



## Hobbes's Contribution to International Thought, and the Contribution of International Thought to Hobbes

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## Hobbes's Contribution to International Thought, and the Contribution of International Thought to Hobbes

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### Summary

The aim of this article is to explore in what respects Thomas Hobbes may be regarded as foundational in international thought. It is evident that in contemporary international relations theory he has become emblematic of a realist tradition, but as David Armitage suggests this was not always the case. I want to suggest that it is only in a very limited sense that he may be regarded as a foundational thinker in international relations, and for reasons very different from those for which he has become infamous. In the early histories of international thought Hobbes is a cameo figure completely eclipsed by Grotius. In early histories of political literature, the classic jurists were often acknowledged for their remarkable contributions to international relations, but Hobbes is referred to exclusively as a philosopher of a positivist ethics and absolute sovereignty. It is among the jurists themselves that Hobbes is believed to have made important conceptual moves which set the problems for international thought for the next three centuries. He conflates natural law and the law of nations, arguing that they differ only in their subjects—the former individuals, the latter nations or states. This entailed transforming the sovereign into an artificial man, not in the Roman Law sense of an entity capable of suing and being sued; rather, as a subject not party to a contract, but created by a contract among individuals who confer upon it authority. This subject is not constrained by the contractors, but is, as individuals were in the state of nature, constrained by the equivalent of natural law, the law of nations in the international context. Throughout, the methodological implications are drawn for modern historians of political thought and political philosophers who venture to theorise about international relations.

**Keywords:** Sovereignty; the state; natural law; law of nations; international jurists; Hobbes; Grotius; Pufendorf; Vattel; Rawls.

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So great is the uncertainty of posthumous reputation, and so liable is the fame, even of the greatest men, to be obscured by those new fashions of thinking and writing which succeed each other so rapidly among polished nations, that Grotius, who filled so large a space in the eye of his contemporaries, is now, perhaps known to some of my readers only by name.

—Mackintosh, *Discourse on the Study of the Law of Nature and Nations*<sup>1</sup>

### 1. Introduction

I want in this article to take as my starting point Michael Oakeshott's contention that it is the historian and not the subject who 'makes' history, and R. G. Collingwood's observation that there is a history of historiography in relation to every historical subject, including texts.<sup>2</sup> To ignore this history of interpretation may result in the unintentional consignment of what was considered important in the text in the past to relative obscurity in the present, or the elevation of what was considered relatively unimportant to foundational status. This is something that David Armitage demonstrates very clearly in relation to Hobbes's place among modern international theorists.<sup>3</sup>

I want to look at three bodies of literature that have a bearing on our understanding of international thought as a subject for investigation. First, early 'histories' of international thought, to show that Grotius and other international jurists completely eclipsed Hobbes as foundational theorists. Second, early histories of political thought, to show that the absence of international jurists, and theorists of international relations, from the canon of political thinkers is not, as Martin Wight contended, because of a paucity of high-quality theory. Indeed, the importance of such theory was widely valued in the early histories of political thought, often above Hobbes's contribution to political theory.<sup>4</sup> Historians of political thought who valued the contribution of jurists to enhance our understanding of international relations did not, however highly they thought of Hobbes, acknowledge or evaluate his contribution to international thought. Third, I want to explore what international jurists considered to be Hobbes's contribution to international thought. It is in this body of literature that Hobbes's contribution to international thought is more clearly identified and evaluated. The reputation he has acquired among many modern writers as an arch-realist in international theory is in fact an aberration, a modern construction.

Put simply, on the one hand we have classic political philosophers and jurists who often cite and interpret each other's work, and on the other historians of both who often ignore this interpretive interaction. In addition, modern political theorists who venture into international theory tend to focus on the classic political theorists to the neglect of international jurists. I want to argue that the questions that international jurists asked of traditional political theorists add an important dimension to interpretation, and therefore have an important place in histories of political and international thought. This example is

<sup>1</sup> James Mackintosh, *A Discourse on the Study of the Law of Nature and Nations*, edited by John G. Marvin (Boston, MA, 1843, first published in 1799)

<sup>2</sup> Michael Oakeshott, *Experience and Its Modes* (Cambridge, 1933); R. G. Collingwood, *The Idea of History*, revised edition, (Oxford, 1993).

<sup>3</sup> David Armitage, *Foundations of Modern International Thought* (Cambridge, 2013), chapter 4.

<sup>4</sup> Chris Brown, 'International Relations as Political Theory', in *International Relations Theories: Discipline and Diversity*, edited by Tim Dunne, Milja Kurki and Steve Smith (Oxford, 2007), 34–51 (49); Howard Williams, *International Relations as Political Theory* (Milton Keynes, 1992).

occasioned by David Armitage's observation that Hobbes's place in international thought presents 'historians, political theorists and international relations theorists alike' with a problem. If, as almost all contemporaries interested in international relations thought suggest, Hobbes's contribution was so fundamental, why was it overlooked for so long, and 'how did he come to be accepted as a foundational figure in the history of international thought if his reflections on the subject were so meagre'?<sup>5</sup> I hope to cast some light on this conundrum, if not provide a complete answer.

## 2. The Parting of the Ways

Before examining the early histories of political thought, the histories of international thought, and international jurists who acknowledged Hobbes's contribution, I want to identify a seminal moment in the relationship between the study of international relations and the study of politics. The emerging discipline of international relations initially tried, as politics had done, to define itself in terms of classic canonical texts; however, with the abject failure of liberal internationalism and the associated discrediting of the Carnegie project—which largely comprised texts in the naturalist tradition—to educate the ruling classes by making available the classic texts on natural law and the law of nations, the nascent discipline rejected its classic heritage, adopted a positivist stance on international law, and embarked upon an interminable search for a new identity.

The person who lamented this departure the most was Martin Wight, the doyen of the English School of international relations and the inspiration for much of the revived attempt to retrieve the classic heritage in order to add intellectual weight and gravitas to the discipline. To some extent Wight was methodologically naïve in suggesting that, in contrast with political theory, international theory could defer only to minor characters and scattered subsidiary asides in the great texts. He confused the contemporary conferral of classical status by political theorists upon texts which are important to them with the historical and intrinsic quality and integrity of texts that are now neglected for want of an audience. David Armitage, I think, misses Wight's mistake when pointing out that he lamented the lack of a tradition of speculation about international relations. Wight conflated two bodies of literature. He was complaining of the poverty and paucity of primary sources devoted to speculation about international relations, as well as the lack of a tradition of secondary, or historical studies of the little there is. He was wrong about the primary literature, but right about the secondary.

Martin Wight maintained that '[i]nternational theory, or what there is of it, is scattered, unsystematic, and mostly inaccessible to the layman'.<sup>6</sup> He was right about the inaccessibility, but mistaken about it being scattered and unsystematic. The texts that comprised the rich heritage of international relations, such as those of Vitoria, Gentili, Suárez, Grotius, Pufendorf, Wolff and Vattel, were certainly not scattered, but were instead, up until recently, largely unavailable to students, scholars and laymen alike. Wight was wrong about the status of the authors. They were not minor figures, but instead were long held up as authorities on matters of natural law, the law of nations, and

<sup>5</sup> Armitage, *Foundations of Modern International Thought*, 60.

<sup>6</sup> Martin Wight, 'Why Is There No International Theory?', in *Diplomatic Investigations Essays in the Theory of International Politics*, edited by Herbert Butterfield and Martin Wight (London, 1966), 20. The analogy which David Armitage draws between the paucity of international theory and the history of international thought is a misleading one. Wight was complaining of the paucity of 'primary sources' and was simply wrong, whereas Armitage is complaining of the paucity of intellectual history in this area of study; see Armitage, *Foundations of Modern International Thought*, 2–3.

international morality. Pufendorf, for example, was the foremost moral philosopher in Europe prior to Kant's Copernican revolution, far more widely read, and much less vilified, for example, than Hobbes.<sup>7</sup> Accessibility of the significant texts in international thought is no longer an issue, with a variety of readings available through a number of publishers (see, for example, Liberty Fund and Cambridge University Press), and a new generation of scholars weighing in to promote the case for the abolition of the artificial distinction between domestic and international political thought.<sup>8</sup>

Texts, of course, are not self-evidently classic and require more than the formality of the printed word to establish their status. They are situated in their own time, reside in a tradition of interpretation in which their fortunes fluctuate, and are interpreted through the lens of the situated reader.<sup>9</sup>

### 3. Histories of Political Thought and Histories of International Thought

The so-called canon in the history of political thought is constantly undergoing reconstruction and re-evaluation, and in its early formation by 'historians' from the late eighteenth to late nineteenth centuries it included the classic international jurists. It has, however, become almost bereft of the great international relations texts, not because they lack intrinsic worth, but because those most likely to champion their cause rejected both them and the whole idea of defining international relations in terms of past classic authorities.

We must not, as Martin Wight did, take current evaluations of the importance of past political theorists to be indicative of the paucity of great texts in International Relations in the past. In the early histories of international thought and political thought there is almost universal acknowledgment of the importance of Grotius as the great systemiser, and to a lesser extent of such thinkers as Pufendorf and Vattel as important in subjecting international relations to law and seeing this as integral to the study of politics.

In more recent histories of international thought Grotius remains the doyen as the systemiser of international law, but they are much more equivocal about the contributions of the likes of Pufendorf, Wolff and Vattel. David Armitage makes special reference to two early histories of international thought, but they may be offered such designation only out of courtesy.<sup>10</sup> To these should be added, over a century later, F. Melian Stawell, a

<sup>7</sup> James Tully, 'Introduction', in Samuel von Pufendorf, *On the Duty of Man and Citizen*, edited by James Tully (Cambridge, 1991).

<sup>8</sup> Williams, *International Relations as Political Theory*; R. B. J. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge, 1993); David Boucher, *Political Theories of International Relations from Thucydides to the Present* (Oxford, 1998); David Boucher, *The Limits of Ethics in International Relations* (Cambridge, 2009); Richard Tuck, *The Rights of War and Peace*, (Oxford, 1999); Beate Jahn, *The Cultural Construction of International Relations: The Invention of the State of Nature* (London, 2000); Edward Keene, *International Political Thought: A Historical Introduction* (Cambridge, 2005); *Political Thought and International Relations: Variations on a Realist Theme*, edited by Duncan Bell (Oxford, 2009).

<sup>9</sup> Hans Georg Gadamer, *Truth or Method* (London, 1975).

<sup>10</sup> Robert Ward, *Enquiry into the Foundation and History of the Law of Nations in Europe, from the time of the Greeks and Romans, to the Age of Grotius*, 2 vols (London, 1795); Mackintosh, *Discourse on the Study of the Law of Nature and Nations*. This was an introduction to a course of lectures Mackintosh gave in 1799 (and repeated at the East India Company College in London on his return from Bombay in 1812), designed to distil the principles of the law of nations 'from the mass of undigested learning, and presented [...] in a most attractive form'; see Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, xxi. Armitage also mentions Henry Wheaton in three contexts.

Cambridge historian, who may be accredited with self-consciously designating the subject matter 'international thought'.<sup>11</sup>

Influenced by Montesquieu, Robert Ward's history was designed to demonstrate the variability of the Law of Nations, and he argued that there may be a variety of systems regulated by different Laws. Yet he was no relativist. He was clear that the European Law of Nations, resting as it did upon the foundation of Christianity, was superior, even discounting nations approaching a state of nature, in comparison with nations professing different religions. This was so on grounds of regularity, equity, benevolence, justice and humanity. Grotius was the pinnacle of the process, because little could be added to his systemisation.<sup>12</sup>

For Mackintosh the history of international thought is a storehouse of examples that need to be translated into the modern idiom so that they may be used for the practical lessons they teach:

History, if I may be allowed the expression, is now a vast museum, in which specimens of every variety of human nature may be studied. From these great accessions to knowledge [...] lawgivers and statesmen, but above all, moralists and political philosophers, may derive the most important instructions.<sup>13</sup>

Mackintosh contends that few works were celebrated more than Grotius's *Law of War and Peace* in his own day, but by the end of the eighteenth century he had become a victim of the French fashion for candour and wit, with his work deprecated for being a shapeless compilation subsuming reason under a 'mass of authorities and quotations'.<sup>14</sup>

Stawell's history of international thought, written after the First World War, also had a didactic purpose, namely, to show that a sane nationalism 'points the way to internationalism as its completion'.<sup>15</sup> If only subsequent generations had followed Sully's grand design, the ideal of internationalism would have been achieved, and the three centuries of war that followed avoided. Grotius, he said, is justifiably famed as the founder of international law, but it was a matter of regret that he never elaborated on the system of impartial conferences necessary for arbitration and for the punishment that was needed to deter transgressions of international law; further that he no more than hinted at how belligerents may be compelled to accept peace on reasonable terms.<sup>16</sup>

Ward had the highest opinion by far of Grotius's successors. The works of Pufendorf and Vattel, he maintained, exhibited great merit in their own right, but were nevertheless largely based upon and elaborated Grotius's *Law of War and Peace*.<sup>17</sup> Mackintosh was a victim of the fashion of candour who rarely could offer a compliment without severely qualifying it with invective, except in irony when citing the one-time target of his ire, Edmund Burke. He suggested that there is real merit in Pufendorf, whose work is a veritable mine which all his successors must excavate, but that he is a rather old-fashioned thinker whose works are more likely to be found on the shelf than on the desk of the student of international law. He went on:

<sup>11</sup> F. Melian Stawell, *The Growth of International Thought* (London, 1929).

<sup>12</sup> Ward, *Enquiry*, I, xxxiii, xlvi; Ward, *Enquiry*, II, 2.

<sup>13</sup> Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, 63–64.

<sup>14</sup> Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, 55.

<sup>15</sup> Stawell, *Growth of International Thought*, 7.

<sup>16</sup> Stawell, *Growth of International Thought*, 127–28.

<sup>17</sup> Ward, *Enquiry*, II, 622.

I only presume to suggest, that a book so prolix, and so utterly void of all the attractions of composition, is likely to repel many readers who are interested, and who might be disposed to acquire some knowledge of the principles of public law.<sup>18</sup>

The shortcomings of Wolffius [sic] apply ‘with tenfold force’ and his abridger Vattel, while deserving ‘considerable praise’ because he is ‘ingenious, clear, elegant’, has nevertheless adopted dubious and dangerous principles which render his ‘politics fundamentally erroneous’ while ‘his declamations are often insipid and impertinent’.<sup>19</sup>

To what extent was Hobbes a central figure for these early historians of international thought? All three histories are motivated by a strong sense of establishing the grounds of international obligation. Both Ward and Mackintosh, in their different ways rejected the universality of natural law as a basis, with the former suggesting that morality derived from different religions provides a variety of bases, and the latter intimating that something like Burke’s historically developing customary law, the distillation of the wisdom of the ages, should replace the old-fashioned philosophising of the jurists. Stawell’s project was to see the establishment of institutions, procedures and mechanisms for the enforcement of international law, and the imposition of compulsory peace terms on belligerents. From these perspectives Hobbes was an unlikely contributor to establishing the grounds of international obligation.

For Ward, the importance of Hobbes is twofold. He is influential in being one of the first to establish a system of law derived from a state of nature argument, and along with Pufendorf and Burlamaqui he illustrates the complete identification of the law of nature with the law of nations, in contrast with Suarez, Grotius, Huber and Bynkershoek. Ward himself objects to both points of view in wanting to separate the law of nature and the law of nations, and to deny the universality of either, resting, as they do, on different religious systems in different parts of the world.<sup>20</sup> In contending, however, that the very nature of man naturally leads him to war with his fellow men and women, Hobbes is hardly at the forefront of those who wish to improve the law of nations, or develop a sense of obligation beyond borders.<sup>21</sup>

Mackintosh dismisses the idea of a state of nature as a starting point from which to establish the relationship between subject and sovereign. This requires compacts, and such compacts, he declares, are chimerical, mere fictions of little use to sound reasoning, and just as capable of justifying, with Hobbes, a system of universal despotism, or with Rousseau, of universal anarchy.<sup>22</sup> No tribe, he suggests, has ever been so brutish as to have been totally devoid of government, or so enlightened as to establish government by consent. The whole idea is so contrary to reason as to require no serious argument in refutation.<sup>23</sup> Stawell mentions Hobbes only in passing, to dismiss his view of the state of nature and characterisation of primitive men as monsters reciprocally and mutually destructive of each other, a view with which he vehemently disagrees.<sup>24</sup>

<sup>18</sup> Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, 59.

<sup>19</sup> Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, 67–68.

<sup>20</sup> Ward, *Enquiry*, I, 4–5, 7.

<sup>21</sup> Ward, *Enquiry*, I, 73; Ward, *Enquiry*, II, 611.

<sup>22</sup> Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, 80.

<sup>23</sup> Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, 81.

<sup>24</sup> Stawell, *The Growth of International Thought*, 146–47. Elsewhere he suggests that Kant leaned more towards Hobbes than Rousseau in portraying the savage state as a war of all against all; see Stawell, *The Growth of International Thought*, 196.

If there was a foundational character in the early modern period according to the putative histories of international thought, it was Grotius and not Hobbes.

Turning to the early histories of political thought, there is little of the division that later became characteristic of the relation between political thought and international thought, with the former focused firmly on intra-state and the latter on inter-state relations. We only need look at what is putatively deemed the first history of political thought to demonstrate how restricted and exclusive the canon of modern political theory has become even since 1855. The history of political literature, as it was then called, had a different scale of values. Only one and a half pages in Robert Blakey's two volumes are devoted to Hobbes, while two and a half are given over to Samuel Johnson, and by comparison a surprising eleven to John Milton, which serves to remind us that Hobbes's classic stature in histories of international and political thought is of recent origin and indeed contested.<sup>25</sup> John Austin, for example, could complain in 1832 that Hobbes's celebrated treatises were 'extremely neglected'.<sup>26</sup>

For Blakey, Hobbes, although acknowledged as an important thinker of the seventeenth century, gets short shrift mainly because he was contradictory and it was difficult to discern 'what his real opinions on general polity were'.<sup>27</sup> Milton commands such extended attention not because he was a systematic theorist—indeed, '[o]f genuine philosophical talent and analysis he was remarkably deficient',—but because some of his passages on political matters are 'so magnificent and powerful, that anything to compare with them cannot be found in any other writer, either before or since his day'.<sup>28</sup>

What is more important from our point of view is that most of the significant jurists in political thought get mentioned, and some occupy an elevated position. These writers on the law of nations, whom Blakey calls 'able and ingenious men', are said to have exercised a powerful influence over the general current of public opinion in Europe, so much so that they constitute 'guides or beacons to all future generations of men'.<sup>29</sup> Indeed, Blakey contends that from the Peace of Münster in 1648 to the French Revolution of 1789, Grotius, his commentators and disciples 'prevailed over almost every other of an abstract and political character'.<sup>30</sup> Many of Grotius's maxims and principles, Blakey claims, have become embedded in the commonplace discourse of politicians and statesmen. In direct reference to Machiavelli, whose views he believed widely misrepresented, and in allusion to Hobbes, Blakey approvingly quotes Grotius's condemnation of any theory 'that renders man the enemy of his fellow-men'.<sup>31</sup> Pufendorf, while usually considered a writer on jurisprudence, is recommended as an author of 'great ability and acuteness' when it comes to the 'general principles of government'.<sup>32</sup>

There were, of course, before Blakey's history of political thought, general surveys of aspects of philosophy, and of literature, of which political literature was an acknowledged branch. Judgements about the importance of the great jurists and writers on the law of nations were not always consistent. Dugald Stewart, for example, had a far from exalted opinion of those whom Blakey admired for their contribution to subjecting nations to the

<sup>25</sup> Michael Oakshott, *Hobbes on Civil Association* (Oxford, 1975), 132–33.

<sup>26</sup> John Austin, *The Province of Jurisprudence Determined*, edited by H. L. A. Hart (London, 1968), 279, note.

<sup>27</sup> Robert Blakey, *The History of Political Literature from the Earliest Times*, 2 vols (London, 1855), II, 142.

<sup>28</sup> Blakey, *History of Political Literature*, II, 136.

<sup>29</sup> Blakey, *History of Political Literature*, II, 322.

<sup>30</sup> Blakey, *History of Political Literature*, II, 325.

<sup>31</sup> Blakey, *History of Political Literature*, II, 330.

<sup>32</sup> Blakey, *History of Political Literature*, II, 330.

rule of law independent of human positive law. Dugald Stewart, who published in 1832 an account of the progress of metaphysical, ethical and political philosophy from the time of Francis Bacon, was severe in his judgements about writers on natural jurisprudence, or what came to be known as the law of nature and of nations. His views to some extent reflect the philosophical reaction, exemplified by Bentham, against natural law thinkers. Bentham rhetorically asks in his *Introduction to the Principles of Morals and Legislation*: 'Of what stamp are the works of Grotius, Pufendorf, and Burlamaqui? Are they political, ethical, historical or juridical, expository or censorial? – Sometimes one thing, sometimes another: they seem hardly to have settled the matter with themselves'.<sup>33</sup>

The followers of Grotius and Pufendorf, Stewart believed, had on the whole been wasting their time. It would be difficult to find 'any class of writers whose labours have been of less utility to the world'.<sup>34</sup> He nevertheless devoted considerable space to their writings because he believed that they provided the key to modern ideas of ethics and the development of political economy.<sup>35</sup> He did, however, admire Grotius, and to a lesser extent Pufendorf. Of those thinkers who contributed to the 'science of mind', broadly conceived, in the first half of the seventeenth century, most relied upon authority rather than argument. Grotius, despite his deference to classical, Christian and medieval sources, was in Stewart's view able to think for himself. For Stewart, Grotius seemed to be the first to have brought the world a system of principles meant to permeate and provide the foundation of all laws of nations. If this was his intention, Stewart retorted, 'it will not be disputed that he executed his design in a very desultory manner'.<sup>36</sup> Pufendorf, however, possessed little by way of 'merit in point of originality, being a sort of medley of the doctrines of Grotius, with some opinions of Hobbes'.<sup>37</sup> He acknowledged that Pufendorf was more widely read and admirably concise, despite his inferiority. He acknowledged Hobbes's importance as a philosopher of sovereignty, and his notoriety as an enemy of religion, but about his natural jurisprudence Stewart was silent. Stewart made the observation, which is common in early histories of ethics and philosophy, that Hobbes's ethical principles were so interwoven with his political system that all that may be said about the one may be said about the other.<sup>38</sup> He was dismissive of Descartes's praise for Hobbes as a moral philosopher, commenting that it simply reflected the very low condition of ethical science in France in the middle of the seventeenth century.<sup>39</sup> Hobbes's most original work, he suggested, was in his writings on human nature.

<sup>33</sup> Jeremy Bentham, *Introduction to The Principles of Morals and Legislation* (Whitefish, MT, 2005, first published in 1781), 329.

<sup>34</sup> Dugald Stewart, *Dissertation First: A General View of the Progress of Metaphysical, Ethical and Political Philosophy, Since The Revival of Letters* (Whitefish, MT, 2009, first published in 1824), 85.

<sup>35</sup> Stewart, *Progress of Metaphysical, Ethical and Political Philosophy*, 84–85.

<sup>36</sup> Stewart, *Progress of Metaphysical, Ethical and Political Philosophy*, 91.

<sup>37</sup> Stewart, *Progress of Metaphysical, Ethical and Political Philosophy*, 85.

<sup>38</sup> W. E. H. Lecky, for example, is typical in portraying Hobbes as a nascent utilitarian. Hobbes, he claims, equates the origin of virtue with self-interest. In deliberating what should be done, a man asks himself only whether it is more advantageous for him to do a certain something or not to do it. Hobbes's opinions on the origins of virtue, Lecky suggests, have been taken up with little variation by 'the narrow school of Utilitarians'. In our natural condition what one man regards as good is no better than what another thinks good. In the natural condition there is no morality. It is to the advantage of each to be subject to constraints in order to minimise conflict and maximise life expectancy and commodious living. Lecky argues: 'According to Hobbes, the disposition of man is so anarchical, and the importance of restraining it so transcendent, that absolute government alone is good; the commands of the sovereign are supreme, and must therefore constitute the law of morals'; see W. E. H. Lecky, *History of European Morals from Augustus to Charlemagne* (London, 1913, first published in 1869), 7, 11.

<sup>39</sup> Stewart, *Progress of Metaphysical, Ethical and Political Philosophy*, 40–43.

Stewart was rather eccentric in his judgements on the classic jurists. Henry Hallam, for example, is more consistent with Blakey. Hallam's four-volume *Introduction to the Literature of Europe* in the fifteenth, sixteenth and seventeenth centuries includes chapters on the political literature of Europe.<sup>40</sup> Hallam discusses Hobbes across eleven pages<sup>41</sup> and Pufendorf across thirteen, but Grotius gets a generous forty-six pages, on the grounds that he is the acknowledged master of all who study international right.<sup>42</sup> In addition, Hallam takes seriously the contribution of jurisprudence generally to European literature. He is astounded that so eminent a commentator as Dugald Stewart should talk 'in terms of unmingled depreciation', about the writers on the law of nature and nations, having read very little of their works. Hallam contends that Stewart had paid little attention to the detail of Grotius's argument and 'displays a similar ignorance as to the other writers on natural law, who for more than a century afterwards, as he admits himself, exercised a great influence over the studies of Europe'.<sup>43</sup> He regrets Stewart's 'scornful ridicule' and contends that none of his claims stand scrutiny.

To give just one instance, Stewart is wrong, for example, about the aim of Grotius's *The Laws of War and Peace*: it does not purport to be a complete system of natural law, but instead systematises what was a body of 'incoherent and arbitrary notions invoking a multitude of sources'.<sup>44</sup> If Grotius did not completely disentangle himself from the complexities and ambiguities, he did nevertheless clear the path for others to travel.

Hallam discusses, for example, the law of nations as it emerged in the writings of Vitoria, Ayala and Gentili, and reflects that it was in the second half of the sixteenth century that we see the foundations being 'laid for the great science of international law, the determining authority in questions of right between independent states'.<sup>45</sup> Vitoria, for him, provides the transition from medieval theology to modern jurisprudence: 'The whole reflection, as well as that on the Indians, displays an intrepid spirit of justice and humanity, which seems to have been rather a general characteristic of the Spanish theologians'.<sup>46</sup> Moreover, Hallam was of the view that Grotius had fallen into neglect because of unjustified criticism by those ignorant of his works. *The Laws of War and Peace* contained much more of original thought than Montesquieu or Adam Smith, and indeed, '[n]o one had before gone to the foundations of international law so as to raise a complete and consistent superstructure'.<sup>47</sup> Hobbes, however, is not treated as a contributor to international thought, but as a brilliant if misguided creator of the 'monstrous Leviathan' and 'after sacrificing all right at the altar of power, denies to the Omnipotent the prerogative of dictating the laws of his own worship'.<sup>48</sup>

The high opinion in which Blakey and Hallam held the theorists of international relations and natural jurisprudence persisted in later histories of political thought. In the United States (US), for example, W. A. Dunning's *A History of Political Theories from Luther to Montesquieu* devotes a chapter each to Grotius and Hobbes, but also discusses

<sup>40</sup> Henry Hallam, *Introduction to the Literature of Europe in the Fifteenth, Sixteenth, and Seventeenth Centuries*, second edition, 3 vols (first published in 4 vols) (London, 1843).

<sup>41</sup> Hallam, *Introduction to the Literature of Europe*, II, 528–39.

<sup>42</sup> Hallam, *Introduction to the Literature of Europe*, II, 541–86.

<sup>43</sup> Hallam, *Introduction to the Literature of Europe*, II, 586.

<sup>44</sup> Hallam, *Introduction to the Literature of Europe*, II, 580.

<sup>45</sup> Hallam, *Introduction to the Literature of Europe*, II, 76.

<sup>46</sup> Hallam, *Introduction to the Literature of Europe*, II, 78.

<sup>47</sup> Hallam, *Introduction to the Literature of Europe*, II, 543.

<sup>48</sup> Hallam, *Introduction to the Literature of Europe*, II, 540. This is also the view of Blakey, who quotes from this passage in Hallam; see Blakey, *History of Political Literature*, 143.

in some detail the Spanish Jurists and moralists, including Suarez. In Dunning's view, it was in the hands of the Spanish jurists that the law of nations took on the modern aspect that was to be developed and made influential by the work of Grotius. In their work the issues of justice and expediency were brought to the fore by reflecting upon European encounters with new peoples and lands.<sup>49</sup> To Grotius, Dunning suggests, has rightly been attributed the foundation of the science of international law, 'in which is to be found the perfect fruit of the doctrine of the law of nature'.<sup>50</sup> Pufendorf's importance lies in the influence he had on his own and the succeeding generation in conciliating the opposing views of Grotius and Hobbes which he 'criticises, selects, rejects and modifies with great energy and acuteness'.<sup>51</sup>

During the emergence of the history of political thought as a discipline commentators simply did not exclude the international because of a bias for the domestic as later historians came to do. They did, nevertheless, make the distinction and tended to consider authors as theorists of either the domestic or the international. Grotius is universally accepted as laying the foundations for international thought, whereas Hobbes is considered exclusively in terms of his ethical and political theories—a hedonist, mechanist and absolutist grounding authority in force rather than will. As Dunning contends:

Right is still but might, and the power of the sovereign to take away the life or the property of the subject is not affected by the fact that such power has not been announced in any formal law [...] for justice is but the keeping of covenants, and there is no covenant between sovereign and subject.<sup>52</sup>

So far I have examined what the early historians of political and international thought considered the contribution of Hobbes and the classic jurists to understanding the external relations of states. Neither group considered Hobbes particularly important. For them, the international jurists provided the foundations of international thought. Grotius was of particular significance as a systematiser, while Pufendorf was also extremely important. Those who followed, such as Wolff and Vattel were of less significance. What is missing here, and which is fundamental, is how the classic jurists read those thinkers who are conventionally designated political theorists, and how this may provide different insights and avenues into their thought.

#### 4. Reading Hobbes Through the Eyes of International Jurists

In this third body of literature, that of the international jurists, Hobbes does have a place as a foundational figure in the history of international thought. Modern historians of political thought and political theorists have largely ignored the contribution of the classic jurists to political thinking, and especially the element of their work which developed aspects of the thought of more established thinkers in the canon in directions different from those that tended to preoccupy political theorists, such as obligation, sovereignty, justice, and democracy. Ignoring the juridical contribution has reinforced the petrification of the canon in political thought, and restricted the range of thinkers 'recognised' as worthy of consideration.

<sup>49</sup> W. A. Dunning, *A History of Political Theories from Luther to Montesquieu* (London, 1905), 133.

<sup>50</sup> Dunning, *History of Political Theories*, 153.

<sup>51</sup> Dunning, *History of Political Theories*, 318.

<sup>52</sup> Dunning, *History of Political Theories*, 287.

This may be illustrated with reference to the doyen of modern political theory, John Rawls, who purports to have learned much from R. G. Collingwood's sensitivity to reading past texts. Rawls nevertheless suggests that there are certain questions of enduring importance: 'What is the nature of a legitimate political regime? What are the grounds and limits of political obligation? What is the basis of rights, if any? And the like'.<sup>53</sup> Hence Hobbes, Locke, Hume, Rousseau, Mill and Marx are the principal thinkers who populate his landscape of political thought when viewed from this perspective. When Rawls turns his attention to international relations the tyranny of the present ossification of the canon constrains him in his terms of reference. His inspiration comes from Rousseau's endeavour to unite what right permits with what interest prescribes, and Kant's idea of a pacific confederation,<sup>54</sup> and not, for example, from Grotius's idea of natural sociability or Wolff's *civitas maximus*, as the foundation of the law of nations.

There are, of course, many readings of Hobbes, not least of which were the responses of his contemporaries to the perceived threat to religion and the state.<sup>55</sup> Looking at Hobbes through the lens of a different context, and one more pertinent to international relations theorists, is the response of commentators on the natural law and law of nations. Among the professors of natural law and the law of nations Hobbes was taken seriously because the vision of the world he presented was at odds with their own, but more importantly because he also intimated conceptual advances that were prescient of a more satisfactory resolution to fundamental problems.

What attracted the attention of the jurists was not primarily his characterisation of human nature, nor of the state of nature, nor indeed his justification of absolutism, all of which were deemed gross exaggerations, but instead his personification of the state as an artificial man and his argument that the natural law could be divided into two species—that which is applicable to the individual and that which pertains to the commonwealth or state. The injunctions of both the laws of nature and of nations, for Hobbes, were the same.

Let me take the latter first. One of the most perplexing issues for writers on natural jurisprudence was how to distinguish between natural law and the law of nations. There was in the view of most jurists a significant overlap, but there were also areas of the law of nations that were permissive, or secondary, and which were not directly derivative from natural law. This, for example, was the position adopted by such jurists as Suarez and Grotius. Hobbes made the controversial move of completely identifying natural law and the law of nations. For him, they differed only in their subject matter.

It is not surprising that *De Cive* (1642), revised and with notes and preface added in 1647, and translated from Latin into English in 1651, and *Leviathan*, written 1649–1651, are concerned not only with civil war, but also war between states.<sup>56</sup> Civil and international war, after all, provide the context in which they were written. Hobbes had

<sup>53</sup> John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA, 2007), 103.

<sup>54</sup> Rawls, *Lectures on the History of Political Philosophy*, 10, 13, 21, 54. See also David Boucher, 'Uniting What Right Permits with What Interest Prescribes: Rawls's Law of Peoples in Context', in *Rawls's Law of Peoples: A Realistic Utopia?*, edited by Rex Martin and David A. Reidy (Oxford, 2006), 19–37.

<sup>55</sup> See, for example, John Bowle, *Hobbes and His Critics: A Study in Seventeenth-Century Constitutionalism* (London, 1951). See also the collected essays on Hobbes by Quentin Skinner, *Visions of Politics*, 3 vols (Cambridge, 2002), III; Noel Malcolm, *Aspects of Hobbes* (Oxford, 2002). The most important study is Jon Parkin, *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England 1640–1700* (Cambridge, 2007).

<sup>56</sup> Thomas Hobbes, *Man and Citizen*, edited by Bernard Gert (London, 1978); Thomas Hobbes, *Leviathan*, edited by Richard Tuck (Cambridge, 1991).

comparatively little to say, however, about international relations in the formal sense, and what he did say was scattered and unsystematic, as the early histories of political and international thought maintained and as Armitage reiterates.<sup>57</sup>

What this view underplays, however, is the extent to which Hobbes's state of nature—our nearest analogy to relations among states—is not populated by isolated individuals for very long, but by communities comprising auxiliaries in war, led by heads of families, and regulated by the rights and laws of nature. Relations in the state of nature are quickly transformed from one-to-one encounters between equal individuals. The need to provide security naturally inclines individuals towards accumulating power, and such accumulations engender fear, envy, and the creation of other grounds for security and gain.<sup>58</sup> It is the first fundamental law of nature that we should, by force or agreement, establish security communities. We are at liberty to take all steps necessary to 'seek, and use, all helps, and advantages of Warre'.<sup>59</sup> Hobbes contends:

For this matter nothing else can be imagined, but that each man provide himself of such meet helps, as the invasion of one on the other may be rendered so dangerous, as either of them may think it better to refrain than to meddle.<sup>60</sup>

Hobbes is clear that it is an impossibility for individuals, unattached to groups, to survive in the state of nature. To subdue others in the state of nature and make them one's servants—they remain slaves until they consent—is what Leo Strauss calls the 'natural State', that is, despotic rule over others.<sup>61</sup>

In the historical examples Hobbes uses to substantiate his characterisation of the state of nature he invokes patriarchal authority, as Filmer perceptively pointed out, as the foundation of group cohesiveness.<sup>62</sup> The bonds are strengthened by procreation; conquests; individuals joining for protection, or being enticed to join because of their skills; or, by the agreement of a number of heads of households.

All nations, Hobbes acknowledges, originally comprised numerous families over which there were lords or masters.<sup>63</sup> In Hobbes's view, a family is a city. When it has grown numerous by the multiplication of children, the conquest of persons who become its servants, and by voluntary subscription to its laws by those 'furnished with Arts necessary for Mans life' in return for protection,<sup>64</sup> such a city cannot be put under the power of another 'without casting the uncertain die of war'.<sup>65</sup>

His use of historical examples illustrates that warring groups, rather than warring individuals, constituted the norm, and that the hostility was mitigated by the emergence

<sup>57</sup> Armitage, *Foundations of Modern International Thought*, 59: 'The relative silence of Hobbes and of his philosophical commentators on this matter [the external relations of Leviathan] contrasts starkly with his canonical position among the founding fathers of international thought'. As we have seen, however, he did not have this status among historians of international thought, nor among historians of political thought.

<sup>58</sup> Hobbes, *Leviathan*, 87–88.

<sup>59</sup> Hobbes, *Leviathan*, 92. Confer Thomas Hobbes, *The Elements of Law, Natural and Politic* (Oxford: Oxford University Press, 1994), 74; Thomas Hobbes, *De Cive*, in *Man and Citizen*, 123.

<sup>60</sup> Hobbes, *De Cive*, in *Man and Citizen*, 166–67.

<sup>61</sup> Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Genesis* (Chicago, IL, 1963), 22.

<sup>62</sup> Sir Robert Filmer, *Observations Concerning the Originall of Government, upon Mr Hobs 'Leviathan', Mr Milton against Salmasius, H. Grotius 'De Jure Belli' in Patriacha and Other Writings*, edited by Jóhann P. Sommerville (Cambridge, 1991), 184–234.

<sup>63</sup> Hobbes, *Leviathan*, 67–68.

<sup>64</sup> Hobbes, *A Dialogue Between a Philosopher and A Student of The Common Laws of England*, edited by Joseph Cropsey (Chicago, IL, 1971), 159.

<sup>65</sup> Hobbes, *De Cive*, in *Man and Citizen*, 217.

and development of constraints, consistent with natural law, upon the actions of groups in their relations with others.<sup>66</sup> Hobbes gives no special designation for the law which governs these groups of auxiliaries of war, usually comprising families headed by a patriarch, or collections of families instituted by consent, or conquest. Patriarchy, as Leo Strauss observes, is construed by Hobbes entirely in accordance with the model of despotic rule, and in this respect despotic rule is the 'natural State', and these States are in relations with each other in a state of nature, just as the 'artificial States' are after commonwealths are instituted.<sup>67</sup>

It is from his characterisation of inter-community relations in the state of nature that he extrapolates the view expressed in most of his political writings, that no lasting peace may be anticipated between nations 'because there is no Common Power in this World to punish injustice: mutual fear may keep them apart for a time, but upon every visible advantage they will invade one another'.<sup>68</sup>

For Hobbes the law of nations is simply the law of nature applied to commonwealths or states. This was a view he held consistently from his first full philosophical work, *Elements of Law Natural and Politic*, in 1640: 'For that which is the law of nature between man and man before the constitution of a commonwealth, is the law of nations between sovereign and sovereign, after'.<sup>69</sup> He admits the difference in name but not in kind. As far as Hobbes is concerned 'the precepts of both are alike' and the 'same elements of natural law and right [...] being transferred to whole cities and nations may be taken for the elements of the laws and right of nations'.<sup>70</sup> It was this identification of the law of nature with the law of nations and his conceptual moves to make nations subject to the latter law that made Hobbes a significant figure in international thought in the eyes of the jurists who interpreted him.<sup>71</sup>

Pufendorf and his follower Burlamaqui was of the same mind as Hobbes on this issue. For them the natural law and the law of nations are the same.<sup>72</sup> All three authors reject the idea that what is called the voluntary law of nations has the legal force and ordinance of a superior power, and therefore it is not obligatory. In his notes to Pufendorf, Jean Barbeyrac contends that both nations and men are naturally equal, the implication of which is that none has the authority to impose a law on another, much less can they collectively impose laws on themselves. By consenting to certain constraints in the absence of a superior there is a difference to be observed between agreement and law. An agreement among nations 'would not produce a particular Law distinct from the Natural, but it must be referred to that general Law of Nature which obliges us to keep all Covenants'.<sup>73</sup> Burlamaqui agrees. For him, 'the law of nations is of equal authority with the law of nature itself, of which it constitutes a part, and [...] they are equally as sacred and venerable, since both have the Deity for their author'.<sup>74</sup>

<sup>66</sup> See Boucher, *Political Theories of International Relations*, chapter 7.

<sup>67</sup> Strauss, *Political Philosophy of Hobbes*, 22.

<sup>68</sup> Hobbes, *Dialogue Between a Philosopher and a Student*, 57.

<sup>69</sup> Hobbes, *Elements of Law*, 190.

<sup>70</sup> Hobbes, *Man and Citizen*, 275. Compare Hobbes, *Leviathan*, 244.

<sup>71</sup> I draw upon some of the examples used in Camilla Boisen and David Boucher, 'Hobbes and the Subjection of International Relations to Law and Morality', in *International Political Theory After Hobbes*, edited by Raia Prokhovnik and Gabriella Slomp (London, 2011), 81–101.

<sup>72</sup> Samuel von Pufendorf, *The Law of Nature and of Nations*, translated by Basil Kennet (London, 1717), book II, chapter III, section xxiii; Jean Jacques Burlamaqui, *The Principles of Natural Law and Politic Law*, edited by Petter Korkman (Indianapolis, IN, 2006), 273.

<sup>73</sup> Barbayerac, in Pufendorf, *Law of Nature and Nations*, 150, note 2.

<sup>74</sup> Burlamaqui, *Principles of Natural Law*, 273–74.

Hobbes differed from Pufendorf and Burlamaqui over whether natural law, and hence the law of nations, had a sovereign capable of enforcing it. For Hobbes it did not (except for the faithful who put their trust in God), but for Pufendorf and Burlamaqui it did. All three rejected the very idea of a positive law of nations that differed from natural law.

For Pufendorf natural law is law that is consistent with the nature of man and may accurately be described as a ‘dictate of right reason’. Our existence as human beings depends upon it, but the fact that it is a dictate of reason is not in itself a ground for obedience.<sup>75</sup> Reason is not able to judge the morality of any particular act without reference to law.<sup>76</sup> To have the force of law to which one is obligated presupposes its imposition by a superior.<sup>77</sup> In order for natural laws, and indeed the natural law of nations, to have force and authority it is a requirement that we presuppose ‘that there is a GOD, and that his Wise Provenance oversees and governs the whole World’.<sup>78</sup> Pufendorf concludes ‘that the Obligation of natural Law proceeds from God himself, the Great Creator and Governor of Mankind; who by virtue of his Sovereignty hath bound Men to the Observation of it’.<sup>79</sup> Pufendorf invokes Cicero’s authority to endorse the view that God is the universal King who enacts the law of nature:

Tis He who is the Inventor, the Expounder, the Enacter of this Law; which whosoever shall refuse to obey, shall fly and loath his Person, and renounce his Title to Humanity; and shall thus undergo the severest Penalties, though he escape everything else which falls under our common Name and Notion of Punishment.<sup>80</sup>

Burlamaqui agrees with Pufendorf in arguing that God gives us the laws necessary to perfect our natures. God is a superior who has given to us everything we have, and is invested with all the qualities required for ‘absolute sovereignty’ over us, and upon which we are ‘unlimited’ in our dependence.<sup>81</sup> Hence for Pufendorf and Burlamaqui natural law is equally as morally obligatory as positive law.

In contrast with Grotius, neither Hobbes, nor Pufendorf nor Burlamaqui, believed that customary international law is enough to command obligation. Customs are complied with not because the law of nations obliges conformity, but instead due to the mere consent of people. Customs appear to be observed by tacit or implied agreement, and this impression is given especially in warfare, which is the origin of ‘customary law’ among nations. On the contrary, Pufendorf contends, the interest and security of nations lay not in customs but in ‘the observance of the law of nature’ which is ‘a much more sacred support’.<sup>82</sup> If the laws of nature are complied with and remain robust, mankind, in Pufendorf’s view, has no need for a law of nations. Burlamaqui contends that tacit consent and custom do not create obligations among states which conform to the customary practices, let alone those which do not. Received usages between nations may give rise to

<sup>75</sup> Samuel von Pufendorf, *The Elements of Universal Jurisprudence*, translated by W. A. Oldfather (Oxford, 1931, first published in 1685), DEF XIII, 14; Pufendorf, *On The Duty of Man and Citizen*, book I, section 16; Pufendorf, *Law of Nature and Nations*, book II, chapter III, section xiii.

<sup>76</sup> Pufendorf, *Law of Nature and Nations*, book I, chapter II, section xi.

<sup>77</sup> The dictates of reason alone are not sufficient to oblige: ‘For to give those dictates of Reason the Force and Authority of Laws, there is need of proceeding on some other Principle, than what he [Hobbes] lays down’; see Pufendorf, *Law of Nature and Nations*, book II, chapter III, section xvi.

<sup>78</sup> Pufendorf, *Law of Nature and Nations*, book II, chapter III, section xix.

<sup>79</sup> Pufendorf, *Law of Nature and Nations*, book II, chapter III, section xx.

<sup>80</sup> Pufendorf, *Law of Nature and Nations*, book II, chapter III, section xx.

<sup>81</sup> Burlamaqui, *Principles of Natural Law*, 131.

<sup>82</sup> Pufendorf, *Law of Nature and Nations*, book II, chapter III, section xxiii.

expectations of submitting to usage, but only until such time that a state declares it no longer intends to do so.<sup>83</sup>

Armitage suggests that Richard Zouche, in 1650, may have been the first legal theorist to deny Hobbes's conflation of the two laws.<sup>84</sup> It was, however, Samuel Rachel who made the most sustained attack when in 1676 he published *Dissertations on the Law of Nature and Nations*.<sup>85</sup> Rachel violently opposes Hobbes's identification of the law of nature with the law of nations. Whereas for Grotius there is an overlap of the necessary and voluntary law of nations, with the latter evidentially based upon the a-posteriori method which recognises custom as a source of law, Hobbes and Pufendorf had denied outright that customary law or explicit agreement without the authority of a superior could have the binding force of law. In opposition to all three Rachel makes a clear distinction between the law of nature and the *jus arbitrarium*, which for him is based upon agreement or custom.<sup>86</sup> The law of nations is part of the *jus arbitrarium*. Custom is, for Rachel, implied agreement. It was commonplace among jurists to acknowledge the important place of custom in developing the voluntary law of nations. They acknowledged that part of the law of nations was independent of the law of nature.<sup>87</sup> Rachel completely separated both. The law of nations need not be concluded among all nations, and may indeed emanate only from those that are civilised and which recognise a definite rule. This *jus gentium commune* is supplemented by *jus gentium proprium* which binds individual states that have concluded agreements with each other.<sup>88</sup>

Rachel concedes that natural or divine law takes precedence over the law of nations and that the latter can have no obligatory force if it is repugnant to the former.<sup>89</sup> He takes Hobbes as the exemplar, and Pufendorf as a prominent follower, of those who argue that no voluntary law between nations, *jus gentium commune* or *jus gentium proprium*, may have obligatory binding force. Rachel agrees with both Hobbes and Pufendorf that the voluntary law of nations does not emanate from a superior, but disagrees with their inference that it has no obligatory force. Rachel contends that just as the natural law cannot be determinate of every situation to which it may be applicable and therefore concedes to legislators the power to create law in order to fill in the gaps not covered by natural law, the natural law also concedes that rulers may legislate 'for themselves mutually by means of such pacts as are not opposed to the Law of Nature or the Civil Laws, and of binding themselves thereby'.<sup>90</sup> Put simply, rulers are permitted to enter into pacts which obligate them as long as the provisions agreed are not contrary to natural law. Just as it is the case that within the state individuals may have recourse to a judicial authority if an individual breaks an agreement, so too does a nation rightfully have recourse to war in the case of broken agreements and 'will have on its side not only the other Nations who are heedful of justice, but also God Himself, the supreme umpire and arbiter of good faith'.<sup>91</sup> Ultimately the obligation to keep faith with the arbitrary law is based on natural law: 'Obedience must be rendered to the Civil Majesty, and to

<sup>83</sup> Burlamaqui, *Principles of Natural Law*, 274.

<sup>84</sup> Armitage, *Foundations of Modern International Thought*, 68. Zouche was the Royalist Professor of Civil Law at Oxford.

<sup>85</sup> Samuel Rachel, *Dissertations on The Law of Nature and of Nations* (Washington, DC, 1916).

<sup>86</sup> Rachel, *Dissertations on The Law of Nature and of Nations*, sections vi and xiii.

<sup>87</sup> Boucher, *The Limits of Ethics*, chapter 3.

<sup>88</sup> Rachel, *Dissertations on The Law of Nature and of Nations*, section xxxiii.

<sup>89</sup> Rachel, *Dissertations on The Law of Nature and of Nations*, section lxxxix.

<sup>90</sup> Rachel, *Dissertations on The Law of Nature and of Nations*, section xci.

<sup>91</sup> Rachel, *Dissertations on The Law of Nature and of Nations*, section xci.

law-givers issuing just and regular enactments; Good Faith must be observed'.<sup>92</sup> Two of the most widely read textbooks on international law in the nineteenth century attribute considerable importance to Rachel for opposing the identification of the law of nature and the law of nations. Wheaton and Woolsey, neither of them positivists, regard Rachel as remarkable for so vigorously opposing the view of Pufendorf (and of Hobbes) and generating a debate over the distinction among two groups of German jurists, one supporting Rachel and led by J. W. Textor (1637–1701), professor of law at Altorf and then Heidelberg, the other following Pufendorf and led by Christian Thomasius (1655–1728).<sup>93</sup>

Hobbes does not figure very prominently in Vattel's work, but he does acknowledge that in Hobbes we discover the 'hand of a master, notwithstanding his paradoxes and detestable maxims'.<sup>94</sup> In Vattel's view Hobbes is important because he was one of the first philosophers who had a distinct idea of the law of nations, albeit flawed. He decries both Hobbes and Pufendorf for thinking that the law of nature remains unchanged when applied to states.<sup>95</sup> Vattel's inspiration comes both from his own mentor Christian Wolff, and from Jean Barbeyrac, the translator of Grotius and Pufendorf. Vattel contends that at least Barbeyrac could see that in the application of the law of nature to nations some modifications were required. The difference between the two, for Barbeyrac, consists in the manner of application occasioned by the different ways to settle disputes adopted by communities.<sup>96</sup> The implications of a separate natural law of nations obligatory to states and sovereigns was a route that Barbeyrac avoided.<sup>97</sup>

We see, then, that Hobbes's identification of the law of nature with the law of nations was a conceptual move that reverberated throughout the discussions of international jurists.

It was Hobbes's, and not Pufendorf's or Barbeyrac's, conception that proved to be influential because it could easily be divested of any residue that relied upon God as the author and sovereign of international law. What Bentham and his disciple Austin did was to emphasise that all law required a sovereign, just as Hobbes had done, and in effect made explicit what was implicit in Hobbes, namely, that international law is no law at all, or at least not in any conventional sense. Austin, for example, contends that international law, the result of general opinion, 'is not a law in the proper signification of the term', because it has no determinate sanction and 'does not impose a duty, in the proper acceptation of the expression'.<sup>98</sup>

It was Austin's and similar views that prevailed. By the turn of the century only a very small minority of international lawyers subscribed to the idea of natural law having

<sup>92</sup> Rachel, *Dissertations on The Law of Nature and of Nations*, section cvii.

<sup>93</sup> Henry Wheaton, *Elements of International Law with a Sketch of the History of the Science*, 2 vols (London, 1836), I, 38–39, 103; of the Jurists which Wheaton cites as contributors to, or sources, of international law, Grotius and Vattel are by far the most relied upon. Theodore Woolsey, *Introduction to the Study of International Law: Designed as an Aid in Teaching, and Historical Studies*, third edition (New York, NY, 1871, first published in 1860), appendix I, 363; Woolsey talks of Pufendorf and not Hobbes in this regard.

<sup>94</sup> Emer de Vattel, *The Law of Nations*, edited by Béla Kapossy and Richard Whatmore (Indianapolis, IN, 2008), 9.

<sup>95</sup> Vattel, *Law of Nations*, 9.

<sup>96</sup> Jean Barbeyrac in Hugo Grotius, *The Rights of War and Peace*, edited by Richard Tuck from the Jean Barbeyrac edition (Indianapolis, IN, 2005), book I, chapter I, section xiv, note 3.

<sup>97</sup> Vattel, *Law of Nations*, 10.

<sup>98</sup> Austin, *Province of Jurisprudence Determined*, 143.

anything at all to do with international law, and by 1925 such lawyers were regarded as eccentric.<sup>99</sup> In that year P. E. Corbett remarks: 'the general view of international law which has, for all practical purposes, definitely prevailed is that of the positivists'.<sup>100</sup>

Modern international relations theorists from Martin Wight onwards have focused upon Hobbes as primarily a theorist of domestic politics, the implications of which for the international realm is a realist stance vis-à-vis other states, with anarchy characterising the external environment in which they operate.<sup>101</sup> Starting from the contemporary dominant understanding of Hobbes as a theorist of Absolutism and Sovereignty, his contribution to the development of international law is entirely lost, and instead he is the theorist of an amoral international system to which justice and injustice are strangers. Even those who contest the Realist vision of Hobbes are nevertheless accepting the terms of reference of the debate.<sup>102</sup>

### 5. The Person of the State and the Law of Nations

Hobbes was also important to international jurists for another reason. In order to establish the efficacy of the equation of the law of nature and the law of nations, which differ only in the subjects they regulate, it is necessary that individuals and states somehow be equated. This entails attributing a character to states similar to that of the moral individual. Hobbes's strategy was to portray the state as an artificial or feigned person. He understood a person in two ways. First it refers to a person who performs his own actions or words, in this respect he is a 'natural' person. The second understanding is that of representing someone else, in which case he is a 'Feigned or Artificiall person'.<sup>103</sup> The sovereign is for Hobbes an artificial person who can be 'carried' by one or more natural persons. When such individuals are in character as sovereign, they exercise their will on behalf of the people who have authorised the sovereign to personate them. The sovereign essentially represents the people, making it a unity. Hobbes contends:

A Multitude of men, are made One Person, when they are by one man, or one Person, Represented. [...] For it is the Unity of the Representer, not the Unity of the Represented, that maketh the Person One.<sup>104</sup>

The idea of an artificial person composed of numerous persons as a means of getting around the problem of subjecting states to the laws of nature, was for many theorists an alluring image.

Hobbes's conceptual move to make the state subject to the law of nations intrigued Pufendorf. Hobbes's metaphor of an artificial man did not, however, go far enough in

<sup>99</sup> Among them Sir Sherston Baker, *First Steps in International Law: Prepared for the Use of Students* (Boston, MA, 1899); see section 8, where he argues that customs which are unjust and in contravention of natural and Divine law have no binding force. That is not to say that such rules possess no validity within a system of rules.

<sup>100</sup> P. E. Corbett, 'The Consent of States and the Sources of the Law of Nations', *British Yearbook of International Law*, 6 (1925), 20–30 (21).

<sup>101</sup> See, for example, Martin Wight, *International Theory: The Three Traditions* (London, 2002, first published in 1991). The realist tradition is exemplified by Machiavelli and Hobbes, the Grotian by Hugo Grotius, and the Revolutionary by Kant. In the posthumously published *International Theory*, Hedley Bull's own characterisation of the traditions precedes Wight's text. For a critique and alternative characterisation, see Boucher, *Political Theories of International Relations*.

<sup>102</sup> Walker, *Inside/Outside*.

<sup>103</sup> Hobbes, *Leviathan*, 111–12. See also Quentin Skinner, 'Hobbes and the Purely Artificial Person of the State', in *Visions of Politics*, III, 177–208.

<sup>104</sup> Hobbes, *Leviathan*, 114. Confer Hobbes, *Leviathan*, 284–85.

characterising the state as a personality in its own right. Pufendorf went further and described the state as a juristic moral person, and hence made it subject to the law of nature. Pufendorf was not here conceiving the moral person of the state in terms of a *universitas*, or corporation, which may have conferred upon it a legal or fictitious personality. In this respect the corporation could possess proprietary rights, but was not deemed to have a will, intentions, or cognitive capacities. In addition, a fictitious personality invoked the correlative idea of a higher legal authority to create it.<sup>105</sup> The difficulties of applying the concept of *universitas* to the state were to some extent evaded by understanding the state as a moral person with a will and personality independent of those that comprise it.<sup>106</sup>

Pufendorf goes further than Hobbes in distancing the private person of the ruler, who exercises the state's authority, from the public person of the state with its own individuality and moral personality distinct from the people who make it up. This, for Pufendorf and Burlamaqui, is not a fictitious legal entity, but a real autonomous moral person with the capacity to will, deliberate and pursue purposes.<sup>107</sup> Burlamaqui contended that as soon as states are instituted they acquire 'personal properties' which allow us to attribute the same rights and obligations to them as we would to individuals in civil society.<sup>108</sup> In sum, Pufendorf and Burlamaqui agreed with Hobbes in identifying the law of nature with the law of nations. They differed from him on the question of natural law having the same character as human positive law, namely a supreme sovereign to enforce it. Similarly they agreed with Hobbes that men in their relations with each other, and nations in relation to each other, are naturally equal. They differed on the questions of the natural condition. It was not for Pufendorf and Burlamaqui an amoral condition in which the natural predicament was a condition of war. It was, for them, a state of peace.

The successors of Pufendorf and Burlamaqui, such as Wolff, Vattel, and Mackintosh, extended the idea of the moral person of the state so that it designated states as the moral subjects, not of the law of nature but of the positive law of nations.<sup>109</sup> Wolff conceives his moral person of the state very differently from the natural person of the individual. He contends that states are themselves corporate moral persons with rights and duties different from those of individual persons, and as the creation of the individuals who comprise them they exercise on behalf of their citizens the duties that those individuals have to mankind as whole.<sup>110</sup> Vattel more than anyone else expressly established the law of nations solely as the law between sovereign states. This strong emphasis upon the sovereign integrity of the state places it, and not individuals, at the centre of international law. In this sense the state became the subject of rights and duties and displaced the individual completely from the system of international law. Vattel, following Wolff, defines the nation or state as a body politic which has 'her affairs and her interests; she

<sup>105</sup> See Ernest Barker, 'Introduction', in John Locke, David Hume, and Jean-Jacques Rousseau, *Social Contract: Essays by Locke, Hume, and Rousseau* (Oxford, 1961), viii–xliv; Otto Gierke, *Natural Law and the Theory of Society 1500–1800*, translated by Ernest Barker (Cambridge, 1934); J. W. Gough, *The Social Contract* (Oxford, 1957), 43–48; Michael Oakeshott, *On Human Conduct* (Oxford, 1975), essay III.

<sup>106</sup> Peter Pavel Remec, *The Position of the Individual in International Law according to Grotius and Vattel* (The Hague, 1960).

<sup>107</sup> Morality is not, for Pufendorf, a property of physical objects or motions, but an imposition of value by intelligence or reason upon them; see Boucher, *Political Theories of International Relations*, chapter 10.

<sup>108</sup> Burlamaqui, *Principles of Natural Law*, 272.

<sup>109</sup> Remec, *The Position of the Individual in Natural Law*.

<sup>110</sup> Christian Wolff, *The Law of Nations Treated according to Scientific Method in which the Natural Law of Nations is Carefully Distinguished from that which is Voluntary, Stipulative and Customary*, translated by Joseph H. Drake (Oxford, 1934), Prolegomena, section 3.

deliberates and takes resolutions in common; thus becoming a moral person, who possesses an understanding and will peculiar to herself, and is susceptible of obligations and rights'.<sup>111</sup> Even though Mackintosh is dismissive of Hobbes, he recognises the importance of conceiving the state as a moral person. He argues, for example:

Hence the writers on general jurisprudence have considered states as moral persons; a mode of expression which has been called a fiction of law, but which may be regarded with more propriety as a bold metaphor, used to convey the important truth that nations, though they acknowledge no common superior, and neither can nor ought to be subjected to human punishment, are yet under the same obligations to practise honesty and humanity, which would have bound individuals, if they were not compelled to discharge their duty by the just authority of magistrates, and if they could be conceived even to have ever subsisted without the protecting restraints of government.<sup>112</sup>

The implication is, then, interpreting Hobbes through the medium of international jurists provides us with a different and potentially more interesting perspective than that projected by international relations scholars for the vast majority of whom Hobbes exemplifies realism and the anarchic society of states. Even those for whom Hobbes is much more nuanced do not bring into focus why, for international jurists, and for the development of international law, Hobbes made significant theoretical breakthroughs. Historians of political thought also tend to miss this significance, choosing instead to portray him as a *de facto* theorist of sovereignty; a theorist equating right with might, and authority with power, or more subtly equating authority with will rather than force, and so on. For international jurists, and the theorists of the law of nature and nations, Hobbes's conflation of the two, with his recognition that they nevertheless had different subjects, was prescient. Hobbes's further conceptual breakthrough was that the state must be viewed as an artificial person if it is to be subject to the law of nations in the way that individuals are to the law of nature.

## 6. Conclusion

The elevation of Hobbes to classic status among contemporary international relations theorists was largely the work of Martin Wight and Hedley Bull, who created a convenient fiction, an emblematic character to represent the archetypal realist. His place in international thought as a foundational theorist rests not upon his hard-nosed realism in equating might with right or in his characterising international relations as the nearest analogue to the state of nature, but upon his conflation of natural law with the law of nations and in clearly designating the subject of both. In order to subject sovereigns to the latter he made the ingenious suggestion of seeing the sovereign as an artificial person, the artefact of a contract authorising 'him' to personate them and make decisions on their behalf. This was not simply invoking Roman law in which personality may be conferred on a corporation by a higher authority and which may sue and be sued. No higher authority confers authority on Hobbes's sovereign, and since the sovereign is not party to the contract, it may not do an injustice to the individuals who create it. These were features of his thought which international jurists admired and for which he was praised.

<sup>111</sup> Vattel, *Law of Nations*, Preliminaries, section 2.

<sup>112</sup> Mackintosh, *Discourse on the Study of the Law of Nature and Nations*, 46.

They deplored his characterisation of human nature and the state of nature as a war of all against all. They also abjured his equation of morality with the will of the sovereign. In the putative histories of political thought, and international thought a quite different landscape is painted. They concur with the international jurists in identifying Grotius as a foundational systematiser of international law, but do not recognise Hobbes's claim to foundational status. Hobbes, for them, is the theorist of absolute sovereignty in domestic politics. However, as I have suggested, his reflections on international or inter-community relations were not meagre. The 'normal' state of affairs in the state of nature is that of families, and collections of families, comprising small nations led by patriarchs, constantly vigilant in maintaining external security. The most important lesson is that we must avoid the anachronistic assumption that because international jurists are not at the forefront of the contemporary canon in political theory, they were never of significance for the understanding of politics. Early histories of political thought included discussions of Suarez, Grotius, Pufendorf and others, identifying their importance for the development of international morality. The failure of liberal internationalism, and probably the rise of legal positivism, contributed to the demise of interest in such 'idealist' dreamers as the classic jurists.

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