁶² Oppenheim's purpose was to chronicle the laudable rise of positivism, and Bull's own analysis of international law adopts a number of positivist tenets, drawing heavily on the thought of Bull's teacher H.L.A. Hart.⁶³ One of Hart's central concerns was the analytic separation of law and morality. Bull devotes curiously little attention to arguing for this separation, which he endorses by implication, but he argues strongly for distinctions between law and political assertions and between law-as-fact and social values. Law must be clearly separated from these varieties of non-law:

[I]f international lawyers become so preoccupied with the sociology, the ethics or the politics of international relations that they lose sight of what has been in the past their essential business, that is the interpretation of existing legal rules, the only result must be a decline in the role of international law in international relations.⁶⁴

In Bull's terminology, "Grotianism" or "neo-Grotianism" among international lawyers referred to solidaristic tendencies to find new sources of law in order to evade the requirement of sovereign consent, extend the range of subjects of international law beyond states, and promote the triumph in war of the party representing the just cause.⁶⁵

Bull does not construct an extended argument as to *why* international lawyers should adhere to positivist premises, but he is committed to the view that international law is separate from, but validated by, practice and to the position that international law can be based only on express or tacit consent, that is, on genuine consensus. This position was at variance with that of Martin Wight, who remarked, as to the

61. *Order in International Politics*, in *ORDER AND VIOLENCE: HEDLEY BULL AND INTERNATIONAL RELATIONS* 54 (J.D.B. Miller & R.J. Vincent eds., 1990).

62. OPPENHEIM, *supra* note 4, at 58-93. This framework was also used by Wight—see WIGHT, *INTERNATIONAL THEORY*, *supra* note 3, at 14.

63. BULL, *THE ANARCHICAL SOCIETY*, *supra* note 6, at 127-61; HART, *THE CONCEPT OF LAW* (1961).

64. BULL, *THE ANARCHICAL SOCIETY*, *supra* note 6, at 159.

65. *Id.* at ch. 6.

question "why must agreements be observed," that "[u]tilitarian reasons may be adduced as the sources of authority for this principle, but the oldest and profoundest answer is that the observance of agreements represents an ethical norm; it conforms to an inherent standard of justice."⁶⁶ This is virtually a paraphrase of Grotius.⁶⁷

The vast gulf between the positions of Bull and Grotius on law is equally evident with regard to morality. For Grotius law and morality are parts of single whole, and both are normative and central. For Bull, law and morality are to be kept separate, and the spheres of both are confined.

III. GROTIUS, BULL, AND MORAL RELATIVISM

Twentieth century proponents of a "Grotian tradition" have seen Grotius as a hero in the perennial confrontation with doctrines of "reason of state" exemplified by the writings of Machiavelli.⁶⁸ At the beginning of *JBP*, Grotius lists possible objections to his enterprise, the first of which is represented by a saying from Thucydides "that in the case of a king or imperial city nothing is unjust which is expedient," to which for good measure Grotius added an excerpt of the Athenian position in the Melian dialogue.⁶⁹ In a general way, the reading of *JBP* as a humanist constitutionalist rejection of *ragion di stato* and *raison d'état*, is justified. Grotius reflects an awareness of reason of state positions, and assigns a significant role to expediency or interest (*utilitas*).⁷⁰ Whether the approaches Grotius reacted against were strictly those of Machiavelli is another matter.⁷¹ The big picture of an opposition between Grotian and Machiavellian conceptions tends to a reductionism which misses much of what is important in the system of Grotius' thought, and overlooks the fruitful possibilities of reading Grotius as responding to a different type of skepticism.

66. WIGHT, *INTERNATIONAL THEORY*, *supra* note 3, at 238.

67. GROTIUS, *JP*, *supra* note 11, ch. 2.

68. *See, e.g.*, Lauterpacht, *supra* note 5, at 24-35.

69. GROTIUS, *JBP*, *supra* note 7. The quotation from the Melian dialogue ("the more powerful do all they can, the more weak endure") was added by Grotius to the 1642 edition.

70. For an elaboration of this theme, see *A NORMATIVE APPROACH TO WAR: PEACE, WAR, AND JUSTICE IN HUGO GROTIUS*, *supra* note 29, at 7 and *passim*.

71. *See* 1 QUENTIN SKINNER, *FOUNDATIONS OF MODERN POLITICAL THOUGHT* (1978); MAURIZIO VIROLI, *FROM POLITICS TO REASON OF STATE* (1991); RICHARD TUCK, *PHILOSOPHY AND GOVERNMENT 1572-1651* (1993) (tracing influences of, and departures from, Machiavelli, and emphasizes the break between Ciceronian and Tacitist patterns of thought in the second half of the sixteenth century).

Tuck makes a stimulating case for retrieving a long-submerged view that Grotius sought to respond in *JBP* (as earlier in *JP*) to a particular form of skeptical challenge that had become increasingly influential in the two or three decades before he wrote *JP*. This was the moral relativist position of Michel de Montaigne and Pierre Charron.⁷² "Grotius and his successors were responding to a straightforward pre-Humean moral skepticism, which simply pointed to the multiplicity of beliefs and practices around the world, and concluded that there were no common moral beliefs and hence nothing stable upon which to build a universal ethics."⁷³ Grotius' express acknowledgment of a concern with moral relativism is very limited. In *JBP* Grotius chooses the second century B.C. Greek skeptic, Carneades, as representative of a particular objection he must confront.⁷⁴

Carneades . . . was able to muster no argument stronger than this, that, for reasons of expediency, men imposed upon themselves laws, which vary according to [peoples'] customs, and among the same peoples often undergo changes as times change; moreover that there is no law of nature, because all creatures, men as well as animals, are impelled by nature toward ends advantageous to themselves; that, consequently, there is no justice [justitia], or, if such there be, it is supreme folly, since one does violence to his own interests if he consults the advantage of others.

72. MICHEL DE MONTAIGNE, *ESSAIS* (n.p. 1580). A posthumous edition incorporating Montaigne's revisions was published in 1595. The classic English translation is John Florio's Elizabethan rendition. PIERRE CHARRON, *OF WISDOM* (Barbara de Negroni ed. & Samsen Lennard trans., London, Luke Fawne, 2d ed. 1651) (1601) (this work builds upon Charron's *Les trois vérités*). PIERRE CHARRON, *LES TROIS VÉRITÉS* (Bordeaux, S. Millanges 1595) (1593). Montaigne and Charron had some common influences, and were both connected with the Gironde region, but the precise connections of the two are not fully known. In *Of Wisdom* Charron made extensive unacknowledged use of the *Essais*, but recent scholarship interprets him as an important and original thinker. See, e.g., FRANCOISE KAYE, *CHARRON ET MONTAIGNE: DU PLAGIAT À L'ORIGINALITÉ* 33-122 (1982) (includes a concordance showing Charron's borrowings from Montaigne); RENÉE KOGEL, *PIERRE CHARRON* (1972). *La Saggezza moderna: Temi e problemi dell'opera di Pierre Charron* includes a useful bibliography of works by and on Charron, and Taranto's essay *Il posto dello scetticismo nell'architettura della "Saggezza."* *LA SAGGEZZA MODERNA: TEMI E PROBLEMI DELL'OPERA DI PIERRE CHARRON* 9-34, 419-35 (Vittorio Dini & Domenico Taranto eds., Edizioni Scientifiche Italiane 1987).

73. Richard Tuck, *The "Modern" Theory of Natural Law, in THE LANGUAGES OF POLITICAL THEORY IN EARLY MODERN EUROPE* 114-15 (Anthony Pagden, ed. 1987).

74. GROTIUS, *JBP*, *supra* note 7, at Proleg. 5. Some modern writers have treated Carneades as simply speaking here for "reason of state." See, e.g., G.I.A.D. Draper, *Grotius' Place in the Development of Legal Ideas About War, in HUGO GROTIUS AND INTERNATIONAL RELATIONS* 200 (Hedley Bull et al. eds., 1990).

Building a picture of the development of humanist thought and Grotius' likely reception of it, Tuck interprets this passage, together with the structure of Grotius' positive argument for natural law, as indicating that "for 'Carneades' one should in effect read 'Montaigne' or 'Charron.'"⁷⁵ For the purposes of this article, the most persuasive and significant aspect of this interpretation is its coherence in explaining elements of the foundations and methods of Grotius' system, particularly with regard to his approach to natural law.

This interpretation of Grotius was in part suggested by Pufendorf and mapped out by Barbeyrac, the influential French translator of Grotius and Pufendorf.⁷⁶ In an essay attached to his 1709 translation of Pufendorf's *De Jure Naturae et Gentium*, Barbeyrac argues that the enterprise of Grotius, as of Selden, Hobbes, and, of course, Pufendorf himself, was the elaboration of a science of morality, and that it was calculated to refute the skepticism represented by Montaigne and Charron without seeking to reestablish (on a scientific footing) Aristotelian ethics.⁷⁷ For both Pufendorf and Barbeyrac, Grotius was the first to understand natural law as a modern science. For Grotius, as for Pufendorf, natural law is the dictate of right reason.⁷⁸ Grotius asserts that the law of nature could be proven by either of two means: *a priori*, "by demon-

75. Tuck, *supra* note 73, at 109. In Montaigne's celebrated encapsulation: "What truth is that, which these Mountaines bound, and is a lie in the World beyond them?" 2 MICHEL DE MONTAIGNE, THE ESSAYS OF MICHAEL LORD OF MONTAIGNE 297 (John Florio trans., J.M. Dent 1924) (*Apologie de Raimond Sebond*).

76. Pufendorf's major works on natural law all make extensive reference to Grotius. However his fullest explicit discussion of Grotius appears in *De origine et progressu disciplinae iuris naturalis* [*The Origin and Development of the Study of Natural Law*], which was included in his *Specimen controversiarum circa ius naturale ipsi nuper motarum* (1678) and in *Eris Scandica, qua adversus libros de iure naturali et gentium obiecta diluuntur* (1686), and to which Hont and Tuck draw attention. (*Eris Scandica* was reprinted in the G. Mascovius editions of *De Jure Naturae et Gentium Libri Octo*, Francofurti et Lipsiae, 1744, 1759, etc.) Carew's English translation of Barbeyrac's principal relevant essay, entitled *An Historical and Critical Account of the Science of Morality*, was printed as a preface to several editions of the Kennet translation of Pufendorf, *Of the Law of Nature and Nations*. Barbeyrac, *Preface to the Fourth Edition of PUFENDORF, OF THE LAW OF NATURE AND NATIONS* 1-88 (Kennet trans., London, J. Walthoe 4th ed. 1729) (introduced by a translation of the second iteration of Barbeyrac's essay). Pufendorf and Barbeyrac both admired many elements of Grotius' thought, including his liberation from adherence to any one school of philosophy (i.e., his eclecticism). Barbeyrac explained such defects as remained in *JBP* by the fact that Grotius had largely to pioneer the subject himself. *Id.* at §§ 29, 31.

77. Barbeyrac, *An Historical and Critical Account of the Science of Morality*, in *DE JURE NATURAE ET GENTIUM* §§ 3, 4 (Barbeyrac trans., n.p. 1709) (Barbeyrac considers and contests various skeptical arguments associated with Montaigne and Charron.)

78. GROTIUS, *JBP*, *supra* note 7, at I.i.12.; PUFENDORF, *DE JURE NATURAE ET GENTIUM*, *supra* note 77, at II.iii.13.

strating the necessary agreement or disagreement of anything with a rational and social nature," and *a posteriori* (as a matter of probability if not absolute certainty), by showing what is believed to be the law of nature "among all nations, or among all those that are more advanced in civilization."⁷⁹ This sidesteps at least one of the methodological objections of Montaigne, that there is not even one rule of the supposedly firm and immutable natural law "but is contradicted and disowned, not by one Nation only, but by many. And yet this same universal Approbation is the only probable Mark, from which they [natural lawyers] can argue, or infer, any Laws at all to be natural."⁸⁰ As to the content of the natural law, Grotius' innovation was to base his system on the natural urge of all humans for self-preservation.⁸¹ For Tuck, this is the crucial insight in responding to moral relativism, for even the skeptics in their philosophy for living accepted that self-preservation was a necessary and proper basis of action. The exact connection and balance in *JBP* between self-preservation and the appetite for society as motivating forces and foundations of natural law are matters on which opinions differ. *JP* is clearer in positing a series of rules of natural law which follow from self-preservation, whereas the *appetitus societatis* plays a more prominent role in *JBP*. As Tuck states his case,

Grotius had one central and simple idea: that precisely because skepticism was a theory about the route to wisdom, a theory which presupposed that wise men were primarily concerned with protecting themselves from harm, skeptical ideas could be restated in the language of natural rights and duties. . . . The fundamental character of these rights and duties also meant they could play the role of cross-cultural universals, and Grotius himself seems to have been principally interested in this aspect of them.⁸²

Tuck suggests that the Pufendorf/Barbeyrac interpretation was lost in the rewriting of the history of modern philosophy occasioned by Kant's innovations, and that the overdue retrieval of this interpretation

79. GROTIUS, *JBP*, *supra* note 7, at I.i.12.

80. This translation is from Carew, *supra* note 76, sec. 4. For Florio's version, see MONTAIGNE, *supra* note 75, at 297.

81. GROTIUS, *JBP*, *supra* note 7, at I.ii.1. "[T]he first principles of nature [are] the preservation of life and limb, and the keeping or acquiring of things useful to life." Compare the two first precepts of the law of nature in *JP*. John Locke also accepted self-preservation as a fundamental and universally-accepted moral principle suitable to ground a natural law theory. See JAMES TULLY, *AN APPROACH TO POLITICAL PHILOSOPHY: LOCKE IN CONTEXTS* 212, 229 n.209 (1993).

81. RICHARD TUCK, *PHILOSOPHY AND GOVERNMENT 1572-1651*, at 347 (1993).

82. *Id.*

shows Grotius to be the most creative and original thinker in the development of the new moral science represented by "modern" natural law, even while Hobbes was the deepest and most acute thinker on problems of moral relativism as on the foundations of Enlightenment political thought.⁸³ Whether or not all of these bold assessments are justified,⁸⁴ the reading of Grotius as mounting a methodical defense against moral relativism provides a revealing counterpoint to the position of Hedley Bull on the central problem of whether it is possible to ground principles of international morality or international law, other than by reliance on express agreement.

The whole tradition of thought about the existence and nature of an "international society" comprised primarily of states bound together by common rules and institutions (a tradition Bull labeled "Grotian" in the broad sense) represents one pattern of approaches to this issue.⁸⁵ Within this pattern is a set of solidarist approaches, labeled by Bull as "Grotian" in the narrow sense, including: solidarity in the enforcement of law;⁸⁶ understanding war as an act of law enforcement legitimated or illegitimated in any particular case by its service or disservice to the interests of international society;⁸⁷ and basing international law on some conception of right or on the solidarity or consensus of international society, even in the absence of express consent and even if empirical behavior is inconsistent with the putative rule.⁸⁸ Grotius can certainly be described as a theorist of "international society" in the broad sense, although he was by no means the first such theorist. He did not envisage a society of states in what was later termed (rather unhelpfully) the "Westphalia" model,⁸⁹ and he said little or nothing about such institutions as interna-

83. *Id.* at xv-xvii, 347-48. See also Tuck, *supra* note 73, at 99.

84. Elements of Tuck's thesis are undoubtedly controversial. For example, Istvan Hont's more general comment: "The sharp break attributed to Grotius in the history of natural law, such a prominent feature of [Adam] Smith's account both in *The Theory of Moral Sentiments* and in the lectures on jurisprudence, can be regarded as essentially an 'invention' of Pufendorf." Istvan Hont, *The Language of Sociability and Commerce: Samuel Pufendorf and the Theoretical Foundations of the "Four-Stages Theory,"* in *THE LANGUAGES OF POLITICAL THEORY IN EARLY MODERN EUROPE* 253, 258 (Anthony Padgen, ed., Cambridge Univ. Press 1987).

85. BULL, *THE ANARCHICAL SOCIETY*, *supra* note 6, at 322 n.3.

86. Hedley Bull, *The Grotian Conception of International Society*, in *DIPLOMATIC INVESTIGATIONS*, *supra* note 1.

87. *Id.* at 54-64; BULL, *THE ANARCHICAL SOCIETY*, *supra* note 6, at 322 n.3, 238-40.

88. Bull, *supra* note 1, at 66-7; BULL, *THE ANARCHICAL SOCIETY*, *supra* note 6, at 148-49, 156-58.

89. As Haggemacher puts it, Grotius is "fully aware of the importance of independent nations and their sovereigns in international life. . . . However, his ultimate frame of refer-

tional conferences, the balance of power, special responsibilities of particular categories of powers, or permanent international organizations. The extent to which he espoused a "solidarist" vision of such a society is much less certain, as Bull recognized.⁹⁰ Grotius' positions on such solidarist themes as the consequences of the justice or injustice of a war for the rules concerning its conduct and the position of neutrals,⁹¹ intervention in "civil" conflicts or against tyrants,⁹² and the enforcement of law by third parties generally,⁹³ are all complex and often difficult to reduce to rules of decision.

Bull embraced the notion that there exists an international society of states, and he was not necessarily hostile to some tenets of solidarism as aspirations for the future, but he argued strongly that a circumspect pluralist conception of what was presently possible in international society was preferable to a solidarist conception it was not (yet) in a condition to bear. In *The Grotian Conception of International Society*, he set up the pluralism of Oppenheim against the solidarism he attributed (albeit with careful qualification) to Grotius, precisely in order to attack neo-Grotian solidarism as premature. *The Anarchical Society* posits an international society of states founded on minimal solidarism and an overlay of pluralism. Unsurprisingly, this work has been criticized as lacking a theory of ethics and as offering inadequate accounts of the

ence remains the Ciceronian *humani generis societas* inherited from Stoicism, . . . a society of mankind rather than of states." Peter Haggemacher, *Grotius and Gentili: A Reassessment of Thomas Holland's Inaugural Lecture*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS 172 (Hedley Bull, et al. eds., 1990). See also Bartelson, *supra* note 6, at 355-56.

90. Hedley Bull, *The Importance of Grotius in the Study of International Relations*, in HUGO GROTIUS AND INTERNATIONAL RELATIONS, *supra* note 2; Bull, *supra* note 1.

91. See GROTIUS, JBP, *supra* note 7, at II.xxii-II.xxv. Cf. JBP, III.xff (the *Temperamenta belli*)—much of JBP Book III is concerned with the mitigation of war and the attainment of viable and enduring peace, which can be construed as solidarist objectives but are not necessarily based strictly on enforcement of law. On the incomplete nature of Grotius' attempts to reconcile the tradition of the just war with the imperative to regulate war (*guerre juste* and *guerre régulière*), see Peter Haggemacher, *Mutations du concept de guerre juste de Grotius à Kant*, in LA GUERRE (Cahiers de Philosophie politique et juridique, No. 10, Université de Caen, 1986), at 107.

92. GROTIUS, JBP, *supra* note 7, at II.xxv, which (like other aspects of JBP) owes a lot to Gentili, *De Jure Belli*—see esp. Book I, ch. 16.

93. GROTIUS, JBP, *supra* note 7, at II.xxff. Van Vollenhoven (*Het Theorema van Grotius*, *supra* note 5) made a great deal of JBP, II.xx.40, on the rights of kings, etc., to demand punishment "on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever." See however Haggemacher, *Sur un passage obscur de Grotius: Essai de réponse à Cornelis van Vollenhoven*, in TIJDSCHRIFT VOOR RECHTSGESCHIEDENIS 51, 295 (1983).

place of ethics and of ethical evaluations in world politics.⁹⁴ This is not to suggest that Bull himself was oblivious to such issues; several of his other works attest to his abiding interest in such problems.⁹⁵ The criticism directs attention to the nature of the theoretical enterprise Bull saw himself as undertaking in *The Anarchical Society*: a largely non-normative analysis of how order is achieved or might differently be achieved, in which norms are for the most part derived from practice, presumed to rest on consent, and reported as facts. As Ian Harris points out, this line of criticism does not apply (at least not on a basic level) to *JBP*. Grotius' system of natural law yields a series of ethical norms suitable for prescribing and evaluating conduct. In particular cases, these are supplemented by other sources of normative standards that are, as a practical matter, not simply "voluntary." It is true that Grotius does not deal satisfactorily with many issues confronted by other theorists such as the nature of political obligation,⁹⁶ an account of practical action, which is necessary to make a system of moral norms into a system of ethics,⁹⁷ the problem of self-judging, expounded by Hobbes,⁹⁸ the "nature" and proofs of human nature, and the vast range of epistemological problems which occupied many of his successors. Nevertheless, Grotius has a foundational moral theory applicable to individuals and to units of authority that does not depend on particular religious belief. In this respect *The Anarchical Society* departs radically and deliberately from the method of Grotius.

Bull did not equate Grotianism with commitment to a theory of universal morality or ethics. This may be interpreted simply as a manifestation of positivism, but a more plausible explanation is hesitancy as to the possibilities of grounding a moral theory in the face of apparent diversity of practice.⁹⁹ Grotius himself presents two different methods

94. Harris, *supra* note 39, at 725.

95. See, e.g., *The West and South Africa*, DAEDALUS 111, 255 (Spring 1982), *The Universality of Human Rights*, MILLENNIUM 8, 155 (1979); *Natural Law and International Relations*, BRITISH JOURNAL OF INTERNATIONAL STUDIES 5, 171 (1979); *Recapturing the Just War for Political Theory*, WORLD POLITICS 31, 588 (1979). The last is of particular interest as Bull in effect criticizes Michael Walzer's *Just and Unjust Wars* for failure to find a Grotian *via media* between individualist and collectivist theories of obligation, or between absolutist and relativist conceptions of morality in war.

96. Haakonsen, *Hugo Grotius and the History of Political Thought*, *supra* note 50.

97. See generally BERNARD WILLIAMS, *ETHICS AND THE LIMITS OF PHILOSOPHY* (1985); *TRADITIONS OF INTERNATIONAL ETHICS* (Terry Nardin and David Mapel eds. 1992).

98. TUCK, *PHILOSOPHY AND GOVERNMENT*, *supra* note 21, at 306.

99. Cf. A. Claire Cutler, *The "Grotian Tradition" in International Relations*, 17 *REVIEW OF INTERNATIONAL STUDIES* 56-58 (1991). See generally TERRY NARDIN, *LAW,*

of grounding natural law, although the first is hierarchically superior and is the only one on which he ultimately relies. The first and preeminent method for establishing the system of natural law is through reason applied to nature. Second, he grants that practice plays a significant role, both as a foundation for *jus gentium*, and more importantly, as evidence for the law of nature, which for many practical purposes can be demonstrated *a posteriori* by empirical evidence. Generality of practice is confirmation, at least, of the rectitude of results reached by reason. Thus consensus and practice are relevant. Pufendorf and other naturalists follow only the first of these methods. Bull follows only the second.

Pufendorf takes a much more robust line than Grotius against skeptical arguments. He dispenses with *jus voluntarium* as a major source of law, and renounces reliance on *a posteriori* means of proving the law of nature (in correspondence he criticizes Grotius for allowing any role to customary practices as evidence of the law of nature).¹⁰⁰ He grants the objections of Montaigne to the notion of law based on the consent of all nations, citing the impossibility of gathering evidence as to the practices of different peoples, the inevitability of many divergencies in such practices, the relativity and self-judging character (and therefore the uselessness) of proposals by any people to designate other peoples as "Barbarians" whose practice can be discounted on grounds of lack of civilization, the tendency of many peoples to behave less well to strangers and downright badly toward enemies, and the general problem that "the Number of Fools far exceeds that of wise Men."¹⁰¹ This is one of the strongest naturalist repudiations of consensus as a basis for establishing the law of nature.¹⁰²

Bull's approach follows a dominant modern pattern, by which con-

MORALITY, AND THE RELATIONS OF STATES (1983).

100. Hont, *The Language of Sociability and Commerce*, 259, referring to a letter of Pufendorf to Baron Boineburg of 13 Jan. 1663, discussed in Fiammetta Palladini, "Le due letteri di Pufendorf al Barone do Boineburg: quella nota e quella "perduta,"" *NOUVELLES DE LA RÉPUBLIQUE DES LETTRES*, I, 134 (1984). The letter is also in SAMUEL PUFENDORF BRIEFWECSSEL 2L (Detlef Döring ed., Akademie Verlag, 1996). For a variety of arguments suggesting that the crucial transformation enabling what became the modern natural law theory of Pufendorf was effected by Hobbes, and not by Grotius, see FIAMMETTA PALLADINI, SAMUEL PUFENDORF DISCEPOLO DI HOBBS: PER UNA REINTERPRETAZIONE DEL GIUS-NATURALISMO MODERNO, esp. 281-83, 157 (following Bobbio) (Bologna: Il Mulino, 1990).

101. SAMUEL PUFENDORF, *DE JURE NATURAE ET GENTIUM*, II.iii.7 (quotation) through to II.iii.12 (1744).

102. Locke also rejected the possibility of founding natural law on consensus as to multiple substantive principles. See generally TULLY, *AN APPROACH TO POLITICAL PHILOSOPHY: LOCKE IN CONTEXTS* 212.

sensus and validation through practice are the *via media* between contemporary moral skepticism and emancipatory or prescriptivist approaches. The consensus method of grounding normative positions is used consistently by Bull, and has been treated as one of the hallmarks of modern "Grotianism."¹⁰³ On one view such consensus may be established by bare agreement, as exemplified by the works of David Gauthier.¹⁰⁴ On another view, consensus must be much more deeply rooted in social practice and values.

Martin Wight inclined to the Burkean view that common morality depends upon generation of a deep moral community through shared interests and through a long experience of shared culture, history, and patterns of religious thought. Thus Wight opined that the discovery and cultivation of political morality—an ethics in the political realm that is more than simply the personal honor of individual leaders or the practice of expediency—seemed to be "peculiarly related to Western values."¹⁰⁵ Bull did not dismiss the Burkean element of this view, although he was much more ready than Wight to see the possibilities of culturally-rooted consensus on political and moral values globally and in different regions.¹⁰⁶ He believed that the continued viability of the states system and of international society depended "on maintaining and extending the consensus about common interests and values that provides the foundations of its common rules and institutions," and that in the face of the vast extension of European international society and the rise of the non-European world relative to Europe, international society could survive only if a common moral and political culture deeply rooted in different societies grew up alongside the common diplomatic and intellectual cultures of the elite.¹⁰⁷

That Grotius represented and embodied a sense of continuity in European culture, combining Greco-Latin learning with humanism and pious Christian ecumenism, seems likely to have appealed to Wight's deep-seated disposition toward a Burkean or Rankean connection between international relations and the depth of historical and cultural

103. ANDREW LINKLATER, *BEYOND REALISM AND MARXISM: CRITICAL THEORY AND INTERNATIONAL RELATIONS*, at ch. 1 (1990).

104. *MORALS BY AGREEMENT* (1986).

105. *WESTERN VALUES IN INTERNATIONAL RELATIONS* 128.

106. Cf. BULL, *JUSTICE AND INTERNATIONAL RELATIONS* (Hagey Lectures, Univ. of Waterloo, 1984).

107. HEDLEY BULL, *THE ANARCHICAL SOCIETY* 315-16. *THE EXPANSION OF INTERNATIONAL SOCIETY* (Hedley Bull and Adam Watson eds., 1984), was concerned in part with the historical basis and future prospects of an expanded international society.

community. The deep permeation of religious elements in Grotius' thought may also have appealed to Wight's own religiosity, whereas Bull professed himself uneasy about religious derivation of any modern theory of international relations, and believed international society must become more inclusive and less Western. In addition to his explicit reliance on the Divine Will and Christian ethics, Grotius frequently uses argumentative structures and metaphors derived from Christian theology even in discussion of apparently secular legal issues.¹⁰⁸ (Similar religious patterns can be traced in modern international law more generally.¹⁰⁹) For Grotius religion is important within the polity, but its function as a bond and motivating force is even greater in the broad human society beyond the civil polity.¹¹⁰ Grotius' philosophical eclecticism is also evident in his commitment to unity across the theological divides in Christendom.¹¹¹ Parallels are readily drawn between Grotius' consensus-based arguments for unity in Christianity and his arguments for a universal law of nature.¹¹²

IV. BULL, THE "GROTIAN TRADITION," AND THE CONNECTION OF THEORY AND PRACTICE

In the scheme of *JBP*, law and morality are inseparable although not identical. Both are immanent in nature and accessible to human reason. The methods of Baconian science are applied to both, and Grotius' derivation of natural law in *JBP* equally grounds morality and law. His position in *JP* that natural law is just because it is willed by God is

108. See I FRANCO TODESCAN, *LE RADICI TEOLOGICHE DEL GIUSNATURALISMO LAICO, IL PROBLEMA DELLA SECOLARIZZAZIONE NEL PENSIERO GIURIDICO DI UGO GROZIO* (Milan: Giuffrè, 1983) (comparing Grotius' historical theory of private property to the theology of innocence, the Fall, and the attainment of grace).

109. See, e.g., David Kennedy, *Images of Religion in International Legal History*, in MARK JANIS (ED.), *THE INFLUENCE OF RELIGION ON THE DEVELOPMENT OF INTERNATIONAL LAW* (Dordrecht: Martinus Nijhoff, 1991), at 137-46 (title page has "Theory" instead of "History"). Cf. Friedrich Nietzsche, *What is the Meaning of Ascetic Ideals?*, in *ON THE GENEALOGY OF MORALS* ss.28ff.

110. See, e.g., GROTIUS, *JBP*, II.xx.44.

111. See, e.g., GROTIUS, *JBP*, Prolegomena 42 (endorsing the position of the early Christians "that there was no philosophic sect whose vision had compassed all truth, and none which had not perceived some aspect of the truth").

112. See, e.g., TUCK, *PHILOSOPHY AND GOVERNMENT 1572-1651*, at 185 (1993). For a remarkable application of Grotius' consensus-based method in his call for transcending sectarian philosophical disputes within Christianity, see HUGO GROTIUS, MELETIUS (c. 1611) (critical edition and English translation by the discoverer, G.H.M. Posthumus Meyjes, Leiden: E.J. Brill, 1988).

transformed by the time of *JBP*, to the position that even God cannot change natural law.¹¹³ Grotius is not very clear as to how exactly it comes about that natural law is obligatory,¹¹⁴ and his account of law and morality is rationalist (couched in terms of reason) rather than voluntarist (resting on the will of a superior, above all God) and hence less dependent on sources of obligation,¹¹⁵ but it is clear that law and morality have many of the same properties and sources. Beyond natural law, the further rules obligatory for Christians are rules both of morality and of law—the same is apparently true for Jews as recipients of the Mosaic law and other rules of religious obligation. Law is not, of course, co-extensive with morality. Natural law does not cover all of morality, and must be supplemented by the “law of love.” Human law may purport to conflict with natural law, and may in practice bear on conduct even though theoretically in Grotius’ scheme it is invalid to the extent of the inconsistency.¹¹⁶

In Grotius’ scheme, law and morality are of major importance as normative systems. They are manifested to a significant extent in practice, but are not ultimately dependent on practice. They are causally relevant to the conduct and evaluative behavior of individual actors. All of this is consistent with features of the “Grotian tradition” noted by Bull: the importance in international society of moral and legal restraints, the connection of international politics to arrangements of con-

113. In JP (ch. 2) Grotius had stated as the first rule: “What God has shown to be His Will, that is law.” The law of nature is the Will of God revealed through his design. In *JBP* (L.i.10), however, he asserted that the law of nature “is unchangeable—even in the sense that it cannot be changed by God.” TUCK, *supra* note 112, at 172-98, attributes this change primarily to shifts in Grotius’ views about the connections between God and nature brought about by his experiences in politico-theological controversies. Haggemacher lays greater emphasis on several centuries of intellectual antecedents for the position taken by Grotius in *JBP*. HAGGENMACHER, *GROTIUS ET LA DOCTRINE DE LA GUERRE JUSTE*, *supra* note 18, at 426-523. Both observe that the famous “*etiamsi daremus non esse Deum*” hypothesis was helpful in opening the law of nature to rational/scientific analysis. Tuck notes also that there must be an independent route to knowledge for an atheist to follow, not least in order to convert. TUCK, *supra* note 112, at 198. The shift away from the voluntarism of JP did not have a significant impact on Grotius’ views as to the *content* of natural law. See also two helpful discussions by ALFRED DUFOUR, *LE MARIAGE DANS L’ÉCOLE ALLEMANDE DU DROIT NATUREL MODERNE AU XVIIIÈME SIÈCLE* (Paris: LGDJ, 1972), and *Grotius et le droit naturel du dix-septième siècle*, in *THE WORLD OF HUGO GROTIUS 15-41* (Amsterdam: Maarssen, 1984).

114. E.g., MICHAEL ZUCKERT, *NATURAL RIGHTS AND THE NEW REPUBLICANISM 188-92* (1994).

115. TULLY, *AN APPROACH TO POLITICAL PHILOSOPHY: LOCKE IN CONTEXTS* 201-41, 281-84.

116. Tanaka, *supra* note 38, at 36.

stitutional government, and the recognition of both the existence and the complexity of moral problems.¹¹⁷

The extent to which Grotius had been influenced by Bacon and the kinds of ideas about to be popularized by Descartes is difficult to assess. Philip Allott argues that Grotius' relation to practice is that of an ironic empiricist,¹¹⁸ describing historical practice empirically, distilling norms from it faithfully, but aware that in purporting to describe reality he is also making it, and that in making it he should be guided by what is accessible to him through right reason. Whether or not Grotius had a methodological self-perception of this type, such readings of *JBP* have long been part of the "Grotian tradition." The possibilities of the social construction of reality are bounded by norms, history, and facts, as well as the limits of concepts and imagination. The theorist unmindful of reality (as society sees it) contributes little, but the theorist is not simply in the business of detached description. The engagement with reality must be humble. As Wight suggested, for Rationalists politics is conceived "as the field of the approximate and the provisional."¹¹⁹

Bull ascribed much of Grotius' influence on both thought and action to his combination of visionary ideas and practical engagement, including a willingness to give "some play to the interests that were predominant in seventeenth-century Europe even while condemning others."¹²⁰ Wight and Bull both exhibited a sustained interest in the thought of practitioners of international relations: Wight's list of "Grotians" thus included Burke, Gladstone, F.D. Roosevelt, and Churchill. Bull's writings point to careful thought with regard to his own position on the complex connections between theory and practice. Linklater rightly if somewhat too simply summarizes this position as a middle ground, refuting the skepticism of realism about the possibility or importance of norms as causes of practical change, conscious of the importance of norms in maintaining and deepening international society, but skeptical of revolutionist or critical proposals that theorists should themselves be committed to the realization of liberation through the

117. Hedley Bull, *Martin Wight and the Theory of International Relations*, *supra* note 6, at 105-07.

118. Philip Allott, *The International Court and the Voice of Justice*, in *FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE* 34 (Vaughan Lowe & Malgosia Fitzmaurice eds., 1996)

119. Bull, *supra* note 117, at 242.

120. Hedley Bull, *The Importance of Grotius in the Study of International Relations*, in *HUGO GROTIUS AND INTERNATIONAL RELATIONS* 93 (Hedley Bull, Benedict Kingsbury and Adam Roberts eds., 1990).

power of theory to effect transformation.¹²¹

In his understanding of the relations between practice and theoretical inquiry in international relations, Bull, like Wight, adhered for the most part to a Grotian position. The system of the three traditions can itself be understood as a tradition of inquiry in the sense outlined by Alasdair MacIntyre: "a coherent movement of thought. . . in the course of which those engaging in that movement become aware of it and its direction and in self-aware fashion attempt to engage in its debates and to carry its inquiries forward."¹²² The trialectic is itself a kind of Grotian solution by Wight, carried forward by Bull, to the theory/practice problem: a reproduction of the relations between a society and a practice of thinking about, and social criticism in, that society.¹²³ The method of the trialectic is itself a Grotian method: adherents of the trialectic method see themselves as both standing outside the three traditions and as themselves having a standpoint and hence being open to analysis by the same method. In Linklater's terms, they recognize that reality must be theorized (in this case by using a trialectic), and that the theory of competing conceptions is itself part of the practice, but purport mainly to discuss what is, and only occasionally to venture remarks on what ought to be, what the ideas of an improved practice of international relations should consist of. As Grotius seems to have recognized, the choice of method must itself be a normative choice. Bull stated his choice: "I believe in the value of attempting to be detached or disinterested, and it is clear to me that some approaches to the study of world politics are more detached or disinterested than others. I also believe that inquiry has its own morality . . ."¹²⁴ The higher value of adherence

121. ANDREW LINKLATER, *BEYOND REALISM AND MARXISM* 21 (1990). Linklater argues that Bull's work, in the last few years of his life, on justice as a value standing alongside order manifested both a commitment to community and a bridging of the gap to the concerns of revolutionist or critical theorists. To Bull this might have seemed a characteristic revolutionist position, denying the possibility of the kind of value-laden self-inquiring detachment Bull always espoused, in order to forge an alliance the better to promote engagement and change.

122. ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* 326 (1988).

123. Compare the views on international law expressed by David Kennedy, *A New Stream of International Law Scholarship*, *WIS. INT'L L.J.* 1, 7-10 (1988) and the discussion of the "heroic practice" of sovereignty and anarchy in contemporary international relations theory by Richard Ashley, *The Powers of Anarchy: Theory, Sovereignty, and the Domestication of Global Life*, *supra* note 30.

124. HEDLEY BULL, *THE ANARCHICAL SOCIETY* xviii (1995). That these criteria were intended as evaluative—of himself and others—in connecting theory and practice, is illustrated by the ferocity and personalization of his criticism of Richard Falk's turn

from analysis to advocacy—advocacy of international betterment in the tradition

to these criteria, combined with inability to ground law and morality in international relations on any basis other than consent or consensus, led Bull to depart from Grotius on two of the most fundamental aspects of Grotius' thought. Like Bull, the discipline of international law has struggled with problems of grounding law, of relating the grounds of law to the grounds of morality, and of relating theory and practice. It is nevertheless a discipline which in its professional dimension has been forced to confront the relations of theory and practice, and may in that respect have significant contributions to make as these issues are confronted in work on international relations more generally.¹²⁵

For Grotius and for Bull, the great problem of theory and of practice is controlling the constant menace of war. Hobbes has much in common with Grotius, although Grotius holds a somewhat more positive view of human nature resulting from its social element, he does not accept Hobbes' war of all against all, and he sees possibilities for amelioration of war through law and morality.¹²⁶ Hobbes' statement of the problems of human nature, authority, and war is starker, and the implications for international relations are bleak.¹²⁷ For Bull, as for many other theorists, Grotius has much to offer, but in the pluralist modern world theories of law and morality as normative constraints threaten to get dangerously ahead of the most essential practical problem of international relations, which is to cope with and eventually to move beyond the world according to Hobbes. The method of inquiry, the engagement with practice, the possibilities of amelioration, may all be "Grotian," but in this Western theory Hobbes poses the single greatest problem.

of the study of international relations as it was in the 1920's. The task of the academic inquirer is not to jump on bandwagons but to stand back and assess, in a disinterested way, the direction in which they are going. Any writer can join a political movement and devote his intellectual talents to supplying the rhetoric, the exaggeration, the denunciation and the slurring of issues that will help speed it on its way. It does not seem the best use for the talents of the Albert G. Milbank Professor of International Law.

International Law and International Order, INT'L ORGANIZATION 583-88 (1972).

125. See, e.g., Andrew Hurrell, *International Society and the Study of Regimes: A Reflective Approach*, in REGIME THEORY AND INTERNATIONAL RELATIONS 49-72 (Volker Rittberger ed., 1993).

126. Letter to Willem de Groot of 11 Apr. 1643, *supra* note 33.

127. Compare, however, FRIEDRICH KRATOCHWIL, RULES, NORMS, AND DECISIONS: ON THE CONDITIONS OF PRACTICAL AND LEGAL REASONING IN INTERNATIONAL RELATIONS AND DOMESTIC AFFAIRS 1-20 (1989).