

# **Order, security and liberty: The ‘sorry comforters’ and the rise of the international**

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## **Introduction**

For most of the twentieth century it has been commonplace to distinguish between domestic and international politics. It has also been common to suppose that each realm is characterised by a distinctive set of problems. Domestic politics, to state a contemporary truism, refers to the set of political problems arising within states. By contrast, international politics refers to that set of political problems arising between states. As simple and straightforward as this distinction may once have seemed, it has been subject to considerable questioning in recent years. Moral issues and empirical trends have conspired to blur this once apparently clear distinction between domestic and international politics as if it were little more than a line drawn in sand at the edge of the sea, to use Foucault’s evocative image (Foucault, 1970: 387). As Ian Clarke (1999) has so convincingly argued, the ‘Great Divide’ between domestic and international politics is under serious challenge.

Debate will no doubt continue to rage about the degree to which globalisation outflanks this ‘Great Divide’. It may therefore seem odd to inquire into the origins of this distinction at the very moment at which it seems to be disappearing. But that is precisely the purpose of this article. It is an inquiry into the origins of the distinction between domestic and international politics. It seeks to shed light on these origins by tracing the emergence of a discourse which takes as its object relations between states. It asks, how and why, at a certain point in time, a political discourse emerged which focused systematically on relations between states. More specifically, it is the task of this paper to draw attention to the conditions which made it possible for modern political thinkers to speak of the ‘international’ as a self-contained political domain analytically separate from the ‘domestic’.

The article will undertake this task by focusing its attention on the writings of a select group of political thinkers who are frequently associated, though to different degrees, with the history of international political thought: Hugo Grotius, Thomas Hobbes, Samuel Pufendorf, and Emerich de Vattel. Over the period that spans between Grotius and Vattel we can attain a useful perspective on the origins and development of the international domain as a discrete object of political inquiry. Before outlining the argument it is worth pausing to explain what is meant here by the ‘international’.

## **‘International’: the invention and meaning of a word**

Like any word or concept, ‘international’ conjures different meanings and connotations depending on the context of its use. As a word or concept it is thus necessarily also an historical product and subject to the contingencies of time and change. We can begin by noting, as several others have before, that the word ‘international’ was invented by Jeremy Bentham (Suganami, 1978; Der Derian, 1989). Writing in *An introduction to the principles of morals and legislation*, first published in 1789, Bentham distinguishes between internal and ‘international jurisprudence’. By ‘international’ he means ‘to express, in a more significant way’, he says in a footnote, ‘the branch of law which goes commonly under the name of the law of nations’ (Bentham, 1996: 296). Though there has been some confusion over whether in fact he mistranslated *ius gentium* by the word international, Suganami has demonstrated that Bentham was not thinking about *ius gentium* at all when he coined the term international (Suganami, 1978: 231). If Bentham had in mind any Latin phrase at all it was more likely *ius inter gentes* (law among nations), for his point was to find an expression which dispensed with the ambiguity of the double genitive in ‘law of nations’, a phrase which Bentham thought implied national law (internal jurisprudence).<sup>1</sup> The adjective ‘international’ thus had the effect of naming, in a single word, the domain beyond and between nations or states.

‘International’ literally means ‘among nations’, but of course Bentham had in mind relations among states not nations. Whether or not this is the best way of defining the meaning and scope of international relations is beside the point here. Clearly there is more to international relations than relations between states, as has frequently been argued, but our concern is not to provide a better or more comprehensive explanation of world politics. It is, as already stated, to clarify the conditions under which relations between states or nations came to constitute a field of inquiry.

Bentham’s newly minted word came to refer to 1.) a field of action, a political space, which is outside and between the ‘domestic’ or interior space of states, and 2.) the specific inquiry into this field of action. The first sense refers to the empirical order of things, ‘international’ relations as opposed to ‘domestic’ politics. The second refers to the theoretical study of this order of things, ‘international’ theory as opposed to political theory.<sup>2</sup>

The conception of the ‘international’ that emerges is one where bounded, independent political units interact in a milieu where there is no supreme authority, where individual units must provide for their own security, and where conflict is an ever-present possibility. In current, twentieth-century parlance the ‘international’ is a realm of anarchy – a system (or as we shall see, society) of states lacking an overarching authority with the legitimate power to lay down and enforce the law to all others. Thus conceived the ‘international’ has the effect of transforming the space outside and between states into a realm of strategic interactions and calculations, where

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<sup>1</sup> In the same footnote Bentham refers to the chancellor D’Aguesseau who remarked, in 1773, that *le droit des gens* ought really to be called *le droit entre les gens* (Bentham, 1996: 296).

<sup>2</sup> But these two senses, though analytically separable, are in actuality inseparable. There are no international relations without the discourse of international theory.

statecraft means figuring out adjustments states can make to preserve and improve their position within the system.

### **Civil wars and civil governments in early modern Europe: Demarcating a detheologised natural law**

When John Locke wrote his *Two treatises of government* towards the end of the seventeenth century he was looking back on a time which consisted of a great many civil wars, religious, dynastic and transnational conflicts.<sup>3</sup> In the midst of this tumultuous period, he observed:

The great Question which in all Ages has disturbed Mankind, and brought on them the greatest part of those Mischiefs which have ruin'd Cities, depopulated Countries, and disordered the Peace of the World, has been, Not whether there be Power in the World, nor whence it came, but who should have it. The settling of this point be of no smaller moment than the security of Princes, and the peace and welfare of their Estates and Kingdoms, ... For if this remain disputable, all the rest will be to very little purpose (Locke, 1988: I, §106).

According to Locke, the single most important political problem was to decide where authority is located. Settling the question of where power should reside, or 'who should have it', in his words, was seen by Locke as a precondition of peace, welfare and security. None could be achieved unless the prior question of authority's location had been resolved. It was therefore a foundational matter.

Hobbes too saw the settling of the question of where power should reside as foundational. He wanted to secure the foundations of a well-ordered state so as to leave behind the miseries of confessional conflict which grew out of the milieu of scepticism and the resistance to authority. *Leviathan* was, Hobbes declares, a 'Discourse of Civill and Ecclesiasticall Government, occasioned by the disorders of the present time' (Hobbes, 1968: 728). His objective was to begin political thinking anew by establishing a firm scientific basis on which his normative programme of authority and discipline could be carried out. The central plank of this normative programme was to construct a political society built on obedience to the sovereign, or, in other words, to establish incontrovertible and unchallengeable grounds for authority here on earth. For Hobbes, as for Locke, the solution to political and religious controversy was to institute a single centre of authority and judgment in the state, namely, the sovereign – 'a certain visible divinity' or a mortal God' as Hobbes describes it (1983: Preface to the Reader, 31; and 1968).

The same goes for Pufendorf. He places repeated emphasis on the 'author' of laws. The structure of an authority governing its subjects conditions his whole argument. It is reflected in God's relation to men, a man's relationship to his wife and family, and in the sovereign's relationship to the body politic. Indeed, as far as Pufendorf is concerned, authority is a condition of peace and

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<sup>3</sup> There is some dispute as to the exact date when Locke wrote the *Two treatises*. Peter Laslett has argued that the date is most likely 1679, Ashcraft has argued that they were written later, between 1680 and 1682. It was first published in 1689-90 though. See Laslett's introduction to Locke (1988).

order. As he says of states, they are ‘unintelligible without supreme sovereignty’ (Pufendorf, 1672: VII, iii, §2). Sovereignty in this sense refers to the supreme or absolute authority of a body which is closed in on itself creating internal integration and external independence (Kriegel, 1995: ch. 2). Sovereign authority both serves to issue the law and to enforce it in Pufendorf’s view, hence its centrality to his argument.<sup>4</sup>

### *Demarcation of natural law and moral theology*

As the sovereign state emerged as the most viable form of governance out of the legitimation crisis of the late sixteenth and early seventeenth centuries, political thinkers increasingly came to regard politics as a realm which should remove, as much as possible, the controversies between confessional doctrines. States undertook to eradicate or neutralise the ‘politics of conscience’ which they blamed for fanning the flames of civil and religious war (Koselleck, 1988).

To understand why states felt compelled to neutralize the politics of conscience it will help to return briefly to Hobbes.<sup>5</sup> Hobbes, it will be recalled, is scathing of conscience in *Leviathan* because on his diagnosis it is the leading source of state dissolution. In chapter XXIX, ‘Of those things that Weaken, or tend to the DISSOLUTION of a Common-wealth’, Hobbes (1968: 366) argues that conscience, which grants to each private individual the right to judge good and evil, is a seditious poison. He wants to deny the presumption of individuals to make themselves judges of good and evil because he believes it to be repugnant to civil society, threatening to unleash a ‘war of all against all’ once again. Private consciences are only private opinions, he says dismissively; ‘the Law is the publique Conscience’, and it alone should be obeyed. Hobbes brings the issue into stark relief by drawing out the consequences of allowing the exercise of religious beliefs or private consciences in public affairs. Ultimately, he says, it leads to challenges to sovereign authority, the setting up of ‘*Supremacy against the Sovereignty; Canons against Lawes; and a Ghostly Authority against the Civill*’ (1968: 370). When conscience enters politics through religion, individuals erect alternative sources of authority; rival kingdoms grounded on different laws compete for the same citizens and territory, invariably leading to bloody conflict.

As Koselleck (1988: 28-9) glosses Hobbes, when conscience pretends to ‘mount the throne’, it does not become the judge of good and evil, so much as ‘the source of evil itself’. ‘Instead of being a *causa pacis*, the authority of conscience in its subjective plurality is a downright *causa belli civilis*’. It is this confessional conflict that the absolutist state was meant to remedy. Fiercely intolerant religious factions had, since the latter stages of the sixteenth century, made the temporal authority of civil sovereignty very fragile. In the midst of this ‘legitimation crisis’, rivals fought bloody battles to impose their confessional beliefs on others, only to encounter determined resistance. As long as the condition of religious diversity fuelled mutual intolerance and violent conflict, public peace could never be guaranteed. A means therefore needed to be devised to smother or neutralise this confessional strife.

Pufendorf’s whole argument in *On the Duty of Man and Citizen* begins from a demarcation of

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<sup>4</sup> For an excellent account of Pufendorf’s conception of authority see Hunter (2004).

<sup>5</sup> This and the following two paragraphs draw upon Devetak (2007).

natural law from moral theology.<sup>6</sup> Whilst natural law is concerned with external human behaviour, moral theology is concerned with the mind's inner workings and conformity to God's will. Pufendorf sees natural law and moral theology as producing two distinct types of person, the political and the moral self. His emphasis is on natural law because it is 'confined within the orbit of this life', concerned with shaping sociable and socially useful individuals (Pufendorf 1991: 8 and 35). This contrasts with moral theology where the end is salvation in 'the life to come' (Pufendorf 1991: 9). Elsewhere, Pufendorf makes the further point that 'God alone is the Judge of our Faith, and even our Thoughts; But Men can only give their Judgment according to such Circumstances, or outward Signs, as effect our Senses' (Pufendorf 2002).

Once again we find the split between the ghostly and the temporal. In his treatise on the nature of religion and its relation to civil society, Pufendorf (2002) distinguishes between the care we should give to our soul and our body. Care of our souls is entirely our own private business. We cannot transfer responsibility for our souls to any other person. Our bodies, however, are capable of being 'committed to the Management of others', rather like the way we 'commit our selves, when we pass the Seas, to the Management of the Master of a ship, by whose sole Care, without our own Assistance, we are conducted to the desired Port' (Pufendorf 2002: 13).

On this account, absolutist natural law marked a vital step forward in decoupling body and soul, politics and religion. The desacralised absolutist state Hobbes and Pufendorf envisage will need to eradicate 'ghostly authority' from the political realm. The purpose, as Saunders (1997: 88) notes, was to 'disengage the demands of spiritual life from civil government, the dictates of moral conscience from law'. Only by delegitimising alternative sources of moral authority could the state take its rightful place above the fray of sectarian bickering as a neutral civil authority – it would take no position on the truth or otherwise of asserted religious doctrines. The de-theologisation or de-sacralisation of politics was intended to neutralise the bloody conflict generated by proselytising religions. It had one very important consequence for how modern thought defines the political. In relegating religion to the private realm, politics was simultaneously carved out as an autonomous realm.

Pufendorf's *Nature and Qualification of Religion* is important in elucidating why he insists on such a strong distinction between the ghostly and the temporal. This treatise, which can be treated as an 'appendix' to his *Duty of Man and Citizen*, according to the title page of the 1698 English translation, systematically spells out the reasons for strictly separating and demarcating, church and state, religious and civil societies. It is a matter of the 'Chiefest' importance, he says, 'knowing exactly what bounds ought to be prescribed to the Priestly Order in Ecclesiastical Affairs; as likewise to determine, how far the Power of Sovereigns extends itself in Ecclesiastical Matters' (Pufendorf 2002: 11-12).<sup>7</sup> The consequences of transgressing the proper bounds of either politics or religion are grave abuses, disturbances and oppressions. The key supposition Pufendorf (2002: 27) wishes to address and deny is that religion might establish 'a new sort of

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<sup>6</sup> Originally published in 1673, *On the Duty of Man and Citizen According to the Law of Nature* is a condensed version of the massive *On the Laws of Nature and Nations* which had been published in the previous year. Since the argument is essentially the same, nothing shall be lost by focusing primarily on the shorter and more widely available text. See James Tully, 'Editor's Introduction', to Samuel Pufendorf, *On the Duty of Man and Citizen*, trans. by Michael Silverthorne, ed. by James Tully, (Cambridge: Cambridge University Press, 1991), p. xxi.

<sup>7</sup> Here and below I have modernised the spelling and adjusted the punctuation for convenience.

Government, separate and independent from the Civil Power'. He attacks the supposition from two directions. First he argues that 'Civil Governments were not erected for Religions sake' (2002: 17). Religion existed well before humans entered into civil societies. Second, each also has a different purpose: states for common security, religions to illuminate the path to salvation.

The sovereign state was to act as a tolerant, neutral arbiter mandated with the task of producing order and security rather than protecting and promoting particular religious beliefs. There was widespread agreement that the condition of this task was to resolve once and for all the question of where authority should be located, and how existing authorities should be re-evaluated in light of the state's sovereign authority and power. It was in this context, of course, that the medieval conception of universal Christendom broke down irretrievably and that its intellectual defence in scholasticism was challenged by detheologised juridico-political theories. Henceforth, individualistic, sovereign states, each with their own interests, each bounded and separated from others, became the primary and uncontroversial subjects of the law of nature and nations.

The idea of a united Christendom, though occasionally invoked by the likes of Leibniz (1988), was now fading fast in juridico-political writings, and was destroyed as a practical political possibility. The most viable political subject emerging on the European scene was the sovereign, territorial state.<sup>8</sup> As the Empire crumbled, absolutist states were being constructed. The heterogeneous laws and practices associated with the Empire and late feudal relations were now being replaced with a more homogeneous conception of social and political relations. The concept of an autonomous, unified individual emerged as the primary mode of subjectivity. Humans and states were now conceived along these lines; crystallising in the concept of sovereignty. Europe was witnessing a shift from feudal, hierarchical orders of politics to a modern order which was based on autonomy, equality and sovereignty.

To summarise, the philosophy of the subject that emerges in the seventeenth century is predicated on a series of transformations within the conceptions of nature and law which are triggered by, and themselves generate, changes in the social and material context of European society. These changes are closely related to the normative programmes articulated by the likes of Grotius, Hobbes and Pufendorf. The normative programmes had the effect of producing new political technologies: technologies of 'domestication' which construct a sovereign state as a proper, interiorised, bounded self, and technologies of 'statecraft' which inform and guide the conduct of these bounded selves as they interact and compete in an exterior field of action.

These political technologies helped construct the sovereign state successively as a juridical subject of order in the early seventeenth century, a political subject of security in the latter half of the seventeenth century, and finally, as we shall see later, as a strategic subject of liberty in the eighteenth century. In the next section I attempt to trace the emergence of the 'international' more closely by following key conceptual developments that are embedded in the normative programmes of Grotius, Pufendorf and Vattel respectively.

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<sup>8</sup> For a superb account of how the detheologised juridico-political thought of Pufendorf and Christian Thomasius relates to the rise of the territorial state in Germany see Hunter (2001).

## The rise of the international in the thought of the ‘sorry comforters’

To understand the normative programmes articulated by Grotius, Pufendorf and Vattel it is necessary to understand the problems and general political context they confronted. Space does not allow us to treat the contexts in any serious way, but it should be remembered that the seventeenth century was a time of great social, political, and religious unrest. It is commonly regarded as a period of ‘legitimation crisis’. It is in this context that the normative programmes of Grotius and Pufendorf must be understood. The context in which Vattel wrote, however, was rather different. The main political difference was that the sovereign state had been virtually unanimously accepted as the best form of political organisation, though whether sovereignty resided in the person of the king or the people remained politically disputed.

### *Grotius on order, law and the rights of nations*

The explicit, governing theme of *De iure belli ac pacis* is that the establishment and preservation of social order requires restraint on the use of force. This led Grotius to attempt a rational reconciliation of force and law grounded in the laws of nations (*ius gentium*), that would guarantee natural, subjective rights and, as a consequence, create well-ordered societies. Grotius wanted to deal effectively with threats to the social order and to defend actions taken to protect this order as ‘just’ or ‘lawful’. Of course, for Grotius, any explication of the requirements of social order necessarily involved an account of law (*ius*). Order and law were inseparable as far as Grotius was concerned, both conceptually and practically. More importantly, Grotius recognised that order and law could properly be applied to relations between sovereign states, just as it had always been within them. Grotius therefore rejected the arguments of the sceptics.<sup>9</sup>

The sceptics refused to countenance any suggestion that disorder and war between states might be diminished by establishing an overarching legal code for states. They tended to circumscribe the law sharply, confining it to the limits of single political societies. The trouble, as Grotius recognised, is that if one accepts the premiss that law reaches only as far as the state’s boundary then there can be no rationally defensible argument for restraint in war.

For Grotius on the contrary, the existence of a social realm where law did not prevail was intolerable as ‘all things are uncertain the moment men depart from law’ (Grotius, 1925: Prol. §22). Grotius insisted that no area of social life should remain outside the province of law, including inter-state relations. Hence Grotius’s statement at the outset of his Prolegomena that indicates his intention to focus on that ‘body of law ... which is concerned with the mutual relations among states or rulers of states’ (Grotius, 1925: Prol. §1).

In order to refute the sceptics, ‘those masters of ignorance’ (Grotius, 1964: 13), and to transcend the legitimation crisis, Grotius mobilises an argument which draws on reason and man’s inherent sociability to establish principles of natural law. In his view this would resolve, in a single stroke, the theoretical challenges of scepticism and *raison d’état* on the one hand, and the practical problem of war on the other. Doing so will require demonstrating that relations between states

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<sup>9</sup> For an argument disputing that Grotius reacted against scepticism, see Mautner (2005).

are, contrary to the sceptics, susceptible of moral and legal reasoning.<sup>10</sup> Law, *ius* in Grotius's terminology, is not confined to the interior of sovereign states. Indeed, if well-ordered societies are to be established and maintained, as even the sceptics wish, then law must be extended beyond sovereign boundaries. The 'juridification of politics' invariably spills over into the empty space outside and between sovereign states, thus establishing a law of nations (*ius gentium*). But there is some ambiguity in the law as conceived here by Grotius as it seems to refer both to the law common to many nations, as in the traditional Roman sense of *ius gentium*, and to a law among nations in the sense of *ius inter gentes*. Grotius never resolves this ambiguity one way or the other, which goes some way to explaining why he is at the threshold of modernity. Nevertheless, he affirms the idea, contrary to the sceptics, that the space beyond states must be immersed in law.

The key to Grotius's argument therefore is the 'juridification of politics' and the consistent accent on subjective or natural right.<sup>11</sup> Subjective right forms the foundation of Grotius's entire moral-legal edifice informing his interpretation of natural law as much as his interpretation of the law of nations, and is instrumental in his translation of natural law into natural right.

Right reason ... and the nature of society [*Recta autem ratio ac natura societatis*]... do not prohibit all use of force, but only that use of force which is in conflict with society, that is which attempts to take away the rights of another. For society has in view this object, that through community of resource and effort each individual be safe-guarded in the possession of what belongs to him [*suum*]. It is easy to understand that this consideration would hold even if private ownership [*dominium*] (as we now call it) had not been introduced; for life, limbs and liberty would in that case be possessions belonging to each, and no attack could be made upon these by another without injustice (Grotius, 1925: I, ii, 1.5).<sup>12</sup>

This passage is crucial not only to understanding Grotius's justification of force in terms of reason and sociability, but also to understanding the way that Grotius transforms natural law into natural right. The essence of his argument is that law is to be defined subjectively, according to his second understanding of *ius*, that is, as a 'moral quality of a person'. In this sense *ius* refers to a 'body of rights ... which has reference to a person' (Grotius, 1925: I, i, 4).

The focus on subjective right leads Grotius to fix on the sovereign state as the primary form of

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<sup>10</sup> One sees the same kind of argument being made in the 'Introductory remarks' of *De iure praedae* (Law of the prize). There Grotius argues that a moral code for inter-state relations cannot be drawn from municipal or domestic law. He admonishes that 'it would be a waste of effort to pass judgement regarding those acts whose scope is international rather than domestic ... solely on the basis of written laws' (Grotius, 1964: 6). Recalling the arguments of Dio, Cicero, Lactantius and others, Grotius argues that the proper basis of moral and legal judgement in relations between states is not to appeal to the 'civic life and custom' of a particular country, as sceptics are wont to do, but 'natural reason' as the font of the laws of nature and nations (Grotius, 1964: 6).

<sup>11</sup> We borrow the phrase 'juridification of politics' from Blandine Kriegel (1995).

<sup>12</sup> It is just prior to this passage that Grotius explicitly states that war is not in contradiction with law: '[i]n the first principles of nature there is nothing which is opposed to war' (Grotius, 1925: I, ii, 1.4 and I, ii, 4.1).

subjectivity, characterised by clear boundaries and rights. Most importantly for our purposes, Grotius applies this conception of the *suum* to the sovereign state, conferring on it certain rights and duties under the law of nations.

Though Grotius is by no means as systematic as Bodin, let alone Hobbes, in identifying sovereignty with the state, he nevertheless articulates such a conception when he says that ‘the civil power (*potestas civilis*) which manifests itself in laws and judgements resides primarily and essentially within the state itself’ (Grotius, 1964: 25). Internally, the sovereign authority presides over the state in the same way as a father rules over his household or a master over his slave, that is absolutely. Externally, ‘the state has no superior’ (Grotius, 1964: 24), and therefore is not subject to the legal control of another’ (Grotius, 1925: I, iii, 7.1).

Sovereigns possessed states in the same way that individuals possessed property and the mind possessed the body. Moreover, they were the only such actors with rights under the law of nations. In this way the law of nations functions to displace other actors from the field of action thereby ‘flattening out’ the social world and giving rise to a field of action marked by inter-state or international relations.

In an effort to establish a case for a law of nations, Grotius co-opts the sceptical arguments for self-preservation and utility but arrives at a radically different conclusion. He argues that just as individuals benefit from the social order produced by obeying the law, a typical sceptical argument, so too do states in the great society of states. Grotius writes:

But just as the laws of each state have in view the advantage of that state, so by mutual consent it has become possible that certain laws should originate as between all states, or a great many states; and it is apparent that the laws thus originating had in view the advantage, not of particular states, but of the great society of states [*magna communitas gentium*]. And this is what is called the law of nations [*ius gentium*] (Grotius, 1925: Prol. §17).

Grotius goes on to say that states which act against the law of nations for immediate advantage undermine their own future security, cutting away ‘the bulwarks which safeguard its own future peace’ (Grotius, 1925: Prol. §18). So, contrary to Carneades and his sceptical friends, Grotius insists that obedience to the law of nations is a mark of wisdom, not folly, for it contributes towards self-preservation. Once again we see Grotius co-opt sceptical arguments in order to advance his own rather different argument, one which posits a law of nations on the basis of reason, sociability, self-preservation and prudence. But the crucial development made by Grotius was to bring the law to bear on states as societal subjects. He thereby conferred exclusively on sovereign states a legitimacy that few of his predecessors had conceded, and in the process helped give rise to a conception of international relations as a realm of inter-state relations governed by a law of nations more in tune with the *ius inter gentes* than the traditional Roman conception of *ius gentium*.

Grotius introduces a distinction between two possible types of social relationship, hierarchy and equality, which have the effect of producing two social domains: one inside sovereign states, the other, outside and between them. The two forms of social relationship are taken to be mutually

exclusive and mutually exhaustive. Political space is now divided exclusively between hierarchical and egalitarian space. Mixed space is not entertained within this binary opposition. Politics is either played out in a space of hierarchy or a space of equality. An actor exists either in hierarchical or equal social relations. As a result, hierarchy and equality are thereby understood to occupy distinct political spaces in the same way that Kenneth Waltz, writing some 350 years later, distinguishes the domestic political space of hierarchy from the space of international anarchy (Waltz: 1979). The effect is the same, but whereas Waltz refers to the international as a realm of anarchy, Grotius refers to it as one of equality. Because Grotius sees sovereign states as having no superiors they interact in an environment of equality:

For an equal cannot be compelled by an equal, except to perform what is owed in accordance with a right properly so called. But a superior can compel an inferior to do other things also, ... because this is embraced in the proper right of the superior as such' (Grotius, 1925: II, xxv, 3.4).

The important point is that Grotius believed that law could and should function in non-hierarchical social settings. So Grotius establishes a clear differentiation of social relations which has the effect of producing two distinct social environments: one is a hierarchical space of politics found within sovereign states, the other is exclusive to relations between sovereign states-as-equals. States, in their mutual interactions, were equal before the law; that is, they were equally bound to respect the law of nations. Grotius makes a normative argument for sovereign states as (exclusive) possessors of an equal capacity for rights in the law of nations.<sup>13</sup> He thus excludes from consideration pirates, brigands, tyrants and universal empires. This focus upon the sovereign state as the proper and exclusive actor under the law of nations also underwrites Grotius's discussion of just war.

The distinction of Grotius therefore was to see the connection between internal and external order, and to attempt to establish a minimal moral and legal code on the foundations of natural law, the law of nations (*ius gentium*), which would produce order and justice within and between states. He recognised that order was a primary social requirement, not just between a sovereign and his subjects, but between different sovereigns. This is what sets Grotius apart from Machiavelli and others, and begins a line of thought which pays as much attention to the problem of order and morality in relations between sovereign states, as it does to those within them. It is also what sets him apart from medieval thought which, generally speaking, reduced the problem of order to a hierarchy of powers within a universal Christian Empire.

The argument advanced here is that Grotius articulates a normative programme which, in trying to achieve its immediate aim of restraining war, has the effect of creating an embryonic conception of the 'international'. Grotius wanted to restrict the right to war to 'proper' authorities and to prescribe conduct proper to such actors. To do this he shifts the focus from natural law to the law of nations. Grotius's law of nations (*ius gentium*) defines a new 'political technology', to use Foucault's term, which is characterised by two aspects: firstly, the proper subject of *ius*

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<sup>13</sup> For an extensive treatment of Grotius's views on 'international' equality see Suganami (1990). It is worth making the point here that whilst Grotius restricts the law of nations to sovereign states, no actor stands outside the natural law.

*gentium* is identified as the bounded, sovereign state; and secondly, the conduct proper to this subject is guided by the normative code inherent in the law of nations. *De iure belli ac pacis*, it should be noted, is less a reflection of the world, than a reflection on the world and a programme for acting in it.

*Transformations of natural law: Hobbes and Pufendorf on insecurity and the state of nature*

The second stage in the rise of the international is marked by both a continuation of certain aspects of the Grotian normative programme, and the introduction of new aspects. There is continuation in the Cartesian rationalism and the subjectivisation of law, that is, the trend towards natural right over natural law. However, an important break is marked by the introduction of what we might call the ‘juridico-politics of security’.

The Grotian ‘juridification of politics’ transmutes, in the work of Hobbes and Pufendorf, into a ‘juridico-politics of security’ where legal and political questions are dominated by concerns over security. In the writings of Hobbes and Pufendorf we see the invention and utilisation of the state-of-nature analogy, which has the effect of consolidating the sovereign state on the one hand, and displacing violence and insecurity to the borders of the sovereign state, on the other. This results in a starker presentation of interior and exterior political spaces. Inside the sovereign state there is peace, order, security, and the possibility of justice; outside and between sovereign states there is war, disorder, insecurity, and the likelihood of injustice.

Underpinning this series of separations or oppositions between inside and outside is the central concept of sovereignty. Grotius had begun to give greater emphasis to state sovereignty, and this was continued by Hobbes and Pufendorf. The political concept of state sovereignty reflected the prevailing trend in philosophical and juridico-political thought to articulate a Cartesian metaphysics of the subject. Subjective or natural right was now dominant in juridico-political discourse, a feature already developing in Grotius.

The argument advanced here is that the normative programme articulated by Pufendorf is concerned with security as a philosophical and political objective. In pursuit of this objective he inscribes a sharp distinction between the inside and outside of sovereign states. Political discourse now has the possibility of dividing its attention between two distinct realms of politics: the domestic space internal to states, and the ‘international’ space which lies outside and between states. And, of course, the state of nature arguments were the first attempts to thicken the description of ungoverned spaces – spaces outside and between sovereign states. However, Pufendorf does not capitalise on this division of politics into two distinct realms. Consequently, *De iure naturae et gentium* offers an analysis of the international only in a partial, fragmented way. There is no fully developed conception of the international in Pufendorf; it can only be reconstructed out of dispersed fragments, as is the case with Grotius. Nevertheless, Pufendorf and Hobbes take us a step closer to the rise of the ‘international’ by sharpening the distinction between inside and outside and using the language of the state of nature to describe the ‘international’.

The state of nature is a fundamentally insecure condition of absolute liberty which consigns

individuals to absolute insecurity. As Hobbes puts it, the state of nature is ‘that dissolute condition of masterlesse men, without subjection to Lawes, and a coercive Power to tye their hands from rapine, and revenge’ (Hobbes, 1968: 238). Amongst ‘masterlesse men’, says Hobbes, ‘there is perpetuall war, of every man against his neighbour; ... no security; but a full and absolute libertie in every Particular man’ (Hobbes, 1968: 266). Or as he summarises it towards the end of Part Two of the Leviathan, ‘the condition of meer nature, that is to say, of absolute Liberty, ... is Anarchy, and the condition of Warre’ (Hobbes, 1968: 395). This is the result of men deciding for themselves how they will preserve themselves and what constitutes a threat to their security.<sup>14</sup> And so long as this condition persists, says Hobbes, where everyone is his own judge about how to protect himself, ‘there can be no security to any man’ (Hobbes, 1968: 190).

One of the interesting aspects of the state of nature analogy is the series of dichotomies it sets up. By resorting to this analogy Hobbes was able to frame politics in terms of an opposition between the natural and civil conditions. This simple distinction produces several other oppositions, including: anarchy and sovereignty, nature and society, war and peace, insecurity and security, lawlessness and law, disorder and order, and so on. He makes this explicit in *De cive* (X, §1), where he says:

Outside a state we are protected only by our own strength, but inside a state by the strength of all. Outside a state no man can be certain of the fruit of his labours, inside a state all can. To sum up, outside a state there is only the rule of passions, war, fear, want, squalor, loneliness, barbarity, ignorance, ferocity; inside a state the sway of reason, peace, security, wealth, comforts, companionship, refinement, knowledge, and benevolence (Hobbes, quoted in Pufendorf, 1672: II, iii, §2).

We need to recognise, however, that inside and outside do not simply operate as spatial markers. Firstly, the distinction between inside and outside represents a temporal distinction. Here ‘outside’ effectively means prior or before. It refers to the original, anterior, natural condition (the state of nature), while ‘inside’ refers to the artificial, civil condition which is created through a contract. It marks the shift from the state of nature to civil society. Secondly, inside and outside represent a spatial distinction. ‘Inside’ here refers to the jurisdiction of a sovereign authority which creates the conditions for peace, order, security, and so on, and ‘outside’ refers to the absence of these conditions. ‘Outside’ means beyond and between sovereign spaces.

This spatial distinction is at its most potent when applied to international relations. Though Hobbes provides no detailed account of relations between sovereign states he does on a few occasions make specific reference to them. His primary concern, of course, is to provide an account of the state, not an account of the state in relation to other states. However, the state of nature analogy does provide Hobbes with a simple and parsimonious description of inter-state relations which later thinkers were unable to ignore.

The state of nature, says Pufendorf, ‘is attended with a multitude of disadvantages’ (Pufendorf, 1673: II, i, §9). Essentially, it is a condition where all the worst traits of man are allowed to

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<sup>14</sup> For a very useful account of the place of self-preservation in Hobbes’s thought see Tuck (1989: 51-76).

flourish and where men remain alienated from one another. Humanity, while it is in this state, remains fragmented, insecure and unfulfilled; it is an incomplete and imperfect existence. Here Pufendorf's analysis bears resemblance to Hobbes's insofar as the state of nature is placed in opposition to civil society, in both temporal and spatial terms. In the state of nature,

each is protected only by his own strength; in the state by the strength of all. There [in the state of nature] no one may be sure of the fruit of his industry; here [in the civil state] all may be. There is the reign of the passions, there is war, fear, poverty, nastiness, solitude, barbarity, ignorance, savagery; here is the reign of reason, here there is peace, security, wealth, splendour, society, taste, knowledge, benevolence (Pufendorf, 1673: II, i, §9; cf. Hobbes, 1983: X, §1).

In a move that has particular relevance for the argument mounted here, Pufendorf extends his argument about the state of nature to sovereign states. Though Hobbes makes reference to states in a state of nature he does not go as far as Pufendorf in applying the state of nature analogy to sovereign states. Pufendorf states categorically that the state of nature can be seen most evidently in relations between sovereign states. In *De officio hominis et civis* he notes:

the natural state which actually exists shows each man joined with a number of other men in a particular association, though having nothing in common with all the rest except the quality of being human and having no duty to them on any other ground. This is the condition [status] that now exists between different states [*civitas*] and between citizens of different countries [*respublica*], and which formerly obtained between heads of separate families (Pufendorf, 1673: II, i, §6; 1672: VII, i, §8).

The natural state is a condition of identity and difference; of association with some, and dissociation from others. This reinforces the distinction previously enunciated by Hobbes between inside and outside, here and there. Within states there exists a civil condition where law is issued and enforced by a superior while outside states retain the natural liberty that comes with being in a state of nature. Whereas individuals, upon entry into civil society, have given up their natural liberty and are therefore obliged to obey the will of the sovereign, sovereign states have done no such thing. Pufendorf argues that sovereign states 'may properly claim for themselves the distinction of being in a state of natural liberty' (Pufendorf, 1672: II, ii, §4). They reserve full control over their will and action, deciding for themselves how they should best ensure self-preservation. The sovereign state in effect becomes a simulation of Hobbes's 'masterless man' (Pufendorf, 1672: II, ii, §4; Hobbes, 1968: 238, 266).

In their inter-relations, states, so long as they are sovereign, have the right to determine their domestic and foreign policies. This reflects the extant reality of the Holy Roman Empire, a reality reaffirmed by Westphalia (Schröder 1999). As territorial estates within the Empire began to assert their rights and defend their liberties more forcefully they contributed to the practical expression of the principle of state sovereignty to which Pufendorf subscribed. Just as individuals appropriated for themselves their own life and liberty, so too did states; they did so not least in their appropriation of external freedom or the right to make their own foreign policy.

What was distinctive about this argument was that it was grounded on the state-of-nature analogy

and hinged on the natural rights accorded to the self in a context of insecurity. Though Grotius also hinged his argument on sovereignty, he never elaborated in any detail the nature and character of non-sovereign space. It was only with the invention of the state of nature as an analytical and descriptive device that juridico-political thinkers were able to provide a fuller account of the 'outside', that is, relations between sovereign states.

Pufendorf distinguishes himself from Hobbes by recognising the utility of sociability and by paying greater attention to the rights and liberties of sovereign states in their external relations. Whereas Hobbes was far from clear about the rights and duties of states in the state of nature, Pufendorf was quite explicit. Indeed several chapters of Book VIII of *De iure naturae et gentium* could be read as attempts to outline this law of nations directly.

### *The rise of the international: Vattel on law, liberty and the society of states*

It is only in the third stage that such an effort is undertaken. It is in the writings of Vattel that the politics of the exterior, that is, international politics, emerges as a distinct object of political inquiry. The possibility of inquiring into international, as opposed to domestic, politics is a result of Vattel adding liberty to the conceptual layers of order and security. Consistently with the general scientific, philosophical and legal trends of the time, Vattel opts for a more empirical approach which seeks to take account of political realities and practicalities. He outlines a normative programme which takes for granted the interiorisation of order and security by defending and promoting the liberty (or independence) of sovereign states. For Vattel, the presence of the sovereign state is never in question; either in principle or in practice. He begins by assuming that the sovereign state exists, and that one can clearly demarcate its boundaries. On this basis, he inquires into the principles by which states should conduct their inter-relations.

Vattel is perhaps the first political thinker to turn his thought almost exclusively to relations between states. He is only interested in 'the state considered by itself' to the extent that it is relevant to 'questions which may arise between states' (Vattel, 1916: I, i, §3). This much is clear simply by looking at the structure of *Le Droit des gens*, which is made up of four books, only the first of which is focused on 'the state'. The four books are entitled respectively: Book I 'A nation considered by itself', Book II 'Nations considered in their relations with others', Book III 'War', Book IV 'The restoration of peace; and embassies'. Although Book I is quite long, it is still shorter than the two central books, II and III. These central books carry the bulk of Vattel's argument about the primacy of the voluntary law, the centrality of states' rights, and the strategic conception of the society of states.

Though he starts with 'the state' it is clear that it is only a first step on the way to his real object of inquiry: relations between states and their correlative problems. It would have been unthinkable in the seventeenth century for a serious political thinker to treat the state so summarily; certainly thinkers such as Hobbes, Locke, Spinoza and Pufendorf, who wrote in the hundred years before Vattel, devoted vast amounts of space to analysing the state, its functions, its origins, its institutions, its obligations and duties, its relation to its citizens or subjects, its relation to liberty, and its relation to law. Indeed, very little political theory ventured beyond such issues. The state was virtually the sole object of political inquiry, focusing on matters between

citizens and the state. Questions arising from relations between states were dealt with in passing and rarely merited dedicated sections.

The first step in Vattel's argument is to rehearse the state of nature analogy made by Hobbes and Pufendorf. Just as men in the state of nature are free, so too are states. Vattel sees 'natural liberty' as a property of both men and states: 'Nations or sovereign States must be regarded as so many free persons living together in the state of nature' (Vattel, 1916: introduction, §4). Moreover, they are both governed by the natural law. 'As men are subject to the laws of nature, and as their union in civil society can not exempt them from the obligation of observing those laws, ... the whole Nation, whose common will is but the outcome of the united wills of the citizens, remains subject to the laws of nature and is bound to respect them in all its undertakings' (Vattel, 1916: introduction, §5). Vattel's main intention here is firstly, to affirm the original natural liberty of both men and states, and secondly, to insist that states, like individuals, are subject to the natural law by virtue of being moral persons. Any moral being is subject to the natural law, states included.

Vattel's next step is to assert the distinctiveness of the law that applies to states. It was Wolff, Vattel says, who systematised a natural law uniquely geared towards sovereign states. He was the one who demonstrated, in a way that no one had done previously, that 'the Law of Nations should be treated as a distinct system' (Vattel, 1916: preface, 7a). When the natural law is applied to states it must be modified accordingly, resulting in what Vattel calls the 'double law' (Vattel, 1916: 11a). This double law has two strands: firstly, the necessary law of nations, and secondly, the voluntary law of nations. The effect of introducing the double law, and privileging the voluntary law as Vattel does, is to 'politicise the law'.

As we shall see, *Le Droit des gens* is concerned primarily with the voluntary law of nations since its core assumption, that states are free and independent, means that the necessary law of nations is inappropriate. At several points Vattel laments that the necessary law of nations is too frequently violated, or 'rendered ineffective by the mischievous designs of dishonest statesmen' (Vattel, 1916: II, xii, §152); but he warns against the naïve hope that the necessary law of nations can regulate the conduct of states, saying that it would be a 'grievous self-deception' (Vattel, 1916: II, i, §1). The precepts of the necessary law may be 'in themselves excellent', he says, but 'the actual state of mankind and the ordinary conduct and policy of Nations' preclude their direct application to inter-state relations (Vattel, 1916: II, i, §16). Vattel thus seeks to demarcate the voluntary law of nations as a pragmatic, empirical juridico-political discourse by building around his notion of the state's natural liberty even in the society of states.

By contrast with the necessary law of nations which stems from the inner conscience as it responds to the demands of the natural law, the voluntary law of nations stems from other requirements related to the nature of the state and the nature of the society of states. To be precise it derives from (i) the natural liberty of states, (ii) the nature of relations within the society of states, (iii) reciprocal duties, and (iv) perfect and imperfect rights (Vattel, 1916 preface, 10a).

Just as Hobbes and Pufendorf insisted that, if peace is to be maintained, matters of conscience must be confined to the private realm and should not determine public conduct, so too does Vattel. For Hobbes, Pufendorf and Vattel alike, one must drive a wedge between inner and outer,

private and public conduct, in order to replace the ‘politics of conscience’ with the neutral space of the sovereign state. Hobbes, Pufendorf and Vattel are thus all in agreement that dogmatically holding onto non-negotiable moral principles, which characterises the politics of conscience, creates political dangers. They believed that the politics of conscience would most likely lead to conflict because it allows no room for accommodation and co-existence. Whereas Hobbes sought to eliminate the politics of conscience by establishing the sovereign state, Vattel seeks the same end by developing the voluntary law of nations. In Vattel’s view, the main theatre where the politics of conscience was being played out was in relations between states, so it was imperative to design a law of nations which would not feed the non-negotiable nature of national consciences.

In the state of nature, if a state acts against the inner law of conscience it has done wrong, but there is nothing that can be done. To force a state to act according to the necessary natural law would be to violate its natural liberty and do it an injury. Vattel thus introduces and privileges ‘an essentially political morality’ (Koselleck, 1988: 45). States may justly suspend their obligations under the necessary law of nations to other states if they judge it to be detrimental to their own preservation. Vattel’s argument sanctions the subordination of the internal to the external law, the necessary law of nations to the voluntary law of nations, so as to guarantee the rights of states and to maintain order between them. In the context of war, for example, it would be counterproductive to impose the necessary law as it would lengthen and exacerbate wars (Vattel, 1916: III, xii).

In Vattel’s work the ‘international’ is problematised for the first time as an object of political inquiry under the guise of the ‘society of states’. His normative programme was essentially concerned with articulating the rights of states in this ‘society’ under the provisions of the voluntary law of nations. By bringing the society of states into focus Vattel acknowledges the field of action in which states exist and act. The society of states thus constitutes a political environment that had hitherto not been a recognisable or cognisable object of political discourse. Vattel’s achievement was to make it just that, an object of political discourse.

For Vattel European states already exist in a society of states which binds them together by common interests and the development of common institutions, such as diplomacy. In what is perhaps the most famous passage of *Le Droit des gens* Vattel enlarges on the notion of a European society of states:

Europe forms a political system in which the nations inhabiting this part of the world are bound together by their relations and various interests into a single body. It is no longer, as in former times, a confused heap of detached parts, each of which had but little concern for the lot of others, and rarely troubled itself over what did not immediately affect it. The constant attention of sovereigns to all that goes on, the custom of resident ministers, the continual negotiations which take place, make of modern Europe a sort of republic, whose members — each independent, but all bound together by a common interest — unite for the maintenance of order and the preservation of liberty. This is what has given rise to the well-known principle of the balance of power, by which is meant an arrangement of affairs so that no state shall be in a position to have absolute mastery and domination over others (Vattel, 1916: III, iii, §47).

This passage contains all the main ideas of Vattel's normative programme and offers a clear idea of what he means by a society of states.

The society of states may still contain risks of violence and war, but it also contains mechanisms for averting the resort to force, or at least using force for the purposes of international order, and for achieving the security and liberty of individual states. One of the effects of construing the society of states in this way is that it begins to give the space outside and between states a fuller, richer description. The outside comes to be understood as the society of states in contradistinction to the civil society inside states; it is no longer a natural condition or empty space or vacuum, negatively defined against domestic or civil society; rather, it begins to take on positive qualities of its own. There are three aspects to this exterior, or 'international' space.

First, it is a field of action inhabited by sovereign states as sole legitimate actors – a corollary of which is that political space is radically divided between the inside and outside. Second, and following on from this, the presence of these states constitutes an 'association', 'system' or 'society' of states. The states that form this association are conscious of interacting in the same field of action, aware that their actions inevitably hold implications for others, and that if they are to preserve themselves they must take into account the actions and intentions of others. Third, the exterior is a space comprising norms, rules, institutions and mechanisms for governing the conduct of states. The balance of power and diplomatic machinery function to socialize and discipline states.

Vattel's importance is thus to be found in the fact that he represents the culmination of a process which established a clear and systematic separation of the 'international' from the 'domestic' realm. He effectively defined international politics as a discrete object of political inquiry in contradistinction to domestic politics. He did this first, by 'politicising law' and giving primacy to the voluntary or external law; second, by tying the voluntary law to a rights-based discourse of the security and liberty of states; third, by outlining a strategic conception of the 'society of states' which reinforces the 'politicisation of law' and the rights of states by affirming the balance of power as a procedural mechanism for achieving order.

## **Conclusion**

The rise of the international was as important an invention to modern political life as the telescope was to modern science. It transformed the way in which humans saw the political world, encouraging certain perceptions while delegitimizing others, and giving rise to new understandings and norms regarding relations between selves and others. Like the telescope, the international had the effect of transforming the relationship between subject and object, culture and nature, and allowing the political world to be viewed in a way that was unimaginable before. Sovereign states were now simultaneously subjects of law and order, security, and liberty, and this could not help but shape the environment in which they existed and conducted their interactions. As political technologies redefined sovereign states and modified their conduct, the 'international' emerged as a field of political action which, in contradistinction to 'domestic' politics, conflict is an ever-present possibility and strategic rationality is the norm. The

international, as an objective field of action, is therefore intimately linked to changing modes of subjectivity.

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