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CHAPTER ONE

INTRODUCTION

To be master of the sea is an abridgement of a monarchy.
Francis Bacon, “Of the True Greatness of Kingdoms and Estates” (1612)

I.1 Exordium and claim

This Thesis combines an historical examination of secularisation during and after the Reformation with an analysis of its implications for public and international law, seeking to provide a part of the legal historian’s and reformer’s answer to a crucial and seemingly simple question. Why do most post-Cold War conflicts, including interstate warfare and terrorism, have a religious component? The answering hypothesis is equally deceptive in simplicity: Westphalian secularism is neither universal nor rational, but the product of an historical process specific to the West. Conflicts with a religious dimension remain irresolvable partly because Western legal categories are not simply secular, but were designed to be blind to religious legitimacy claims. A recollection of their historical contingency and conceptual and pragmatic specificity is an essential prerequisite to overcoming some of the failures of modern politics. Failure is almost the norm, not the exception, when conflict prevention and resolution, and social integration policies are applied to problems with a religious dimension. Cases in point include armed violence in the Middle East and the Indian subcontinent, or the integration of Muslim immigrants in the West. It is an unusual claim, but I think legal history offers the most promising starting point for the analysis and resolution of this current and pressing problem.

A major, perhaps the chief, obstacle to preventing conflicts with a religious dimension is persistent, but rectifiable ignorance of history. Any attempt at improvement must begin by addressing this underlying failure. Misunderstandings and real-life disasters persist at least partly because ignorance of secularisation’s history has become institutionally embodied and embedded. In the social sciences, presently there is no more important subject to address than the systemic cause of conflict: the forgotten contingency of secularisation.

From the fourth to the seventeenth century, Christian theology underpinned all aspects of thought, from the natural sciences to international law. As the Reformation eroded Catholic doctrinal monopoly, much of Europe’s conceptual edifice thought broke down.
Secularisation is the process whereby Europe’s Weltanschauung was rebuilt without theology. The consequent depth, range and urgency of doubts and debates help to explain the ferocious Wars of Religion, one of the greatest traumas in European history. The solution and settlement required new intellectual foundations. Numerous attempts were made, including the reassertion of doctrinal monopoly, the reduction of Christianity to a widely acceptable minimal set of tenets, the effective replacement of Christianity with alternative metaphysical systems like neoplatonism, Christian Kabbalah, or priscae theologiae variously labeled Egyptian, Orphic, Trojan, Druidic, and so on. A reaffirmation of the old orthodoxy, the victory of a new one, or the co-existence of several exclusivist political theologies, were unsustainable options. With historical hindsight we can see that secularisation, involving the radical disconnection of religion from politics, was the only solution that could have worked.

Colonialism spread secular norms around the world, often with stabilising effect. However, when the historical contingency of secularisation was forgotten, and its norms came to be mistaken for universal ones, conflicts with a religious dimension became irresolveable. The territorially defined sovereignty of states; third-party arbitration under international organisations (including mediation and adjudication between secular and religious claims); the assumption of the sufficiency of constitutional guarantees of religious and gender equality; the expansive judification of human rights; the notion that economic interdependence invariably engenders peace; and authorisation through the represented numerical majority, are examples of legal constructs that can be implemented uncriitically, assuming that they express universal values, or with an historical self-awareness. The latter yields better outcomes, the former is more common.\(^1\) The task of the legal historian and reformer is to explain the value and proper sphere of historical sensibility in improving the ways in which public and international law is made, applied, and revised. This task is fraught with considerable difficulties, the shifting signification of words over time and across languages, and finding valid ways to translate lessons from one context to another, being not the least among them. However, the alternative to trying to clear these high bars is a principled stance on the irrelevance of history to jurisprudence. While defensible, this stance is neither interesting nor mine.

My working hypothesis models secularisation as a cumulative and incomplete historical process, contingent to the West, and often the unintended consequence of limited politiue designs for stability and peace. It is best examined through a double focus, on broad historical advances and intense episodes. On the one hand, secularisation describes a generic set of

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\(^1\) A case of historical sensibility in public law: Mabo 2 (1992). In international law: British White Paper of 1939. While flawed in many ways, these cases show greater historical self-awareness than others.
solutions to the generic problem of ongoing or repeatedly renewed religious-political conflict, including some advances in doctrinal ecumenism and minimalism, and the reprioritisation of natural over divine law. On the other hand, some Italian humanists and neoskeptics, the French ‘New Historians,’ the Leiden Circle, and some seventeenth-century English thinkers represent intense periods when the urgency of secularisation prompted game-changing works with long-term influence. These groups spearheaded efforts to systematically and cumulatively remove religion from politics, while secularisation’s components continued to play out in several broader, diffuse discourses around Europe. The ecumenism and irenicism of those who strove to reunite Christianity, for instance, increasingly turned toward a Christian minimalism that reduced the religion to barely more than a code of ethics, or even mere behaviour. Regardless of the intention and religiosity of the agent, the cost of saving Christianity proved to be its removal from politics. Secularisation arose from irenicism, patriotism, ecumenism, and even the various projects to revive Christianity by re-emphasising its mystical, irrational and irreducibly individualistic elements. It was tangentially to these large intellectual movements that small bands of self-conscious secularisers prioritised political stability and worked systematically, often according to an agreed division of labour, to reform the European worldview.

Yet – how to draw a credible, robust, and informative trajectory from the medieval epistemic and disciplinary supremacy of theology, through the secularisation of the sixteenth to eighteenth centuries, to the aforementioned twenty-first-century problems? The task is daunting and probably impossible. One can trace the process in the natural sciences, comparative mythography, drama and pedagogic theory, even theology, with equal validity and an equally improbable aim at comprehensiveness. The best trade-off between analytical paralysis and a still-responsible portrayal of the contingencies, ebbs and flows, trends, counter-trends, and assorted vagaries of the complex historical process of secularisation seems to depend on an accumulation of cases of secularisation, each taken on its own terms, subjected to the same questions of context, close textual analysis and impact, and compared, connected and contrasted with patience and alertness to exceptions and idiosyncracies. Therefore the contribution of this Thesis to our understanding of the historical process and implications of secularisation are meant to be serviceably delimited, and continue the inquiry began in my first book. To extend the same focus, secularisation is traced here through biblical exegesis in seventeenth-century Dutch and English political and legal theory, with opening chapters on

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3 For a discussion of these terms, choices and mechanisms, see Somos, *Secularisation*, Chapter I.
Rome and the Renaissance and a final chapter on the American Founding, to indicate the intended but impracticable sweep. Given the risk of source selection bias and the consequent onus of proof on the illustrative method, the principle behind the selection of texts treated here will be explained separately below.

I.2 Definition
The broad framing question of this Thesis, which followed from the recognition of religion’s role in conflict, presented itself readily: when, how, why, and to what extent did religious justifications fade out from mainstream legal, political, and scientific arguments in the West? That they largely did is a fact, historical and stubborn. However, not only the causes and mechanisms of this significant change are unclear – even its label is contested.

The term ‘secularisation’ has a bad press today. There are good and bad reasons for this. They range from a healthy suspicion of sweeping generalisations and of ideology-driven models of progress to increasing overspecialisation and thickening walls between the disciplines, including legal history, political science, anthropology, and sociology.

In addition, there is an inability and unwillingness to use ‘secularisation’ in the historiography of ideas that emerged in reaction to simplistic genealogies of modernity. In the second half of the twentieth century historians, sociologists and philosophers developed increasingly restricted and disconnected meanings, ranging from early modern prescriptions of church land, through rational individualism, to the decline in church attendance. Such specialised usages resisted chronological, geographical, or disciplinary broadening. Admonitions against ‘premature secularisation’ multiplied, and attempts to revisit the term met sometimes automatic resistance. Arguments, trends and events that were readily called ‘secularisation’ previously were redescribed as desacralisation, demystification, irreligiosity, irenicist patriotism, moderation, deconfessionalisation, anti-confessionalisation, politique and reason of state arguments, casuistry, a-confessionalisation, and so forth, and occasionally mis-described just to avoid using ‘secularisation’ as a term. The term became taboo, and the initially salutary reaction against oversimplification turned into superstition.

A fitful change began a few years ago. From furtive phrases to major monographs, secularisation began to reappear in the English literature. By contrast its original, commonsensical usage, referring to a process that clearly separates the middle ages from our times, never disappeared from German intellectual history. From Adalbert Klempt in 1960, through Michael Stolleis in 1993, to a dozen works by Martin Heckel and Hartmut Lehmann, usages of the term remained pluralistic and unrestrained by disciplinary dogmatism.
One of this Thesis’s ambitions is to reconsider the revival, meaning, significance, limits, and future usage of ‘secularisation.’ Do recent uses have anything in common, or contribute to a future common sense? Is the term’s revival likely to prompt a return to over-ambitious system-fabrication and oversimplify intellectual change as a process, glossing over its non-linear, incremental, asynchronous and polygenetic features, or its heavy dose of unintended consequences? Can the term become inter- and multi-disciplinary without self-deconstruction or renewed over-simplifications? That is, has secularisation one cogent history, or is it at best a collection of micro-histories? Can it help to explain the success of early modern colonialism? How about the reprioritisation of natural over divine law, and the new options to replace Christian with alternative metaphysics, or with civic and commercial morality? How persistent was, and is, this reordering? Can and should the presently emerging usage of the term be guided toward current concerns, from the autonomy of the religious experience to the viability of the disenchanted political? Or has secularism, the norm and end-point of secularisation as a process, now become so closely associated with rationalism and modernity that it cannot be contested without appearing retrograde?

Or are such questions mis-posed, because the historical range of the current revival is too limited to the Reformation and the Enlightenment? Are Bentham, Burke, and other critics of post-Kantian moral philosophy relevant here too, and has political theology returned in the nineteenth century under protean guises of nationalism, cosmopolitanism, a culturally partisan human rights discourse, metaphysically founded national exceptionalisms and self-positionings of “friends of man” states like Britain, the US, France and Prussia, or the shift in international law from the sufficiency of self-declared sovereignty to a status bestowed by a self-appointed club of ‘civilised’ states?Were secularised norms spread around the world by early modern imperialists, or was the process critically uneven in both depth and breadth? If so, do the histories and abiding implications of post-Enlightenment exceptionalisms and globalisation render early modern secularisation effectively irrelevant to current affairs? Or are these better understood as temporary lapses, or even normal corrections from and to a process with a much longer span? Can any conceivable history of secularisation contribute to understanding the modern state’s and international community’s inability to prevent and resolve conflicts that have a religious dimension, from home-grown terrorism, through the regular failure of

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4 A note on ius gentium and ‘international law’: I agree with Janis, Toyoda and others that there are contexts, including this Thesis, in which it is better to use the modern term than to overemphasise the importance of Bentham’s terminological innovation. M.W. Janis, “Jeremy Bentham and the Fashioning of ‘International Law,” American Journal of International Law 78 (1984), 405-18. Tetsuya Toyoda, Theory and Politics of the Law of Nations: Political Bias in International Law Discourse of Seven German Court Councilors in the Seventeenth and Eighteenth Centuries (Nijhoff, 2011).
territorial nation-states, majority rule, international arbitration and other techniques of post-conflict state-building, to the integration of Muslim immigrants in the West?

These questions, and others that rephrase them into a different vocabulary, are what brings together these forays into seventeenth-century English and Dutch secularisation. Ambitions include discussing early modern English and Dutch historiography as a discourse allied with secularisation (by reducing, for instance, sacred history to an history of church institutions). Another leitmotiv throughout these chapters is the state, touching on the macro-level strengths and micro-level weaknesses of rationalisation models of modern state development, the tangled relation between churches and states, the rise and rival forms of juridified toleration, secularisation and state-led processes for the differentiation and systematisation of the criteria of and marks for inclusion and exclusion, educational reforms and institutionalisation, and the role of secularisation in European self-definitions of state sovereignty, illustrated by the contrast between non-politique Gallicanism and the Erastian offshoots of Anglicanism. The third motif, focusing on what secularisation does outside the state, will consider seventeenth-century Dutch and English works on colonialism and the law of nations, and their relationship to political developments, with particular attention to secularisation’s competitive advantage for seventeenth-century soft imperialism, its utility in defining and distinguishing ‘moments’ in the history of international law (Machiavellian, Vitorian, Grotian, Seldenian or Kantian), building a foundation for possible eighteenth- and nineteenth-century retheologisation, secularisation’s and retheologisation’s paradoxically joined role in historical and enduring national exceptionalisms, and the globalisation of secular legal norms and procedures. The hope is to zoom in on specific texts through these prisms (history, law, state and empire) in order to assess the general utility of secularisation as a technical term in legal historiography. The Conclusion will review, sharpen and evaluate the agreements and disagreements that emerge from these studies. It will return to the opening questions concerning secularisation’s meanings, boundaries, utilities, and consider the feasibility and desirability of formulating definitions, marking its perimeters, raising its theoretical sophistication – for instance by distinguishing between didactic and irenicist registers of secularisation – and putting it to practical use.

I.3 Method

Once we assume, as given the persistent failures we must, that a better history of secularisation as the outcome of a contingent, cumulative, incomplete and at best partly intended historical process has the potential to improve our self-understanding, and help
reduce violence in which religion is a motive or a pretext, the next thing we face is a range of quite daunting methodological problems. Despite the power and validity of illustrations, analogies, metaphors, and other devices, it is good form to make one’s conclusions roughly commensurate with the evidence presented. A compelling historiography of secularisation will be probably long. On the one hand, it is therefore important to note that this study focuses on a few texts published between 1617 and 1657. On the other hand, the principles of selection were designed to broaden the analysis’ power and significance as much as possible. Most texts discussed here had a tremendous and enduring impact. Most of them departed from mainstream themes and solutions, discussed in the treatment below. They were chosen to illustrate distinct but dove-tailing aspects of public and international law, including property, war, sovereignty, ideological mission and duty, colonial expansion and trade, that make it relatively easy to recognise their contemporary relevance despite the enormous changes that have taken place since then. Most readers, for instance, will be able to situate this Thesis in the lively literature on early modern colonialism, or the rise of nation states, the early Enlightenment, or other debatable but convenient broad orientational concepts. The texts were also selected with a view to addressing specialists in fields most relevant to the larger task of producing useful legal historiography. Thus, *De veritate* was chosen for the Grotius chapter because it allows me to complement, but not repeat, the existing literature on secularisation and colonialism in Grotius; the chapter on Selden speaks to international historians and postcolonial legal theorists; the chapters on Cunaeus and Harrington invite connections to the literature on the Hebrew Republic; and the themes discussed in the Harrington and Hamilton chapters will be immediately recognisable, and hopefully useful, to those interested in discussions of commercial morality and the international order during the long eighteenth century.

These and allied literatures in turn inform the theory of secularisation that this Thesis is built on. The last few decades’ invaluable reassessment of the place of religion in early modern political theory, developed in reaction to the “Marxist and Whiggist visions” of an unstoppable linear march toward a questionably rationalised modernity, has made it both possible and necessary to refine our understanding of secularisation. That religious justifications faded out from mainstream political, legal, and scientific argumentation is a stubborn historical fact.

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5 This is why church-state relations, more contested in the seventeenth than in the twenty-first century, are discussed only in passing.

Reclaiming ‘secularisation’ as a term in a more sophisticated framework seems preferable to disavowing even its commonsensical meaning due to its specialised misuses in the past.

I.4 Structure
This is, however, not an easy task. Previous ideology-driven, functionalist models and over-simplifications, and reactions against them, have underlined the importance of careful historical analysis, as well as the futility of self-referential antiquarianism. A new balance between detail and relevance should be sought. Accordingly, this book continues and builds on existing work to probe the history and implications of secularisation for public and international law.

My book on Dutch secularisation, *Secularisation and the Leiden Circle* (Brill, 2011), shows how a group of early-seventeenth-century writers excluded theologically grounded argument from a wide range of disciplines, from the natural sciences to international relations. Facing severe conflict, the Leiden Circle realised that rival claims that staked their truth-content and validity on religious belief were ultimately irreconcilable. Gradually they removed such claims from acceptable discourse, contributing to the comprehensive secularisation that defines modernity as a norm. The 1618-19 Calvinist purge destroyed this experiment, and exiled or executed the leading figures of Dutch secularisation. I offer portraits of Scaliger, Heinsius, Cunaeus and Grotius, placed in a thick context of comparable Italian and French secularising efforts, to develop a new model of secularisation as a contingent, cumulative, and incomplete process, with some unintended consequences.

This Thesis begins by shifting the scene from the Leiden Circle in 1575-1618 to England and Holland in 1617-1658, covering the period from Cunaeus’ *De Republica Hebraeorum* and the executions of Oldenbarnevelt and Raleigh, iconic for imperial history, to Harrington’s *Prerogative* and Oliver Cromwell’s death. The Dutch lesson in the interdependence of the individual’s religious, political and economic autonomies profoundly shaped the emergence of a new parliamentarianism from the English Civil Wars. The constitutionalism of the Glorious Revolution, including doctrines of pre-political liberties and right of resistance, conditional religious toleration and the replacement of one royal dynasty with another, likewise drew heavily on Dutch secularising discourses. Innovative arguments by Selden, Bacon, Hobbes, Harrington, Locke and others effected a seismic shift in the intellectual landscape. England by the end of the seventeenth century was essentially Erastian and tolerant in her politics, empiricist in her science, and ready to become the model for the Enlightenment. The intellectually successful but politically abortive Dutch Remonstrant experiment was, in turn,
England’s defining model. While much superb work has been done on this period, the story of English secularisation remains to be told. To illustrate its significance for the broader story of Western imperialism and secularisation, the 1617-1658 period in focus is framed by an opening chapter on the Roman agrarian and its sixteenth-century adaptation, and a concluding chapter on the constitutional design for the United States, in many ways the fruit of secularising commercial and colonial imperialism.

In addition to parliamentarianism, constitutionalism and Erastianism, this Thesis will address the indomitably complex and consequential early-modern twinned discourses of legal secularisation and imperialism in England and the Netherlands. Without oversimplifying their complexity, non-linear, incremental, asynchronous and polygenetic features and heavy dose of unintended consequences, and without forcing a genealogy of modernity on the evidence, the secularising implications of several stability-seeking writers will be drawn out and compared. It is the broad range, the variety of thinkers, genres, and rhetorical techniques analysed here that illustrates effectively how a common core of secularising ideology was crafted, and how the centripetal and centrifugal forces of Erastianism, republicanism and imperialism were reshaped and rebalanced around it. Recovering these heterodox etiologies of law, knowledge, salvation, property, politics, representation, commerce and empire sheds new light on the connections between the seemingly disparate discourses of imperialism and secularisation.

I.5 Caveat: some pitfalls of comparing Dutch and English secularisation

Before we begin, a word of caution is in order. Secularisation has profoundly shaped the course of both English and Dutch colonial and commercial expansion. It is hard to identify the role one can safely assign to the English and Dutch states in explaining secularisation’s impact. Supranational intellectual movements as diverse in chronological and geographical scale as ‘humanism’ or the ‘Calvinist international,’7 or the difference in the time periods over which these two states must be regarded as relatively coherent if they are to serve as either agents or background in explaining secularisation,8 are two exemplary reasons why one should be cautious with state-grounded accounts of secularisation. In the particular case of Dutch-English

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8 I do not mean a vague “no stepping twice in the same river” type of critique and deconstruction of states, but the possible and serious objection that both the Netherlands and the UK have changed their forms of government during the period in question.
comparisons, there are further reasons to be careful not to overstate the similarities between the two trajectories.

One current stream of historical overviews suggests that while Henry VII’s experimentation with John Cabot (including granting the famous patent for discovery in 1496), and with adding colonies to his range of accessories fashionable among ‘new monarchs,’ there was no English policy of colonialism until the 1580s. Even Elizabeth I’s initial involvement with privateering was driven primarily by the desire for revenue, not by a sustained crown policy of colonisation or commerce, nourished by a coherent vision of empire.10

A valid challenge to the current account of interrupted English colonialism is to fit The Company of Merchant Adventurers (1407-19th cent.), The Mystery, Company, and Fellowship of Merchant Adventurers for the Discovery of Regions, Dominions, Islands, and Places Unknown (est. 1551, chartered 1553), later Muscovy Company (1555-1917), and the Eastland or North Sea Company (1579-? min. 1661), into the picture. This is a perfectly valid way to enlarge the history of the interaction between the waxings and wanings of English overseas trade and colonialism on the one hand, and of the English state, on the other hand. Such a chronological broadening of perspective, however, comes at the price of de-emphasising the unique features that were introduced by and after Elizabeth I into the English twin development of state and empire. It may well be impossible to find a European country without nominally comparable state-licensed trading and colonial companies; but few of them gave rise to a global empire. While fifteenth-century trade in wool, cloth, timber, and luxuries was an important stage in the rise of English imperialism, this stage has more European equivalents than the seventeenth-century, let alone the later, stages of British expansion does.11 To explain the success of English imperialism, and the place of secularisation in it, one is driven to acknowledge that the conventional comparison with the United Provinces is oversimplified. Unlike the Dutch, the English state underwent major secularising turns before its overseas expansion was in full swing.

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9 I realise that this is a contentious position. John Cabot’s son, Sebastian, was employed by Henry VIII to explore the coasts of Brazil and the West Indies. My argument is that such instances, even if several, add up to neither the same volume of crown-sponsored and —directed enterprise as they did in Spain, nor to a coherent English crown policy of overseas imperialism.

10 T.W. Fulton, *The Sovereignty of the Sea* (Blackwood and Sons, 1911).

11 I use ‘British’ and ‘English’ in this paper variably, but knowingly. The full realisation of the colonialism under examination here is rightly called the British Empire, not least because of the tremendous Irish and Scottish participation in colonisation and imperial rule. In my usage, ‘British’ therefore refers to the United Kingdom of Great Britain and Northern Ireland. Selden, Harrington and many other seventeenth-century thinkers, however, used ‘Britain’ to refer to an historical, sometimes mythical state, which excluded Ireland. Given that the scope of this project stretches from the seventeenth to the twentieth century, remaining true to all shifting senses of ‘British’ throughout the period would sacrifice consistency for its illusion. I use the term in the sense of the period under discussion, unless my sentence indicates the longer-term perspective.
The two secularising imperatives, to contain religious disunion at home, and facilitate commercial and colonial expansion abroad, united politically only after 1688. Legal philosophy and colonial practice, however, predate the political resolution. Selden and Harrington removed Christian components from politics that proved irresolvably contentious; yet both returned to a pre-Christian, Israelite political language to reframe property, law and representation. This half-way house between anti-clericalism and full secularisation drew heavily on Dutch writings before the Synod of Dordt.

Similarly to imperial differences, these small maritime Protestant nations’ secularisation of state and empire followed somewhat divergent paths. Unlike the Dutch, the English state has completed crucial stages of secularisation, centralisation and anti-clerical self-fashioning before it embarked on the colonial enterprise where it eventually overtook the Dutch, Spanish, and other rivals. While the Dutch state and imperialism are coeval, English secularising state-building is best traced to Henry VIII’s Act of Supremacy (1534) and its reiteration under Elizabeth I (1558). The forceful detachment from Rome and the pro-active Erastianism of shaping religion, instead of merely agreeing to ceremonially invest bishops and arbitrate in ecclesiastical cases submitted, redefined state sovereignty. Elizabeth’s famous invocation of the ‘two bodies’ formula marked an invention in English sovereignty at least as much as it signalled continuity. The anti-clerical use of history in Selden’s Titles of Honor (1614) and the ancient constitutionalist legal arguments built upon it are thus fruitfully placed in a context that stretches back to the Collectanea satis copiosa project (1530). Long observance and custom have made it a powerful law that all ranks flow from the unitary sovereign. Even in History of Tithes (1618), Selden secularises in the sense of defending the monarch from the pope, as Cranmer defended Henry VIII: profoundly, but detachably from colonialism. It is as unhistorical to attribute the success of both English and Dutch early colonialism to the co-operation of governments and corporations as it is counter-productive to

12 Steve Pincus, 1688: The First Modern Revolution (Yale, 2009).
14 “My lords, the law of nature moveth me to sorrow for my sister; the burden that is fallen upon me maketh me amazed; and yet, considering I am God’s creature, ordained to obey His appointment, I will thereto yield, desiring from the bottom of my heart that I may have assistance of His grace to be the minister of His heavenly will in this office now committed to me. And as I am but one body naturally considered, though by His permission a body politic to govern, so I shall desire you all, my lords (chiefly you of the nobility, everyone in his degree and power), to be assistant to me, that I with my ruling and you with your service may make a good account to almighty God and leave some comfort to our posterity in earth.” 17 Nov, 1558. In Elizabeth I, Collected Works, eds. L.S. Marcus, J. Mueller and M.B. Rose (Chicago, 2000), 51-2.
overdraw the interaction between secularisation and state-building, or secularisation and successful colonialism, by either state.\textsuperscript{15}

Another possible challenge to the currently held account of nearly a century of English non-colonialism comes from those who unite the imperialism of policies for gaining overseas territories and establishing a legally, militarily and demographically stronger presence in Ireland.\textsuperscript{16} Even so, neither state-creation nor colonial and commercial expansion creates the same sort of motives for secularisation that a reassertion of domestic control does.\textsuperscript{17} While the urgency of domestic secularisation could equal or outstrip the utility of a non-Christian idiom for colonial encounters, the tasks of pacifying old enemies, making new friends, or creating durable new polities, are clearly different.

\textsuperscript{15} Similarly to Elizabeth I’s grant of a royal charter to the East India Company on 31 December, 1600, one could also see the legal process of Sir Walter Raleigh’s trial and suspended death sentence (1603), the reinstatement of his sentence under Spanish pressure (1617), and his execution (1618), as another emblematic part of the shift from the Crown’s haphazard interest in colonial affairs to its skilled use of the legal ambiguities stemming from the status of privateers and private corporations. Pocock warns that comparing Dutch and English expansionary republicanism creates a “problem of the elephant and the whale.” J.G.A. Pocock, “The Atlantic Republican Tradition: The Republic of the Seven Provinces,” \textit{Republics of Letters} \textbf{2:1} (Dec. 2010), 1-10, at 3. See also Jonathan Scott, \textit{When the Waves Ruled Britannia: Geography and Political Identities, 1500-1800} (Cambridge, 2011), xiv, 3-6, 34 and passim, and the pertinent distinctions in Alexandrowicz, \textit{Introduction}. David Armitage consistently ignores the distinction, and ties the failures and successes of British state-building and empire-building together. E.g. \textit{The Ideological Origins of the British Empire} (Cambridge, 2000), 60.

An important counter-melody to my distinction would be a comprehensive survey of the impact of exiled English preachers in the United Provinces. Robert Parker and others are mentioned below. For Hugh Peter see Scott, \textit{When the Waves}, 68.

\textsuperscript{16} Alison Games, \textit{The Web of Empire: English Cosmopolitans in an Age of Expansion, 1560-1660} (Oxford, 2008). In this light, Harrington’s detailed policy recommendations for reconquering and stabilising both Scotland and Ireland come from this tradition, rather than his pursuit of new possibilities opened by the Wars of the Three Kingdoms (1639-51). Armitage, \textit{Ideological}, 6-7, and chapter 2.

\textsuperscript{17} One can state that motives are created by certain factors without speculating about the motives of individual thinkers. If a thinker experienced those factors, they make his motivation more probable, but not proven.
II.1 Introduction

It seems to me that despite great differences, in this context it is helpful to consider commonalities in the intellectual ambitions and works of Max Weber, Werner Sombart, R.H. Tawney, C.B. Macpherson and others who offered genealogies of economic thought going back to the middle ages, and developed analytical concepts like economic individualism and early capitalism, usually as the driving force in sophisticated models of secularisation that later sociologists and political scientists occasionally oversimplified and misrepresented by the mid-twentieth-century, to the righteous chagrin of historians. One thing that the partially salutary reaction to this oversimplified and thereby over-theorised kind of genealogy did was to emphasise eighteenth-century economic thought and realities in an effort to challenge the teleologies and improbable continuities that were proposed. However, the positions that Machiavelli, Hobbes and Harrington relegated economic concerns to second-order status, derivative of the political or social elements of their thought, have been taken too far. A reassessment is possible and necessary, hopefully without a return to grand theories.

By way of background, this chapter explores the survival, transformation, and spread of commercial republican norms, and their significance for the history and implications of secularisation in constitutional and public international law. One of its arguments is that economic considerations remained integral to discussions of republican imperialism, and were neither opposed by, nor tagged on to, either Machiavelli or Harrington after 1675 or the Glorious Revolution. The Roman Republic's virtue in resisting idleness, its citizen army, demographic and colonial growth, the option to complement or substitute commerce with arms, the relationships between the centre and provinces, and the complex history of agrarian laws, evoked conjoined ethical, military, and economic analyses without such a neglect of any of these interrelated topics that would justify current descriptions of late seventeenth- and eighteenth-century emphases on republican economics as a major departure. The recovery of these ever-present linkages does not diminish, but enriches the present understanding of how Roman individual virtue, collective concord, republican expansion, and the dialectic of social orders informed Renaissance, early modern, and Enlightenment constitutional and imperial
debates. Moreover, recognising the uninterrupted presence of economic concerns in republican discourses through the prism of legal history allows us to reconnect debates that now seem disjointed, and add detail and granularity to the currently lacunose, at best pointillist genealogy of public international law. This chapter will illustrate the large claim about economics’ constancy by showing how energy’s role in Machiavelli’s republic, and Sigonius’s application of a classical political framework to Israel, enabled Cunaeus to present the biblical commonwealth as an agrarian and armed republic.

Sigonius also exemplifies the provincial strand in civic humanism that emerged outside Venice, Florence and Milan. Provincial republicanism relied on a distinct vision of Roman imperial and legal history and of the nature of the transition to medieval city-states after the fall of Rome. It was primed for passive resistance toward the metropolis, uneasy about cooperation with central authority, and eminently suited to shaping Renaissance and early modern colonial governments’ self-understanding. Following the economic thought and transformations of Israel by Machiavelli, Sigonius and Cunaeus, Harrington posited his famous “balance,” upon which the superstructure of government must be based. While most states’ balance manifests in land ownership, the Dutch and the Hebrew republics are exceptional for Harrington in that their natural balance is in money.

Harrington’s invention not only pre-dates ‘neo-Harringtonian’ commercial republicanism. It also forms a link in an unbroken chain that begins with the medical theories of Hippocrates and Galen on the one hand, and with ancient writers on the agrarian such as Plutarch, Livy, Appian, and Cicero, on the other. It runs through Marsilius of Padua, Poggio of Bracciolini, Machiavelli, Sigonius and other Renaissance economic commentators to the Israel, England and Netherlands described by Cunaeus, Harrington, Fénélon, Montesquieu, Madison and beyond. Uncovering the dust-covered links in this chain prevents errors such as mischaracterising Renaissance and early departures from both ancient and medieval economic, political and legal thought; confusing Venetian, Florentine, Milanese and provincial strands in the genealogy of republican imperialism; ignoring Machiavelli’s economics; misunderstanding Harrington’s agrarian proposal as land redistribution; or the attribution of economics’ introduction into republicanism to the late seventeenth century. The present argument divides into three parts, first on the different dimensions of agrarian law in the Roman Republic, second on its refiguration by Machiavelli and Guicciardini, and third and last on its continuation in the Hebrew Republics of Sigonius and Cunaeus.

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II.2 The ancient republic and some relevant agrarian laws

Robbin’ people with a six-gun
I fought the law and the law won
I fought the law and the law won

Sonny Curtis, 1958

In most contexts it is misleading to speak of ‘the agrarian law’ of Rome. The distinct acts of legislation and complex debates covered by this phrase span at least six centuries, from the 486 BC *Lex Cassia agraria* to the *Lex Cocceia* under emperor Nerva (96-98 AD). Although generally concerned with the distribution of public land, in fact they range from dividing freshly conquered lands among citizen soldiers and the poor, and regulating the fees payable to the state after the allotments, through the confiscation of political opponents’ lands and their redistribution among supporters, to the transfer of boundary stones, and appeal, protection and compensation against provincial governors’ abuse of their powers. Moreover, many agrarian laws combine several of these considerations as a matter of course. Thus, in addition to the multiplicity and diversity of *leges agrariae*, another caution against reductionist invocations is that their provisions and status were among the most complicated aspects of Roman legal history. A final reason against such oversimplification, even in accounts of Renaissance and early modern interpretations of Roman agrarian laws, is that throughout its history the term both shifted and was seldom, if ever, used in a consistent and uncontested sense.¹⁹

II.2.1 Studies in Roman agrarian laws and their reception

II.2.1.1 Spurius Cassius

The first agrarian law known in some detail was proposed by Spurius Cassius Viscellinus. Cassius turned the Hernici from foes into allies and, according to Livy, the Hernici surrendered two thirds of their land to Rome. In 486 BC Cassius proposed to distribute half among the Latins, the other half among the Romans.

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¹⁹ “It is not exactly true that the agrarian law of Cassius was the earliest that was so called: every law by which the commonwealth disposed of its public land, bore that name; as, for instance, that by which the domain of the kings was parcelled out among the commonalty, and those by which colonies were planted. Even in the narrower sense of a law whereby the state exercised its ownership in removing the old possessors from a part of its domain, and making over the right of property therein, such a law existed among those of Servius Tullius.” (Niebuhr, *Rom. Hist.* II.129, transl.) Cited in William Smith, *A Dictionary of Greek and Roman Antiquities* (London, 1875).
To this donation he proposed to add a considerable tract of land, which belonged, he said, to the public, though possessed by private persons. Many of the patricians, who were themselves in possession of this land, were hereby alarmed for their property, and besides, that body in general was seized with anxiety for the safety of the people; observing that the consul, by these donatives, was forming an influence at once dangerous to liberty and to right. This was the first proposal of the agrarian law, which, from that time to the present age, has never been agitated without the most violent commotions in the state.  

A vehement debate ensued. Fellow consuls and most patricians disagreed with Cassius’s proposed expansion and restoration of public land. Populists argued that all conquered land should be distributed among Romans, and that Cassius was trying to become a tyrant or a king. He was duly executed. This process set a pattern, recurring throughout Roman history, for such accusations and reactions against those who proposed an agrarian law. After Cassius, the stock Roman ideal was to ensure that whoever proposed an agrarian was in no position to benefit, and for the proposer to go to great lengths to assert his disinterested commitment to the public good. The accusations and responses settled into a game increasingly understood, formalised, anticipated, and progressively developed. In the Renaissance, early modern and Enlightenment reception history of the Roman agrarian, who and when chose to level the accusatory tropes of demagoguery and undue ambition against the Gracchi also gave strategic signals in their own contemporary debates about property, class, and empire.

Cassius’s execution in 485 BC removed immediate concerns about his ambition. Yet after his death, the popular allure of the agrarian re-ignited the debate. From this point on, there is hardly a year until 465 BC when Livy does not report an episode in the direct continuation of the struggle. In 465 BC, the consul Quintus Fabius hit on the compromise of distributing land seized from the Volscians the previous year. Consuls, tribunes, patricians and plebeians agreed but, according to Livy, they were so disgusted by the gratification of their wishes that they sabotaged the colonial project, and returned to their lawsuits for land in Rome. The proposal obfuscated the class struggle sufficiently to allow the creation of a united front when the Aequi invaded Latin lands the same year, and the agrarian debate was suspended for a while. Nonetheless, the genie was out of the bottle. Cassius’s agrarian created legal precedents and socio-political patterns that would resurface again and again in Roman history.

In *Ab urbe condita*, II.xli-xlii Livy reports Cassius’s military triumphs and the agrarian in relatively neutral terms, his blame directed at the discord among all classes and offices, and the ambition and deceit of other individuals. It is not Livy, but Dionysius of Halicarnassus who portrayed Cassius inventing the agrarian law because of his arrogance and ambition in the wake of his triumph over the Hernici.

But it seems that to be successful in many undertakings is a dangerous and prejudicial thing for a man; for to many it is the hidden source of senseless pride and the secret author of desires that are too ambitious for our human nature. And so it was with Cassius. For, being the only man at that time who had been honoured by his country with three consulships and two triumphs, he now conducted himself in a more pompous manner and conceived a desire for monarchical power. And bearing in mind that the easiest and safest way of all for those who aim at monarchy or tyranny is to draw the multitude to oneself by sundry gratifications and to accustom them to feed themselves out of the hands of the one who distributes the possessions of the public, he took that course; and at once, without communicating this intention to anyone, he determined to divide among the people a certain large tract of land belonging to the state which had been neglected and was then in the possession of the richest men. Now if he had been content to stop there, the business might perhaps have gone according to his wish; but as it was, by grasping for more, he raised a violent sedition, the outcome of which proved anything but fortunate for him. For he thought fit in assigning the land to include not only the Latins, but also the Hernicans, who had only recently been admitted to citizenship, and thus to attach these nations to himself.\(^{22}\)

Dionysius’s characterisation notwithstanding, his long accounts of Cassius’s actions, intentions and speeches (VIII.lxviii-lxxx) contain sufficient material to allow appraising Cassius as a good patriot and republican, should readers prefer such an interpretation. For instance, after a public speech with vague promises, Cassius addresses the Senate.

And before taking up any other subject he proceeded to lay before them openly the purpose which he had kept concealed in the popular assembly, asking of the senators that, inasmuch as the populace had rendered the commonwealth great

service by aiding it, not only to retain its liberty, but also to rule over other peoples, they should show their concern for them by dividing among them the land conquered in war, which, though nominally the property of the state, was in reality possessed by the most shameless patricians, who had occupied it without any legal claim; and that the price paid for the corn sent them by Gelon, the tyrant of Sicily, as a present, which, though it ought to have been divided among all the citizens as a free gift, the poor had got by purchase, should be repaid to the purchasers from the funds held in the public treasury.23

It was only after the Senate’s outrage and accusations that Cassius disclosed his plan to the people. Charges of populism and tyrannical ambition, by contrast, were more easily levelled at those who made specific promises directly to the people, without taking the Senate’s temperature first. Dionysius describes Cassius’s supporters as the unwashed, and his fellow consul, now opponent, Verginius’s supporters as “those of the noblest birth and the most immaculate.” It is not obvious that Renaissance and early modern readers,24 including Harrington, would find this account of Cassius, his proposal to distribute public land, and his turning to the people after failure at the Senate, necessarily damning. Dionysius draws out in detail the tribunes’, patricians’, and others’ manipulation of the people, who turn away from Cassius only when told that excluding both the Latin and Hernician socii would increase their own personal allotments. Further, Cicero invokes Cassius’s agrarian as evidence that it is in the republic’s nature to encourage the expansion of popular rights, and of laws that aim to solve the unbearable debt burden of the poor.25

Livy’s neutral, Cicero’s and Dionysius’s ambivalent, and Cassius Dio’s laudatory characterisations notwithstanding, in some circles Cassius’s agrarian proposal made him an iconic populist with regal or tyrannical ambitions. Machiavelli’s Discourses III.8 is a case in point.26 My intention is not to comprehensively chart Cassius’s reception, only to note that such choices are meaningful, not obvious, and should not be eliminated by oversimplifying the agrarian debate either in ancient Rome, or in Renaissance and early modern Europe. The story of the Lex Cassia itself; Livy’s and Dionysius’s connection to later Roman agrarian laws; and Sigonius’s link to the Lex Liciinia Sextia, demonstrate that Cassius’s role in Renaissance and early

23 Dionysius of Halicarnassus, Roman Antiquities, VIII.lxx.
25 Cicero, De rep. II.57, 60.
26 Even though Mansfield’s edition refers to Livy II.xli, and not to Dionysius or Cicero, as the source of Machiavelli’s assessment. Niccolò Machiavelli, Discourses on Livy ([1517?] tr. Harvey C. Mansfield and Nathan Tarcov. Chicago, 1995).
modern agrarian debates is not only complex, but also that the agrarian debate served as a converging lens for public interest topics ranging from colonialism to constitutional law. Further, it brings out the severity and scale of the error of the oversimplifying assumption that agrarian references necessarily concern land redistribution. Without proper context and attention to detail, no credible argument about Renaissance and early modern republican colonialism or domestic property arrangements can be made. Given the complexity and chronological and legal range of the Roman agrarian and its later reception, such unclarity leaves no part of an argument either potentially or actually valuable.

Moreover, although it was an obviously iconic moment, Berger, Niebuhr and others have suggested that Cassius’s was neither the first nor the archetypal agrarian law in Rome.27 Around 500 BC Cassius himself, after defeating the Sabians, negotiated a settlement that included not only grain for the Republic, but also money and cultivated land allotted to his veterans.28 However, the 486 Lex Cassia agraria seems the oldest for which detailed historical records of the legislation and the social debate were available to Renaissance and early modern readers. It is also the first in the history of the Roman Republic. Carolus Sigonio (c. 1524-84), for instance, drew a fascinating direct line from Cassius’s proposal to the momentous Lex Licinia Sextia, promulgated around 376 BC and enacted in pieces between 367 and 365 BC after political stand-offs between the Tribuni Plebis and the Patricians.

No bill which expelled rich private individuals from their holdings and settled plebeians on the lands of the nobles, was ever put forward without the very greatest political turmoil. The one first proposed by Spurius Cassius as consul and then aired virtually every year by the tribunes of the plebs, but always nullified or impeded by various devices of the noble faction, was carried in the end by the tribunes of the plebs L. Sextius and C. Licinius by means of a veto on the holding of the elections for the magistracies.29

27 There is a strong argument that Romulus’s founding can be seen as the first agrarian law. Adolf Berger, Encyclopedic Dictionary of Roman Law, s.v. ‘leges agrariae.’ Transactions of the American Philosophical Society, vol. 43, part 2 (Philadelphia, 1953), 544-5. “Niebuhr suggests that it in fact restored the law of Servius Tullius, the sixth King of Rome, strictly defining the portion of the patricians in the public land, dividing the remainder amongst the plebeians, and requiring that the tithe be levied from the lands possessed by the patricians.”
28 Dionysius of Halicarnassus, Roman Antiquities, V.xlix.
Far more than an ordinary agrarian law, the Licinian laws marked a milestone in the Conflict of the Orders, and a turning point in Roman history. They opened up consulship and membership of the Decemviri Sacris Faciundis to plebeians, limited occupation of the agrer publicus to 500 iugera and the pasturing of 100 large or 500 smaller animals. In the mass of agrarian legislation, this is the specific agrarian law tradition that Tiberius Gracchus revived. Interpretations and assessments of all Licinian-Sextian measures, from membership of the Decemviri to the limits on use of public land, will prove significant for sixteenth-century Italian civic humanism as much as for early modern English republican imperialism.

II.2.1.2 Cicero
As he is for other themes, Marcus Tullius Cicero (106-43 BC) is a main source for the legal history of the Roman agrarian. The three agrarian orations against the tribune Rullus represent a conciliatory but conservative position, as opposed to the continuation of the Gracchan reforms. Cicero’s criticism is not limited to the landed, foreign policy and colonial elements of Rullus’s proposal, but accords equal attention to credit and cash. These arguments are great instances of the coherent handling of these elements, challenging the reductionism of some accounts of seventeenth- and eighteenth-century innovations in economic history and theory. Cicero is concerned that redistributing among Roman citizens the land surrendered by socii, but entrusted back to them for cultivation, would not only alienate allies, but also transform Roman expansion into a predatory imperialism, driven by rent-seeking decemvirs. Domestically, its effect would be contrary to its ostensible objective of allaying social inequalities within Rome, because decemvirs will set the vectigal too high in order to reclaim land from those not rich enough to pay it. Under the guise of redistributing land, Cicero predicts, the decemvirs will make land-holding impossible either by the high vectigal, or by

31 McCuaig, Sigionio, 158-9.
32 De leg. agr. i.i.2, 344-5, l.iv.11, 352-3, l.iv.14-5, 354-7. See also I.viii.23, 362-3, on how Rullus’s proposal banishes credit (fides) from the forum, where fides encompasses the monetary, landed, social, and political aspects of ‘credit,’ closer perhaps to current usages of ‘trust.’ The same holds for Cicero’s use of fides to denote the military-economic aspects of the ideal, good decemvir’s power in De leg. agr. II.ix.23, L22, 396-7. See De leg. agr. II.xvii.47, 420-1, II.xxii.59, 432-3, for a lurid picture of “great heaps of money” coming to the public treasury under Rullus’s corrupt scheme. De leg. agr. II.xvii.71-xxviii.75, 446-51, re-states Cicero’s criticism of most components, including domestic land allocation, the public treasury, hijacking colonial schemes for domestic and foreign control, and using all these as instruments to create a monarchy or worse. Cicero points out the demographic demand of the proposed agrarian’s colonial component in De leg. agr. II.xxxii.86, 460-1. Relevant studies of seventeenth-century revisitations of the same nexus of trust, money and law include Hans Blom, “The Meaning of Trust: Fides between Self-Interest and Appetitus Societatis,” in Festschrift Peter Haggenmacher. ed. by Vincent Chetail (Leiden, 2013), and Marc de Wilde, “Fides Publica in Ancient Rome and its Reception by Grotius and Locke,” The Legal History Review 79:3-4 (2011), 455-87.
33 De leg. agr. I.iii.10, 350-1. Note that the Loeb translation of vectigal here as “tax” is a bit misleading.
exposing those who can afford it to widespread envy and hatred. They will sell the reclaimed lands and take control of the treasury.

The other key instrument of power they will hijack is colonisation. Domestically, there is no guarantee that the decemvirs will refrain from creating colonies on Roman territory, effectively turning colonisation inward and threatening the republic by, for instance, setting up a second Rome at Capua.34 The Roman fathers thought that outside Rome only three cities, Capua, Carthage and Corinth, could sustain an empire; therefore they destroyed two, and decreed that Capua must never be a republic. Without public honours to compete for, Capuan virile martial fierceness descended into ‘the most indolent and slothful ease’ [ad inertissimum ac desidiosissimum otium perduxerunt].35 Despite its great import for expansionary colonialism and relations with allies, Cicero’s summation in De lege agraria I presents this complex threat as primarily internal:

there is no danger from without, no king, no people, no nation, is to be feared; the evil is confined within our gates, it is internal and domestic.36

Cicero’s second agrarian speech, delivered not in the Senate as the first, but in front of the popular assembly, connects the same components of Rullus’s proposed agrarian, and reformulates the same substantive conclusion as a threat of arbitrary, deceitful monarchy.

And from the first article to the last, Romans, I find that the only idea of the tribunes, their only scheme, their only aim in what they do is that ten kings of the treasury, the revenues, all the provinces and the entire republic [decem reges aerarii, vectigalium, provinciarum omnium, totius rei publicae], of friendly kingdoms, of free nations – in fact, ten lords of the whole world [orbis denique terrarum domini], should be set up under the pretended name of an agrarian law.37

34 De leg. agr. I.v.16-vii.22, 357-63. In De leg. agr. II.xiii.33-4, 406-9, Cicero restates the summary of the decemvirs’ intolerable powers in the same framework that unites and explains the connections between the foreign and domestic, and economic, social, legal, and political factors in Rome.
35 De leg. agr. II.xxxii.86-xxxiii.91, 460-9.
37 De leg. agr. II.vi.14-5, 384-7. Also see II.vi.15-6 for the repeated accusation that under the guise of the agrarian, the tribunes intend to set up a monarchy. Additionally to the passages above, the claim is repeated in De leg. agr. II.x.24-5, 396-7; II.xi.9, 402-3 (“It is Kings that are being set up over us, not decemvirs, O Romans...”), II.xiii.32, 404-5; II.xiii.32-3, 406-7 (“Just observe what immense power is conferred upon them; you will recognize that it is not the madness of private individuals, but the intolerable insolence of kings.”); II.xvi.43, 416-7. Even greater than kings,
Cicero clearly and emphatically applies the time-honoured accusation that goes back, as we saw, at least as far as Cassius Spurius, and associates the proposal of an agrarian with monarchical ambition. This corruption renders Rome’s expansionary republicanism unsustainable, and replaces the system of alliances with a rapacious foreign policy. Cicero fears that allowing the decemvirs to turn the agrarian law into an instrument of control over Roman land and the treasury will prompt them to create an oppressive Roman empire, one that loses the advantage of republican attraction and reputation for honourable and mutually advantageous alliances, and raises the risk of existing allies seceding, and enemies refusing to become allies. The losses of domestic and foreign trust are linked, through distinct but interlinked mechanisms. The agrarian remains a *leitmotiv* throughout this dynamic of corruption. Cicero fears that Roman governors and ambassadors will be seizing land from conquered allies to redistribute at home, in an extension of Rullus’s proposal.

For the mere name of *imperium* is hateful and greatly feared, however insignificant the possessor of it may be, because, when they have left the city, it is not their own name, but yours, that they abuse. How then will it be, do you think, when these decemvirs roam about the world with *imperium*, with the rods of office, with that picked band of young surveyors? What do you think will be the feelings, the apprehension, the danger threatening the unhappy nations?  

To forestall charges of monarchical ambitions of his own, Cicero emphasises the interests and procedures of the full popular assembly he is addressing. Repeatedly he objects to the proposed manipulation of voting by tribal assemblies, and to allowing the majority to decide about the agrarian law. He considers only the full assembly, not the decemvirs, to be the appropriate forum for the disposal of revenue-yielding lands. At other points in this oration, Cicero finds sortition by tribes unsuitable for settling some issues, including the agrarian. He argues that it waters down popular sovereignty, and calls Rullus a hypocrite for invoking the

since even royal power had limits: II.xiv.35, 408-9. Tribunes’ and proposed decemvirs’ assault on popular power: II.xxvi.70, 444-7.  
30 *De leg. agr.* II.xvii.45, 418-9. Cicero depicts Rullus in identical terms in *De leg. agr.* II.xxxvi.98-9, 474-7, where Rullus roams the world *cum imperio summo, cum iudicio infinito, cum omni pecunia*. This is the inverse of Lord Archon’s vision for England’s “patronage of the world” at the end of Harrington’s *Oceana*. See the end of chapter VII, section 1.2.3, “Good things from not the divine polity,” and section 2 on *The Prerogative*, below.  
39 E.g., *De leg. agr.* II.xxix.79, 452-5.  
40 *De leg. agr.* II.xxi.55, 428-9.  
41 *De leg. agr.* II.vii.17-20, 388-93.
Sempronian laws as a precedent, since Tiberius Gracchus consulted all the tribes, not a hand-picked sample of them, as Rullus proposed to do.\textsuperscript{42} This is followed by a generalised and heavy criticism of suffrage, as amenable to manipulation. According to Cicero, the agrarian is too technical and too fundamentally constitutional to risk such manipulation.\textsuperscript{43} He proffers a complex account of forms of deliberations, ranging from fully public through representative to closed-door Senate sessions, and their appropriateness to different issues.

Cicero continues by classifying land as private and public, and notes that setting the \textit{vectigal}, deciding exemptions, and other related agrarian decisions are not neutral and merely procedural, but highly political and instruments of real power.\textsuperscript{44} Should the agrarian be accepted, the decemvirs will abuse their power in two chief ways: they will create colonies, both within and outside Rome, under their personal control, and they will amass money under the guise of administering public lands.

Let the decemvirs possess all the money that there is in the world; let nothing be passed over; let all cities, lands, kingdoms, and lastly, even your revenues be sold; let the spoils obtained by your generals be added to the heap. You see what enormous and immense wealth is the object of the decemvirs in these sales on so large a scale, in all these decisions, in their absolute and unlimited powers.

Now learn some other enormous and indefensible gains, and you will understand that the name of agrarian law so dear to the people has been sought out for this scheme merely in order to satisfy the insatiable avarice of certain individuals.\textsuperscript{45}

The decemvirs will repossess private property and seize newly conquered lands, set the price for the allotments, and control public income from one-time sales and revenue from the taxes. In a long section of \textit{De agr. leg.} II, Cicero points out repeatedly, in kaleidoscopically shifting formulations, that this defeats the very idea of buying and selling.\textsuperscript{46} Some of these formulations connect readily to Harrington’s image of justice itself as one girl dividing, the other choosing.

\textsuperscript{42} \textit{De leg. agr.} II.xii.31, 404-5.
\textsuperscript{43} Compare Selden on law as artificial reason in chapter V below, and Harrington on the expertise of Bible interpreters in chapter VII, section 1.2.5.2, “Church-State relations: education, Scripture, Erastianism,” and the expertise of political advisors in \textit{The Prerogative}.
\textsuperscript{44} \textit{De leg. agr.} II.xxi.56-7, 430-1. “It will be for the decemvirs to decide after inquiry whether the land is private or public; and upon such land a heavy tax is imposed. Who can help seeing what extensive, intolerable, and despotic judicial power this is – to be able, wherever they choose, without any discussion, without any legal assistance, to make what is private property public and to exempt from taxes what is public property?”
\textsuperscript{45} \textit{De leg. agr.} II.xxiii.62-xxiv.63, 436-7.
\textsuperscript{46} \textit{De leg. agr.} II.xviii.47-xxv.67, 421-43.
Cicero also created a cunning assessment of the Gracchi. He agreed, or at first feigned agreement for rhetorical effect, with the Gracchi’s intention to restore ancient equality and distribute land among the Roman poor.\textsuperscript{47} At the same time, he blamed the Gracchi for the rash implementation that threatened the very existence of the republic.\textsuperscript{48} This view became a stock theme by Machiavelli’s time. It surfaces clearly in 	extit{Discourses}, I.37.

From this there arose the plague that brought forth the contentions about the Agrarian law, and in the end was the cause of the destruction of the Roman Republic. And because well-ordered Republics have to keep the public (State) rich and its Citizens poor, it was apparent that there was some defect in that law in the City of Rome, which either was now drawn in the beginning in such a way that it required to be redrawn every day, or that it was so long deferred in the making that it became troublesome in regard to the past, or if it had been well ordered in the beginning, it had become corrupted in its application. So that whatever way it may have been, this law could never be spoken of in Rome without that City going upside down (from turmoil). This law had two principal articles. Through the first it provided that each Citizen could not possess more than so many jugeri of land, through the other that the fields which were taken from the enemy should be divided among the Roman people. ... this law remained, as it were, dormant up to the time of the Gracchi, by whom it being revived, wholly ruined the liberty of Rome; for it found the power of its adversaries redoubled, and because of this (revival) so much hate developed between the Plebs and the Senate, that it came to arms and bloodshed beyond every civil limit and custom. ... And although elsewhere we showed that the enmity in Rome between the Senate and the Plebs should maintain Rome free, because it gave rise to those laws which favored liberty, and therefore the result of this Agrarian law may seem different from such a conclusion, I say that I do not on that account change my opinion, for so great is the ambition of the Nobles, that if it is not beaten down in various ways and means in a City, it will soon bring that City to ruin. So that if the contentions about the Agrarian law took three hundred years in bringing Rome to servitude, she would perhaps have been brought to servitude much sooner if the Plebs with this law and their other desires had not always restrained the ambitions of the Nobles.

\textsuperscript{47} i.a. \textit{De leg. agr.} II.v, 380-1, II.xxix.81, 456-7.
\textsuperscript{48} i.a. \textit{De officis}, III.xii.
... The movers of these disorders were the Gracchi, whose intentions should be praised more than their prudence.\textsuperscript{49} For to want to remove an abuse that has grown up in a Republic, and enact a retrospective law for this, is a badly considered proceeding, and (as was discussed above at length) does nothing else than to accelerate that evil which leads to that abuse; but by temporizing with it, either the evil comes much later, or by itself in time (before its end comes) it will extinguish itself.\textsuperscript{50}

The same assessment of the Gracchi and template for explaining Roman social struggle appear in Sigonius, as well as in Harrington. This Ciceronian topos combines an appeal to popular sovereignty, the conservation of domestic property arrangements, the encouragement of further colonisation to expand public land from which distribution can be made without upsetting the \textit{status quo}, and stern warnings against allowing partisan interests and ambitious men to hijack colonisation efforts for their self-interest. The intrinsically and inextricably linked concerns with land and money are also clear and already sophisticated in Cicero’s imperial thought. This complex and pervasive Ciceronian theme is another reason why it is counter-productive and impoverishing to reduce to Gracchan redistribution the Renaissance and early modern interpretations of the Roman agrarian, and the practical policy lessons drawn from it.

Machiavelli, Sigonius, Cunaeus, and Harrington all discussed both Spurius Cassius and the Gracchi. This is another small, but significant and concrete demonstration that if one aims to tell the story of transformations in the legal and political conceptualisations of property by connecting their writings, then it is insufficient to assume that their references to the Roman agrarian relate to the redistribution, as opposed to expansion and distribution, of public land. One could likewise illustrate the inseparability of constitution, property, and empire in this debate by tracing these authors’ assessment of the \textit{Lex Licinia Sextia}, or a number of other agrarian laws; but the point hardly needs further elaboration. However, it allows me to introduce a less obviously relevant agrarian law, and propose that while it may just have been known to Machiavelli, it certainly influenced Sigonius, and Harrington and Rousseau (especially in \textit{Social Contract}, Book IV), as well. If anything, it is the diametric opposite to the Gracchan project, and offered either a restoration of pre-Gracchi \textit{status quo}, or a conservative compromise against it.

\textsuperscript{49}`Eorum incendiorum causam Gracchi fere suppleditarunt, quorum voluntas & studium erga plebem melius, quam prudentia laudari potest.` \textit{Machiavelli Florentini disputationum De Republica libri tres} (Leiden, 1643), p. 111.
\textsuperscript{50}Machiavelli, \textit{Discourses}; even though recent editors and annotators fail to identify Cicero as a source.
II.2.1.3 Against redistribution: the Urbino fragments

The eleven bronze fragments discovered near Urbino at the end of the fifteenth century offer a singularly relevant case study of the reception of Roman agrarian laws other than the Gracchan, and of the prudential policy inferences drawn from them, by and for Renaissance and early modern audiences.\(^{51}\) An agrarian law is inscribed on one face of the tablet, and a law concerning extortion (\textit{lex repetundarum}) on the other. The fragments first appear in the library catalogue of the Montefeltro dukes of Urbino at the end of the fifteenth century. They were given to Pietro Bembo (1470-1547) shortly after Cesare Borgia captured Urbino in June 1502 through treachery, and occupied and pilfered the ducal palace.\(^{52}\) This was also the month when Machiavelli’s famous interview with Cesare Borgia in Urbino took place.

Cesare did not hold Urbino long. His father, pope Alexander VI, died in August 1503 after an infamous meal that nearly killed his son, too. Guibaldo de Montefeltro resumed his ducal seat in Urbino. Bembo spent much of 1502 and 1503 in Ferrara, among other things with an affair with Lucrezia Borgia. He left just in time to avoid the plague, and pursued serious literary work in Urbino between 1506 and 1512, completing \textit{Prose della volgar lingua}. He accompanied Giulio de Medici to Rome in 1513, and was raised to the office of Secretary of the Briefs to the Curia. When Leo X died in 1521, Bembo moved to Padua, before taking up the post of historiographer to Venice in 1529, then librarian at the Biblioteca Marciana. In 1539 Paul III made him cardinal, and Bembo lived in Rome until his death in 1547. After his death, the fragments were found in his Paduan \textit{palazzo}, and gradually dispersed. These biographical details are helpful in stipulating conjectures about the tablet’s fate and reception.

The sixteenth-century reading public learned about the Urbino fragments in fits and starts. Fragment A, which among others mentions Tiberius Gracchus by name, appeared in Jacopo Mazzochi’s 1521 \textit{Epigrammata Antiqua Urbis} (fo. 180r-v).\(^{53}\) The Venetian Paolo Manuzio (1512-74) discusses fragment E in his 1557 \textit{De Legibus Romanorum}. An inaccurate bronze copy was made of this fragment, probably at Fontainebleau, which appears as early as 1559 in a manuscript by J.-J. Boissard. Claude Dupuy (1545-94) also transcribed the flawed French copy, while the itinerant young J.J. Scaliger (1540-1609) copied a better version of

\footnotesize{\textsuperscript{51}\textsuperscript{52}\textsuperscript{53}\textsuperscript{54}This fragment is now divided into Aa and Ab, and Ab has been lost.}
fragment E some time before 1567 and sent it to Aldo Manuzio the Younger (1547-97) in Venice, who also made a copy.\footnote{Lintott, Judicial, 68-9.}

Allow me to speculate, without evidence, that Scaliger copied fragment E in Rome, while visiting Muretus (1526-85) as the Grand Tour companion of Louis de Chastaigner.

In 1567 Gian Vincenzo Pinelli (1535-1601), born in Naples but living in Padua from 1558 until his death, prepared minuscule copies of A, Ba+Bb and Da. Sigonius published Aa+Ab and Ba+Bb in the 1574 editions of *De antiquo iure Italiæ* (II.2) and *De Iudiciis* (II.27). In 1575 János Zsámboky (Sambucus, 1531-84) sent a good copy of Db+Dc from Vienna to Stephanus Pighius (1520-1604), who published them in the 1615 *Annales Romanorum*. Fulvio Orsini’s (1529-1600) *Leges et Senatus Consulta quae in veteribus cum in lapide tum ex aere monumentis reperiuntur*, in *Notae ad Leges*, a supplement to Antonio Agustín’s (1516-86) *De Legibus et Senatus Consultis* (Rome, 1583), is usually regarded as the redaction that first combined previous

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6 Codex Vaticanus Latinus 6531, fo. 175. Another majuscule copy of the *repetundae* face of the E fragment. The page number in the top right-hand corner is that of the manuscript syllage of the younger Aldo Manuzio, corresponding to those otherwise found in Vat. lat. 5234. For material in the same hand deriving from J.J. Scaliger, cf. fos. 144-6 of that manuscript. Photo: Biblioteca Vaticana.

**Figure 1. Fragment E of the Urbino tablet. Source: Lintott, Judicial**
editors’ partial reconstructions of how the pieces fit together, adding Orsini’s own.55 Orsini was in Farnese service at the time.

Although I found little evidence that his illustrious lineage was of much advantage to him in this work (his family cast him out), it is clear that through hard work and talent Orsini became a nodal point in the intellectual network engaged in reconstructing the tablets. It is worth noting that Sigonius’s earlier, partial edition had a great effect on his Roman histories, which in turn shaped Hobbes’s, Harrington’s, Rousseau’s and others’ understanding of Roman republicanism. One is also tempted to conjecture that Sigonius contributed directly to Orsini’s edition. From the 1570s Orsini was one of Sigonius’s chief Roman contacts,56 and probably the person to whom he dared to reveal most candidly his frustration with papal censorship.57 We also know that while Sigonius himself was working on Cicero’s fragments and on the Urbino bronze, he was in frequent contact with Orsini as well as with others, such as Sambucus, who were involved in the Urbino fragments’ physical dissemination and publication at the same time.58

As mentioned, both Roman history and this particular reception story show that general references to Roman agrarian laws are of limited use. Beside identifying which laws the Renaissance or early modern writer had in mind, one should also try to reconstruct the historical context that was known to the writer, including military and political affairs directly related to the law. The association with the Gracchi, which appears dominant among non-specialists today, was by no means automatic or exclusive among the thinkers examined here. As Lea Campos Boralevi pointed out, even when lip service is cursorily paid to the rich and complex tradition that is “the Roman agrarian,” it is a fatal slippage to assume that Renaissance and early modern references are primarily to the Gracchi, and to the redistribution of domestically held lands in ancient Rome or in the writers’ own time.59 The three episodes outlined above, Cassius, Cicero and the Urbino fragments, show at the very least the complexity and varieties of the agrarian.

The main propositions of this section were the following. Firstly, Renaissance and early modern references to Roman agrarian law are not constrained to Tiberius Gracchus’s Lex Sempronia.

55 McCuaig, Sigonio, 168. Lintott, Judicial.
56 McCuaig, Sigonio, 31, 296, 333, etc. (see Index).
57 McCuaig, Sigonio, 258.
58 McCuaig, Sigonio, 296, 300.
Agraria, or to redistribution. Secondly, such references must be contextualised, the law identified, and the writer’s knowledge of that law carefully reconstructed. Thirdly, among the agrarian laws known and discussed from the Renaissance on, several contained provisions for emphatically not redistributing land at home, but pledging future colonial conquests instead. Cicero’s three agrarian orations and the Urbino fragments are cases in point. Their import is the opposite of redistribution, for instance in a context like Harrington’s constructively critical adaptation of Roman agrarian laws to the immortal and expansionary Commonwealth of Oceana (1656). Their lesson is that the Gracchi were correct to identify land as the means of pacifying, providing for, and co-opting the people, but wrong to upset the status quo by proposing domestic redistribution. One notes this lesson in Cicero, Machiavelli, Sigonius and Harrington alike.

Fourthly, Roman agrarian laws were unusually public and sophisticated. Mommsen, Niebuhr, Lintott, Roselaar and others draw attention to the degree of literacy and legal knowledge, and the assumption and empowerment thereof, that was required to understand and refer to i.a. the Urbino fragments that hung in the Forum on public display.\(^6\) Similarly, Cicero’s agrarian speeches contain several descriptions of the fora and processes of the sophisticated legal deliberation involved. These include forensic speeches to the people, speeches to the Senate, the use of scribes to take written notes on Rullus’s proposals, which were only spoken (according to Cicero) to disguise tyrannical ambition behind populist phraseology, and Cicero’s call for full public deliberation of some aspects of the agrarian, and specialist discussion on other aspects by the appropriate political representatives.

Finally, below will show that Mommsen’s point concerning the rare ‘democratic’ (in our current sense of the term) quality of the Roman agrarian debate, including its unusually broad basis, sophistication, predominantly legalistic form, and emphasis on the constitution and the rule of law, was also apparent and striking to Renaissance and early modern republican thinkers, Sigonius and Harrington included. The combination of a particular set of concerns – including the deliberative content of social equality, the dynamic of balancing domestic (both provincial and state-level) and foreign allies, judicial recourse against extortionate office-holders (see e.g. 122 BC Acilian law, 111 BC, etc.), taxation, self-reliance for food and arms – and with variety of corresponding frameworks of republican deliberation, was described in ancient Rome in sufficient detail and yet with sufficient lacunae and ambiguities for

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Renaissance Italy and early modern England to revive this combination and place it at the core of sweeping constitutional reform.

II.3 The new men

When you have got a little, it is often easy to get more. The great difficulty is to get that little.  
Adam Smith, Wealth of Nations, i.ix

II.3.1 Background and literature
Radical constitutional reform proposals ignore political economy, and political economy ignores moral economy, at their peril. From Confucius and Plato through Hobbes and Montesquieu to Lenin, intellectual history records few, if any, thinkers whose advocacy for a new order was not accompanied by the promotion of a new sort of men.

Current literature predominantly credits the eighteenth century with developing the moral philosophy and moral economy that midwived and now sustains modern capitalist democracies. Without challenging this view of the importance of the Enlightenment’s contribution, and without engaging in exercises to redefine ‘the Enlightenment’ and push its accomplishments further and further back in time, I hope to show that current consensus on the Enlightenment’s originality neglects several crucial continuities or revivals. The new man, allegedly cooked up by French, Irish and Scottish 
philosophes after the 1730s, is said to have acquired commercial and republican qualities only after losing Christian morals and redeemability, and other painful trade-offs during the 1750s of Rousseau, Smith, and Hume. This is not quite the case. Xenophon, Cicero, Machiavelli and Harrington developed this moral economy with such detail and cohesion that on this particular issue one is tempted to side with those revisionist historians who put forward two pertinent alternatives to the pervasive enchantment with the convenience of regarding the Enlightenment as coherent, and a watershed between the dark age of superstition and that of luminous reason.

One alternative regards defining Enlightenment debates, including this one about commercial morality and international order, as at least as much of an effort by Christianity to update itself as humanism’s and reason’s conclusive triumph. Another alternative reads the Enlightenment as a public relations exercise in promoting seventeenth-century principles and findings, and points i.a. to Voltaire’s laudation of Bacon, Locke, Newton, Pope and the Royal Society in the Lettres philosophiques (a.k.a. Lettres anglaises, wr. 1726-9, publ. 1733, 1734), or to Diderot’s fabrication of an image of early modern scepticism as an incoherent philosophical
revival, redeemed only as a self-validating antecedent to the *Encyclopédie* (1751-72). Without engaging in partially ill-conceived attempts to identify earlier formulations of ideas that are generally and mistakenly associated with the Enlightenment (an exercise both easy and meaningless, as it regards arguments’ historical context as a tool for finding, but not for understanding them), one could easily find support for both these alternatives in the fact that Xenophon’s perfect gentleman, or Cicero’s new man, have more in common with Hamilton’s representative merchant or Mandeville’s selfish citizen than with Montesquieu’s nobility, slowly remade fit for *doux-commerce*. To both place these moral economies into a context that shows the significance of the Harringtonian move, and keep the story to a manageable size, is the unreasonable ambition of this section.

II.3.2 The new men (old and new)

Not working (*otium*) was a sign of nobility in feudal Europe. Emerging urban patriciates in Germany, Venice and the Netherlands expressed their aspirations by withdrawing from trade and living on income. Scarcity of land was a dominant and long-evolving theme in political discourse in and about the Netherlands. In a sense, capital investment was a necessary alternative to renting out land for those who sought to live on income, and may have signalled an ambition to preserve, not proudly depart from, the feudal order. This therefore contrasts with, rather than emulates, the civic humanist critique of feudal nobility and the call for a new aristocracy based not on birth and the trappings of parasitism and idleness, but on the energetic cultivation of body and mind. This is the space that the new men, trading and investing, equipped with and served by a commercial humanist ideology, grew into. Both feudal and humanist ideals of nobility espoused wealth; but the latter allowed for, even encouraged new wealth. Instead of appealing to asceticism, other-worldly values, charity or altruism, fourteenth-century economic theory already recognised the conformity of self-

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61 E.g. in s.v. “Encyclopédie,” vol. 5 (1755), 635-48, esp. “Nous avons vu que l’Encyclopédie ne pouvait être que la tentative d’un siècle philosophe... cet ouvrage demande par-tout plus de hardiesse dans l’esprit, qu’on n’en a communément dans les siecles pusillanimes du goût.”


interest with natural law, and sought to maximise and entrench the public benefits of private ambition.\(^{65}\)

As usual, the counter-trend also existed. McCuaig identifies Sigonius as the origin of a new historical account of ancient Roman social stratification, with particular attention to the *hombres novi* acquiring offices, and artisans, merchants, clerks, even labourers desiring and achieving social mobility. A concrete and important instance of the impact of Sigonius’s analysis on late sixteenth-century views on political economy is Charles Loyseau’s (1564-1627) contrast between class rigidity in contemporary France on the one hand, and the social mobility of ancient Rome and contemporary Venice (particularly through finance), on the other hand.\(^ {66}\)

Unnoticed but unsurprisingly, some of this relevance goes back to Cicero. *De lege agraria* II in particular is both a defining text on *hombres novi*, and highly relevant to the present argument. Unlike *De lege agraria* I, delivered before the Senate, this oration was given before the Assembly. It begins with Cicero presenting himself as a new man, defending his ancestors’ merits even though they were not as publicly recognised as his own, and praising the Romans for opening their political system to merit. Voting is a chief instrument of meritocracy and public reason, Cicero explains.\(^ {67}\) However, meritocracy raises the risk of demagoguery and populism. It is to the people that Cicero turns:

> But I have urgent need of your wisdom to help me to explain the force and interpretation of this word [i.e. *popularis*]. For a great error is being spread abroad through the hypocritical pretences of certain individuals, who, while attacking and hindering not only the interests [*commoda*] but even the safety of the people, are striving by their speeches to obtain the reputation of being supporters of the people.\(^ {68}\)

The first thing to note is that *commodum* is Cicero’s word for the public interest. When this key notion is revived in sixteenth- and seventeenth-century Dutch and English texts, e.g. by

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\(^{67}\) *De leg. agr.* II.i-ii, 370-5.

\(^{68}\) *De leg. agr.* II.iii.7, 376-9.
Harrington and De la Court, it is exactly in Cicero’s sense.\textsuperscript{69} One reason why Hobbes may seem the odd one out in mid-seventeenth-century economic thought is because he prefers ‘commodious’ to ‘interest’ in describing the same thing. ‘Interest’ or ‘commodious’ mean not simply ‘commercial’ and ‘industrial,’ but address social, political, and material interests under a unified aspect. Earlier we saw Cicero, e.g. in \textit{De lege agraria} II.iii.7, and Livy handle the same connections effortlessly, again questioning the extent to which ‘interest’ was conceptually novel.\textsuperscript{70} One should not of course under-appreciate the seventeenth-century transformation of the term, either. There is nothing new under the Sun; to trace concepts to earlier times does not eliminate the value and interest inherent in the same concepts’ application in changed historical and linguistic conditions. It does, however, challenge simplistic accounts that commerce and interest were invented in the late seventeenth century, and are minimised or absent in Machiavelli, Harrington or Hobbes.

The second thing to note is the pressure on new men to justify their eminence in terms of representation and natural law. Cicero explains that he is the most reliable consul due to his recognition that the people’s greatest desire, which they share with all animals, is peace, liberty and leisure (\textit{pax, libertas, otium}).\textsuperscript{71} Undeliverable and unreasonable promises of riches and new land damage this interest.\textsuperscript{72} At the end of the Second Agrarian, Cicero returns to this theme, and argues that the popular interest is safer in his hand, because carrying ancestral images and upholding his family’s public glory is missing from his set of possible motivations.\textsuperscript{73} If one took this logic further, Harrington’s emphatic insistence on the desirability of regular and constitutionally embedded rotation is where one may arrive.

Xenophon (c. 430-354 BC) was another main source of agrarian and commercial moral models for reformers who contemplated the expansionary republican form. Xenophon gave at least two archetypal models: Cyrus as the enlightened prince in \textit{Cyropaedia} (but also in the \textit{Anabasis}, and in virtually all Xenophon texts), and Ischomachus, the gentleman farmer and fighter in \textit{Oeconomicus}. Indeed, Xenophon’s \textit{Oeconomicus}, which influenced not only Cicero but also the pseudo-Aristotelian \textit{Oeconomicus}, and was published in Latin translation by

\begin{itemize}
\item \textsuperscript{70} J.A.W. Gunn, \textit{Politics and the Public Interest in the Seventeenth Century} (Toronto, 1969); idem, “‘Interest will not Lie’: A Seventeenth-Century Political Maxim,” \textit{Journal of the History of Ideas} 19 (1968), 551-64. For the Anglo-Dutch Wars as a result of an emerging ideology of national interest see Gijs Rommelse, “Mountains of Iron and Gold: Mercantilist Ideology in Anglo-Dutch Relations (1650-1674),” in eds. \textit{idem} and David Onnekink, \textit{Ideology and Foreign Policy in Early Modern Europe} (1650-1750) (Ashgate, 2011), 242-66.
\item \textsuperscript{71} \textit{De leg. agr.} II.iv.9, 378-9.
\item \textsuperscript{72} \textit{De leg. agr.} II.iv.10, 380-1.
\item \textsuperscript{73} \textit{De leg agr.} II.xxxvi.100, 476-9.
\end{itemize}
Leonardo Bruni in 1420, is arguably the key ancient text for a particular and relevant type of *kalos kagathos*, ideal personal conduct. The perfect gentleman is discussed by Herodotus, Plato, Plutarch and others, and receives systematic treatment in Aristotle’s *Eudemian Ethics*, VIII.3. However, in Xenophon’s, Cicero’s and pseudo-Aristotle’s *Oeconomicus*, household management and civic-minded agriculture are integral parts of gentlemanliness, unlike in the other sources, which mainly discuss harmony, completeness of personality, battle, brave speech, and many other virtues. Note that Sigonius’s interpretation of the utility and excellence of Xenophon’s text and of Cicero’s translation is not dissimilar to Giannozzo Manetti’s (1396-1459), Leon Battista Alberti’s (1404-72) and other Renaissance readers’, insofar as they all examine direct causal connections between household, polity, and commercial and colonial empire.74

Hippocrates and Galen may have been major sources of Marsilius of Padua’s (c. 1275-1342) view of corruption and representation, and of Machiavelli’s notion of virtue as an energetic, expansionary counter to idleness, without which both citizen and republic are lost; but they were not the only ones. In Xenophon, Cicero’s fragmentary translation, and in pseudo-Aristotle, the virtue of the warrior citizen of a conquering polity is closely tied to his agricultural skills. On these grounds, agrarian virtue was even presented occasionally during the Renaissance as the hallmark of true, as opposed to corrupt, nobility.75 This was no mere contrast between *vita activa* and *vita contemplativa*,76 agriculture as well as arms had to be among the perfecting activities. There are no elements of the late-seventeenth-century ‘Country’ criticism of Parliament and the Court that are not already in place, in the same configuration, by the 1550s.77 The interlinked criticisms of a standing army, central bank,
insufficient representation, system of placemen, and corrupting luxury, begin at least as early as Cicero’s Second Agrarian, and matures by the time of mid-sixteenth-century objections to private armies of liverymen, proposals for land banks in the heyday of enclosures, the hijacking of royal taxes for the private aggrandisement of the monarch and/or his or her overmighty subjects, and the corrosive effect of importing foreign luxuries on the moral health of the nation.\(^78\) This tradition, though absent from current legal historiography, is recognisably distinct from the one that connects a self-sufficient economy with a citizen militia, and luxury to territorial expansion and defense by a standing army.\(^79\) It is a specific republican discourse of commerce and the agrarian that runs from Xenophon and Cicero through Alberti and Sigonius to Harrington, Chief Justices Hale and Vaughn, and at least as far Franklin, Jefferson, St. John de Crèvecoeur and Thoreau. Overemphasis on the ‘ancient constitutionalist’ component of this tradition gives insufficient weight to the ancient, Renaissance, and non-Anglophone parts if this tradition.

Using and transforming the ‘new man’ topos of Sallust and Cicero,\(^80\) Leonardo Bruni (1420 tr. of ps-Arist. *Oeconomicus*), Poggio Bracciolini (e.g. 1428-9 *De avaritia*) and Leon Battista Alberti (*I Libri della Famiglia*) were key Renaissance exponents of the *homines novi*. Cicero’s three agrarians, and other forensic orations with influential sections on property, such as “In Pisonem,” were discovered by Bracciolini in 1417 at Langres, and “Pro S. Roscio” with another four great orations in 1415 at Cluny (the *Vetus Cluniacensis*). During the same years Bracciolini and his assistant also recovered the works of Columella, whose influence on Renaissance agrarian and commercial republicanism is comparable to that of Xenophon.\(^81\) An examination of the effect of these texts, and of Poggio’s translation of Xenophon’s *Cyropaedia* and knowledge of *Hiero*, on the 1428-9 *De avaritia* in particular could be rewarding, and helps us to catch and trace transitions before these specific classical statements on the agrarian were adapted by Bracciolini in the 1450s.\(^82\) Note that his translation of Xenophon into Latin formed the basis of at least one early translation into vernacular Tuscan.\(^83\) A close examination of

\(^{78}\) Compare the discussion of Cicero above with the texts analysed in A.B. Ferguson, *Articulate Citizen and the English Renaissance* (Duke, 1965).

\(^{79}\) See e.g. Plato, *The Republic*, 372d-374a, 416d-417b, and the reception of these influential passages, including medieval Latin and Arabic accounts of the formal separation of classes of serfs, knights, rulers and priests.

\(^{80}\) McCuaig, *Sigonio*, 125.

\(^{81}\) E.g. Roger Ascham, *Toxophilus the schole of shootinge contayned in tvvo bookees. To all gentlemen and yomen of Engelande, pleasantaue for theire pastyme to rede, and profitable for theyre use to folow, both in war and peace* (1545 ed.), 42.

\(^{82}\) For Poggio’s translation see David Marsh, “Xenophon,” at 118-21. For Poggio and *Hiero* see Iiro Kajanto, “Poggio Bracciolini’s *De infelicitate principum* and its Classical Sources,” *International Journal of the Classical Tradition* 1:1 (1994), 23-35. The 1470 *Facetiae* relating jests, anecdotes and *bons mots* of Poggio and his friends should also be trawled.

Poggio’s terminological choices could also be helpful for understanding the Renaissance resurrection of the particular type of Greek agrarian discourse discussed here, one in which agricultural pursuit is an individual and civic virtue, and economics connects the household, the republic, and the empire, in manifold and seamless ways.

While the connections between the outlined themes of new men and new, commercial morality and international order are numerous and exciting, the next necessary step in examining the relationship between secularisation and soft imperialism is to show how Machiavelli, and the reason of state literature he shaped, is not a jarring note, and not captured by the straightforward, prima facie reading of the eighteenth-century term, a Machiavellian ‘jealousy of trade.’ The irreligiosity and princely ambition for grandeza that became associated with Machiavelli made it useful for free-traders to deploy ‘Machiavellian’ as an accusation, and equally useful for protectionist republicans who wished to extend the established legal-economic criticisms of monarchy to the protectionist and mercantilist measures that they only favoured for themselves. One should not take Davenant’s or Hume’s accusation that monarchs suffer from Machiavellian jealousy of trade entirely at face value, let alone agree with them that Machiavelli was insensible to economics. It is not a blindness to economics that was suddenly lifted in 1675 or 1688. Earlier thinkers did not, as a rule, fail to recognise that commerce is the opposite of the expansion of war by other means. Eighteenth-to twenty-first-century proposals to reform states and state systems on the assumption that commerce necessarily and invariably pacifies did not require a ‘turn,’ commercial or another kind.

Within the universe of salient primary sources, the continuities sketched above and below challenge these currently dominant views with themes and texts selected for being useful in understanding how soft imperialism developed and survived, and with a view to the Christian theology that first had to be removed. The non-Christian virtues of this new man – a farmer, soldier, merchant, citizen and colonist – is the perfect prism through which one can economically map out this section of our terrain.
CHAPTER THREE

COMMERCIAL CANAAN: SECULARISING REPUBLICANISM IN MODELS OF ISRAEL AND ROME

22. CORRUPTION in Government is to be read and consider’d in MACCHIAVEL, as Diseases in a man’s Body are to be read and consider’d in HIPPOCRATES.

Harrington, A System of Politics (1700, posthum.)

III.1  Machiavelli’s theory of labour

Above it was shown that for Machiavelli, as well as for Sigonius, Cunaeus, Harrington and their contemporaries, the Roman agrarian had multiple referents other than redistribution, including the compromise of land distribution from colonial conquests, and the conservative consolidation of misappropriated lands (i.e. the reaction to redistributive agrarian projects). The richness of Machiavelli’s economic thought is a distinct argument that stands or falls on its own, although both propositions are load-bearing components in my main thesis’s architecture.

In what follows I hope to erect, or at least lay some of the foundations for, an interpretative framework based on the recognition that Machiavelli did have economic sensibilities; investigate the role of labour as a manifestation of a republic’s energy in his thought, taking a cue from his borrowings from ancient medical texts; and establish a rudimentary starting point for reconsidering Harrington’s understanding and development of Machiavelli’s theory of labour into a model of commercial republicanism in The Prerogative of Popular Government (1657), and thereby challenge claims of a neo-Harringtonian, anti-Machiavellian turn toward commercial modernity.84

III.1.1  Machiavelli

Until the 1970s it was common to read Machiavelli as an advocate of republicanism who regarded military, artisanal, and agricultural activity, rather than Christian exceptionalism or commercial monopolies, as the key to domestic stability and international power. Before the Pocockian turn, Hans Baron and Christian Bec put civic wealth at the centre of their analyses.

84 This will be developed in Somos, “Harrington’s Project.”
Rubinstein has shown that Machiavelli’s terminology drew on Florentine merchants’ language: *principati acquisitati* instead of *conquistati*; *il danno e il benefizio*; *l’industria*; *l’utile*; and so on. The same introduction of commercial terms into politics characterises Lorenzo de Medici’s correspondence. Such terminological adoptions were not accidental, but complemented these thinkers’ substantive integration of economic concerns into the art of government.

The relative current inattention to the economic aspect of virtue, energy, and idleness in Machiavelli’s writings is particularly surprising because they frame both Machiavelli’s own treatment of expansion, and debates concerning the relationship between Machiavelli and early modern and Enlightenment republican colonialism. Yet Machiavelli’s “energy” is treated as a vague, neoplatonic concept, attendant upon the polity’s organic body metaphor. This fits the evidence of even the sixteenth- and seventeenth-century interpreters only to some extent: this meaning is often present, but seldom the only one. Challenging the monopoly of neoplatonic, organic body interpretations of Machiavelli also allows us to understand how *populousness* came to be regarded as a mark of success, and also how Harrington could build on Machiavellian foundations to reach the opposite conclusion to Machiavelli about states’ immortality. Finding Machiavelli’s political economy behind the neoplatonic expression suggests that Oceana’s immortality may simply refer to the theoretically endless collective survival of the human race, dependent on the reproductive passion. Population growth is a virtue that a well-ordered, expansionary commonwealth can rely on for its immortality, without any need to be chosen by God or achieve any kind of mystical status.

Whether this adds up to an uninterrupted, a patchy, or a reinvented tradition of putting Machiavelli’s energetic expansion into economic terms, and how the organising categories of this discourse shifted, are questions that need to be addressed in the future. One way of showing its importance is by pointing to Harrington’s reception of Machiavelli’s theory of labour, expressed i.a. in Machiavelli’s advice to pay armies with colonial landholdings, and the integral place of this method in his broader framework for individual, as well as republican,

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85 I owe this point to Lea Campos Boralevi. Also see Adam Smith, *Wealth of Nations*, V.II.i.343.
87 Or, to combine the two, Harrington may have had in mind the argument that occurs i.a. in Bacon, Bornitz and Hartlib, namely that collectivities rather than individuals are required to pursue scientific projects that improve the state. Vera Keller, “Accounting for Invention: Guido Panciroli’s Lost and Found Things and the Development of *Desiderata,*” *Journal of the History of Ideas* 73:2 (2012), 223-45, at 242. Bacon, *Two Bookes* (1605), 2:7. Jakob Bornitz, *Tractatus politicus de rerum sufficientia in Rep. et civitate procuranda* (Frankfurt: Godefridus Tampachius, 1621), esp. III.iv.236-7, on the Hansa and the VOC. Thanks to Hans Blom for directing me to Bornitz’s treatise.
virtue and expansion. As discussed in chapter VII, Harrington adopts from Machiavelli the state’s populousness and territorial expansion as measures of its success.88

The first cliché to undo for this reconstruction of the impact of Machiavelli’s theory of labour is the strict periodisation of economics before and after Adam Smith, and/or the creation of academic chairs in the discipline. It has become almost de rigeur to note the difference between household management and what we mean by ‘economics’ today. Modern economics obviously differs from that of the Renaissance. However, it is equally easy and wrong to overstate the differences; and the history of economic thought, not immune to political partisanship, also has a penchant for the teleological collapsing of important distinctions. Cicero’s De lege agraria, discussed above, and for instance ancient, medieval, and early modern commentaries on Xenophon’s Oeconomicus, unite private and public supply, demand, monetary and fiscal policy, and matters of trade in a way that often suggests a systematic attention and an exhaustive, programmatic agenda for figuring out the right way to run a household, a province, a republic, and the ideal relationship between these mechanisms, in a way that seems as close to a distinct discipline as medicine, theology or law were at the time. The extended household of Xenophon’s perfect gentleman, who must pay attention to the welfare, training, loyalty, and personal investment of his servants and slaves in his own fortune, translates to both Renaissance city-states and principalities readily.89 Furthermore, once the unfamiliar or ostensibly, deceptively familiar terminology is translated into modern terms, some Renaissance texts on economics seem on par with modern ones in sophistication.

The second cliché concerns Machiavelli’s alleged blindness to economics. Though Machiavelli, unlike notably his Venetian peers, is sometimes faulted for ignoring commerce, his writings contain a sophisticated theory of labour.90 It is prima facie improbable that the intense and varied discussion of economics, which already produced staple topos by the 1500s, completely passed Machiavelli by. Beside the evidence of Machiavelli’s economic thought in his own writings, the powerful presence of economic analysis in not only Venetian, but also Florentine, Roman and Paduan writers of Machiavelli’s period and earlier, as well as the fiscal and commercial aspects of Machiavelli’s own political and diplomatic experience, make this

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88 Harrington makes the connection between Hippocrates and Machiavelli in 10.22-23 at the end of the posthumous A System of Government (ed. Toland, 1700), 514, considered by some a better summary of Harrington’s views than Oceana. Bodin and Hume also wrote at length about territorial and demographic expansion as related but distinct measures of greatness.


90 E.g. Parole da dirie sopra la provisione del danaio, facto un poco di proemio et di scusa (1502/3); Discourses, I.1§4, I.2§2, I.25 §1, I.37§1, II.2, II.25, III.1, III.16§2, III.21§2, III.30§1.
implausible. The question is not whether Machiavelli had an economic theory, but how and why it differed from others’ such that later commentators were struck by what appeared to be his relative neglect.

I submit that Machiavelli differs from most of his peers’ able and detailed discussion of manufacturing and trade because he makes a conscious decision to focus on labour as the common denominator in the prince’s, and in the people’s, virtue. Military and economic fortunes depend on individual and collective strategies to maintain, harness and apply this energy, and avoid idleness. Machiavelli’s formulations of the political significance of a republic’s energy and its opposite, idleness, together with his (in)famous redefinition of virtù as a technical, not a moral category of excellence, follow from his conscious preference for labour over money as the organising concept of political economy. One strong lead in this proposed inquiry is the extent to which Machiavelli may have drawn on Hippocratic and Renaissance medical texts on idleness.91

To cite examples of Machiavelli’s economic reception before Harrington, Reginald Pole (1500-1558) and Pierre Charron (1541-1603) both read Machiavelli’s republican energy as coherent policy advice for imperialism.92 In A Good Speed for Virginia (1609), Robert Gray explained Machiavelli’s expansionary energy as the mobilisation of surplus population for colonialism. A similar argument is made in Dudley Digges, The Worthiness of Warre and Warriors (1604), and The Defence of Trade (1615).93 Another case, as we shall see, is Cunaeus’s direct adaptation of Machiavellian categories to the biblical Israel in De republica Hebraeorum (1617), which allowed Cunaeus to neutralise biblical legitimacy claims and prepare the legal groundwork for pragmatic imperialism. Here one should also mention the Antwerp-born Gerard de Malynes’s (fl. 1585-1641) 1622 Consuetudo, vel, Lex Mercatoria, which achieved the rarified status of a book of authority, a handful of works excepted from the rule that textbooks cannot be cited as authorities in common law. Finally, it is worth exploring whether the

93 Admiral and MP William Monson (1569-1643) had wonderfully naval arguments against idleness as the obstacle to empire. Scott, When the Waves, 51-2, 61-2. Also see Thomas Scott (1580?-1626), The Belgicke Pismire: Stinging the Slothfull Sleeper (1622) on the industriousness of the Dutch people and geography as a lesson for England: Scott, When the Waves, 57-9.
importance of adding one’s own labour in Locke’s theory of property and liberty is grounded in this specific tradition of agrarian and commercial republicanism.

Yet from Nicholas Unless-Jesus-Christ-Had-Died-For-Thee-Thou-Hadst-Been-Damned Barebon (c. 1640-1698) to J.G.A. Pocock, Machiavelli has been described as a thinker who saw no potential in economics to make a positive contribution to politics. Pocock described Machiavelli’s view of wealth as positively antithetical to civic humanism. Many argued that this is untrue, and that Pocock’s, and his followers’, understanding and formulation of republican virtue in and after Machiavelli have been profoundly distorted by this error. Pocock’s critics draw attention to Machiavelli’s view of wealth as an emergency repository of value, mobilised by the goodwill and civic virtue of the rich; and to the role he ascribed to the dynamism of the rich-poor antagonism in the health of the republic. Yet even Pocock’s critics agree that Machiavelli’s view of the economy was unique and very different from his predecessors’ and contemporaries’.

While the critics are right to point out Pocock’s underestimation of an aspect of Machiavelli, their own account of Machiavelli’s economic idiosyncrasy is uninformative. Criticising Pocock now overshadows the task of re-reading Machiavelli in the context of the economic theories of his time. Moving away from this unhelpful framework would allow the revisitation of both early modern and Enlightenment works of economic theory. Charles Davenant’s (1656-1714) and David Hume’s (1711-76) criticisms of Machiavelli for paying insufficient attention to commerce and money can be revisited, and perhaps shown to be deliberate attempts to distance themselves from the moral implications of a rapacious and realist reading of republicanism. Reconstructed, Machiavelli’s theory of labour may reveal seventeenth- and eighteenth-century descriptions of ‘jealousy of trade’ as ‘neo-Machiavellian’


to be less an insight into the self-defeating economics of mercantilism than the continuation of an established equation of governmental immorality with Machiavellism, and an eighteenth-century republican apology for pursuing anti-free-trade economic policies that the authors wished to associate with monarchies instead. Before this interpretation was partly obscured from view, Machiavelli’s political economy was understood and developed by seventeenth-century theorists of commerce, colonialism and imperialism. By the time of the American Revolution, Machiavelli’s ‘energy’ in a republic was clearly detached from overextended neoplatonic body metaphors, and applied primarily to the republic’s economic survival and growth.97 Readings of these later Machiavellians and anti-Machiavellian Machiavellians will be reinvigorated by a reconstruction of Machiavelli’s theory of labour.

This is not the place for even a cursory survey of Renaissance Venetian or Florentine economic thought, or for their comparison. Footnotes will refer to salient passages in Alberti, Bracciolini, George of Trebizond, and others. To economise, I will first illustrate the role that idleness in Machiavelli’s sense has played in English legal and economic thought. The distinctive combination of agrarian and legal considerations in improving and harmonising the household’s and the whole state’s welfare in the 1523 Boke of Husbandire and The Boke of Surveyinge and Improvements, by the great judge and common law authority Anthony Fitzherbert (1470-1538), brings into play all the concerns relevant to this study. It is notable that they are based on assumptions and value judgements that are pious and far from Machiavelli’s. By contrast, works by English thinkers like Thomas Starkey (c. 1495-1538) and Sir Thomas Smith (1513-1577), supported at Padua by Reginald Pole and recalled to public service by Thomas Cromwell (1485-1540), show a remarkable transformation in offering a combined treatment of agriculture and law that presents, for instance, idleness as not an offense against God, and not only a threat to the moral and material welfare of the individual, but also a burden to the state in an international environment of military, manufacturing, and commercial competition. Despite many of their assumptions about law, politics and economics remaining the same, a mere 40 years separate Fitzherbert’s and Smith’s radically different recommendations for individual and collective conduct. This transformation is not only an efficient illustration of the sea-change in economic thought because it takes place when Machiavelli’s works are published. It is also a time-saving shortcut through the voluminous literature, because the lessons that these English thinkers learned from Italian, and specifically

Paduan, economic debates in turn set the scene and clarify both the topics, and the changes that they underwent, by the time English thinkers like Harrington came to consider the Venetian experience with commercial, and the Paduan theory of provincial, republicanism in the middle of the seventeenth century.

The second part examines a few chapters in Lodovico Guicciardini’s 1567 *Descrittione di Tutti i Paesi Bassi*. These exemplify sixteenth-century economic thought about the new men and commercial morality, with particular reference to what soon would become the United Provinces. The book also adapts the long-standing discourse of *laus urbis* to commercial cities and free ports. These aspects of the work help to explain both continuities and changes from the Roman agrarian and imperial debates, through the sixteenth-century Italian self-conscious revisitation of these debates for prudential and theoretical guidance, to the seventeenth-century Dutch and English iteration of these debates, informed by their Italian precursors. *Descrittione di Tutti i Paesi Bassi* sets up the post-Machiavellian trajectory of this chapter, including Sigonius’s civic humanism and Cunaeus’s insertion of biblical Israel into this language of commercial humanism, and its link to Harrington’s view of commercial towns and free ports in the context of a pan-European republic.

III.1.2 The English in Padua

The assumption that underpins this section is that it is a useful rhetorical and heuristic device to establish interesting connections and differences, and adumbrate continuities, between near-contemporary arguments bearing on secularisation and imperialism in English constitutional reform. Padua, as a centre for reconstructing and interpreting the Urbino fragments and home to a variety of provincial republicanism distinct from the well-known Florentine and Venetian strands of Italian Renaissance political thought, is a useful device to frame these connections and differences. It is valid to present and understand a group of sixteenth-century English thinkers, who pursued some of their studies in Padua and who had to formulate, develop, and sometimes revise their views on government and religion under the pressures of Henry VIII’s divorces, as a ‘Paduan circle.’

Yet the current selection of such

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In a discussion of secularisation it is important to note that I do not disagree with Kristeller’s criticism of Ernest Renan. In *Averroés et l’Averroïsme* (1852), Renan may have overstated the cohesion and uniqueness of ‘the school of Padua.’ Kristeller is certainly right to question the view that Paduan emphasis on the contrast between philosophy and theology is a direct precursor to libertinism and free thought. Kristeller’s conservative formulation,
thinkers is looser than that, and was made with a view to making specific connections between texts on secularisation, commerce, and soft imperialism from the 1520s until the 1560s, and between these English writers and politicians and the Italians with links to Padua, such as Bembo, Speroni, Piccolimini, Sigonius, and Paolo Paruta (see e.g. his Discorsi politici, book 1, on Roman idleness). I will not therefore consider the magnificent literary output of the Accademia degli Infiammati (c. 1540-50), nor call the English in Padua, including Pole, Starkey, and Smith a ‘circle’; but I will consider them together partly based on their shared immersion in Paduan humanism, and partly because their prominent place in the history of English secularisation and soft imperialism is important for understanding Harrington’s adaptation of provincial and commercial republicanism to English circumstances. It is not altogether misleading, for instance, to draw a trajectory between the small-state strategies developed during the 1494-1559 Italian Wars and the provincial republicanism, economic autonomy, and the incentive structure for colonists and corporations, that defined early modern English imperialism and eighteenth-century American identity.⁹⁹

Beside this design for the selection of sources examined here, another caveat is against reducing the relationship between the English in Padua and Henry VIII’s regime to one of opposition. Henry VIII (1491-1547) famously paid for over half of Reginald Pole’s (1500-58) graduate education in Padua from 1521 until 1526. There Pole met Pietro Bembo (who, as we saw, also moved to Padua in 1521), Peter Martyr, Jacopo Sadoleto, and other Renaissance luminaries. When Henry offered Pole the Archbishopric of York or the Diocese of Winchester in 1532 in exchange for supporting his divorce from Catherine of Aragon, Pole chose self-exile and continued his studies in Padua and Paris before returning to England. His definitive break with the king took place only in 1536, when Pole replied to the questions posed by Thomas Cromwell, Cuthbert Tunstall and Thomas Starkey by sending a copy of his Pro ecclesiasticae unitatis defensione, which called for Henry’s immediate deposition.

From the range of texts that comprise English civic humanism, here I will only examine one, Smith’s De Republica Anglorum. To bring out the unique contribution of the English trained in Padua, I will briefly compare it with Fitzherbert’s Boke of Husbandire. These two

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⁹⁹ The international law and relations works of eighteenth-century Genevan représentants, which in turn greatly influenced European and American theories, embody many of the exact same small-state strategies. Richard Whatmore, Against War and Empire: Geneva, Britain and France in the Eighteenth Century (Yale, 2012).
make an economic pairing, and test my thesis about the English in Padua and the Machiavellianism they brought back to England, including its distinct theory of labour. Both texts cover social and constitutional developments in England, and both pay particular attention to the emerging role of yeomen; the management of the household, and how it fits in with national interests; and both authors are judges. On the same topic, with some shared main features in their background, they come to very different conclusions about constitutional reform, the role of religion, and colonialism.

Although it is still sometimes attributed to his brother John, the balance of evidence suggests that the author of the Boke of Husbandire was Sir Anthony Fitzherbert, best known as Justice of the Court of Common Pleas, serving on a special commission to restore order to Ireland, and author of the huge Magnum abbreviamentum (1514-7), a digest of almost fourteen thousand cases, La Novelle Natura Brevium (1534) on writs and one of the few books of authority in common law, in use well into the eighteenth century, and of The New Boke of Justices of the Peas (1538), renowned as the first printed treatise on English criminal law.

The Boke of Husbandire was reprinted very often throughout the sixteenth century, and enjoyed a revival in the mid-seventeenth-century. The first edition and other sixteenth-century reissues were almost always bound together with Xenophon’s Oeconomicus, in a translation that the preface claims to have been made by Gentian Hervet (1499-1584), tutor and later companion to Reginald Pole, at the request of Geoffrey Pole (1501/2-1558), Reginald’s brother. Like contemporary Italians, and like the English in Padua, the printer, Thomas Berthelet (d. 1555) also recognised the connection between agriculture, household management, and participation in, and management of, the whole country’s economy. Berthelet became king’s printer to Henry VIII in 1530, and published most, if not all of Fitzherbert’s books, including La Novelle Natura Brevium, the Book on Surveyinge, as well as Sir Thomas Elyot’s works.

Fitzherbert opens the book by examining Job 5:7 and 2 Thess. 3:10, both on the need for men to work. Fitzherbert denies this is a literal injunction, and deploys the simile of a chess game to show that there is an ordained division of labour, with rulers, clergy, knights, judges, yeomen, and so forth, all with their appointed tasks and authorities. Fitzherbert explains that his book is vital because it helps the yeomen with his duties, and it is the yeoman who defends and maintains all the other orders, and represents the common people.100 The constitutional

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100 Compare Hamilton’s suggestion in Federalist 35, discussed in chapter VIII below, to make merchants Congressmen, as they best represent the common interest.
and military significance of household management and agriculture could not come together in a more emblematic passage.

This is not to say that Fitzherbert offers maxims and prescriptions. He emphasises throughout the *Bake of Husbandire* that his main source is decades of personal experience, and explicitly challenges the relevance of “the science or connynge of a philosopher not proved” (141¶, 91). He also warns against idleness (e.g. 144¶, 94; 146¶, 96; ¶166, 115-6) and luxury (150-152¶¶, 101-4) several times, and advises wives on processing hemp and flax. The book seamlessly combines religious, moral, legal and economic instruction.

*De Republica Anglorum* by Sir Thomas Smith (1513-77), written in 1562-5 and first published in 1583, is now much better known.\(^1\) The present treatment is limited only to relevant aspects. Smith studied civil law in Padua, and in 1540 became the first Regius Professor of Civil Law, at Cambridge, chosen by Henry VIII. Henry also ended the teaching of canon law at both Oxford and Cambridge. Like Fitzherbert’s, this book also underwent a remarkable revival and numerous editions in the middle of the seventeenth century, no doubt because the constitutional problems then were seen as analogous or directly connected to the reigns of Henry VIII and Elizabeth I. References made here are to the 1640 edition.

In Smith’s view, a hallmark of a king, as opposed to a tyrant, is that the former “doth see the profit of the people as much as his owne.”\(^2\) Naturally, he argued that the Kings of England owed no allegiance to the papacy.\(^3\) Perhaps more surprising is Smith’s well-developed Machiavellian argument that previous papal influence on English law and character suppressed and clashed completely with England’s martial spirit.\(^4\) Smith describes the household as resembling the government,\(^5\) and colonisation as a natural extension of the family’s growth.\(^6\) Perhaps surprisingly, Smith considers rotation to be the natural political arrangement after the death of the first *paterfamilias*. People, however, wish to become immortal through their posterity. Both of these points are made in I.xiii on the rise of aristocracies, and echoed in Harrington’s *Oceana*, discussed below. Chapter I.xv introduces a

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\(1\) See esp. the directly relevant treatment in David Armitage, *The Ideological Origins of the British Empire* (Cambridge, 2000), 47-51.

\(2\) *De Republica Anglorum*, I.vii.10. Note how this formulation of complementary interests differs from many others, from Plato to John of Salisbury or Aquinas, in which only the tyrant, not the king, has interests that are distinct from his people’s interests.

\(3\) *De Republica Anglorum*, I.vi.18-19. All religious courts owed their authority to the king: III.xi.269.

\(4\) *De Republica Anglorum*, III.iii.212-3. Smith’s account of mercenaries, the danger of roaming troops and *condottieri*, and the consequent rise in violent factionalism is also Machiavellian. III.iv.216-7. Further insistence that England’s spirit is strongly and primarily military: III.v.229, III.ix.246, etc. Smith discusses and offers conjectures about some constitutional continuities between the England of his time, and its state before conversion to Christianity, in III.xi.

\(5\) *De Republica Anglorum*, I.xi.25.

\(6\) *De Republica Anglorum*, I.xii.26-27.
version of the Aristotelian notion that all good forms of government are fine, as long as they match the nature of the people; although captains of conquering armies who choose to stay tend to establish monarchies. Another reason for the need for prudence is that states, like ancient Rome and modern England, have both similarities and differences, and no two states are the same. Moreover, states themselves change.

For all changeth continually to more or lesse, and still to divers and divers orders, as the diversitie of times doe present occasion, and the mutabilitie of mens wits doth invent and assay new wayes to reforme and amend that wherein they doe find fault.107

Still, Smith systematically applies Roman political and legal terminology in his analysis of England, whenever possible. He discusses Cicero’s *novi homines*, another thread that runs through this book, in I.xx. A key part of his argument is that as times and circumstances change, princes and commonwealths must create new and suitable noblemen and gentlemen, “as The Husbandman hath to plant a new tree where the old faileth.”108 The next chapter is devoted to Smith’s refutation of the opinion that the creation of such *novi homines*, especially if they have a law degree like he does, is a bad thing. Later he goes further and praises yeomen, freeholders between gentlemen and labourers who “commonly live wealthily, keepe good houses, and doe their businesse and travell to acquire riches.”109 They farm gentlemen’s lands, go to market, employ servants, shun idleness, and send their sons to university or raise them into gentlemen by other means. Then follows pages of praise for this new class, their ability to farm and to fight as archers and infantry, and thereby save and expand England in contrast with the equestrian French aristocracy that continues to suffer defeat. When Smith describes that common law does not abide torture, but it is comfortable with the death penalty, he strongly hints that the free and tough yeomen best reflect, and perhaps determine, the ancient and new *mores* of England, which he describes in similar language.110 Finally, Smith conjectures that the English ‘yeomen’ comes from the Dutch ‘yonker.’111 In criminal inquests, we later learn, yeomen are vitally important jurors, because they are local and have relevant specific knowledge. They also possess practical wisdom as a class due to their daily labour, travel, and

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107 *De Republica Anglorum*, I.xiii.43.
108 *De Republica Anglorum*, I.xx.54.
109 *De Republica Anglorum*, I.xxxiii.60.
110 *De Republica Anglorum*, II.xvii.197.
111 He makes a similar Dutch-English etymological connection between legal concepts in *De Republica Anglorum*, III.x.258-9.
avoidance of idleness. All the Paduan and Xenophonian elements of this new republicanism are present, and even the link between Dutch and English *homenes novi* is made explicit.

In II.ii Smith states the supremacy of Parliament and, with some difficulty, explains it in Roman constitutional terms.

And to be short, all that ever the people of *Rome* might doe, either *Centuriatis Comitiis* or *Tribitis*, the same may be done by the Parliament of *England*; which representeth, and hath the power of the whole Realm, both the head and bodie. For every Englishman is intended to be there present, either in person, or by procuration and atturny, of what preheminence, state, dignitie or qualitie soever hee be, from the Prince (be he King or Queene) to the lowest person of *England*. And the consent of the Parliament, is taken to be every mans consent.113

A detailed and clear introduction to parliamentary procedure follows. Later, in II.xviii, Smith similarly tries to present the jury, another peculiarly English institution, in ancient Roman terms. In II.iv Smith moves to foreign policy, and explains that the English monarch has absolute authority of decision over war and peace, more so than Venice or even Sparta. This authority, called martial law, befits the expediency and speed needed in war. In Smith’s discussion of the English legal systems we find the common trope that litigious citizens are idle and wicked, and disagreements are best settled outside the court.114 To this he adds the point, reminiscent of Paduan provincial republicanism as much as it prefigures Harrington’s emphasis on local courts, that courts baron resolve disputes among neighbours, and by doing so, encourage them to avoid formal litigation altogether.115 The Justices of the Peace serve a similarly important local legal and social function.116 One of their main tasks is to put idle people and vagabonds to work.117 Smith also ascribes a great role to equity and conscience.118 Local legislation and law enforcement, encouragement to avoid idleness and settle disputes outside of court, and the role of equity and conscience combine to make the English legal system ‘soft.’

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112 *De Republica Anglorum*, II.xxvii.183. Punishments for idleness: III.x.263.
114 *De Republica Anglorum*, II.xii.113, III.i.209, etc.
115 *De Republica Anglorum*, II.xx.154-5.
116 *De Republica Anglorum*, II.xxii.164.
117 *De Republica Anglorum*, III.x.263-4.
118 *De Republica Anglorum*, II.xii.115, 118, 119.
There was never in any Common wealth devised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwayes, as it were, in a bridle of good order, and sooner looked unto, that they should not offend, then punished when they have offended.\textsuperscript{119}

One also wonders whether Smith’s criticism of the hypocrisy of English clergy and monks, who encouraged everyone to manumit their serfs but did not free their own, owes anything to Continental criticisms of the Iberian clergy’s attitude to imperialism.\textsuperscript{120} At the same time, Smith argues that Christianity itself abolishes slavery.\textsuperscript{121} In a great metaphor, Smith concludes by describing his book as a chart or map of the English constitution, and recommends that other European countries adopt its best and adoptable features.\textsuperscript{122}

III.1.3 Lodovico Guicciardini (1521-89)

Lodovico, the nephew of Francesco, published in 1567 his illustrated Descrittione di Lodovico Guicciardini patritio fiorentino di tutti i Paesi Bassi altrimenti detti Germania inferiore.\textsuperscript{123} The book was soon translated and published, sometimes in abbreviated forms, in Dutch, French, German and English versions, and remained popular well into the seventeenth century.\textsuperscript{124} The Provinces broke out in open rebellion against Philip II in 1568, and signed the Union of Utrecht in 1579 and the Act of Abjuration in 1581. The fall of Antwerp, often seen then and now as the event that formally separated the Dutch Republic from the Spanish Netherlands, took place in 1585. When Guicciardini’s book first appeared, the rebellion, the separation, and all that was yet to come. It both predates the conventionally defined Dutch Golden Age, and considers Spanish presence in the Low Countries without foreknowledge of the fierce and long wars, foreign and civil. The Beeldenstorm was already under way, but it resembled French, German and other iconoclastic movements so closely that when Lodovico was writing, it would have required extraordinary prophetic powers to interpret it as primarily a bid for national independence. Although Dutch complaints about heavy Spanish taxes became commonplace, the long debate surrounding the Compromise of Nobles (Eedverbond der Edelen) as late as

\textsuperscript{119} De Republica Anglorum, II.xxii.165.
\textsuperscript{120} De Republica Anglorum, III.x.250-1.
\textsuperscript{121} De Republica Anglorum, III.x.252-4.
\textsuperscript{122} De Republica Anglorum, III.xi.272-3.
\textsuperscript{124} E.g. The description of the Low countreys and of the Provinces thereof, gathered into an Epitome out of the Historie of Lodovico Guicchardini (London, 1593). The first French translation was published in Antwerp in 1567, as was the original Italian.
1566 showed the conciliatory, as well as the independent, side of politics in the Habsburg Netherlands. There was little, in sum, to prompt Lodovico to predict the war of independence.

That said, meaningful parallels appeared readily. France and the papacy were large territorial states, and the policies they pursued towards Italian city-states were comparable to Spain’s approach to the Provinces, at least from the latter’s perspective. In the context of large state – small state analyses, the curious thing about large sections of Lodovico’s account of Antwerp’s (Anversa) rise and character is that it ranks economic over political factors in priority and explanatory force, and adopts them from the sort of descriptions we find among contemporary Florentines and Venetians. Lodovico regards Antwerp as a city-state, operating quasi a modo di citta libera. If anything, he overestimates the capacity of Antwerp’s commercial character to preserve the city’s independence, defend its security, and force enemies to either suspend their hostility, or risk losing the economic benefits of Antwerp’s craftsmanship and trade, including its manufacture and distribution of arms. Another reason why Descrittione di tutti i Paesi Bassi is a good illustration of the conundrum of Machiavelli’s economic theory, as pursued in this chapter, is that Lodovico’s text can be instructively compared with Harrington’s presentation of Amsterdam in Oceana and The Prerogative.

Lodovico’s explanation of Antwerp’s rise begins with the emphatic identification of privileges as a chief cause. He traces how various local, national, imperial and ecclesiastical rulers granted, abrogated, and re-granted privileges. The most important were the right to hold fairs and to grant safe conduct and immunity to traders and buyers. However, Bruges, with a similarly chequered history of holding and losing the same privileges, was eventually overcome by Antwerp due to the external economic reason that Portuguese discoveries changed the pattern of trade (not, in Guicciardini’s account, because the Zwin silted up and cut off Bruges’s sea access). Rich bankers and traders moved to Antwerp, and reinvigorated its commerce as well as its political strength. The description of the new Antwerpians represents another milestone in the transformation of the good man, a process in which we earlier saw

\[\text{125} \text{ See the very interesting Violet Soen, “Between Dissent and Peacemaking. Nobility at the Eve of the Dutch Revolt (1564-1567),” Revue belge de Philologie et d’Histoire 86 (2008), 735-58.} \]
\[\text{127} \text{ For similar accounts of ‘triadic games’ between the king, the nobility and the cities, see Max Weber, and Wim Blockmans and Charles Tilly, eds., Cities and the Rise of States in Europe, AD 1000 to 1800 (Boulder, Col., 1994), chapter 11, 218-50.} \]
\[\text{128} \text{ Guicciardini, Descrittione, 84.} \]
Xenophon’s integration of the individual’s agricultural work and household management into the framework of collective good, and Cicero’s addition of political meritocracy in the *homines novi* to the same.¹²⁹

The inhabitants of this city are for the most part engaged in commerce, and indeed they are great merchants and very rich, some here being worth two hundred thousand, others up to four hundred thousand crowns a man, and more. They are courteous, civil, ingenious, quick to imitate foreigners, and to intermarry with them. They are capable of dwelling and carrying on business throughout the world. Most of them, and even the women (though they may not have been out of the country), know how to speak three or four languages, not to mention those who speak five and six and seven; this is something to marvel at as well as a great advantage. They have artisans proficient in every kind of art and craft, for they work so well that they sell their products even before these are finished, and, as everyone knows, continual work brings perfection.

Now as to the kind and number of crafts exercised in this city, one can almost say in a single word – all.¹³⁰

Every item is checked on the list of Aristotelian and republican recipes for destructive corruption: commerce, crafts, inequality, personal opulence, openness, mingling readily with foreigners, intermarriage, continuous travel and exposure¹³¹ – except here they are celebrated. The republican city-state’s distrust of money was overcome. George of Trebizond (1395-1472/3), Bracciolini and others tell the same story. The new man trades and imitates endlessly, in pursuit of both the private and public good.

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¹²⁹ More similarities: Guicciardini, *Descrittione*, 30F-G on Dutch men’s household, relationship to wife, diligence and temperance, and trading. Note that while similar to Smith’s account of yeomen as industrious, trading, traveling, socially mobile, and the key to constitutional stability and the correct representation of the national interest, Guicciardini’s merchants concentrate in a city, instead of being dispersed in both cities and the countryside. Hamilton combines the two in *Federalist* 35, arguing that merchants make the best representatives because of their habits and skills, from communicating with all classes through their industriousness and need for credibility to their physical and social mobility, and because of the circulatory nature of the economy, and the merchants’ comprehensive view of national interest they must consequently develop in order to be successful. For the early modern British-American part of this tradition, including idleness vs. industry and the claims to privileged constitutional functions by an emergent trading gentry, see Michael Walzer, *The Revolution of the Saints: A Study in the Origins of Radical Politics* (Harvard, 1965), chapters 6 and 7.

¹³⁰ *Descrittione*, 114F-G. Tr. from *The Portable Renaissance Reader*, 187. For a process whereby Antwerp makes *nuove gentilhuomi*, see *Descrittione*, 91E-F. From the same period contrast e.g. the non-agrarian, non-commercial ideal in Girolamo Muzio, *Il gentilhuomo* (Venice, 1571).

¹³¹ *Politics*, V.
Despite his ebullient praise, Lodovico does not subscribe to Antwerp’s manners wholeheartedly. He notes that while some live in austerity, others dress a little too well and spend a bit too much on feasts, dances and revelries. Nevertheless, their spectacles reinforce the impression of a great and powerful city.\textsuperscript{12} This half-hearted reprimand may be interpreted as a moral hedge, a transitional point between Christian and commercial ethics. Note, however, that this sort of luxury is also condemned by the Dutch at least until the 1660s, and Harrington does not regard it as particularly beneficial for a republic, either. We are tracing the genealogy of something other than the eighteenth-century damnation or praise of luxury’s effect on the collective economic and social well-being, and of the avenues for accommodating its moral costs.\textsuperscript{13} This is the trail of a republicanism that accommodated individual and collective economic interests from the start, and a commercial imperialism that never gave up on classical republican virtues. From this perspective, it becomes clearer how the reintroduction of the agrarian theme is a defense against inequality getting so out of hand that threatens the poor’s food supply in a recognisably modern global economy; and at the same time, how household agriculture as a pursuit was meant to instil good habits, good character, domestic and civic co-operation and concord, and to inure the body to privation and hard work. It is not a moralising after-thought and a half-way house to Enlightenment commercial republicanism, but already a crucial ingredient of this new republicanism, where colonisation could be a substitute for war in channelling the republic’s expansionary energy.

This is the real context and genealogy of commercial republicanism in which Machiavelli now appears as a less obvious outrider who, in contrast with other Renaissance thinkers discussed here, builds on a more classical notion of virtue and critique of commerce, as opposed to ignoring or rejecting it. Note that this still allows for agriculture as one of the state’s needs, and a useful skill and habit for soldiers and colonists. What it contrasts with is both Italian Renaissance celebrations of commerce, and the old topos that commerce, ports, speaking several languages, intermarriage and the like, cause terrible corruption. We see Harrington grappling with this problem. In a marked shift from the 1656 \textit{Oceana}, where he does not quite know what to do with Holland, in the 1657 \textit{Prerogative} Harrington reconciles Machiavelli’s energetic republicanism and fear of luxury with the undeniable power of commerce by conceptualising Holland, Genoa, and the biblical Israel as unusual states which, due to the scarcity of land and historical circumstances (being banned from other trades, in the

\textsuperscript{12} \textit{Renaissance Reader}, 189.
case of Israel) became capable of sustaining theoretically immortal, stable commonwealths on
the unique foundation of the balance of money.\textsuperscript{134}

Lodovico’s constitutional interpretation of Antwerp, by contrast, neither emphasises
fatal flaws nor diagnoses them as something new. For him, what Antwerp’s privileges-based
urban arrangement has achieved is the updated, commercial version of the same ancient
Polybian perfect mixed constitution that Sigonio had ascribed to Venice.

Proceeding now with our discussion, let us briefly consider how this noble city is
ruled and governed. Antwerp primarily has as its lord and prince the Duke of
Brabant, as Marquise of the Holy Roman Empire. However, the city has gained so
many and such privileges in the past that – save for the rights and supremacy of
the Prince – it is ruled and governed as it were by itself, almost as a free city or a
republic. In fact, in my opinion this is a form of government that, if it were
completely observed, would differ only slightly from the form that Polybius, the
most authoritative philosopher and historian, considers the true and happy
republic: which he thinks comes from a combination of three regimes, Monarchy,
Aristocracy and Democracy, with the prince keeping his imperium, the optimates
their authority, and the people keeping the power and the weapons. This is the
constitution that Sparta retained for many centuries; God willing, this is the
constitution that the city of Antwerp has long retained and will happily retain: a
city that has always had its own prince and a government of noblemen, along with
popular consent and power.\textsuperscript{135}

\textsuperscript{134} The alternative sacred geography tradition, which held that Canaan was uniquely fertile, may be more familiar
to readers. One influential proponent is Benito Arias Montano (1527–98). While Selden, Harrington and others
discussed here regarded the mountains and the sea as geographic limitations on the chosen nation’s agrarian and
territorial expansion, and, in the case of Harrington, therefore a key component of the special circumstances that
enabled Israel to remain stable on the balance of money, Montano actually considered the Holy Land’s mountainous
character as a cause of its fertility. Sebastian Münster took the same position, but added that God gave the gift of
unique fecundity to the pious, and therefore it shifted from Israel to Germany. Zur Shaley, \textit{Sacred Words and
Worlds: Geography, Religion, and Scholarship}, 1550-1700 (Brill, 2012), 53-4. The point here is that the broad
tradition of attributing extraordinary fertility to Canaan precluded most ways of presenting Israel as a republic, since
extraordinary fertility raised the spectres of luxury and surplus that classical republican theories warned against, and
also deprived Israel of the necessity of developing commercial republicanism. It would be interesting to find a
Xenophonian, purely agrarian, non-commercial republican take on Israel.

\textsuperscript{135} aHOR seguitando il nostro corso, vegghiamo sommariamente come questa nobil’ citta si regge, & si gouerna. Ha
primieramente Anuera per suo signore, & Principe il Duca di Brabante, come Marchese del sacro Imperio, ma con
tanti & tali preuligeb obtenuiti antico, che ella come da per se (salvo sempre il iure & superiorité del Principe) quasi a
modo di citta libera, & di Republica si regge & si gouerna. Anzi questo è un’ modo di gouerno a mio guiditio poco
differente, se fusse pero totalmente osservato, da la forma, che da Polibo grauissimo Filosofo, & Historiografo, alla
vera & felice Republica, perche vuole che elle sia mescolata de tre stati Monarchia, Aristocratie, & Democratia, doue
il Principe ritenga il suo imperio, gli ottimati la loro autorité, & il popolo la potestà & l’armi. Questo è quel’
temperamento, che mantenne molti secoli la Republica de Lacedemoni, questo è quel’ temperamento che ha
lungamente mantenuto, & manterrà felice (a Dio piacendo) la citta d’Anuera: la quale ha hauuto sempre Principe

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The comparison with Sparta is interesting, since Sparta is rarely known for its ostentatious wealth, inequality, commerce, manufacture, and interaction with foreigners. What it was known for, i.a. from Xenophon, was its period of regional dominance and the Athenian radical criticisms of democracy that Sparta’s rise provoked. Whether or not Lodovico tapped into this vein, and transformed accounts of Sparta’s republican military dominance into Antwerp’s republican commercial strength with striking directness, his debt to the Machiavellian cost-benefit analysis of perilous factionalism vs. constructive tripartite dialectic is clear. The constitutional arrangement that allowed the king, the nobility and the city to play one off against the other, and balance and rebalance their military and economic interests, provides in Lodovico’s account the dynamism and dialectic that is not only not detrimental to, but positively supportive of, Antwerp’s longevity. This arrangement, the principle of a mixed constitution upon the unmixed foundation of popular sovereignty, is what resembles Sparta, despite being contrary in all its particulars; and it is the consequent analogy between Sparta’s and Antwerp’s republican character that may have allowed Lodovico to transform military into commercial power in his analysis and forecast.

Incidentally, I suspect that the Prince’s imperio in Lodovico’s account is clearly distinct from the autorità of the optimates in the same way that Sigonius argued, at the cost even of contradicting Cicero, that there is only potestas, therefore there can reside no imperium in the provinces. The provincial nobility owes allegiance and military service to the prince, but have very considerable independent powers in their own domain. Given Lodovico’s emphasis on privileges, it is unlikely that the potestà he assigns to the people is the same potestas that Sigonius locates in the provinces. Perhaps the addition of l’armi in the passage cited is meant to recall that the principle of popular sovereignty is anchored in citizens’ right to bear arms – for both self-defense and the practice of virtue – thus more deeply than the magisterial division of

(particolare, ha hauuto il governo de nobili, accompagnato dal consenso & potestà popolare.” Guicciardini, Descrittione, 908-C. With many thanks to Francesca Borgo for help with this translation. 136 One wonders about the Renaissance view of ancient Greek mirroring. Aeschylus’s Persians (472 BC) is a justly celebrated instance. More relevantly, the jury is still out on the extent to which Xenophon was inspired by Persian rulership and agrarian gentlemanliness, or levelled instead an internal critique against Greek practices by using Persia as a mere literary device. (Due to biographical details I favour the currently minority view that Xenophon’s ideals are genuinely indebted to Persia.) Beside Alberti, Bracciolini and others discussed here who drew heavily on Xenophon, one should note that the longest-ever novel, according to reputable scholars, the siblings Scudéry’s 10-volume Artamène ou Le Grand Cyrus (1649-53), and the Chevalier Ramsay’s 1727 Les voyages de Cyrus, are novels that return to Xenophon’s model ruler in their experiments with new moral economies. Their indebtedness to the use of the Persian model in Renaissance and early modern agrarian and commercial humanism is clear, but how they transformed Xenophon’s Cyrus and its adaptation by Alberti, Bracciolini and others into oblique yet obvious and powerful critiques of modern absolutism remains to be studied. Some of this discussed in M. Somos, “The Lost Treasures of Sethos, Enlightened Prince of Egypt,” in eds. L. Campos Boralevi and P. Kitromilides, Athenian Legacies: European Debates on Citizenship (Florence, forthcoming). 137 De leg. agr. II.xvi.45, 418-9.)
labour among the prince and the optimates. Alternatively, by *imperio* Lodovico means not the ancient Roman notion, but whatever legitimacy is vested in the Holy Roman Empire he cites at the beginning of the passage, including sacral, military, and feudal authority. This is, however, a less plausible interpretation, since in the passage Lodovico juxtaposed Sparta’s constitution (*temperamento*) with Antwerp, not with the Empire. The centre-province relationship, and therefore the relevance of ancient Roman categories exemplified here by Sigonius, is now easier to see.

Adding the provincial strand of republicanism to Florentine civic humanism as an intellectual source in constitutional justifications of American independence also allows us to resolve the tension between two large literatures, the federalist historiography of the eighteenth-century Founding Fathers and the more deeply embedded but mixed foundations of independence in religious, chartered, and royal provincial and municipal constitutions that date back to the early seventeenth century (drawing, in turn, from even earlier models that include self-contained and transplantable cities organised along Calvinist magisterial lines). John Phillip Reid, Michael Walzer, Daniel Elazar, Donald Lutz and others supplied excellent accounts of the emergence of powerful local and provincial constitutional conscience and identity in the American colonies.\(^{138}\) Gordon Wood, Joseph Ellis, Jack Rakove, LaCroix and others have offered different models of the process whereby the Founders had to balance competing priorities and claims, and created centripetal consensus around a compromise constitution.\(^{139}\) Bernard Bailyn and Jack Greene are right, in turn, to point out that *imperium in imperio* was, given the gap between the early modern and Enlightenment genealogies of America, a surprising *leitmotiv* in British-American polemic.\(^{140}\) A likely resolution is that this is where the two literatures should meet. Not the federalists who aspired to a clean break and a united state, but reluctant federalists like Jefferson and the anti-federalists, protective of past privileges and regarding independence as an undesirable outcome but a credible bargaining threat, had to and therefore did draw on Marsilius, Sigonius, Harrington, and other exponents of provincial republicanism, in order to keep *imperium in imperio* from disappearing as the


straightforward fallacy or “great solecism” (in the words of Iredell, one of the first Justices of SCOTUS) that the American federalists and Westminster considered it to be.  \(^{141}\) While Cicero’s attribution of potential *imperium* to a particular type of province – settled by the veterans who won it, and with a record of allegiance to the metropolis – is a straightforward fit with the anti-federalist discourse, Lodovico’s transformation of Antwerp into a self-sufficient city due to its commerce and cosmopolitan culture belongs to a tradition that Hamilton found more useful than Jefferson.

While I cannot settle the issue of Lodovio’s sources and model beyond Antwerp, one useful solution is to bracket the relationship between the *imperium-potestas* distinction in Renaissance uses of Rome as a model (especially in Machiavelli and Sigonius, from whom Harrington draws much), and how this relationship was mapped on to current affairs by thinkers like Machiavelli, Bodin and Lodovico in their policy advice and analytical distinctions between *imperio, autorità, potestà*, and other terminological experiments like the adaptations of *imperium merum* and *imperium mixtum* discussed below. \(^{142}\)

We can also bracket the issue of the mixed constitution for now: we will return to it later. Although highly relevant, it serves as an *explicandum* of these distinctions, and in terms of *explicanda*, here we are after colonisation, not the mixed constitution. Without aiming to cover this subject in detail, the aspect particularly relevant here is how the two sets of distinctions – one for ancient Rome, one for contemporary states – and the intense debates about them inform the new republican colonialism, one that is safe from the corruptive influence of luxury without relinquishing the power and benefits of manufacturing and international trade. Sigonius’s assignment of *imperium* to the centre, and *potestas* to the provinces, is a relatively simple solution. Another route is to focus on popular sovereignty, and on citizenship as the criterion of exclusion or inclusion. This is Cicero’s solution in *De lege agraria II*. Colonies are created on land newly occupied, prescribed, or conquered, under the *imperium* of the Quirites. *Socii* must be looked after and treated well, but ultimately the power to eject them from their land is reserved for the Romans. Cicero’s argument is that doing so at the time would be impolitic, not illegal; Spurius’s acceptance of the Hernici was not necessarily a good thing, as generals can at times accommodate allies at the expense of Rome. Such things depend on the laws and the political process, and the prevailing conditions. Soft imperialism has not the same priority as the interests of Roman citizens. The question is, what kind of

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142 For a medieval summary, also important for Marsilius, and a review of key parts of the secondary literature, see Francesco Maiolo, *Medieval Sovereignty: Marsilius of Padua and Bartolus of Saxoferrato* (Eburon, 2007), chapters 1 to 3.
power to locate in the provinces, who should hold it, and what sort of political process and hierarchy should bind the centre and the provinces together.

In this light, the multiple and sophisticated debate concerning distinctions between power, authority and sovereignty gain a new dimension in seventeenth-century England. The trade-offs facing supporters of popular sovereignty become much clearer once we realise that not only the ancient Roman, but also the medieval communes’ and Renaissance city-states’ development of these distinctions (within which story one should distinguish centralising Milanese, regionalising Florentine, commercial and neutral Venetian, and provincial Paduan strands) grew into the colonial aspect of this British debate. Should the Anglo-Scottish and Anglo-Irish nobility, colonial agents and defenders of borders with a dual identity, have the same representation at Westminster as the English? What about the Scots, according to Oceana, after they become fully civilised? Colonialism, in turn, can now be recognised as a major factor in defining and grading citizenship, and specifying and allocating its rights and responsibilities (including titles of land-tenure and taxation). While the upheavals and colonial debates of the English Civil War are often recognised for creating ideological precedents for the British Empire, and its debates among nominal or aspiring equals as a template for the secession of America, in the opposite chronological direction figures like Neville, Nedham, Harrington and Sidney form a crucial link back to Renaissance debates around the same issues, including a commercial and colonial republicanism quite distinct from eighteenth-century accommodations of commercial reason of state and its colonial and moral paradoxes. It is only in this sense that Pocock was right to call Harrington the first political humanist in England. Humanist constitutional theory was sophisticated and not limited to Machiavelli’s view of commerce’s proper role in the republic’s life, which in itself is misunderstood in the Pocockian idiom.

So is Harrington. For instance, there is no disputing Harrington’s ingeniousness and originality in formulating the balance of property and its rare variant, the balance of money in The Prerogative (which does not fit Pocock’s distinction between Harringtonians and neo-Harringtonians). It was not, however, original to see the latter as a founding principle of cities. Lodovico’s section on Antwerp contains a separate Discorso sopra i mercantati d’Anversa et il loro traffico. The final clause of the opening sentence is, “massimamente essendo la citta

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143 Interesting and rich, though sometimes unconvincing (e.g. on Harrington’s pejorative use of ‘optimacy’): Anna Maria Strumia, “Ancient Republics in Seventeenth-Century England and the Origins of the Modern Dichotomy Between Authority and Power,” Hebraic Political Studies 2:3 (2007), 284-300, tr. from the 1992 Italian original.
145 Descrittione, 115-124, latter misnumbered as 126.
fondata in maggior’ parte in su la mercatura” (that her principal foundation consists of commerce [and that she is made famous and increased by foreigners]).

Commercial interest brings in people and generates concord in several ways. Many interact and intermarry, but many retain their national identity. There are six distinct nations in Antwerp, Lodovico explains, residing and trading regardless of whether their nations are at war or peace. They observe Antwerp’s laws and ordinances and live in marvelous freedom and variety, which allows them both to observe and, should they like the manners, fashion, customs of one another, to imitate. Because of them, one always has news of the whole world. They can nonetheless remain free and useful agents of their countries, even when they are at war. Spain, Portugal, England and others maintain representatives who ensure trade (even in armaments) and raise enormous loans (even for war) on the Exchange. The Exchange is a wonderful system, although occasionally abused by greedy lenders who artificially cause scarcity or oversupply of money. Lodovico defends both the lending trade and the deposit system explicitly from theologians by arguing that the lenders who are avaricious suffer great risk for small profits (effectively checking one another), and that the system is a great net benefit to everyone, borrowers included. Lodovico comments that despite this net benefit, the prospect of idle profit even at high risk prompted many noblemen, who are normally banned by law from lending, and used to investing in agricultural land development in the countryside and in goods in the city (creating both rural and urban employment), to lend secretly and abandon their previous habits. Lands lie uncultivated, food becomes scarce, “and all this redounds to the great and extreme disadvantage of the poor, who are in many ways devoured by the rich.” Even before the 1568 rebellion, the ancient and Renaissance agricultural-commercial norm, namely that virtuous citizens are tied to the land, carried over into and was strikingly preserved in this analysis of a highly commercial city-state that united multiple nations, languages, morals, classes – and interest.

Idleness is another recurring theme, also transformed, in this case from a Hippocratean personality type and Machiavellian republican vice to a factor made meaningful in international political economy. The laziest nation, according to Lodovico, is the Spanish, and they are forced to import everything. An history of Renaissance labour theory or views on indolence should note that in his Responce aux Paradoxes de Monsieur de Malestroit, published the year after

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146 Descrittione, 115D.
147 Descrittione, 115D-116E.
149 Ren. Reader, 202. For the perfect combination of this trope of Spanish idleness and Harringtonian political economy, see Andrew Saltoun of Fletcher (1655-1716), “A Discourse Concerning the Affairs of Spain: Written in the Month of July, 1689,” in Andrew Fletcher, Political Works, ed. John Robertson (Cambridge, 1997), 83-117.
Lodovico’s book and widely applauded as a milestone in monetary theory, Jean Bodin (1530-96) also repeats several times the verdict of Spanish indolence. This fact challenges recent simplistic descriptions of the Responce as focused on inflation. Bodin describes France, especially Lyons and its newly opened bank, in terms similar to Lodovico’s Antwerp, and prefigures Harrington’s link between banks and imperialist republics in The Prerogative.

150 Ren. Reader, 206, 207. For an attack on both Malestroit and Bodin see Gerard de Malynes, Englands View, in the Unmasking of Two Paradoxes with a Replication unto the Answer of Maister John Bodine (London, 1603).

Figure 2. L. Guicciardini, Descrittione di Tutti i Paesi Bassi, frontispiece. Is it idleness, or just conventional vana opera, in the upper right corner?\footnote{152} 

Of course, Lodovico’s account is a more convenient link in this narrative than Bodin’s Responde. First, simply because the Low Countries, even before the Union of Utrecht and the Act of Abjuration, were the same country that Harrington was concerned with, with a loose federal structure, rich commercial cities, relative land scarcity, and other features that appear in Harrington’s analysis. Lodovico’s book has a chapter on Amsterdam, too. Second, Lodovico’s description of a translatio, the shift of trade from Bruges to Antwerp, closely resembles Harrington’s account of the same shift from Antwerp to Amsterdam. Third, the Provinces differ greatly from France. Had Harrington relied on Bodin’s account of a French city like Lyons, then the land scarcity, the privileges and relative freedom from monarchical control, and other elements less conspicuous than in Holland, would have become unavailable for his comparison. This is another reason why Amsterdam was a better model by the mid-seventeenth-century than Antwerp for Harrington’s development of the notion of a viable, republican and potentially immortal balance of money in The Prerogative.

Finally, Lodovico’s description of Antwerp created a set of themes that became relatively widely dispersed and imitated. The illustrations, which are both pragmatically detailed and yet idealised enough to capture Lodovico’s text, are among the reasons for the book’s influence.\footnote{153} The list of professions and population figures is another.\footnote{154} It is Lodovico’s topoi of international trade, pragmatic pacifism, cosmopolitan attitude and linguaphilia that appear in the Jesuit Carolus Scribani’s Counter-Reformation Origines Antverpiensium (Antwerp, 1569), and in royal historiography like Jean Baptiste Gramaye’s Antverpiae Antiquitatis (Brussels, 1610). Lodovico’s unique contribution of cosmopolitan and commercial loci to the epideictic laus urbis genre reappear in Harrington’s praise of Amsterdam, complete with an account of the city from which the one being praised has taken over: Amsterdam from Antwerp in Harrington, Antwerp from Bruges in Lodovico, with both writers describing the towns, as well as the shift of commercial power, in similar terms.\footnote{155}

\footnote{154} Esser, 179-81.
\footnote{155} E.g. The Prerogative, I.ii, where Harrington’s account of Antwerp’s ruin and Amsterdam’s commercial and demographic greatness – the latter despite and the former because of its scarcity of land – is combined with his account of Emporium, i.e. London, Oceana’s capital. Another wonderfully relevant text for the commercial and
One also notes a shift in these specimens of laus urbis, corresponding to the shift from non-commercial to commercial republicanism. As discussed earlier, medieval communes and Renaissance city-states were keenly aware of their dependence on an agricultural hinterland. With Antwerp, and to a debatable degree with Venice, we find a republican laus urbis tradition in which commerce replaces this hinterland, sometimes violently and endangering the urban poor, as in Lodovico’s account. The bet here is that the commercial advantage, and the dependence of both great powers and small villages on the city’s trade and manufactures, will ameliorate or negate its dependency on food production. If, for instance, France restricts grain export in a bid to starve Holland, France’s impaired ability to raise loans and to trade will inflict greater damage on itself, provided that Holland has access to Spanish, Italian, Central European, and even Russian and North African grain. This is the beginning of a line that runs through De la Court’s 1662 Interest of Holland, as well as Hamilton’s plan for building US capacity for military self-defense through creating commercial influence and making trading partners dependent.\textsuperscript{156}

Another notable corollary of the commercialisation of republican city-states is the striking shift from regional to global politics. While Florence had to construct and maintain regional alliances with Padua, Bologna, Ferrara, and plead with Venice to ally against Milan based on careful calculations about controlling the agricultural hinterland of each separately, and of a given alliance as a whole,\textsuperscript{157} commercial republican cities increasingly operated in a global pattern, competing and co-operating with others of their kind and refusing to be drawn into, and/or making a profit from, the conflicts of great powers. Instead of eliminating their dependence on food, it transformed their calculations to a global level with a greater number of variables, and set the pattern for the eighteenth- and nineteenth-century discourse of armed neutrality in international law.\textsuperscript{158}

The cloth trade, which these cities controlled thanks to their manufacturing and distributing position, showed a similar globalisation for the opposite reason, transformed from an opportunity matrix of regional to global alliances not by the cities’ demand, as in the case of food, but due to their hold on supply. This shift was not restricted to republics, since many European monarchies and non-European polities also had to revise their legal, economic and political strategies as geographical discoveries and improvements in military and shipping

\textsuperscript{156} See chapter VIII below.

\textsuperscript{157} Hans Baron, The Crisis of the Early Italian Renaissance, one-volume revised ed., Part One.

\textsuperscript{158} See chapter VIII, section 4 below. For the failure of Renaissance attempts at a new, unarmed diplomatic order, see Garrett Mattingly, Renaissance Diplomacy (Boston, 1955).
technologies, company law, and communications accompanied the rising rate and reach of commercial and strategic interactions. While these are complex and fascinating processes in their own right, what this chapter seeks to explain (the dependent variable, as it were) is how commercial and colonial competition, including the need for new ways of approaching non-European rulers, encouraged constitutional innovations that had a lasting effect on the emergence of the kind of republicanism and individual rights (such as property, holding office, and freedom of speech and conscience) that we recognise as modern. Fidelity to sources and facts is a useful protection against over-simplification and teleology; but the volume of relevant sources and facts necessitates methods like illustration and paradigms. Given that Harrington and ‘neo-Harringtonianism’ are established topoi in the current literature, it is a reasonable bet that this minor contribution to the existing literature on Machiavelli’s theory of labour, the Paduan and Bolognese elaboration of a republicanism anchored in small existing states and easily deployable in new colonies, the irenic secularisation of the biblical commonwealth, and the formulation of an imperial vision with Holland as the free port of a Europe dominated by Britain thanks to its republican virtue, immortal constitution and its global sea-power, is useful in understanding the background, meaning, and power of both modern commercial republicanism, and the historical process of its rise and dissemination of historically contingent secular norms in politics and law.

III.2 Sigonius’s secularisation of Italian popular imperium and colonial potestas

Although a defense of the possession of secular goods, of striving after them, and of man’s ability to make his way in life were among the indispensable arguments in certain phases of the fight against the dangers of withdrawn contemplation, in the world of the XVth and XVIth centuries no merely economic consideration could have established a valid alternative to the powerful argument that the spirit was higher than either matter or the body, and that religious contemplation and intellectual speculation were, therefore, offering a nobler way of life. The one and only idea which could lead to an alternative in value lay in the consideration (of Aristotelian origin) that man by his very nature is a social and political being, not only on account of his material wants, but because his inborn nature will not grow to maturity unless he trains all his faculties and takes upon himself his proper responsibilities by participating in the public life of his community or country.

Hans Baron, “Secularization of Wisdom and Political Humanism in the Renaissance”159

There are several, equally valid and rich ways of continuing to trace the unified vision of home, country and empire, that ran uninterrupted from Xenophon through Alberti to Harrington and the Founding Fathers. An obvious choice for moving from Lodovico Guicciardini to Harrington is a thinker like Botero or Althusius who, similarly to Lodovico, elaborate on the special role of commercial towns, illustrate my main thesis by explicitly asserting the indivisibility of home, country and empire in political thought,\textsuperscript{160} and set up the subsequent sections of this chapter by developing a model of agrarian and commercial republican imperialism that includes corporatism. Although this lineage would be satisfying and relatively easy to trace, it would make it more difficult to bring out the provincial strand of republicanism, the neutralisation of the biblical commonwealth as a uniquely authoritative model, and the transformation of the Roman and Jewish agrarian first into Harrington’s balance of property, then his balance of money. This is the purpose that the next few sections, on Sigonius and Cunaeus, are designed to serve, without claiming that what is presented here is anything more than one possible illustration among many.

Having cleared some misconceptions about the agrarian and Machiavelli, we can turn to Carolus Sigonius (1524-84), a pivotal figure in the history of commercial republicanism and the secularising steps in its creation and evolution. Isolated and crucial cases of his influence on Harrington and Rousseau are known, but a lot remains to be done before his full impact and significance can be understood. Here, Sigonius helps us address the questions: now that the agrarian confirms Rome’s influence for early modern constitutional theory and reform, which Romans laws, including agrarians, were seen as viable models, or at least prudential lessons, for Renaissance and early modern imperialism? Further, what constitutional arrangements, from the legislative-executive relationship, through the system of representative and deliberative institutions, to the authorisation of military engagements and provincial government, did Sigonius prepare with his critical commentaries for the seventeenth- and eighteenth-century reformers?

Sigonius’s interest in the Roman agrarian laws was as multidimensional as the subject. One of his earliest scholarly projects was a biography of Scipio Aemilianus, shelved in 1549 when Antonio Bendinelli, a rival, published his first.\textsuperscript{161} Scipio the Younger’s opposition to the Gracchi’s reforms was not only crucial for his biography (as it probably explained his death), it

\textsuperscript{160} E.g. Althusius, \textit{Politica}, Liberty selections from the 1614 ed., 31, §42. Foreshadowing Harrington on man as a microcosm, and cities as small states, see Althusius, 46.

was also a major theme in Renaissance histories of Rome. Sigonius soon moved to Venice and held the San Marco lectureship in 1552-59/60. One wonders how much of his research for the attempted biography found its way into his teaching on Aristotle’s *Rhetoric* from 1553-4. In his comments on *Rhetoric* 1.4, Sigonius presented Scipio the Younger’s Rome as an optimal mixed constitution, discussed features of sortition and secret suffrage that made it clear that he was discussing Venice rather than Rome, and concluded by exhorting his students to consider ‘the Scipionic republic as the model of civic concord.’ One should also note Sigonius’s unusual view that Scipio’s model republic was created by emphatically secular public authorisation. Under the Republic, the tribal assembly had extensive powers despite the absence of religious justifications, and Sigonius argued that Scipio the Younger’s consular *imperium*, military command, was bestowed by such an assembly, without any need for auspices.

Sigonius’s engagement with agrarian laws carried on from his musings on the good constitution, based on Aristotle and Scipio, to his influential edition of, and commentary on, Livy. If there is continuity to be found from his early abandoned biography of Scipio, then one could say that Sigonius deemed the Gracchan reforms unwise from the start, due to the danger of discord and instability. Yet even if one thought that Sigonius pursued no systematic research agenda on the agrarian, for our broader story it is worth tracing the continuities and many-sidedness of his engagement.

For instance, Liljegren argues that when Harrington referred to Livy in *Oceana*, instead of Livy he drew on Sigonius’s *De antiquo iure civium Romanorum* to understand the Roman republic’s constitution. One should note first that Harrington’s marginal reference in the passage that prompted this general reflection is to “Sigonius,” without mentioning the particular work. Harrington’s agrarian could have been inspired by Sigonius’s *Livy*, as his marginal notes suggest, as easily as by other Sigonius engagements with the agrarian.

In any case, instead of the view that he read one text not the other, and one version not another, it is well to remember the complexity of editions. We find a similar case in the treatment of *Oceana*, discussed in chapter VII below, where I draw attention to the various

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162 Discussed in Antonio Bendinelli, *P. Cornelli Scipionis Aemiliani Africani Minoris vita...* (Florence, 1549), 86 ff.
163 McCuaig, *Sigonio* writes 1560; Bartolucci gives 1559 in *De Republica Hebraeorum*, xiii.
164 McCuaig, *Sigonio*, 20-22, quotation at 22. For Sigonius’s view of history as the master discipline see Somos, *Secularisation*, chapters I and II. On how its high-level inductive generalisations should inform the deductions of practical policy-making, see Sigonius, *Oratio de laudibus historiae* (Venice, 1560).
166 *Historiarum ab urbe condita libri qui extant XXXV.*
167 S.B. Liljegren (ed.), *James Harrington’s Oceana* (Lund and Heidelberg, 1924), 292, as in Pocock’s notes in Harrington, *The Commonwealth of Oceana and A System of Politics* (Cambridge, 1992), 74n7. One may add that this includes the voting assemblies, all-important to Harrington, and routinely confused by Livy. McCuaig, *Sigonio*, 190.
composite Sigonius editions in the British Library, neither the cover title nor the catalogue title of which describe the actual contents in full. Two other relevant cases are the single-work and composite editions of Sigonius that Milton owned, and Hobbes's autograph catalogue of the Hardwick Library, which contains the following entry:

Figure 3. Hobbes’s book catalogue, Hardwick Library. Devonshire Mss., Chatsworth, HS/E1A

The implications are significant. If Harrington used a composite edition, for instance, that included Sigonius’s books on Athens, Sparta, Rome, and Israel, then his own comparative framework of constitutional analysis presented itself almost irresistibly. Attributing author-only references to a particular work or, when a work is mentioned, not checking whether it is an

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169 Personal communication with and photograph by Ioannis Evrigenis.
edition with a title that gives only one of the works in the actual volume, have led scholars to make erroneous connections and miss the correct ones.

Secondly, the custom of aggregating commentaries can obscure direct influences when books are viewed solely or mainly under the authorship of the commentator who published the aggregation. For example, one of the great Livy editions in Harrington’s lifetime, the 1644-5 Leiden Elzevier (reissued in 1653-4) by J.F. Gronovius (1611-71), professor of rhetoric and history at Deventer, then Leiden, relied extensively on Sigonius’s edition. While trying to respect fully supersede him, Gronovius drew on Sigonius in his edition to such a degree that Gronovius’s son, Jacob (1645-1716), later re-issued his father’s comments together with Sigonius’s. Harrington clearly consulted Sigonius extensively and in depth, and noted often his agreements as well as his disagreements with the Italian. He may have had access to more contemporary editions of Livy, with Sigonius’s comments, and Gronovius’s critical comments upon them. In Venice, Sigonius used the collections of one of his key patrons, the patrician Andrea Loredan, whose son Bernardino was almost certainly one of Sigonius’s prize students. Sigonius’s 1555 edition of Livy is dedicated to Bernardino. In 1558, aged twenty-five, Bernardino became head of the great Marciana Library. The same year he published *Bernardini Lauredani … in M. Tullii Ciceronis Orationes de lege agraria contra P. Serrulium Rullum … commentarius*, an edition and commentary on Cicero’s speeches against the agrarian law, showing both independent judgement (and errors) and extensive reliance on discussions with Sigonius.

Sigonius’s *Fragmenta Ciceronis…* (1559, Venice; 2nd ed. 1560) is likewise relevant for several reasons. Sigonius was probably the first to collect Cicero’s fragmentary speeches. His redaction contains fragments of *De republica*, as well as of the first agrarian oration. Sigonius wrote a separate scholium to the section presenting the fragments of Cicero’s *Oeconomicus*, itself a translation of Xenophon’s Socratic dialogue on household management and agriculture. His comments show that Sigonius held the work in high esteem, and appreciated

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171 Not an empty shirt, he exercised this post until 1575.
172 McCuaig, *Sigonio*, 12-5, 23-4, 202. Note that de Thou wrote that Sigonius was the real author of Loredan’s work, and sundry texts by other students. Whether true or not, the remark can be significant for how readers understood Sigonius’s views on the agrarian. McCuaig, *Sigonio*, 70-1. For highly relevant later discoveries and debates on this text, see McCuaig, *Sigonio*, 219-20 on Sigonius’s discussion of *De lege agr.* in the 1560s, and Turnèbe’s posthumously published 1576 commentary.
174 Agrarian comments: Sigonius, *Fragmenta Ciceronis* (I used the 1560, 2nd ed.), 156-7.
it as a discourse on energy that connected individual industry, a stable home, farming and the local community, and the political state built on these foundations.¹⁷⁶

In the same volume, Sigonius also connects the fragments of De república 2 (known to draw on Polybius) to the Gracchi, social disorder and sedition, despite the absence of explicit references to them in Cicero’s own text.¹⁷⁷ The same connection is made again in his comments on De república 6, including a substantial discussion of Gracchan reforms and their relationship to Roman foreign policy, covering both alliances and colonies.¹⁷⁸ Andreas Patricius (1522-87), the prominent Polish statesman and Sigonius’s student and friend, edited and published Ciceronian fragments in 1561 (Venice, repr. 1570 Lyon), including De republica. It seems that while Patricius learnt a lot from Sigonius, the influence was one-directional, despite contrary hypotheses.¹⁷⁹

Sigonius’s comments in Fragmenta Ciceronis make it tempting to review the pieces discussed so far, and identify the criticism of the Gracchi as a connecting thread. Sigonius seems to have recycled a set of criticisms from his early research on Scipio the Younger (1549), his constitutional lectures inspired by Aristotle’s Rhetoric (1553-), his edition of Livy (1555), his teaching, philological instruction and writing assistance offered to students like Bernardino Loredan and Andreas Patricius, and his own edition of Cicero’s fragments (1559). The evidence in the individual texts shows a long-sustained interest in the Roman agrarian and its lessons, together with an equally compelling picture of an anti-Gracchan sentiment even before the great De antiquo iure civium Romanorum, and the other works beloved by Harrington and others, appeared. Even if one were justified to interpret Sigonian references in isolation as evidence of a political commitment, without taking the cumulative weight of the evidence into account, that commitment would be to the critique, not the endorsement, of socially dangerous redistribution. This is the line continued in the 1560 De antiquo iure civium Romanorum libri duo.¹⁸⁰

To recapitulate: Sigonius’s lectures on the Rhetoric, including the discussion of Venetian constitutional elements and Scipio the Younger’s support of domestic concord, together with his edition of Livy and his student’s edition of Cicero’s attack on another agrarian, indicate the complexity of the package of concerns that Harrington and Rousseau inherited, as well as its anti-Gracchan, rather than pro-redistribution, bent.

¹⁷⁶ Sigonius, Fragmenta Ciceronis, 51-5.
¹⁷⁷ Sigonius, Fragmenta Ciceronis, 61-2, in 61-6.
¹⁷⁸ Sigonius, Fragmenta Ciceronis, 87-8, and the substantial treatment on 93-5.
¹⁷⁹ Crawford, Cicero, Introduction, 2. Note however that Sigonius acknowledges and praises Patricius’s emendations on De rep. 3, e.g. Sigonius, Fragmenta Ciceronis, 72.
¹⁸⁰ E.g. 2.21, pp. 144-5, on the Gracchi in the same terms.
Sigonius’s work on the Urbino fragments, discussed above, took place in Padua, where scholars gradually gained access to them after Bembo’s death in 1547. Sigonius’s 1560-63 Paduan tenure is better known for his big fight with Francesco Robortello (1516-67), who just returned to Padua in 1560. In my view their controversy, published as orations, is misunderstood as primarily philological. Instead, its focus is Roman provincial administration, including aspects directly relevant to political and legal debates of their time, briefly outlined below. Not only this often ferocious exchange, and the analyses of contemporary politics included in Sigonius’s lectures on Rhetoric, but his technical work on Roman law was likewise clearly political. As with Budé, Cujas, Pierre Pithou and others, it is difficult to call Sigonius either a lawyer or a legal historian in the current sense: these divisions did not exist in quite the same form as today.\(^\text{181}\) In the 1567 *De antiquo iure provinciarum*, Book 3, a text Harrington cites, as well as in the 1566 *De lege curiata*, preface, f. *2r*, Sigonius emphasised the contemporary relevance of his work as much as he did during his lectures on the *Rhetoric* in the early 1550s.

Of all the questions regarding any branch of polite letters which have engaged the intelligence of learned contemporaries, perhaps none is more inherently noble or of greater utility than that debated for some years between myself and Nicolaus Gruchius, inasmuch as it concerns ... a matter of the greatest importance not only for the study of antiquity, but for that of philosophy as well. Ostensibly we are arguing only about the ancient application of the *lex curiata*, but in fact we are discussing the constitutional role [*ius*] of the senate and the Roman people, of magistrates and military commanders, and the most difficult passages to be found in the best ancient writers. Nor are we bringing up once more a series of those well-worn themes of the schools which merely bore their listeners; rather we are exhibiting new subjects of argument, unfamiliar to the present age. For this reason those devoted to political philosophy [*civilis disciplina*] and not only devotees of Roman studies, can find here not a little utility, and even pleasure.\(^\text{182}\)

The Urbino fragments’ role in the reception history of non-Gracchan agrarian laws is not the onlyguidingly bright thread to pull on. One seldom (perhaps never) discussed political context of Sigonius’s stay in Padua, including his dispute with Robortello over Roman provincial administration.

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\(^\text{181}\) I disagree with the otherwise excellent McCuaig, *Sigonio*, 231, that the 1574 *De iudiciis* marks Sigonius’s departure from Roman studies for humanist history, despite being influenced by the *mos gallicus*.

\(^\text{182}\) McCuaig, *Sigonio*, 204.
government and his work on the Urbino fragments, is Padua’s own republican tradition.¹⁸³

Consider the striking similarities between Marsilius of Padua (1275-1342) and Harrington. Both Defensor pacis and De translatione imperii have strong textual echoes in Harringtonian texts. Condren, Henderson, Nederman, Syros and others have traced Marsilius’s reception sufficiently to make Harrington’s direct reading possible, but Harrington also could have picked many of Marsilius’s arguments from the works published during Sigonius’s Paduan period. For instance, the emperors’ and kings’ independent power base, the unflattering assessment of early and central medieval popes’ ambition for territorial and secular powers, the questionable papal excommunication of Ludwig of Bavaria, and other components are featured prominently in Marsilius, Sigonius, and Harrington alike. Other accounts, such as the economic and medical explanations and sensibilities (not quite metaphors), or the reduction of all religious developments to political causes, connect Marsilius and Harrington more directly. I have not, for instance, found a version of Marsilius’s and Harrington’s argument in Sigonius that the Greek cities adopted Christianity as a means to create democratic justification for independence, and that political forces hijacked primitive Christianity almost instantly. These sections of De translatione read exactly like Oceana’s account of the early, as it were founding, corruption of the Church.¹⁸⁴

One may also note that the Paduan strand of republicanism contained a bright thread of medico-political thought particularly noticeable in Harrington. Marsilius’s medical studies,
mocked by his friend Mussato, shaped his political system as much as Pomponazzi’s led him to materialism, an irenic or *politique* (not e.g. millenarian) separation of reason and revelation not unlike Marsilius’s, complete with its own political implications. To demonstrate the possibility of genuine innovation superior to established wisdom, Harrington compared his own political insight into the working of the body politic with the Padua-trained William Harvey’s discovery of the circulation of the blood – the same discovery that Hobbes used as a metaphor for the circulation of money in the polity (*Leviathan*, ch. 24). Secularisation and an approach to politics grounded in the natural physiology of man, including not only body metaphors but also the identification of material interests and physiologically framed cognitive processes as the right starting point and basic building blocks of politics, seem to me both more Paduan than Florentine in origin, and at least as influential as Florentine neoplatonism in Harrington’s system of thought. The Paduan-Bolognese, provincial republicanism also speaks to Harrington’s imperialism, the kind of soft imperialism that distinguished Dutch and English imperialism from the more top-down Portuguese, Spanish, or French colonial rule.

There is also a great deal that Marsilius and Sigonius have in common. Their extensive analyses of the Roman origins and feudal continuity of Italian, provincial, and municipal autonomies are profitably compared, and shed light on the kind of civic humanism that seventeenth- and indeed eighteenth-century reformers found easy to use in their designs for imperialist republics. It is worth noting Harrington’s adoption of the Paduan Marsilius’s and the Bolognese Sigonius’s affinity to reconstructing history and constructing narrative from the perspective of provincial city-states. Harrington’s professions of love for Venice, and for the Florentines Machiavelli and Giannotti, are well known. Bologna, Siena and Padua should be added to the list, representing a tradition of a kind of second-order city-states’ civic philosophy and historiography that developed under centuries of pressure on the one hand from Milan to submit to ‘tyranny’ and join the project to centralise Italy against foreign invaders, even at the cost of employing mercenaries alongside militias, and on the other hand from Florence to form alliances against Milan, even at the cost of inviting German and other invaders – this in addition to the pressures of functioning as other medieval and Renaissance city-states, protecting and amassing privileges and playing off king, emperor and pope against one another whenever possible.185 Venice’s hope of neutrality is a fourth model, quite distinct from Milan’s, Florence’s, and the other cities’ caught in the domestic and international fallout of their

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rivalry.\textsuperscript{186} For present purposes we need to disentangle some, though not all, of these very different civic strands that are among the most important formative influences on the interplay of secularisation and soft imperialism.

Venice, in this sense, is most easily comparable to Antwerp, and later to Amsterdam. The established genre of praising towns, and the emerging sub-genre of praising commercial towns, made their mark on Harrington. Harrington’s praises of Giannotti corroborate this conjecture, insofar as Giannotti, in contrast with Machiavelli, straddled both Florentine and Venetian models. However, despite his numerous professions to the contrary, Harrington consistently rejects Venice as a viable model for England.\textsuperscript{187} Republican virtue must have a military component, Harrington argues, and commerce and luxury are potential threats. Nonetheless, the expansionary force must wither, or find an outlet. What better than the combination of Venice and Florence, translating, as it were, Florence’s long-cherished scheme for an anti-Milan alliance with Venice onto England, and the theatre of Europe?\textsuperscript{188} In Harrington’s scheme in \textit{The Prerogative}, the reformed England will dominate Europe, and it will need Holland, as Machiavelli’s Florence needed Venice, as an outlet to benefit from trade while making it possible for the rest of Europe to contain the moral and social threat of luxury, thanks to Holland’s unique ability to remain stable on the ‘balance of money’ as its constitutional foundation.

But how can the fierce independence and multiple dialectics that flow from the constitution of Italian city-states, rendered strong through well-arranged internal class struggle and engaged in alliances according to a clear pattern of offense, defence or neutrality, be translated to a European system of centralised states, dominated by England? Harrington is unusual in the mid-seventeenth-century for seeking this translation based on a commercial outlet to protect republican virtue, rather than the unification of Europe under a hegemon or small club of strong states against the Ottoman Empire. We find Montesquieu, Madison and others grappling with the French and American equivalents of the same question.\textsuperscript{189} One great thinker and statesman who contributed to this specific train of thought is Alexander Hamilton, and chapter VIII will show how his unique answer to these same connected questions has profoundly shaped the American constitution.

\textsuperscript{186} From time to time, Florentines also had an interest in armed neutrality. Baron, \textit{Crisis}, 17-19. Cf. Hamilton’s founding vision of the US as a trading, armed, neutral power, with an interest in disentanglement from – perhaps continuation of – European power rivalries.

\textsuperscript{187} The reasons he gives include that Venice is a republic for preservation, not expansion; and that its commerce, relationship with an agrarian hinterland, and governmental structure cannot be translated to Oceana.

\textsuperscript{188} These are the seeds of the far-reaching role Hamilton assigns to armed neutrality in US constitutional design. See chapter VIII below.

\textsuperscript{189} Salient references include Madison, \textit{Federalist Papers}, nos. 39 and 51.
A key to Harrington’s answer, I believe, is in his emphasis on local and provincial courts. They solve local issues, their authority is built into the constitution, and they instill in citizens a smaller focus of identity than the more outwardly circles in Harrington’s neoplatonic conceptualisation of concentrically expanding and contracting identities. They form a place where central authority can be efficiently obeyed or resisted, and small-state or colonial governance can be practiced. Their constitutional authority is shown by Harrington’s insistence on calling them Jethronian.

Moses was unable to bear the workload of central government. Jethro’s first advice to him was to delegate. The system of local courts and judges that resulted reappears in numerous Harringtonian discussions, almost always mentioning Jethro’s name. Jethro, although a heathen, advises Moses on all the essential constitutional features of the divine polity. This argument comes out of the secularising and Paduan-Bolognese, provincial strands in Harrington’s thought – more so than, for instance, from an extension of the manor court system in England and France; exactly as Sigonius developed it; and contrary to Cicero’s and Bodin’s view of imperium. It gave local communities sufficient autonomy to enable them to train potential colonists. I suggest that there are several reasons why Harrington was fixated on Jethronian courts. Their significance as a counter-argument to the divine inspiration and reproducibility of the biblical polity, discussed in chapter VII.1, is one major reason. Harrington also saw them as a key ingredient in the expansionary, republican Israel. Sigonius drew i.a. on Appian, and developed an intricately coherent theory of the agrarian, demographic growth, and provincial legal systems in De antiquo iure civium Romanorum and in the chapter on colonisation in De antiquo iure Italae.

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190 See chapter VII.1. below.
192 Perugia belongs to this strand, insofar as it was caught in the Milan-Florence rivalry. I think it is correct to read Bartolus of Sassoferrato (1313-57) as defending city-states’ autonomy, and standing generally closer to Guelphs than to Ghibellines, as parts of the same Italian, and not a Catholic allegiance. His views on city-states reveal clearly that his anti-Germanism was a greater motive than any pro-papalism. Bartolus’s respect for the Empire, however, shows in his reluctance to buy into the Milanese propaganda for national unity, as that would have undermined Perugia’s status. City-states other than Milan, Florence and Venice share several features, and their provincialism sheds new light on Harrington. In this context it would be interesting to research whether Bartolus’s great influence on Richard Zouche (c. 1590-1661) ever manifested during Zouche’s period in 1621-4 in the House of Commons, where he overlapped with Selden though only for two years, or a bit less. Another version of the same question is: did Bartolus’s heavy influence on Alberico Gentili (1552-1608) inform English imperialism through, for instance, either Gentili’s practice of civil law at the High Court of Admiralty, or through his De iure belli libri tres? If so, then the distinctiveness of English common law (which I think has been overemphasised in genealogies of republican imperialism), and/or the thesis of an elective affinity between common law and British imperialism’s success, need to be revised. The line from Sassoferrato’s civic autonomy through Gentili and Zouche to the seventeenth century seems an economical way of settling this.
Venice-type city-states, such as Holland and Israel, also have to send out colonies, due to population growth and land scarcity. Yet without a provincial government that has the right amount of autonomy for local affairs, but still depends on the mother country for greater decisions, commercial colonies would become rivals to their mother states, as Cicero feared that Rullus’s colonies, or as Cicero’s ancestors thought Capua, Corinth or Carthage, would do. The careful distinctions between grades of authority, empire, and sovereignty, that enabled Harrington to transplant Italian republican virtue into English soil, and to graft commerce on to arms and the agrarian, came from thinkers such as Marsilius and Sigionius, who retained a provincial perspective instead of, or at least alongside, the metropolitan. They recognised the value of citizen militias, as well as of commerce. This ‘provincial republicanism’ of city-states, however, neither trusted commerce sufficiently to maintain neutrality like Venice, nor believed that militias and civic virtue can resist Milan, Florence, and their unwelcome bedfellows (mercenaries and/or the Empire). This component of Harrington’s imperialism, more than the Florentine or the Venetian, is in turn key to understanding the adaptability and pragmatic tolerance that distinguish English soft imperialism from the ideology-driven, top-down imperial machinery of Spain. Without exaggerating ideology’s real-life importance, it is

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193 Another genre that made direct connections between Venice, the Holy Land and colonialism is the projects calling for new crusades. The historical lesson, especially the fiasco of the Fourth Crusade, that Venetian cooperation was essential to this conquest, was not lost on subsequent generations. One instance is the great collection of crusader texts, Gesta Dei per Francos... (Hanover: Welchel, 1611), edited by Jacques Bongars (1554-1612). The second volume, dedicated to the Venetian Senate, prints Marino Sanudo the Elder’s (c. 1260-1338) manuscript Liber secretorum fidelium crucis, which gives a detailed description of Mediterranean history, geography, governments and trade, an elaborate plan for a new crusade that starts with a full commercial blockade of the Levant and which Sanudo offered to successive popes and kings of France, and a mappa mundi of previously unmatched accuracy, nautical and portolan charts and country and city maps by the Genoese Pietro Vesconte (fl. 1310-1330), still regarded as pioneering in the history of cartography. Shalev, Sacred Words, 97. Bongars writes in the Preface that he received Sanudo manuscripts from Scaliger and the Jesuit Petavius (1583-1652), who continued Scaliger’s chronological project (and probably taught Descartes rhetoric at La Flèche). Thus Gesta Dei per Francos is a wonderfully emblematic case of the genre that throws into economic and elegant relief both the imperialist continuity and secularising transformation of crusading plans from the eleventh to the seventeenth centuries, and of the recognition of the key role of Mediterranean trade and of Venice in attempts to conquer, colonise and sustain European expansion. E.O.G. Haitsma Mulier, The Myth of Venice and Dutch Republican Thought in the Seventeenth Century (Van Gorcum, 1980).

194 Sigionius’s provincial perspective, as historian and political philosopher, was trained in both Bologna and Padua. Marsilius of course left Padua for Paris, then Nuremberg and Munich. However, his Paduan perspective remained definitive for a number of reasons. Firstly, biographical details confirm this. We do not know how old he was when he left Padua for Paris. He is unlikely to have been young, and could have been as old as 41, assuming he was born in 1275 and moved to Paris in 1313. Even in 1316, when Marsilius had been in Paris for years, the benefit that John XXII thought might attract him was that of Padua. Secondly, Syros’s Die Rezeption richly contextualises and firmly anchors Marsilius’s work in Paduan politics, including the communes’ decline and the signoria’s ascent. Thirdly, Marsilius’s friendship with Albertino Mussato, the Paduan poet and historian, is both well known, and its influence on Marsilius widely discussed. Baron regards Mussato as a precocious forerunner of civic humanism. Also see Syros, Die Rezeption, 1er Teil.

195 For Padua, commerce and progress see Keller, “Accounting.”

196 J.H. Elliott, Empires of the Atlantic World: Britain and Spain in America, 1492-1830 (Yale, 2006). Another argument would be that Marsilius already translated civic principles from city-states to large states, for instance in extrapolating the doctrine of popular authorisation from Padua to the Holy Roman Empire. All Harrington had to do was to shift them from Germany to Britain. This is a tempting trajectory, but undermined by the textual evidence for

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still possible to suggest that it is more difficult to cite Spanish than English examples of provincial autonomy granted with a view to educating virtuous republicans at both home and abroad.\footnote{See e.g. the picture of the English East India Company as civic humanist, republican, commercial, and adaptable, in Philip J. Stern, “Soldier and Citizen in the Seventeenth-Century English East India Company,” \textit{Journal of Early Modern History} 15:1-2 (2011), 83-104.}

\textit{De antiquo iure Italie}’s chapter on colonisation contains a survey of Roman agrarian history. Appian, or perhaps his source, Asinius Pollio, presents colonial and agrarian policy as subservient to the aim of demographic increase. Through Sigonio, this is one source of the aforementioned early modern and eighteenth-century understanding of populousness as a sign of imperial success. It is also a major statement which, again through writers like Sigonio, forms a link in the uninterrupted line of complex economic thought on demography, colonialism, skilled immigration, monetary policy, land ownership, social inequality, provincial jurisdiction and federalism, and refutes the thesis that eighteenth-century political economy connected them first.

Appian, as mentioned, is a major source for Renaissance and early modern evaluations of the Roman agrarian. There are notable differences from Plutarch’s or Cicero’s assessments, some of them relevant here. McCuaig convincingly argues that it was Appian who prompted Sigonio to re-focus on the domestic unravelling of the Gracchan reforms, and fit them into an history of Italy. As a part of this reconstruction, McCuaig ascribes to Appian’s influence Sigonio’s conjecture that in a precedent to the \textit{lex Sempronia}, the 368 BC Licinian-Sextian law created an agrarian triumvirate to distribute plots to plebeians. The Gracchan reforms were little less than a failed attempt to revive this law.\footnote{McCuaig, \textit{Sigonio}, 155-7.}

This is one of the places where Sigonio, like Machiavelli, distinguishes between founding and re-founding the republic. At founding, newly captured, occupied or purchased public land is divided into private plots without controversy. \textit{Leges agrariae}, narrowly defined, are enacted when redistribution or confiscation is needed to restore the republic’s equity and balance. Spurius Cassius’s was the first such agrarian, and its failure was followed by constantly renewed attempts until the success of the Licinian-Sextian law. Tiberius Gracchus’s reform aimed to revive the same law, after the conditions of illegal occupation and land-holding concentration, temporarily remedied by the Licinian-Sextian laws, reasserted themselves.\footnote{Sigonio, \textit{De antiquo iure Italie}, 2.2, “De coloniis.” McCuaig, \textit{Sigonio}, 157-60.} Features that unite these laws include setting the same amount of land and livestock (500 \textit{iugera}, 100 head

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Harrington’s predominant reliance on Sigonio. Sigonio’s \textit{De regno Italie} is quite consonant with Marsilius’s view of Italy, but it is significantly less emphatic on the legitimacy of the Empire.
of cattle, or 500 smaller animals) as the individual limit. Interestingly, Sigonius here de-emphasises the Gracchi’s originality, although he again identifies the *lex Sempronia agraria* as the origin of the Roman revolution and recurring discord, in keeping with Livy, Dionysius and Cicero. Yet here the Gracchi emerge as morally justified restorers of the existing but lapsed social arrangement proposed by Cassius, and accomplished by the *lex Licinia Sextia*. Interestingly, McCuaig traces some of Sigonius’s language in these passages to François Hotman’s (1524-90) 1557 *De legibus populi Romani*.201

The Urbino fragments may be the reason why Sigonius began to warm to the Gracchi. 1560 saw the first edition of both Sigonius’s *De antiquo iure civium romanorum libri duo* and *De antiquo iure Italiae libri tres, ad senatum, populumq[ue] romanum*, as well as the second edition of *Fragmenta Ciceronis*, all three published in Venice by Giordano Ziletti. This was also the year when Sigonius arrived in Padua, where most of the Urbino fragments still were, in Bembo’s legacy, with fragments of a *lex repetundarum* on the observe, and those of an agrarian on the reverse. A brief summary of a particular debate connected to the fragments, as well as to Hotman, is required here.

Manuscripts and sixteenth-century editions of Appian report three laws that continue, then undo the Gracchan reforms. The first made plots assigned to small landholders by the Gracchi alienable; the second was an omnibus proposed by a certain Spurius Borius, abolishing the triumvirate, halting the further division of public land, and solidifying the disputed status quo on condition that landowners pay a tithe (*vectigal*) for poor relief. In a final victory for the rich, the third law Appian mentions abolished this tithe.202 Cicero’s *Brutus* 136 refers to one of these laws, ascribed to Thorius in ambiguous syntax (*is qui agrum publicum vitiosa et inutili lege vectigali levavit*) and usually read as removing the *vectigal*. When Hotman conflated Thorius and Borius in his 1557 *De legibus populi Romani*, he left unresolved the problem of which law Thorius was the author.203

Already in the 1560 *De antiquo iure Italiae*, Sigonius noted the similarity between the fragment published by Mazzochi in 1521, concerning the abolition of the *vectigal*, and Appian’s report of the third agrarian in *Bell. civ.* 1.27. It seems he set to work on the fragments soon after his arrival. During his tenure in Padua between 1560 and 1563, Sigonius transcribed and studied fragments Aa, Ab, Ba, Bb, and perhaps Da. His findings appear first in the 1574 edition of *De antiquo iure Italiae*, the last during his lifetime, with the *lex agraria* on unnumbered

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201 McCuaig, *Sigonio*, 160.
202 Appian, *Bell. civ.* 1.27.
203 McCuaig, *Sigonio*, 160-1. For a superb recent account see Roselaar, *Public Land*, sections 5.3 and 5.4.

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sheets in chapter 2.2, and the *lex repetundarum* in the same form in a new work, *De iudiciis* 2.27, “De legibus de pecuniis repetundis.” He describes his finding and process on p. 525 of the latter work. Unfortunately he resolves the Borius-Thorius dissonance between Appian and Cicero by proposing that M. Baebius, an otherwise unknown figure from the Gracchan period, was responsible for the second law that fixed the *status quo* and imposed the *vectigal*. The current consensus is that Thorius authored this second law. Sigonius also identified the *lex repetundarum* with the *lex Servilia Glauciae*, and dated it to 100 BC.

What matters here is the early modern influence of Sigonius’s incorporation of the Urbino fragments into his history of Roman social struggle, and the role of the various agrarian laws in domestic and imperial politics. Hotman’s conjecture, and the Urbino fragments, helped Sigonius de-emphasise the Gracchi as well-meaning failures, following Cicero, and in contrast with Livy’s attribution of a systematic and fatal destabilising rift across Roman society to the Gracchi (but in keeping with tracing these reforms to Spurian origins instead). The Urbino fragments also drew attention to the conservative compromise that shortly followed, and soon reversed, the Gracchan reforms. The three agrarians on the Urbino fragments describe a Roman republic that learned its lesson from the Gracchan upheavals, and was willing to expand and colonise to ameliorate the sense of injustice at home by distributing newly conquered lands, mainly in Africa, among the veterans, but without any troublesome redistribution of lands in Italy. This is a dramatically different proposition than Gracchan reforms, and indeed it is this, rather than any sort of redistribution, that we find in Harrington. The difference is similarly key to understanding Cunaeus’s agrarian. As we shall see, Cunaeus interprets the Jubilee not as redistribution, but as an agrarian fixing the balance of the armed and expansionary biblical polity at its founding, on territory newly conquered. It is not, therefore, analogous to Lician-Sextian or Gracchan attempts at re-founding a republic slid into corruption. If anything, its Roman equivalent is the original, constitutive land distribution by Romulus.

Did Harrington use the 1574 text, which included the Urbino fragments, or the earlier, more anti-Gracchi ones? There are at least five pieces of circumstantial evidence that point to his reliance on the mature editions. First, eighty-five years passed between the first printing of Sigonius’s revised *De antiquo iure civium Romanorum* and *Oceana*, enough for Harrington’s environment to replace earlier, less mature Sigonius editions. Second, Harrington’s easy transition between various Sigonius texts suggests that he used a collected edition, such as

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204 McCuaig, *Sigonio*, 162-3.
206 See chapter VII, section 2 below.
those in the British Library. Third, the sympathy toward the Gracchi as politically failed moral champions of the agrarian in the Licinian-Sextian vein can be found in Harrington, together and compatibly with the damning opinion of Livy, and in harmony with the back-handed compliment and condemnation by Cicero. Fourthly, “Praevicator,” Harrington’s nickname for Matthew Wren (1629-72), may come from Sigonio’s edition of the Urbino fragments.

207 Note McCuaig, Sigonio, 354, on not being able to trace the diverse collected eighteenth-century editions of Sigonio’s works, which were originally published separately. It seems we have the same blind spot for the seventeenth century, hence Pocock, Nelson and Bartolucci underestimating the influence of and connections between Sionegus texts that were easily accessible in a single large volume, like the 1609 Wechelius edition printed in Hanau. A relevant similar case is the set of travel accounts by pilgrims to Jerusalem that included comparative constitutional notes on contemporary governments. See e.g. Johannes Cotovicus (Johannes van Cootwyk/ Jan van Cotwyck/ Kootwyck, 1629, Doctor of Law at Utrecht), Itinerarium Hierosolymitanum et Syriaum… Accessit Synopsis Republicae Venetae (Antwerp: Hieronymus Verdussius, 1619, translated and published as De Ieroycke reysse van Ierusalem ende Syriyen ghedaen ende in het Latijn beschreuen by the same publisher in 1620), with extensive discussions of Venetian maritime trade and power, cities and islands seen on the journey to and in Israel, ending with another account of Venice upon the author’s return. Cootwijk’s account of Venetian government and the five fold-out diagrams depicting its constitution may come from Gasparo Contarini’s (1483-1542) De magistratibus et republica Venetorum, first published in 1543, quickly translated into European vernaculars and reissued in several forms (abbreviated, annotated, or without changes) well into the middle of the seventeenth century. Indeed, the 1626 Leiden: Elzevier edition of Contarini’s book as the Venetian part of their famous Petites Républiques series, and the 1628 second edition of the same, both include Cootwijk’s synopsis, which was first published with his 1619 itinerary to the Holy Land.

Even if some of Cootwijk’s portrayal of Venice came partly from Contarini’s well-known account, his insertion of it into an account of his own journey to the Holy Land is an interesting case of comparative constitutionalism as a cumulative, expansionary endeavour. Moreover, in addition to historical and contemporary cross-country constitutional comparisons, Cootwijk also situates Venetian colonial and provincial administrations, e.g. of Corfu on I.vii.37-40, Zakynthos on I.x.54-55, and Crete on I.xii.68-71, as integral to the proper analysis of Venetian government. While rightly classified as a pilgrim’s itinerary, it is useful to recall that readers of such books would often learn from them about sacred geography, Islam and its holy sites, Mediterranean ancient history, and religious, political, and legal comparisons. Inspirations and materials to secularise the biblical commonwealth through comprehensive comparison, and the implicit dissolution or explicit negation of its privileged status, came in many and widely available forms. Cf. e.g. Grotius’s 1622 De veritate, discussed in chapter IV below, and Cotovicus, itinerarium, IV.iii.428-36, comparing Muslim and Christian doctrines, IV.vii.445-9 comparison of the two religions’ ecclesiastical institutions, and adjacent chapters for systematic comparisons of laws, rituals, sacrifices, and sects. It is in fact this part of Cootwijk’s book that was excerpted and reprinted in Arabia, seu, Arabum vicinarumque gentium orientalium leges, ritus, sacri et profani mores, instituta et historia: accedunt pratera varia per Arabiam itinera, in quibus multa notatu digna enarrantur (Amsterdam, 1633).

It is easy to lose sight of the fact that while Sionegus’s own distinct works contained comparisons of Israeli, Greek, Roman, and early modern European constitutions, when these works were published together, with supplementary materials including comparative tables, it became easy for Sionegus’s readers like Selden, Cuneus, Hobbes, Harrington and Rousseau, to draw their own conclusions (one should also note Hobbes’s reading of the Petites Républiques, a series comparative by design, and including Cootwijk’s synopsis from his journey to Israel in the Elzevier edition of Contarini’s Venice). What then becomes interesting is not the mere fact of secularising comparison, but the constitutional reform proposals these separate readers built on the secularised comparisons. Similarly, it is easy to lose the full force of a book like Cootwijk’s when its aspects are considered in isolation. The later reuse of these distinct aspects – such as his synopsis of Venetian government, and comparison of Muslim and Christian legal systems, articles of faith, and institutions – in turn validate the notion that the unity of these separable elements in the original work is significant. How to best interpret these cumulative and transecting layers of meaning, which are not apparent from the texts unless they are contextualised and the circumstances of their appearance and reappearance are carefully taken into account, is another matter. While collected editions of Sionegus’s works on different constitutions, already comparative in themselves, are bound together in a way as to invite pushing the constitutional comparisons in the texts further, conceivably they could just as easily lead to alertness and resistance to the secularisation of the biblical commonwealth. For Shalev’s use of ‘secularized’ in a similar context, though restricted to ‘humanistic travel,’ see Sacred Words, 82.
Figure 4. Lintott’s reconstruction of the Urbino tablet

Figure 5. Fragment E. From Lintott, Judicial Reform
Finally, several provisions in Oceana, including leaving the existing status quo unchanged, and focusing on colonial conquest instead of any sort of domestic redistribution, harken to the third law on the epigraphic lex Thoria. Another reason why this distinction is crucial is because it forms a link in the chain of the tradition that distinguishes the destabilising agrarian (whether Cassian or Gracchan) from the curative agrarian (including Thorius), where the latter is meant to restore concord and harmony even at the expense of strict justice, and which closely ties the republic’s colonial expansion to its domestic stability. Machiavelli’s agrarian, as a domestic and colonial manifestation of the republic’s energetic virtue, incorporates and dovetails with the latter.

A key issue that carries over from Sigonius’s investigations of Athens, Sparta and Rome, and defense of feudal Italian city-states’ independence from popes and emperors, is the nature of his comparisons with the biblical polity in his De republica Hebraeorum (1582). The extent of his views regarding Israel’s similarity with other ancient and medieval cities, their militia, agrarian hinterland, division into tribes and a range of different groups, their trade and other contacts with other countries, provincial government and other constitutional features should be examined with care, in order to trace the evolution of commercial republicanism from Plato’s and Aristotle’s non-trading landlocked virtuous city with a fixed class system, and Xenophon’s ideal farming and armed citizen-soldier-colonist, through the Machiavellian and commercial brands of Renaissance civic humanism, to the early modern sublimation of the agrarian into a matter of property distribution that neither ossifies inequality nor stifles but harnesses self-interest for the common good.

Sigonius’s analysis of Roman and feudal Italian history, reduction of Catholic sacred history to institutional history, removal of Catholic and apostolic land claims, and his formal, if dry, application of Roman categories to the biblical Israel in De republica Hebraeorum, proved the perfect starting point to Cunaeus’s interpretation of Israel in Machiavellian terms. The result included but is not limited to a view of the rhetorically divine approval of Moses’s laws, including the Jubilee, as serving social functions like Lycurgus’s, Solon’s, Numa’s or Romulus’s laws; and a view of the biblical Israel as an expansionary, but irreproducible republic. Harrington’s ingenious move followed readily: to take Israel as an expansionary but irreproducible republic, identify scarcity of land as one factor that makes it irreproducible (at least in England), to liken it to Holland, and to make it an exception to the rule of balance in

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208 To keep an alternative tracing alive, Althusius’s Politica includes a systematic comparison of tribes and collegia in Rome and Israel, using Sigonius’s De antiquo jure Italae and De republica Hebraeorum, and a discussion of municipal autonomy. A few years earlier Grotius discussed the same topics in the manuscript of De republica emendanda (ed. A. Eyffinger, Grotiana, n.s. 5, 1984).
property, insofar as Israel and Holland depended on a balance of money instead of land, and they alone have or had the potential to remain stable upon this exceptional foundation. But for this Harringtonian move, Cunaeus first had to turn Israel into a Machiavellian republic.

III.3 Cunaeus’s armed, agrarian, Machiavellian Israel

Nevertheless be assured, reader, that it is sheer misinterpretation to attribute such excellence to this land which the experience of merchants and travelers proves to be barren, sterile and without charm, so that you may call it in the vernacular ‘the promised land’ only in the sense that it was promised, not that it had any promise.

Servetus, *Ptolemaei Geographicae enarrationis* 209

Behold, the Army of Israel become a Common-wealth, and the Common-wealth of Israel remaining an Army Harrington, *Oceana*

In 1614 Petrus Cunaeus (1586-1638) took over from Heinsius the recently created Chair of History and Political Science at Leiden, before asking the Curators for leave to become a Doctor of Law. According to Cunaeus, *De republica Hebraeorum* was started in 1614 while he was gaining practical courtroom experience at the Hague, and staying with Apollonius Schotte. Schotte pointed out to him the unappreciated treasure-trove of Maimonides, a copy of *Mishneh Torah* having been given to Cunaeus by Johannes Borelius that year. Cunaeus crossed out his earlier notes on the sacred polity, and started anew. 210

This may be a polite exaggeration. Cunaeus has already discussed the Hebrew Republic extensively with Drusius, father (Johannes, 1550-1616) and son (also Johannes, 1588-1609), and continued to do so long after *De republica Hebraeorum* was published. Yet it is probable that during his legal studies and practice at the Hague he radically reframed his inquiry, and rearranged his earlier notes in light of a newly found appreciation of the legal dimension of the biblical and Rabbinic texts, and their potential to shed light on contemporary Dutch challenges. They could do so in two ways: by providing case studies in the political and legal containment of religious controversy, and by helping to dissipate Dutch conflicts between legitimacy claims deriving from direct descent from, or analogy with, one particular stage or interpretation of the succession of Jewish polities described in the Old Testament. The key to both constructive

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209 Michael Servetus, adapting earlier editors of Ptolemy, in Claudii Ptolemaei Alexandrini geographicae enarrationis libri octo... (Lyon: Melchior and Gaspar Trechsel, 1535). Cited in Roland H. Bainton, *Hunted Heretic: The Life and Death of Michael Servetus, 1511-1553* (Boston: Beacon Press, 1960), 95; and Shalev, *Sacred Words*, 1. The passage was cited against Servetus in the trial that led to his burning at the stake in 1553.

210 Cunaeus, *De republica Hebraeorum*, I.ix.
approaches to the Hebrew Republic topos was the combination of comparativism and historicisation that Scaliger and Selden perfected.211

Cunaeus returned to Leiden and gained tenure in Civil Law and the Digest in 1615. De republica Hebraeorum was first published in 1617, and reprinted in Elzevier’s Petites Républques in 1631.212 He remained an important legal scholar and practitioner until his death in 1638, defending Dutch legal scholarship from Salmasius in a series of high-profile polemics,213 taking over the professorship of Roman Law in 1630 at the death of Swanenburg, his old professor, and requested to respond to Selden’s Mare clausum by both Grotius in exile and by the Dutch Estates General (an honour he refused). It is tempting to speculate whether Cunaeus discussed Machiavelli at Leiden, whether he had a role in the Dutch translations of the Discourses and The Prince that first appeared in 1615 (and was being prepared while Cunaeus was teaching Political Science and writing the first draft of De republica Hebraeorum, and to situate him within the Leiden reception of Machiavelli from Lipsius, Grotius and Hooft to the De la Court brothers.214 For now, it is enough to indicate how Cunaeus’s Machiavellisation of the Hebrew Republic in De republica Hebraeorum picked up from civic humanism and changed the course of early modern republicanism.

Cunaeus’s De republica Hebraeorum is a fascinating work. It is best known today for bringing attention to Maimonides’s Mishneh Torah (c. 1170-80).215 It also put the Hebrew Republic into a comparative political framework, and desacralised it to an extent by constructing comparative, historical, and anthropologically grounded accounts of its rites’ emergence and evolution. It gave a Machiavellian account of Moses as both a lawgiver and prince, and of the divine polity as an expansionary republic. It neutralised Dutch and other divine legitimacy claims by providing an historical account of sacred laws, and by comparing them systematically to Greek and Roman laws. Furthermore, it dealt an intellectual coup de grâce to such claims by describing and emphasising numerous breaks and legal discontinuities within the biblical story, and by demonstrating the impossibility of translating the Jewish

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211 Somos, Secularisation.
212 Somos, Secularisation, chapter IV.
imperium from its original geographical location. Finally, it compared the agrarian laws of the Hebrew Republic with those of ancient Rome, and put them in terms of a Machiavellian analysis of republican expansion predicated on turning soldiers into farmers, and decline and fall due to aristocratic greed and revolutionary populism.

When Pierre Pithou (1539-96) came across and started to edit a unique late antique legal work, the Collatio legum Mosaicarum et Romanarum, a comparison of the Pentateuch and the Twelve Tables, he sent a copy to Cujas, who was hosting and teaching Scaliger at the time. Pithou eventually published the collation with his commentary as Mosaycarum et romanarum legum collatio in 1574. Scaliger copied this manuscript as well for his own use. This is the manuscript listed as “Leges Mosaicae collatae cum Corpore Iuris Civilis” in Codices Scaligeriani, Scal. 61, f107. The Collatio and its French-Leiden lineage is important to note because the rediscovery of this fourth-century historical document was partly and perhaps mainly responsible for the favoured Leiden project of systematically comparing the divine laws of the Hebrew republic with the civil laws of other countries, and denying the divine laws any epistemic or legal superiority. We find this secularising approach to divine law, much in contrast with contemporaries’ legal commentaries, in Cunaeus’s De republica Hebraeorum and in Grotius’s De iure praedae.

As we saw, Sigonius also compared Israel to Rome systematically, but did not for instance berate Moses for deceptive religious legislation, and did not praise Israel’s military prowess. Sigonius’s De republica Hebraeorum VII.ix, the chapter near the end of the book entitled “De re bellica” in the 1583 Frankfurt edition (the 1583 Cologne version has no chapter heading), opens with Sigonius’s admission that there is not much to say about the military affairs of the biblical polity, because Scripture says little about it. In remarkable contrast,

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216 For more on this text see the excellent A.S. Jacobs, “Papinian Commands One Thing, Our Paul Another’: Roman Christians and Jewish Law in the Collatio Legum Mosaicarum et Romanarum.” In: Religion and Law in Classical and Christian Rome. Eds. Clifford Ando and Jörg Rüpke (Stuttgart: Franz Steiner Verlag, 2006), 85-99.
218 The connection between the Collatio and Sigonius’s 1582 De republica Hebraeorum is yet to be determined. Some links between Sigonius and the Leiden Circle are discussed below. See also Bartolucci, “The influence,” 197-9. Bartolucci is right to draw attention to the unique features of Sigonius’s work. Yet pioneering as he was, Sigonius was not alone. The 1570s already saw comparative legal studies that demystified biblical law, both Old and New Testament. Pithou published his Collatio legum in 1574. Bertram’s De politica iudaica tam civil quam ecclesiastica appeared the same year. Another case in point is Scaliger’s stay with Cujas in the early 1570s. “Erat hac aetate maximum ac celeberrimum Cuiacij nomen, cui principatum iuris omnes deferebant: cum hoc ita annos quinque vixit, ut iucunditatem litterarum penitus ex animo deleret, & cum praecipituum suo, quo & postea usus est amico, totus in collatione legum hæreret.” Heinisius, funeral oration for Scaliger, “Oratio I” in Orationes (1615, Leiden), S. Franciscus Junius’s De politiae Mosis observatione dates from 1593, after Sigonius. As shown in Somos, Secularisation, Pithou’s and Scaliger’s historico-political method blossomed in the Leiden Circle.
219 “Neque verò de hac re multa dicentur, quòd sacrae litteræ non multa suppediment, quæ dicantur.” Sigonius, De republica Hebraeorum (Frankfurt) VII.ix, 376.
Cunaeus’s dedication to the States of Holland and Western Frisia at the very start of his De republica Hebraeorum claims that while the rules of Israel’s government can be extracted from the sacred books,

it is only their military knowledge of which nothing at all was passed down to the memory of later generations. But as anyone who pays careful attention to the victories and accomplishments of the Hebrews will admit, every one of them was extremely skilled in the arts of war.\footnote{Eorum nos magnam partem posse ex sacris voluminibus erui ostendimus. Sola est militaris disciplina, de quâ admodum nihil traditum memoriae posterorum sit. Omninò tamen virtutem bellicam in omnibus Hebræis summam fuisset fætetur, qui victorias eorum, atque res gestas cum animo suo reputabit.” Cunaeus, De republica Hebraeorum Praefatio, 2. Tr. Weytzer, p. 3.}

In the greetings to readers, the book’s next section, Cunaeus mentions two authors, Bertram and Sigonius, whose De republica Hebraeorum genre he intends to follow, but without repeating what they said. Clearly this bold opening claim about the biblical polity’s skill in arms, and the desirability of deriving prudence from their case for this reason, is one of Cunaeus’s innovations. It is noteworthy that he echoes Sigonius’s premise that Israel’s military power cannot be deduced from Scripture – despite the numerous wars, campaigns, battles and skirmishes reported in the Old Testament. In this, Cunaeus agrees not only with Sigonius but also with Grotius, who presented the Hebrew Republic’s military victories as historicised, localised, and not as amenable to generalisation into principles of \emph{ius gentium} as the Christian legal tradition of over a thousand years was wont to assume.\footnote{Somos, Secularisation, chapter V.} In addition to the clear claim to an extra-biblical, historical foundation to prove his point (which in turn could and did use the Bible as an historical source, equivalent to any other), Cunaeus’s emphasis on the skill of every individual Jew – as opposed to being satisfied to point out their collective military skills – is another distinctive compatibility with Machiavelli, in addition to extra-bibicality and the use of the Bible as an historical source, rather than with those interpreters of the Jews’ military exploits who emphasised collective military efficacy at the expense of individual prowess; those who privileged God’s promise and assistance over human skills in explaining Israel’s victories; or with those who regarded God’s, Moses’s and/or David’s military instructions as expressions of universal principles. Cunaeus’s Israel was Machiavellian, armed, agrarian, and comparable to all states without claim to special status or authority as a source of either prudence or law.

Cunaeus built on Sigonius’s systematic comparison of Israeli, Spartan, Athenian, Roman and feudal constitutions and histories, from secularised popular sovereignty through tribal
assemblies to provincial courts, in order to adopt and develop Machiavelli’s analysis of the biblical polity to his thorough-going secularisation of Israel. The re-prioritisation of history over theology in interpreting the biblical polity; the neutralisation of its prescriptive value for *ius gentium*; and the attribution of military valour to non-biblical sources and non-divine, republican causes are the beginning of a long list of Cunaeus’s Machiavellian adaptations. *De republica Hebraeorum* presents Israel in Machiavellian terms, complete with social struggle, military valour, ruthlessness, deceit, the political instrumentalisation of religion, and other *arcana imperii*.

*De republica Hebraeorum*’s first substantive point about Israel is its military prowess, which Cunaeus argues has been missed by everyone before him, except Josephus (*De republica Hebraeorum*, Preface). It is unnecessary to enumerate all cases when Machiavelli praised Rome’s military manners and might, though perhaps *Discourses*, I.21 resembles Cunaeus’s choice of terms the most. Cunaeus attributes Israel’s military virtue to necessity, along the lines of Machiavelli’s own comparison between the necessities that drove the Jews and the Goths to conquest.\(^{222}\) Crucially, these terms were not feudal, but ancient republican.

They met as a group for the welfare of all. And though there were many communities, they did not try to set up their own individual fiefdoms; rather they defended with great passion the people’s liberty.\(^{223}\)

Regarding cruelty, Machiavelli already cites Moses for it.

And whoever reads the Bible attentively, will see Moses, in wanting that his laws and his orders be observed, was forced to kill an infinite number of men who opposed his designs, moved by nothing else other than envy.\(^{224}\)

The radical overhaul of all institutions was part of the process of Moses’s founding, according to both Machiavelli and Cunaeus. This was by no means easily compatible with a pious

\(^{222}\) Cunaeus, *De republica Hebraeorum* I.12.47 and I.13.53. Cf. Machiavelli, *Discourses*, II.8 “These people go out from their countries (as was said above) driven by necessity; and the necessity arises from famine, or war, and oppression, which in their own country is experienced by them, so that they are constrained to seek new land. And these such are sometimes of a great number, and then enter into the countries of others with violence, killing the inhabitants, taking possession of their goods, create a new Kingdom, and change the name of the province, as Moses did, and those people who occupied the Roman Empire.” Machiavelli goes on to describe how princes who start a new state, including Moses, change the established religion and the name of institutions.

\(^{223}\) *De republica Hebraeorum*, Preface.

\(^{224}\) *Discourses*, III.30.
Christian reading of biblical history. In addition to undermining the doctrines of detailed or interventionist divine forethought, guidance, or continuity stretching back to Creation, both Machiavelli’s and Cunaeus’s accounts of Moses’s radical break with all previous history consisted of components that were unpalatable for most Christians independently, let alone when combined.

One such component was the instrumental use of religion for political manipulation. Machiavelli infamously argued that a new prince must destroy existing institutions in a conquered nation and construct new ones, even if sometimes pretending that they represent a return to an old, pristine order. The prince can perform these egregious manoeuvres because it is a general maxim that princes easily corrupt the people, and because the people are generally daft, captivated by appearances, crave novelty, and easily misled. Along other, self-serving princes, Machiavelli describes Numa as a benevolent deceiver and instrumentaliser of religion. Cunaeus ticks all the boxes by interpreting the biblical account of the relationship between Moses and the people of Israel, and between Jeroboam and the people, in accordance with these Machiavellian maxims. A notable difference is that Cunaeus compares the Roman and the Old Testament religions more systematically than Machiavelli did, following a project started by figures like Sighius and Pithou, and continued by Junius, Scaliger, and Grotius.

Cunaeus’s agreement with Machiavellian maxims extends to human nature, especially to the necessity of recognising that the people are gullible and factitious. Jeroboam is a perfect Machiavellian prince:

But Jeroboam, a man who was thoroughly versed in the shameful crimes men use to dominate each other, and who had been responsible for the secession, made use of a technique which guaranteed that the Twelve Tribes would never reconcile: he corrupted the true religion religion with an empty superstition. So once he had used his

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225 *Discourses*, I.25, I.26, II.5, III.29.
226 *Discourses*, I.42, III.29 – the latter a notable misquotation of Livy.
227 *Prince*, 95-6, *Discourses*, I.53, 106, 263. Also *Discourses*, III.21: “men are desirous of new things, which most of the times are desired as much by those who are well off as by those who are badly off; for (as had been said another time, and is true) men get tired of the good, and afflict themselves with the bad. This desire, therefore, opens the door to anyone in a province, who is the head of an innovation; and if he is a foreigner they run after him, if he is a provincial they surround him, favoring him and increasing his influence. So that in whatever way he proceeds, he will succeed in making great progress in those areas.”
228 *Discourses*, I.11.34-5; I.14.
229 *De republica Hebraeorum* 4, 5, 6, 43, 106, 277.
230 *E.g.* *De republica Hebraeorum*, I.10.42; I.12.49-50.
231 *Discourses*, I.3 “As all those have shown who have discussed civil institutions, and as every history is full of examples, it is necessary to whoever arranges to found a Republic and establish laws in it, to presuppose that all men are bad and that they will use their malignity of mind every time they have the opportunity.”
Although Moses institutes the right religion and a potentially immortal commonwealth, his techniques and the maxims in effect are identical. Cunaeus has no qualms about applying the same Machiavellian language and explanatory framework to both Moses and Jeroboam. Moreover, the creation of a new religion falls under the aforementioned Machiavellian imperative, namely that the prince must create new institutions. The upshot of Cunaeus’s adaptation and extension of Machiavelli’s principles to Israel is the recognition that Moses would have needed to introduce a new religion even without God’s revelation and command. Cunaeus offers a chilling portrait of Moses as the great manipulator of religious sentiment and law, for the common good. In Cunaeus’s adaptation of Machiavellian terms, Moses appears as an unusually successful prince. The monotheism he introduces is an effective religious innovation because it is new, has a system of rewards and punishments, and excludes other gods.

It is worth noting that Cunaeus here considers neither divine Providence nor the truth of Abraham’s religion to have been a sufficient guard against religion’s corrupting potential. Nor does he attribute providential reasons to the Jews’ loss of true religion. Strikingly for his time and context, Cunaeus explains the Hebrew religion’s rise, preservation and decline in secularising and Machiavellian terms. According to him, Jeroboam successfully used religion to divide the people into parties and factions, utilising their lack of understanding, desire for novelty, and impulse to follow leaders. Cunaeus’s analysis of Jeroboam’s manoeuvres, prefaced by a comparison to the religious partisanship and factionalism of the United Provinces, is patterned on Machiavelli’s description of several such incidents in ancient Rome.

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232 De republica Hebraeorum Preface, 5. Cf. Nedham’s great diatribe against “that Italian Goddess, Raggione di Stato”: “It was Reason of State, that made Jeroboam to set up Calves in Dan and Bethel.” Excellency, 106-9, at 107.

233 Discourses, II.5. “Because, when a new sect springs up, that is, a new Religion, the first effort is (in order to give itself reputation) to extinguish the old; and if it happens that the establishers of the new sect are of different languages, they extinguish it (the old) easily. Which thing is known by observing the method which the Christian Religion employed against the Gentile (heathen) sect, which has cancelled all its institutions, all of its ceremonies, and extinguished every record of that ancient Theology.”


235 Cf. Discourses, 263. Discourses, II. Preface, 125 “human appetites being insatiable (because by nature they have to be able to and want to desire everything, and to be able to effect little for themselves because of fortune), there arises a continuous discontent in the human mind, and a weariness of the things they possess; which makes them find fault with the present times, praise the past, and desire the future, although in doing this they are not moved by any reasonable cause.”

236 Discourses, II.29. “And the words of the historians are these: Timasitheus implanted religion in the multitude, who always imitate their rulers. And Lorenzo De Medici in confirmation of this opinion says: And that which the Lord does, many then do, Whose eyes are always turned on their Lord.”
and Renaissance Italy, and expands to the divine polity the set of cases that support Machiavelli’s maxim that manipulation of the masses through religion is usually the reason behind the discord, decline, and revolution of states. Machiavelli and Cunaeus draw the same lesson for their contemporaries: it is the current condition of religion that is responsible for the discord and decline they experience, and threatens the state’s very survival. Given human nature, from gullibility and partisanship to a yearning for novelty and leadership, religious discord is the greatest single threat to the state. Quelling and preventing religious speculation is therefore one of the highest priorities of any government with an interest in salus populi and its own survival.

Religion is instrumentalised not only by the prince at the state’s foundation, but also permanently through the legal system. Moses suppresses his natural ambition by surrendering to God. Note, again, the gap between a pious and a Machiavellian view of human nature behind this interpretation. Yet apart from this surrender, it is Moses, not God, who created the immutable and perfect laws that regulated the divine polity. Moses bestowed supreme authority on the legal system, and appointed magistrates not as its masters, but its servants. Deferring to God and the law enabled Moses to overcome passions, and his laws to achieve “permanent stability,” and without any need to abrogate old laws or create new ones. Cunaeus’s conclusion to this chapter is that other states’ legal system failed to accomplish the same gold standard because they were protected only by the threat of punishment. The laws of Israel, by contrast, were protected by religion as well. The immortality of Harrington’s commonwealth is often traced to neoplatonism, but the secularising interpretation of the constitution of the Hebrew Republic may also have been a source. If so, Harrington’s decision

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237 The quotation is from the Preface. Also see De republica Hebraeorum I.10, 43 on Jeroboam, who soon secured the kingdom of Samaria for himself through a change in religious practices and ceremonies. On treasonous assemblies and Jeroboam: De republica Hebraeorum, 4. Compare Discourses, 106, 277, and Discourses, II. Preface, 125 on man being partisan by nature. 238 Discourses, II.2.131, 132. 239 Discourses, II.2.131-2. De republica Hebraeorum Preface. 240 This is a constant theme in Machiavelli, and hard to support with exhaustive references. But see e.g. Discourses I.6, 23; I.7, 24; I.25; I.26; II.5; II.8; III.11; III.21; III.29. For Cunaeus, De republica Hebraeorum Preface 4-6, I.10.43, I.15, passim. 241 De republica Hebraeorum I.1, 12. “Indeed, his behavior hardly seems human at all – a certain desire for power is normal among mortal men, and Lord knows it is very ancient and burns more fiercely than all the other emotions.” Discourses I.37, 78. “For whenever men are not obliged to fight from necessity, they fight from ambition; which is so powerful in human breasts, that it never leaves them no matter to what rank they rise. The reason is that nature has so created men that they are able to desire everything but are not able to attain everything: so that the desire being always greater than the acquisition, there results discontent with the possession and little satisfaction to themselves from it.” 242 De republica Hebraeorum I.1.12-13. 243 De republica Hebraeorum I.1.13.
to remove religion from the heart of this constitution and attribute the state’s immortality to perfected human prudence is even more interesting.\footnote{244}{See chapter VII, Section 1 below.}

This is not to say that Cuneaus’s account fits easily with seventeenth-century piety. One would expect Cuneaus to rest his argument concerning religion’s immortalising effect on the state on the foundation that the religion of the chosen nation was true, or powerful, in contrast with the pagans’. Instead, Cuneaus returns to fear, and names it as the core of Mosaic religion. Unlike pagan laws, the divine commonwealth’s laws “persist and they remain the same, and even when people are no longer frightened by axes and rods, religion can still scare them.” This is a Machiavellian, profoundly instrumentalised reading of religion, and all legal systems.\footnote{245}{De republica Hebraeorum I.13. See Discourses, I.57: “And Titus Livius said these words, From being ferocious when together, fear made them individually obedient. And truly this part of the nature of the multitude cannot be better shown than by this sentence. For the multitude many times is audacious in speaking against the decision of their Prince: but afterwards, when they see the penalty in sight, not trusting one another, they run to obey.” Discourses I.3, 15 on founding: “it is necessary to whoever arranges to found a Republic and establish laws in it, to presuppose that all men are bad and that they will use their malignity of mind every time they have the opportunity.” Discourses I.46, II.24. Discourses I.58: words are enough to cure the malady of the People, and that of the Prince needs the sword. Prince, 91-92, Discourses, III.19, 263-5, 267! Discourses I.11 “And truly there never was any extraordinary institutor of laws among a people who did not have recourse to God, because otherwise he would not have been accepted; for they (these laws) are very well known by prudent men, but which by themselves do not contain evident reasons capable of persuading others. Wise men who want to remove this difficulty, therefore, have recourse to God.” Compare Althusius, Politica (Liberty ed.), 83 and John Selden, Of the Dominion, Or, Ownership of the Sea ([1635] tr. Marchamont Nedham, 1652), I.vii.43: “So that as of old in the Jewish Church, so also in the Christian, the use of humane Reason among the vulgar, though free in other things, yet when it dived into the contemplation or debate of Religious matters, it hath often been most deservedly restrained, by certain set-Maxims, Principles, and Rules of holy Writ, as Religious Bolts and Bars upon the Soul; lest it should wantonize and wander, either into the old Errors of most Ages and Nations, or after the new devices of a rambling phansie. And truly, such a cours as this hath ever been observed in Religious Government.”}

God’s chosen people are indistinguishable from all other nations in their passions, gullibility, their institutions, their religion, and the unrivalled efficacy of fear in securing compliance with their politics and laws. Cuneaus’s adaptation of this whole range of connected Machiavellian values to Israel creates a secularising effect. In Cuneaus, the wise Jubilee laws, which kept inequality of property to a minimum, were a chief reason for this un paralleled stability.\footnote{246}{Another reason Cuneaus hints at is that Moses’s agrarian stopped people from changing their occupation, or introducing new professions. De republica Hebraeorum I.2.15. It would be interesting to trace how the early modern debate about emerging classes, including the new men, yeomen and merchants mentioned above, transformed the reception of Plato’s justice, which prioritised focusing on one’s own profession.} This raises the intriguing question, discussed elsewhere, of Maimonides’s influence on Harrington’s notion of the balance of property, via Cuneaus’s translation of the Jubilee into the framework of seventeenth-century public law.

Even though Machiavelli subscribed to the principle that fairness and equity in land distribution is essential to founding a republic, he famously did not think that any constitution
could accomplish the perfect stability that Cunaeus derived from the biblical agrarian.\textsuperscript{247} While Cunaeus agrees with \textit{anacyclosis} (not necessarily the Polybian sequence), and thinks it applies to Israel as well as to other states,\textsuperscript{248} he deems the biblical polity a remarkable and unique source of prudential inferences precisely because its design made it potentially immortal.\textsuperscript{249} This is problematic insofar as it postulates human constitutional theory’s ability to produce an enduring state, and thereby contradicts most Christian exegeses and doctrines that regard Christianity as the fulfilment of Old Testament promises, Israel’s decline as inevitable, God’s role in politics as vital, and man’s unassisted capacity for immortality an arrogant pipe dream. Harrington’s secularising design for an immortal commonwealth, and positioning of Jethro as the pagan inventor of most constitutional features of the biblical commonwealth, are prime examples of the intellectual consequences of Cunaeus’s move.\textsuperscript{250}

Cunaeus’s Israel, stabilised i.a. by the agrarian, therefore becomes a vital link between Machiavelli’s Rome and Harrington’s immortal Oceana, and the transformation of republican utopias into secular and secularising constitutional blue-prints that were fully intended to endure. The mechanisms for change are endogenised: instead of fortune, Providence or revolutions, it is elections and the English common law that provide the means of adjustment and correction in Selden and Harrington.\textsuperscript{251} Both features, namely secularised immortality and endogenised mechanisms of adaptation, are key to understanding the success, and the legacy, of English soft imperialism, and highlight the historical contingency of norms often considered universal.

Perpendicular to the eternal revolutions of the rise, corruption and fall of states, as well as to the immortality of exceptional states like Cunaeus’s Israel and Harrington’s Oceana, these thinkers offer narratives to explain the origin of society. The creative ambiguities of these narratives are notoriously pervasive and embedded. Are Cicero, Aquinas, Hobbes, Rousseau and so many others proposing normative changes based on their narratives, or are the

\textsuperscript{247} Machiavelli on fair land distribution: \textit{Discourses} I.17; I.55. On inevitable decline: \textit{Discourses} III.17. “And as similar disorders which arise in Republics cannot be given a certain (adequate) remedy, it follows that it is impossible to establish a perpetual Republic, because in a thousand unforeseen ways its ruin may be caused.” Also \textit{Discourses} I.6.23; I.49 end; III.9.240, III.11, III.49, etc.

\textsuperscript{248} \textit{De re publica Hebraeorum} I.8. 35: “Jerusalem’s welfare began (in accordance with its fate) to decline and regress,” \textit{De re publica Hebraeorum} I.15. In fact, it is part of nature’s plan that all great states eventually experience changes of fortune. Cunaeus writes about Scipio changing a Roman public prayer: “This very wise man, then, understood that the grace of God never consistently favors one people with its gifts, or makes these gifts exclusive to that people alone. He feared the vicissitudes of fortune, and he was aware of all the factors that often come from within a state, and disturb or corrupt it without any help from abroad.”

\textsuperscript{249} \textit{De re publica Hebraeorum} I.13. “But I am not going to venture into this period; I have been examining the ancient republic and the pristine institutions of the nation, and it would be pointless to try and examine any of the others. Nothing certain can be said about them because they have undergone constant changes.”

\textsuperscript{250} See chapter VII below.

\textsuperscript{251} Cf. Machiavelli’s mechanisms for adaptation, e.g. \textit{Discourses}, end of I.49; III.11; III.49, etc.
historical and analytical aspects of their state of nature and divine or social contract stories so clearly divorced that there can be no pretence to normative claims based upon them? One factor that clearly determines the possible range of answers in each thinker’s case is their stance on the relative powers of Providence and Fortune. If societies emerged by accident, it may be useful or even necessary to count on similar accidents occurring in the future; but the legal and political arrangements to cope with such accidents are primarily prudential, not ethical. It may be the case that not human desires but certain features of nature, from topology to agricultural yield, set optimal boundaries to state size, or that demographic change necessitates a constitutional mechanism for redistricting, or that climatic variation and natural resource distribution make global trade mutually beneficial.

Yet is and ought remain distinct enough in the history of both political and legal theory. It is fashionable and unfortunate to back-project Machiavelli’s and others’ dilemma about the compatibility of Christianity and politics into pre-Christian debates. In one of many misunderstandings that are relevant here, some recent literature mischaracterises Cicero’s equation of honestas with utilitas. It aims not to frontally challenge an existing Roman ethical dimension to constitutional law, in a pre-Christian instance of several unsatisfactory solutions to the dilemma between the unfortunate is and the unattainable ought, but to translate the Greek unity of to kalon, the same beauty, nobility and excellence that is embodied by Xenophon’s kaloskagathos and described in Aristotle’s Eudemian Ethics, VIII.3. In the absence of a directly equivalent Latin term, Cicero’s move is an exercise in conceptual translation from his beloved Athenians, not a ground-breaking response to a pre-existing Roman dilemma in the face of Christianity, let alone a straightforward precursor to Machiavelli’s view of religion.253

Similarly to, and perhaps extending from, this often misunderstood virtuous-useful equivalence, it is not the case that the classical notion of the gentleman with healthy body and healthy mind, best suited to populating and ruling the republic, underwent a radical split in Rome and came to face a moral dilemma about reconciling ethics and politics before

252 E.g. Machiavelli, Discourses I.2 “These variations in government among men are born by chance, for at the beginning of the world the inhabitants were few, (and) lived for a time dispersed and like beasts: later as the generations multiplied they gathered together, and in order to be able better to defend themselves they began to seek among themselves the one who was most robust and of greater courage, and made him their head and obeyed him. From this there arose the knowledge of honest and good things; differentiating them from the pernicious and evil; for seeing one man harm his benefactor there arose hate and compassion between men, censuring the ingrates and honoring those who were grateful, and believing also that these same injuries could be done to them, to avoid like evils they were led to make laws, and institute punishments for those who should contravene them; whence came the cognition of justice.” N.N. Taleb, Antifragile: Things that Gain from Disorder (New York, 2012).

253 See e.g. the 1913 Loeb’s potentially misleading translation of honestas as “moral goodness” throughout De officiis. More works and mistranslations are reviewed in Alexander Welsh, What is Honor? A Question of Moral Imperatives (Yale, 2008), 43-7. Recent mischaracterisations of Cicero’s point as a milestone in the genealogy of ‘realism’ are too numerous to list.
Christianity. Rather, the Renaissance and early modern interpretations discussed here were prompted and sustained by a successful recapture of an originally singular plane where the relationship between the good individual, judged in this-worldly terms, and the perfect constitution, judged in the same terms, had to be mapped out. The Machiavellian virtue that withstands the vagaries of Fortune is not only forged by necessity, it must also be of both body and mind. It attests to the success of the Christian notion that both the individual’s and the state’s goodness, in both this- and other-worldly terms, can now be distinct and even antithetical enough to create another dilemma that we tend to back-project.

Likewise, though on a smaller scale, one should not mischaracterise adaptations as borrowings among our thinkers. For instance, Machiavelli emphasised the necessity of good arms and good laws, with a preference for the former. Cunaeus’s preference is for laws, which must be super-human. ‘Arms’ actually include reason and judgement, which make man “admirably suited to wreaking havoc, once you take law out of the equation.” Yet arms for Machiavelli, and laws for Cunaeus, both root the state’s founding strength in religion.

Another difference is that Machiavelli extrapolated from the history of the Roman agrarian a set of general observations about the social, political and legal forms of property relations’ impact on the fortunes of a state. It was Cunaeus who applied the same explanatory framework to both the Jewish agrarian, and to two sets of maxims, one based on lessons derived from comparing the biblical polity with several others (including Sparta, Athens, Rome, and the United Provinces), and one based on the distinctive and irreproducible features of ancient Israel. The language as well as the argument of De republica Hebraeorum I.3, for instance, is Machiavellian. Here Cunaeus describes the rich driving the poor off their land as a common reason for regime change throughout history. He pursues an extensive and systematic comparison between Rome and Israel. One argument he sets up to address the connections between the agrarian, military, political and legal causal processes that characterise republics

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254 Machiavelli, The Prince, chapter 25. Discourses, II.1, II.30.199, III.31.284. III.12.249: “he (Messius) said these words to his soldiers; Follow me, neither walls nor ditches block you, but only men armed as you are: of equal virtu, you have the superiority of necessity, that last but best weapon. So that this necessity is called by T. Livius THE LAST AND BEST WEAPON.” Same in Thomas Starkey, A Dialogue between Pole and Lupset, 52. Cunaeus says of the twelve tribes, “They always emerged from disaster stronger than before, and through defeat and destruction they drew their courage and strength from the very sword that attacked them.” De republica Hebraeorum Preface, 4.
256 prince, 12, The chief foundation of all states...; Discourses I.4.1; and III.31, “And although at another time it has been said...”
258 Discourses, III.33: “Which things well observed are good reasons why the army becomes confident, and being confident, wins. The Romans used to make their armies assume this confidence by way of Religion, whence it happened that they created Consuls, levied troops, sent out the armies, and came to the engagement, by the use of auguries and auspices.”
starts from the assertion that farming makes land more fertile, and spirits more brave. Roman patricians who stopped working the land themselves were rightly faulted by Varro for losing their virtue and independence. The Hebrew agrarian designed by Moses, a human leader, “prevented the great evils that (like a kind of plague) can assault a state when it forgets how to farm.”259 Xenophon’s and Columella’s ideal, adapted to Renaissance states by Bracciolini, Alberti, Thomas Smith and others, is applied here directly to the biblical commonwealth.

Machiavelli, Sigonio, Cunaeus and Harrington all distinguish sovereignty and government. According to all, sovereignty flows from the people. Cunaeus in De Republica Hebraeorum I.9.40-1 and passim states this explicitly about the Hebrew Commonwealth. Although Moses instituted religion, laws, and form of government, the people are sovereign even in a theocracy. It becomes increasingly difficult to see the space Cunaeus leaves for God in the divine polity.260

The tension between popular sovereignty and the ‘realistic’ or pessimistic view of human nature discussed above – characterised by ambition and beastly passions, not restrained but empowered by human reason and judgement, as well as by gullibility, fickleness, factitiousness, susceptibility to manipulation and an inner urge to follow – was and remains at the heart of political thought. From Aristotle to Jefferson and beyond, one standard partial resolution was to distinguish between the multitude and the cohesive ‘people,’ and bestow upon the latter a sort of perception, a common sense that cannot be permanently deceived, but which in aggregate has a greater wisdom and better judgement than the smartest lawgiver, hero, or natural nobility. Cunaeus adapts this cardinal tenet to Israel, and refers to Aristotle’s formulation in Politics, III.11.

His application of this principle to political assemblies, followed by instances when the chosen nation made the wrong decision nevertheless, recalls, however, Machiavelli’s treatment of the Romans much more closely than Aristotle.261 Moreover, using language

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259 De republica Hebraeorum I.3.18-9.
260 Harrington’s connected, but different solution to the same problem is discussed in chapter VII, Section 1 below.
261 The people can usefully participate in assemblies, but shouldn’t fulfil other political functions. They are easy to manipulate (e.g. with religion), yet together they have a sort of perception. De republica Hebraeorum I.12, 50-1. Compare Discourses III.34. “Although it could happen that the people might be deceived by the fame, opinions, and acts of a man, esteeming them greater than, in truth, they are; which does not happen to a Prince, for he would be told and advised of it by those who counsel him; for although the people do not lack these counsels, yet the good organizers of Republic have arranged that, when appointments have to be made to the highest offices of the City, where it would be dangerous to place inadequate men, and where it is seen that the popular will is directed toward naming some that might be inadequate, it be allowed to every citizen, and it should be imputed to his glory, to make public in the assemblies to defects of that one (named for public office), so that the people (lacking knowledge of him) can better judge.” Also Discourses I.34.74-5, I.40.88, I.44, I.47. Discourses I.53. “Here, two things are to be noted. The first, that many times, deceived by a false illusion of good, the People desire their own ruin, and unless they are made aware of what is bad and what is good by someone in whom they have faith, the Republic is
strongly allied with the contemporary Dutch discourse on the political and legal aspect of commerce, Cunaeus formulates the agrarian in terms that generalise property relations. After praising the equity of Moses’s agrarian and the Jewish, Greek and Roman concern for equitableness when founding colonies, Cunaeus notes,

If on those occasions every settler who first came to an unoccupied territory had seized whatever land he wanted, there would inevitably have been a great deal of fighting and rioting among the citizens; for if a commodity is of the sort that can be turned from public to private ownership, it often leads to such contention that it makes it extremely difficult to preserve the sacred bonds of fellowship.262

Cunaeus singles out the potential of certain things to become the object of public-private contestation with a view to seventeenth-century Dutch and imperialist debates. It also explains English attention to Dutch literature even if the English social, economic and legal problems included not only joint stock companies and colonisation schemes, but also enclosures.263

Cunaeus’s comparison of the Hebrew agrarian with the Xenophonian and Roman republican agrarian is also explicit, and includes idleness as one of the evils that the agrarian is designed to remedy.264

If not in Oceana, in The Prerogative Harrington introduced the balance of money as a special kind of balance of property. This transformation, crucial in any history of commercial republicanism, required a refutation of a tremendously venerable set of maxims that characterised commerce as profoundly corruptive. Aristotle was one of several cardinal thinkers to describe the virtuous and stable polity living on natural produce and staying away from commerce. Cicero occasionally professed the same opinion.265 Earlier we saw Alberti, Bracciolini and Lodovico Guicciardini offer moral economies to reconcile trade and charity, self-

subjected to infinite dangers and damage. And if chance causes People not to have faith in anyone (as occurs sometimes, having been deceived before either by events or by men), their ruin comes of necessity." Discourses, I.58. Virtue in people: judgement. Discourses I.58 throughout, including "But as to prudence and stability, I say, that a people is more prudent, more stable, and of better judgment than a Prince: And not without reason is the voice of the people like that of God, for a universal opinion is seen causes marvelous effects in its prognostication, so that it would seem that by some hidden virtu, evil or good is foreseen. As to the judging of things, it is rarely seen that when they hear two speakers who hold opposite views, if they are of equal virtu, they do not take up the the better opinion, and they are capable of seeing the truth in what they hear."

262 De republica Hebraeorum 1.2.15.
263 Cf. Machiavelli, Discourses, I.17; I.55.
264 De republica Hebraeorum 1.3.17-19.
265 Cicero, De leg. agr. 471: “It is not so much by blood and race that men’s characters are implanted in them as by those things which are supplied to us by nature itself to form our habits of life, by which we are nourished and live. The Carthaginians were given to fraud and lying, not so much by race as by the nature of their position, because owing to their harbours, which brought them into communication with merchants and strangers speaking many different languages, they were inspired by the love of gain with the love of cheating.”
seeking and the common good. His Machiavellianisation of Israel having been shown, the next question is the extent to which Cunaeus commercialised the biblical polity.

It turns out that his commitment to fit Israel into the republican mould led Cunaeus to adapt Flavius and break with the clichés about the Jewish spirit of commerce, rather than take two steps at once and undermine Israel’s newly-found republican credentials.

It is certainly true that the practice of trade drew the various nations so close together that once something new appeared in any of them, it seemed to have sprung up among them all; only the Jews, living in their own land, and content with the wealth that nature produced there, led a life free of commerce. [...] for this was how they kept their way of life uncorrupted for so many years, and nothing that had to do with wealth or luxury – things that usually lead to the downfall of even the most powerful peoples – could find its way in.266

In the light of Cunaeus’s innovations, namely his emphasis on the military and agrarian virtue of biblical Israel, and his choice to describe it in wholly comparative and Machiavellian terms, and given the Renaissance reconciliation of commerce, agriculture and republican virtue, based on Xenophon’s, Columella’s, Cicero’s and ps.-Aristotle’s works, it is rather surprising that it was left as late as Harrington’s Prerogative to apply the latter formula to the biblical commonwealth.

On top of these direct links Machiavelli and Cunaeus share several less direct, and in some ways more powerful secularising arguments than the secular interpretation of biblical political events, and the ‘realist’ interpretation of all politics. Although Machiavelli is generally understood to recommend the Roman model for imitation, and Cunaeus is known for introducing a staggering number of legitimacy breaks and additional reasons why the Hebrew Republic cannot, and should not, be imitated, there are nevertheless similarities between Cunaeus’s radical refutation of all possibility of emulating Israel and Machiavelli’s occasional doubts about the possibility of effectively imitating Rome.267

Cunaeus’s Machiavellisation of the divine polity is beyond doubt. It might be possible to scour ancient authors and identify passages that resemble the abovementioned sentences from De republica Hebraeorum. There are, however, two reasons why Machiavelli is a better

266 De republica Hebraeorum I.4.20-21. For Machiavelli’s uses of the same classical commonplace of virtuous republics’ incompatibility with commerce see i.a. Discourses I.55.111; II.19.174.
267 e.g. Discourses I.49, III.27.
candidate. First, only there can one find all the maxims and interpretations that were described above. Second, the whole is greater than its parts, and Cunaeus’s view of biblical politics maps on to a great deal of Machiavelli’s view of ancient Rome and Renaissance Italy. Rich studies of the reception of Machiavelli in the United Provinces in the 1610s corroborate the textual evidence for Machiavelli’s direct influence on Cunaeus’s presentation of Israel as armed, agrarian, subject to corrosive forces like all other states, but possessing a politically instrumentalised religion which, unlike in Machiavelli, offered the unfulfilled possibility of an immortal commonwealth.268

This is not to say that Machiavelli was Cunaeus’s single source. The Bible, Flavius, Maimonides, Bertram, Sigonius, and Grotius are notable influences. Nonetheless, it is easy to show that Machiavelli had a profound influence on Cunaeus; and one could plausibly argue that the Florentine was not only one, but among the main influences on the analysis of the divine polity published by the Leiden Professor of Political Science an exact hundred years after the Discourses’s completion, two years after its first translation into Dutch, and re-issued in 1631 as one of Elzevier’s Petites Républiques on the centennial of Discourses’s first publication.

CHAPTER FOUR

BEYOND MINIMALISM: DIDACTIC SECULARISATION IN GROTIUS’S DE VERITATE

Is there a syllable of it less truth, because I am sorry for the publishing it?
Selden, Reply to Dr. Tillesley’s Animadversions upon M. Selden’s History of Tithes, c. 1620

En dankt, ach Heer, het is te Loevestein gemaakt.
Grotius, Bewijs, 1622

Summary

This chapter offers an interpretation of De veritate that resolves its ostensible self-contradictions and uncovers its coherence when it is read as a text designed primarily with an irenic purpose, a didactic method, and having a secularising effect regardless of the author’s intention.

IV.1 Introduction

Readers of De veritate seldom miss one or more oddities and apparent self-contradictions in Grotius’s arguments for the truth of Christianity. The contemporary reception and eighteenth-century afterlife of De veritate was remarkably contentious. Among recent readers, Heering and Klein point out the absence of Creation and the Trinity from the list of Christian doctrines to be proved, in contrast, for instance, with Mornay’s De veritate or Grotius’s own Meletius. Günther Lottes describes Grotius’s arguments as “garbled,” “verging on the ridiculous,” and unwittingly weakening his own arguments. Here, it is the “unwittingly” part of this acute assessment that I wish to dispute.

A systematic survey of the positive doctrinal content of Christianity that Grotius offers suggests that these oddities and self-contradictions are neither isolated, nor accidental. Instead of reducing Christianity to minimal tenets accessible to all reasonable men, including Jews, Muslims, and polytheists, Grotius subverts the reasonability of every core Christian doctrine. A possible explanation is that De veritate was designed to gradually lead readers away from an expectation of reasonable proofs to sola fide in a minimal set of Christian doctrines, to which standards of human reason cannot apply. This rhetorical strategy, and the legal genre of the work, are two reasons why De veritate does not readily fit into the mainstream of Christian apologetics, and exerts an ultimately secularising effect.

In the next four sections I will outline the ways in which Grotius implements this strategy in De veritate by examining what he regards as proofs of religious truth, how religious practice is evaluated, how to settle contentious dogmatic issues, and how to reconcile Providence with politics and free will. A shorter section on the insights we can glean from De veritate’s reception precedes the conclusion, where several explanations for Grotius’s strategy are explored.

IV.2 Proofs of religious truth
IV.2.1 Standards of good religion: ethics, rewards, and the violence of conquest

Grotius posits two criteria for a good religion: ethical rules for life, and the promise of reward. Grotius, De veritate religionis christiana (2nd ed., Leiden, 1629), IV.149-50, translated in Symon Patrick, The truth of Christian Religion: In Six Books Written in Latin by Hugo Grotius... (London, 1689), IV.ix.120. Unless indicated otherwise, references are to the 1629 second edition, followed by the corresponding page number in this English translation. On Patrick, see J. van den Berg, “Between Platonism and Enlightenment. Simon Patrick (1625-1707) and his Place in the Latitudinarian Movement,” in van den Berg, Religious Currents and Cross-Currents: Essays on Early Modern Protestantism and the Protestant Enlightenment, eds. J. de Bruijn, P. Holtrop, E. van der Wall (Brill, 1999), 133-48. Note that in the 1629 ed., IV.139, Grotius states that prayers to evil spirits are useless, because their worshippers cannot be certain that the evil spirits will deliver. This strikingly mercenary account of religion makes no reference to the comparative morality of Christianity and that of evil spirit-worship; only to rewards.

Other editions are referenced when the reader may benefit from tracing the connection between a different edition and political or intellectual events (such as Counter-Remonstrant criticisms, or the presence or otherwise of an argument in the 1627 first edition) or in the case of relevant textual changes, including Grotius’s own revisions, commentaries and annotations by editors, such as Jean Leclerc (1657-1736), and similar edition-specific features.

271 Grotius, De veritate religionis christiana (2nd ed., Leiden, 1629), IV.149-50, translated in Symon Patrick, The truth of Christian Religion: In Six Books Written in Latin by Hugo Grotius... (London, 1689), IV.ix.120. Unless indicated otherwise, references are to the 1629 second edition, followed by the corresponding page number in this English translation. On Patrick, see J. van den Berg, “Between Platonism and Enlightenment. Simon Patrick (1625-1707) and his Place in the Latitudinarian Movement,” in van den Berg, Religious Currents and Cross-Currents: Essays on Early Modern Protestantism and the Protestant Enlightenment, eds. J. de Bruijn, P. Holtrop, E. van der Wall (Brill, 1999), 133-48. Note that in the 1629 ed., IV.139, Grotius states that prayers to evil spirits are useless, because their worshippers cannot be certain that the evil spirits will deliver. This strikingly mercenary account of religion makes no reference to the comparative morality of Christianity and that of evil spirit-worship; only to rewards.

272 Grotius, De veritate religionis christiana (2nd ed., Leiden, 1629), IV.149-50, translated in Symon Patrick, The truth of Christian Religion: In Six Books Written in Latin by Hugo Grotius... (London, 1689), IV.ix.120. Unless indicated otherwise, references are to the 1629 second edition, followed by the corresponding page number in this English translation. On Patrick, see J. van den Berg, “Between Platonism and Enlightenment. Simon Patrick (1625-1707) and his Place in the Latitudinarian Movement,” in van den Berg, Religious Currents and Cross-Currents: Essays on Early Modern Protestantism and the Protestant Enlightenment, eds. J. de Bruijn, P. Holtrop, E. van der Wall (Brill, 1999), 133-48. Note that in the 1629 ed., IV.139, Grotius states that prayers to evil spirits are useless, because their worshippers cannot be certain that the evil spirits will deliver. This strikingly mercenary account of religion makes no reference to the comparative morality of Christianity and that of evil spirit-worship; only to rewards.
If my main thesis is true, and this shift of emphasis to self-interest serves an overarching didactic purpose, Grotius’s choices remain striking. Among the well-established apologetic traditions one that it discards is that miracles have ceased with Christ precisely because for true believers faith must outweigh the attraction of rewards. An alternative onus probandi in early modern Protestant theology invoked both OT and NT language on the circumcision of the heart, and the laws written in man’s conscience. On the rare occasion when Grotius does invoke this standard of proof in De veritate, his legal analogy is to a king who replaces sundry laws with a common legal system for the sake of uniform government. Even here, Grotius interprets the law written in men’s minds, according i.a. to Jer. 31:31, as a positive divine law, not a natural law discoverable by all. The law written in all hearts serves in De veritate not as a proof of Christianity, but as a doctrine dependent on demonstrating the truth of Christianity by other means.

Pacifism or bellicosity is an important litmus test of a religion’s ethical value for Grotius. Islam, ancient Greece and Rome are found wanting, allowing Grotius to present pacifism – as well as monogamy – among the exclusive proofs of the truth of Christianity. “The spread of Christianity,” section 5.2 below, will show how Grotius comprehensively subverts this claim by building a contradictory picture of the worldly triumph of Christianity that closely follows his repeated condemnations of Islam for the violence of its expansion, proving its untruth as a religion. In sum, even if boiling down the truth of Christianity to ethics and reward were unproblematic, De veritate would still need not only close analysis, but also radical re-evaluation.

IV.2.2 Testimony and consensus

Grotius subscribed to the Aristotelian distinction between different types of evidence, and the necessity of matching them to the subject matter. Ethics may not be susceptible to the same type of proof as geometry – although universal consensus on an ethical subject, should it ever occur, may come close to geometry. Since there is no universal consensus regarding the

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273 See also 1629 ed., V.168, or V.vii.310 in the 1675 Amsterdam edition: in creating universally binding laws Christ abrogated Mosaic laws, which applied only to Jews, the same way a king abolishes municipal statutes. Borrowing later from Tacitus, Grotius uses the same analogy to explain epistemic humility: just as it is perilous to inquire into kings’ counsel, so it is unwise to conjecture into God’s meaning. 1675 ed., III.xii.221-2.

274 1629 ed., V.170-1; 1689 tr., V.vii.137-8. See also Jesus acquiring regal potestos, including the authority to make law; 1629 ed., V.167; 1675 ed., V.vii.308; 1689 tr., V.vii.135.

275 1689 tr., II.xiv.

276 1689 tr., II.xv.

277 Later restatements of Islam’s violence are at the beginning of Book VI, and also VI.vii.

truth of Christianity (even if there is consensus about the existence of the divine), the methods of establishing probability that are used in law offer the only alternative to using non-rational sources of authority to verify the claims of Christianity.279 Given Grotius’s own positions on the limits of human understanding and the errors caused by these epistemic limits – ignorance of natural causes, undue reliance on human authority, errors of translation, transmission, and the like – the human testimonies and the reasonability of those who transmit and receive them are strikingly inadequate to support the theological onus probandi of the truth of Christianity that he chooses to place on them.

Grotius’s apologetics rely extensively on the power of human testimony.280 He states this reliance pointedly and often. While the invocation of witnesses and testimonies is a staple of Christian apologetics, it is unusual to see the emphasis and authority that Grotius ascribes to them. In addition, Grotius frequently uses pagan rituals and accounts as ‘hostile testimonies’ to prove Christian doctrines. However, the net effect is the relativisation of these doctrines and the debasement of their claim to truth. This is illustrated by Grotius’s favoured method of comparing these rituals and accounts as equals, with the Christian ones being far from unique in either substance or authority.281

Grotius also recognises consensus as a source of authority. Astrology’s groundlessness is demonstrated by the absence of consensus regarding any of its claims.282 Grotius’s comparison of the credibility of the Muslim with the Christian claim to an uncorrupted divine text concludes with the extraordinary thought that had there been no reports of the sayings and teachings of Jesus and Muhammad, equity would have dictated that the consensus of their followers determine the doctrinal content and validity of their respective religions.283

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279 See Henk Nellen, “Minimal Religion, Deism and Socinianism: On Grotius’s Motives for Writing De Veritate,” Grotiana 33 (2012), 25-57, at 37, 57, for an excellent discussion of probability and De veritate. My point, on Grotius’s use of probability specifically in legal reasoning in De veritate, is complementary, and does not detract from the validity of the intellectual lineage that Nellen traces through Mersenne, Cherbury and beyond.

280 Passages are too numerous to list, but see e.g. De veritate, II.v for the steps of Grotius’s method and the weight of authority he assigns. II.vii: Christ’s resurrection would not be believed by anyone, had it not been for eye-witnesses and ocular testimony. This leaves little room, for instance, for proving the truth of Christianity from the gift of faith, or from a combination of OT prophecies about the Messiah’s resurrection with signs from the life of Jesus suggesting that he is Christ. Not in the 1629, but later editions of De veritate, Book III verifies Christian miracles performed at sepulchres by referring to Porphyry as a hostile witness. III.vii.213 in the 1675 ed. Also see V.xxii (1627 ed. V.182; 1689 tr. V.167). Islam is refuted because the miracles reported in the Bible are attested by better witnesses than the miracles of Mohammed; therefore the Bible is a better source of Law. 1627 ed., VI.191. 1689 tr., VI.v.176.

281 See esp. De veritate, I.xv. There is an interesting discussion in book III, where Grotius explains that eye-witnesses to biblical events have the same authority as the witnesses that Tacitus, Suetonius, and other historians relied on. 1629 ed., III.106. On the secularising effects of historicising exegesis see Somos, Secularisation, chapter II, and 414-6 for cases in Grotius’s De iure praedae.

282 1629 ed., IV.151-2 (ending “…ut nihil in ea certi reperiatur, praeter hoc ipsum, certi esse nihil.”); 1689 tr., IV.xi.122.

283 1629 ed., VI.220; 1689 tr., VI.iii.174.
The historical context of *De veritate* is of paramount importance in understanding Grotius’s seemingly self-contradictory claims concerning the existence and absence of a broad or universal consensus among Christians regarding the essence of their faith. The range of vehement and high-visibility debates surrounding biblical exegeses germane to however minimalist a notion of Christianity one entertained, and the absence of consensus among Christians about the biblical text and its meaning, were particularly striking in the decades when *De veritate* was written, and rewritten. The textual evidence for the doctrines of individual salvation, the nature of Jesus, and the status of rituals, practices and church hierarchy, was fiercely contested not only among theologians but throughout society, from the highest ranks of church, cities, and state, to millenarian settlements and movements sweeping the countryside.

In Grotius’s framework for comparing testimony, textual integrity and consent as sources of authority for religious truth, and with the inadequate or counterproductive evidence he chose to present, the doctrinal content of Christianity is radically challenged, or at the least fails to emerge as evidently more compelling than Judaism or Islam.284 Although I think this would go too far, one could nevertheless cogently sustain the interpretation that the radical doctrinal disagreement among Christians that constitutes the immediate historical context in which *De veritate* was written appears in Grotius’s critique of astrology (III.xiv, IV.v and xi), and the choice of his evidence and the features of his comparative framework reveal a similarly profound epistemic scepticism about both – without negating in any way Grotius’s possible opinion that *unreasoned* faith is justified in Christianity, but not in astrology.

IV.2.3 Miracles

Grotius’s unusual treatment of miracles as the ultimate proof of a religion’s truth is suspect for at least seven reasons.285 Firstly, it contravenes all the traditions that emphasise faith instead, including those that build the distinction between the Jews and the Christians on the latter’s comparative and meritorious dependence on faith, after miracles had ceased with Christ. Further, the insistence that miracles are the effective way of convincing man of religious truth de-prioritises time-honoured philosophical arguments for the existence of God, such as the

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284 For instance, Grotius praises the credibility of the OT Jewish authors in the same terms as the NT authors’ (e.g. 1629 ed., III.127-8), with the one difference that he does not attribute simplicity and lack of learning to OT authors. Likewise, the argument for the NT’s textual integrity, treated below in section V.1, is restated for the OT on III.129-30 of the 1629 ed.
285 1629 ed., V.160 (“Neque enim potest Deus dogmati per hominem promulgato auctoritatem efficacius conciliare, quam miraculis editis.”); 1689 tr., V.ii.129. That Grotius’s reliance on miracles is highly unusual has been noticed i.a. by Heering, *Grotius*, 90, 105. No comparable emphasis can be found in Mornay or Meletius. Calvin regards miracles as unimportant, because they belong to a chapter in providential history that was closed by Christ.
ontological argument, the argument from design, or the appeal to the universality of conscience. The stated intention of *De veritate* is to convince reasonable men of the truth of Christianity. Prioritising miracles over philosophy is not an obviously advantageous method to achieve this.

The second warning sign about Grotius’s intention is that he praises miracles often in Book V, addressed to the Jews. Out of his four target audiences (Christians, Jews, Muslims, and pagans), Grotius chooses the Jews, the only group whose canonical miracles Christians also believe in. All OT miracles, like the burning bush, the signs to convince pharaoh to let the Jews leave Egypt, and so on, are parts of both the Jewish and the Christian religions. If divine miracles are to be used at all in Christian apologetics, then distinguishing between four audiences and addressing the Jews in particular with the argument for the superiority of Christian miracles, including those in the OT, is an unpromising way to proceed, with a high risk of becoming counterproductive to the alleged demonstration.

The undue dependence on the Jewish tradition brings us to the logic of Grotius’s argument. Lottes points out the oddity and unusualness of Grotius’s “reverse argument” concerning miracles. This argument takes the following form: there exists a tradition reporting miracles; the tradition was started and perpetuated by trustworthy eye-witnesses and reasonable men; therefore the miracles must be true. In addition to the logical weakness of proving the eye-witnesses’ reliability from the circular argument that their testimony would not have survived otherwise, in this part of *De veritate* the witnesses are Jews, and the unquestionable tradition that attests the historical truth of miracles – which in turn was to prove the truth of Christianity – is Jewish. This is indeed “remarkably idiosyncratic” for a Christian, and allows Heering to trace the argument to Faustus Socinus (1539-1604). It was, however, also a well-established argument in Judaism, used extensively i.a. by Maimonides (1135-1204) and also known as ‘the Kuzari principle.’ The fact that Maimonides’ *Guide to the Perplexed* is directly cited in *De veritate*, and there is evidence of Grotius and his circle reading Halevi’s (c. 1075-1141) *Kuzari* long before the 1660 Buxtorf edition, suggests that this pillar of

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286 Grotius’s concluding summary of Book V restates the emphasis on the miracles of Christianity, which should convince the Jews. 1629 ed., V.211-2; 1689 tr., V.xxiii.168.
287 The weight put on the Jewish connection to prove Christianity is also brought out by the contrast with Grotius’s treatment of Islamic miracles. *De veritate*, VI.v: Islam is refuted because the miracles reported in the Bible are attested by better witnesses than the miracles of Mohammed; therefore the Bible is a better source of Law. 1627 ed., VI.191; 1689 tr. VI.v.176.
the Judeo-Christian apologetic tradition is at least as likely a candidate as Socinus to be the
source of Grotius’s argument on miracles.289

Fourthly, in addition to subverting OT miracles in particular, and placing all Christian
miracles on doubtful foundations, Grotius refutes the validity of miracles in several other ways
that cannot but apply to Christian miracles as well. The reduction of some miracles to the
witnesses’ ignorance of natural science, such as optical illusions and the power of magnets, was

a well-established but no less powerful criticism in the early seventeenth century.290 Grotius’s

attribution of false miracles to priestly cunning, deceit, and vested interest in entrenching
popular delusions, foreshadows eighteenth-century opinions.291 It is also worth noting that

Grotius does not debunk all pagan miracles, but allows that evil spirits in collusion with pagans
performed real ones.292

Grotius’s next step is to classify God’s complicity in real pagan miracles, and God’s

independent performance of miracles that do not reveal but conceal the truth of Christianity,
as deceit of the same kind. This may be justified legally as divine forms of punishment for
treason; but it sits uneasily with most possible formulations of the doctrines of divine
beneficence, grace, and providence.

Neither need any Man wonder why God suffered some marvels to be wrought by
evil Spirits among the Gentiles, seeing they deserved to be cheated with such
illusions, who so long time had forsaken the worship of the true God.293

The alternative explanation of biblical reports of non-divine miracles, namely that God allowed
pagans and evil spirits to directly perform miracles as part of his providential plan to bring

289 The Kuzari principle is described i.a. in De veritate, I.xiii, I.xvi, V.ii, and used in I.xv (where the historicity of
Moses proves the truth of miracles); II.ii, II.vii for Christ’s resurrection, where the act of appealing to witnesses itself
is also considered a sign of veracity, etc. For more details and related texts using this principle, including Cunaeus’s
Sardi venales and De republica Hebraeorum, see Somos, Secularisation, 348-52. For praises of Maimonides’ Guide
from 1605 onward by members of the Leiden Circle see Jason P. Rosenblatt, Renaissance England’s Chief Rabbi

290 1629 ed., IV.145. “Neque est, quod miretur quisquam, passum esse summum Deum, ut mira quædam à pravis Spiritibus ederentur, cum delubi talibus praestigijjs meriti essent, qui à veri Dei cultu pridem
defecerant.” The pagan miracles’ breach of human laws is in the preceding sentence. In the same context, Grotius
describes the pagan attribution of miracles to humans and natural phenomena as the legal crimes of high treason
and rebellion against God, on IV.138 and 140 of the 1629 ed.
impious men like Vespasian to power, and punish the Jews, is more conventional. However, this explanation is not only abandoned in favour of acknowledging pagan miracles as genuine, but also explicitly denied in De veritate II.vii, where Grotius states that God would not deceive men, particularly not through miracles.

In contrast with his treatment of miracles performed for pagans by evil spirits, Grotius challenges both the truth content and validity of Mohammed’s miracles, because they do not conform to the universal ethical norms against which, as all reasonable men must agree, the verity of compared religions must be measured. Jesus’ miracles, according to Grotius, were humane and appealing to those who care about this-worldly rewards. Mohammed’s were frivolous and magician-like, starting with the case of the dove that flew to his ear. The parallel with Noah’s dove in Genesis 8 is hard to escape.

Note that unlike many contemporary Christians and Hobbes, in De veritate Grotius does not hold that miracles have ceased with Christ. De veritate I.xvii, for instance, is an answer to those who wonder why miracles are not seen now. Given the preponderance of the general early modern Christian position – in Catholic, Calvinist and other varieties – that miracles have ceased with Christ, and consequently faith has become an even more important duty and gift, it is surprising to see Grotius avoid this position altogether, and argue (somewhat unconvincingly) that God can still work miracles, but simply has not found it necessary lately. Seemingly anti-thetically to De veritate’s stated aim, this also allows Grotius to accept Mohammed’s and other miracles, reported after Christ’s incarnation and ascension, as genuine. In sum, the fifth reason to question Grotius’s prima facie claim to present miracles as evidence for Christianity is the unfavourable light cast on the Christian acceptance of miracles when they are compared with similar Islamic ones, which Grotius dismisses, and with genuine pagan miracles, performed by evil spirits and permitted by God in deceit.

Sixthly, Grotius posits an obviously non-existent consensus around Christian miracles. In Book III, he elaborates several salient arguments about miracles as evidence for the truth of.

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294 1689 tr., IV.viii.118.
295 1629 ed., VI.221, 1689 tr., VI.v.175. It is unclear where Grotius got this. One possibility is that he took Scaliger’s note on Manilius, and adapted it to make this incredible story sound similar to Noah’s, creating a parallel where none existed, for the purpose of didactic secularisation described here. G.J. Toomer, “Edward Pococke’s Arabic Translations of Grotius, De Veritate,” Grotiana 33 (2012), 88-105, at 92-3, 100. The link between the miracles of Noah and Mohammed would have also been readily suggested by the Doctrina Machumet. Klein, “Hugo Grotius’s Position,” 162. Toofer, “Edward Pococke’s Arabic Translations,” 103. To avoid alienating the Muslim audience, Pococke removed this passage in his translation of De Veritate. Johann Christoph Koecher, a keen student of De veritate and annotator of Leclerc’s edition, also found the story of Mohammed’s dove odd. See VI.v.297 in the 1807 Oxford edition of De veritate, which does not clearly distinguish Koecher’s and Leclerc’s annotations (but cf. the 1734 Hague issue of Leclerc’s edition without Koecher’s notes, where the note on doves is missing on VI.v.295-6). On Leclerc and Koecher see J.J.V.M. de Vet, “Jean Leclerc, an Enlightened Propagandist of Grotius’ De Veritate Religionis Christianae,” Nederlands archief voor kerkgeschiedenis 64 (1984), 160-95, at 164 and 195.

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Christianity. One is that non-Christians have performed miracles, a point already discussed above. Another is that no one has doubted that Peter and other Apostles worked miracles.296 This is not true, as he and his readers knew. As discussed below, Grotius uses the same technique, namely to appeal to an obviously non-existing consensus, with regard to the textual integrity of the Bible, the credibility of the Apostles and first Christians as witnesses, and contemporary agreement about Christianity’s core tenets.

The seventh reason to rethink the doctrinal vs. didactic value of Christian miracles that emerges from De veritate is that despite the clear and repeated emphasis on their status as one of the two proofs of Christianity (rewards and punishment being the other), neither the observation of natural miracles nor the acceptance of witnesses’ reports of miracles are mentioned in the book’s concluding summary. There, Grotius gives his readers an eight-fold evidence of true Christianity: faith, rendered efficacious by love; a moral way of life; the deprioritisation of rites; social concord; unity; epistemic humility; patient expectation; and proselytising. This list reinforces the interpretation of De veritate as an exercise in didactic secularisation, whereby the process of reading the book – in which sections are very clearly structured and echoed, yet the arguments shift – shepherds the mind from reason to faith.

IV.2.4 Oracles and prophecies
Grotius’s refutation of pagan oracles is interesting. As in the case of miracles, he does not dispute that some oracles worked, and gives several reasons why. Firstly, some were ambiguously worded. Secondly, based on natural causes and probability, physicians and those learned in politics can make predictions that seem supernatural to non-specialists. Thirdly, God can use pagan mouthpieces, like Virgil or the Sybils, to prefigure truths of Christianity, without thereby approving paganism.297

One reason why this is problematic for the truth of Christianity is that Grotius uses the same premises to draw a different conclusion regarding Jewish oracles and prophecies. In Book III, 110-1 in the 1629 ed., he sets up an invalid, circular argument to show that these writings must be true, because although obscure at the time of writing, later events retrospectively prove them to have been divinely revealed.298 In addition to expressing a classic fallacy, this point also negates the argument that the lack of objections to the Christian interpretation of OT prophecies on the part of Hebrew writers, who also lived before the events that could have retrospectively proved these passages to be divinely inspired, validates these Christian

\[\text{296} \quad 1629 \text{ ed., III.109-10.}\\
\text{297} \quad 1629 \text{ ed., IV.148-9; 1689 tr. IV.ix.119.}\\
\text{298} \quad \text{Logical fallacies in De veritate are treated separately in Section 7.3 below.} \]
interpretations of OT passages as true prophecies. Whether or not Christian history divides OT figures into Jews who were the true spiritual ancestors of Christians (Noah, David, etc.), and Jews who are merely ancestors of post-biblical Jews, the dilemma remains: either no Jew before Christ objected to these prophecies because they did not know their true meaning; or those who foresaw Christ did not object to the Christian interpretation because they did know their prophecies’ true meaning. It is impossible to maintain both of Grotius’s statements on OT prophecies, namely that lack of objections to OT prophecies’ Christian interpretation indicates understanding, and that OT prophecies are validated by later events, of which the biblical authors and recorders of the prophecies were unaware.

That Grotius was aware that maintaining both statements at the same time was illogical is shown, for instance, in his treatment of pagan oracles, discussed in Section 2.4 above. The pagans who gave correct oracles and prophecies of future events that proved the truth of Christianity, without the pagans themselves knowing it, were incorrect in their paganistic interpretation. It is the same logic that would invalidate OT prophecies of NT events. Such OT prophecies are indispensable to the core points of *De veritate*. OT prophecies foretold not only Christ’s coming (e.g. 1689 tr., V.xvii) but also the abolition of sacrifices (1689 tr., V.viii.141-2).

In Book V, Grotius begins an ingenious series of moves with the introduction that Christ abrogated Mosaic laws in the way a king ends a civil war among his subjects, by declaring new laws that apply across the country, and pardon those who obey. Grotius then announces that he will position the abolition of sacrifices, rites, holy days and outward ceremonies at the core of this series of arguments. Aimed ostensibly against the Jews who refuse to recognise Christ and the validity of his abrogation of Mosaic laws, this series serves as a stark reminder of the wars among Christians, as well as of the imperative to create religious peace among and within the United Provinces. Moreover, by placing his radical minimalism and deprioritisation of these aspects shared by Judaism and Christianity (rites and rituals, festivals, and so forth) in the framework of his demonstration of Christianity’s superiority, Grotius puts any Christian reader who insists that these sacrifices are essential in the unenviable position of seeming to favour the Mosaic laws over Christ’s. In this section Grotius sets up the Jews as a straw

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299 1627 ed. 146; 1629 ed. V.171; 1675 ed. V.vii.311.
300 The series of radical minimalist arguments thus structured, starting with sacrifices, runs from V.146-159 in the 1627 ed.; 171-85 in the 1629 ed.; V.viii.313-V.xi.334 in the 1675 ed. The series is followed by an account of the Apostles’ policy of toleration.
301 In the sixteenth and seventeenth centuries there was a well-established tradition of applying the trope of “Judaising seducer” to both Jesus’s contemporaries who in retrospect seem to have veered too easily between Christian and Jewish beliefs, and to one’s own Christian contemporaries who offered a rival biblical interpretation.
dummy, a common enemy to unite all Christians; and at the same time an enemy familiar and familial, one who should be pacified and persuaded, rather than vanquished. Grotius does not sacrifice what we would now call inter-faith irenicism to the success of his creation of a temporary outgroup against which disunited Christians may be reunited. Later, at the start of Book VI, we learn that Christians made the same error as the Jews. Soon after Constantine espoused their cause, they began to mistakenly regard rites and ceremonies as important. Disagreements about the specifics of unimportant ceremonies in turn gave rise to zealous partisanship.302

After the unsustainable refutation of pagan prophecies with the same argument with which he accepts Jewish prophecies, and the multi-step but clear strategy of playing off ritual-focused Jews against dogmatic Christians, Grotius’s argument about the chronological sequence of prophecies is the third reason why his position on this doctrine offers at best dubious support for the truth of Christianity. In I.xvi, Grotius ridicules doubters of Jewish prophecies, like Porphyry, who consider for instance Daniel’s prophecies to be anachronistically attributed to him after the foretold event has already taken place. Grotius’s counterargument is that Hebrew writers would have objected if this were the case, just as Romans would have objected to works mis-attributed to Virgil. Given the number and ubiquity of early modern scandals and debates around forgeries, not least those ascribed to early Christian authors, this defense of prophecy is manifestly unsustainable. (One salient case is the fourth-century Acta Pilati, a source that Grotius invokes in De veritate II.i to support the historicity of Jesus’ death. Baronius accepted this source as a genuine official record and a validation of the historical Jesus, and was promptly ridiculed for it. When Grotius later invokes it in support, while pointing out that Christians like Eusebius made no reference to it, we find beyond doubt that he knew the inauthenticity of the evidence he was presenting, and that this proof of Christianity was chosen as either disingenuous or too lacunose and complicated for De veritate’s stated intention of presenting clear and universally compelling justifications.)

Fourthly, by including Mexican and Peruvian prophecies in De veritate, I.xvi, and rendering his list of true prophecies comparative beyond the Abrahamic religions, Grotius effectively subverts the argument that they prove the unique truth of Christianity. Even if ancient pagan prophecies can be dismissed, and Jewish and Islamic prophecies can be made to support the truth of Christianity, native American prophecies of Spanish conquest both undermine Grotius’s assertion that God could, but chooses not to, perform miracles; and

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One way in which Grotius frames minimalism in De veritate is to historicise Christian rituals and group them with Jewish rituals, thereby exposing the non-minimalist to the dangerous accusation of “Judaising.”

302 1627 ed., VI.185; 1689 tr. VI.170.
expand the scope of comparison beyond the range that could support the specific truth of Christ’s incarnation.

A fifth reason to think critically about Grotius’s use of oracles and prophecies in *De veritate* is that he concludes the same chapter, I.xvi on oracles and prophecies, with an apparent *non sequitur* on the value of public examinations of innocence, for instance *ad tactum ignitorum vomerum*. These were among the most ridiculed ancient and medieval customs in early modern Europe.303

IV.2.5  

Simplicity

In *De veritate*, II.vii and IV.x we find Grotius using the simplicity of the Apostles to prove their honesty. II.v is one of several chapters that presents a curious contradiction to this formulation. Here Grotius presents the Apostles and the early Fathers as intelligent men who did careful due diligence to make sure that the events they reported were well-attested and stood up to several distinct epistemic tests of veracity.

The same topic repeats in II.xviii.185-6 of the 1675 edition, but with a different contradiction. Unlike the Greek moralisers, the early teachers of Christianity used only the plainest language, bereft of subtlety and, Grotius suggests, perhaps intelligence. The Peripatetics argued from natural history, the Stoics used logic (*dialectica subtilitate*), the Pythagoreans, mathematics, and Plato, Xenophon and Theophrastus had eloquence. They form the contrast to Grotius’s portrait of the first teachers of Christianity. This is not quite the same as the wise simplicity that was often considered a Christian virtue, and a sign of truth.304

The theme of Christian simplicity as ignorance is repeated in Book III as an accusation that was levelled against witnesses to Christ’s resurrection.305 It is a back-handed compliment at best when Grotius explains that their enemies did not call into question the witnesses’ piety and way of life; only their learning. Moreover, even this back-handed compliment of their reliability is suspect. The emperor Julian, Lucian and others also objected to Christians’ false piety, as Grotius knew very well. (Elsewhere, Grotius himself asserts that the *simplex pietas* of early Christians was gradually corrupted after Constantine and others began to favour Christianity.)306 But to drive the point about doubtful credibility home, Grotius closes this section by arguing that one sign of the gospels’ credibility is that Peter allowed his triple denial


304 For Cunaeus’s similar move in the 1612 *Sardi venales* from Erasmus’s Christian folly to plain folly in Christianity, see Somos, *Secularisation*, 377-8; and 422-6 for an account of the same technique in Grotius’s *De iure praedae*.

305 1629 ed., III.108.

of Christ to be included. In a classic paradox, Grotius argues that Peter cannot be a liar, because he reports himself as one.

In Book V, Grotius develops a version of the Protestant simplicity argument to convince the Jews to accept Jesus. Applying the hermeneutics of simplicity, he calls on Jews to disregard the messianic prophecies they believe have yet to come true, because they are obscure or ambiguous. Understanding other prophecies, known as the closed books (libri clausi), requires divine help – therefore these cannot inform the common recognition of the Messiah. The scenario in which an entire people is directly assisted by God in understanding the revealed text correctly, as opposed to using reason to arrive at the right judgment, then at a consensus about the prophetic texts’ meaning, is rejected. Grotius’s skepticism concerning the possibility that God can directly reveal the text’s true meaning to a whole people signals his disagreement with Christian chosen nation theorists, as well.

The fact that the impossibility of such a divine elucidation of meaning, and the consequent necessity of human reason as the common ground, are pervasive assumptions in De veritate, also reveal other acts of disagreement with Dutch Calvinists in the book. One relevant instance is in VI.ii, where Grotius criticises Islam for prohibiting that people read the holy book. The echoes of his criticisms of Counter-Remonstrants are loud, clear, and discussed elsewhere. The additional and complementary point here is that Grotius anchors sola scriptura and the freedom of conscience in bonitas divina which, rightly understood, prompts us to assume that despite all men’s considerable epistemic limits, and uneven intellectual capacities within mankind, the road to salvation can be found through reason.

IV.3 Religious practice

IV.3.1 Ceremonies and rites

According to Grotius, the message of the New Testament is primarily ethical. At best, rites are didactic tools; at worst, they produce idolatry through ignorance and misunderstanding. The distinction between kosher and non-kosher meats, for instance, is a foolish superstition. So are festival days, including the Sabbath. (Further, Grotius notes that the Sabbath was observed in order to foster civic unity, and due to the pragmatic benefit of having a universal day of rest across the country.)

Circumcision, the token of a covenant that has been replaced, is

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307 1627 ed. 169, 1689 tr., V.xviii.157.
308 I.a. in Heering, Grotius.
309 1627 ed. VI.187; 1689 tr. VI.ii.172. For a relevant discussion between Mersenne and Ruarus, see Nellen, “Minimal,” 51.
310 1689 tr., V.ix.143.
311 1689 tr., V.x.144-6.
superstitious enough to do more spiritual harm than good. Neither is it far-fetched to discover in one of Grotius’s descriptions of Islam a veiled criticism of the Counter-Remonstrants:

This Religion altogether contrived for the shedding of blood, delights much in Rites and Ceremonies, and would be believed without all liberty of enquiry thereinto...

The non-tangential, indissoluble link that Grotius created between the truth of Christianity and the radical minimalisation of its rituals and ceremonies is a major reason for the broad and long-term popularity of De veritate.

IV.3.2 Sacrifices
An obvious reason to consider carefully Grotius’s position on sacrifices is that even friendly and, in this case, unheeded critics like Episcopius and Vossius pointed out that Grotius’s attribution of the institution of sacrifices to man, rather than God, is theologically untenable.

To undermine the superfluous and harmful doctrine of sacrifices, Grotius describes several cases where the ritual of sacrifice, which has never in itself pleased God, gave rise to superstition. His etiology of superstition in Book V repeatedly emphasises a point, illustrated by this passage:

...Sacrifices are not in the number of those things which God desires for themselves or primarily; and that the People (a naughty Superstition creeping in, as is usual, by little and little among them) placed a great part of their Piety in them, and believed they made a sufficient compensation for their sins by Sacrifices: what wonder is it, if God at length take away a thing, which was not now in its own nature indifferent, but whose use was now become a Vice?

One also wonders whether Grotius is taking a swipe at the Synod of Dordt in this process. Compare Rejectio Errorum § IV in the Canons of Dordt, condemning those

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312 1689 tr., X.vi.147-8.
314 Heering, Grotius, 14.
315 1629 ed., V.175, 1689 tr., V.viii.141.
316 1689 tr., V.viii.141.
Who teach that what is involved in the new covenant of grace which God the Father made with men through the intervening of Christ's death is not that we are justified before God and saved through faith, insofar as it accepts Christ's merit, but rather that God, having withdrawn his demand for perfect obedience to the law, counts faith itself, and the imperfect obedience of faith, as perfect obedience to the law, and gracingly looks upon this as worthy of the reward of eternal life.

For they contradict Scripture: They are justified freely by his grace through the redemption that came by Jesus Christ, whom God presented as a sacrifice of atonement, through faith in his blood (Rom. 3:24-25). And along with the ungodly Socinus, they introduce a new and foreign justification of man before God, against the consensus of the whole church.317

The Dortian view of Christ meets Grotius’s specific standards for misunderstanding and idolising a sacrifice quite well, just like his own view, as many have noticed, is remarkably close to the Socinian notion of Christ that is criticised here. Elsewhere, Grotius reminds his readers that prophecies have foretold the abolition of sacrifices.318

IV.3.3 Adiaphora

In Book V, Grotius rejects the necessity of observing a whole range of religious practices fiercely debated in his time, from dietary restrictions to holy days. In concluding these sections, he expounds a view of the Apostles and the early church as gentle and tolerant. As long as followers believed in Christ’s direct commands, “they easily suffered them to follow what course of life they pleased in matters of indifferency” (rebus mediis),319 and imposed no religious requirements whatever on strangers.

The distinction between necessary and unnecessary doctrines is a well-known mainstay in Grotius’s irenicism, from his characterisation of Erasmus in the Parallelon to his late works.320

In De veritate, one load-bearing pillar of Grotius’s distinction is that Jesus observed all the laws

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317 "Qui docent, 'Foedus illud novum gratiae, quod Deus Pater, per mortis Christi interventum cum hominibus pepigit, non in eo consistere, quod per fidem, quatenus meritum Christi apprehendit, coram Deo justificemur et salvemur; sed in hoc, quod Deus, abrogata perfectæ obedientia legalis exactione, fidem ipsam et fidei obedientiam imperfectam pro perfecta legis obedientia reputet, et vitæ aeternæ præmio gratioso dignam censeat.' Hi enim contradicunt Scripturam, Justificantur gratis, ejus gratia, per redemptionem factam in Jesu Christo, quem proposuit Deus placamentum per fidem in sanguine ejus. Rom. iii. 24, 25. Et cum impio Socino, novam et peregrinam hominis coram Deo justificationem, contra totius Ecclesiae consensum, inducunt.”

318 1629 ed., V.175-6; 1689 tr., V.viii.141.

319 1689 tr., V.xii.148-9.

of Moses until the time came to abrogate those that were not universal, but given only to the Jews.

Now that part of the Law, the necessity whereof was taken away by Christ, contained nothing that was honest in its own nature: but consisted of things that were indifferent in themselves and consequently not immutable. For if those things had had in them any thing of themselves, why they should be done; then would God have prescribed them not to one, but to all People; and not after that Mankind had lived above the space of Two Thousand Years, but even from the beginning of all.321

Here we see Grotius crafting the components of his eventual conclusion, namely that most laws and rites are inessential. Even though many rituals were prescribed in the OT, they were given only to the Jews, and never applied to all mankind. Jesus initially observed them, but later replaced them with his own universal and tolerant laws and minimalist rites. Grotius’s final step is to show that there is little to no ceremonial content in the Christianity that replaced Judaism.

Grotius systematically excludes all arguments for ritual Christianity, whether they derive from references to the OT, from positing Christians as ‘the new Jews,’ or from Jesus’ own observation of Mosaic rituals. Moreover, he does so while making it difficult for princes or ministers to persecute incorrect rituals, and as easy as possible for Jews to convert to Christianity. Idolatry toward rituals is a mistake, because rituals are inessential; yet the right attitude toward those who observe rituals is toleration.322

Grotius’s etiology of inessential rituals is ingenious. In De veritate, II.xiii he explains that pagan religions are cruel, as shown by ancient texts, but also by recent travel and exploration reports. Judaism contains nothing unseemly or dishonest, but it is loaded with neutral adiaphora to prevent a relapse into idolatry. Turks, among others, borrowed some of these inessentials. Christianity, by contrast, is pure. Two points worth noting here is that some of the adiaphora Grotius mentions, including the Sabbath, were hotly debated among his contemporaries. His formulation and advocacy of ‘pure Christianity’ entailed taking a controversial stance. Secondly, Grotius’s ostensibly tenuous distinction between idolatrous

321 1689 tr., V.vii.136. 1629 ed., V.167-70: “Pars vero illa legis, cujus necessitas à Christo sublata est, nihil continentae sui natura honestum: sed constabat ex rebus per se medij, ac proinde non imutabilibus. Nam si eæ res per se aliquid haberent, cur faciendæ essent, omnibus populis non uni eas praescipisset Deus, & ab initio statim...”

322 1689 tr., V.xii.148-9.
practices and *adiaphora*, neutral but integral parts of Judaism constituted solely to distract and prevent a lapse into idolatry, underscores his sensitivity to the didactic necessities and potential of religion. If he is capable and prefers to explain Jewish rituals as the harmless satisfaction of imperfect understandings, it becomes more probable that he regarded both the Christian doctrines wrapped around the ethical core, and the structure of *De veritate* itself, as primarily didactic in function.

IV.4 Distinctive Christian truths

Grotius frequently invokes the testimony of pagans and non-Christians as hostile witnesses. There are several ways in which this tends to damage his case for the truth of Christianity. The deployments of non-Christian witnesses and beliefs in support of Christianity in *De veritate* often question Christian tenets, reduce them to non-special status, or alienate non-Christian readers by highlighting an incompatibility instead of anchoring the doctrine in reasonable common ground.

Book IV concludes with a section entitled “Ostenditur præcipua Christianæ religionis probari à sapientibus paganorum: & si quid in ea est difficile creditu, paria apud Paganos reperiri.” The premises of this section are already problematic. There are not many Christian authorities to support the first statement, namely that the wisest pagans approve of all Christian precepts.

Grotius was extremely well versed in Christian apologetics. His choices in structuring and substantiating his arguments must be interpreted in the light of this fact. Among numerous examples, *De veritate* is profitably compared with Lactantius, *Divinarum Institutionum*, Book II, and the apologetic tradition that runs through Vives, Mornay and Sebond, mentioned explicitly in the book’s opening address to Bignon. The opening proposition of this section, already arresting, is even more striking in this context.

But the Pagans have the less to object against Christian Religion: because all the parts thereof are of such honesty and integrity, that they convince Mens minds by their own light. In so much that there have not been wanting Men among the

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323 1629 ed., IV.154-5; 1689 tr., IV.xii.124-5.
324 Heering thinks that Sebond is a guise for Socinus. Heering, *Grotius*, 94.
Pagans also, who have here and there said every one of those things, which our Religion hath in a body all together.  

A list of cardinal Christian tenets follows. Later editions give references to the pagans who prefigured the Christian doctrines on Grotius’s list, from the insignificance of rituals to the undesirability of swearing. The notion that every single Christian truth can be found among the pagans is neither a compelling argument to convince pagans to convert (if anything, it may have the opposite effect), nor logically necessary to Grotius’s scheme. The two proofs he names as primary, namely miracles and rewards, can and in fact are demonstrated in De veritate without deriving their validity from mankind’s collective religious experience. This section in Book IV remains a puzzling choice, unless one places De veritate squarely in the context of secularisation.

IV.4.1 The Trinity
The next sub-section of IV.xii ostensibly aims to convert pagans by showing that the outlandish, creditu difficile things in Christianity are matched by similarly hard-to-believe doctrines of wise pagans. The first such item is the immortality of the soul (discussed separately below), followed by the Trinity, the possibility of combining human and divine nature, and finally the cross.

Grotius’s inclusion of the Trinity among the Christian doctrines approved by the wisest pagans is not an obviously winning defense.

Thus Plato, as he learned from the Chaldeans, distinguished the Divine nature into the Father; and the mind of the Father; (which he calls also the branch of God, the Maker of the World) and the Soul or Spirit, which keeps together and preserveth all things.

This comes as a seemingly secondary point in his attribution of the immortality of the soul to pagan philosophy; but not even those Christian apologists who traced the soul’s immortality to pagans, including Marsilio Ficino (1433-99) in Theologia Platonica, went so far as to argue that

325  1689 tr., IV.xii.124. 1629 ed., IV.154-5: “Et verò minus pagani habent, quo Christianam religionem oppugnet, quod ejus partes singulae tantæ sunt honestatis, ut suae pace animos quasi cóvissent, ita ut inter paganos quoque non defuerint, qui dixerint singula, quæ nostra religio habet universa...”
326  E.g. notes 1-12 on pp. 289-96 of the 1669 Amsterdam edition.
327  Somos, Secularisation.
328  1689 tr., IV.xii.125. 1629 ed., IV.155-6: “Sic Plato à Chaldæis edoctus divinam naturam distinguat in patrem, mentem paternam, quam & rationem & Dei germen vocat, Mundi opificem, & Animam sive Spiritum quo cuncta contineantur.”
Plato prefigured the Trinity in any way. Others, including Augustine, used exactly the uniqueness of the Trinity as a Christian doctrine to forcefully refute Plato and neo-Platonism. It is similarly noteworthy that Grotius puts the crucifixion in this second group of doctrines, defensible by referring to equally or more incredible pagan beliefs.

One should also note that this attribution of a clear version of the Trinity to Plato, Philo, the Rabbis, Nahmanides and the Cabbalists (repeated in V.xxi, 1627 ed. 179-80) is particularly counterproductive in a proof of the truth of Christianity when it is coupled with the argument that the Trinity cannot be derived from reason, and must be discovered through, believed due to, and otherwise derived solely from, revelation. Grotius’s adoption of this notion from Junius, and his resistance to friends’ and enemies’ suggestion that he changes his position, is well known. What has not, to my knowledge, been noted before is that grounding the Trinity exclusively in revelation, while attributing the same doctrine to Plato and Jews, undercuts the exclusivity and eminence of both Christian and Judeo-Christian revelation, and renders the Trinity, impossible to prove from reason, inaccessible to those who have not received the same revelation. In other words, this makes the Trinity both inaccessible to reason and to anyone without direct revelation, and not unique to Christianity.

IV.4.2 Jesus Christ

Grotius’s intention in writing *De veritate* has been the subject of considerable debate. Is it a conciliatory gesture toward orthodox Calvinism or a confession of crypto-Socinianism? Is it addressed primarily to Christians, in order to foster unity, or should the reader take seriously Grotius’s assertion that his way of reclassifying and verifying Christian doctrine can help convert non-Christians to the true faith? Is there a difference between the seriousness, urgency, and expectation of success in his addresses to Jews, Muslims, pagans and Christians?

Without claiming to settle these debates, the language and organisation of *De veritate* suggests that Grotius was serious about addressing the Jews. However, in the course of crafting and compiling various reasons why they should accept Jesus as the Messiah, Grotius created a Jesus that a broad range of Christians would have found hard to recognize as their own.

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329 Or if Ficino does this, I have not found it. Grotius also asserts that Cabalists have the same view of Trinity: 1629 ed., V.208; 1689 tr., V.xxi.165.
330 Augustine, *On the City of God*, x.
331 The significance of the cross was a much-debated issue. To cite one example, Robert Parker (1569-1614) had to flee after publishing *A scholastical Discourse against symbolizing with Antichrist in ceremonies, especially in the Signe of the Crosse* in 1607, in which he strongly objects to the symbol. He became minister to the separatists in Holland.
De veritate, II.vi contains several disingenuous or suspect points. Grotius argues that Jesus must have worked real miracles, inexplicable by nature or the devil’s assistance, because if that were not the case, these miracles would have been questioned by Christianity’s enemies. The appeal to an apophatically universal consent is already suspicious; but the real problem is that De veritate details numerous criticisms against Christianity on exactly this score. V.ii, for instance, counters those Jews who attribute Jesus’ miracles to the devil’s help— the precise charge that has not, according to II.vi, ever been made.333

Grotius asserts that all accusations against Jesus for being non-Jewish, or transgressing Mosaic laws, are false. Jesus observed all Jewish laws and rituals before his resurrection.334 Nor does the spate of accusations against him mean that Jesus was not an observant and orthodox Jew. Micah, Elijah and Jeremiah were similarly accused, and later justified.335 Not even his claim to be the Messiah was unprecedented.336

IV.4.2.1 Son of God, Son of Man

Grotius points out that the doctrine that Jesus was the son of God is not original to Christianity, either. Plato had earlier, and Mohammed later, made the same point about someone.337 Julian attributed a dual, divine and human, nature to Aesclepius.338

IV.4.2.2 Death, Resurrection, and Ascension

Many contemporary Christians and thinkers, including Hobbes, insisted that the historical fact of Jesus’ resurrection must be central to the truth and appeal of Christianity. As explained elsewhere, for instance in Section II.3 on miracles above, Grotius himself put considerable stock in this doctrine. The argument of II.vii, namely that Christ’s resurrection cannot be refuted on grounds of impossibility because reports of resurrection from Plato, Heraclides, Herodotus and Plutarch show that wise men regarded it possible,339 cuts against the unique appeal and truth of Christianity, which is the ostensible demonstrandum of De veritate.

In later editions Grotius added the testimony of Rabbi Bechai to those who witnessed Christ’s resurrection. The Judæorum magister Bechai mentioned in De veritate is probably Bahye ben Asher ibn Halawa (mid-13th cent. – 1340), an anti-Christian polemicist noted for

333 See Section IV.ii above.
334 1629 ed., V.166; 1689 tr., V.vii.135.
335 1629 ed., V.206; 1689 tr., V.xx.164.
336 1629 ed., V.194; 1689 tr., V.xxvii.156.
337 1629 ed., VI.226; 1689 tr., VI.ix.179-80. [1669: 395].
338 1629 ed., IV.156; 1689 tr., IV.125.
339 Repeated in II.viii, and II.xii.
introducing the Kabbalah into Torah study, and for the influential Kad ha-Kemah, a series of homilies designed to instruct in everyday ethics. Kad ha-Kemah 49.1 may be the source of Grotius’s intriguing enlistment of a Rabbinic authority for Christ’s resurrection. If so, it is a daring co-optation, but in keeping with the pattern in the rest of De veritate, where Grotius goes beyond many contemporary Christians’ comfort zone in order to connect with Jewish readers.

Although the reference to ben Asher appears only in later editions, the first edition already states that the authors of the OT and the Talmud believe the credible witnesses to Elisha’s ascent to Heaven; and Jews should therefore accept the same report of Christ. Likewise, already in the 1627 first edition, Grotius invokes the prophecy of Nehumias, magister Hebræus who lived 50 years or so before Christ, that the Messiah will come within 50 years. Grotius’s inclusion of Rabbi Bechai as an actual rabbi who, as he thought, accepted Christ’s resurrection, is the continuation of a pre-existing systematic inquiry into commonalities.

This is not to say that while Grotius went to great lengths to uncover and foreground these commonalities, he side-stepped or ignored all differences. A short section in Book V states his unequivocal rejection of the alleged Jewish accusation that Jesus obtained his miracle-working powers by stealing from the Temple a secret name, protected by lions for over a thousand years. Surprisingly, Leclerc did not comment on this section at all, known by that point as a separate chapter (V.iv) entitled Aut vi vocum, referring to earlier section headings on why the Jews should accept Christ’s miracles, and not attribute them to devils or power words.

Grotius is referring here to the Shem ha-Mephorash, anciently used by the Tannaim and later by Kabbalists for the Tetragrammaton. The story of Jesus stealing it from the Temple is likely to come from Sefer Toledot Yeshu, a popular medieval anti-Christian text. Luther quoted it in his quite rabid 1543 Vom Schem Hamphoras und vom Geschlecht Christi, using a Strassburg translation. Grotius could have also known about this book from Ramón Martí’s 1280 Pugio Fidei, or from Jüdischer Abgestreifter Schlangenbalg (1614) by Samuel Friedrich Brenz.

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341 1627 ed., 160-1. Also see 1627 ed., 175, “Melius antiqui Hebræorum magistri fatebantur hæc de Messia dici...,” and 178, “Addendum hic,...”
342 1627 ed., 137-8, 1689 tr. 131.
343 1734 ed., V.iv.227-8.
344 On Scaliger’s and his students’ knowledge and use of the Pugio, including in De veritate, see Somos, Secularisation, 325-7. The Houghton Library copy of Brenz’s book claims to be printed in Augsburg, not Nuremberg, as most bibliographical sources have it.
Grotius refutes the Toledot Yeshu story with the argument that lions, though surely the most noteworthy sight, are not mentioned in descriptions of the Temple by Josephus, or the Books of Kings and Chronicles, or any Roman writer. The first odd thing is that this is Grotius’s entire treatment of the thesis that Christ wrought miracles with the power of words. The New Testament is full of such cases. Secondly, one should note that the Kings and Chronicles contain well-known references to lions in Solomon’s Temple, famously in 2 Chr. 9:19. An elementary, non-specialist familiarity with the OT, or popular knowledge of the depictions of the Temple, were sufficient to detect the error of Grotius’s argument.345

IV.4.3 Free will

Grotius’s strong version of free will may be the only unproblematic and unquestioned Christian doctrine in De veritate.346 Man is born with an intrinsic sense of free will. It is the reason why astrology is wrong, and God is not responsible for evil.

I do not here speak of such effects as follow from a natural necessity of causes, but of those that proceed from the will of Man, which of it self hath such liberty and freedom, that no necessity or violence can be impressed upon it from without. For if the consent of the will did necessarily follow any outward impression, then the power in our Soul, which we may perceive it hath to consult, deliberate and chuse, would be given in vain. Also the equity of all Laws, of all rewards and punishments would be taken away, seeing there can be neither fault nor merit in that which is altogether necessary and inevitable.347

While natural forces can affect will-formation, the Christian and contemplative man can learn to dissociate from nature and achieve self-mastery. Grotius’s linking of Christianity and Stoicism is well discussed in recent literature.348 The point to note here is that the Christian free will doctrine Grotius offers is developed legally and philosophically, rather than on specifically Christian foundations. It needs little Christianity to work.

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345 See for instance Somos, Secularisation, 413-4 for the same technique in De iure praedae.
346 1689 tr., IV.xi.122.
347 1689 Simon Patrick tr., IV.xi.122. See also the next paragraph. In 1629 ed., 152: ‘Non de illis loquor effectibus, qui ex naturali necessitate causarum sequuntur, sed de his, qui ab humana procedunt voluntate…’
IV.4.4 Immortality and last judgment

As mentioned above, Grotius’s logical argument for the immortality of the soul and the last judgment is fallacious. Moreover, in De veritate, I.xii he attributes the same two beliefs to several pagan groups. Just as he courted controversy by ascribing the notion of the Trinity to Plato, Grotius does the same with the immortality of the soul (I.xxiv).

IV.4.5 Doctrinal omissions

The absence of the Trinity from the list of core doctrines Grotius set out to prove provoked fierce criticism at least until the nineteenth century. Although Grotius refers to the idea of a Prime Mover briefly (in I.xxii), he does not include it among the proofs of God’s existence at the beginning of De veritate.

When he elaborates in II.vii that God would not allow innocent men to suffer or be misled, Grotius is effectively denying tenets that hinge on the notion of trials and tribulations. This notion is well supported in the NT, and most Christian denominations subscribed to a variety. Grotius’s treatment of evil spirits as real and effective (e.g. in II.vi), however, precludes the doctrine that they are all the products of ignorance, idolatry, or trials and tribulations.

This is also the place to note the peculiarity of De veritate, II.xvii, where Grotius refutes Christianity’s critics who emphasise the disagreements and controversies among Christian factions. A diversity of opinion about matters of secondary importance is natural, and inevitably appears in all areas of human knowledge; but certain basic principles are evident and indisputable without losing credibility. Grotius ends his passionate plea to accept these principles, attested by all Christians, the same way everyone admits the whiteness of snow:

For in the opinion of any indifferent Judge, that must needs be reputed the true doctrine of Christ, which so many have successively acknowledged and professed; like as we are persuaded that was the doctrine of Socrates which we read in Plato and Xenophon; as also that of Zeno the Philosopher, which we find held by the Stoicks.

As mentioned before, there were no key doctrines left unquestioned in this book. De veritate and other works of Christian minimalism explicitly set out to find the sustainable core, and

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349 For some, see the secondary literature cited in Section IV.1 above. Similar cases of Grotius’s deliberate and politically strategic omissions of specific doctrines from biblical exegeses in De iure praedae are given in Somos, Secularisation, 416-22.
350 1675 ed., II.xvii, 180: “Nam quod hi omnes ut Christi dogma agnoscent, id omnino pro tali habendum est ab æquo rerum judice: sicut Platoni, Xenophonti, alisque Socratis, Stoicorum scholæ de his quæ Zeno tradidit.”
generate consensus around it. Note, however, that even if *De veritate* did not fail to postulate such a doctrinal core of Christianity, Grotius’s equation of the epistemic reliability that could be attributed to such a minimalist core by an equitable judge with the reliability that the same judge would attribute to Socrates or Zeno, based on their followers’ evidence, would still debase the claim of Christianity to special truth.

IV.5 Proofs from providential history

IV.5.1 The Bible’s textual integrity

Grotius opens *De veritate*, Book III with the statement that the eponymous authors of biblical books did in fact write them, and this plain and uncomplicated fact is proved by the absence of any controversy by Christians, Jews or pagans on this matter.\(^{351}\) This was one of the, if not the, most disputed issues in the history of biblical exegesis, in which the seventeenth century was not the calmest. It is difficult to avoid the impression that Grotius’s unqualified oversimplification and mis-statement are intentional. In fact, Grotius later modifies this statement by adding that some texts, including Revelation, Hebrews, and the second epistle of Peter, have only been recently accepted; but they contain nothing that is not attested in other books. Elsewhere, for instance in Book V, he himself calls attention to the broad and contested range of interpretations in existence.\(^{352}\)

The implausible overstatement regarding the Bible’s undisputed textual integrity is followed by a move, still in Book III, that has a didactic secularising effect whether or not one accepts the seriousness of this opening statement. Denying disagreement among the biblical books, Grotius states that they “do most manifestly and apparently agree about such things as concern any weighty point of doctrine or history,”\(^{353}\) and that such consent cannot be found outside Christianity. Small discrepancies do not undermine but strengthen the case for the Bible’s veracity, because such discrepancies are natural and prove that there was no conspiracy among the authors. If readers unreasonably considered small discrepancies unacceptable, then all books, especially histories, would have to be discarded. Polybius, Halicarnassus, Livy and Plutarch write true histories, even if they disagree on small details.\(^{354}\)

Firstly, subjecting the Bible to the same sort of textual criticism as non-religious texts was still a highly controversial manoeuvre in the seventeenth century. It was common, for instance, to consider God as the author of the Bible, and the men reported in the Bible as

\(^{351}\) 1629 ed., III.101-3.

\(^{352}\) 1629 ed. III.197; 1689 tr. V.xviii.157.

\(^{353}\) 1689 tr., III.xiii.97. 1629 ed., III.119: “quod in rebus, quæ aliquod dogmatis, aut historiæ momentum in se habent, manifestissima est ubique consensio...”

\(^{354}\) 1629 ed., III.120.
various sections’ authors as hardly more than divinely inspired amanuenses. Discrepancies were often explained as mysteries, limitations of human language and understanding, figurative or allegorical expressions, prophecies still unfulfilled, and so forth. There was a range of more pious alternatives to attributing them to human errors akin to contradictions within and between historical texts.\textsuperscript{355} Secondly, the acknowledgement of even small discrepancies is not uncontroversial in \textit{De veritate}’s historical context. Thirdly, Grotius sets the same standards for the Bible’s integrity as for histories.\textsuperscript{356} Fourthly, just a few pages later Grotius directly contradicts his statement that the same consent cannot be found outside Christianity, when he reformulates the same proofs of the NT’s veracity for the OT. According to Grotius, one proof of the OT’s textual integrity is that the dispersion of the Jews did not produce rival versions.\textsuperscript{357} The fifth thing worth noting here is the ingenious way in which Grotius removes the disputed parts of the Bible from Christianity’s core doctrines, and positions only the universally accepted parts left – if any – as really important.

Next, Grotius builds one of the most remarkable sections in \textit{De veritate} to prove the Bible’s authenticity. The section is difficult to summarise adequately, but centers on the argument that the integrity of the biblical text is shown by its survival of various challenges, including the translation of the text into many languages, and the absence of an authority figure who could have imposed a text other than the one that truthfully reflected the reported events. The biblical prophecies concerning God are true, because the God described therein would not have allowed thousands of men, earnestly desiring salvation, to be misled into error.\textsuperscript{358} On the one hand, this is a blatant logical fallacy. On the other, Grotius gives actual counterexamples of such false beliefs in his accounts of paganism and Islam, both of them

\textsuperscript{355} This is an important and influential argument. Bochart makes the same point in \textit{Phaleg II} (1646), referencing \textit{Dubiorum Evangelicorum} (1631-39), written by Friedrich Spanheim (1600-49) in Geneva before he became professor of theology at Leiden in 1642. Walton cites Bochart on this point in \textit{Biblia sacra polyglotta} (London, 1657) – discussed in further detail in chapter V on Selden below – in Prolegomena, IV.36, §§2-3. The interesting fact that despite its priority and influence the \textit{De veritate} formulation of this principle is not mentioned in these texts may confirm that it was, and was seen as, framing this principle to secularising effect. The later interpretation of this break is similarly informative: in \textit{Origines sacrae} (1662) Stillingsfleet used Bochart to show that pagan wisdom was corrupted biblical truth, but he could not have based the same point on either Scaliger or Selden. In sum, the Protestant-Catholic divide, which shapes current scholarly literature on sacred geographies should be expanded with a secularising category. Catherine Delano Smith, “Maps in Bibles in the 16th Century,” \textit{The Map Collector} 39 (1987), 2-14, C.D.S. and E.M. Ingram, \textit{Maps in Bibles} (Droz, 1991). Shalev, \textit{Sacred Words}.

\textsuperscript{356} Somos, \textit{Secularisation}, ch. II and passim, on the historicisation of the Bible; and 414-6 for the secularising effect of the same technique in \textit{De iure praedae}. Another case in \textit{De veritate} is the Sabbath, which Grotius fully historicises in order to refute its binding ceremonial character. 1689 tr., V.x.145-6.

\textsuperscript{357} 1629 ed., 129-31. For related arguments by contemporaries see Somos, “\textit{Mare Clausum}, Leviathan,” and \textit{Oceana}: Bible Criticism, Secularisation and Imperialism in Seventeenth-Century English Political and Legal Thought,” in eds. C.L. Crouch and J. Stökl, \textit{In the Name of God: The Bible in the Colonial Discourse of Empire} (Brill, 2014), 85-132, Section II.

\textsuperscript{358} 1629 ed., III.127.
widespread belief systems at one time or another, despite the combination of God’s benevolence and these religions’ error.

IV.5.2 The spread of Christianity
There are two perhaps unexpected ways in which Grotius uses the survival and spread of Christianity to prove its truth content. First, Christianity’s historical survival in the face of adversity is unparalleled evidence of its truth, according to Grotius, but only if one regards it as the perfection of the Jewish religion — which is older.\(^\text{359}\) Secondly, Grotius presents the spreading of Christianity as one of the miraculous signs of its truth.

... if God have any care of humane affairs, this doctrine cannot but be believed to be Divine. It was very agreeable to Divine Providence, to make that which was best, to be of the greatest and largest extent. ... And certainly there is no other Religion comparable hereunto for ample and large extent.\(^\text{360}\)

Grotius’s conclusion to this section is that while Islam commands large territories, all of its countries contain Christians as well; but the opposite is not true.

Grotius also appeals to the spread of Christianity as proof that Jesus is really the Messiah foretold in Jewish prophecies, unlike others who made the same claim, but left no followers behind. Moreover, his followers converted more people, and whole states, replacing other faiths.

Before Jesus his coming almost the whole World was over-spread with false Worships and Religions: which afterward by little and little began to vanish away, and not only single persons, but both People and Kings were converted unto the worship and service of one God.\(^\text{361}\)

The self-subversion of Grotius’s argument for Christianity’s truth based on its territorial, demographic and political expansion, and on its conversion of states and individuals at the

\(^{359}\) 1629 ed., I.xiii.


\(^{361}\) 1689 tr., V.xvii.155-7. The passage cited is on 156-7.
expense of other religions, is set up in perfect detail, as Grotius explains the mirroring set of the same metrics of success as signs of unholy aggression and false beliefs in Islam.

A second reason why Grotius’s contrast between the spread of Christianity and the expansion of Islam is indicative of didactic secularisation is that the self-contradiction we find in his discussion of the former is mirrored in the latter. As we saw, Grotius gives conflicting proofs of the truth of Christianity, as peaceful and simple until Constantine on the one hand, and increasingly corrupt and victorious afterwards, on the other; with both initial pacifism and its unrivalled later worldly expansion meant to prove its truth. Similarly, in De veritate, VI.vii. he describes Islam as a religion that is a mere accessory to war. Therefore its conquests condemn, not justify, its religious truth. Immediately, Grotius inverts the argument: Islam’s later defeats show the religion’s inconstancy. The passage is worth citing at length.

There is nothing that is liable to such uncertain alterations, nothing that may be common both to good and bad; which can be a certain note of true Religion: much less can their Arms, which are so unjust, that oftentimes they fall upon people, that do not any way molest or offend them, nor are known to them by any injury; in so much that all the pretence they have for their Arms, is only Religion; which is most irreligious.

For there is no true worship of God, but what proceeds from a willing mind. And the will is to be wrought upon by good instruction and gentle persuasation, but not by threats or violence. He that is compelled to believe, doth not believe at all, but plays the Hypocrite, and feigns himself to believe, that he may escape and avoid some danger or punishment. And he that by threats or sense of punishment, will force another Man’s assent, shews by that very proceeding, that he distrusts his arguments. Again, they themselves destroy this very pretence of Religion; in that they suffer any people that live under their Dominion, to use what Religion they please: yea, and sometimes they will openly acknowledge, that Christians may be saved by their own Law.\(^{362}\)

It is hard not to hear Grotius’s criticism of Counter-Remonstrants and a sense of his own predicament in this passage. (Moreover, the concluding sentence suggests that even these oppressive Muslims have a degree of tolerance and understanding.) It is also one more statement that warrants paying attention to the immediate historical and personal context of

De veritate’s composition. The simple facts of the Remonstrants’ persecution and Grotius’s imprisonment suggest that in addition to Grotius’s genuine point about Islam, this passage is also a thinly veiled attack on the Gomarists.\footnote{Klein points to the same contradictions in the text, and reads them as Grotius’s reproach of Christianity in general for falling behind Islam in tolerance. I agree that there are self-contradictions, but I think they hide narrower criticisms of Counter-Remonstrants. Neither am I convinced by Klein that Grotius seriously posited Islam as a lesson in toleration for Christians. Klein, “Hugo Grotius’s Position,” at 157-8. Conversely, when Klein intriguingly conjectures that Grotius deliberately identified and foregrounded Socinian-Muslim commonalities and doctrinal approximations, I see Grotius use these commonalities to subvert his prima facie argument for the reasonableness of Christianity not in order to move closer to Socinianism, but in pursuit of his irenic, ecumenist, and didactic objective.} Importantly, alongside this secularising twist, Grotius’s condemnation in De veritate of proselytism by violence and conquest, the hard imperialisms of Christianity and Islam, also serves as a theological and legal justification of the legal and administrative practices that often characterised Dutch soft imperialism until the 1660s, the end of the period examined in this Thesis.\footnote{E.g. 1629 ed., II.vii. On the pervasive secularising effect of his historicisation of the OT see Dmitri Levitin, “From Sacred History to the History of Religion: Paganism, Judaism, and Christianity in European Historiography from Reformation to ‘Enlightenment’,” The Historical Journal 55:4 (2012), 1117-60, at 1129.}

IV.5.3 The early Church and the Bible

Placing the New Testament in an historicising context, Grotius showed that the Apostles believed that the Second Coming was imminent.\footnote{E.g. Jack P. Greene, “The Cultural Dimensions of Political Transfers: An Aspect of European Occupation of the Americas,” Early Modern American Studies 6:1 (2008), 1-27, esp. 5-6, 9-11.} Heering explains a contemporary inference. Sarrau wondered if this did not strip the Scriptures of all their authority; for if the apostles had really believed this they would have been the victims of a delusion, and would immediately lose all their authority.\footnote{Heering, Grotius, 215, with references and summary of their 1640-1 exchange.}

One can perhaps distinguish three reasons for this instant loss of authority. One is that the Apostles were mistaken. In the rest of this paragraph in II.vii, Grotius ties the correctness, and evidential value, of the Apostles’ belief closely to the erroneous assumption of an imminent Second Coming. In addition, one also wonders whether Christianity, thus historicised, meets Grotius’s two criteria of a good religion. What use is the ethical guidance of Christianity for everyday life if the religion’s establishment was predicated on the imminent end of everyday life? And what does it mean if those who first transmitted the promise of reward, the other hallmark of a good religion, were completely mistaken about the reward’s nature and delivery? A third reason may be suggested in the next part of Grotius’s argument.

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\footnotetext{363}{Klein points to the same contradictions in the text, and reads them as Grotius’s reproach of Christianity in general for falling behind Islam in tolerance. I agree that there are self-contradictions, but I think they hide narrower criticisms of Counter-Remonstrants. Neither am I convinced by Klein that Grotius seriously posited Islam as a lesson in toleration for Christians. Klein, “Hugo Grotius’s Position,” at 157-8. Conversely, when Klein intriguingly conjectures that Grotius deliberately identified and foregrounded Socinian-Muslim commonalities and doctrinal approximations, I see Grotius use these commonalities to subvert his prima facie argument for the reasonableness of Christianity not in order to move closer to Socinianism, but in pursuit of his irenic, ecumenist, and didactic objective.}


\footnotetext{365}{E.g. 1629 ed., II.vii. On the pervasive secularising effect of his historicisation of the OT see Dmitri Levitin, “From Sacred History to the History of Religion: Paganism, Judaism, and Christianity in European Historiography from Reformation to ‘Enlightenment’,” The Historical Journal 55:4 (2012), 1117-60, at 1129.}

\footnotetext{366}{Heering, Grotius, 215, with references and summary of their 1640-1 exchange.}
Moreover all Religions, and Christianity more than any other, forbids lying in bearing false witness, especially in divine things.\textsuperscript{367}

In the context, it is hard to resist the inference that either the Apostles completely misunderstood Jesus, or Jesus deceived them about the imminence of his return. Neither tine on this Morton’s fork bodes well for the truth of Christianity.

Circling back to section V.1 above on the Bible’s textual integrity, one should note Grotius’s familiarity with arguments that the early Christians corrupted the text, partly by mistake, partly with interpolations that matched early prophecies to later events, to make the latter seem like a fulfilment.\textsuperscript{368}

IV.6 Aspects of reception
Grotius gave diverse accounts of the ambition of \textit{De veritate}. His brother Willem asked Gerard Vossius in a letter of 14 June, 1619 to send Grotius books to support his writing project against atheists, Jews, heathens and Muslims, as well as the internal enemies of the church. In a 15 December, 1619 letter to Vossius, Grotius mentioned unbelievers and Jews as the target audience of his intended short book.\textsuperscript{369} When Willem predicted that Grotius will be severely censured for not proving the Trinity or the divinity of Christ, Grotius replied on 12 April, 1620 that his intended audience is not Christians, but \textit{impii, ethnici, iudaei, mahometistae}.\textsuperscript{370} The Preface reiterates these target audiences, and adds Dutch seafarers in particular. \textit{De veritate}, Grotius explains, is meant to help the Dutch, who excel other nations in navigation, spread Christianity, and also resist the temptations of converting to paganism, Islam, or Judaism.

Both a close reading and the history of its reception show that \textit{De veritate}, while not a secular or atheistic text, had a profoundly secularising impact. Its ostensible minimalism and its self-contradictions are both reasons for \textit{De veritate}’s enormous eighteenth-century success.\textsuperscript{371} Blom points out Grotius’s engagement with Vorstius and Socinianism in both \textit{Ordinum pietas} and \textit{De satisfactione}, and that \textit{De veritate} revives this engagement by incorporating Socinian exegeses.\textsuperscript{372} This challenges the hypothesis that Grotius used Vorstius’s anonymous edition

\textsuperscript{367} 1689 tr., II.vii.48.
\textsuperscript{369} References in Heering, \textit{Grotius}, 9.
\textsuperscript{370} Cited on Heering, \textit{Grotius}, 73. Note that my concern here is Grotius’s original intention, not the later missionary uses of his work.
\textsuperscript{371} Champion, “‘Socinianism.’”
unwittingly. Furthermore, both his brother Willem and Vossius pointed out resemblances to Socinus as early as 1620, and the point turned into public accusation already before the 1629 edition.\textsuperscript{373}

It is certainly noteworthy that many scholars detected a causal link between early modern Socinianism and the retrenchment of Christianity from disciplines outside theology. Having noted the relevance of this debate to secularisation, I leave the question of Socinianism and De veritate to others and summarise the above findings, based almost exclusively on an internal analysis of De veritate.

IV.7 Conclusion: Christianity according to De Veritate

Mirum autem non est, umbras destinati operis auferri opere impleto.

Grotius, Sensus librorum sex, quos pro veritate Religionis Christianæ (1627), 158

IV.7.1 Summary of findings

Grotius ostensibly presented certain tenets as the minimalist core of Christianity that commanded universal consensus. He did not positively specify which tenets these were.\textsuperscript{374} Elsewhere he acknowledged that Christian sects were numerous and disagreed viciously,\textsuperscript{375} and that such a consensus was impossible to begin with.\textsuperscript{376} Moreover, Christians have disputed every doctrine from the start.\textsuperscript{377} Each doctrine that Grotius implied was necessary and universal was challenged in his lifetime, together with his selection,\textsuperscript{378} and his method.\textsuperscript{379} Even compared to other secularising essays in irenicism and minimalism, De veritate stands out as unusual. The fact that contemporary condemnations (and rewritings) of De veritate came ecumenically from Catholics, Remonstrants, strict Calvinists, Anglicans, and others, corroborates its uniqueness.\textsuperscript{380}

Grotius’s separation between reason and revelation, which underlies his division of doctrines, does not work. Grotius systematically refused to address the Trinity, the nature of

\textsuperscript{373} Heering, Grotius, 200-2.
\textsuperscript{374} Heering, Grotius, 70.
\textsuperscript{375} 1629 ed., 111-2.
\textsuperscript{376} Nellen, “Minimal,” an excellent point on 30, referring to De iure belii ac pacis, II.20.50.2.
\textsuperscript{377} 1629 ed., VI.213-5. 1689 tr., VI.170.
\textsuperscript{378} Heering, Grotius, 200.
\textsuperscript{379} Heering, Grotius, 208-9: too general an account of God. See Heering, Grotius, 210, for Shoockius’s criticism.
\textsuperscript{380} Major criticisms from Episcopius, Vossius, Schoockius, and Sarrau are referred to above. Maresius, Rivet, and others in Heering, Grotius, chapter 7. On competing rewritings and adaptations see e.g. Heering, Grotius, 236-8. Idem, 73: Grotius is unique among Christian apologists in not proving the truth of Christian doctrines.
Christ, correct rites, and so forth. These he claimed — but only in letters to friends — to leave to revelation, intending to lead men to faith by using reason to prove the veracity of Scripture and the historicity of Christ. At the same time, Grotius showed that by using reason, one found that all the revealed truths of Christianity were not unique.

The appeal to self-interest throughout De veritate makes perfect sense if we read the Conclusion as the end of the lesson that Grotius in his correspondence explained De veritate to be. Convinced, as far as possible, of the factual truth and profitability of Christianity, the reader learns to love and trust Christ and the Christian community through an unspecified emotional mechanism, set in motion by the appeal to the reader’s power of reasoning, self-interest, free will, and autonomy. The rhetorical trajectory that runs from de-emphasising accepted authority with a respectful appeal to individual reason, through the thorough and careful subversion of reasonable proofs of Christian doctrines, to the eventual persuasion about faith’s importance and reason’s severe limits, also tallies with Grotius’s repeated warning to the reader that different demonstranda call for different methods.381 If this is the, or one, explanation for De veritate’s conspicuous and systematic self-contradictions, then the striking feature of De veritate becomes the even starker minimalism of Christianity’s doctrinal content. If miracles and rewards lead one to believe in Christ, and reasonable arguments concerning witnessed and transmitted miracles and the divinity and resurrection of Christ are shown to have been a didactic tool, there is not much left beyond irrational hope.382

IV.7.2 Thesis 1: Secularising legalism

As mentioned, Grotius was keenly conscious of the need to match style to content. The interesting thing is that while his source is Aristotle, he also attributes this rhetorical insight to Moses.383 Several arguments and compositional features have been noticed by other scholars, and in this chapter, that bring out the striking fact that De veritate follows the genre characteristics of a legal treatise. On the one hand, this is readily understandable, given Grotius’s training, and his trust in legal methods of presenting and evaluating evidence, and positing and balancing arguments, in front of De veritate’s intended broad and diverse audience. Moreover, to some extent he was working on De veritate and De iure belli ac pacis in

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381 Evrigenis, Images is an excellent study of a comparable, though more sophisticated, rhetorical strategy in Hobbes’s Leviathan.

382 Despite a few generalisations and overstatements, Hiram Haydn’s thesis in The Counter-Renaissance (New York, 1950), namely that a fideism skeptical of humanism and reason was the main intellectual movement that nourished both the Reformation and ‘the scientific revolution,’ remains valuable, especially as it situates the repeal of all universal laws, including the divine, in this movement, and discusses Machiavelli as one of the architects of this anti-humanist move.

383 1629 ed., l.xiv. Also see 1689 tr., l.xv.25-6.
parallel. On the other hand, the consequent reductionism, use of analogies, balancing claims to come to a reasonable verdict rather than accommodating claims that seem contrary to reason, the prioritisation of authorities, the minimalisation of potentially conflicting definitions, and other legalistic features of De veritate, are ill-suited to proving the truth of any religion. The rhetorical and argumentative techniques that are available in a theological or mystical treatise to, for instance, reconcile reasonable with revelation-based doctrines, are unavailable in a legal treatise. The numerous ways in which Grotius’s reliance on the device of testimonies subverts his claim to prove the truth of Christianity comprise one such case; the reluctance to offer a treatment of the Trinity, despite friends’ and enemies’ warnings, may be another.

Heering is among those who rightly draw attention to the peculiarity of De veritate within the apologetic genre as primarily a legal treatise, in method, source selection, argumentation, and arrangement. This is a crucial point, and one can expand it by noting Grotius’s examination of witnesses’ potential conflicts of interest, his systematic invocation of hostile witnesses, as well as the assumption that the agreement of pagans, Jews, and Muslims on aspects of Christianity constitute sufficient proof. This assumption holds up in forensic reasoning and not otherwise, especially when the witnesses are also systematically shown to be unreliable in general and in the particulars of their own creed. The net result, therefore, is a strong refutation of opponents of Christianity, but a weak or even self-contradictory verification of Christianity.

No less striking is the fact that when Grotius explains how the true religion was extended from the Jews to all mankind, he consistently employs legal formulations. One instance is the legal idiom with which Grotius shows Christ abrogating the Mosaic law, and expressing his sovereignty after the Resurrection by granting immunity and making laws in a way he was previously unable to. Both the abrogation of Mosaic law, and the expansion of the true faith to cover the whole of humanity, are likened to a sovereign abolishing municipal statutes for the sake of uniform government. The historicisation of the Bible that Grotius learned from Scaliger, among others, is augmented by the technical uses of history in legal reasoning. One of such cases in De veritate concerns the Sabbath. Grotius explains that it is not binding, but a particular historical custom limited to the OT. The weak and flexible standing of the laws of the Sabbath is further attested by OT passages showing it yield to other imperatives, from

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384 Heering, Grotius, 36.
385 See Heering, Grotius, 71, references to relevant passages in other Grotius works.
386 Heering, Grotius, 62, 71, 242, passim.
387 II.13.48, II.16, II.22.70-1, for Messiah.
388 1629 ed., V.167-8, 171.
circumcision to the siege of Jericho. Generalising from this law, Grotius explains that none of the ordinances instituted in memory of the Exodus (including the outward circumcision, which trumped the Sabbath) are binding.\textsuperscript{389} The same this-worldly legalism informs Grotius's reconstruction of the Apostles' misunderstanding of Jesus' promise as referring to an imminent Second Coming, a view for which Grotius was heavily criticised by contemporaries. Passages like

Moreover, vain is that persuasion which they conceive of GOD, that he is good, and therefore will not punish this offence; because they so to do, were contrary to his goodness. For mercy or clemency, that it may be just, hath its bounds and limits: and where wickedness abounds beyond measure, there justice doth as it were necessarily require the infliction of punishment.\textsuperscript{390}

exemplify other legalisms, deployed to make legal sense of Christian doctrines like God's justice, even if they come at the cost of reasoning more like a lawyer than a Christian. Another instance is Grotius's defense of free will, following his refutation of astronomy. And as we saw in section 4.3 above, it is the primarily legal, not the Christian, definition of intention that underpins the right understanding of free will.

The legal framework sharpens our focus on the question: what is the significance of all these self-contradictions? What is the reason for this method? One obvious, but ultimately unconvincing, reason is that the original version was written while Grotius was in custody. Although this is certainly important, it is an insufficient explanation of the particular features described here. Moreover, one should not be quick to reduce the text to the most simplistic reconstruction of its context, especially given the history of later editions, and Grotius's opportunities to make emendations. In the preface to Bignon, Grotius contrasts his corporal captivity with his mental freedom to use Jewish and Christian sources \textit{uti voluisse meo qualicunque judicio, & animo dare, negatam, cum id scriberem, corpori libertatem}.\textsuperscript{391} A more careful explanation is needed.

\textsuperscript{389} 1689 tr. V.x.145-6. 1629 ed., 182: "Iam vero, quæ in memoriam exitus ab Ægypto instituta sunt, non esse tali, ut nunquam cessare debeant, supra jam ostendimus ex promisso majorum multo beneficiorum." Outward circumcision superseded: V.xi.

\textsuperscript{390} 1689 tr., IV.iii.111. 1629 ed., IV.138: "Stulta autem est persuasio, qua fingunt, Deum bonum id non vindicaturum, quia id à bonitate alienum esset. Nam clementia, ut justa sit, suos habet limites, & ubi scelera modum excedunt, poenam justitia ex se quasi necessario product." 

\textsuperscript{391} \textit{De veritate}, 2.
IV.7.3 Thesis 2: Didactic secularisation

An intriguing alternative explanation for the numerous, systematic, and strategic self-contradictions in *De veritate* is Jane Newman’s suggestion that Grotius did not seek to establish a new orthodoxy or a minimalist consensus on reason, but on the authority of the early church, and “local receptions of Scripture in various countries and tongues.” His intention was to re-establish what Newman calls “unity-in-diversity” as Christianity’s proper foundation. One could add to her supporting citations Grotius’s argument that even though localised natural causes can affect will-formation, Christianity continued for 16 centuries under different constellations.

One reason to not be satisfied with this explanation is that even later, rewritten and mature versions of *De veritate* carry the marks of their origin as a didactic poem. The legalistic genre was superimposed without obliterating this foundation. There is no tension between the legalistic and the didactic framework; we saw, for instance, that Grotius thought that Moses composed in the same way. So did God: OT laws were, Grotius points out often, a didactic device. Nonetheless, the didactic structure built into *De veritate* can be divorced and retraced independently from the work’s legalistic form.

Grotius’s appeal to all men’s reason is the first step of his strategy. This allows him to claim to build on common ground, as well as to fiercely criticise religious doctrines in paganism, Islam, Judaism, and in Christianity, that do not fit the minimalist thrust of his argument, namely the reduction of strife-causing doctrinal commitments. On this common ground, however, following his call for a shared epistemic space, he proceeds to perform a series of moves that demolish the power of human reason to prove Christianity. Designating miracles as one hallmark of a true religion, consistently placing tremendous burdens of proof on them, and consistently subverting the credibility of biblical miracles, comprise one of these moves. Others are detailed above.

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393 1689 tr., IV.xi.123-4.
394 E.g. 1689 tr., V.vi.134-5!
395 Contrast, for instance, Isaac La Peyrére (1596-1676), who in his 1655 *Prae-Adamitae*, IV.iv begins from the same principles to explain and interpret miracles, but ends with the opposite conclusion: “Such men as these think all things that people believe will not believe Religion & Divinity, & miracles with them have the greater repute of sanctity, the more incredible they are; and which is a strange thing, the more they are past belief, the more they believe them: I ingenuously confesse, I doe not give in my name amongst those enormous upholders of miracles, who put all reason out of square. I am reasonable, and any thing that is belonging to reason I pretend an interest in it.” *Men before Adam* (London, 1656), IV.v.234. On IV.xiv.276-81, La Peyrére recounts that he showed Grotius an early manuscript version of his book.
Grotius also consistently and systematically undermines his own rational arguments for the truth of Christianity, and does so with logical fallacies that were recognisable to any of his educated readers who were familiar with Aristotle (and were in fact pointed out by several of them). The various statements that the core of Christianity commands perfect consensus, and its spread proves its truth, beg the question and *raison d’être* of the whole *De veritate*, as it is laid out in its Introduction and Conclusion. Grotius’s presentation of the evidence, for instance in II.vi. that Jesus’ miracles were not assisted by the devil, often involves a *petitio principii*. One of Grotius’s arguments for the Bible’s textual integrity is another case of this logical error, laid out in a straightforward, easy-to-recognise manner.\(^{396}\) The paradox of Peter’s credibility, based chiefly on the truth of his self-presentation as a liar, is discussed in Section 2.5 above. The reasoning in I.xxx regarding the soul surviving the body is a textbook case of *circulus in probando*, as is the argument in Book III that prophetical passages in the Bible, though obscure at the time of writing, are justified by later events that prove those passages to have been inspired by divine revelation.\(^{397}\) We saw several cases of faulty generalisation (often the specific form *a dicto secundum quid ad dictum simpliciter*) or *ignoratio elenchi*, for example when Grotius deduced from Christianity’s geographical spread its truth, from all Christians’ consensus the validity of its core doctrines, from all Christians’ consensus the canonicity of the Old and New Testament, or from Jewish, pagan and other critics’ universal consensus the credibility of the Apostles and early teachers. In addition, he undermines several of these premises in *De veritate* himself, and/or presents them in a form that is calculated to strike his readers as absurd. It almost seems as if in his defense of Christianity, Grotius ran through a check list of logical fallacies that were most recognisable to his contemporaries.\(^{398}\) These are not likely to be mistakes, especially since his friends pointed out some of them.\(^{399}\)

*De veritate* is a didactic exercise. It begins with a call for shared reason to suspend the doctrinal baggage. It imposes severe restrictions on the capacity of reason to prove Christianity, and weaves numerous self-contradictions and logical fallacies through and through the fabric of the book. However, if these steps were not enough, Grotius spells out the lesson in the Conclusion. Read the Bible. Do not follow uncritically the authority of other readers.\(^{400}\)

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\(^{396}\) Mentioned in Section 5.1 above, 1629 ed., III.127.

\(^{397}\) 1629 ed., III.110-1.

\(^{398}\) Aristotle’s *Prior Analytics* and *Organon* are among popular sources of such lists. Jacopo Zabarella (1533-89), who taught Arminius at Padua, builds on Aristotle an excellent checklist of such logical fallacies in *Opera Logica*.

\(^{399}\) Heering, *Grotius*, 12-14!

\(^{400}\) Champion’s formulation of the broader importance of this move is spot on: “Socinianism,” 126-7. I suggest that the “radical complexion” and political message that *De veritate* assumed in the eighteenth century, as Champion explains, also existed in the United Provinces after the Synod of Dort. Although *De veritate* served different functions in eighteenth-century political contexts, it was hardly less subversive in its own (pace Champion, “Socinianism,” 135). Seeing *De veritate* merely as a milder forerunner of Enlightenment manoeuvres, including the
Most biblical truths cannot be confirmed by reason.\textsuperscript{401} Ignore rites and ceremonies. What you cannot understand, you must take on trust, and believe it. These steps are necessary to preserve social order.\textsuperscript{402} Earlier emphases on reason were necessary to bring all readers to the text, but by the Conclusion it is clear that the reasonableness of Christianity is a red herring.\textsuperscript{403}

There are two implications of this interpretation. One is that Grotius remained committed to the specific version of epistemic humility that characterised the Leiden Circle before it was reproved by the Synod of Dordt.\textsuperscript{404} Whether it was his endogenous development of the Leiden Circle’s epistemic humility, or a reaction to Dordt, Grotius came to think that his best chance of convincing his reader that faith, not reason, was the paramount reason to believe in Christianity, was to first appeal to the reader’s self-perception as rational and autonomous by offering seemingly rational proofs, including the prospect of reward and the efficacy of \textit{sola Scriptura} without the authority of any exegetical tradition and established churches; and then to gradually and deliberately subvert all reasonable proofs offered. The second import of reading \textit{De veritate} as a case of didactic secularisation is that Grotius remained consistent in prioritising political concord above establishing religious truth. The well-known and striking statement, that it is more important to be a good citizen than to be a good Christian, is the key to both the content and structure of \textit{De veritate.}\textsuperscript{405}

\textsuperscript{401} Even the strong version of this claim of course predates Protestantism, e.g. in the oft-cited \textit{fides non habet meritum cui humana ratio prebet experimentum}. Gregory, \textit{Hom. in Ev. II.26.1}, in PL 76, 1197C. Not only obvious authors like Aquinas, but even Fitzherbert’s \textit{Boke of Husbandire}, discussed in chapter 3 above, cites it (¶161, 111). Incidentally, Fitzherbert may be replying to, or even drawing from, the great reformer or heretic John Wycliffe (c. 1320-84) here. In Book III, chapter 3 of Wycliffe’s \textit{Trialogus}, the character Phronesis describes faith and reason the same way, and cites Gregory’s maxim (tr. Stephen E. Lahey, Cambridge, 2013; p. 117). The \textit{Trialogus} was the best known work by Wycliffe at the time, and the first to be printed (1525). Just a few pages later Fitzherbert praises the Gift of Tongues for its potential to “conuerte all the inflydeles, heretykes, and lollers in the worlde.” ¶167, 116.

\textsuperscript{402} 1689 tr. VI.xi.184-5.

\textsuperscript{403} An attempt to explicitly map out this strategy can be found in Matthew Hale, \textit{The Primitive Origination of Mankind} (publ. 1677, from notes made throughout his life), including I.ii.63, III.i.246, III.v.165-7 and III.vi.283.

\textsuperscript{404} Somos, \textit{Secularisation}.

\textsuperscript{405} Grotius, \textit{Rivetiani Apologetici... in Opera Theologica} (Basel, 1732), IV.679-745, at 701, b32-36. Cited on Heering, \textit{Grotius}, 72. This is perfectly in keeping with Nellen, “Minimalism,” 26: “Grotius was an advocate and \textit{homo rhetoricus} whose eclecticism encouraged him to make points rather than hold views.” For a parallel case of these two implications, applied to Hobbes, see Evrigenis, \textit{Images}. 
CHAPTER FIVE

SELDEN’S MARE CLAUSUM: THE SECULARISATION OF INTERNATIONAL LAW AND THE RISE OF SOFT IMPERIALISM

Imperialism is no word for scholars.

Summary

Dutch and English empire-builders had more secularising legal and political categories to draw on than their Iberian and French counterparts. Some of them were crafted by challenging the spiritual monopoly of the clergy or the religious foundation of monarchy, based on doctrinal openings provided by sola fide, sola Scriptura, and minimalism and toleration anchored in individual responsibility and autonomy and in epistemic humility, a recognition of the universal limitations of human reason. Other practices, such as revisions to sacred cosmology – for instance with Earth at the centre of the universe, and Jerusalem at the centre of Earth – and innovations in navigation and financial instruments supportive of enterprise and less concerned with usury, emerged gradually and relied less on the kind of doctrinal confrontation that is exemplified by the five solae. The empire-builders who operated in a secularising intellectual and legal environment had more options to encounter non-European legal systems without having to take a position on their missionary duties and rights, the Christian tradition of just war, forced conversion, slavery, or non-Christians’ right to property and sovereignty. Their imperialist method helped to secure non-European co-operation and save economic and ideological costs of commercial and colonial expansion. It enabled, structured, and sustained the British Empire before the possible nineteenth-century retheologisation of imperialism. Long recognised as a landmark in the history of public and customary international law and the law of the sea, Selden’s Mare clausum is both an iconic and synecdochal case of the secularisation of law that created soft imperialism. This chapter’s aim is to propose Mare clausum as the beginning of imperialist international law.
V.1 Introduction

V.1.1 Exordium

How did the West move from a condition where theology was the sovereign discipline, able and willing to influence all others, to a state in which the arts, the sciences, law, and politics are self-sufficient in method and cognisance? Turning-points like Machiavelli, Montaigne, Descartes, the Peace of Westphalia and Hobbes, and processes like the centralisation and rationalisation of states, have been posited to explain secularisation. “Premature secularisation,” that well-worn phrase, is a salutary caveat against these, but neither an answer nor the start of one.406

Early modern imperialism, and its role in the spread of secularism as an ideal, is one of the most important subjects in reconstructing and understanding secularisation as an historical process. This Thesis examines seventeenth-century Dutch and English neutralisations of the Bible in legal discourse, and their unexpected assistance for early imperialism.407 It is part of a broader project on the intellectual history of Western secularisation.

I hope to adumbrate two specific contributions to the existing literature, then see if they are connected. First, it is still unexplained how two small states, the Netherlands and the

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406 The phrase comes from Duncan Forbes, Hume’s Philosophical Politics (Cambridge, 1975).
407 I try to use “imperialism” advisedly, balancing its seventeenth- and twenty-first-century connotations. For Selden and Harrington, imperium could mean power or dominion in general, or overseas commercial and colonial influence. When they meant policy concerning existing and planned holdings abroad, they usually, though not always, qualified the term. This terminological caveat becomes more complicated by their discussions of the checkered history of Roman imperium as a source of lessons and even models for England. See some relevant caveats in Quentin Skinner, “Meaning and Understanding in the History of Ideas,” in Visions of Politics I: Regarding Method (Cambridge, 2002), 57-89. While shifts in imperium’s meaning can be crucial for right interpretation, an exhaustive terminological index of all usages would have limited use. Some semantic shifts and deliberate ambiguities of imperium, for instance from Roman historians through Machiavelli to Harrington, map onto each other and reduce the need to trace terminological changes in great detail; others increase it. (E.g. in Harrington, Prerogative, II.ii.17, where the translation of imperium as Empire means both provincial government and political power. The reasons will be explored in chapter VII below, where Sigonio and provincial republicanism are shown to belong to the context necessary to understand Harrington.) Instead of imposing preconceptions, I hope to allow imperium’s early modern meanings’ relationship to today’s connotations, including postcolonial sensibilities, arise from the textual analysis and contextualisation. Cf. Benton, Search, 5fn8.

Note, however, that not all shifts can be bracketed. For instance, Livy reports a key speech by Publius Decius Mus, where the plebeian consular (ex-consul) derides the patricians for disallowing imperium to plebeians, because in the patricians’ opinion plebeians have no right to auspices. Livy 10.7.9-8.12. Imperium as military command with right to auspices is not normally the early modern legal meaning, yet early modern writers seldom missed this dimension in their reading of Roman history. For an account of shifts within ancient Roman usages, including statistical analyses, see John Richard, The Language of Empire: Rome and the Idea of Empire from the Third Century BC to the Second Century AD. (Cambridge, 2008). A good note on a Renaissance debate concerning imperium is summarised by McCuaig, “Sigonio and Grouchy: Roman Studies in the Sixteenth Century,” Athenaeum 74 (1986), 147-73; and Sigonio, 175-7, 213. Also see Adolf Berger, Encyclopedic Dictionary of Roman Law, Transactions of the American Philosophical Society, vol. 43, part 2 (Philadelphia, 1953), 493-4, incl. s.v. ‘imperium,’ and ‘imperium merum.’ Lijegren notes the influence of Selden’s tracing of Roman merum & mextum imperium to feudal royal jurisdiction on Harrington’s history of Norman titles. Harrington, Oceana, ed. Lijegren (Lund, 1924), 273. Imperium in imperio and the imperium-potestas distinction from the Renaissance legal historiography of Rome to the early American constitutional debates are discussed separately in chapter III, Section 1.3 above.
United Kingdom, became able to rapidly outcompete France, Spain and Portugal in creating and commanding global trade (both in terms of volume and value), and seizing and holding territory outside Europe. There is no satisfying explanation why the most globalised legal norms today are originally either Roman or English. Second, the causes, circumstances and consequences of the secularisation of international law in the seventeenth century continue to baffle historians of international law as much as intellectual historians. Although Grotius’s De iure belli ac pacis (1625) is regarded as the foundation of modern international law, some legal historians exploring the foundation of imperialism, territorially defined nation-states, and modern sovereignty and International Relations under conditions of limited resources, recognise the importance of Selden’s Mare clausum (1635). While some currently held views on Selden are debatable, both his role in the legal scholarship tradition and in actual legal history foreground Mare clausum as the best illustration of the intellectual shift that accompanied and shaped Western imperialism. However, many legal historians of colonialism ignore him, and those who do not, offer starkly different reasons for his importance. This chapter is an attempt to revisit Mare clausum with a view to establishing the terms and categories of inquiry required for a comprehensive analysis of Selden’s role in the birth of the legal foundations of modern imperialism.

V.1.2 Claim
Eminent lawyers like the Italian Andrea Alciato (1492-1550) and Alberico Gentili (1552-1608), the French Jacques Cujas (1520-1590) and Étienne Pasquier (1529-1615), and the Dutch Petrus Cunaeus (1586-1638) and Hugo Grotius (1583-1645), responded to the seemingly interminable Wars of Religion by gradually deconstructing the theological claim to epistemic authority in all systems of law. The secularising projects built on their work were suppressed after the Council of Trent, St. Bartholomew’s Day Massacre, and the Synod of Dordt, respectively. Their legal method, concepts and arguments prompted Selden, Hobbes, Harrington and other English thinkers to reprioritise natural over divine law, and secularise law, the state, and civil society. Their intention was to create domestic political stability; an unintended consequence was an advantage in soft imperialism.409

408 E.g. T.W. Fulton, The Sovereignty of the Sea (Blackwood and Sons, 1911), 338-9.
Contrary to Iberian and French colonial projects, some Dutch and English thinkers worked out a way to encounter native rulers and legal systems without a pressing need to take a position on issues like the Christian traditions of just war, missionary obligation, forced conversion, slavery, or non-Christians’ right to property and sovereignty. The new system proved effective in securing non-European co-operation and saving the economic and ideological costs of non-secular commercial and colonial expansion. It created, structured, and maintained the British Empire before a possible nineteenth-century retheologisation of imperialism. Long recognised as a landmark in the history of customary international law and the law of the sea, Selden’s *Mare clausum* is both an iconic and synecdochal case of the secularisation of law that enabled soft imperialism. Two features cause this: Selden’s secularisation of thirteen centuries of Christian international law, and his formulation of British exceptionalism. Both rely on his unprecedented elevation of history into both the ultimate source and method in finding out what the law is.

This chapter presents *Mare clausum* as the most influential legal statement at the birth of modern imperialism. *Demonstranda* categories include Selden’s reformulation of all property as *de facto* private; of state sovereignty as encompassing effective and legitimate control over territorial seas; the possibility of expanding the seas subject to sovereign control indefinitely when reason of state is expanded to include global trade; the formulations of British exceptionalism that became a template for Danish, Swedish, American, Prussian and other claims; and the secularisation of public international law.

Recognition is another pertinent legal category. Although Las Casas (1484-1566), Vitoria (1492-1546) and others were notably humane, ‘the other’ in their legal system (often called “Saracen” even when referring to New World inhabitants) was inferior in one way or another. Classifications of newly encountered actors, including classifications of sovereignty,

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posed to the Iberians a particular subset of challenges of this type.\textsuperscript{413} By contrast, secularised natural law applied to everyone equally, whether immediately or at a future stage of development.\textsuperscript{414} In the latter case, the natives depicted as being at a lower stage of development ‘imposed’ trusteeship and obligations of development on their colonisers.

It is possible to compare this relationship with the non-secularised set of obligations of conversion and Christian re-education. Yet the markers of developmental stages proposed by Christian imperialism – conversion, baptism, specific ecclesiastical institutions, etc. – were less acceptable than the hallmarks of capacity and right for self-governance that were posited by secularised imperialism, including settlement, advanced modes of production, political institutions, and other developmental criteria which, however Eurocentric, were at least tangible and empirical.\textsuperscript{415} Such markers seemed less autocratic and indeterminate than those afforded by \textit{ius gentium} tied to Christian principles. The colonial discourse created by secularised natural law thus proved easier to establish and maintain than the colonialism of

\textsuperscript{413} Alexandrowicz, \textit{Introduction}, chapter 2. A closely related issue, not examined here, is the development of legal doctrines concerning international corporations. The “delegated sovereign powers” of the Dutch, French and English East India Companies in making bilateral trade and military agreements with non-Europeans powers, as discussed i.a. by Alexandrowicz, \textit{Introduction}, 15, 26 and passim, are salient examples. Alexandrowicz argues that this problem was absent from Iberian imperialism, in which sovereigns dealt with each other directly. This fits the view of positive feedback loops between Protestantism, capitalism, and mercantilism in the phenomenal success of seventeenth-century European imperialism. The profit motive and ingenuity of private corporations created a more successful empire than Iberian centralised state Catholicism. Whether this conventional account in this simple form is supported by the evidence remains to be seen, especially as we continue mapping out the profit motive and space for entrepreneurial initiative in Catholic imperialism. See Greenblatt, \textit{Marvellous}. Many thanks to Dániel Margócsy for this point.

\textsuperscript{414} The conspicuous shift from the Catholic use of “Saracen” to the Protestant use of “man” in the language of international law had a partly unintended secularising effect. Without questioning the recognised importance of other aspects of Grotius’s system of natural law, one could posit that this shift in language further supported his attack on the anti-Moor and anti-Ottoman foundations of Iberian colonial claims. Inversely, one could argue that in the context of Iberian accusations that the Dutch broke Christian international laws by trading and even forming military alliances with Muslims (e.g. Freitas, \textit{De iusto} cap. XIII), the shift from “Saracen” to “man” supported not only Grotius’s supra-legal moral rhetoric, and his secularising strategy for reconciling pacifist Anabaptist, militant Calvinist, and \textit{realpolitik} Erastian Dutch agents with Iberian Catholic sensibilities, but it also served immediate VOC commercial interests. Alexandrowicz, \textit{Introduction}, 14, 17-8, 26-9, 41, passim. “Unlike the Portuguese, the Companies were not engaged in any anti-Islamic action or missionary endeavour. The Dutch, English and French did not come to the East Indies as subordinates of their governments in Europe but as employees and servants of corporations of merchants specially formed for engaging in East India trade.” 27. This may be an exaggeration; see i.a. Alexandrowicz, \textit{Introduction}, 32-5, 39 note G. Furthermore, the Portuguese also found non-Christian allies against Muslims: Alexandrowicz, \textit{Introduction}, 89. Similarly to my theory that Grotius’s elimination of “Saracen” as a special category of ‘the other’ in European international law was partly motivated by short-term, pragmatic considerations, Alexandrowicz argues that Grotius in \textit{Mare liberum} ascribed legal sovereign status to East Indian communities partly to undermine Portuguese legal title claims. \textit{Introduction}, 44-9. \textit{Cf. De iure belli ac pacis}, i.iii.20. However, the likelihood that early modern international law was dechristianised and reformulated due to particular circumstances detracts nothing from the generic, broader historical pattern of secularisation’s advantages. Somos, \textit{Secularisation}, chapter I. The tactical particularities in the contexts of \textit{Mare liberum} or \textit{Mare clausum} do not contradict, but fill out the big picture.

Christian divine law.\textsuperscript{416} Compared with Iberian and French, it made English and Dutch imperialism highly effective by eliminating the economic and ideological cost of non-secular (whether Catholic or Protestant) commercial and colonial undertakings.

However, a little hindsight is dangerous. Legal historians must entertain the possibility of unintended consequences. The English colonial advantage of secularising law appears less the achievement of omniscient and omnipresent proto-capitalist oppressive states than a corollary of the secularisation first performed to secure domestic stability, including the renegotiation of the powers of clergy, and the contestation of sources of law and the legal theory of property.\textsuperscript{417} To analyse the interconnected nature and development of the secularisation of law, the state, and the early modern British Empire, it is insufficient but necessary to trace the secularising techniques in the iconic \textit{Mare clausum}.

V.1.3 Method

Another word of caution is in order. It is counterproductive to reduce secularisation to commercial interests. In a pop-Marxist variant, the moral principles enshrined in Christianity are said to have been abandoned by a greedy military-mercantilist-political nexus skilled in the use of legal ambiguity. Such accounts point to men like John Hawkins (1532-95), Martin Frobisher (1535/9-1594), Francis Drake (1540-96) and Walter Raleigh (1554-1618), who ran discovery, privateering, commercial and colonial adventures under the aegis of both Crown and corporations. The corporation could deflect to the Crown, and \textit{vice versa}, frustrating legal challenges. It has been argued that the semi-public, semi-private nature of their enterprises was eminently suited to early colonialism’s evasion of legal accountability.\textsuperscript{418}

Additionally to positing efficient long-term conspiracies and revealing a shallowness by assuming, instead of proving, the reducibility of all things to greed, these arguments invert the Whig theory of Protestant progress and preserve its flaws by conflating Dutch and English


\textsuperscript{417} It may be useful to note here that \textit{imperium} is more serviceable than “imperialism” insofar as the former considers domestic and foreign affairs as inseparably joined, while the latter does not. While ancient, medieval, Renaissance and early modern thinkers distinguished the homeland from its overseas commercial and colonial interests, they tended to handle them as integrally connected. Livy or Machiavelli saw demographics, form of government, education and the economy as intrinsically linked as the American Founding Fathers did. The ability to consider Western states as imperialist aggressors that act in smoothly-run conspiracies to dispossess the poor and the non-Western for uncomplicated profit probably dates from the nineteenth century. In contrast with two-dimensional usages, the challenge for seventeenth-century theorists was to reinterpret \textit{imperium} in a three-dimensional chess game that combined domestic and foreign policy variables and could even replace pieces altogether (including bishops and kings).

imperialism. As discussed in chapter I, Section 5 above, Dutch state-formation and colonial and commercial expansion were intertwined from the start; the English had a long, distinctly private phase before the creation of the East India Company (1600-1874) and the Crown grant of monopolies. It is as unhistorical to attribute the success of both English and Dutch early colonialism to the co-operation of governments and corporations as it is counter-productive to overdraw the interaction between secularisation and state-building, or secularisation and successful colonialism, by either state.419

We must assume that it is possible to cogently discuss the beginning of European imperialism, if for no other reason than to fail constructively. One popular, and obviously limited, heuristic device for constructing explanations without over-defined origin myths for imperialism is to posit ‘moments.’ Machiavellian, Gentilian, Vitorian, and Grotian genealogies of international law exist.420 All have adherents, opponents, and modifiers proposing sub-varieties. This chapter suggests the ‘Seldenian moment’ as a useful alternative.

V.1.4 Das Selden Rätsel

The distinction between the synchronicity of Dutch and the asynchronicity of English state- and empire-driven secularisation is useful, among other things, in approaching what may be described as The Selden Mystery. Selden is known as an antiquarian, ancient constitutionalist, parliamentarian, international lawyer, and Judaiser. Recent works on his thought often limit themselves to one of these aspects, and the emerging personae are sometimes difficult to reconcile.

For over a century (in some accounts, since 1777), das Adam Smith Problem denoted apparent contradictions between sympathy in The Theory of Moral Sentiments and self-interest in The Wealth of Nations.421 Selden’s case is comparable, though arguably worse; he truly is all


things to all people. To Pocock and others he is an ancient constitutionalist by virtue of arguing that England is originally an aristocracy, become a monarchy through necessity. For his work on the Arundel marbles, and so many things beside, he is an antiquarian, and a preeminent historian. Ziskind, Berman and others regard him primarily as an English lawyer and scholar of common law history. From Berkowitz and the voluminous work of Christianson on Selden's early career, the figure of a revolutionary parliamentary leader emerges. For Tuck, Selden is a pioneering international lawyer, the English Grotius. Rosenblatt regards him as “Renaissance England’s Chief Rabbi,” a major English Judaiser. Even if there is truth to all these aspects, recent writers make little attempt to connect the dots. Toomer gives an exhaustive survey of Selden’s works, but the conceptual and material links between them are left unexplained. None of these writers attempt to explain the causes and consequences of either the shifts or the coherence in Selden’s overall thought and numerous disparate works. To my best knowledge the only recent attempt, valiant if ultimately unsatisfying, to interpret Selden’s life and works as a whole, is Sergio Caruso’s La miglior legge del regno (2001).

After reading his works, some parts of the jigsaw start to align. The anticlericalism of the History of Tithes (1618) is relevant to the shift from English to international law, manifest for instance in Selden’s treatment in Mare clausum (1635) of canon law as void, and the papacy as a regular, if small, state. Selden’s fascination with English customary law, evident from his earliest published notes from the 1600s, is a revealing context for the way he crafts an analogous customary and historically rich source in Mare clausum for public international law.

However, this is at best a tracing of interests, not a reconstruction of the evolution of Selden’s thought. The strong anticlericalism of the History of Tithes sheds little light on the sense in which Selden is a natural lawyer, or how his early work informs what seems like a radical shift in De iure naturali et gentium, iuxta disciplinam Ebraeorum, libri septem (1640). Does his revival of the Noahide Laws in the same work follow the same twinned methodological lines of legal abstraction and historical reduction that we saw him develop, largely from his contemplation of English customary law, in Mare clausum for public international law?

international law? Is De iure naturali supposed to describe the world’s ancient constitution, akin to the Renaissance prisca sapientia and Hebraica veritas discourses, but based on the principles of customary law instead of mere antiquity or revelation? If not, are there inexplicable breaks between these works, or is there an alternative explanation – for instance, is Selden’s reconstruction of the Mosaic foundation of all law supposed to emphasise i.a. the legal discontinuities from biblical times, and the consequent impossibility of maintaining divine legitimacy claims in post-biblical times? Or does it anchor its legal system so deeply in historical Judaism that modern sects become unable to hijack it? And if De iure naturali followed the same process of legal abstraction and historical reduction one finds in the transition from the History of Tithes to Mare clausum, there would still be an unexplained shift in Selden’s legal thought between 1635 and 1640 from the customary to the positive, from historical forces explaining historical changes (in England, and for the seas) to divine forces that constitute universally binding norms. A well-known and closely connected discontinuity that remains is his mysterious acquisition of unrivalled knowledge of Hebraica.\(^{424}\)

While the focus of the following analysis of Mare clausum remains the connection between secularisation and soft imperialism, I hope that some elements, such as the role of the Samaritan Pentateuch in Selden’s neutralisation of the Bible in public international law, or his analogy from the rules of recognition and legal evolution in English to those of international law – with a consequently unique authority of English law in clarifying the international – also make it easier to answer some of the large questions around this fascinating figure.

V.2 Mare clausum: Erastianism, parliamentarianism, soft imperialism and the secularisation of law

The ends of this voyage are these:

1. To plant Christian religion.
2. To trafficke.
3. To conquer.

Or, to doe all three.

To plant Christian religion without conquest, wil bee hard. Trafficke easily followeth conquest: conquest is not easie. Trafficke without conquest seemeth possible, and not uneasie. What is to be done, is the question.

Pamphlet for the Virginia Enterprise by Richard Hakluyt, lawyer, 1584. In The Original Writings & Correspondence of the Two Richard Hakluys, ed. E.G.R. Taylor (London, 1935), 332.\(^{425}\)


\(^{425}\) For Selden’s and Herbert’s involvement with the Virginia Company see Berkowitz, Selden’s Formative, 55-64.
Mare clausum has a remarkable publication history even by seventeenth-century standards. From 1616 to 1663, under James VI/I, Charles I, Cromwell, then Charles II, Mare clausum addressed enduring concerns including the Civil War, mercantilism, the government’s right to tax for defense, and its right to identify emergency.\textsuperscript{426} It was first drafted in response to the publication of Grotius’s Mare liberum (1609), originally chapter 12 of De iure praedae commentarius. The whole De iure praedae remained unpublished until 1864. Hakluyt translated Mare liberum into English some time before his death in 1616 (perhaps as early as 1609), and this translation, although privately circulated, also remained unpublished until recently.\textsuperscript{427} Armitage dates the first draft of Mare clausum to 1618; Toomer cites Selden’s Vindiciae to show that Selden decided to counter Mare liberum before 1618; Tuck posits 1616-7.\textsuperscript{428} Buckingham, recently made Lord Admiral, had Selden submit the draft Mare clausum to James for approval in the summer of 1619 (misremembered by Selden as 1618). Although approved, the court asked Selden to remove the final chapter on British claims in the North Sea, likely to offend James’s brother-in-law, Christian IV of Denmark. Selden was unwilling or unable to gain access to Buckingham with the revised version, and Mare clausum vanishes from sight for a decade.\textsuperscript{429}

Bourgchier updated Ussher several times about Selden’s condition in Marshalsea Prison. In one of these letters, dated 12 June, 1630, he informed Ussher that Selden was preparing Mare clausum for publication.\textsuperscript{430} Nothing more is heard until spring 1635 when, according to his Vindiciae, Selden was approached by unnamed noblemen with Charles I’s

\begin{footnotesize}
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\item \textsuperscript{426} On Selden and mercantilism see Richard Tuck, Natural Rights Theories: Their Origin and Development (Cambridge, 1979), 100.
\item \textsuperscript{427} P.C. Mancall, Hakluyt’s Promise: An Elizabethan’s Obsession for an English America (Yale, 2007), 275.
\item \textsuperscript{428} David Armitage, The Ideological Origins of the British Empire (Cambridge, 2000), 113. Tuck, Natural Rights, 116. Welwood in 1613, and even Freitas in 1625, did not name Grotius as the author of Mare liberum, perhaps because they genuinely did not know. Fulton regards the second edition of Mare liberum, from 1618, as the official disclosure of Grotius’s authorship. W.T. Fulton, The Sovereignty of the Sea (Edinburgh, 1911), 342fn1. Could Selden have known earlier? Armitage argues that seventeenth-century British imperial ideology was built on a secularised, minimally Protestant religion because it depended on the “collision between an Erastian English church and a Presbyterian Scottish kirk.” Ideological, 9, and 38-40 (though cf. 63-7 and 99). This accords an interesting role to sixteenth- and early seventeenth-century Scottish lawyers, like Craig and Welwood, in the formation of British imperial ideology. Ideological, 108-11. An excellent discussion of Welwood’s view of Mare liberum and its author, and his own contributions to the imperial ideology of James VI and I, is J.D. Ford, “William Welwood’s Treatises on Maritime Law,” The Journal of Legal History 34:2 (2013), 172-210.
\item \textsuperscript{430} James Ussher, The Whole Works of Ussher, ed. C.R. Elrington (Dublin, 1829-64, 1847), XVI.514, cited in Toomer, Selden, 390fn12.
\end{enumerate}
\end{footnotesize}
order to publish. Toomer confirms the date through diplomatic and academic chatter from April 1635 on, including Samuel Johnson’s letter to Grotius in May. The revised manuscript was submitted to Charles I, approved in August 1635, and published in November. Toomer adds,

Nevertheless, although the preceding account may accurately reflect the formal record of events, we cannot escape the suspicion that an informal agreement about the publication of *Mare clausum*, as a condition of Selden’s release from bail, had been reached some time before.

*Mare clausum* was closely tied to Stuart maritime policies, including claims to the adjacent seas, as well as ship money. As many point out, *Mare clausum* was cited in the 1637 Ship-Money Case by Sir Edward Littleton and Sir John Banks, Crown lawyers and prosecutors of Hampden. Ascribing appeasement of Court as a motive to the imprisoned Selden, Fulton and Toomer agree that Bourgchier’s report is credible, and revision may have began as early as 1630.

Toomer’s two points on the dating of *Mare clausum*’s revision, namely its connection to Stuart claims to adjacent seas, and Selden’s appeasement of the Crown, neither support nor contradict each other. However, Selden’s revisitation of *Mare clausum* in 1630 could be connected to Charles’s third Parliament, 1628-9, not to Ship Money. A very brief overview of the much-discussed events is in order. The June-August, 1625 so-called Useless Parliament granted Tonnage and Poundage to Charles I for a year, instead of life, as has been customary since the early fourteenth century. After a year Charles continued to collect this levy on wine and other goods, both exported and imported. The second Parliament of 1626 began with a litany of complaints against Buckingham and this illegal collection, leading Charles to attempt to adjourn the session. MPs famously held John Finch, the Speaker, in his chair until three resolutions were read, one of them condemning anyone who paid unauthorised Tonnage and Poundage as a traitor and enemy of England. This was Selden’s first Parliament, where he played a prominent role in attempts to impeach Buckingham.

The abrupt dissolution of the second Parliament in June 1626 left Charles without subsidies. Forced loans and customs duties unauthorised by Parliament followed, causing deep resentment. Refusal to pay led to the imprisonment of seventy-six prominent men. They were held but not charged, for fear that the court would find against the king. Five of them applied for writs of *habeas corpus*, starting the Five Knights’ Case in which Selden’s defense of Edmund

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Hampden eventually led to his own arrest. The third Parliament opened in 1628. Led by Selden, John Eliot, Edward Coke, Robert Phelips and Thomas Wentworth, it forced Charles into signing the famous Petition of Right, which limited Charles’s absolute prerogatives. The second session opened in January 1629 with parliamentary speeches against Arminianism, and Charles’s moderate speech defending Tonnage and Poundage. Parliament passed a resolution against the illegal levying of Tonnage and Poundage. Charles had the MPs who orchestrated this tumultuous process arrested, Selden among them. Selden was arrested on 4 March, 1629 and sent to the Tower, and banned from books and writing materials. This provision eased slightly from the end of July 1629. He was moved to Marshalsea Prison in January 1630, and allowed access to London during the day, and to read and write in prison. There he started De successione and the second edition of Titles of Honor. Selden remained at Marshalsea until May 1631, when he was finally granted bail, though until January 1635 he had to renew it twice every year.

The tenor and implication of Mare clausum’s covert and overt constitutional and ironic attacks on Charles’s taxes change, depending on whether their context is Tonnage and Poundage, or Ship Money. To my knowledge, the matter of what the advisable distance was for Selden from an Arminian like Grotius (given for instance the strong anti-Arminian sentiment of the third Parliament), and how this distance influenced Selden’s criticisms in Mare clausum regardless of his position on Grotius’s free sea arguments, has not been raised before. Perhaps it was politic, for instance, to cite De iure belli ac pacis strategically, and not to draw too much support from it for his anti-Mare liberum arguments, however tempting it was to dwell on Grotius’s changes of mind or emphasis from Mare liberum to De iure belli.

The second life of Mare clausum, its first actual publication in 1635, is complex and rich. Three unauthorised reprints appeared in Holland in 1636, prompting Charles to ban their importation to England. The Dutch States General, and Grotius, independently encouraged Cunaeus to respond, but in vain. The States General commissioned Dirk Graswinckel (1600/1-66), who finished his draft by the end of 1636. He was eminently suited to the task. A cousin and student of Grotius, Graswinckel was with him at Senlis when he was writing De iure belli ac pacis around 1623. Graswinckel already had a reputation as a polemicist favouring free seas. Libertas Veneta (1634) defended Venetian claims to trade freely, countering Welwod’s arguments to the contrary. Soon after Mare clausum’s appearance, and before the

432 Fulton, Sovereignty, 374-5.
434 Tuck, Natural Rights, 89-97.
States General commissioned him to draft an official response, Graswinckel privately sent detailed criticisms to Selden.\textsuperscript{435} In 1636 the States General amply rewarded him for the finished work, but suppressed \textit{Vindiciae maris liberi adversus I.C. Janum Seldenum} due to political concerns. The published responses to \textit{Mare clausum} challenged British dominion claims, set forth their own (e.g. Pontanus for Denmark over the Sound), but the genie was out of the bottle: there was no influential counter to Selden’s innovative justification of private dominion over the seas. Not only in England, the temptation of the argument proved irresistible. \textit{Mare clausum}’s first appearance in 1635 is as convenient a birthday for the public international law of modern imperialism as one can hope to find.

A letter survives from a William Watts of Northampton from 11 July, 1636 to Selden, concerning an English translation.\textsuperscript{436} Watts would have brought the finished draft to Selden “but for the rayny weather.” He kept the Preface in Selden’s own English translation, left his Epistle to Charles I diplomatically untranslated, and wrote out his translation leaving space between the lines for Selden’s corrections. The letter attests to existing arrangements and a nearly completed translation process. Watts refers to his translation of \textit{Mare clausum} in his glossary to Matthew Paris, for which Selden provided some assistance around 1640.\textsuperscript{437} Other than these references, this translation disappeared without trace.

The third life of \textit{Mare clausum} begins in the 1650s, under a different regime facing similar problems. The war of 1652-54 is known as the first of four Anglo-Dutch Wars, and it is fought by the new Commonwealth of England against the United Provinces. Neither the war’s ordinal number nor the new form of government should obscure the continuities from Stuart naval policies and the steady development of Anglo-Dutch rivalries. The first published translation was Marchamont Nedham’s (1620-78) in 1652 under the title \textit{Of the Dominion, Or, Ownership of the Sea}.\textsuperscript{438} Nedham replaced Selden’s dedication to Charles with a dedication to Parliament, and added supplementary materials. This translation is considered generally faithful and accurate. Yet as we will see, it introduces a few important changes to Selden’s text to fit the Cromwellian milieu.\textsuperscript{439} After the Restoration, James Howell, Historiographer Royal,

\textsuperscript{435} Tuck, \textit{Natural Rights}, 89-90.
\textsuperscript{436} Selden, \textit{Correspondence}, 104-5.
\textsuperscript{437} Toomer, \textit{Selden}, 345-9.
\textsuperscript{439} For the diplomatic rumour that Cromwell used \textit{Mare clausum} to prepare his claim to becoming “emperor of the seas occidentalis” see Armitage, \textit{Ideological Origins}, 119-120. The additions Selden may not have readily agreed with include the attachment of Ingenius’s and others’ claims for Venetian dominion over the seas, which Selden actually disputed in \textit{Mare clausum}. This tension between the 1635 and the 1652 \textit{Mare clausum} editions may be part of the same ambivalence in the English attitude to the Venetian model that one finds in Harrington’s praise of
deleted Nedham’s deprecatory comments on Charles, restored Selden’s original dedication, and published the reworked translation in 1663.440

*Mare clausum*’s direct policy impact can be traced until the 1830s. The above four lives of *Mare clausum* merely illustrate the endurance of *Mare clausum*’s topicality and its continuous use in the policies of otherwise starkly different British governments.

V.2.2 Deconstructing sources of law: the Bible and human reason

Politically, *Mare clausum* is Selden’s reply to Grotius’s *Mare liberum*, countering the Dutch claim to free navigation and fishing with a clear, powerful and influential statement of British dominion over the seas. Regarding biblical criticism, however, Selden’s method is remarkably close to Grotius’s. Both lawyers positioned their contribution on a theoretical level above biblical justifications and chosen nation theories, thereby seeking to systematically prevent religious engagement with, and adaptations from, their writings. Biblical criticism is an integral part of their strategy.441 Selden’s claim that all property was originally private is also the part of *Mare clausum* where a close look at his biblical exegesis can tell us the most about the significance of Bible criticism for seventeenth-century legal debates over imperialism. As detailed below, Selden explicitly names and refutes Roman and Christian legal and theological assertions that mankind originally held everything in common; that some things, like air, fish and the seas, continue in common; and that in special circumstances, such as extreme privation or a state’s dissolution, recourse may be had to the residual or resurgent legitimacy of common property.

V.2.2.1 Origins of global private property

In Selden’s classification the universal laws of nations, or common laws of mankind, are either natural or divine.442 They are unchangeable, as shown by ancient philosophers (including Aristotle and Cicero); theologians (Aquinas); and lawyers. By contrast positive or civil law,
“ordained either by God or men,” can change.\textsuperscript{443} It has two varieties: peculiar (to a nation or group), and what is “received by divers Nations.” The latter can bind nations either “jointly, equally, and indifferently, by som common obligation,” or accidentally. The jointly binding in turn is either imperative, or intervenient. The imperative (common) laws of diverse nations are special commands of an external authority, whether God or man. After citing classical instances in support, Selden adds Deut. 20.10. which, according to him, bound the Israelites by this force, not because God was their ruler. It equally bound the Canaanites, with whom they were to wage war. When several nations submit to the same papal command, they are likewise obeying an Imperative Law of Nations.\textsuperscript{444}

Through these distinctions Selden effectively diminishes the universality of all biblical precepts concerning international relations. Even when they apply (or have applied) universally, the reason they cannot be regarded as the universal law of nations is precisely because God ordained them positively, and is recorded in the Bible as having done so (as opposed to, for instance, making His will known through nature or conscience). Grotius uses the same method of subversion against legalistic uses of the Bible that create irresolvable conflicts by grounding their validity in open-endedly debatable exegetical problems. Interestingly, one of Grotius’s favourite passages to wreak havoc on is the same that Selden cites here.

Deuteronomy 20:5-17 has always troubled lawyers. Here God tells the Israelites to kill all males in far-away cities, but take the women and children alive. In nearby places they wish to keep, they must kill everybody. This was hard to accept as a straightforward divine law. Vitoria joined a long list of thinkers who argued that this was a special command given under special circumstances.\textsuperscript{445} The Deuteronomy commands begin with military service dispensations for the dedication of new houses, vineyards, and sleeping with new wives. Unless women and grapes were to be obligatory considerations before all wars, it was easy to show that the indiscriminate murder in Deut. 20 was speciali mandato Dei. Vitoria had no difficulty concluding that what God wanted understood as a universal rule was that civilians and non-combatants are protected, and the maximum reasonable degree of mercy must be shown at all times. By contrast, Grotius took Deut. 20, one of the most discussed and blood-thirsty Bible passages in the theory of war, and presented it as a straightforward law of nations.\textsuperscript{446} In \textit{Mare

\textsuperscript{443} \textit{Dominion}, l.iii.13.

\textsuperscript{444} \textit{Dominion}, l.iii.13-15.

\textsuperscript{445} Francisco Vitoria, “De Indis Posterior, sive de iure belli,” in \textit{Relectiones theologicae XII} (Lyon: Jacob Boyer, 1557), Vol. i, 409-10.

\textsuperscript{446} \textit{De iure praedae}, iv, Q II in \textit{Commentary on the Law of Prize and Booty} (ed. M.J. van Ittersum, Indianapolis, IN: Liberty Press, [ca. 1603] 2006), 81. Further cases and details of Grotius’s use of Deut. 20.10-17 in Somos,


clauserum, his response to Grotius, Selden picks the same passage to make a similar point – even though he has not seen the whole of De Indis, only Mare liberum. Selden neutralises this key passage in the just war tradition slightly differently from Grotius, by redefining the types and hierarchy of laws it fits into.

Yet Selden’s main concern in Mare clauserum is not international relations but dominion. In l.iv he seems to distinguish between the enjoyment and dominion of property, and define the original community of property as analogous to the former. He starts by citing Lactantius’s Divine Institutes V.v to explain the classical accounts of an original communality of property as poetic license. Lactantius believes that Cicero, Ovid, Virgil and Aratus were not referring to shared dominion in their descriptions of the golden age, but to a spirit of sharing and the common enjoyment of the Earth. To Lactantius’s comparison of these sources Selden adds Gen. 9:1-2, which he interprets not as a divine command, but a figurative donation of the world to Noah and his three sons, Shem, Cham and Japhet, to hold in common. To buttress the point that this was still a community without individual private property, Selden cites Justin on the Age of Saturn, and Cicero’s De Officiis and Ovid’s Metamorphosis on the golden days. Although Selden does not give a detailed account of how private dominion came into being before the Earth’s division among Noah’s sons,\(^447\) the fact remains that it is through a neutralisation of the established biblical loci that he presents all property as private. Instead of Grotius’s Mare liberum, Lauterpacht could have cited Selden’s Mare clauserum to express his disagreement with nineteenth-century positivism and his agreement with the seventeenth-century lawyers who traced all public international law back to the expansion of private law, leaving no room for incompleteness and non liquet.\(^448\)

Continuing his extension of Lactantius’s comparative and historicising debunking of classical myths to Old Testament passages, Selden cites Gen. 10:5-25, and allocates the three

\(^{447}\) Though compare Gerrard Winstanley (1609-76) on common property coming from Genesis; and everyone carrying the same personalities. There are other similarities here with Selden, including Winstanley’s view on the Fall ending the idyll, and starting demarcations of private property. Selden’s connection between Noah and Janus is similar to Lancelot Andrews (1555-1626), a friend of Grotius’s, in Apospasmia sacra (London, 1657), 3.

sons to geographical regions over which they “settled themselves as private Lords.” To support this, Selden invokes disparate sources ranging from Josephus and Eusebius to Cedrenus and Zonaras. Like Scaliger and Grotius, it is at crucial points in his argument that he prefers Greek administrators’ history-books over Greek theologians, such as this State of Nature moment in his account of the rise of private property. Selden asserts that Noah had private dominion, revived after the Flood in the same form it was granted by God to Adam (Gen. 1:2, 28). Both patriarchs had exclusive, full dominion over the world, which they divided and passed on voluntarily. This is consistent with Selden’s earlier characterisation of accounts of idyllic communities as poetic depictions of magnanimity. Cain built a city called Enoch, and settled there. Commerce arose naturally, and in turn required contracts, judges, and boundary marks. Further divisions into smaller units of private dominion followed. Selden argues that universal law, whether natural or divine, neither proscribed nor prescribed but permitted both the emergence of numerous private owners, by the extension of the voluntary bequests of universal dominion-holders (like Adam and Noah), and the transformation of common rights to enjoyment into full-title dominion. Preparing his argument for exclusive British dominion over the seas, Selden thus concludes that universal law is not the source of private property.

Instead, it is popular consent that creates private property. By “the mediation of something like a compact, which might binde their posteritie,” public goods turn into private properties. Things that are not public are possessed by first occupation, unless a nation’s civil


450 It is at similar junctures in their train of thought, namely in reinterpretations of how biblical and patristic sources relate to contemporary questions of public law and especially imperial expansion, that Cujas, Scaliger, Selden and Bayle prioritise the authority of Constantine VII, the Chronicon Paschale, Cedrenus, Zonaras and other Byzantine administrators and historians, over Eusebius and other Greek-language authorities with a long exegetical tradition in the West. In addition to their historical interest, another reason for this wave of rereading and deploying imperial historians and administrators (some of whom were also clerics) is that theology takes a back seat in these books. Moreover, it is Greek, not Latin Christian theology, so even those who sought to maintain theology’s epistemic dominance over all other disciplines were less likely to object to historical arguments based upon these sources. That said, Cujas, Scaliger, Selden, and others who fall into this trend often play off such sources against Greek theological loci that had an established exegetical tradition in Latin Christianity. Another reason for this new interest is that Byzantine historians and imperial administrators often offered Western Europeans an alternative history of the Roman Empire and its aftermath. It is one thing to figure out the strengths and weaknesses of the Roman imperial model when one is tracing Goths and the rise of feudalism, as Sigerius and Selden also do; it is quite another to look at the aftermath of 376 from the perspective of the tenth- or twelfth-century Byzantine Empire. See e.g. the wonderful chapters 27-29 in Constantine VII’s De administrando imperio on the history of Venice and other city-states in Italy and Dalmatia.

It is as part of this trend to reconsider historical models of expansion and colonial administration, and the afterlife of the Roman Empire, without theological distractions of Augustinian providence and translato imperii, that the Leiden Circle’s and, in Mare clausum, Selden’s use of De administrando imperio (editio princeps by Johannes Meursius, Leiden, 1611) relates directly to the theoretical and legal framework of early modern colonialism, including the strategies of choosing and justifying the right legal approach to barbarians and natives. It is in the same context that early modern imperialist thinkers drew on Cedrenus to construct a map and history of mankind’s spread around the globe to fit their agenda, including for instance the allocation of Noah’s sons and the derivation of national characteristics from them. The use of these central medieval Greek sources is a currently neglected chapter in the history of genealogical and imperial thought that runs straight to Montesquieu and Raynal. Note that Selden already displays intimate familiarity with these Byzantine sources in Titles of Honor (1614).
law appropriates them to the Prince. Already in creating and structuring his distinctions, one finds Selden systematically precluding some anti-imperialist arguments, whether by appeal to universal laws governing public goods, or to terra nullius. Res nullius are shown to be open to seizure by reference to “the Laws and Customs of the Hebrews and Mahometans, as well as the Christians,” giving “Misna & Gemara utraque tit. Baba metzia cap. I. & Maimonides tit. Zachia Wemishna cap. I.,” and “Alcoran. AZoar. 12. de venatu; & Azoari 34.” In later editions of De iure belli ac pacis, at II.ii “De his quae hominibus communiter competunt,” Grotius referred to “Selden, the glory of England” and this passage as evidence that Selden found for explicit agreements to transform common into private property. Grotius’s celebrated reformulation of both ius naturae and ius gentium with a pragmatic view to imperialism owes the discovery and occupation of this patch of common ground to Selden.

Selden next directly squares up to the problem of transmission from the original community of property to a state of private ownership. In a speculative tone he posits that original title to terra and res nullius must have belonged to all mankind; therefore there must have been an original contract of some kind that instituted not so much property as the laws relating to its division, inheritance, and acquisition. This is why Grotius was right to locate the origin of property in express agreement for division, and in tacit agreement for seizure or first occupation. As divine universal law and natural law are both permissive with regard to property, national variations could lawfully emerge after the world was divided into private dominions.

But by virtue of that Universal Compact or Agreement (before mentioned) whereby things not yet possessed, were to becom the Proprietie of him that should first enjoi them by Occupation; hee that shall so possess them by Occupation, receiv’s the Island and Building as it were by a Surrender of Right from former Owners.

Unlike the universal and natural bodies of permissive positive law, the “due observation of Compacts and Covenants” remains a universal obligatory law that continues to underpin the permissive developments in property law, including division, inheritance, original occupation

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451 Dominion, l.iv.19-21.
452 Dominion, l.iv.22.
453 De iure belli ac pacis, II.ii.v.122 in the 1642 Amsterdam edition, author’s note. Tr. in ed. Richard Tuck (Liberty, 2005), 426.
454 De iure belli ac pacis, II.ii §2.
455 Dominion, l.v.24, l.vi.41, l.xxi.130.
456 Dominion, l.xxi.130.
and, if so provided in a given state, even appropriation of still undiscovered lands to the Crown.\textsuperscript{457} According to Selden, permissive development and obligatory observance of contracts fully account for the regulation of property in both land and sea. One of several sets of evidence for this is the assignment of sea as a boundary to land, as seen in Julius Africanus (from Eusebius’s \textit{Chronicle}) for the Sons of Cham.

V.2.2.2 Sources of law: Samaritan Pentateuch vs. established legal \textit{locri}

Selden’s next example for the permissive positive law of private property is the land of the Canaanites, within the land of the Sons of Cham, described as stretching from the Nilus to the Euphrates “\textit{and unto the utmost Sea}, or the \textit{remotest}, which is the great or Western Sea.”\textsuperscript{458} By the latter Selden means not the Dead Sea, but the Persian Gulf. His source is a manuscript of the Samaritan Gen. 10:19 and Deut. 34:3. The cited “\textit{and unto the utmost sea}” is from the latter verse, changed erroneously to 34:2 in Nedham’s translation. Conventional biblical geography locates Cham’s lands in the Fertile Crescent and limits the Canaanites to modern-day Israel, just stretching into Jordan at the city of Lasha, as mentioned in Gen. 10:19. By replacing the Jordan with the Euphrates as the other river, beside the Nile, which bordered Canaanite territory, Selden ascribes the whole Fertile Crescent to them.\textsuperscript{459} The deliberateness of this shift is confirmed when Selden continues by describing the land assigned to Japheth’s Sons as being outside the Fertile Crescent, citing Num. 34:6-7 and 34:12 (to which Nedham adds 34:3-5). However, as Num. 34:2 explicitly refers to Canaan, these passages are conventionally interpreted to do likewise. Selden points out that Josh. 15 (1-5) gives the same description of a region that was parcelled out by Joshua; but he fails to mention that this account applies to the land of Judah’s progeny, instead. Selden’s final biblical support in \textit{Mare clausum}, I.v for using seas as territorial boundaries is Ps. 72:8. Although the best support for his argument, it is the only one that Selden simply includes in the marginalia, without discussion. Nedham’s changes can be interpreted as not a combination of mistakes and additions, but attempts to steer \textit{Mare clausum} back toward conventional sacred geography.\textsuperscript{460}

\textsuperscript{457} \textit{Dominion}, l.v.24-5.
\textsuperscript{458} \textit{Dominion}, l.v.25.
\textsuperscript{459} On a secondary level this also broke the link between some views of Eden and Canaan. Calvin, for instance, thought that Eden lay between the Tigris and the Euphrates. Shalev, \textit{Sacred Words}, 168fn73.
\textsuperscript{460} For a great survey definition of this term see Shalev, \textit{Sacred Words}, 4-6. For Montano’s “Phaleg,” interpreting Gen. 10 to reconstruct the spread of mankind after the Flood, see Shalev, 57-8. Like Montano and Selden, Samuel Bochart’s (1599-1667) \textit{Geographia Sacra seu Phaleg et Canaan} (Caen, 1646) also builds a genealogy of nations and a reconstruction of their migrations on exegeses of mostly Gen. 10. Peter N. Miller, “The ‘Antiquarianization’ of Biblical Scholarship and the London Polyglot Bible (1653-57),” \textit{Journal of the History of Ideas} 62:3 (2001), 463-82. Shalev, \textit{Sacred Words}, ch. 4. Bochart was one of Erpenius’s students.
Mare clausum, i.vi is a much longer chapter dedicated to showing “That the Law of God, or the Divine Oracles of holy Scripture, do allow a private Dominion of the Sea. And that the wide Ocean also, which waseth the Western Coast of the holy Land, or at least a considerable part of it, was, according to the Opinions of such as were learned in Jewish Law, annexed to the Land of Israël, by the Assignation or appointment of God himself.” This historical statement, and its use in Selden’s treatise on closed seas, is an important part of the thread we follow through Cunaeus’s, Harrington’s and others’ reconstructions of biblical Israel, and the uses to which they put these reconstructions to argue for or against seventeenth-century constitutional reforms concerning the agrarian, armed, commercial, and maritime reform of England and the United Provinces.

Selden’s use of the Samaritan Pentateuch for Genesis and Deuteronomy here is striking not only for his revision of sacred geography. Although Jerome, Eusebius, Diodorus of Tarsus, Procopius, Cyril of Alexandria, Syncellus and others used and cited this Pentateuch, it gradually fell into oblivion in the West. Scaliger reasserted the Samaritan Pentateuch’s importance in De emendatione temporum (1583), but his own prized manuscript was the Samaritan Chronicle, not the Pentateuch.461 Peiresc tried to obtain a copy, but the ship carrying it was captured by pirates.462 In modern times the first complete copy, dating from 1345/6 CE and known now as Codex B, was finally acquired in 1616 in Damascus by the redoubtable Pietro della Valle (1586-1652) and sent by M. de Sancy, then French ambassador to Constantinople, to the Oratorians in Paris in 1623. Its editio princeps is by Joannes Morinus (1591-1659) in LeJay’s 1628-45 Polyglot (in vol. 6, 1645), from which Walton’s famous Polyglot reproduced it in 1657.463

461 Grafton, Scaliger. Leiden’s first Samaritan Pentateuch manuscript is from Jacobus Golius’s collection, registered in the Leiden University Library in 1629, now known as Or. 6. Based on a letter from Golius, Gassendi published this catalogue in 1630 (P. Gassendi, Catalogus rarorum Librorum... [Paris: Antonius Vitray, 1630]). See J.J. Witkam, Inventory of the Oriental Manuscripts of the Library of the University of Leiden (Ter Lught, 2007), I.11, 17. When Golius acquired it, and whether Or. 6 was in the Library or kept by Golius in his house (despite being purchased with University funds) before it was auctioned off by his successors in 1696, remain to be seen. See the discussion in J.J. Witkam, Jacobus Golius (1596-1667) en zijn Handschriften (Brill, 1980). On balance, Golius probably acquired it on his 1625-9 Oriental travels (i.e. when or just after Ussher obtained his copy) rather than on his first visit to the East in 1622 with the Dutch embassy to Morocco.


463 These editions are now regarded as somewhat unreliable. Gen. 10:19, the first passage Selden cites from the Samaritan Pentateuch, was deemed by as near a contemporary as Leclercr to have been altered by a critical hand. Comment. in Pentateuch, Index, ii.

The Samaritan Pentateuch played several roles in political and legal controversies until
the nineteenth century. It was understood that the Samaritans arose from Jewish and Gentile
intermingling, and that Jews and Samaritans entertained cordial hostility to one another.464
Samaritans rejected all Jewish sacred texts except the Pentateuch, and raised a temple on
Mount Gerizim to worship according to Mosaic law. It was popular among early modern biblical
scholars to argue that the mutual hostility between Samaritans and Jews stopped all
interaction; therefore the insignificance of textual variants between the Torah and the
Samaritan Pentateuch was another proof of Moses’s authorship and the text’s faultless
preservation through the millennia.465 Others focused on the differences and turned them to
sectarian use.466 (Unusually, Selden rejected the historical accounts of this hostility, thereby
avoiding this controversy.) In his edition, Morinus praised the Samaritan Pentateuch and even
the Greek Septuagint at the expense of the (Hebrew) Masoretic text, and joined to this eclectic
re prioritisation of sources a systematic attack on Protestant biblical exegesis. Many
contemporaries recognised the extremity of his view. Their impression was confirmed by
the posthumous and often reprinted Exercitationes biblicae de hebraeici graecique textus
sinceritate (1660) where Morinus, following and going beyond Louis Cappel (1585-1658),
demolished the theory that the Hebrew text, including the vowel points, remained unchanged
and uncorrupted since Moses.467

Cunaeus was a professor law at Leiden when Grotius, his former fellow student, asked
him to respond to Mare clausum. Though nothing came of this, it is worth noting Cunaeus’s
contribution to the re-evaluation of the Samaritans that occupied many scholars after the
humanist clarion call of ad fontes and the Protestant embrace of sola Scriptura. In his 1617 De
republica Hebraeorum, reissued in Elsevier’s famous petites républiques series in 1631,
Cunaeus described the Samaritans as neither idolators nor proto-Protestant believers who
stayed closer to the true religion than the Jews, but a mixed bag of Gentiles, confused
colonists, and inept syncretists.468 One can read Selden’s defence of the Samaritans, and his
unusual denial of Jewish-Samaritan animosity, as a rehabilitation of the value of religious
syncretism during colonisation.

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464 The usual early modern reference for this trope of Jewish-Samaritan hostility is Flavius Josephus. As he does
with the Druids in his “Notes on Fortescue,” Selden positions Flavius as a lawyer. Dominion, I.xxiii, 149. Nedham
describes the Druids as in charge of the republican education of children. Excellencie, 93.
465 Toomer, Selden, 245. This is another context in which the radicalness of Grotius’s stance on the same issue in
De veritate becomes apparent. See “The Bible’s textual integrity,” Section 5.1 in chapter IV above.
466 E.g. Johann Heinrich Hottinger (1620-67) derived Protestant justifications from the Samaritan Pentateuch in
467 Gibert, “Catholic…” Shalev valuably names this “the ’Cappel’ turn.” Sacred Words, 201.
468 De republica Hebraeorum libri III (Elzevier, 1617), II.16, 17.
We established the importance of the Samaritan Pentateuch in Selden’s innovative construction of the aetiology and law of global property rights. How does Selden fit into these controversies, and where did he get his references from? As discussed above, dating parts of *Mare clausum* is complicated by the fact that the initial draft and the 1616?-19 version (cleaned up for Buckingham and James VI/I and perhaps improved until 1621) are lost. Selden may have left the manuscript lie fallow until 1630. Despite the abovementioned evidence of his re-engagement with the text, including Bourgchier’s June 1630 letter to Ussher, we can only speculate about Selden’s expansions and revisions before the first publication, in 1635. Comparing the two editions of *Titles of Honor* in detail is one way of trying to narrow the gap between 1621 as *terminus a quo* and 1630 as *terminus ad quem* for the start of Selden’s revision.

Another, tentative way is to examine possible inspirations for his incorporation of the Samaritan Pentateuch into *Mare clausum*. The two main possibilities are Ussher in or after 1622, and Morinus around 1631. Morinus studied at Leiden before converting to Catholicism, joining the Oratory, and taking orders. He visited England in 1625 in the retinue of Henrietta Maria. Beyond these and similar tenuously possible personal connections, Selden’s source could also have been Morinus’s 1631 *Exercitationes ecclesiasticae in utrumque Samaritanorum Pentateuchum*, even though it predates the Samaritan Pentateuch’s *editio princeps*. Furthermore, Selden occasionally shares Morinus’s distinctive hierarchy of sources, mentioned above. In addition to the preference for the Samaritan Pentateuch over others, in *Mare clausum*, I.vi Selden attributes greater credibility to the Greek translation of Esther than to the Hebrew version, before he returns to Num. 34:5 and offers his own translation from the Hebrew of *erunt exitus ejus in Mare*, instead of the *magni maris littore finietur* of Jerome.\(^{469}\) The Greek translators, he continues, provide a superior text to the Hebrew original because they follow the Samaritan Pentateuch, “after their usual manner.”\(^{470}\)

Despite features in common with Morinus’s work after 1631, Selden’s substantive engagement with the Samaritan Pentateuch probably began with his exchanges with James Ussher (1581-1656), who had a considerable interest in this source. Eventually Ussher acquired six copies of the Samaritan Pentateuch, of varying quality, and attempted to arrange for a Protestant edition and publication before Morinus’s. Ussher also generously provided extracts, lists of variants, transcripts and even loans of his copies to other scholars, including Loius de

\(^{469}\) Except Selden transposes Jerome’s “maris magni”.

\(^{470}\) *Dominion*, I.vi.32.
Dieu in 1629, and of course Selden. In a letter to Selden, dated 16 April, 1622, Ussher writes that he is eager for news from France concerning an edition of the Samaritan Pentateuch. This letter is a reply to Selden’s from 24 March, 1621/2 OS. Selden’s letter begins with an apology for not returning Ussher’s Nubiensis Geographiae, presumably al-Idrisi’s Nuzhatul Mushtaq, a twelfth-century book of travels and systematic geography, translated and abbreviated from a Marionite version and published in Paris in 1619 with a short appendix on Arabian cities, geography, history, manners, languages and religions. The unadorned tone, lack of introduction, and references to prior business make it clear that this is not Selden’s and Ussher’s first exchange. Toomer dates their acquaintance and mutual, life-long admiration as early as 1609, but it is unclear whether 1622 was the first time they discussed the Samaritan Pentateuch specifically. On balance, we can assume that Selden developed his remarkable role for the Samaritan Pentateuch before 1631. Another piece of circumstantial evidence for Selden’s access to parts of the Samaritan Pentateuch before Morinus’s edition is the end of Selden’s 1631 De successionibus, ch. XXIV, entitled “Discrepantes Pentateuchi Samaritani, in Legibus de iure successionis, Lectiones, quae ab observationibus ac interpretamentis aliquot Magistrorum sunt dissonae.” It is a short, three-page but trenchant exposition on the Samaritan Pentateuch’s significance.

However, it is worth noting that while Ussher’s, like Scaliger’s, interest in Samaritan sources was chronological, Selden’s use of the Samaritan Pentateuch in Mare clausum is closer to Grotius’s neutralisation of the Bible in legal debate in Mare liberum. The similarity between Selden’s and Grotius’s legal, rather than chronological interest in the diverse biblical exegetical traditions also suggests that it is worth keeping open the possibility that Selden revisited the Mare clausum draft before 1630. 1625 saw the appearance of Grotius’s De iure belli ac pacis. In parts of Mare clausum, Selden used De iure belli ac pacis to refute Grotius’s own Mare liberum; therefore he certainly revised his draft between 1625 and Mare clausum’s first appearance in

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471 Letter CLIV in ed. Elrington, Works of Ussher, XV.451-3. Cited in J.G. Fraser, “Ussher’s Sixth Copy of the Samaritan Pentateuch,” Vetus Testamentum 21:1 (1971), 100-2, at 100. Interestingly, Fraser conjectures that Ussher’s sixth copy passed from de Dieu to Denis Nolin at the same Paris Oratory where Morinus worked, and is currently known as MS Samaritan 4 of the Bibliothèque Nationale.


473 M. ibn-Muhammad al Idrisi, Geographia nubiensis: id est accuratissima totius orbis in septic climata divisii descriptio (ed. and trans. G. Sionita and J. Hesronita; Paris: Hieronymus Blageart, 1619), an abbreviation and translation of Kitab nuzhat al-mushtaq fi’hkitiraq al-’afaq (twelfth century CE). Selden cites this work in Dominion, I.vi, 37; I.xxxii.137; etc.

474 Selden’s letter is XLVI in Parr, Usher, 78-9.

475 Toomer, Selden, 804.
1635. Moreover, had his opening discussion of private property been inserted earlier, then the whole *Mare clausum* would have required a serious structural transformation. The key role of *De iure belli ac pacis* in *Mare clausum*, i.iv, and of the Samaritan Pentateuch in i.v-vi, both suggest that the Samaritan Pentateuch sections were put in after 1625. At the same time, the neutralisation of the Bible that Selden develops in *Mare clausum*, i.v-vi, using the Samaritan Pentateuch (which he discussed with Ussher at least as early as 1622), is so close to *Mare liberum* that it is worth keeping an open mind about the possibility that Selden had recognised the potential of the Samaritan Pentateuch for a new argument on private property already before 1625. Another avenue worth pursuing is Ussher’s reference: what made him expect a French edition in April 1622, before della Valle’s copy reached Paris?

Another clue for a pre-1631 (if not pre-1625) revision comes from Selden’s 1628 edition of the *Marmora Arundelliana*. This description and academic apparatus for the Arundel Marbles was eagerly awaited throughout the republic of letters. By 1625 Ussher owned a manuscript Samaritan Pentateuch that he hoped to have someone edit and publish. As Selden was preparing *Marmora*, he asked Ussher for the Samaritan Pentateuch variants for Gen. 5 (the genealogy from Abraham to Noah) and Gen. 11 (the Tower of Babel). As Toomer points out, these passages seem to “have no relevance to anything in the Marmor Parium.” Selden may have been planning a broad chronological introduction that he later abandoned or, alternatively, he may have been revisiting the 1618/9 *Mare clausum* draft and constructing the stages in the biblical accounts of the transformation of universal rules of dominion, including Noah and the Tower of Babel. In any case, Ussher’s learned reply concerning the Samaritan Pentateuch was gratefully acknowledged in the *Marmora* – which also contains excerpts from the Samaritan Pentateuch. Ussher expressed his hope that Selden could have Samaritan types made for these excerpts and use them for a pioneering Protestant edition of the Samaritan Pentateuch. When this failed, he sent a manuscript to de Dieu in Leiden. That attempt also failed and, as we saw, the eventual *editio princeps* was Morinus’s contribution to the Paris Polyglot Bible.

Merely publishing the Samaritan Pentateuch, let alone attributing authority to it, remained highly contentious in England, as well as on the Continent, in Selden’s time and long after his death. Selden’s use of the Samaritan Pentateuch, his claim for its superiority in *Mare clausum*, I.xxvi Selden explicitly mentions, compares, contrasts, and responds to both *Mare liberum* and *De iure belli ac pacis*. *De iure belli ac pacis* is mentioned many times, incl. *Mare clausum*, II.ii. Other interactions are detailed above. Richard Tuck, *Natural*, 86 shows that *Mare clausum* is a response to *De iure belli ac pacis* as much as to *Mare liberum*. Also see Fulton, *Sovereignty*, 348-9, and Christianson, *Discourse*, 249.

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476 E.g. in *Mare clausum*, I.xxvi Selden explicitly mentions, compares, contrasts, and responds to both *Mare liberum* and *De iure belli ac pacis*. *De iure belli ac pacis* is mentioned many times, incl. *Mare clausum*, II.ii. Other interactions are detailed above. Richard Tuck, *Natural*, 86 shows that *Mare clausum* is a response to *De iure belli ac pacis* as much as to *Mare liberum*. Also see Fulton, *Sovereignty*, 348-9, and Christianson, *Discourse*, 249.


478 Toomer, *Selden*, 806.
clausum, and his radical reformulation of property as not communal but ab initio private, should be seen in this context. A case in point is Walton’s great Polyglot, in many ways a fruit of the work of Selden, Pococke and Ussher on the Samaritan Pentateuch. Selden and Ussher were the key early patrons of the project. Ussher, Pococke and many of Selden’s friends, allies and admirers, including John Lightfoot and Patrick Young, made direct contributions to this Polyglot. The first volume appeared in 1654, the year Selden died.

Walton justified the inclusion of the Samaritan Pentateuch in a critical overview of the textual traditions in his famous Prolegomena to the Polyglot, originally published in 1657 but also reprinted separately for almost two centuries. Indeed, the inclusion of this source was another reason why the Vatican placed Walton’s Polyglot on the Index Librorum Prohibitorum, while the nonconformist John Owen (1616-83), among others, accused Walton of aiding atheism. Walton’s rejoinder to Owen, The Considerator Considered (1659), details his reliance on Selden’s manuscripts and help, and again addresses and defends the use of the Samaritan Pentateuch. Unlike Selden in More clausum, Walton regards the Samaritan Pentateuch as inferior to the Hebrew in terms of divine inspiration. At the same time, he demolishes Owen’s objections to the Samaritan Pentateuch’s use, namely that the Samaritans’ true knowledge of the pristine version of the Torah, their creation of a rival temple on Mt. Gerizim, and early Christians’ use of the Samaritan Pentateuch, are unhistorical fabrications. Walton even defends the Samaritans from the Rabbis he cites in the Prolegomena, who “out of their innate hatred they forge many calumnies and untruths against them.” To Owen’s proposition that no copy of the Samaritan Pentateuch survives, Walton counters that he himself consulted one that belonged to a Samaritan priest in Damascus “about four hundred years ago.”

In light of these loaded debates surrounding the Samaritan Pentateuch, Selden’s reliance on the Samaritan version of Gen. 10:19 and Deut. 34:3 is indicative of both his philological and non-sectarian self-positioning, especially in an applied legal work like More clausum. Unlike hundreds of seventeenth-century sects and thinkers, Selden avoided

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479 Biblia Sacra Polyglotta, completentia Textus Originales Hebraeum (cum Pentateucho Samaritano), Chaldaicum, Graecum, Versionumque Antiquarum, Samaritanae, Graecae lxxii. Interp., Chaldaicae, Syriacae, Arabicae, &Ethiopicae, Persicae, Vulg. Latin. quidquid comparari poterat. Cum Textuum et Versionum Orientalium Translationibus Latinis. Cum Apparatu, Appendicibus, Tabulis, variis Lectionibus, Annotationibus, Indicibus. Levitin argues that “the very idea of a polyglot implied that the existing biblical texts were by themselves insufficient, and that a critical-philological approach was necessary to get closer to an original version. This contradicted the exegetical rules set out in the sixteenth century on both Protestant and Catholic sides.” “From Sacred History,” 1125.


481 Walton, The Considerator Considered, II.1-351, at 191.

482 Todd, Memoirs, II.193.

483 The peculiarity of this move is also pointed out by Toomer, Selden, 398. The Samaritan Pentateuch had about 6,000 differences from the Masoretic text: Levitin, “From Sacred History,” 1126.
replacing one mythic text with another and placing equal emphasis and legitimacy on his favoured alternative. 484 His reliance on the Samaritan Pentateuch to redraw sacred geography and reformulate the origins of private property effectively side-stepped contemporary uses of the Bible in imperial debates. Had Selden proceeded to trace a genealogy of the British back to one of Noah’s sons, like many French lawyers did for the French, he could have easily constructed biblical justifications for the claim that Britain and Britain alone ended up – through inheritance, for instance – with full dominion over the seas. This, however, would have made him a chosen nation theorist, albeit of an expansionist, imperialist variety. 485 Instead, Selden made the biblical foundation of his account of property critical of existing biblical imperialisms, yet so contentious as to be unusable for chosen nation arguments, before he proceeded to build the justification of closed seas on carefully chosen aspects of Roman law. 486

From the perspective of the legal issue under consideration – sovereignty over the sea and Dutch versus British rights of passage and fishing – one should note that William Welwod criticised Grotius’s Mare liberum for its treatment of the Bible as a source of law on par with pagan sources. 487 Selden’s Mare clausum, supposedly in the same political camp as Welwod’s Abridgement, was unlikely to be seen as more orthodox.

In sum, in Mare clausum, I.v-vi Selden went to great lengths to establish biblical evidence for the use of seas as boundaries within which dominion applies, and then to make this biblical evidence as radically different as possible from the biblical exegeses used in the established framework of legal disputation over territorial sovereignty; and finally to make the equation of the boundaries with the territory, which is his clinching argument for possible dominion over the seas and which he derived from his unique biblical exegesis, depend not on established biblical, but on new and tangential biblical texts, and Roman legal commentaries. As the Samaritan Pentateuch has just become available for insertion into legal reasoning, Selden’s choice signaled that he regarded his treatment as original and previous treatments (and therefore the conventional applications of the Bible to this issue) as inadequate, and that his interpretation was deliberately as controversial as possible. Had this not been his intention, he could have chosen to position his argument in the existing framework of the Christian legal

484 Geoffrey of Monmouth’s Historia Regum Britanniae (1136) shaped centuries of mythological, at best quasi-Christian English identity claims, usually centering on Brutus, a refugee from the Trojan wars. Selden explicitly makes fun of this and similar claims and adds: “Scare indeed is there a nation in Europe, whose deduction from a like name of the first auttor, is of sufficient credit.” “Notes upon Fortescue,” 16. See also Selden’s hostility to ‘Druidic’ claims to British prisco theologia.
485 For such seventeenth-century English examples see Armitage, Ideological Origins, 81-90, i.a. on Samuel Purchas (1577?-1626).
486 Cf. Grotius’s techniques for neutralising the Bible in De iure praedae, in Somos, Secularisation, chapter V.
487 Welwod gave Christian theology a prominent role in his legal doctrine. British rights over fisheries were proven from divine ordainment, etc. Fulton, Sovereignty, 355. Ford, “Welwod’s Treatises.”
tradition, engaging the arguments by Cajetan, Vázquez, Vitoria, Freitas, Welwod or others through a philological disputation of the well-established biblical *loci* that these lawyers used to frame the debate concerning the use of seas as boundaries. Instead of putting the Samaritan Pentateuch variants to such polemical use, on this key issue he replaced all other versions (Hebrew, Greek, Latin) with it.\textsuperscript{488}

\textbf{V.2.2.3 Non-transferability}

On such contentious biblical foundations, Selden argues that seas have long been used to define territory. This becomes particularly important when, like Cunaeus and later Harrington, he identifies a range of reasons for the non-transferability of the biblical chosen nation. They include the uniqueness of Jerusalem, the abrogation of Old Testament laws after Jesus, irreparable legal discontinuities already in the Old Testament between God’s divine polity and its successors, and other reasons why God’s commands to the Jews cannot be translated to territories outside the Holy Land. The Sabbath, tithes, and other “precepts and laws belonging to the Land of Israël” likewise lose force elsewhere.\textsuperscript{489} This method of refuting all medieval and early modern chosen nation claims is based on identifying and emphasising a compelling number of discontinuities and non-transferabilities of legitimacy in the Bible itself, often drawing on claims of exclusivity and uniqueness in the Old Testament. The secularising implications of this refutation of all ‘chosen nation’ claims are tremendous, as we already saw in Cunaeus, and shall come back to again with Harrington. In Selden’s case, aside from neutralising competing claims to wholly or partly religious legitimacy, it also made *Mare clausum* an equally semi-useful double-edged sword for James VI/I, Charles I, Cromwell, and Charles II, who all often had to walk a fine line between surrendering their imperial agenda to those who supported them on some form of the chosen nation theory, and between alienating such supporters. Like Grotius in *De iure praedae, Mare liberum, Defensio Maris Liberi,* and *De veritate,* Selden actively subverted the biblical foundations of established legal discourse. This *leitmotiv* runs from at least *The Historie of Tithes* (1618) to *De iure naturali* (1640). It is also a

\textsuperscript{488} Delano Smith and Ingram showed that including maps in Bibles was primarily a Protestant, not a Catholic practice in the sixteenth century. *Maps in Bibles.* Shalev agrees and adds welcome nuance to this finding in *Sacred Words.* The point is that Selden’s sacred geography – not discussed in either of these books – is notable for his conscious effort to distance himself from both. A confirmation of this picture of secularising sacred geography is that it remains valid to understand Bochart’s sacred geography as Protestant (Shalev, 146ff.) largely because he broke with both Selden and Scaliger (Shalev, 176-8, 187-90.)

\textsuperscript{489} *Dominion,* i.vi.34-39; passim. Legal discontinuities of paying tithes to the priests already occur within the Bible, therefore seventeenth-century claims of divine legitimacy are unfounded: *The Historie of Tithes* (1618), chapter II. Compare Cunaeus, *De republica Hebraearum,* i.ix-xi and passim. For the same in Grotius see Somos, *Secularisation,* chapter V. For Harrington, see chapter VII below. Similar discontinuities in Selden’s *De iure naturali* and their influence on Chief Justice John Vaughan (1603-74) are described in Rosenblatt, *Renaissance,* 235-7.
major factor in *Mare clausum*’s influential legal support for the maritime component in British sovereignty and imperialism.

V.2.2.4 Natural-permissive: the unreasonable and irreligious common law of nations

Book I, chapter vii of *Mare clausum* is about method. Therein Selden constructs an extraordinary source for what he calls the natural-permissive law, or common law of nations. He showed earlier that positive laws, whether divine or natural, permit private dominion over the sea. The right use of reason (*recto humano rationis; rectum Humanae rationis, Mare clausum* l.29) reveals these laws. He now wants to show that natural-permissive laws, where reason has no place, equally permit private dominion over the seas. Selden clarifies and strengthens his distinction between these types of law by explaining that customs of several nations, which constitute the source of natural-permissive laws, are arbitrary, haphazard, and unrelated to reason. Correct natural-permissive laws can be deduced from an observation and comparison of customs, which vary across nations and the ages.  

Religious truths, however, cannot. After citing Antisthenes from Cicero’s *De natura deorum* I, “that there are many national gods, but only one natural,” Selden continues,

> So that as of old in the Jewish Church, so also in the Christian, the use of humane Reason among the vulgar, though free in other things, yet when it dived into the contemplation or debate of Religious matters, it hath often been most deservedly restrained, by certain set-Maxims, Principles, and Rules of holy Writ, as Religious Bolts and Bars upon the Soul; lest it should wantonize and wander, either into the old Errors of most Ages and Nations, or after the new devices of a rambling phansie. And truly, such a cours as this hath ever been observed in Religious Government.**

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490 See also Selden, “Notes upon Fortescue,” to chapter XVII, 7-22, esp. 17-19, incl. “all laws in generall are originally equally ancient. All were grounded upon nature, and no nation was, that out it took not their grounds; and nature being the same in all, the beginning of all laws must be the same. [...] But the divers opinions of interpreters proceeding from the weaknesse of mans reason, and the several conveniences of divers States, have made those limitations, which the law of Nature hath sufferd, verie different. And hence it is that those customes which have come all out of one fountain, *Nature, thus varie from and crosse one another in severall Commonwelths.* The unique features of a civil society, and the state erected from it, determine what limitations are imposed on natural law. Natural laws thus limited are a state’s civil laws. Unlike in *Mare clausum*, however, in these 1616 Notes Selden argues that antiquity is no proof of superiority. 20: “Little then follows in point of honor or excellency specially to be attributed to the laws of a Nation in generall, by an argument thus drawn from difference of antiquitie, which in substance is alike in all. Neither are laws thus to be compar’d. those which best fit the state wherein they are, clearly deserve the name of the best laws.” Next, Selden refutes arguments based on Roman law’s antiquity, showing how it was forgotten, then rediscovered under Lothar. He refers back to *Titles of Honor* for the detailed argument.

491 Dominions, l.vii.43.
Since religious lawgiving is necessary, and works by putting bolts and bars upon the soul to regulate behaviour, all religious laws must be ignored when one sets out to discover natural-permissive law. Reason must likewise be ignored, because religious lawgivers are correct about reason being fallible. All that is left to deduce natural-permissive law from is history. From history one can glean the common law of nations by examining customs, which in turn might be best reflected in bodies of civil law – as long as these are not religious. With reason, religion, and antiquity shown to be unreliable sources, one wonders what natural law Selden allows for.

Yet on closer inspection, the permissive natural laws that regulate non-religious affairs are not much simpler, either. Selden reverts to the skepticism we find in The History of Tithes when in Mare clausum he cites Justinian and Gaius, who posit a “natural reason” that manifests in the law of nations, followed by all. Selden retorts: where are these nations, which laws are in common, and how can natural reason accommodate the necessary evolution of laws? For instance, landbound states have no customary law that informs the natural law of the sea; and the enslavement of prisoners is no longer practised by Christians, though it is by Muslims. No law can be reliably gathered from inspecting and comparing the customs of nations. Selden’s skepticism is unlike Montaigne’s, Charron’s, or their many readers’. From accounts of civilisations radically different than their own, including ancients and in extremis cannibals, they stoically surmised the contingency of their moral and religious norms. Selden’s maxim in Mare clausum about the inapplicability of laws derived from comparing however many civilisations belongs not to this brand of early modern skepticism, but to the rise of a body of affirmative, imperialist positive law of nations, justified, as we will see, with reference to the best legal practices in historical situations and nations that Selden deems civilised. Selden’s claims in Mare clausum that legal history shows that British common law applies globally follow from this skeptical blow to natural law. It was appreciated by Selden’s

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492 Compare Scaliger’s elevation of history into a master discipline, and its effect on the Leiden Circle, including Grotius, as discussed in Somos, Secularisation.
493 Tuck, Natural Rights, 84-85 and 95, for the secularising implications of this move, both in terms of Erastianism and vacating divine law.
494 John Selden, The Historie of Tithes... (London: William Stansby, 1618), Preface xiii, and passim.
495 Dominion, l.ii.43-5.
non-English followers as such when they adopted his reasoning to vindications of their own exclusive dominions over the sea.497

The importance of this point cannot be overemphasised. It is often noted that the fifteenth century saw a shift away from Christianity due to lawyers’ invocation of Roman law as the model for, virtually the entire content of, reformulated natural law. 498 Three well-known instances are the genealogical and analogical connection stipulated between private and public property and contract; occupation of *terra nullius*; and acquisitive prescription. *Non liquet* may be added to these three cases of Roman law being used to distance early modern natural law from Christian dogma. Many, including Grotius, argued that international law arose from Roman private law.499 Related to this development, it has also been argued that the Renaissance and early modern resurrection of the Roman law gradually institutionalised an advantage for strong unitary sovereignty.500 Though somewhat liberating from post-Reformation Christianity, the model and laws of ancient Rome could become stifling. As Lesaffer points out,

With time, the writers of the modern law of nations as well as their civil law counterparts became more critical of Roman law and found more instances of situations in which Roman law did not provide the most reasonable or just solution. A new criterion for the application or not for Roman law emerged: reason. Though Roman law often proved to encompass this, it not always did.501

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497 This is a key part of the legal theory that matched – whether caused or was caused by may be a moot point – the role common law played in the evolution of colonial legal systems. Common law, it is often pointed out, seems to have an elective affinity with the recognition of custom, flexibility, and adaptive mechanisms required to create and sustain colonies. For its role in American colonialism see Jack Greene, “The Cultural Dimensions,” 15-21.
499 Famously, this inspired Hersch Lauterpacht. Schmitt points out that the early modern lawyers who handled the problem of land appropriation along these lines missed the point that unlike the French, Dutch and English conquests, the Spanish “was not at all private and, to this extent, was purely a matter of public law.” Carl Schmitt, *The Nomos of the Earth* (New York, NY: Telos, [1950] 2006), 138 n7. Lesaffer, “Argument,” 28.
These are the stakes and the context in which Selden here rejects Roman lawyers\textsuperscript{502} and demolishes natural reason as a potential source for international law, given the diversity of customs, the limited sphere of laws (e.g. maritime laws in landlocked countries are unhelpful, however reasonable those countries may be), and his observation that the natural reason that may emerge from a collation of customs cannot provide secondary rules whereby laws can be created, altered, or extinguished.\textsuperscript{503} In \textit{Mare clausum} I.xxiv, Selden surveys post-Roman legal opinion on the matter. He agrees with Cujas, who finds some Roman law superseded by later custom, and rejects Gentili’s view in \textit{De iure belli} of Roman law as the law of nations and of nature. Selden’s arguments against Gentili, an Oxonian law professor and fellow defender of English imperial interests, follow Cujas’s \textit{mos gallicus} in showing abiding changes in custom from history.\textsuperscript{504} As he does with Rome, Selden at the end of \textit{Mare clausum}, I.xxiv denies that the tradition of legal opinion and scholarship is a viable source of law, due to its incoherence and carelessness.\textsuperscript{505}

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\textsuperscript{502} In \textit{Dominion}, I.xxiv 151 he cites Cujas’s rejection of Roman law when superseded later by custom.

\textsuperscript{503} H.L.A. Hart, \textit{The Concept of Law} (Oxford, 1961). This is not to say that Selden’s limitation of the applicability of \textit{terra nullius} informs all parts of the imperialist law built on \textit{Mare clausum}. Trade and colonisation in the East Indies, for instance, were not discussed in terms of \textit{terra nullius}, as indigenous regimes were generally perceived to be valid negotiating partners. See e.g. charters in M.F. Lindley, \textit{The Acquisition and Government of Backward Territory in International Law} (London, 1926), 94-8. However, given Selden’s emphasis on customary law, the historical genealogy of private and public property carries more weight in imperial justifications built on his legal theory than they do in those that rely chiefly on Grotius. The genealogy of \textit{terra nullius} is thus more important for English than for Dutch imperialism. \textit{Terra nullius}, however, was used to justify British occupations of America, Australia and Africa. James Tully, \textit{An Approach to Political Philosophy: Locke in Contexts} (Cambridge, 1993). Lesaffer, “Argument.” Alternatively, one could argue that the distinction between “civilised” non-Christian and unoccupied lands was irrelevant, and \textit{terra nullius} was a legal norm that \textit{emerged} into \textit{lex lata} from the practice of conquerors who claimed the lands even of peoples whose lawyers deemed civilised, using symbolic acts and land markers that were theoretically appropriate only in \textit{terra nullius}. Grotius’s distinction between \textit{dominium}, (private) property, and \textit{imperium} (jurisdiction), served as a bridge to move from the occupation of vacant land to the seizure of land that was uncultivated, but already owned by others (e.g. the Irish, or non-Europeans). \textit{De iure belli ac pacis, ii.ii}s 17, II.iii.54, II.iii§19.2. To my knowledge, this possibility of legal emergence (even constructivism), which dissolves the prized but simplistic conundrum of the self-contradictions, hypocrisy and injustice of early imperialism, has not been raised elsewhere. F.A. von der Heyde, “Discovery, Symbolic Annexation and Virtual Effectiveness in International Law,” \textit{American Journal of International Law} 29 (1935), 448-471, at 453-460. A.S. Keller et al, \textit{Creation of Rights of Sovereignty Through Symbolic Acts, 1400-1800}, (Columbia, 1938). Spanish, Portuguese, Dutch and English practices are compared in Patricia Seed, \textit{Ceremonies of Possession in Europe’s Conquest of the New World, 1492-1640} (Cambridge, 1995). Note that this way of framing the issue implicitly refutes Fulton and others who regard pertinent details concerning historical acts of taking possession in \textit{Mare clausum} as mere digressions. Lesaffer, “Argument,” 49 posits a similar legal transformation, of acquisitive prescription into effective occupation. Cf. similar trajectories in von der Heyde, “Discovery.”


\textsuperscript{505} Note that this and the preceding passage seems absent from the first Latin \textit{Mare clausum} edition.
Despite Selden’s skeptical onslaught, the natural-permissive law turns out not to be an empty category after all. Instead of consent and a comparative study of customs, Selden proposes to draw only on civilised nations of the past and present, and only on the expert testimony of historians and lawyers. In this context, “the people of Rome, the most noble precedent of all both for Law and Custom,” is a compelling source of customary international law. The practice of ancient Rome is a valuable historical precedent even when ancient Roman legal doctrines are fallacious. Roman Emperors were regarded as lords of both land and sea, hence a valuable precedent for closed seas.

It is important to establish the perimeters Selden sets for the right use of reason. As we saw, reason cannot be “gather’d from the Customs of several Nations,” partly because “it hath often been most deservedly restrained” by religious precepts. Justinian and Gaius are wrong: the law of nations, observed by all, is not established and sustained by “natural reason.” Hence the need for expert testimony. Although Selden begins this chapter by moving from positive law (natural or divine) to permissive natural law only, when he includes nation-specific religious laws and the two Roman legal authorities in his discussion of the correct sphere of reason, he also moves the category of law that is under examination back to positive divine and natural law. This is done in an orderly manner that makes it unlikely to be the result of confusion. Having refuted reason’s role in natural-permissive law, he continues by refuting it in the rest of natural law.

What are the consequences of this move? Four considerations jump out. Selden is not widely known for removing natural reason from the possible list of law’s sources. I suggest, however, that this tallies with his installation of Noahide precepts as a positive source of international law. Moreover, it does not contradict his statements regarding the desirability of lawyers following the mos geometricus. Secondly, Selden’s presentation of Noahide precepts

506 Dominion, l.xiii.76.
507 I disagree with Christianson, Discourse, 254-5, 260-1, that Selden “deflated Roman law to a status inferior to international treaties and equal to other national laws” (255). In Selden’s system of international common law, Rome was the most important precedent. (Despite his powerful advocacy of emulating Rome, even Machiavelli had misgivings about the possibility and practicability of imitation: Discourses, I.19, III.27.) Compare eds. Kingsbury and Straumann, The Roman Foundations of the Law of Nations (Oxford, 2010) on the difference between the role Gentili and Selden assigned to Rome. Lesaffer’s emphasis in “Argument” on medieval and early modern uses of Roman law as ratio scripta underlines Selden’s equidistance from the other end of the spectrum of Roman law’s authority as a source of law. Selden neither “deflated” Roman law, nor treated it as straightforwardly authoritative ratio scripta. Harrington adopts Selden’s paradigm and assigns a unique status to Rome as a model for modern international law. See Oceana, 259, 261-5, and Harrington’s advice to Oceana to divide and conquer, and install its own manners and laws benignly. See also 266: Rome in the end failed, where England will not. More on this in chapter VII below. Cf. Locke, Essays on the Law of Nature, Q. 5 (An lex naturae cognosci potest ex hominum consentu? Negatur).
508 Dominion, l.xxii.143-5.
509 Dominion, l.vii.42-3.
510 Mare clausum l.xxvi, the end of Book I where Selden directly addresses Grotius’s Mare liberum and De iure belli ac pacis, ends with “quod erat demonstrandum.” For a charming metaphor of history as distance, and triangulation
in *De iure naturali* as a constitution for international law by virtue of their divine ordainment on the one hand, and hallowed historical observance on the other, owes much to Selden’s use of Noah and his sons in his imperialist redefinition of global property rights in *Mare clausum*.

Thirdly, popular sovereignty is another central feature for Selden in the precedent set by Rome for customary international law. In the light of *Mare clausum*’s original context as legal support for James VI/I, then to Charles I, this is unexpected, though given Selden’s parliamentary work, unsurprising. Several times throughout *Mare clausum*, Selden states and strongly restates Rome’s power as precedent, and popular sovereignty as the foundation of Rome’s power. He weaves the two together subtly, powerfully and inextricably into a legal foundation for early modern imperialism that is broadly negotiated, e.g. in Parliament, rather than directed, as in Spain by Philip II, or as desired by several English monarchs. The foundation of popular sovereignty is a vital connection in the narrow and specific trajectory of imperial theory sketched here, from Xenophon and Cicero through Sigonius to Selden and Harrington. This is also why it is important to note that the limits Selden sets on reason also apply to public reason, which is limited by *opinio iuris* and parliamentary representation. Even a vehement emphasis on popular sovereignty should not be mistaken for an argument against the artificial reason needed for government and the common law, or against the role of counsel and expert opinion; just as a prominent role for artificial reason and counsel should not distract from the significance of a striking insistence on the foundational character of popular sovereignty.

The fourth inference concerns secularisation. The reduction of the correct sphere of reason in identifying divine positive law inevitably reduces the scope of theology, as well. Selden’s criticism of “natural reason” in specifying the content and cognisance of positive divine laws in public international law is very similar to the epistemic humility that Cunaeus and Grotius formulated and put to the same use.

Assuming infallible universal reason, and appealing to it, is an obvious way of side-stepping religion. Revelation and universal reason can be compatible, if reason is God’s or the gods’ gift. If *a priori* superiority is given to reason in case they clash, then reason is assumed to

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as a way to overcome optical illusion and uncertainty, see *Mare clausum* II.ii (*Dominion*, 189). John Dee famously promoted triangulation as a technical tool for expanding the British empire. Lesley B. Cormack, *Charting an Empire: Geography at the English Universities, 1580-1620* (Chicago, 1997).

511 Many thanks to Alain Wijffels for raising the question whether this insistence on popular sovereignty is an integral part of soft imperialism. Based on the evidence used here the answer is yes; but at least the chapter on millenarian imperialisms, mentioned in the Conclusion as a discourse rival to secularising soft imperialism, must be written before I can approach this seminal question.


513 Somos, *Secularisation*, s.v. ‘epistemic humility.’
be infallible. Geometry and logic are often cited as paradigmatic in these models. Proponents of a strong theory of reason face a set of problems particular to them, ranging from the absence of empirical evidence for such reason (which can be countered by discussing the physiology of cognition shared by all men, or by the self-evidentiality of mathematics) to man’s necessary deceptions by God (which cannot really be countered, unless to call them possible but insurmountable, therefore irrelevant, if true). In the passages Selden cites, Justinian and Gaius appeal to empirical evidence for infallible universal reason, namely the set of axioms common to all nations. Weaker varieties of the aggregate reasonableness theory include Machiavelli’s and Madison’s People, who are often wrong about small things, but never about the great; and some eighteenth-century formulations of “common sense” that posit a similarly omnipotent universal reason with a similarly limited sphere of applicability. All versions of this theory, however, assume that infallible universal reason is indeed universal, therefore it can serve as the foundation for negotiation. The secularising effect of Grotius’s De veritate, for instance, derives from this assumption, which can only be maintained and extended to savages by rejecting rationalist arguments that support Christianity proper. Unlike today, however, seventeenth-century thinkers could argue that most men believe in one god or at least multiple gods, and those who do not are such aberrations that they, like the mentally disabled, can be ignored in reconstructing the nature and right sphere of reason.

Selden is suspicious of all this. His skepticism toward reason is shared by many believers, but given what he writes about religious laws in Mare clausum, that comparison does not say much about him. It is more revealing to note that the same skepticism led many others, including Cherbury, to “skeptical fideism.” While Bedford, Serjeantson and others point to problems with this term, as used by D.P. Walker, on balance it remains useful. It describes a category of thinkers who resolve any contradiction between reason and religion by accepting the irremovable irrationality of religion. This position contrasts sharply with those

514 Conal Condren, Argument and Authority (Cambridge, 2006), 290-313.
515 Compare Selden calling Erastus a new Copernicus. Tuck, Natural Rights, 95.
who found harmony between reason and religion, and evidence for religion in reason, even if a part of religion remained outside the proper sphere of reason.

It also differs from Selden’s position. Selden does not argue that an examination of the religious laws of states, other than Israel’s, can indicate what the natural law is. Neither does he argue that natural law can be deduced from a comparative study of religious laws, which allows for the imperfection of all states’ particularity, and focuses on their commonalities as expressions of universal truth. Nor does he rely on reason, which must be deceived and contained by religion for the sake of public order. Unlike the syncretists and the ecumenists, or even the skeptical fideists, Selden removes both reason and religion from the list of the reliable sources of natural law. The most obvious corroboration of his secularising reformulation of natural law is what he does with natural religion.

The range of adiaphora, things indifferent to salvation, began to be extended during the Reformation for several reasons. As shown in the chapter on Grotius above, irenicism was one motive for the resulting trend toward minimalist definitions of Christianity; the ideal of a priesthood of all believers was another. A third reason was the commitment to reunite as many Christian sects as possible. These motives can combine in different configurations, but the distinctions remain useful. An advocate of extending adiaphora further could be, for instance, a skeptical fideist, and hope for a reunification of sects due to some sort of eclectic syncretism, probably neoplatonic. Bruno, Mirandola and even Cherbury may be thinkers who whittled Christianity down to a hardly recognisable minimal core that it shared with all religions. Those who insisted on more specificity, for instance on the unique particularity of Jesus as the Messiah, or on some of the divine revelations, held positions that were irreconcilable with eclectic syncretism. An irenicist extender of adiaphora, by contrast, could hide his belief that certain articles of faith were inessential, or even his disbelief in some of them, make peace with his opponents, and remain coherent in his adiaphorism. (Two closely related thought patterns from this period are Christian Stoism and Nicodemism.)

519 In Bedford’s summary of this stance: “No religion is entirely devoid of truth.” Defence, 181.
520 Dominion, i.vii.43. Because of the role he ascribes to reason and Roman law, Selden is a counter-example to the legal pluralist genealogy of early modern British imperialism. See e.g. Craig Yirush, Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675-1775 (Cambridge, 2011), 10-12; although note that the supposed return to reason in imperialist English law also “led to a downplaying of scriptural claims in legal debates” (Yirush, Settlers, 12).
521 I see Melanchthon’s extension as primarily irenicist, and Luther’s as primarily levelling. For a case of supporting adiaphorism from a use of history as the master discipline, see Vossius’s argument that all traditions decay in the Christian churches over time. N. Wickenden, Vossius and the Humanist Concept of History (Van Gorcum, 1993), 169-70. To see one secularising implication, contrast Christian positions that hold that God guarantees the constancy of, or periodic returns to, true church government.
salient point is that it matters whether one arrived at “natural religion” by extending adiaphora or via comparative religious anthropology, and whether the journey was motivated by irenicism, human reason, or skeptical fideism.

From this perspective, natural histories of religion fit uneasily with other historiographical genres. It is true that it was common to combine the arguments that ancient and contemporary pagans, New World savages and heretics fell into worshipping the sun, stars, rivers, trees and other natural phenomena (let us call this Pausanian, or “natural revelation”), and that they also turned their founders and heroes into gods (Euhemerian). It is also true that it was possible to condemn pagans for doing either or both, and assign them to hell; forgive their error and acknowledge that it was the best they could do before Christ; or to praise their efforts.

In the last case, however, the new scientific spirit relativised the approbation of pagan religions from the perspective of natural history of religion. It was one thing to say that Egyptians worshipped the sun as the next best alternative to Christ, and that the sun is still a strikingly compelling argument in favour of God’s might, intelligence and benevolence: it remains an error for Egyptians to mistake the sun for God. It was something else to argue, in the seventeenth century, that the non-Christian ancient monotheists and philosophers who realised that the sun is not God, but a sign of His power, were right, but for the wrong reason. They identified the correct Creator, and did so correctly from Creation, but were mistaken to take Creation as the chief source of evidence or the Creator, instead of relying also on revelation – admittedly, an historically specific event, unavailable e.g. to pre-Mosaic Egyptians – and from faith. The scientific spirit, inverse to Protestant epistemology not in all but in this particular sense, imbued another sense of superiority and respectful disregard for tradition.

No Pythagorean or Egyptian, in this example, could understand the sun, and the underlying order of Creation, as well as a seventeenth-century natural philosopher. Even if their monotheism was correct, and their inference from natural phenomena to monotheism


525 Francis Bacon (1561-1626), the unfinished Instauratio Magna project. Nienke Roelants, Lutheran Astronomers after the Fall (1540-1590): A Reappraisal of the Renaissance Dynamic of Science and Religion (PhD, University of Ghent, 2013). Sachiko Kusukawa, The Transformation of Natural Philosophy: The Case of Philip Melanchthon (Cambridge, 2006). This scheme helps to explain why ancient philosophers, virtuous statesmen, American savages, heretics and unbaptised children raised similar theological problems in the sixteenth and seventeenth centuries.
admirable, at the same time they could still make (wholly or partially) wrong inferences about God from the phenomena.\textsuperscript{526} Importantly, this was not Selden’s position, either.\textsuperscript{527} His recognition of necessary deceit by “religious government” to contain arrogant reason is tantamount to a rejection of both natural religion and natural reason as a valid source of universal natural law. What later turns out to be a valid source, particularly in \textit{De iure naturali}, is the Noahide Laws.

Selden’s introduction of Noahide Laws as the historical font of all legal systems is one of the most striking cases of secularisation discussed in this Thesis, with tremendous significance for soft imperialism.\textsuperscript{528} Selden did not try to normatively endow legal systems with divine authority by positing Noahide Laws as their common core (which is not to say that he denied that historically, religion and law often invoke one another for support). Nor, importantly, did he propose Noahide Laws as the shared historical core of all laws primarily to bring together most of the sects with a chosen nation self-image. Tracing all legal systems Noah does accomplish this, but only if the sectarians are not paying close attention. For first of all, by substituting Noahide Laws as the historical standard for the Decalogue or Christ’s commandments, both of which had volubly and irresolvably contested self-appointed heirs in the seventeenth century, Selden side-stepped a zero-sum debate the same way he did by inserting the Samaritan passages into the legal tradition of debating property rights. Moreover, to the introduction of Noahide Laws Selden joined a philosophy of legal evolution and differentiation, adopted from the common law, that gave great authority to the Noahide Laws, but did not exclude the possibility that they are validly transformed in part or in whole by particular polities in the course of history. Those armed with Selden’s justifications of imperialism, as found i.a. in the authoritative \textit{Mare clausum}, can use the Noahide Laws to identify commonalities with native non-European legal systems and use those established commonalities to negotiate, as well as to justify \underline{to themselves} the permissibility and validity of the negotiation and their negotiating partners’ legal system (which derives from Noah, just as the secularising trader’s, colonist’s, or administrator’s) but, given Selden’s rules of legal transformation, without being able to ascribe higher authority to their own laws, let alone impose them as superior. These rules of recognition, embodied in the common law, are also why Selden cannot accept Roman law as an authority higher than what is warranted by Rome’s

\textsuperscript{526} E.g. Cherbury, \textit{Antient}, ch. VIII on modern vs. ancient astrology and astronomy.\textsuperscript{527} This may answer Toomer’s question as to why Selden – note, unlike Grotius in \textit{De veritate} – omits references to Plato, Aristotle or the Stoics at the end of \textit{De dis Syris}, in the section on pagan monotheism. Toomer, \textit{Selden}, 219.\textsuperscript{528} For an excellent discussion of the debts of Selden’s secularising formulation of Noahide Laws to Grotius see Rosenblatt, \textit{Renaissance}, chapter 6, with a useful caveat on 222; and chapter 8 on its development by Stubbe into “a deistic minimum.”
standing as an historical paradigm of civilisation and imperialism, with failures and problems and some irrelevance.529 It is perhaps also why Selden needed to add to natural laws the Noahide Laws, as another tier of source for all nations’ laws. Natural laws can be limited and transformed, like Theseus’s ship, by “the conuenience of ciuill societie.”530 However, unlike the Noahide Laws, which are equally limitable, natural laws do not enable Selden or other seventeenth-century secularising theorists of empire to side-step thirteen centuries of legal tradition concerning Christians as the true knowers of natural law, or the relative powers of revelation and history in settling a conflict or a contested hierarchy of laws.

Selden’s support for English mercantile capitalism rested on the secularisation of international law by displacing legal problems, like prescription or the types of private property, from the realm of divine law into the historical constitution of law, encompassing all religious laws. To Adam and Noah, among others, God revealed his will, and the prospect of eternal life. According to Tuck this information, transmitted by the “historical continuity of human societies,” changed the cost-benefit calculus of “the rational egotist,” and turned pacta sunt servanda into a universal law.531 There are two problems with this account: Selden’s above-mentioned subversion of the link between ratio recta and ius naturale, and the implication that Selden’s system of law allows no colonial negotiation that depends on contract to be conducted without verifying the parties’ genealogical relationship to OT figures. Before entering a commercial or defense treaty, an English merchant or conqueror would need to know the native party’s place in the historical continuity of human societies, and whether or not the native ruler who can guarantee compliance has historically inherited the pacta sunt servanda awareness. In effect, the Iberian lawyers’ puzzle of diplomatic and commercial relations with non-Christians is replicated, albeit in a Judeo-Christian, not a Catholic form.

Had Selden offered a systematic genealogy of all nations in order to categorise applicable and non-applicable legal instruments, he would have followed others on a well-worn path.532 The fact that he did not suggests a calculated openness on the matter. It is also worth noting that Selden’s curtailment of reason can be easily accommodated by deleting the word “rational” from Tuck’s account. It is enough to assume that people seek their self-interest (“egotist”), and the good news about eternal life will convince them to suspend disbelief in rewards and punishments for keeping promises. It is one thing to appeal to reason with a rhetorical strategy (whether about reason, God, or both) and argue that society collapses

529 See Selden’s extraordinary “Notes to Fortescue,” De laudibus, capt. xvii, 9-22.
530 “Notes to Fortescue,” 19.
531 Tuck, Natural Rights, 89-90.
without it, and another to appeal to individual self-interest. It is yet another thing to use either as a load-bearing component of a legal and political theory, as opposed to deploying them in service of a rhetorical strategy designed to persuade the reader. If Selden assumed the priority of self-interest, as Tuck suggests, then it is not the appeal to reason that will convince the soldier not to desert, but his belief in duty, love of patria over self and family, and/or the ability of the organised state to protect his family best: eminently irrational beliefs, in short. The only thing an imperialist must convince his negotiating partner of, the unum necessarium in his rhetorical pilgrim’s purse, is neither the particularly Christian revelation nor universal reason, but the possibility of eternal life.

Selden’s displacement of the legal puzzles of early modern imperialism away from universal divine or natural law toward an historical account of the emergence and evolution of laws has several secularising consequences. First, it allows him to dismiss the Ten Commandments as natural law, and reclassify them as historically specific to the Jews at a given time. This is a notable coup in the context of seventeenth-century imperial legal debates. Selden’s disagreement in Mare clausum with those who saw Judaism as superseded by Christianity, and with those who thought that formulations of universal truths pre-date the Rabbis, set up perfectly Selden’s leitmotiv in De iure naturali. Das Selden Rätsel of apparent breaks and puzzling departures in his work continues to dissipate. Second – and further connecting the 1635 Mare clausum to the 1640 De iure naturali – it also leads Selden to identify the Noahide Precepts as an historically recognisable instance when divine positive laws were revealed and applied to all men, before human expansion across the world and the fog of history made property relations complicated, creating the need to revisit this historical

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533 Evrigenis, Images.
534 Natural Rights, 96-7.
535 This is the underlying message of Grotius’s De veritate, and a key to its efficacy as a sailors’, merchants’ and administrators’ manual for imperial encounters.
537 For the same idea in Cherbury see Bedford, Defence, 183.
instance for guidance.\textsuperscript{538} Thirdly, given Selden’s notion of legal evolution, the Noahide Precepts may not be always binding, either.\textsuperscript{539}

Appreciating Selden’s view of customary law as the ideal receptacle for the live force that is history sheds light on his move from Roman, to comparative, to English, to international law. Selden regards binding international law as the set of laws in force at a given time due to historical traditions, ranging from the effectiveness of their enforcement (which is a realist argument\textsuperscript{546}) to the reformulation of Roman law as binding due to the prudential lessons of past achievements. \textit{Mare clausum} is a good starting point for the international law of mercantile capitalism and the British Empire not only because historical events bear out this association, but also because it is a self-aware announcement of an historical moment when England comes to uniquely embody, and become the source of, \textit{right} international law. The originality of Selden’s transposition of the doctrine of the uniqueness and superiority of English law into the realm of international law is unaffected by pointing out that he drew on a great tradition of presenting English common law as unique and superior to others, due to its self-aware historical and customary nature. Among other such praises, Chapters 15 ("That all Lawes are the law of nature, customes, or statutes"), 16 ("The Law of nature in all countries, is all one") and 17 ("The Customes of England are of most ancient antiquitie, practised and received of v. [5] severall Nations, from one to another, by succession") of Fortescue’s \textit{De laudibus legem Angliae} (1463?), which as we saw was republished with an English translation and Selden’s commentary in 1616, foreshadows Selden’s proposal of historical British sovereignty over all seas as the most compelling law of nations.\textsuperscript{541}

This is why, after \textit{Mare clausum}, Book I ends with Selden’s rejection of reason, Roman law, and \textit{opinio iuris} as valid sources of international law, he stakes his proof of exclusive British sovereignty over the seas on the historical claim that such effective dominion has always existed, uninterrupted. Selden’s is a modern framework for assessing sovereignty and

\textsuperscript{538} One should also note Selden’s simultaneous concern for time and space. The legal category of universal divine laws can only be emptied if all, or most, divine laws are positive. To be able to trace all property relationships to a specific divine command, the part of Creation where legal relationships apply (the Earth, including seas and the stratosphere) must be finite. The argument for closed seas and finite resources, discussed below, dovetails perfectly with Selden’s historicisation of the Bible. The unique authority of English common law as a source of international law; the immemorial custom of English rule over the seas; the historical documents that establish its priority; are among Selden’s arguments for British exceptionalism.\textsuperscript{539} This is the direction taken in Henry Stubb, \textit{An Essay in Defence of the Good Old Cause} (London, 1659), 15 and 106-32.\textsuperscript{540} See Fulton, \textit{Sovereignty}, 371 for Selden’s realism. In \textit{Mare clausum} II.ii (Dominion, 188) Selden agrees with Grotius’s \textit{De iure beli ac pacis}, ii.iii.11 on the necessity of an external act in legitimate occupation, and the insufficiency of the mental act alone. However, this is far from being the sum of Selden’s realism.\textsuperscript{541} Selden, "Notes upon Fortescue," in Fortescue, \textit{De Laudibus Legem Angliae, with Ralph de Hengham, Two Summes} (London, 1616).
statehood, endogenising historical, even ethnic change. It differs from chosen nation theories as much as from ancient constitutionalist models. Book II.i promises that

Then it shall bee shewn, from all Antiquitie, down to our times without interruption, that those, who by reason of so frequent alterations of the state of Affairs, have reigned here, whether Britains, Romans, Saxons, Danes, and Normans, and so the following Kings (each one according to the various latitude of his Empire) have enjoined the Dominion of that Sea by perpetual occupation, that is to say, by using and enjoying it as their own after a peculiar manner, as an undoubted portion either of the whole bodie of the estate of the British Empire, or of som part thereof, according to the state and condition of such as have ruled it; or as an inseparable appendant of this Land.542

The sovereign imperium over the seas that Selden sets out to prove is attached to the land, not to a dynasty, race, language group, or a chain of successive polities that claimed continuity. Selden was content to propose an history-based legal argument that even encompassed regimes, like the Normans, that were keen to emphasise discontinuity from their predecessors. It is here, at the beginning of Mare clausum II, that we learn that Selden defines “British” from historical usage (starting with Caesar’s), regardless of the changing sovereignties of England, Wales, Scotland and Ireland. Similarly, his definition of Britain’s territory combines a geographical description with a survey of Greek, Roman, Arabic, Byzantine and other historical sources discussing the coastline, seas, and associated islands. Having thus established the state’s territorial contours, Selden promises that in the rest of Book II he will

set forth the antient Occupation, together with the long and continued possession of every Sea in particular, since the Norman’s time; whereby the true and lawful Dominion and Customs of the Sea, which are the subject of our Discours, may bee drawn down, as it were by a twin’d thred, until our own times.543

Selden’s method of establishing both British geography and law relies on collating sources in several languages along a continuous historical timeline. Berman describes this as Selden’s “historicity.” “He carried Coke’s historicism one giant step beyond the conception of an

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542 Dominion, II.i.182.
543 Dominion, II.i.187.
immemorial past and an unchangeable fundamental law to the conception of an evolutionary past and an evolving fundamental law."\textsuperscript{544} While true, this fails to capture Selden’s radical emphasis on the constructive and limiting potentials of history. His method owes more to Scaliger’s elevation of history into a master discipline than either to Coke or the mos gallicus.\textsuperscript{545} In Mare clausum in particular, Selden consistently offers historical arguments for naval defense, fishing, and trade, as ab initio and uninterrupted British customs of sovereign imperium over the seas.

To appreciate the exact character and subtle yet momentous originality of Selden’s view in Mare clausum, one should bring in at this point his De diis Syris Syntagmata (London, 1617). The title page motto is “Primus Sapientiae gradus est FALSA intelligere,” from Lactantius, Div. Inst. I.xxiii. Works that systematically compare religions, including Scaliger’s De emendatione temporum (1583), Selden’s De diis Syris, Mersenne’s Quaestiones celeberrimae in Genesim (1623), Vossius’s De theologia gentili (Amsterdam, 1641), Cherbury’s De religione gentilium (1645), etc., superficially seem similar, but their differences are important. Scaliger’s and Selden’s main concern is the historical genealogy of religions, Vossius and Cherbury develop their historicisation into some sort of deism, while Mersenne catalogues religious parallels and influences to bring out Christianity’s unique features and to explicitly disprove Mirandola, Ficino, and other pantheists and eclectic syncretists.

Selden’s adaptation of history as a master discipline to his scheme of law’s sources is the reason why his attribution of particular degrees of historical credibility to particular sources is significant.\textsuperscript{546} The historicisation of biblical precepts, for instance, that Grotius uses in De iure praedae to transform universal into particular commands, becomes less available to Selden as a secularising technique, the more he invokes the causal connection between history, precedent or custom, and law. Without exaggerating the starkness of the separation between Grotius’s civil law and Selden’s common law thinking,\textsuperscript{547} a comparison of their secularising

\textsuperscript{544} Berman, “Origins,” 1695. Also see Berkowitz, Selden’s Formative, chapter 3. Another role for Selden’s historical method, and elevation of history into a master discipline, namely the coupling of this new imperialism with popular sovereignty, is suggested by Berkowitz, 77: “It was the genius of Selden to solve this dilemma [i.e. James trying to establish “imperial absolutism as a deliberate action of the people”] by transferring the arena of combat from theories of law to the forum of constitutional history.”

\textsuperscript{545} Somos, Secularisation, chapters I-II. This book also explores the importance of French New Historians and the mos gallicus for Scaliger’s elevation of history into a master discipline. For an Italian example see Sighoni, Oratio de laudibus historiae (Venice, 1560). A comparison of Sighoni’s, Heinsius’s, and Vossius’s orations on this same subject would be excellent fun. Oddly, Selden seems to think that Cardano and Scaliger both lived in Britain for a while: Dominion, II.ii.194-5.

\textsuperscript{546} Compare Grotius’s attention to establishing the credibility of various historical sources in De veritate, in chapter IV above.

\textsuperscript{547} Recall, for instance, the discussion in chapter III above of Sir Thomas Smith and other Englishmen who studied civil law and Padua, and the contribution they made to the English legal system in addition to its pre-existing civil law
techniques in neutralising or removing the long tradition of biblical exegesis in legal reasoning suggests that the historicisation of a biblical precept may be a more easily secularising legal strategy in a civil law context than in a common law environment, where historicisation makes a situation differently, rather than less, relevant to a case. This is not to say that the same outcome cannot be achieved: but first, in a common law framework the historical reasons for the irrelevance of the biblical passage in question must be shown. Nevertheless, what Selden chooses to deploy in this case is another secularising technique to which the Leiden Circle made a defining contribution, namely the relegation of aspects of Christianity, including the Creation, Abraham and Noah, to the realm of myth. Myths are valuable, but require an historian to apply interpretative techniques beyond the historical range, such as the evaluation of an author’s veracity, bias, method, proximity to events reported, use of sources, and so forth. Assessing Christian stories as myths in turn allows Selden to debunk exclusive Christian legitimacy claims, including papal cognisance over discoveries, and rulers’ right to send missionaries and to build garrisons to protect them.

V.2.2.5 Fables and history

Selden’s strategy in Mare clausum, I.viii is first to rehabilitate the value of fables and myths, address and refute the accusation that this opens the door to atheism, and then to turn Genesis, including the account of the origins of private property he earlier based on it, into a fable. While this secularises insofar as it denies the literal truth of the Bible, one should note that Selden’s insistence that fables are subject to rigorous historical analysis leads him not to reject, but to re-examine the historical foundations of the Bible. 548

Mare clausum, I.viii begins by establishing criteria that allow the addition of poets and myths to the range of sources from which the natural-permissive law of nations can be drawn. Like Scaliger, Hobbes and Vossius, Selden divides history into the Fabulous and the Historical Age. By the former he means not Varro’s pre-Olympic times, but “that which is obscured onely by the most antient Fables, at least under a fabulous Representation.”549 He first tackles the Fabulous.

But in applying our selvs unto the fabulous Age, wee do not ground Arguments upon Fables, as they are meer Fables; but wee manifest Historical Truth out of the most

features. Smith in particular worked hard to compare the common and civil law, and render them mutually intelligible. See e.g. Commonwealth, III.ii.

548 Although see Selden, Table-talk, and short treatise on Christmas, on Jesus’ historicity. Compare Scaliger’s remarks on the same, Scaligeriana vol. II.

549 Dominion, I.viii.47.
antient Historians, though wrap’t up in the mysteries of Heathen Priests and Poëts. 550

While this view is best known from Augustine, Selden cites Lactantius instead in both De diis Syris (1617) and Mare clausum. Lactantius is notoriously more forgiving than Augustine toward not only pagan philosophy, but also pagan religions. 551 It is worth recalling here the earlier distinction between Selden and skeptical fideists. Renaissance and early modern Neoplatonists, including skeptical fideists like Ficino, Mirandola and Cherbury, chose Lactantius as their patron saint because his appreciation of pagan religions extended a shield against theological objections. Lactantius was something of an untouchable for Luther, Calvin and other reformers, whose extensive commentaries on Augustine informed potentially always and actually often violent sectarian debates among Protestants. 552 Seventeenth-century Englishmen were equally susceptible to charges of wandering beyond the acceptable, even into atheism. 553

Yet the approach to pagan values, schematised above, is not the same as the method used to uncover them. The method followed has profound consequences for secularisation. Lactantius and Augustine were engaged in theological polemic. Despite Lactantius’s relative tolerance, neither of their accounts of pagan religions meets the dispassionate technical criteria for mythography that grew out of Renaissance philology and palaeography, ranging from provenance verification to full-scale comparative religious anthropologies. Selden’s willingness and focus on obtaining reliable historical information from even the oldest and most obscure fables and myths is inspired partly by Scaliger, his role model. 554 The historicising renegotiation of the boundaries between pagan and Christian, fable and superstition, or historical memory and damnable idolatry, was a secularising technique that reached maturity with the Leiden Circle. 555 Selden’s admiration for Scaliger’s and Grotius’s historicising methods is amply documented. In this particular instance, his transformation of poems and myths into historical sources that can inform legal arguments is patterned more directly on Grotius, who in turn builds on the Scaligerian foundations completed by Vossius. To understand the distinctive

550 Dominion, I.viii.47.
551 In contrast with Lactantius, Augustine criticises several times the justifications of pagan poets as historical or prophetic precursors to Christianity. See e.g. City of God, XVIII.14. One possible reason is that the period between these two Church Fathers saw Julian’s turn against Christianity. F.E. Yates, Giordano Bruno and the Hermetic Tradition (London, 1964), 58-60.
552 See e.g. Yates, Bruno, 6-9, 18, 26-7, 36, 42-3, 83, 85-6, 143, 310, 364, 384-5, 399, 401, for Lactantius as an inspiration, vehicle and shield for Renaissance ascriptions of high authority to Hermes Trismegistos, the Sybils, and even Kabbalism.
554 Selden was, aimed to be, and/or aimed to be seen as, the English Scaliger. Tuck, Natural Rights, 85.
555 Somos, Secularisation, chapters II-III.
features of Selden’s method, and its secularising implications, the oft-noted similarities between Selden and Scaliger and between Selden and Grotius must be augmented with a Selden-Vossius comparison on their use of fables and myths.556

Vossius’s remarkable rehabilitation of pagan myths strongly suggested that the thousand-year-long Christian polemic to turn Socrates, Aristotle and Seneca into proto-Christian figures, to present pagan religions as the devil’s work, and to refute pagan philosophy as contradicting Christianity, were equally wrong-headed and misguided attempts, however defining of Christian civilisation they have become between the early Fathers and the seventeenth century. According to Scaliger, Vossius and other Leiden thinkers, the worship of trees, heroes, deified reason, and the pursuit of non-Christian philosophy, are all valuable on their own terms, not only as stages leading up to the Christian enlightenment.557 Instead, they are historically and culturally contingent, yet valid forms of genuine approaches to the true divinity, comparable to perfect Christianity and, despite some of them having no access to Christian revelation, not necessarily epistemically inferior (especially given the unchangingly grave epistemic limitations of man’s understanding of God), just as Jewish OT figures are not inferior.558 This was the re-evaluation of paganism, whether historical, heretical or American, that made Vossius the true father of comparative anthropology.559 Unlike the naturalistic and/or historicising explanations of pagan religions by Cyprian, Arnobius and others, Vossius’s Christian, but philologically and historically founded, secularising adaptation of the tools and premises of ancient comparative religious anthropology, including Euhemerus, Plutarch, Pausanias and others, was not predicated on an inductive bias against non-Christians’ facts and methods.560

Vossius’s De theologia gentil et physiologia Christiana; sive de origine ac progressu idololatriae ad veterum gesta, ac rerum naturam, reductae; deque naturae mirandis, quibus homo adducitur ad Deum, first appeared in 1641 in Amsterdam. It was dedicated to the Church

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558 For Vossius’s application of Euhemerism to the Judaism-Christianity transition with Paul, see Wickenden, Vossius, 113.


of England, as negotiations about Vossius’s appointment to a post were ongoing. Admiration for this book has not ceased since its first publication. Richard Westfall and Richard Popkin continue a line of praise that is uninterrupted since Cudworth, Newton or Edward Gibbon. Popkin describes it as “first, a taxonomical listing and analysis of the varieties of polytheism and, second, an attempt to show that the personages and activities of ancient pagan religions are degenerative fictions derived by a variety of reductive processes from the original of all religions – the Mosaic religion.” Rationalising all Jewish and Christian characters, after and including Moses, had an obvious secularising effect. The reception and afterlife of *Theologia Gentili* confirms that much. However, there is a consistent “physiological” and natural scientific aspect to the book that should not be neglected. Vossius declared that

> it became clear to me that divine providence, which I knew to be mirrored in history, shines forth in every age; from which I inferred that the human mind also, which is created in the image of God, should range through the whole of history.\(^{562}\)

Vossius’s announcement of *Theologia Gentili*’s agenda has a double meaning. First, Vossius draws on the humanist tradition of anthropology, highly sophisticated by his time, to systematically describe man and man’s mental operations (as manifest from history), as a part of nature. Second, in so doing he follows the Baconian and Scaligerian commitment to the comprehensive overview, and to the construction of a method that accommodates future additions of natural, historical and theological facts. Given the combination of natural science, observation, history, and the history of religions, and this new methodology’s commitment to comprehensiveness, Vossius’s demystification of Judeo-Christianity claims and acquires the authority of science, in a sense that is recognisably close to its current meaning.\(^{563}\) Vossius systematised the natural or intellectual variety observed in man, and put Christianity squarely inside the system that emerged; not above, outside, of another kind, or otherwise special. Compared to previous historicisations of Christianity, Vossius’s had the approval of the natural sciences, including the science of human epistemology and religion, as one of its indices and consequences.\(^{564}\)

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564 Rademaker, *Vossius*.

564 Another inference is that any man can examine the State of Nature through introspection. Wickenden, *Vossius*, 160. Simplified, the structure runs: If we collect all or many historical accounts, and use them to historicise all religions, then the resulting totality and schematics of faith will show the mind in operation. This is a natural science
Theologia Gentili was accompanied by his son’s translation and edition of Maimonides’s work on idolatry. To my knowledge, the connection has not been well explained. It is not simply the case that Vossius called his otherwise dispassionately or even approvingly given account of pagan religions a ‘progress of idolatry,’ and attached his son’s translation of a loosely connected text on the same subject. Rather, Maimonides’s account of idolatry as a mental falling-away from God that is both an historical and an ever-present danger, caused by man’s ignorance and epistemic hubris, informs Theologia Gentili directly. (On a controversial Arminian note, Vossius, like Grotius in De veritate, points to those who mistake ritual and dogma for religious truth as suffering from one of many forms of the same falling-away.) Like Cunaeus famously did with De republica Hebraeorum, albeit more politically, Vossius’s Theologia Gentili also energised the early modern study of Maimonides on a subject that connected naturally with Selden’s De iure naturali, published the year before (1640).\textsuperscript{565} Popkin’s comparison of Theologia Gentili to Selden’s De diis Syriis (1617) makes valuable connections, but these are limited to techniques of demystifying Christianity through historical comparisons. In this study, Vossius’s works function as an invaluable exemplar for the complex early modern evolution of the historical anthropology of religions, which sheds light not only on Selden’s Noahide Precepts in De iure naturali, but also on his puzzling use of the figure of Noah in Mare clausum.

As mentioned, Selden’s strategy in Mare clausum, I.viii is to rehabilitate the value of fables and myths, refute the accusation that this opens the door to atheism, and turn Genesis – including the account of the origins of private property he earlier based on it – into a fable. Though he draws heavily on Lactantius, he does so for a different purpose than neoplatonic syncretists. He quotes from Div. Inst. I.xi:

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\textsuperscript{565} Popkin, “Crisis,” 28.
Nam etiam *Vera sunt quae loquuntur Poetae* (ut rectè Lactantius) sed obtentu aliquo specieque velata. Et sic veritatem mendacio velaverunt, ut Veritas ipsa persuasioni publicae nihil derogaret.\(^{566}\)

This passage is interesting for two reasons. First, it never appears in Lactantius in this form. Beside minor adaptations, Selden moves the second sentence, originally in *Div. Inst.* I.xi.4, after the first, originally in *Div. Inst.* I.xi.5.\(^{567}\) The context of the first sentence (the second in Selden’s citation) is Lactantius showing that the poets must be transmitting an obscured but truthful fact about Jupiter, Neptune and Pluto, who agreed to a division by lot to hold the heaven, the sea and the nether regions, respectively. As land is not mentioned, Lactantius argues, the deal must have taken place on land. Heaven, sea and the underworld must refer to geographical regions, and the gods emerged from historical figures. The parallel with Noah’s sons, whom Selden discusses immediately earlier and after this Lactantius mis-citation, is not spelled out yet in *Mare clausum*, I.viii, but it is clear and irresistible. Selden indicates from the start the historical kernel and fabulous character of the biblical story. (As discussed below, he later goes on to state these features explicitly, after lengthy pre-emptions of inevitable charges of atheism.) It also reminds the reader of the start of the previous chapter, where Selden wrote that both Jewish and Christian religious government is necessarily deceitful, in order to protect public order from the inquisitiveness of all human reason.

Selden summarises Lactantius’s argument, and concludes that both land and sea were distributed with an historical agreement. He cites Euhemerus in support, recorded and translated by Ennius, and also referenced by Lactantius. Next, Selden inserts a longer passage from Lactantius. This passage is also significantly reworked, although Selden’s purpose is not always obvious. For instance, Lactantius compares Neptune’s kingdom to the unlimited maritime powers of Mark Anthony (83-30 BC). Selden changes the name to Pompey the Great (106-48 BC), which is historically more plausible, but constitutes another odd case of silent and purposeful mis-citation.

According to Selden, the writings of Euhemerus and Ennius’s translation were destroyed by the priests, who also accused Euhemerus, Diagoras and others of atheism. The echo of Selden’s own treatment after the scandalous *History of Tithes* is hard to miss in this bitter passage. Selden also defends Euhemerus from Plutarch’s charge that he made up the

566 *Mare clausum*, I.viii, 33. In Nedham’s translation: “For (as Lactantius saith well) even *Those things whcil the Poets speak are true, but cover’d under a certain veil or Figure. And yet they have so veiled the Truth with Fiction, that the Truth it self might not take off from the common belief of the People.*” *Dominion*, 47.

567 The originals read: “*Sic veritatem mendacio velaverunt, ut veritas ipsa persuasioni publicae nihil derogaret.*” And several sentences down: “*Vera sunt ergo quae loquuntur poetae, sed obtentu aliquo specieque velata.*”
nation of Panchaeans, upon whose island the Triphylian temple to Jupiter once stood. This temple houses the inscription on the golden column on which, according to Euhemerus, Jupiter recorded his deeds. As Selden points out, the existence of this place is central to Euhemerus’s, and therefore Lactantius’s story.\(^{568}\) The next key move, the application of these mythographical instruments to the Bible, happens not under the aegis of Lactantius but a lawyer, Selden’s contemporary.

As briefly mentioned above, early modern approaches to the long-standing tradition of biblical exegesis in legal reasoning had a twin context, namely the debate over the status of natural reason and Roman law. Joannes Gryphiander (1580-1652) is seen as a pioneer both in adapting Roman law to modern conditions, and pointing out its limitations.\(^{569}\) His advocacy of reforming law through a better knowledge of nature, including the mutability of rivers and seas, has been contrasted with Bartolus’s use of geometry as the right pattern for legal science. This was, however, a practical point, rather than an act of giving up on reason in the face of mysterious and uncontrollable nature. In *Tractatus de insulis* (Frankfurt, 1623) Gryphiander argues that prescription requires discovery (*invenire*) and actual occupation (*corporalis apprehensio*), reducing the complexity of the matter which, according to some of his contemporaries, also involved mental occupation and hierarchies and types of signs of the will, and the ability, to occupy and own. Selden first touched on this undesirable complexity of the legal debate around prescription when he referred to Aerodius’s discussion of the controversy surrounding the capture of Acanthus, where one Greek ran bodily to the gate to claim the abandoned city, while the other threw a javelin into it.\(^{570}\) Much of *Mare clausum*, as indeed Grotius’s *Mare liberum*, is taken up with distinguishing legitimate from illegitimate occupation and prescription. Gryphiander’s position has the advantage of being relatively simple, which may be why ch. XIV of *De insulis* is cited often, whether in agreement or dissent.\(^{571}\)

Another reason could be that *De insulis* is a dense collection of learned *loci* organised to cover issues connected with islands from a lawyer’s point of view. It is a method, in the sense of a handbook or guide, occasionally interspersed with Gryphiander’s own arguments. Grotius’s *De iure belli ac pacis*, Vázquez de Menchaca’s *Controversiarum Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, 2011), 222-5.

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\(^{568}\) Selden’s gloss (f) refers to Vossius, *De Graecis*, l.xi.55-56 (1624 ed.), as the pertinent authority, without noting that Vossius here actually quotes from Lactantius, *Div. inst.* l.xi.


\(^{570}\) *Dominion*, i.iv.21-2.

\(^{571}\) From Grotius, *De iure belli ac pacis* (1625), to the International Commission of Jurists, *For the Rule of Law*, issues 24-31, 28.
Despite their number, they support their arguments more directly than Gryphiander’s *loci* do. Gryphiander’s book seems closer to a ‘method’ than to a systematic legal treatise.\(^{572}\) One should therefore exercise caution when tracing Selden’s inspiration to Gryphiander. For instance, *Mare clausum*, I.xiv draws heavily on *De insulis*, but the selection of *loci* and their legal interpretations are Selden’s. Selden uses the clear categories expressed in *De insulis*’ chapter headings as Gryphiander intended, i.e. to mine classical and contemporary *loci* from which to construct his own argument. Selden’s engagement with Grotius, by contrast, is about the argument itself. *Mare liberum* can conceivably be used as a small repository of legal *loci*, but unlike *De insulis*, its primary function is to advance a specific argument.

Discussing the fabulous age, Selden invokes Gryphiander’s use of Homer’s lines on Neptune.\(^{573}\) Selden here reveals that following Lactantius’s debunking of fables it is not he, as implied earlier,\(^{574}\) but Gryphiander who equates the three Greek gods, Jupiter, Neptune and Pluto, with Noah’s three sons.\(^{575}\) Selden can now explicitly call Gen. 10 a fable (*in fabula illa*).\(^{576}\)

Peter Pett’s (1630-99) *The Happy Future State of England* (1688) puts Gryphiander to similar use, but with instructive differences. Pett cites *De insulis* XXXII, “De mirabilibus insularum,” to defend St. John from the charge that, like other island-dwelling soothsayers, he wrote Revelations on Patmos due to its noxious vapours. Pett confesses that he dares not speculate on the meaning of Revelations, decries English “*Fanaticks,*” and predicts that those “drunk with *Enthusiasme* will not be again allowed to make all things reel into Confusion.”\(^{577}\) Pett actualises the debunking potential of Gryphiander’s mythography for *politique* irenicist aims, whereas Selden does it to support a legal argument. They both secularise; but Selden’s equation of Noah’s sons with Jupiter, Neptune and Pluto does so unapologetically. In Selden, both sets of brothers fall prey to the debunking principle:

Other matters there are in the *fabulous time*, which beeing spoken of the Gods, may seem to shew, what opinion the Antients were of touching the right and custom of

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\(^{573}\) Gryphiander, *De insulis tractatus*, *ex iurisconsultis, politicis, historicis et philologis collectus* (Frankfurt, 1623), XXXI §74, p. 490.

\(^{574}\) *Mare clausum*, I.viii, 47.

\(^{575}\) Gryphiander, *De insulis*, XXXI §75.

\(^{576}\) A decade later Bochart, by contrast, insists that Greek stories are ridiculous fables, but Gen. 10 is reliable. Shalev, *Sacred Words*, 176-8. While this contrast brings out the secularising significance of Selden’s move, the elaborate process he used to neutralise Genesis in *Mare clausum* I.viii highlights his commitment to history as a master discipline, insofar as it complements his refusal in *Mare clausum* II.i to consider non-biblical historical sources that pre-date Julius Caesar, because they are “too obscured with Fables.” *Dominion*, II.i.189.

men in this particular. For, when they cloth their Gods with the persons of men, they commonly speak such things of them as belong unto men.\(^{578}\)

Selden’s other crucial move in this chapter is to begin to reinterpret his sources in order to transfer sovereignty from gods and rulers to the people. He criticises Lactantius for comparing Neptune with Pompey (though Lactantius’ comparison was with Mark Anthony), not with the People of Rome (*Populi Romani*). He introduces and keeps the theme of popular sovereignty in the foreground, before he develops it later in *Mare clausum* at great length.

V.2.3 Reconstructing sources of law

V.2.3.1 History becomes law

Selden begins his account of public dominion over the sea in historical times with the Cretans. He carefully shows that the historical understanding and practice of dominion covers the right to make rules, collect tolls, and control the number of ships on the sea, analogously to the meaning of sovereignty in overseeing law, taxes and armies on land. Minos, king of Crete, set a precedent when he took first possession “of that part which was not yet possessed but remained vacant (from whence this kind of Dominion doth arise).”\(^{579}\) Selden takes care not to contradict his earlier statements concerning Adam’s and Noah’s dominion, Noah’s transfer of full title to his sons, all men’s communal property in use and fruits, and their ability to claim private property in some unspecified way. However, he does not offer a coherent account of the transition from “fabulous” to historical time, nor an explanation of how some parts of the sea could have remained vacant (not owned) after the world was divided among Noah’s three sons.

It is remarkable that Selden does not engage here the competing mythical genealogies beloved by his contemporary peers. The most straightforward, and at the time usual, option for Selden would have been to make a direct claim to British dominion over the sea by tracing Noah’s sons’ genealogy to a mythical English government.\(^{580}\) Given Selden’s secularising agenda, it was good strategy as well as good scholarship to avoid religious partisanship. It would have also undermined Selden’s view of law as a changing and evolving corpus. It would

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579 *Dominion*, I.ix.54.

have, however, made it much easier to support the claim that not only had Britain full title over the seas, but at the time of writing it was the only state in the world to have this sort of exclusive and historically justified dominion. The difficulties of making this claim are greater than the Spanish and Portuguese claims, even in their extreme form. In addition to millenarian, chosen nation and other exclusivist claims, the Iberians also had papal bulls in support.\(^{581}\) The opportunity cost of Selden’s eschewal of religious partisanship, and his refusal to offer a nationalist biblical exegesis in *Mare clausum*, was therefore considerable.\(^{582}\)

After Minos and the Cretans, Selden names 17 nations that had private dominion over the sea, “accomplishing among them all above five hundred and sixtie years without Intermission”: Cretans, Lydians, Pelasgi, Thracians, Rhodians, Phrygians, “Cyprians,” Phoenicians, Egyptians, Milesians, Carians, Lesbians, Phoceans, Corinthians, Ionians, Naxians, Eretrians, and Aeginians.\(^{583}\) Selden names his main sources as Eusebius and Africanus, and his references are mostly to Scaliger’s *Thesaurus Temporum* (1606)/ Selden notes that the beginning of this chain, with Minos, coincided with the time of the Judges of Israel. In *Mare clausum*, Selden often relates a given sea-lord nation’s period to Jewish history. Thracians belonged to the time of Jeroboam, Rhodians to the reign of Jehosaphat, the Cyprians to Joas, Phoenicians to Uzziah, Carians to Hezekiah, the Phoceans to the Babylonian Captivity. Yet Selden also remarks on the importance of Rhodes for international law, Phoenician technical improvements in seafaring, and tries to calculate the period of every nation’s sovereignty over the sea.

\(^{581}\) For present purposes, the Iberian arguments for and against the legitimacy of occupation based on papal bulls supporting Iberian proselytising are sufficiently summarised in the secondary literature cited, for instance W.G. Grewe, *The Epochs of International Law* (revised ed., Gruyter, 2000), 233–7. A full comparison with Iberian non-secular imperialism is greatly desired, but beyond the scope of this work. Reference will be made to Vitoria, Freitas and others only as and when relevant to Selden. It is, however, useful to note that von der Heyde in “Discovery,” 451 is right to point out that the legal issue of papal donations precedes Alexander VI’s famous *Inter caetera* (1493). To be able to specifically ignore papal donations in the New World, Selden could turn at least as far back as Bartolus de Saxoferrato (1313-1357), whose “De insulis” was reprinted numerous times in *Consilia, quaestiones et tractatus* (e.g. Venice, 1593, vol. 10, 137-41). Selden’s sometimes explicit, sometimes implicit insistence on effectiveness as a precondition of *de iure* occupation, which allows him to side-step much of the New World problematic, can come from the same Bartolus treatise.

\(^{582}\) For Ronsard, Hotman, Becanus and others who derived such theories of exceptionalism see Maurice Glender, “Europe, or How to Escape Babel,” *History and Theory*, 33:4 (1994), 5–25. Also matches Janus, and Titles! This is the crucial point missing from the account of Selden’s linguistic theory in the otherwise excellent Daniel Droixe, *Souvenirs de Babel. La reconstruction de l’histoire des langues de la Renaissance aux Lumières* (2007), ch. 4.

This is not to say that Selden shrank from a fight. In the case of Minos, he picked several. A careless scribe, Selden posits, must be responsible for distorting the passage in Jerome’s translation of Eusebius’ *Chronicon*, Book II: “Minos Mare obtinuit & Cretensibus leges dedit, ut Paradius memorat, quod Plato falsum esse convincit.” (*Mare clausum*, i.ix.55), Using Scaliger’s *Thesaurus temporum*, but castigating him for missing these errors, Selden first conjectured that *para Dios* was jumbled into the name of a non-existent writer. The salient passage in Plato’s *Laws* confirms that Minos’s laws were not recorded by a “Paradius,” but received from Jupiter. Second, Selden must accordingly change the translation from *convincit* to *affirmat*, from “which Plato proves to be false” to “which Plato affirms.”

\(^{583}\) Dominion, i.x.57.
We discussed earlier how the practice of ancient Rome, as a store of precedents, is a more valuable source of international law for Selden than the Roman legal writings are as a source of authority. Selden cites and reviews these texts critically. Though written by historians, they are subjected to historical criticism as much as any other source. When Dionysius Halicarnassus calls Rome “Ladie of the whole sea,” Selden explains that he is using a hyperbole that is nevertheless “a clear Testimonie of a very large Sea-dominion.”\footnote{Dominion, I.xiv.78.} Grotius, Selden continues, is therefore wrong in De iure belli ac pacis, II.iii.§15, to argue that these examples “do not prove a possession of the Sea or of a Right of Navigation,” but instead are contracts whereby a party gave up not only its particular right to dominion in favour of the other party, but also its right to the same sea that originally derived from holding the sea in common with all mankind.

This may seem an odd passage to cite and refute. Selden’s Mare clausum is an attack on Grotius’s Mare liberum, and there are many other passages he could have cited to illustrate and support his disagreements. Moreover, Grotius’s point could have been adapted to support Selden’s argument. It would have enabled Selden to argue, for instance, that all other nations but the British have alienated their dominion. The customs, treaties, coins, inscriptions, and other evidence that Selden cites in Mare clausum could have easily been selected and arranged to support this line of counter-argument. Instead, Selden reduces the point he ascribes to Grotius ad absurdum: if dominion has been lost through such contracts, and another party’s fishing for instance can be banned by the force of such contracts, not from dominion (as Grotius interprets Ulpian), then dominion is meaningless. Enjoyment and the right to hinder others must constitute dominion, otherwise the category is empty.

Selden backs up this claim with a line from Lycophron’s Cassandra, predicting that the people of Rome will have dominion over both land and sea. The reference is doubly odd. First, because Selden gets little support by citing a prophecy in a poem for the methodological argument that Grotius handled his sources with insufficient historical criticism. Second, in another case of Selden mis-citing a classical source on a single ruler’s empire as if it concerned an empire under popular sovereignty, in this play Cassandra is predicting the global empire of Alexander the Great, and not of the Roman people. Indeed, Selden’s subsequent references, to Suetonius, Aristides, Themistius, Procopius, Nicephorus Callistus, Julius Firmicius, Oppianus, Virgil, Claudian, Constantinus Monomachus, Varadatus, Constantinus Porphyrogenitus, Nicephorus Gregoras, and so forth, are all passages that describe the worldwide empires of single individuals, and not populations.
Selden continues his systematic reinterpretation of classical loci on empire as if they supported popular sovereignty by criticising Herodotus’s statement that except for Minos, Polycrates was the first to desire dominion over the sea. Selden objects that Herodotus must have meant the first king to do so, since all the states he previously listed had already held that dominion under popular or aristocratic government. Selden next launches into a discussion of Spartan and Athenian dominion over the sea, coveted by both, but open only to one. He moves from an account of concurrent historical rivalries to the scheme of a succession of single rulers over the sea. Thereby he gradually builds a customary law of nations that supports the British claim to sole dominion, without claiming to go back to the beginning of history to do so. At the end of Mare clausum, I.xi Selden reveals that Africanus and Eusebius, whom he named at the very beginning of Mare clausum, I.x as the source of his list of Lords of the Sea, probably took the list from Castor Rhodius. He cites viri docti in support of this view, but refers only to Scaliger, Vossius (Historicus Graecis again, given by Selden as I.25, though in fact I.24) and to alii. Selden conjectures that in his lost work Castor must have added Athens and Sparta to the list, which brings it to a total of 20 successive nations with full and single dominion.

In a crucial departure, Selden transforms the deeply rooted, time-honoured analogies between property held in common, yet privatised by temporary enjoyment, and occupation of seats in public baths and theatres. Crossing the sea and even fishing is conventionally likened to both. Selden undercuts the potential use of this hallowed trope to counter the claim of exclusive British dominion over the seas by showing that the types of dominion and the transition between them described in these analogies “are proper and peculiar to the people of Rome, not common to all men.” Selden draws on Sextus Pomponius (2nd cent. AD) and Ulpian (c. 170-223), imperial lawyers, to revisit the analogy between theatre (or bath) and the sea. He develops the point with reference to Celsus (2nd cent. AD), who emphasised popular sovereignty. Yet when Selden insists that the analogy applies to the Roman people, not to all men, he writes in his own name, and before he brings in Celsus. When he does, he quickly proceeds from Celsus’s confirmation of his own insistence on popular sovereignty to a reinterpretation of Celsus, who assigned only the shores to the Romans, and allowed the air to all men. According to Selden, the earlier statement modifies the latter, meaning that Celsus advocated popular sovereignty over shore, air, and seas alike.

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585 Herodotus, III.122.
586 Dominion, I.xi.65-6.
587 Dominion, I.xiv.87.
588 Ulpian reproduced much from Pomponius. The first modern edition of Ulpian was by Jean du Tillet in 1549. Selden had been fond of Tillet at least since Titles of Honor (1614).
Selden’s emphasis on popular sovereignty becomes even more apparent when we compare this chapter with Grotius’s *Mare liberum*, chapter I, to which this is a direct reply, tackling the same subjects of occupation and shore, sea, theatre and land through roughly the same *loci*, but with even greater emphases on popular sovereignty. A quick reference to Scaevola (?-82 BC), Aristo (in the Digest), and “Greek lawyers” concludes Selden’s argument, before a summary of legal sources and conclusion:

Whereby it is made manifest, as well out of the determinations of Lawyers, as the Transcripts of Leagues and Treaties, and the writings of Historians, Orators, and Poëts, that a Dominion of the Sea was in use among the *Romans*, after the same manner as the Land.

Earlier we saw Selden’s insistence on popular sovereignty, including dominion over the sea. To further erode *Das Selden Rätsel*, Christianson’s book can be brought in at this point to show that Selden’s work on the history of English law, and his active defence and enlargement of Parliament’s powers, were cut from the same cloth. Christianson shows how Parliament’s control over the seas, and cognisance over taxes required to defend it, are themes that run through *Mare clausum*. The ironic tone noted above in Selden’s discussion of Charles I’s Ship Money, and Selden’s stress on the people as the seat of dominion, complete the jigsaw puzzle of the coherence and trajectory of Selden’s writings. Surprisingly, although *Mare clausum*’s first draft was written for James VI and I around 1616-9, and the second for Charles I in 1635, Selden’s arguments that sovereignty over the sea is fundamentally popular sovereignty, and his irony in places where one would expect him to support Ship Money, are both integral to the text, and unlikely to have been absent from the first draft. The irony is nicely exemplified by Selden’s derivation of the concurrent rights to sea and to taxes, in exchange for protection, from the Glutton’s speech in Antiphanes’ comedy.

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589 See e.g. *Mare liberum*, Liberty, 27-8.
590 *Dominion*, I.xiv.89. Also see I.xv.90! 102, 106.
591 Paul Christianson, *Discourse in History, Law and Governance in the Public Career of John Selden, 1610-1635* (Toronto, 1996), 270-81. Popular sovereignty and irony are among the elements of *Mare clausum* that make it difficult to accept i.a. Fulton’s view of Selden as a coward who wrote *Mare clausum* to get out of jail. Fulton, *Sovereignty*, 367-8.
592 One should perhaps add Selden’s notion that tithes paid to clergy are also founded on the people’s consent to pay the clergy, not on the monarch’s will, let alone divine ordainment. *Tithes*, Preface, x, and throughout.
593 Although there are oblique references that could be read with a contrary sense. E.g. *Dominion*, 73-4: sovereignty over others and over the sea go together. This does not mean this is how it should be, or that popular sovereignty is thereby excluded. This is a careful formulation typical of Selden.
A greatly telling silence in Selden is the biblical justifications of papal property. He categorically ignores them. Selden does cite Roman and canon law to discuss “the Pope’s Sea” as any other Italian maritime state’s. He rejects Graffius’s reinterpretation of Mare Nostrum as mare universim Christianorum, and sides with the Catholic lawyers Franciscus Toletus (1532-92), Francisco Suárez (1548-1617), Antonius de Sousa (1580-1632), Bartholomaeus Ugolinus (fl. 1600) (at least the first three of whom are Jesuits), to interpret the bull Coenae Domini, which excommunicates pirates infesting papal waters, as referring to the Pope’s private patrimony. Selden ignores all theological contributions to this debate, treats the papacy as a secular state, and its private dominion as another precedent for his argument on customary international law. This is secularisation by inversion and omission, akin to Grotius’s treatment of church-state relations in Abraham and Melchizedek. What Selden does choose to emphasise is that the citizens of Rome had the right to fish in papal waters, despite the Pope’s private dominion. As in Grotius’s De iure praedae, legal claims based on corpus Christianorum and respublica Christiana are inadmissible. Selden rejects them in favour of private dominion, and does so on the basis of canon law, avoiding every part of the complex biblical exegetical tradition concerning the church’s property. Furthermore, he limits the pope’s private dominion by the people’s right to enjoy the sea’s fruits.

V.2.4 The new, imperialist public law of nations

Selden in England writes in favour of dominion over the sea. Let the Dutch answer. I am now concerned with Swedish affairs.

V.2.4.1 Free trade

The two main lines of argument in Mare clausum sketched out above, namely the Bible’s neutralisation and closed seas, combine in Selden’s position on free or unfree trade. Here he engages the Bible-based legal tradition directly. A conventional locus on free trade was Num. 21:21-35, the war of Israel against the Amorites.

21 And Israel sent messengers unto Sihon king of the Amorites, saying,
22 Let me pass through thy land: we will not turn into the fields, or into the vineyards; we will not drink [of] the waters of the well: [but] we will go along by the king’s [high] way, until we be past thy borders.

23 And Sihon would not suffer Israel to pass through his border: but Sihon gathered all his people together, and went out against Israel into the wilderness: and he came to Jahaz, and fought against Israel.

24 And Israel smote him with the edge of the sword, and possessed his land from Arnon unto Jabbok, even unto the children of Ammon: for the border of the children of Ammon [was] strong.

The question is whether the war was just, given that Israel was denied right-of-way. Selden refers to Gratian’s famous Causa 23, Quest. II and III, which commented on Augustine’s justification of the war and served as a key commonplace for medieval and early modern treatments of just war. Selden adds the reference to Grotius, De iure bello ac pacis, II.i.§13. Grotius is discussing here the capacity of rivers to be subjects of private dominion. If considered territorially, they are subject to the sovereign. If seen as running water, their use must be free, like lighting one’s candle from another’s. Grotius draws from this the right of free passage over both land and water in case of necessity, such as expulsion, travelling to a land for rightful occupation, commerce, and just war. Grotius’s account of Israel’s war against the Amorites occurs in this context. His use of Num. 21 here is criticised by Barbeyrac, because Sihon not only forbade passage, but marched out against Israel; and because as GOD had given them the Land of Canaan, with express Orders, not only to destroy the seven accursed Nations, but also to combat all Opposition to the Execution of the Designs of Heaven, their Case was extraordinary, and such as cannot reasonably give Occasion to a general Rule for deciding the Question in hand.

This was a shrewd analysis of one method by which Grotius subverted the Bible’s use in international law. Welwod pointed out another, namely the elimination of Scripture as an

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597 References in F.H. Russell, Just War in the Middle Ages (Cambridge, 1975), 21-2, 64, 72-3, 91, 100, 221-2, 225.
598 J. Barbeyrac, note 3 to De iure bello ac pacis, II.i.§13, in ed. Barbeyrac, Grotius, Le droit de la guerre, et de la paix, 236. This Barbeyrac note first appeared in his 1724 French translation of De iure bello ac pacis. See also Tuck, Grotius, The Rights of War and Peace, 440fn3.
599 One can read this as Grotius replacing the Iberian justifications of conquest, made with reference to the divine and papally approved right to access foreign lands to proselytise (summarised in Grewe, 233-7), with rival claims to
acceptable source of international law. Unlike Barbeyrac, Selden accepts this Grotian claim as a methodologically valid legal proposition – despite the fact that this is one of the rare instances where Selden himself engages the tradition of biblical exegesis salient to this legal point. After adopting Grotius’s inversion of universal and particular laws, Selden next refers to Gentili, Bodin, Vitoria, Solórzano, Molina and others, because this passage from Num., and the just war arguments built on it, played a prominent role in framing the early colonial legal debate over the right of merchants and evangelists, including their access to the Indies. In Selden’s review of the literature not only the rejection of missionaries, but the denial of commerce was also used to justify Spanish conquest.

Selden raises two objections to the argument that this was a just war against the Amorites, who denied Israel right-of-way. First, private dominion over the land was not affected by the issue. Second, free passage is not a positive, and its denial is not a negative, externality.

And for any man to allege here, what is commonly talked, of the lighting of one Candle by another, of the not deying a common use of Water, and other things of that nature, it is plainly to give over the disquisition of Law and Right, to insist upon that of Charite.  

Selden here is responding to Grotius’s use of the same references and images in De iure belli ac pacis, II.ii, referred to earlier in Mare clausum, I.xx. Here, Selden effectively lumps Grotius together with the Iberian lawyers. Against Grotius he pits Gentili, who is right to say that Reason of State trumps charity, and Gratian and Augustine would be right only if there were no possibility that a passing army could do damage. Selden shows that customary international law recognises this condition by citing one treaty, namely the 1609 Treaty of Antwerp between 

free trade, equally based on biblical exegesis, but in an ironic register. Iberian claims are thereby doubly subverted, with merchants replacing missionaries, and the biblical justifications for both shown to be inapplicable.  

601 Somos, Secularisation, 388-91.  

602 Dominiun, I.xx.124.  


604 Alberico Gentili, De iure Belli Commentationes Tres (London: n.a., 1589), I §19.
Spain and the Netherlands, in preparation for which *Mare liberum* was published.\footnote{604} The provisions about the contracting parties’ right to ban access in order to avoid fear and jealousy, Selden points out smugly, support his point that dominion entails discretion over granting access to merchants, Christian proselytisers, and all strangers.\footnote{605} He brings in Aristotle’s *Politics*, VII.6 and several passages from Bodin’s *De republica* to corroborate that this right is a part of sovereignty, and to refute Vitoria’s justification of Spanish conquest “for a denial of commerce.”\footnote{606} Selden writes that Juan de Solórzano Pereira (1575-1654) follows Vitoria in this respect. Solórzano appears again when Selden lists other Spanish justifications for their conquests: “For, they pretend also a Right of Discoverie, primarie occupation, Conversion to the Faith, and other things of that nature, besides the Donation of the Pope. Of all which, *Solorz anus* treats at large.”\footnote{607}

Solórzano’s *De Indiarum iure, sive de iusta Indiarum Occidentalium inquisitione, acquisitione, & Retentione* appeared in two volumes, the first in 1629, the second in 1639.\footnote{608} Current assessments of Solórzano vary widely. Gordon considers him a realist, who placed the fact of occupation above papal and other justifications.\footnote{609} Alvares reads *De Indiarum* as prioritising papal authority above all other actual and possible justifications for Spanish and Portuguese conquest.\footnote{610} Muldoon regards Solórzano as a medieval just war lawyer hopelessly behind his more enlightened Salamanca and other neoscholastic Iberian peers, including Vitoria.\footnote{611} Pagden portrays Solórzano as more radical than Las Casas or Vitoria, attributing a potential to American Indians to progress to a state wholly equiparant with that of Catholic Spaniards.\footnote{612}

Selden’s choice of Solórzano as Vitoria’s mouthpiece and the representative of Spanish claims deserves further study, as does his pitting of the authority of the Salamanca Jesuit Luis de Molina (1535-1600) against Solórzano. Molina’s position on the right to traverse a sovereign’s land or sea without permission derives from his displacement of the divinely

\footnote{605} He calls the result of this treaty a League, in *foederibus*, which is odd. Harrington also considers the United Provinces a league in parts of *Ocean*, and a republic in others. Same in Madison and Hamilton in *Federalist Papers*. This may be one reason why provincial republicanism, as learned from second-tier Italian city-states and adapted to local and colonial government, remained ideologically distinct from the uncomfortably straightforward proposition to model Britain and/or its empire on the federalism of the United Provinces, which could have been easily seen as a continuation of the Italian model. Rommelse, “Mountains,” 253.
\footnote{606} *Dominion*, I.xx.125.
\footnote{607} *Dominion*, I.xx.126.
\footnote{608} Selden’s reference to lib. 2. cap. 20. §55 must be wrong, because §55 has a different subject matter. Lib. 2. is unproblematic, as it is part of vol. 1.
\footnote{609} http://blogs.law.yale.edu/blogs/rarebooks/archive/tags/Juan+de+Solorzano+Pereira/default.aspx
\footnote{612} Pagden, *Fall*, 165.
instituted fellowship of men from the state into the church. As part of a post-Reformation
tactical retrenchment of the church from politics, Molina argued that there was no political
organisation in the original status naturae after the Fall, and polities were man-made for purely
temporal ends. ⁶¹³ There was no body of natural law that had content detailed enough to
include provisions for crossing another sovereign’s territory without permission, and could
override civil laws at the same time. Molina anchored trading rights in a supra-political natural
law of nations, the same state of nature in which Locke grounded original property rights. ⁶¹⁴

Selden chose the Catholic thinkers for his contrast shrewdly. ⁶¹⁵ In secularising fashion he
thereby suspended two considerations: the true nature of papal authority, and the
reasonableness of Christianity. Contrasting Molina and Solórzano allowed Selden to focus the
readers’ attention on the Spanish justifications of conquest, with reference to the natural right
to trade, and oppose it to mare clausum without having to consider the religion or
reasonableness of non-Europeans.

Another useful piece of the puzzle is Selden’s difference from other critics of Grotius’s
Mare liberum on this point. In De iusto imperio Lusitanorum Asiatico (1625), Freitas countered
Mare liberum with the straightforward argument that natural law underpins all civil laws;
natural law is universal; and its ultimate purpose is the welfare of all mankind. While Freitas
and Molina both mounted Catholic positions on trade, Freitas, like Selden, regarded the right
to grant and revoke trading privileges as integral to sovereignty, which can be enjoyed by
Christians or pagans alike. Here they both differed from Vitoria’s view of the providential
nature of global trade, among nations that must learn to co-exist or suffer the consequences of
imperfect self-sufficiency. Despite making trade integral to sovereignty, Freitas justifies
Portuguese occupation from the papal delegation of the universal duty to proselytise, joined to
the particular duty to gather allies against Islam. ⁶¹⁶ Another useful compare and contrast
exercise is with Purchas who, unlike Selden, regarded the English as a new Israel, God’s chosen
nation, ordained to spread Christianity by imperial means. In Hakluytus Posthumus, or Purchas

⁶¹⁴ Compare Gabriel Vázquez: prescription is purely civil, and not a natural law. Therefore it cannot be used to
settle disputes between states that acknowledge no common arbitrator. Fulton, Sovereignty, 341.
⁶¹⁵ Shalev argues that Montano’s reconstruction of sacred geography helped him justify Spanish imperialism, and
also criticise its focus on material wealth. Sacred Words, 18, 54; but see 61 on reading Montano’s equation of Ophir
and Peru as an ambiguous justification, suggesting that the New World’s natural resources are providentially meant
for many nations.
⁶¹⁶ De iusto, cap. IX. Another difference between Selden and Freitas is that the latter regards the sea as res
communis. Freitas is either inconsistent, or he demonstrates that the refutation of the universal and natural right to
trade, and the specification of the right to ban or allow trade as a part of sovereignty, need not add up to a doctrine
of mare clausum. The ‘quasi-rights’ and quasi possessio he assigns to the sovereign in De iusto, chapters VII and XIV,
which he tries to define as jurisdiction but not ownership, suggest that he is inconsistent. Alexandrowicz,
*His Pilgrimes*, published in 1625 like Grotius’s *De iure belli ac pacis*, Purchas drew on Vitoria to refute Iberian claims to just conquest, particularly because they failed to spread the faith.\(^{617}\) These contrasts economically adumbrate Selden’s radical originality, and difference from the range of imperial justifications that had the use of religious components in common.

V.2.4.2 Colonisation

Selden is quick to point out Spanish and Portuguese hypocrisy in justifying their conquest from denial of trade, and at the same time denying access to other European nations in both Indies.\(^{618}\) The implications of his counter-argument are worth drawing out. Selden effectively postulates a global public order of sovereign nation-states with the capacity to own everything. When at the end of *Mare clausum*, l.xx Selden traces free passage arrangements to particular contracts instead of universal law, he positions himself on the distinctly modern side of the legal historical debate raging at the least until Carl Schmitt and Ulrich Scheuner. Schmitt famously argued that from an early modern European perspective, *Raumausgrenzungen* divided the world into geographically defined spheres of different types of international law. England and Spain, France and Spain, Spain and the Netherlands could cogently agree that might was right in the New World, while keeping the State of Nature under civilised control in Europe. Admiralty courts of the offending state could and did award compensation, for instance, if the plaintiff could demonstrate that its ship was taken in the sphere of civilised international law. Scheuner, Reibstein, Alexandrowitz, Grewe and others raised distinct objections against this account, which emphasised the ‘lines of amity’ that were specified in numerous treaties between European colonial powers.

While important, none of these objections are wholly convincing. As Grewe points out, Scheuner’s counter-examples to Schmitt come from a later historical period, Reibstein’s indignation is unsubstantiated, and Alexandrowicz’s work on European-Asian seventeenth-century treaties and customary law undermines Schmitt’s model indirectly at best. In my, rather than Grewe’s, interpretation it does so because while the account of reiterated and evolving legal interaction between European and non-European powers is fascinating, it does not contradict the proposition that European treaty-making was often shaped by assumptions containing bias or assessments of non-Europeans as ‘the other,’ thereby strengthening rather than weakening Schmitt’s model of distinct spheres. Grewe’s objections, in turn, are contradictory. On the one hand, he criticises Schmitt for ascribing too much coherence to


\(^{618}\) *Dominion*, l.xx.126.
systems of ‘lines of amity,’ which did not add up “to a philosophy of a geographically determined *ius publicum europaeum*.” On the other hand, he argues that lines of amity did not affect rules of discovery or occupation. Instead,

they gave each nation a formless and geographically restricted right of self-help beyond the line. This right of each State to enforce its supposed rights through the use of force was distinct from the formal *ius ad bellum* and the right to take reprisals. It had the effect of limiting the effectiveness of the peace treaties to Europe.

The logic behind this limitation was to provide a shield for European peace against increasing conflicts overseas, and to protect the political balance of power from the impact of the unpredictably shifting pattern of forces there. The legal status of the overseas colonial sphere was not altered as a result.619

There are at least three problems with this objection. First, it contradicts Grewe’s other objection concerning the coherence of the new European-made international law. Second, it effectively replicates Schmitt’s argument for distinct spheres. Finally, it ignores global theories of law developed in response to occupation and colonisation, and in anticipation of its continuance. Grotius’s *Mare liberum, De iure belli ac pacis* and Selden’s *Mare clausum* and *De iure naturali* offer such theories.

Lines remain essential tools for controlling new lands.620 Instead of lines of amity, Selden concentrates on the capacity of the whole world to be territorially divided by latitudes, longitudes, and the geometry of triangles they enable. In *Mare clausum*, I.xxii he praises the compass, and the reports of European settlers in America, for furnishing and expanding the store of geographical information on the basis of which private property can be demarked and occupied. It is after he points out the geometrical capacity of the world to be unambiguously divided that Selden reviews treaties and agreements that establish lines of amity. He cites a few cases to trace the legal custom from the treaty between Rome and Antiochus III of Syria to “the late Agreement betwixt the Kings of Great Britain and Spain” in 1630, before he turns to the bulls of Alexander VI.621 Selden does not question here the validity of these bulls, only cites the part that introduced “an imaginarie Line drawn from the Artick to the Antarctick Pole,”

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620 Alexander VI’s 1493 bull “Inter Caetera” and the 1494 Treaty of Tordesillas are conventional *loci* in the literature on lines as instruments of imperial control. Benton, *Search*.
621 *Dominion*, I.xxii.138 ff.
dividing the whole globe. The whole world is private property from the beginning, and land, sea and air are equally capable of being privately owned. The finite nature of these resources (and of Creation) is why it is naïve and erroneous to posit unalienable rights to perpetually hold some things in common (e.g., the deep seas far from shore), and why international law must assume scarcity as the default condition.

As Tuck points out, Selden was not the first to raise the limited resource argument against Grotius’s *Mare liberum*. Welwod’s *De dominio maris* (1615) incorporates parts of his *Abridgement* (1613) and contains the passage:

> The earth, by the infinite multiplication of mankind, beeing largely replenished, and therefore of necessitie thus divided, and things upon the earth not sufficient for the necessaries and desires of man in every region, followed of force the use of trading upon the seas... For the which... the waters became divisible, and requiring a partition in like manner with the earth.

Though Welwod’s arguments are “pretty shoddy,” according to Tuck, this is not the reason why *Mare clausum* was fervently endorsed by both Charles I and Cromwell. Differences between the two supporters of British imperialism include Selden’s claim that it is only Britain that had full dominion over the seas; that this did not originate in an intermediate term, namely from the necessity to trade; and Welwod’s reliance on the Bible.

V.2.4.3 Imperial law under limited resources

At the beginning of this section we saw Selden in *Mare clausum*, I.xx reject the traditional argument that merchants’ passage across seas is just and cannot be hindered partly due to the common property of all mankind in the seas, and because such passage cannot injure the owner of the seas, even if there was one, in any way. In a modern and decidedly early-imperialist twist, in I.xxii Selden introduces the argument that the seas themselves are a finite resource. They are not like the burning candle from which another man can light his own without diminishing its flame. “Yea, the plentie of such seas is lessened every hour, no otherwise then that of Mines of Metal, Quarries of stone, or of Gardens, when their Treasures

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622 Contrast Grotius’s criticism of the same Iberian use of lines to justify possession: *The Free Sea*, 34.

and Fruits are taken away.”\textsuperscript{624} Caesar came to Britain looking for pearls; pearls and fish are further cases of exhaustible maritime resources. “Where then is that inexhaustible abundance of Commodities in the sea, which cannot bee impaired?”

The Sea (I suppose) is not more inexhaustible then the whole world. That is very much inferior to this, as a part is to the whole, in greatness and plenty. And therefore a Dominion of the Sea is not to bee opposed upon this accompt.\textsuperscript{625}

This is the final piece needed before Selden’s doctrine of closed seas can come to serve early imperialism. In \textit{Mare clausum}, I.xxiii he begins to bring the pieces together by showing that ancient accounts of free and unhindered fishing prove not a positive or a customary universal law, but belong to an early stage of human history when charity \textit{ex officio humanitatis} encouraged sharing, and primitive technology discouraged those practices of private dominion over the sea that \textit{Mare clausum} now codified as international law.\textsuperscript{626}

V.3 Conclusion and outlook

history devises reasons why the lessons of past empire do not apply to ours  

\textit{J.A. Hobson, \textit{Imperialism: A Study} (London, 1902), 221.}

Selden has long been recognised as a key figure in legal history. However, some legal scholars, including Westlake, attribute Selden’s achievements to Grotius. Others give unclear or clear, but radically divergent, explanations of Selden’s importance. This chapter presented Selden’s importance in a new light, as the father of modern imperialism. Five elements of \textit{Mare clausum} were discussed: Selden’s redefinition of property as historically (but not theoretically) always private; his neutralisation of the Bible in legal argument; his Scaligerian reconfiguration of history into the highest source of law, furnishing colonial administrators, lawyers and statesmen with an historical sensitivity and soft imperialism toolkit with which to engage indigenous traditions; his pivotal replacement of the assumption of the co-existence of limited resources (land) with inexhaustible and uncontrollable resources (seas, air, fish and other

\textsuperscript{624} \textit{Dominion}, I.xxii.141.
\textsuperscript{625} \textit{Dominion}, I.xxii.143.
\textsuperscript{626} This is the State of Nature point where Locke instead re-emphasises divine Workmanship, human Stewardship, civil society, and the labour component of property that they infer. John Locke, \textit{Two Treatises of Government} (London: Awnsham Churchill, 1690).
natural goods) with the assumption of universally limited and controllable natural resources, together with the transformation of European sovereignty and colonial prescription claims that follows; and his argument that the customary law of nations supports Britain as the one and only legitimate claimant of dominion over all seas.\footnote{627}{Fulton, \textit{Sovereignty}, 373: “The maritime sovereignty claimed by Selden for the kings of England was of the most absolute kind.”}

However, this colonial advantage was less the achievement of omniscient and omnipresent proto-capitalist oppressive states than a probably unintended consequence of the secularisation first performed to secure domestic stability in states troubled by religious conflict, which included the renegotiation of the powers of clergy and the contestation of sources of law and of the general theory of property.\footnote{628}{It may or may not be useful to note here that \textit{imperium} is more serviceable than “imperialism” in that the former considers domestic and foreign affairs as inseparably joined, while the latter does not. While ancient, medieval, Renaissance and early modern thinkers distinguished the homeland from its overseas commercial and colonial interests, they tended to handle them as integrally connected. Livy’s account of Roman politics and wars or Machiavelli’s republics for increase saw demographics, form of government, education and the economy as intrinsically connected as the American Founding Fathers did. The ability to consider Western states as imperialist aggressors that act in smoothly-run conspiracies to dispossess the poor and the non-Western for uncomplicated profit probably dates from the nineteenth century. In contrast with two-dimensional usages, the challenge for seventeenth-century theorists was to reinterpret “imperium” in a three-dimensional chess game that combined domestic and foreign policy variables and could even replace pieces altogether (including bishops and kings).} Broadly speaking, English and Dutch competitive imperialist advantage was a corollary of the secularisation originally started in order to secure domestic stability in a time of religious conflict. One crucial move was to undermine the biblical foundations of law, from Christian just war theories to the use of the Bible in domestic legitimacy claims. The secularising project to reprioritise natural over divine law, or minimise divine law for the sake of peace and expansion, stands in stark contrast to varieties of international law that posit a radically different ‘other.’ At the least, Grotius’s and Selden’s law-creation strategy of neutralising biblical \textit{loci} deeply embedded in international law, and demonstrating that the Bible’s historicity is either dubious or, when clear, of limited cognisance, are among the many techniques they used to clear the ground for a new type of international law that was universal in scope.

The contribution of Grotius’s \textit{Mare liberum} to free trade arguments make his legacy enduringly relevant to colonialism and international law. One can also argue that Selden’s case for closed seas, and unique British dominion, is a meaningful starting-point to the legal history of British imperialism that ends, or even continues, with American hegemony. One could also feasibly maintain that Grotius’s appeal across religious divides is more formative of eighteenth-century international law than Selden’s development of the Noahide Precepts. Conversely, one could argue that international law was retetheologised in the nineteenth century, and the ecumenist Christian evangelism that Europeans could accept from one another was closer to
Selden than to Grotius. It is also valid to point out that the stadial theory in Grotius’s writings, including his *Defensio capitis quinti Maris Liberi oppugnati a Gulielmo Welwodo*, and the openness of his system to the insertion of other stadial theories, made the new, secularised natural law eminently adaptable to different cultural and legal environments in the course of Western colonialism, without enshrining much systemic protection for the conquered and colonised against being portrayed as occupying a much lower level of development, and in need of thoroughgoing political, cultural and legal tutelage (recall Kipling’s 1899 poem, “The White Man’s Burden”). In this sense, there seems to be little difference between Vitoria’s humane approach to the radically ‘other’ natives, and secularised justifications based on the white man’s burden trope instead of evangelisation.

These debates point beyond this chapter. For present purposes, Selden’s impact on imperialism outweighs Grotius’s to the extent that first, Selden’s *Mare clausum* shaped legal justifications of state policy more than Grotius’s *Mare liberum*; and second, the British Empire, financed, expanded and defended while Selden was its chief legal authority, outweighed and outlasted the Dutch Empire.\(^{629}\) While this argument at first may seem a *reductio ad quasi-absurdum*, it is hard to think of more salient criteria for assessing the *de facto* impact of a legal treatise on early modern, modern, and contemporary imperialism.

It is important to recognise the limits of Grotius’s and Selden’s international law, and the differences between them. It nevertheless remains true that secularising manoeuvres allowed them both to posit a natural law with the potential to be applied all over the world, regardless of Christian specificities. Moreover, their stadial theories were not indeterminate or open-ended. ‘White man’s burden’ raises different issues and tasks than evangelisation. In principle, however backward a people are, in a secularised system of international law they eventually attain equality with their wards, however dubious or accidental markers of civilisation are stipulated. If one must walk and talk like an Englishman to be accepted as civilised, one eventually can. Joining a ‘chosen nation,’ or the Elect, can be harder. Grotius in *Mare liberum* argued that all seas are free. Selden, including the end of *Mare clausum*, I.xx discussed above, argued that they are all closed. Both legal arguments claim global validity, and both break with the strong embedded tradition of using biblical passages to do so. Grotius rules in favour of the Israelites against God in the matter of having to give a formal declaration of

\(^{629}\) Note that this comparison between *Mare liberum* and *Mare clausum* neither characterises the two authors’ entire life work, nor denies the importance of other legal approaches to the same problems, including the “ocean regionalism” of co-existing claims to protect sea routes and maritime networks (Benton, *Search*, ch. 3).
war when a de facto state of war already exists, and in Selden the Amorites were in their right to deny Israel passage.

The new system proved extremely effective in securing non-European co-operation and saving the economic and ideological costs of non-secular commercial and colonial expansion. It created, structured, and maintained the British Empire before its possible nineteenth-century retheologisation. Identifying its distinctive features only provides analytical categories for revisiting not only the strange success of the British Empire, but also the relative decline of Iberian Catholic imperialism and the rise of Enlightenment American, French, and Prussian exceptionalism.

While secularised hallmarks of civilisation represent a significant break with the Christian international law tradition, non-Christian stadal theories of progress were easily adaptable to secularised imperialism. Throughout the seventeenth and eighteenth centuries, Europeans could and did claim prescription and/or first valid discovery or occupation against indigenous groups that were deemed to have a lower form of production (e.g. nomadic), culture (e.g. no writing), or political system (e.g. anarchy, or monarchy). Similarly, there are numerous cases when the early modern secularisation of international law made it possible to accord full recognition to non-Europeans’ right to property, territorially defined nation-states, and sovereignty. It remains to be seen whether the nineteenth-century doctrinal turn in international law – discussed by Alexandrowicz, Grewe, Koskenniemi, and others, and paralleled by the resurgent missionary zeal of imperial powers previously careful to maintain a secular law idiom continued at least in part the stages-based justification of imperialism, or whether Victorian imperial evangelism constitutes a volte-face from almost three centuries of self-consciously secularising imperialist legal discourse, resurrecting in effect sixteenth- and seventeenth-century Catholic justifications of imperialism. Without drawing a comprehensive arc, one can start a pointillist picture of this change by contrasting, for instance, Vattel’s (1758) criterion for being a member of the natural society of nations (namely, a state’s own claim to govern itself by its own authority and laws) with post-Kant and post-Bentham elaborations that the correct hallmark of civilisation is not self-determination but recognition by a club of

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630 This is Grotius’s reading of Deut. 20 in De iure praedae, H.G. Hamaker (ed.) (The Hague, [1604?] 1868), 102.


632 Alexandrowicz, Introduction, 83 and passim.

633 Emer de Vattel, Droit des gens; ou, Principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains (London: n.a., 1758), I: §4.
nations, self-appointed as already civilised.\textsuperscript{634} Even if there were no nineteenth-century reversal to the imperialist doctrines of Renaissance and early modern expansionary Catholicism, at least a common, minimalist Christianity became a defining hallmark of civilisation in positive international law.\textsuperscript{635} Another open question is the relationship of this rechristianisation of public international law to post-Hegelian doctrines of recognition, as another hallmark of civilised statehood.

In sum, considering \textit{Mare clausum} as a ‘Seldenian moment’ has multiple advantages. It exposes the legal cornerstones of early British imperialism’s success, and provides analytical categories for revisiting both the decline of Iberian Catholic imperialism and the strange rise of Enlightenment American, French, and Prussian exceptionalism. It also throws into sharper relief three unclearly but intriguingly connected nineteenth-century imperial developments, namely the stadial theories of progress designed to classify state and non-state legal entities; the European formulation of an ostensibly universal doctrine of recognition; and the rechristianisation of international law that underpinned imperial justifications of occupation, prescription, and war.

\textsuperscript{634} Koskenniemi, \textit{Gentle}.

CHAPTER SIX

HOBBES’S USE OF THE AUTHORISED VERSION, THE GENEVA AND OTHER BIBLES IN LEVIATHAN, PART III

Summary

Few areas of Hobbes’s thought have received as much recent attention as his religion. “The Foole hath sayd in his heart, there is no such thing as Justice” is his famous silent adaptation from Psalm 14.1 that triggered centuries of debate. While the complexity of his thought is widely recognised, there are no elementary and comprehensive studies of Hobbes’s biblical exegesis.

The exegetical techniques even within Leviathan, his most discussed work, have rarely been subjected to systematic analysis. This chapter hopes to show the importance of such work, and illustrate its potential by adumbrating some of its implications for the political and legal theory supporting seventeenth-century English secularisation and imperialism.

VI.1 Introduction

Selden was one of the few thinkers Hobbes admired. A systematic textual study of their reciprocal influence remains a desideratum. While some direct textual connections will be noted, my objective here is to examine secularisation in Hobbes by offering case studies that illustrate the conspicuous and consistent idiosyncracy of Hobbes’s biblical interpretations in Leviathan, and its integral relevance to Hobbes’s political project. Hobbes puts the Bible to strikingly unsuitable uses hundreds and hundreds of times in his works. To avoid making this chapter unnecessarily long and overloading it with exegetical analyses of marginally

637 While to my knowledge this has never been done, the literature on Hobbes’ biblical criticism is too large even to survey here. On the technicality of tracing his biblical sources, see H.W. Jones, “Thomas Hobbes and the Bible: a preliminary enquiry,” in ed. J.M. Vaccaro, Arts du Spectacle et histoire des idées. Recueil offert en hommage à Jean Jacquot (Tours: CNRS, 1984), 271-85.
diminishing utility, but without ceding much explanatory force, this chapter is limited to seven examples from Part III of *Leviathan*, “Of a Christian Commonwealth.” After debunking the clergy’s claims to power independent from the Sovereign in the preceding parts of *Leviathan*, this is the section where Hobbes proffers his vision of the constitutional arrangement that ideally accommodates religious sensibilities with political necessity. As *Leviathan* is relevant to Hobbes’s oeuvre as a whole, Part III was chosen for its relevance to secularisation and sovereignty. Yet as Part III alone contains hundreds of Hobbes’s biblical exegeses, seven examples were selected according to two further criteria. Firstly, they pertain to well-known and core parts of Hobbes’s theory, including representation and anti-clericalism. Another criterion was their ability to illustrate something interesting about Hobbes’s exegetical method, which applies throughout Part III: namely his preference for the Geneva Bible over the Authorised Version. This in turn raises new questions about whether or not Hobbes regarded himself as a greater authority than the Sovereign in some religious matters; and if his published religious arguments were designed to wholly serve his political and legal agenda.

A sure sign of Thomas Hobbes’s greatness as a thinker is that the adjective from his name remained an insult long after his death. The label “Hobbist” put the accused beyond the pale of civilised, morally acceptable discourse. It was the heterodoxy of his religious views that most upset contemporaries. In spite of this, Books III and IV of *Leviathan* (1651) and their religious context fell into comparative neglect some time during the twentieth century, as Pocock, Champion and others have pointed out.

It is clear to any reader that Hobbes traced most seventeenth-century upheavals, from the Spanish Armada to the Civil War, to the unholy marriage of politics and religion. His fear of anarchy was triggered by religious “enthusiasm” as much as by political *libido dominandi*; and he saw the two as intertwined more often than not. The dilemma of choosing between papal and clerical abuse of the monopoly over right interpretation, and between *sola Scriptura* and the cacophony that is bound to arise from the individual right and duty to read the Bible for

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oneself, appears as a theoretical problem in *Leviathan*, and as an historical explanation of the Civil War in *Behemoth* (wr. 1668, publ. 1681).

A. This controversy between the Papist and the Reformed Churches could not choose but make every man to the best of his power examine by the Scriptures which of them was in the Right. And to that end they were translated into vulgar languages; whereas before the translation of them was not allowed, nor any man to read them but such as had expresse lycence so to doe. For the Pope did concerning the Scriptures, the same that Moses did concerning mount Sinai, Moses suffered no man to go vp to it to hear God speake or gaze vpon him, but such as he himselfe tooke with him. And the Pope suffered none to speake with God in the Scriptures, that had not some part of the Popes spirit in him, for which he might be trusted.

B. Certainly Moses did therein very wisely and according to Gods owne commandement.

A. No doubt of it; and the event it selfe hath made it since appear so. For after the Bible was translated into English, euery man, nay euery boy and wench that could read English, thought they spoke with God Almighty and vnderstood what he said, when by a certain number of chapters a day, they had read the Scriptures once or twice ouer. And so the reverence and obedience due to the Reformed Church here, and to the Bishops and Pastors therin, was cast off; and euery man became a Judge of Religion, and an Interpreter of the Scriptures to himselfe.

B. Did not the Church of England intend it should be soe? What other end could they haue in recommending the Bible to me, if they did not mean I should make it the Rule of my Actions. Else they might haue kept it, though open to themselues, to me seald vp in Hebrew, Greek, and Latine, and fed me out of it in such measure as had been requisite for the saluation of my soul, and the Churches peace.
A. I confesse this lycence of interpreting the Scripture was the cause of many seuerall Sects, as hauing lyen hidden till the beginning of the late Kings reigne, did then appear to the disturbance of the Commonwealth.640

Against pope and civil war, Hobbes praises Henry VIII’s solution, namely transforming the Sovereign into the head of a national church. In *Leviathan*, he argues numerous times that biblical interpretation belongs to the Sovereign only.641 One of the most important reasons why James VI/I had the Authorised Version (AV) prepared was to replace the Bishops’, the Geneva, and other translations that contained Calvinistically anti-monarchical annotations, or otherwise undesirable features. The question arises readily: given the Sovereign’s all-important right to control the text of the national religion according to Hobbes, what was Hobbes’s relationship to the AV?

Elsewhere Hobbes claims the right of interpretation for the individual, and separately for himself at the time of writing: “For the church of England pretendeth not, as doth the church of Rome, to be above the Scripture; nor forbiddeth any man to read the Scripture; nor was I forbidden, when I wrote my Leviathan, to publish anything which the Scriptures suggested. For when I wrote it, I may safely say there was no lawful church in England, that could have maintained me in, or prohibited me from writing anything.”642 Elsewhere, he claims the right to interpretation at all times.643 The individual’s right to biblical interpretation, upon which his salvation depends, assumes that God’s message can be interpreted well enough for salvation, whether thanks to the text’s clarity, man’s natural reason, the minimisation of the message essential for salvation, Hobbes’s consistent distinction between knowing and believing, an admission of Scripture’s incomprehensibility and the replacement of reason with faith as the key to salvation,644 or the reliability of interpretative authorities, including the Sovereign and the consensus of divines and academics. Statements can be lifted from Hobbes’s writings to support several of these contradictory positions. Figuring out the relationship


641 E.g. *Leviathan*, chapter 33, 260; chapter 40, 320-30.

642 Hobbes, *An answer to a book published by Dr Bramhall, Late Bishop of Derry, Called Catching of the Leviathan* ([1682]; Molesworth IV, 1811), 355.


between these claims would require discussions of Hobbes’s rhetoric, development, and diverse contexts. This chapter’s scope is limited to selective analyses of Hobbes’s use of the Bible in Part III. In light of his attribution of interpretative rights to the Sovereign, this is a useful illustration of the value of a comprehensive close reading of Hobbes’s biblical exegesis for future substantive discussions. By adumbrating seven out of 228 idiosyncratic biblical interpretations in Part III, I hope to demonstrate that examining his non-intuitive and idiosyncratic combinations of references can add a dimension of understanding to key concepts in his political theory, including full-spectrum representation (religious, philosophical and political), anticlericalism, deism, atheism or otherwise, the Christian Sovereign, and the Second Coming.

I used the Vulgate, Tyndale’s, the 1560, 1587 (with Tomson’s revised NT), 1599, 1610 and 1615 (with Beza’s commentary) Geneva Bibles and the 1611 AV, versions that featured prominently in seventeenth-century debates, to check Hobbes’s citations and his ‘strings of references’. By the latter I mean the following. Leviathan is carefully broken down into small units of argument, as indicated either by the marginal summary or in the main body of the text. Often Hobbes would use several biblical citations to support a point. When Hobbes denied the clergy a formal power of excommunication, for example, he cited Titus 3.10, 2 Tim. 2.23 and Titus 3.9 to show that the AV translated the same Greek word in two different ways, and the resulting mistranslation of “avoid” as “reject” is to blame for much of the confusion in the debate on excommunication. Where did Hobbes get the cross-references from? Assuming that he did not know all translations (Hebrew, Aramaic, Samaritan, Greek, Latin, English, etc.) and all variants by heart, he must have relied to some extent on the enormous exegetical tradition. An obvious possibility, though far from the only one, is the marginal glosses and cross-references in the Bibles themselves. The AV does not have a cross-reference between Timothy and Titus, so Hobbes must have used other sources. The Vulgate, Geneva and Tyndale do have the reference. The unsurprising inference is that Hobbes probably used one or more of these in addition to the AV. Pursued systematically and comprehensively, strings can yield surprising information about Hobbes’s methods and sources.

Checking every biblical reference and all the strings in Parts III and IV against the Vulgate, the AV, Geneva and Tyndale leads to three general conclusions. First, from the number of identifiable borrowings it appears that Hobbes used the Geneva more often than the AV, both for references and the structure of his argument. Second, there is no indication that he used Tyndale’s much, other than a few similarities in cases where Hobbes proposed an

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645 Leviathan, ch. 42, 351.
alternative to the AV and the Geneva. Finally, since only a fragment of the references and strings in *Leviathan* come from the four sources I compared them to, there must be another source, or sources, that Hobbes had open on his desk while he was writing *Leviathan*. Except for the long polemical passage against Bellarmine, the identity of this source or sources remains an open question. If it was not a single source, it is unlikely to have been too many, given the difficulty of handling numerous disparate sources while constructing extended and complex theological and political speculations like those in *Leviathan*.

This chapter will give examples of Hobbes’s surprising uses of the Bible from *Leviathan*, Part III to show how he led his readers, some of whom were well-versed in the Bible and the topical debates in political theology, to ideas that he did not spell out in the text. To do so, he had three variables to which he could deploy a range of rhetorical devices to get the desired interpretation: 1) the text of biblical passages (in several translations), 2) cross-references to other biblical passages that supported Hobbes’s given interpretation, and 3) the historical context of the passages he cited. The first two required no other resource than the Bible itself, albeit in all its variants. For the third ostensibly primary source, namely the historical context of the given passage, Hobbes could draw on extra-biblical texts to obtain the intended interpretation. A range of rhetorical devices, from replacing universal with particular divine precepts (as in the case of the phrase, “peculiar people” discussed below), through inserting misdirecting cross-references, to the deliberate neglect of entrenched exegetical traditions, could be judiciously applied to these three signifiers. Describing at least some of these passages and demonstrating his use of the first two types of signifiers (biblical texts and cross-references) will hopefully lay the methodological foundation for a comprehensive evaluation of the whole of *Leviathan*, which in turn may contribute to the reconstruction of Hobbes’s religious views.

Out of at least 228 idiosyncratic biblical interpretations in Part III, the seven cases developed below were selected to illustrate Hobbes’s method. The three selection criteria were the illustrative power of a case, the difference of its subject matter from other cases, and its distance from other cases within Part III. The aim was to render this collection of cases representative of Hobbes’s exegetical strategy throughout Part III, as well as economical, involving the smallest possible number of *Leviathan* passages on the one hand, and of Hobbes’s biblical references, on the other. This allows for more detailed treatment of individual cases in

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646 The number is uncertain because some biblical references, even citations, are not indicated by the main text, the marginalia, or the typography of *Leviathan*. 

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a short space, and demonstrates Hobbes’s intentionality and ingenuity in reworking the Bible to his purpose.

VI.2 First example: Deut. 13:1-5

The first example consists of a single biblical reference in chapter 32, "Of the Principles of Christian Politiques," the first chapter in Part III. After the Hobbesian caveat: “Nevertheless, we are not to renounce our Senses, and Experience; nor (that which is the undoubted Word of God) our natural Reason,” he goes on to consider revelation, the prophetical as opposed to the natural word of God. His evaluation of different kinds of truth claims is fairly straightforward. In post-biblical times sense experience and natural reason must always stand ready to critically assess alleged prophecies, reported miracles and other supernatural occurrences. Even if there were miracles after Christ, could they serve as proofs of claims, do they have any bearing on the epistemic status of statements? Moreover, can these statements serve as the foundation of resistance against the established civil authority? What if two prophets clash? “If one Prophet deceive another, what certainty is there of knowing the will of God, by other than by way of Reason? To which I answer out of the Holy Scripture, that there be two marks, by which to settle these questions. Moreover, can these statements serve as the foundation of resistance against the established civil authority? What if two prophets clash? “If one Prophet deceive another, what certainty is there of knowing the will of God, by other than by way of Reason? To which I answer out of the Holy Scripture, that there be two marks, by which to settle these questions.

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<td>Deut. 13.1-5</td>
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<td>If a Prophet rise amongst you, or a Dreamer of dreams, and shall pretend the doing of a miracle, and the miracle come to passe; if he say, Let us follow strange Gods, which thou hast</td>
<td>1 si surrexerit in medio tui prophetes aut qui somnium vidisse se dicat et praedixerit signum atque portentum</td>
<td>1 IF there arise among you a Prophet or a dreamer of dreams, and giveth thee a sign or wonder, 2 And the signe and the wonder, which hee hath told thee, come to passe) saying, b Let us go after other gods, which thou hast not known, and let us serve them; 3 Thou shalt not hearken unto the wordes of the prophet, or unto that dreamer of dreams : for the Lord your God c prooveth you, to knowe</td>
<td>1 IF there arise among you a prophet, or a dreamer of dreams, and giveth thee a sign or a wonder, 2 And the sign or the wonder come to pass, whereof he spake unto thee, saying, Let us go after other gods, which thou hast not known, and let us serve them; 3 Thou shalt not hearken unto the wordes of that prophet, or that dreamer of dreams: for the LORD your God prooveth you, to</td>
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547 Leviathan, 257.
not known, thou shalt not hearken to him, &c. But that Prophet and Dreamer of dreams shall be put to death, because he hath spoken to you to Revolt from the Lord your God.

whether you love the Lord your God with all your heart, and with all your soul.

4 Ye shall walk after the Lord your God, and fear him, and keep his commandments, and hearken unto his voice, and ye shall serve him, and cleave unto him.

5 But that Prophet, or that dreamer of dreams, he shall be slain, because he hath spoken to turn you away from the Lord your God, which brought you out of the land of Egypt, and delivered you out of the house of bondage, to thrust thee out of the way, wherein the Lord thy God commanded thee to walk: so shalt thou take the evil away forth of the middes of thee.

There are several things to note here. First, Hobbes is fairly cavalier in his treatment of this passage. He omits phrases and translates others differently, notably “miracle” and “pretend to do a miracle” in verse 1, “follow strange Gods” in verse 2, and “to Revolt from the Lord” in verse 5. Hobbes was not afraid to criticise the AV, or even the Vulgate, or other exegetes like
Beza and Bellarmine. In most cases he would explain the reasons for his disagreement and the grounds for his own translation. Here he fails to note or explain his disagreement. His omissions and retranslations occur in the middle of a carefully constructed flow of argument concerning the epistemic status of Scripture and revelation, leaving one of the crucial load-bearing components of his argument hanging in the air. Hobbes’s retranslation of “wonder” as “miracle” allows him to elaborate his position in the fierce seventeenth-century debate about the nature of miracles, and what they do and do not prove. It also enables him to connect false prophets with rebels against established civil authority. As the rest of chapter 32 confirms, Hobbes silently retranslates two phrases in Deut. 13 specifically in order to politicise the biblical language: deos alienos as “strange Gods” (in the sense of alien, foreign) instead of the Geneva and AV “other,” and vos avertet as “to Revolt” instead of the Geneva and AV “to turn you away.”

Hobbes’s “to Revolt from the Lord” is interesting for another reason. The AV gloss may have been a source, but not for all of, or anything as stark as, Hobbes’s interpretation:

Secondly, that how great soever the miracle be, yet if it tend to stir up revolt against the King, or him that governeth by the Kings authority, he that doth such miracle, is not to be considered otherwise than as sent to make triall of their allegiance. For these words, revolt from the Lord your God, are in this place equivalent to revolt from your King.  

Hobbes pins the interpretation on the historicisation of this OT scene, arguing from the start of chapter 35 that it refers to God’s direct rule over the Jews, authorised by the covenant made at Mount Sinai. This historicisation is not original, but Hobbes’s version is. In his account, Jesus was the next King in the lineage of divine rulers, but only to those who, like Paul, accepted Jesus as the new King of the Jews. As Curley points out, Paul never calls Jesus the King of the Jews, and Jesus consistently evaded the question when it was put to him. Hobbes, however, is clear and insistent on Jesus’s succession in chapter 35, and restates the same reading of Deut. 13:1-5 in the Review and Conclusion.

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648 Leviathan, 258.
649 Curley, 248fn10.
650 Leviathan, 487. Winch Holdsworth in Defence of the Doctrine of the Resurrection of the Same Body (London, 1727) accused Locke of Socinianism for interpreting 1 Cor. 12:3 the same way, with “the Messiah the Lord” referring to the unitary Redeemer and future earthly King, in A Paraphrase and Notes on the Epistles of St Paul (London, 1705-7).
By insistently interpreting these passages as referring to the Father and Jesus in their role as earthly sovereigns, the historicisation seems either to get away from Hobbes, or serve a specific premeditated function. If Jesus’ rule is viewed as an historical event, then the truth of current Christianity requires that Christians have become the new Jews, by a mechanism Hobbes does not specify. Otherwise Paul’s preaching, as interpreted by Hobbes, was intended for Jews only, and on his return Jesus will not be a legitimate king to the Christians.\footnote{The same escalating tension between historicised and prophetic interpretations of Scripture features in many of Scaliger’s and Selden’s writings.} Without addressing these issues, standard in the exegetical tradition, Hobbes focuses on laying the foundations for his doctrine of the Christian Sovereign. The analogy between God and kings delegitimises Revolt. To this he adds the parallel between biblical and extra-biblical covenants, the unbreakable pact that creates all sovereigns. Many royalists drew a similar parallel to argue that the absolute and indivisible power of kings was necessitated by the same logic as that which made God’s omnipotence logically necessary.

This was not the avenue Hobbes took. He did not make this connection between the two Sovereigns explicitly. It was through an intervening step that Hobbes classified all post-biblical prophecy as sedition, incitement and revolt. The intervening step is simply the timely restatement of one of his main points, namely that miracles have ceased and were replaced by Scripture as the source of revelation; therefore anyone who publicly pretends to revelation is a liar and a manipulator of men, bent on establishing himself as a rival to the civil authority. This was perfectly in line with his stated aim of dispossession of clerics and self-proclaimed prophets from all political influence. It also clearly expressed his position in the debates that dominated his times, when visions and prophecies were often used to justify radical, subversive action.

However, compounding the earlier problem of the God-Jesus and Jews-Christians historical transitions, the objects of Hobbes’s analogy shift in chapter 36, where he revisits the same Deut. 13:1-S passage. He recalls his earlier description of the two marks of true prophecy,\footnote{Leviathan, 293-4.} namely miracles (including foretelling the future) and adherence to the religion “which is already established.”\footnote{Leviathan, 257.} The God-Sovereign parallel of chapter 32 becomes a Moses-Sovereign parallel in chapter 36, when Hobbes names Moses a “Sovereign Prophet” whose prophecies must not be examined by the subjects with natural reason. It is not God, but Moses who institutes the new religion, and subsequent prophets must adhere closely, if they are to meet one of the conditions of possible veracity.\footnote{Clarendon, A Brief View and Survey of... Leviathan (Oxford, 1676), 196, objects to Hobbes’s two marks of true prophecy precisely because they undermine Moses. Hobbes’s return to Deut. 13. in chapter 36 solves this problem,} As the age of miracles has ceased with the
end of the NT, the working of miracles ceases to be a requisite sign of true prophethood, leaving only adherence to “this Doctrine, That Jesus is the Christ, that is, the King of the Jews, promised in the Old Testament” – Hobbes’s unum necessarium. This raises the intriguing possibility that Hobbes’s account of the Christian Sovereign in Parts III and IV Leviathan should be read not as his analysis or recommendation, but a prophecy.

VI.3 Second example: Exod. 19.5 – Tit. 2.14 – I Pet. 2.9 – I Sam. 8.7
The next case comes from chapter 35, “Of the Signification in Scripture of KINGDOME OF GOD, of HOLY, SACRED, and SACRAMENT.” The point at issue, God’s direct rule over the OT Jews and its relevance to later monarchies, is central to the whole of Leviathan. Hobbes rejects the metaphorical reading and shows that Scripture is in most cases literal when it discusses the Kingdom of God, “constituted by the Votes of the People of Israel in peculiar manner; wherein they chose God for their King by Covenant made with him, upon Gods promising them the possession of the land of Canaan.” This is the same emphatic historicisation that we saw in the previous example. According to Hobbes, in the few instances when Scripture did use the phrase “Kingdom of God” metaphorically, it refers to God’s dominion over sin, and not to anything that could threaten the Sovereign’s authority.

Hobbes then widens the definition of the divine kingdom to include those whom God commanded directly, in addition to His general dominion over all men. Yet his reading of the biblical passage remains strictly historical. We get the following list of divine kingdoms: Adam, Noah, Abraham, God’s direct rule from Moses to Saul, and the future kingdoms of Christ and the Father. Next, Hobbes constructs his definition of “holy,” meaning God’s own by peculiar right, or commissioned by Him with a specific command. This train of argument in chapter 35 is

but only by changing Moses’s status from prophet to “Sovereign Prophet,” in effect a shift from God to Moses as the divine commonwealth’s Sovereign. See other chapters in this Thesis for Machiavelli’s, Sigonius’s, Cunaeus’s, Selden’s and Harrington’s views of Moses, not God, as the Founder of Israel.  

655 Leviathan, 298-9.
656 This need not imply hubris on Hobbes’s part; e.g. chapter 36, 291 allows for a definition of prophecy as simply prediction, whether by God’s agents or by impostors. My suggestion, however, is that Hobbes’s insistence on the unum necessarium, and his heterodox and idiosyncratic interpretation of Jesus as the future direct, civil ruler and King of the Jews, align to satisfy his post-revelation single criterion for constituting true prophecy in a divine kingdom. In other words, Parts III and IV can be cogently read as a millenarian prophecy. This possibility is strengthened by the contrast between unum necessarium in Leviathan, and Hobbes’s philosophical discussion of the knowledge of God that is possible to man. Given man’s epistemic limitations, Hobbes writes in Thomas White’s De mundo Examined (wr. 1643), “I incline to the view that no proposition about the nature of God can be true save this one: God exists, and that no title correctly describes the nature of God other than the word ‘being.’” Cited in R. Tuck, “The ‘Christian Atheism of Thomas Hobbes’,” in Atheism from the Reformation to the Enlightenment, eds. M. Hunter and D. Wooton (Oxford, 1992), 113-30, at 115. If philosophy underscored man’s epistemic limitations, allowing for an apophatic theology at best, then Leviathan’s unum necessarium must be beyond philosophy.

657 Leviathan, 280.
supported with a string of biblical references. We will only consider a segment here, Exod.19.5 – Tit. 2.14 – I Pet. 2.9 – I Sam. 8.7.\textsuperscript{658}

In Hobbes’s citation, in Exod. 19.5 God commanded Moses to tell his people the following: “If you will obey my voice indeed, and keep my Covenant, then yee shall be a peculiar people to me, for all the Earth is mine; And yee shall be unto me a Sacerdottall Kingdome, and an holy Nation.” Hobbes criticises the AV and the Geneva translations equally, where instead of “peculiar people” we find “a peculiar treasure unto me above all Nations,” and “the most precious Jewel of all Nations,” respectively.\textsuperscript{659} He then cites the Greek original of Tit. 2.14 to show that “peculiar” should be understood as distinctive, unique, by special right. In the case of the divine kingdom this meant that God ruled over the Jews through their “Consent, and Covenant, which is in addition to his ordinary title, to all nations.”

\begin{center}
\begin{tabular}{|l|l|l|l|}
\hline
Leviathan & Vulgate & Geneva & AV \\
Exodus 19.5 & & & \\
\hline
If you will obey my voice indeed, and keep my Covenant, then yee shall be a peculiar people to me, for all the Earth is mine; And yee shall be unto me a Sacerdottall Kingdome, and an holy Nation. & 5 si ergo audieritis vocem meam et custodieritis pactum meum eritis mihi in peculum de cunctis populis mea est enim omnis terra mea & 5 Now therefore * if ye will heare my voyce in deed, and keepe my covenant, then yee shall be my chiefe treasure above all people, * though all the earth be mine. & 5 Now therefore, if ye will obey my voice indeed, and keep my covenant, then ye shall be a peculiar treasure unto me above all people: for all the earth is mine. \\
& 6 et vos eritis mihi regnum sacerdotale & 6 Yee shall be unto me also a kingdome of * Priests, and an holy nation. These are the words which thou shalt speake unto the children of Israel. & 6 And ye shall be unto me a kingdom of priests, and an holy nation. These are the words which thou shalt speak unto the children of Israel. \\
& quae loqueris ad filios Israel & & \\
& & & \\
& 5 Exod. 23.22, 24.7, Deut. 11.27, 28.1, Joshua 24.24, 1 Sam. 15.22, Isa. 1.19, Jerem. 7.23, 11.4-7, Hebrew 11.8, Deut. 5.2, Psalms 25.10, 103.17-8, Isaiah 56.4, Jerem. 31.31-3, Deut. 4.20, 7.6, 14.2, 14.21, 26.18, 32.8-9, 1 Kings * Deut.5.2. & c Deut. 32. 8, 1 Ki. 8. 53, Ps. 135. 4, Isa. 43.1, Titus 2.14. \\
& * Deut.10,14, Psal.24,1. & * I Pet. 2. 9. revel.1,6. & d Deut. 10. 14, Job 41.11, Ps. 50.12, 1 Cor. 10. 26. \\
& * I Pet. 2. 9. & & e 1 Pet. 2.5, 9, Rev. \\
\hline
\end{tabular}
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\textsuperscript{658} Leviathan, 281-3.
\textsuperscript{659} “For a Peculiar people, the vulgar Latine hath, Peculium de cunctis populis: the English translation made in the beginning of the Reign of King James, hath, a Peculiar treasure unto me above all Nations; and the Geneva French, the most precious Jewel of all Nations. But the truest Translation is the first, because it is confirmed by St. Paul himself (Tit. 2.14.)...” Leviathan, 281.
Hobbes's recontextualisation of these two passages is particularly revealing. Exodus is about the people's covenant with God, made through the mediation of Moses. Only Moses is allowed to talk to God, and elaborate precautions are taken to ensure that the people would not.

Given the anarchical State of Nature and the power of religion to motivate everyone, Hobbes gives the monopoly of official scriptural interpretation and public ceremony to the Sovereign. It would have been easy to use Exodus for an analogy between, or even for a direct descent from, Moses and the Sovereign, both already shown to be God's representatives. Even if for well-considered epistemological reasons Hobbes continued to maintain that Sovereigns cannot force men to believe, he could have still followed the argument that the State of Nature
resulted from the Fall, therefore Sovereigns are divinely instituted and not only have the monopoly of interpretation but are actually right in religious matters, having been inspired by God; therefore every man who wishes for salvation should force himself to internalise and come to believe the religious views declared by the civil authority.

But neither epistemic humility nor Christian Stoicism drove Hobbes to develop his system along these lines. Instead, he argues that all men are wrong in their speculations about God, including the Sovereign. Hobbes retains freedom of conscience and belief for the individual, and limits the power of the Sovereign to external signs of worship. The verses around the Titus passage give a similar story, only not about Jews and God, but Christ and the faithful who are purified through his sacrifice (Titus 1.15-3.1). There is a long tradition of tracing the connection between these two “peculiar people.” Hobbes does not conclude that Christian Sovereigns are as infallible and omniscient as God was, and Christ will be, when they rule directly over their chosen nations. Nor does he argue on this basis that it is useful to make oneself believe in the Sovereign’s Bible interpretation, even if only in the adiaphora.

The next textual corroboration of the meaning that Hobbes assigns to “peculiar” comes from 1 Pet. 2.9. In this short paragraph Hobbes overturns the interpretation of a verse cited by many chosen nation theorists. The Exodus phrase, “kingdom of priests,” used by both the Geneva and the AV, is regnum sacerdotale in the Vulgate. Hobbes argues that the AV and Geneva were guilty of serious mistranslation, unless they meant the succession of High Priests who represented God from the time of Moses to Saul. Instead, Hobbes proposes the translation, “a Regal Priesthood,” arguing that the AV and Geneva translation of sacerdotium regale in 1 Pet. 2.9 is correct, with which their translation of the same phrase in Exodus 19.6 is inconsistent.

This is the fight for God’s mantle. The objective of a time-honoured and multifarious Christian tradition (both Latin and Greek) was to show that a given form of government was either strongly analogous with or directly descended from the OT kingdom of God, and therefore it commanded greater legitimacy than other forms. Hobbes makes explicit comparisons between the indivisible sovereignty of God the King, and that of Christian monarchs. As we saw, he also claims legal continuity between Moses and the High Priests as representatives of God, but the connection he establishes between them on the one hand, and the Christian kings who ruled by God’s grace and commission, on the other, is more complex and subtle than some of his contemporaries understood, and than what we can examine here.

660 Leviathan, 479-80.
661 He spells this out in the Latin edition.
662 Leviathan, 282.
The Geneva gloss interprets the verse as referring to the elect, which means being a member of Christ’s priesthood and kingdom. Hobbes often discusses the elect in Leviathan as well as in other works, but he is reluctant to use the term in proving that “peculiar” and “holy” mean set aside for God by special command or right. A simple explanation could be that one of his main points here is precisely that there was no particular government that could claim direct descent or strong analogy with the Kingdom of God, as that came to an end with Saul’s enthronement, and will only be resurrected at the Second Coming.663 The elect do not, in this sense, form a divine kingdom within or above established civil sovereignties. His silence on predestination here must have struck his contemporaries, since this passage was a standard point of reference in that debate.

The other, related, issue that becomes conspicuous by its absence is the much-debated transition from Jews to Christians as the chosen nation. Hobbes was clearly familiar with the problem, and had his own views about it. He had a predilection for questioning the importance of Christian rituals and sacraments by showing their Jewish origins. Moreover, the biblical passages he uses in this chapter have a wealth of cross-references to both Christ and the Jews in order to show how God’s words in the OT also apply to Christians after they became the

663 Leviathan, 283-4. This is the same strategy that is described for the Leiden Circle in Somos, Secularisation, and for Selden and Harrington in this Thesis.
chosen nation. Hobbes follows some of these cross-references himself when he sets up his string. The *Leviathan* paragraph on 1 Peter 2.9 explicitly mentions the Geneva translation.

A possible clue as to why Hobbes remained silent about the Jewish-Christian transition here could be that his stated aim in chapter 35 was to clarify the meaning of “kingdom of God,” “holy,” “sacred” and “sacrament,” and that the marginal summary for the section we are looking at, “That the Kingdome of God is properly his Civill Soveraignty over a peculiar people by pact,” suggests that if he laid too much emphasis on tracing the continuity from the original to the new chosen nation, then he may have diminished the force of his parallel between the God who ruled directly over Israel and the Christian Sovereign, and between the covenants that instituted them. A republican who wanted to draw a comparison between the relationship of a country’s sovereign assembly and its citizens and between the Jewish commonwealth under God’s direct rule would have found it more convenient to start the comparison with a juxtaposition of the two peoples, while it made sense for Hobbes to begin the same exercise by comparing the two sovereigns, instead of building the comparison on the continuity between the two peoples. This only explains the layout of the argument; it is another question, beyond our present scope, why Hobbes rejected the claims of both church and state for direct descent from the Jewish commonwealth.

The next verse cited to corroborate that the ‘kingdom of God’ should be taken literally is 1 Sam. 8.7. Again, this is a very short paragraph in which all Hobbes seems to argue is that God’s comforting words to Samuel (according to which the Jews who deposed God in favour of Saul rejected God, not Samuel) show that until his deposition God ruled over the Jews directly.664

<table>
<thead>
<tr>
<th>Leviathan</th>
<th>Vulgate</th>
<th>Geneva</th>
<th>AV</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Samuel 8.7</td>
<td>dixit autem Dominus ad Samuhel audi vocem populi in omnibus quae loquuntur tibi non enim te abiecerunt sed me ne regnem super eos</td>
<td>And the Lord said unto Samuel, Heare the voyce of the people in all that they shall say unto thee: for they have not cast thee away, but they have cast me away, that I should not reigne over them.</td>
<td>And the LORD said unto Samuel, Hearken unto the voice of the people in all that they say unto thee: for they have not rejected thee, but they have rejected me, that I should not reign over them.</td>
</tr>
<tr>
<td>Num. 22.20, Psalms 81.11-2, Isa. 66.4, Hos. 13.10-1, 1 Sam.</td>
<td>h Ex. 16.8, Mat. 10.24-5, Luke 10.16.</td>
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664 *Leviathan*, 282-3.
After citing 8.7 Hobbes adds a reference to 12.12, recalling God’s defence of His people while still their king. 1 Samuel 8, however, is not only about the Jews forsaking God. They are shown to have been idolatrous in Egypt, just as they are rebellious now (8, 9); God Himself makes the parallel between idolatry and *lèse-majesté*. He then asks Samuel to tell the Jews what kings do: they take away their subjects’ relatives and property, to use and allocate as they wish, and the people will cry out as their king enslaves them. The passages before and after 8.7 are stark and striking, and have long been famous *loci*. The Geneva gloss for verse 11, the beginning of a list of monarchy’s horrors, runs: “f Not that kings have this authority by their office, but that such as reigne in Gods wrath should usurpe this over their brethren, contrary to the law, Deut. 17.20.” One reason why James VI/I commissioned the AV was precisely to remove antimonarchical annotations like this. In this light, it is intriguing that Hobbes chose to add 1 Sam. 8.7 to his string. What was his point? Did he believe that God gave a correct description of human sovereigns? He was clearly not making a simplistic point about dictatorship as the price of survival, or introducing biblical support for his Sovereign, since here we see God Himself deposed by the people – not the sort of behaviour one would expect Hobbes to endorse. It may help to understand Hobbes’s point if we knew where he got his string from. We can trace some, but not all of it. The Vulgate and the AV have the Exodus-Titus link, and together with the Geneva they all have a reference between Exodus and Peter; but none of them could be the source for the odd choice of adding 1 Sam. 8.7. (Unless, improbably, Hobbes is drawing here on the long tradition of this passage justifying republicanism and/or tyrannicide.) Finding his source may help us understand Hobbes’s reason for choosing this passage to support his point about the kingdom of God.

VI.4  Third example: Ps. 36:31-Jer.31:33-Deut. 30:11,14

In chapter 36 Hobbes sets out to clarify the meaning of the phrase “the word of God” and the nature and role of true and false prophets. In one section he argues that the word of God can refer simply to statements consonant with natural reason, even when not spoken by a prophet.665 His first example is 2 Chronicles 35:21-23, Pharaoh Necho’s warning to Josiah. Hobbes adds that in Esdras it was Jeremiah who warned Josiah, not Necho, but “wee are to

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665 *Leviathan*, 290.
give credit to the Canonickall Scripture, whatsoever be written in the Apocrypha.” This may be ironic, since in chapter 42 Hobbes is strongly critical of the separation of the canon and the apocrypha. The next paragraph runs,

The Word of God, is then also to be taken for the Dictates of reason, and equity, when the same is said in the Scriptures to bee written in mans heart; as Psalm 36.31. Jerem.31.33. Deut. 30.11,14. and many other like places.

Neither the sequence nor any of the connections come from the AV or the Geneva, and only the Psalms – Jeremiah link could come from the Vulgate. What is more remarkable about this string is that none of the verses cited has the phrase “word of God” at all. Instead, the Psalms and Jeremiah have divine “law,” Deut. 30.11 has “command,” and 14 has sermo. These biblical passages are all singularly unsuitable for demonstrating Hobbes’s point.

<table>
<thead>
<tr>
<th>Vulgate</th>
<th>Geneva</th>
<th>AV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psalms 37 (36).31</td>
<td>For the Law of his God is in his heart, &amp; his steppes shall not slide.</td>
<td>The law of his God is in his heart; none of his 9steps shall slide.</td>
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<tr>
<td>lex Dei eius in corde ipsius et non subplantabuntur gressus eius</td>
<td>Psa. 1.2, 40.3, 40.8, 119.11, 119.98, Deut. 6.6, 11.18-20, Prov. 4.4, Isa. 51.7, Jer. 31.33, Heb. 8.10, Psa. 37.23, 121.3, 17.5, 40.2, 44.18, 73.2, Job 23.11, Prov. 14.15, Eze. 27.6.</td>
<td>9 Or, goings.</td>
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<tr>
<td>Jeremiah 31.33</td>
<td>But this shalbe the covenant that I wil make with the house of Israel; After &quot;those daies, saith the Lord, I wil put my Law in their inward parts, &amp; write it in their hearts, &amp; wil be their God, and thei shalbe my people.</td>
<td>But &quot;this shall be the covenant that I will make with the house of Israel; After those days, saith the LORD, &quot;I will put my law in their inward parts, and write it in their hearts; and will be their God, and they shall be my people.</td>
</tr>
<tr>
<td>sed hoc erit pactum quod feriam cum domo Israel post dies illos dicit Dominus dabo legem meam in visceribus eorum et in corde eorum scribam eam et ero eis in Deum et ipsi erunt mihi in populum</td>
<td>Jerem. 32.40, Deut. 30.6, Psa. 37.31, 40.8, Isa. 51.7, Eze. 11.19, 36.25-7, Rom. 7.22, 8.2-8, 2 Cor. 3.3, 3.7-8, Gal. 5.22-3, Heb. 8.10, 10.16, Jer.</td>
<td>k In the time of Christ my Law shal be in stead of tables of stone be written in their heartes by mine</td>
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<td></td>
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<td>n Hosea 3.5, Rev. 21.4</td>
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<td></td>
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<td>o Isa. 58.11</td>
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<td>p Isa. 35.10, Rev. 21.4</td>
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</table>

666 Leviathan, 362-3.
667 Leviathan, 290. Hobbes’s reference to Ps. 36:31 is to the Vulgate. In the Geneva and the AV, Ps. 37:31 is the corresponding verse.
Deuteronomy 30.11

| mandatum hoc quod ego praecipio tibi hodie non supra te est neque procul positum | For this commandment which I commande thee this day, is it not hid from thee, neither is it far from thee. |
| Psa. 147.19-20, Isa. 45.19, Rom. 16.25-6, Col. 1.26-7. | h The Law is so evident that none can pretend ignorance. |

Deuteronomy 30.14

| sed iuxta te est sermo valde in ore tuo et in corde tuo ut facias illum | But the word is very nigh unto thee, in thy mouth, and in thy heart, that thou mayest do it. |

Not only the letter, the spirit of these verses also makes them unsuitable for showing that the word of God can mean natural reason. The context of the Psalms verse gives no such clue, while the other three concern entirely different topics. Jeremiah is about God’s promise of a new covenant, after which He will put His law into the heart of His people. Not before, and not into the heart of everyone; while Hobbes’s argument is about natural reason that all men are supposed to have. The Deuteronomy verses are about the divine laws, the meaning of which God revealed and incorporated into the terms of His covenant with the Jews (Deut. 29.1 ff., esp. 29.29). Again, this is a special case and not something that applies to the whole of mankind. In other words, this is a reversal of the universal-to-particular subversion of the exegetical tradition that we saw in the second example, where Hobbes changed universal promises of redemption to a narrow historical pledge, given to those over whom God and Jesus rule directly.  

VI.5 Fourth example: Num. 27:21

The next example of an odd use of the Bible is in chapter 40, where Hobbes tries to show that after Moses and Aaron, the role of representing God’s sovereignty passed on to Eleazar the

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668 Cases of Grotius’s similar inversion of universal and particular divine commands are given in Somos, *Secularisation*, chapter V. See the similar observation on this Leviathan passage in Curley, 282fn8.
High Priest. God also appointed Joshua as General, but he remained subordinate to Eleazar. To support this, Hobbes cites Numbers 27:21. 669

This is a crucial passage. It was a masterstroke on Hobbes’s part that while he agreed that “the Supreme Power of making War and Peace, was in the Priest,” and that “the Civill and Ecclesiasticall Power were both joined together in one and the same person, the High Priest; and ought to bee so, in whosoever governeth by Divine Right; that is, by Authority immediate from God,” he then turned the tables by saying that after the anointment of Saul it was kings, not priests, who carried on legitimate government. Therefore Popes cannot claim any power that descends from ancient Israel. 671

Hobbes’s use of the verse, however, is not straightforward. Its original context is revealing. After God tells Moses that he is going to die, Moses asks for a successor, so that he would not leave the congregation without a shepherd. Yet it is unclear what Joshua is appointed for. The verse reads as if his were a ritual function, telling the congregation to go in and out (exire et intrare). According to the Geneva gloss this denotes civil magistracy, while Hobbes thought it meant being the general of the army. 672 God tells Moses to confer some of his honour on Joshua and to invest him in front of the congregation. The Geneva Bible interpreted this as telling Joshua “how he should governe himselfe in his office.”

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669 Leviathan, 327.
670 This sentence is missing from the Latin Leviathan. Curley, 322fnS. But compare Sigonius on Saul: “he judged the tribes, and he had – both in conjunction with the council and by himself – absolute power to grant life or death as he saw fit; he was, in a sense, above the law.” De republica Hebraeorum, VI.3, 272 in Shalem ed. Cunaeus describes the people and the priests standing in separate areas of the temple court, and the Sanhedrim and the king sitting in their separate areas. The intention was to signal “the king’s unmatched dignity.” Cunaeus continues, “So this set him above the priests as though he were closer to God, or a more important religious figure than they themselves were. And as for the other nations, Aristotle says that the earliest men more or less considered the same person to be both king and priest. I cannot see anything the least bit wrong with this. Those men were still living innocently according to nature, and the closer they were to their origins and their divine ancestry, the better they understood what was right.” De republica Hebraeorum, 59. Hobbes’s Christian Sovereign therefore approximates Cunaeus’s Sovereign when the latter is closest to a blessed State of Nature.
671 Cunaeus interprets Saul as the same turning-point: “The act of being anointed gave the kings a kind of divine stature and majesty, so that men would treat them as holy and they would have a closer relationship with God; but if the kings of that age did from time to time establish ceremonies and rituals to restore them to practice, it was certainly not because they were prophets. Though some people have this mistaken idea, it is completely groundless; for with the exception of David and possibly Saul, none of the others predicted the future by means of divine inspiration.” De republica Hebraeorum, I.14, 59 in Shalem ed., 90 in the 1632 Elsevier edition, part of their famous Respublicae variae series, later known as les Petites Républiques, which Hobbes was fond of reading. V. Conti, Consociatio Civitatum. Le repubbliche elzeviriane 1625-1649 (Florence, 1997).
672 Hobbes changes his mind about this in Behemoth, 122-3. There he uses Num. 27:18-21 to describe the “gift of the Empire” received by Moses from God, and by Joshua from Eleazar. Here Hobbes (or rather speaker B, with whom A fully agrees) curtails the Pope’s power by arguing that the High Priest’s and the Pope’s power is purely ritual. Dominion comes from the Sovereign. Curley 322n4 details other ways in which Hobbes’s interpretation of Num. 27 here is highly idiosyncratic.

To my knowledge, after Flavius, Cunaeus was the first to emphasise the military valour of OT Jews. He thereby gave a new reason for their emulation, while refuting that emulation of, or pretended descent from, the divine commonwealth could bestow divine legitimacy. As shown above, Cunaeus’s account of Jewish military organisation and ethos follows Machiavelli’s categories and language closely, and was adopted in this form by John Selden. Also see Spinoza, Theological-Political Treatise (Amsterdam, 1670), chapter XVII, sections 4-61.
<table>
<thead>
<tr>
<th>Num. 27.15-23</th>
<th>Leviathan</th>
<th>Vulgate</th>
<th>Geneva</th>
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He shall stand before Eleazar the Priest, who shall ask counsel for him, before the Lord, at his word they shall go out, and at his word they shall come in, both he, and all the Children of Israel with him

21 And he shall stand before Eleazar the Priest, who shall ask counsel for him by the judgment of Urim before the Lord: at his word they shall go out, and at his word they shall come in, both he, and all the children of Israel with him & all the Congregation.

h According to his office: signifying that the civil magistrate could execute nothing but that which he knew to be the will of God.

22 And Moses did as the LORD commanded him: and he took Joshua, & set him before Eleazar the Priest, and before all the Congregation:

i How he should govern himself in his office.

23 And he laid his hands upon him, and gave him a charge, as the LORD commanded him: and he took Joshua, and set him before Eleazar the priest, and before all the Congregation:

Hobbes also omits the phrase “after the judgment of Urim.” Urim is used by Harrington, for example, to argue for the republican-democratic character of Israel, in which votes and lot play an important part in political deliberation.673 In contrast, the Geneva Bible interprets the Urim phrase as “[a]ccording to his office: signifying that the civill magistrate could execute nothing but that which he knew to be the will of God.” This is the sort of Calvinist interpretation that motivated James VI/I to organise the creation of the Authorised Version.

Tyndale’s solution is again different. He gives the power over the congregation to Eleazar: “And he shall stand before Eleazar the priest which shall ask counsel for him after the manner of the light before the Lord: And at the mouth of Eleazar shall both he and all the children of Israel with him and all the congregation, go in and out.” Although Hobbes may well have wanted to avoid the complications of introducing this device of divine government in addition to clarifying the hierarchy of God’s various representatives, it is also possible that he may have simply retranslated the passage from the Vulgate without spelling out what “asking counsel” actually meant.

Hobbes also avoids discussing the congregation here, although it features prominently in the Numbers chapter he cites. Elsewhere he gives a detailed description and comparison of the Jewish and the early Christian ecclesiastical hierarchy and processes, from the congregations’ election of ministers – over which the Apostles only presided, but had no power to interfere – to the order of donations.\(^674\) The absence of even the tiniest comment on the congregation in Num. 27:21, which Hobbes uses to support the argument for the power of the civil authority over religious worship, is striking. Hobbes builds up the structure of at least these parts of his argument with a view to criticising the power claims of the clergy. Thanks to his reinterpretation, both the Sovereign and the community turn out to have more power than the priests and ministers. What Hobbes nonetheless avoids doing here, and in the second example described above, is clarifying the relationship between the Sovereign and the congregation.

To summarise, the oddities in Hobbes’s use of this verse are the following: the very choice of the verse to prove his point, namely that whoever had civil authority in ancient Israel also had the right to regulate external worship; agreeing with Catholics that High Priests ruled in God’s name, but showing how all that changed with Saul; making Joshua a general; and ignoring the political problems posed by biblical interpretations of the Urim and the congregation in the seventeenth century.

VI.6 Fifth example: Acts 1:20-22
As already mentioned, Hobbes gives a systematic treatment of church offices in chapter 42, 363-9. A point he keeps returning to is that in biblical times the congregations elected the various office-holders, and that these offices were limited to teaching and persuasion.\(^675\) It is perhaps not without irony that he cites Acts 1:20 to show that even Judas had a bishopric.\(^676\)

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\(^{674}\) *Leviathan*, 365-7.
\(^{676}\) *Leviathan*, 365.
Hobbes’s citation follows the AV, but the Geneva glosses strongly resemble Hobbes’s general drift in chapter 42.

<table>
<thead>
<tr>
<th>Leviathan</th>
<th>Geneva</th>
<th>Geneva glosses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acts 1:20-22</td>
<td>20 For it is written in the booke of Psalms, * Let his habitation be voyd, and let no man dwell therein: * also, Let another take his 'charge.</td>
<td>* Psalm. 69,26. * Psalm. 109,7. s His office and ministrie. David wrote these words against Doeg the Kings heardman: And these wordes, Shepheard, Sheepe, and Flocke, are put over to the Church office and ministrie, so that the Church and the offices thereof are called by these names.</td>
</tr>
<tr>
<td>Of these men that have companied with us, all the time that the Lord Jesus went in and out among us,</td>
<td>21 8 Wherefore of these men which have companied with us, all the time that the Lord Jesus was †conversant among us.</td>
<td>8 The Apostles deliberate upon nothing, but first they consult and take advisement by Gods word: and againe they doe nothing that concerneth and is behovable for the whole body of the Congregation, without making the Congregation privie unto it. † Word for word, went in and out, which kinde of speach betokeneth as much in the Hebrew tongue, as the exercising of a publique and painfull office, when they speake of such as are in any publique office, Deuter. 31,2. I. Chronic. 27,1.</td>
</tr>
<tr>
<td>beginning from the Baptisme of John unto that same day that he was taken up from us, must one be ordained to be a Witnesse with us of his Resurrection</td>
<td>22 Beginning from the baptisme of Iohn unto the day that he was taken up ‡ from us, must one of them be made a witnesse with us of his resurrection.</td>
<td>‡ From our company.</td>
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<td></td>
<td>23 ‡ And they • presented two, Ioseph called Barsabas, whose surname was lustus, and Matthias.</td>
<td>9 Apostles must be chosen immediately from God, and therefore after prayers, Matthias is chosen by lotte, which is as it were, G O D S owne voyce. x Openly, and by the voyces of all the whole company.</td>
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</tbody>
</table>
The plausibility of the influence of the Geneva glosses on *Leviathan* is supported by the fact that in his discussion of ecclesiastical hierarchy Hobbes relies heavily on several citations from the Acts, for which the Geneva provides copious glosses like the above. Hobbes also juxtaposes not only the Old Testament congregations with the early Christian church, but also these two with the Catholic and Protestant churches of his own time. His main point concerns the priests’ illegitimate and deceitful self-aggrandisement. But it is not Hobbes’s only point. In this passage Hobbes also seeks to define the powers of priests and congregations.

When an Apostle was needed, the Jerusalem congregation chose two people – one of them Matthias – then they drew lots. The Geneva version renders this as God’s, not the people’s, choice. Hobbes reads it as election by the congregation, just as the elevation of Paul and Barnabas to the Apostleship was authorised by the “particular church of Antioch.” The early Christian congregations also elected the rest of the church officers. Only the twelve Apostles who saw Christ and were witnesses to Him were unelected. Even so, the Geneva commentators and Hobbes agreed that the Apostles were subordinate to the congregation. Their direct contact with Christ gave them no special authority. They could make no laws for a congregation, only advise them. Additionally to countering papal claims to divinely ordained superiority, and refuting the legates and other clerical officers from claiming power by virtue of apostolic succession, Hobbes also purports to give an accurate description of the original church hierarchy.

In the gloss to verse 21, the Geneva Bible makes Christ an actual officer in the church. By contrast, Hobbes follows the Vulgate or the AV and interprets “went in and out” historically, meaning being manifest in the flesh.

<table>
<thead>
<tr>
<th>Vulgate</th>
<th>AV</th>
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<tbody>
<tr>
<td>oportet ergo ex his viris qui nobiscum</td>
<td>Wherefore of these men which have companied</td>
</tr>
<tr>
<td>congregati sunt in omni tempore quo intravit et</td>
<td>with us all the time that the Lord Jesus went in</td>
</tr>
<tr>
<td>exivit inter nos Dominus Iesus</td>
<td>and out among us,</td>
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</table>

Although neither the Geneva nor the AV make the connection between Acts 1:21 and Num., this is the same phrase that Hobbes invoked from Num. 27.17 and 21 concerning Joshua, in the fourth example above. There Hobbes made a general out of Joshua on the strength of these words, while the Geneva made him a governor or civil magistrate. Only the present Vulgate has a cross-reference between the Num. and the Acts verses. In all probability this is an example of Hobbes deliberately manipulating the text of the Bible to suit his purpose, or at least choosing not to explain the meaning of an important phrase, “going in and out in front of the
congregation,” which in chapter 40 he took to mean something quite specific, but nothing particular when cited in chapter 42.677

VI.7 Sixth example: Eph. 4.11-25
Here I would like to suggest that Hobbes’s commonwealth, described in the first two parts of Leviathan, is at least partially modelled on a particular theological position concerning the nature of the Christian Church, and that this position is well exemplified in the Geneva glosses.

On 391 in chapter 42 Hobbes sets out to refute what he said was Bellarmine’s last point, namely that all ecclesiastical jurisdiction belongs to, and can only be received from, the Pope. Hobbes’s refutation depends on smuggling in two assumptions that already contradict Bellarmine’s argument, and then drawing the conclusion. The first is that Eph. 4.11, the verse Bellarmine used, can be applied to the relationship between the Pope and the bishops, but not to the Pope and the King. The second is that “Christian Kings have their Civill Power from God immediately.” Magistrates get their power from the king, Hobbes begins. If we accept Bellarmine’s argument that bishops have no power other than what they receive from the Pope, then it follows that Bellarmine must either accept that not only the bishops but also every constable in the country has his authority de iure divino mediato; or he must admit that the bishops have a different source of power. In addition to the unwarranted assumptions, Hobbes’s argument here has several structural weaknesses, some of them due to his attempt to approximate, but not equate, the Sovereign to God, and to simultaneously remain Erastian by denying divine rights to clergy.678 However, our present concern here is with his reinterpretation and use of Eph. 4.11, and his view of Christian Kings.

677 For Grotius’s similar bending of Deut. 20 in several directions, including universal-particular and particular-universal, historical- eternal and eternal-historical, see Somos, Secularisation.
678 “The last point hee would prove, is this, That our Saviour Christ has committed Ecclesiastical Jurisdiction immediately to none but the Pope. Wherein he handleth not the Question of Supremacy between the Pope and Christian Kings, but between the Pope and other Bishops. And first, he says it is agreed, that the Jurisdiction of Bishops, is at least in the generall de iure Divino, that is, in the Right of God; for which he alleges St. Paul, Ephes. 4.11, where he says, that Christ after his Ascension into heaven, gave gifts to men, some Apostles, some Prophets, and some Evangelists, and some Pastors, and some Teachers: And thence inferres, they have indeed their Jurisdiction in Gods Right; but will not grant they have it immediately from God, but derived through the Pope. But if a man may be said to have his jurisdiction de Jure Divino, and yet not immediately; what lawfull Jurisdiction, though but Civill, is there in a Christian Common-wealth, that is not also de Jure Divino? For Christian Kings have their Civill Power from God immediately; and the Magistrates under Him exercise their several charges in virtue of his Commission; wherein that which they doe, is no lesse de Jure Divino mediato, than that which the Bishops doe, in vertue of the Popes Ordination. All lawfull Power is of God, immediately in the Supreme Governor, and mediate in those that have Authority under him: So that either hee must grant every Constable in the State, to hold his Office in the Right of God, or he must not hold that any Bishop holds his so, besides the Pope himselfe.” Either both Pope and Sovereign are supreme governors, and have their power immediately from God, or the parallel and the conclusion does not hold. Most of Leviathan is about showing that there can be only one supreme governor, the Sovereign. Even if he could resolve this contradiction, another would arise immediately, since Hobbes did not derive the power of all sovereigns directly from God, only Christian sovereigns’. If the above passage is about Christian sovereigns only, then the statement that the magistrates and constables hold their power de iure divino mediato
Verses Eph. 4.13 and 16 offer, I think, a possible clue to Hobbes's concept of representation, “incorporation,” embodiment, “carrying the person of,” which is central to the instantiation and legitimacy of the Sovereign and of the Commonwealth. The way in which Christ represented all sinners has been the subject of centuries of theological speculation, and Hobbes may well have drawn on this when he constituted his Sovereign. A specifically Calvinist view appears in the Geneva commentaries to Eph. 4:11-25.

<table>
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<td>11  ^6 Hee therefore gave some to be  ‾√J Apostles, and some ‾√m Prophets, and some ‾√n Evangelists, and some ‾√o Pastours, and Teachers.</td>
<td>6 First of all he reckoneth up the Ecclesiasticall functions, which are partly extraordinary and for a season, as Apostles, Prophets, Evangelistes, and partly ordinary and perpetuall, as Pastours and Teachers.</td>
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<tr>
<td></td>
<td>‾√l The Apostles were those twelve, unto whom Paul was afterward added, whose office was to plant Churches throughout all the world.</td>
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<td></td>
<td>‾√m The Prophets office was one of the chiepest, which were men of a marveilous wisedome, and some of them could foretell things to come.</td>
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<td></td>
<td>‾√n These the Apostles used as followes in the execution of their office, being not able to answere all places themselves.</td>
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<td></td>
<td>‾√o Pastours are they which governe the Church, and Teachers are they which governe the schooles.</td>
</tr>
<tr>
<td>12  ^7 For the repairing of the Saints, for the worke of the ministrie, and for the edification of the body of Christ.</td>
<td>7 He sheweth the ende of Ecclesiasticall functions, to wit, that by the ministrie of men all the Saints may so growe up together, that they may make one mysticall body of Christ.</td>
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<tr>
<td></td>
<td>‾√p The Church.</td>
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<tr>
<td>13  ^8 Till weall meete together (in the unitie of faith and that acknowledging of the Sonne of God) unto a perfite man, and unto the measure of the age the fulnesse of Christ.</td>
<td>8 The use of this ministrie is perpetuall so long as we are in this world, that is, untill that time that having put off the flesh, and throughly and perfity agreeing betwixt our selves, we shall be joined with Christ our head. Which thing is done by that knowledge of the Sonne of God increasing in us, and he himselfe by little and little growing up in us untill we come to be a perfitt man, which shall be in the world to come, when God shall be all in all.</td>
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<td></td>
<td>‾√q In that most neere conjunction which is knit and fastened together by faith.</td>
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meaning that Christian sovereigns have no power of their own in addition to God’s commission. Therefore the whole argument about the providential instantiation of the Sovereign, as the only possible way to leave the state of nature, falls to the ground.
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<th>Text</th>
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<tbody>
<tr>
<td>14</td>
<td>That wee henceforth be no more children, wavering and carried about with every winde of doctrine, by the deceit of men, and with craftines, wherby they lay in wait to deceive.</td>
</tr>
<tr>
<td>15</td>
<td>But let us follow the truth in love, and in all things, grow up into him, which is the head, that is, Christ.</td>
</tr>
<tr>
<td>16</td>
<td>By whom all the bodie being coupled and knit together by every joynt, for furniture thereof (according to the effectual power, which is in the measure of every part) receiveth increase of the body, unto the edifying of it selfe in love.</td>
</tr>
</tbody>
</table>

The 1560 Geneva Bible has completely different glosses for this chapter, but those in the 1599 edition are very interesting indeed. The little man that grows up in us connects particularly well with Hobbes's treatment of internalisation. If we are one of the elect, after death we can achieve mystical union with God by internalising Christ, and a similar, though less perfect, mystical union in this life with a little help from the ministers, in a fully harmonious Church.

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679 Compare Winstanley on the opposite of the ever-present Adam, namely the spiritual man, who judges all things. For a recent treatment of internalisation in Hobbes’s moral psychology see C. Tilmouth, *Passion’s Triumph Over Reason* (Oxford, 2007), chapter 6.
Needless to say, this Church differs from Hobbes’s Christian Commonwealth in several ways. The most immediately apparent resemblance between them is Hobbes’s use of the body metaphor with Christ as their head. There are other parallels between Hobbes’s Church and State. Future citizens of Christ’s kingdom must internalise Christ’s will in this life, while men in a State of Nature must prepare to suspend and delegate their will to the Sovereign before the Commonwealth can be established at all. The relationship between Christ and the elect, who accept Christ as their King, is similar to the relationship between the group of men who become a commonwealth by accepting the Sovereign. In both cases the king does not merely serve or legislate. He is the linchpin that holds the community together. He puts his own stamp on its character, and continuously nourishes and vitalises the whole body and its limbs. The citizen who abides by the civil laws is like the “perfit man” in whom Christ has fully grown up, and His will has taken over.

VI.8 Seventh example: the unum necessarium

Chapter 43 of *Leviathan*, “Of what is NECESSARY for a Man’s Reception into the Kingdom of Heaven,” contains a long discussion of *unum necessarium*. Part of the context for this discussion is the voluminous and intricate early modern debate about essential and non-essential tenets, and the significance of the distinction. As mentioned, Grotius, Herbert, Hobbes and Locke were among those who took the minimalist project to its logical conclusion, deconstructing the claims for the necessity of most Christian doctrines, in Hobbes’s case leaving only that Jesus is the Saviour. All who believed this were Christians, with a right to critically examine other doctrines. Grotius, Hobbes and Locke all offered extensive biblical support for the argument that beliefs other than the messianic status of the historical Jesus are non-essential, setting up the claim that institutional ceremonies and the individual liberty to perform external actions pursuant to heterodox beliefs are subject to the magistrate’s approval. Conscience could not be forced, but the magistrate could justly regulate public forms of worship. This extreme dogmatic minimalism complements the position on church-state relations normally called Erastian, but it does not lead automatically to modern ideas of tolerance.

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680 *Leviathan*, 324-30. Note that this section is extensively rewritten in the Latin *Leviathan*.


This is because the single remaining article of faith is a complicated one. Even extreme minimalists could and did portray Catholics, Jews, Socinians, atheists and nonconformists as denying Jesus’ redemptive power, and therefore untrustworthy in worldly matters that require adherence to an ethical code – such as keeping promises – that is derived from the fear of eternal death and the promise of salvation. They also could, and did, accuse others of challenging the sufficiency of unum necessarium, thereby undermining social order and appropriating the Sovereign’s right to regulate external behaviour. Catholics remained subject to the charge that they followed the Pope, whose secular powers were as extensive as a Sovereign’s; therefore they were citizens of the Roman Catholic state, not of England.

Notwithstanding such limits of the legal and political effect of doctrinal minimalism, the seventeenth-century minimalist stance was calculated to effectively contain and prevent conflicts that were motivated or excused by religious arguments. Hobbes’s formulation of the unum necessarium is a major contribution.

VI.8.1 First argument: reductio ad absurdum

First, Hobbes explains that “Christ” means the promised future king of an actual commonwealth. He then breaks down his argument into numbered parts. The first relies on the Gospels, including descriptions of the life of Jesus. Hobbes argues that the essence of all the Gospels is the unum necessarium, nothing more: “the Scope of all the Evangelists (as may appear by reading them) was the same. Therefore the Scope of the whole Gospell, was the establishing of the onely Article.”

To show this, Hobbes first purports to summarise Matthew’s gospel. His summary leaves out the Sermon on the Mount, the parables in chapters 13, 15, 16, 20, 25, etc., all the teachings of Jesus, Judas’ betrayal, Pilate and the trial, and Jesus’ resurrection. Instead, the list he claims is exhaustive contains only scenes that support his point, and not even all of those. Furthermore, the differences between the canonical gospels have always been a matter of intense debate, including the gaps between the historical accounts of Jesus’ life in the synoptic gospels and John. Hobbes addresses none of this, even though he mentions John in this part of his argument: “And St. John expressly makes it his conclusion, John 20.31. These things are written, that you may know that Jesus is the Christ, the Son of the living God.”

This is not, in fact, the conclusion to John: there is another whole chapter. In addition, Hobbes truncates the penultimate verse of the chapter he does cite,
which ends with the phrase, “and that believing ye might have life through his name.” This first argument from the gospels as historical evidence already contains conspicuous idiosyncrasies.


Hobbes claims that his second argument is based on sermons made by the Apostles, both before and after the Ascension. Instead, he cites passages describing Jesus’ commission to the Apostles, before the Ascension. One plausible reading of this inconsistency is that Hobbes is implicitly questioning the Apostles’ veracity regarding the source of their own authority. This is corroborated by the fact that in chapter 42 he uses Matt. 10:7 and the identical argumentative structure, from unum necessarium to the Apostles’ mandate, to refute Bellarmine, papal infallibility and all popes, bishops, monks and clerics who claim to have temporal powers. The string of biblical references in chapter 43 to support the unum necessarium follows the same structure and uses many of the same references, but applies them to the apostles:

The Apostles in our Saviours time were sent, Luke 9.2. to Preach the Kingdome of God:
For neither there, nor Mat. 10.7. giveth he any Commission to them, other than this, As ye go, Preach, saying, the Kingdome of Heaven is at hand; that is, that Jesus is the Messiah, the Christ, the King which was to come. That their Preaching also after his ascension was the same, is manifest out of Acts 17.6.

The first notable thing about this string of biblical references is that, according to Luke 9:2 and Matt. 10:7, Jesus gave several commissions in addition to preaching, namely to heal the sick, cast out devils and, in Matthew, to raise the dead. The Apostles received both the power (Matt. 10:1) and Jesus’ commission (Matt. 10:7), and did indeed perform all these. Although it would have been sufficient support for unum necessarium to say that Jesus instructed the Apostles to preach that he was the Messiah, Hobbes instead emphatically makes the point, recognisably erroneous, that this commission was the only one. Even if he wanted to minimise the powers that priests could claim through apostolic succession, he did not need to deny them the added commissions of healing and exorcism, especially after he showed these two to be one and the

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685 For Grotius doing the same, see chapter IV. Section 5.3 above.
686 Leviathan, 300-320.
687 Leviathan, 325.
same.\textsuperscript{688} He could have argued that it was the Church’s duty to care for the sick, as long as it did not infringe upon the Sovereign’s authority.

Hobbes’s use of Acts 17:2-3 and Acts 17:6-7 is also peculiar. In Thessaloniki, Paul preached the divinely ordered necessity of Jesus’ suffering, his resurrection, and his divinity. Paul’s Jewish opponents distorted his words and accused him of inciting rebellion against Rome in favour of a new king. Hobbes reverses the textual order in \textit{Leviathan}, citing the distorted report (Acts 17:6-7) before the real sermon (Acts 17:2-3), and treats both as equivalent proofs of \textit{unum necessarium}. However, neither passage supports his argument. As Hobbes points out, the divine plan was not to make Jesus king at his first coming, but to obtain satisfaction for man’s sins through the crucifixion. The accusation of Paul’s opponents was unfounded. Paul himself taught several things in addition to Jesus being the Messiah, including precepts for the internal and external behaviour of congregations. The contradiction between Hobbes’s agreement with Paul’s critics (according to whom Paul fomented political rebellion) and Hobbes’s citation of Acts 17 in support of \textit{unum necessarium}, disappears only if being the new, actually reigning king and being the redeemer are not overlapping but identical conditions. This is possible if Hobbes was a millenarian, or if he agreed with Paul’s critics, and/or if he historicised Paul’s sermons as referring to an imminent second coming and found Paul to be wrong about it.\textsuperscript{689} (As we saw in chapter IV, section 5.3, in \textit{De veritate} Grotius explicitly upholds the latter interpretation, with what contemporaries like Sarrau recognised as devastating implications for the Apostles’ reliability as witnesses to Christ’s resurrection and the truth of Christianity. Hobbes may well have seen these criticisms.) Another possible and compatible explanation for the contradiction Hobbes creates by subverting Acts 17 is that again he chose not only inappropriate, but \textbf{obviously} unsuitable verses to prove his point.

While this is not the place to delve into Hobbes’s probable sources, we can query how he assembled the Luke 9:2 - Mat. 10:7 - Acts 17:6-7, Acts 17:2-3 string. In most Bibles Luke 9:2 refers to Mat. 10:7-8 as well as to Mark 6:12, while Luke 9:1 points to Mat. 10:1 and Mark 3:13. Similarly to the verses in Luke and Matthew, those in Mark clearly state that Jesus gave the Apostles other commissions as well, namely to cast out devils and heal the sick. Elsewhere in \textit{Leviathan} Hobbes argues that casting out devils and healing was often the same thing, since when men did not know the natural cause of an illness, they explained it with devils (e.g. chapter 8.) Even so, Hobbes fails to mention healing or exorcism either there, or here. Furthermore, he ignores the Mark references, even though all the salient Luke, Matthew and

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{688} E.g. \textit{Leviathan}, 36-9: when men did not know the natural cause of an illness, they explained it with devils.
\item \textsuperscript{689} Grotius explicitly argues the latter in \textit{De veritate}, 1629 ed., 55-61.
\end{enumerate}
\end{footnotesize}
Mark verses refer to one another, and are very similar. None of them, however, refer to the verses in Acts, and Acts 17 has no references to the others, either.


Hobbes’ third argument for unum necessarium is

from those places of Scripture, by which all the Faith required to Salvation is declared to be Easie. For if an inward assent of the mind to all the Doctrines concerning Christian Faith now taught, (whereof the greatest part are disputed), were necessary to Salvation, there would be nothing in the world so hard, as to be a Christian.\(^{690}\)

Minimalism was often complemented by the argument from simplicity, according to which the parts of the Bible that God wanted everyone to understand are so clear that there is no debate about them, and the others are inessential.\(^{691}\) The general direction of this discourse was the opposite, the reversal of a long medieval process of theological refinement, and often provoked accusations of Arianism, Pelagianism, Socinianism, or even atheism.

Hobbes’ string for this, the third argument, is Luke 23:39-43, Matt. 11:30; 18:6 and 1 Cor. 1:21. Although he does not explicitly mention Luke, he argues that the only reason why the thief upon the cross was saved was that he testified to Jesus being king. In support, Hobbes cites a part of Luke 23:42 verbatim, but without giving the reference. Hobbes’ citation of Luke’s report of the thief’s words runs, “Lord remember me when thou commest into thy Kingdome; by which he testified no beleefe of any other Article, but this, That Jesus was the King.”\(^{692}\) The first thing to note is that the thief’s statement supports the proposition that Jesus will be king, not that he already is. Secondly, the other source for this story is Matt. 27:44. Contrary to Luke, it describes both thieves reviling Jesus. This was a well-known and oft-cited instance of evangelical inconsistency. Hobbes leaves it unmentioned and unresolved, despite the fact that all Bibles have the cross-reference to the contradictory passages, and despite Hobbes’s familiarity with the Gospel of Matthew, which he cites often in Leviathan, and twice as often in the third argument as the other books of the Bible combined. Luke 23:42 is another conspicuously inappropriate passage to support the unum necessarium.

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\(^{690}\) Leviathan, 325.

\(^{691}\) See chapter IV, section 2.5 above for Grotius’s simplicity argument in De veritate, and some relevant background in ancient philosophy and early Christianity. Also see Meletius, sections 54 and 91.

\(^{692}\) Leviathan, 326.
Hobbes quotes Matt. 11:30 as “Christ’s yoke is Easy, and his burthen Light,” though the original is direct speech in the first person. Matt. 18:6 is an odd reference: since little children believe in Christ, Hobbes argues, it must be easy to do. Matthew 18 is a long sermon by Jesus about the need to be humble, forgiving, and not hurt or despise children. Although in Matt. 18:6 Jesus does say that children believe in him, the verse itself is a severe threat against those who would offend ‘one of these little ones.’ Moreover, nowhere does Jesus say that belief is in any way easy; in fact, the overall impression is of a continuous struggle aimed at undoing the world in oneself. It certainly does not support Hobbes’s point.

The often-used “foolishness of preaching” in 1 Cor. 1:21 also stands out as an odd passage to choose to prove *unum necessarium*, especially that the ease of believing it is one proof of its validity and truth content. The passage is against worldly philosophy, including its commonsensical and eminently easy-to-believe components. The Geneva Bible, on which Hobbes draws more than the AV, gives elaborate and long glosses to 1 Cor. 1:21, which exemplify the early modern English concern with this passage. Despite Hobbes’s sophisticated engagement with contemporary exegetical debates elsewhere, here he uses without comment this highly debated biblical verse to prove easiness of belief – perhaps ironically.⁶⁹³ Hobbes’s final point in support of this argument is that Paul, who “never perhaps thought of Transubstantiation, nor Purgatory, nor many other Articles now obtruded,” was still saved. It is worth noting, however, that it was physical signs that convinced Paul: the great light, the voice, and being thrown from his horse. God did not tell him anything about the second coming or Jesus being the king (Acts 9). There is no cross-reference between the passages cited in Hobbes’s third argument in Tyndale, the Geneva or the AV. The Vulgate refers from 1 Cor. 1:21 to Matt. 11:25, and also from Matt. 18:6 to Acts 9:5. If Hobbes’s edition had the same, then it is likely that he also had Paul’s conversion in mind when he wrote that Paul did not believe in transubstantiation. Neither, however, was Paul converted by *unum necessarium*, let alone the easiness of believing it, which is what Hobbes set out to prove.


The fourth argument for *unum necessarium*, the keystone of Hobbes’s theology, builds on biblical passages that allow for “no controversy of interpretation.”⁶⁹⁴ His references are John 5:39; 11:26-7; 20:31; 1 John 4:2; 5:1; 5:5; Acts 8:36-37 as well as “Thy faith hath saved thee,”

⁶⁹³ Compare Grotius’s obviously untrue and potentially ironic claim that core doctrines of Christianity command universal consensus: chapter 4, Section 2.2 above.
⁶⁹⁴ *Leviathan*, 326.
which only occurs in Luke 7:50 and 18:42, although the phrase, “thy faith hath made thee whole,” also appears several times (Matt. 9:22; Mark 5:34; 10:52; Luke 8:48; 17:19). The Geneva Bible has no cross-references between any of the verses that Hobbes purports to cite. The AV only has Luke 7:50 to 18:42. The Vulgate has most of them, except for cross-references between any of the first seven verses in this string, and between “Thy faith hath saved thee” in Luke.

This connection between Luke and the first seven biblical references in Hobbes’s argument for unum necessarium is another instance of the influence that the Geneva glosses had on Leviathan, this time on proving unum necessarium with an argument from simplicity. Gloss k to John 20:29 explains the verse as: “Which depend upon the simplicitie of Gods worde, & grounde not the selves upon mans sense and reason,” while gloss b to 1 John 4:2 on Jesus reads: “Who being very God came from his Father and toke upon him our flesh. He that confesseth or preacheth this truely, hathe the Spirit of God, els not.”

Once again we find Hobbes choosing verses that are ambiguous at best, and often strikingly inappropriate, in ways that make the reader question the Bible’s authority and applicability to the constitutional issues raised in Leviathan. John 5:39 is a part of Jesus’ speech against those who do not believe in him. It takes the form of a legal argument that must have appealed to Hobbes. A man’s testimony about himself should be disregarded, Jesus begins, but his own messiahship is attested by John, God the Father, and by Scripture. Those who doubt that Jesus is the Son of God also reject these witnesses. This is the context in which Scripture is mentioned, as one of the authorities ignored by all those who did not accept Jesus as the Christ. Hobbes uses this passage to argue that since Jesus was referring to the Old Testament (the New not having been written yet), and Jesus reduced the Old Testament to the “marks” and prophecies of Christ, therefore the only substantive message of the whole Bible is the unum necessarium. At the least, this is a radical interpretation of Jesus’ words.

John 11:26-27 comes from the resurrection of Lazarus. Martha’s response to Jesus’ question about her belief concerns eternal life; it says nothing about kingship. Throughout the fourth argument Hobbes repeatedly cites passages like this, which describe Jesus as the saviour, to show that he is king; yet the two are not necessarily synonymous. Likewise, John 20:31 is the closing formula of the doubting Thomas scene. It states that there were more signs that Jesus was the Christ, but these are not described. The signs that remain unwritten are

695 The role and importance of witnesses in Grotius’s reasoning about the truth of Christianity is discussed in chapter IV, e.g. in sections 2.2 and 2.3. Also Nan Goodman, “Seeing the World Seeing: The Puritans and the Legal Science of Evidence,” presented at Sacred and Secular Revolutions: The Political and Spiritual Legacies of the Atlantic Enlightenment in the American Founding, JMC and The Huntington Library, 7 March, 2014.
meant to make people believe and to have eternal life through their faith. Again, this is an odd passage to bear any weight in Hobbes’s argument for unum necessarium, partly because Hobbes does not describe here what these signs might be (if they are miracles, for instance, Hobbes argues elsewhere that these have ceased after Christ) and partly because Thomas’s demand for tangible evidence is a striking reminder that even Apostles are not always ready to take unum necessarium on faith alone.

The next biblical passage supporting the fourth argument is 1 John 4:2, a doctrinal exposition warning against false prophets, addressed to all believers. Acts 8:36-7 is about a eunuch who was reading Isaiah when he met Philip, who explained the Old Testament passage as a prophecy about Christ. The eunuch then wished to be baptised, so Philip summarised the faith. This seems like a straightforward and excellent choice for Hobbes to substantiate unum necessarium from the Bible. However, he irreparably obfuscates the matter by dividing the fourth argument for unum necessarium into five groups. The first group begins with John 5:39 about the marks of Jesus and the Old Testament; while the eunuch scene from Acts 8:36-7, which is in the last, fifth group is supposed to show that

Therefore this Article beleeved, Jesus is the Christ, is sufficient to Baptisme, that is to say, to our Reception into the Kingdome of God, and by consequence, onely Necessary. And generally in all places where our Saviour saith to any man, Thy faith hath saved thee, the cause he saith it, is some Confession, which directly, or by consequence, implyeth a beleef, that Jesus is the Christ.  

This conforms to Hobbes’s definition and view of baptism as the sign of a pact with God and a promise to obey Christ when he establishes his kingdom, a view developed at length at the end of Leviathan, chapter 35, and in chapters 41 and 42. Although Hobbes discusses prophecy at length elsewhere, he does not bring in his own views here, even though the Acts passage clearly requires it. Not that his view of baptism was straightforward: it could be a sign of the elect, but in chapter 41 Hobbes historicises it, and presents it as a ritual established by Jews at a time of leprosy, or derived from the Greek practice of washing the dead. Still, for Hobbes it was one of the two deeply meaningful sacraments (the other is the Lord’s Supper), all other rites being even more incidental and historically contingent.

Regarding the second sentence in the last passage, Jesus invariably uses the “Thy faith hath saved thee” and the “Thy faith hath made thee whole” formulae when dismissing

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696 Leviathan, 326-7.
someone he just healed: never when he says that someone will enter Heaven or gain salvation.

In sum, these passages have little of the meaning that Hobbes ascribes to them.


The fifth and final argument for unum necessarium is no less surprising. This argument is “from the places, where this Article is made the Foundation of Faith”: Mat. 24:23; Gal.1:8; 1 John 4:1; Matt. 16:18; 1 Cor. 3:11-12; Zech. 13:8-9; 2 Pet. 3:7, 10, 12. This string may have come from the Vulgate, since almost none of the cross-references are in the AV or the Geneva Bible.

The context of Matt. 24:23 reveals the typical Hobbesian interpretative strategy.

The last argument is from the places, where this Article is made the Foundation of Faith: For he that holdeth the Foundation shall bee saved. Which places are first, Mat. 24. 23. If any man shall say unto you, Lo, here is Christ, or there, beleive it not, for there shall arise false Christs, and false Prophets, and shall shew great signes and wonders, & c. Here wee see, this Article Jesus is the Christ, must bee held, though hee that shall teach the contrary should doe great miracles.\(^697\)

The Matthean context is the end of the world and the destruction of the Temple. The whole chapter is dire and foreboding in tone, unfit to prove and flesh out a positive doctrine. Furthermore, Hobbes refers to the same verse and the same link (Matt. 24:24 and Gal. 1:8) in chapter 32 to show that miracles prove little, since even false prophets can produce them and “deceive the very elect.”\(^698\) He also brings in the more ominous nearby verses (Matt. 24:5, 15) to discuss the Antichrist and the end of the world in chapter 42.\(^699\) What connects Matt. 24:5; 25:11; 25:24 and 1 John 4:1 is the motif of false prophets. This is in the Vulgate, but not in the AV: Matt. 24:5 cross-refers to 24:11 and 24:24, while Matt. 24:11 refers to the other two Matt. 24 verses as well as to 1 John 4:1. Since Hobbes adapted this string either from another book or his own notes on false prophets and the end of the world, it is odd to find him recyle it to support unum necessarium.

The reference to Gal. 1:8 is not in Geneva or the AV, but the Vulgate 1 Cor. 3:10 does refer to Gal. 1:7-9. It is another incongruous passage, and its use for unum necessarium is conspicuously far-fetched and forced. Galatians 1 is an admonishment; Paul is berating the

\(^697\) Leviathan, 327.
\(^698\) Leviathan, 197.
\(^699\) Leviathan, 303.
Galatians for falling from the true faith. To put an end to disagreements within the Church, he instructs the Galatians that even if an angel preached something different from what they heard from the apostles, they should still ignore it. He does not say that *unum necessarium* should be the foundation of their faith.

As with other passages he cites, Hobbes again appears to be more concerned with defeating false prophets and those who claim doctrinal authority than with supporting the *unum necessarium*. Earlier we saw the uneasy adaptation of Hobbes’ powerful anti-clerical and anti-papal biblical exegeses, developed in previous *Leviathan* chapters, to his definition and severe limitation of the Apostles’ mandate in chapter 43, as part of his second *unum necessarium* argument. Just as the redeployment of earlier anti-clerical and anti-papal interpretations led to Hobbes detracting from the Apostles’ power (including the reduction of Jesus’ commissions), here the exegetical barriers he erects against false prophets severely hamper his ability to construct a positive theological argument to support *unum necessarium*.

Matt. 16:18-19, unlike the other references, is actually directly relevant to what Hobbes set out to demonstrate. This is, as he knew, one of the most debated passages in the Bible; Catholics used “That thou art Peter, and upon this rock I will build my church” to support the Pope’s legitimacy. Hobbes argues instead that the “rock” refers to the *unum necessarium* professed by Peter in Matt. 16:16. He makes the exact same point in his response to the third argument of Bellarmine’s first book, where he invokes five other biblical passages to prove precisely that *unum necessarium* is the only proper and required foundation of faith.\(^700\)

Strangely, Hobbes’s exposition of these passages is significantly more detailed and convincing when he levels them against Bellarmine’s justification of papal authority than here, where his stated aim is to prove *unum necessarium*. Again, the anti-clerical component of *Leviathan* not only far outweighs the constructive theology, but does so in contradiction to Hobbes’s stated priorities.

There is a similarly multi-layered and contentious exegetical tradition for 1 Cor. 3:11-12. Hobbes’s reading is *prima facie* credible: those who believe in *unum necessarium* will be saved, irrespective of their position on *adiaphora*. However, he next conjectures that the fire, which burns down every man’s house and reveals the durability of the materials used to build on the solid foundation, which is the *unum necessarium*, is deeply allegorical. The passage in 1 Cor. refers not to purgatory, but relies on Zech. 13:8-9. This is an ingenious but problematic interpretation. Hobbes cites Zechariah as:

\(^{700}\) *Leviathan*, 301-2.
Two parts therein shall be cut off, and die, but the third shall be left therein; And I will bring the third part through the Fire, and will refine them as Silver is refined, and will try them as Gold is tried; they shall call on the name of the Lord, and I will hear them.  

But this is not the end of the passage. It continues, in the AV: “they shall call on my name, and I will hear them: I will say, It is my people; and they shall say, the LORD is my God.” Moreover, verses 8 and 9 are at the end of Zech. 13, in the context of verse 7, where God prophecies that he will smite the shepherd who looks after his sheep unfaithfully.

The AV reads Zech. 13:7-9 as a prefiguration and prophecy of the crucifixion and the new covenant through Christ. Geneva offers a different interpretation. Its glosses to verses 4 and 5 say that false prophets will have to work for their living, no longer able to claim church tithes. The trial in verse 8, according to the Geneva gloss, refers to the chosen, who will endure suffering before ascending to heaven. Hobbes’s reading, as in all other cases, is closer to the Geneva Bible than to the AV, and adds a millenarian twist: “The day of Judgment, is the day of the Restauration of the Kingdom of God.” According to Hobbes, this is what 1 Cor. 1:21, Zech. 13:9, and 2 Peter all refer to.

Unusually, this reading is both consistent with the biblical text and relevant to Hobbes’s alleged demonstrandum. The questions are where he got the reference from, why he omitted the final phrase of Zechariah, and what he meant by choosing a verse preceded by the image of God smiting and scattering his own shepherds. On balance, it seems highly probable that in this case, as in the cases treated above, Hobbes is trying to use an anti-papal and anti-clerical (and possibly millenarian) treatise’s biblical strings to construct a dubious doctrine of unum necessarium. The final references to prove unum necessarium are 2 Pet. 3:7, 10, and 12. They too describe the day of judgment rather than unum necessarium. In conjunction with Zechariah, they offer a clue to Hobbes’s source for this string. Besides the millenarian and anti-papal genres, another candidate is a work on purgatory, since here Hobbes again rejects the view that either 2 Peter or the foregoing verses prove its existence.

VI.9 Conclusion

Comprehensive analysis of Leviathan reveals that most of its hundreds of biblical interpretations are also conspicuously untenable and were recognised as such by Hobbes’s
Leviathan

Biblical Criticism


One possible explanation is that Hobbes’s reinterpretations are genuine, albeit eclectic. Another is that the consistent instrumentality and idiosyncrasy of Hobbes’s biblical exegesis is a bravura demonstration that the Bible, like all texts, is open to irreducibly multiple interpretations, and therefore should be inadmissible as evidence in constitutional debates. Explicit parts of Leviathan make this same point, including the unum necessarium argument, Hobbes’s repeated affirmation of the individual’s freedom of conscience, and the comprehensive assault on clerical authority. It does complicate matters, however, if the explicit arguments are supported by obviously (but not explicitly) fallacious biblical interpretation.

That, however, is another story. The goal here was to show that Hobbes, like Grotius, Selden and, as shown below, Harrington, systematically subverted the biblical politics which were a cause, and/or the result, but certainly an integral part, of the violence and instability that these thinkers aimed to contain. Moreover, the case of Hobbes’ unum necessarium – ostensibly in the same genre as irenic and missionary minimalism – shows how hard it is to find conceptual space in Leviathan for Christian evangelism, let alone a state and an empire based on positive Christianity. James Harrington was one of Selden’s many and Hobbes’s very few overt admirers in the 1650s. Proposing sometimes similar, sometimes different constitutional arrangements, but sharing the same ambition to construct an irenicist framework for English, British and colonial politics and law, Harrington’s exegetical techniques for the neutralisation of the Bible constitute the next chapter in what increasingly seems like a coherent history of seventeenth-century English secularisation, yet to be written. While texts like Mare clausum, Leviathan and Oceana are rightly placed in the context of particular political controversies, they also address chronic problems of religious politics, and deliberately build on one another to do so.

Perhaps a chief aim of Leviathan was really to disabuse men from the deceit of others and make them steady against “every winde of doctrine.” From his own explicit comments and from textual evidence it is clear that Hobbes had at least the Vulgate, the Geneva Bible and the AV on his desk while writing Leviathan. It is also clear that the furore aroused by his

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703 For the same method in Grotius see Somos, Secularisation, chapter V.

704 E.g. Leviathan, 384-6.

705 Contemporaries famously identified several of Hobbes’s biblical subversions. See e.g. Parkin, Taming the Leviathan.

706 Counterarguments to this include reconstructions of Hobbes’s own rhetorical agenda in Skinner, Reason. Evrigenis, Images.
exegeses did not surprise him.\footnote{That which perhaps may most offend, are certain Texts of Holy Scripture, alledged by me to other purpose than ordinarily they use to be by others. But I have done it with due submission, and also (in order to my Subject) necessarily; for they are the Outworks of the Enemy, from whence they impugne the Civill Power." \textit{Leviathan}, Epist. Ded., 3. Contemporary criticisms, specifically of his exegeses, include R. Hook, \textit{Leviathan Drawn out with a Hook} (1653), 11, 33, 72-7. T. Tenison, \textit{The Creed of Mr Hobbes Examined} (1670), 64-6, 200-1. Clarendon, \textit{A brief} (1676), 5-6, 198, 202, 316-9, \textit{passim}. J. Whitehall, \textit{The Leviathan Found Out} (1679), 90-1, 113-4, 142, 149. Hobbes's defence: \textit{Considerations}, 30.} Previously less evident, but hopefully demonstrated, is his extensive reliance on the Geneva glosses for several interpretations, derivative points and argumentative structures. It does not follow that Hobbes modelled the whole of his Commonwealth, “fitly joined together and compacted by that which every joint supplieth,” on the image of God’s kingdom to come. He may have, nonetheless, been influenced by it sufficiently for the connection to deserve further examination, together with the rest of the text. His defense of \textit{Leviathan}, namely that it was written in a moment of power vacuum and no Sovereign, is a possible explanation of Hobbes’s dislike for the AV.\footnote{Hobbes, \textit{An Answer to a Book Published by Dr Bramhall, Late Bishop of Derry, Called Catching of the Leviathan} ([1682]; Molesworth IV, 1811), 355.} Another, not incompatible, possibility is his surprising attachment to Calvinist and even millenarian views of sovereignty, which put moral but little redemptive value in the earthly sovereign; unless that earthly Sovereign was Christ.
CHAPTER SEVEN

HARRINGTON’S PROJECT: IRENIC SECULARISATION AND THE REPUBLICAN PATRONAGE OF THE WORLD

O that those who pretend to set up a gospel-commonwealth in England, Scotland and Ireland would not be worse than Moses, but rather exceed Moses, knowing that if this our English commonwealth’s government carry perfect freedom in his hand, then shall the law go forth from England to all the nations of the world.

Gerrard Winstanley, The Law of Freedom in a Platform, 1652

For if these were but notions,—I mean these instances I have given you of dangerous doctrines both in civil things and spiritual; if, I say, they were but notions, they were best let alone. Notions will hurt none but those that have them. But when they come to such practises as telling us, for instance, that liberty and property are not the badges of the Kingdom of Christ; when they tell us, not that we are to regulate law, but that law is to be abrogated, indeed subverted; and perhaps wish to bring in the Judaical Law, instead of our known laws settled among us: this is worthy of every magistrate’s consideration, especially where every stone is turned to bring in confusion. I think, I say, this will be worthy of the magistrate’s consideration.

Oliver Cromwell, At the Opening of Parliament under the Protectorate. 4 September, 1654

VII.1 Irenic secularisation, republic and empire in Harrington’s Oceana

VII.1.1 Introduction
This chapter offers an interpretation of Oceana as a secularising work. As a reminder, in contrast with secularism as a norm, secularisation is the contingent, incremental, non-linear, and often unintended historical process of removing Christian theology from all aspects of thought, from the natural sciences to international law. Historically, secularising proposals often reacted to specific political problems, such as competing legitimacy claims made irreconcilable by theological justification, or rival visions of religious toleration. They often contained confessionally ecumenist, epistemically minimalist, and Erastian elements, and prioritised the need for social order over a particular set of religious beliefs. Unlike unseasonably blunt statements of secularism, such irenicist texts had a secularising effect on the European worldview and institutions, whether they were written in defense of politics from religion, or vice versa. Here I show how Harrington drew on the existing discourse of

Somos, Secularisation, 1-6, 30-42, 439, 442-5.
secularisation, including Grotius, Selden and Hobbes, discussed above, and how he adapted their techniques to accommodate, reconcile, and contain the volatile range of political and religious convictions in mid-seventeenth-century England.

Among Harrington’s secularising techniques, such as the systematic subversion of conventional biblical exegeses, the historicisation of biblical episodes, and natural theology, the one in focus here is his neutralisation of the Hebrew commonwealth as a potential source of political disagreement in Oceana. The reason for this choice is the rapid expansion of scholarly literature concerning the Hebrew Republic. The theme takes increasingly ambitious roles, not only in textual analysis but also in genealogies of modern democracy, capitalism, liberalism, toleration, pluralism, and multiculturalism.\textsuperscript{710}

I would like to point out a fundamental misunderstanding in some of this literature. In my interpretation, several early modern uses of the OT commonwealth were influential and original because they showed various ways in which the Hebrew Republic was a profoundly unsuitable model. This is why early modern political analyses of the Hebrew Republic form a crucial subject of study. The revealing aspect of some Renaissance and early modern usages of the OT commonwealth, from Machiavelli’s Discorsi (1517) through Grotius’s De republica emendanda (1600?) to Harrington’s 1656 Oceana, is how they discontinue the medieval tradition of deriving legitimacy claims from alleged analogy or parallel with, or even direct descent from, God’s directly ruled country. The equally revealing contrast is with sixteenth- and seventeenth-century millenarians and heresiarchs (Savonarola, Müntzer, Hoffman, van Leiden, several English ‘saints’), who wanted to model their city on the Bible. The remarkable thing about Selden, Hobbes and Harrington is that they did not anchor their politics in claims of English descent from, or legitimising analogy with, the Hebrew Republic, unlike many of their peers, opponents and occasional allies.

Why not? Because they recognised the irresolvability of conflicts based on religiously founded truth claims. England saw numerous cases throughout the seventeenth century, most prominently during the Civil War, when conflicts hinged on biblical interpretations or other matters of faith. Something had to be done. Writers like Harrington had two good reasons to

neutralise the biblical commonwealth in an indirect and non-confrontational manner. Firstly, his times supplied ample evidence that such conflicts cannot be settled by ignoring religious sensibilities and suddenly eliminating religious elements from legal and political arguments. To be an effective aid in negotiating, pacifying and uniting opposing sides, secularisation had to be subtle and incremental. Radically secular arguments could be easily rejected as irrelevant. Secondly, groups and individuals who tried to resolve religious conflicts through precipitate secularisation, including French New Historians and the Leiden Circle, suffered oppression.  

Harrington’s best hope of being effective was to figure out a way to minimise the number and kinds of believers who would be upset by *Oceana*; and at the same time to propose a credible Erastian arrangement to institutionalise some form of toleration, including the liberty of conscience he prized, and constraints on enthusiasm. His best instruments for accomplishing this included stripping Israel from all claims to special status, historicising its institutions, comparing them to other states’, and explaining why Israel was not a successful state by any historical standard, and that no pragmatic theorist could take it as a model for a viable, let alone glorious, modern state. Another instrument was an ecumenic expansion of the ant clericalism that characterised his times. Harrington’s insistence on the unity of government and the impossibility of parallel civil and ecclesiastical regimes undermined not only the established Anglican clergy, but also any episcopalian, Presbyterian and Congregationalist system that presumed the authority of bishops, the self-sufficiency of a Presbyterian polity and its independence from civil government, or the spiritual and governmental autonomy of local churches.

VII.1.2 Secularising techniques

Either I have impertinently intruded upon the Politicks, or cannot be said so much to meddle in Church-matters, as Church-men may be said to have meddled in States matters.

*Prerogative*, II.v.51

For the sake of simplicity, I divide Harrington’s techniques for removing Christianity from politics into six groups. The first group disclaims the specialness of the divine polity: whenever Harrington justifies a political institution or practice from the biblical polity, in the same passage he adds other, non-biblical sources for the same. There is not a single feature of

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Oceana, including the agrarian, that is justified from the Bible alone. Second, Harrington marshals several reasons why no feature of the biblical polity can ever be reproduced, or why the features that can be reproduced were not directly ordained by God as the historical ruler of the Jews. The third group contains Harrington’s institutions and policy recommendations that have no biblical precedent. Fourth, Harrington gives several reasons why institutions derived from the divine polity, even if it were possible to reproduce them, would be unsuitable to the task of reforming England. The fifth group surveys Harrington’s replacement of accepted forms and interpretations of key Bible passages with highly unusual alternatives. In keeping with the overall agenda of his biblical usage in Oceana, these alternatives negate or neutralise the political applicability of these passages. The final group, containing direct criticisms of enthusiasts, makes Harrington’s purpose and design explicit and clear.

VII.1.2.1 The non-specialness of the divine polity as a model

The argument that the divine polity holds no special status as a model can be gleaned from the very opening of Oceana, where we read that ancient prudence was “first discovered unto mankind by God himself, in the fabric of the Common-wealth of Israel, and afterward picked out of his footsteps in nature, and unanimously followed by the Greeks and Romans.” Key institutions, like the agrarian, sortition, and consent, are shown to have existed in the Hebrew Republic, but also as deducible from nature and other, equally instructive historical examples. To support the existence of a natural aristocracy, Harrington cites Deut. 1:13 emphatically as only one example of “a naturall Aristocracy diffused by God throughout the whole body of mankind.” Election, parliament, bicameralism, the Council of Legislators, rotation and other constitutional components are treated the same way. When the Hebrew Republic is cited in Oceana as a viable model, Harrington always states that its emulable qualities can also be deduced from nature and other historical examples. Harrington summarises his argumentative process and the hierarchy of his sources:

712 Oceana, 1.
713 Oceana, 5.
714 Oceana, 14. Again on 146, together with Num. 1:16 and 1:18, followed by corroborating examples from Athens, Sparta, Rome, Venice, Holland, and Switzerland.
715 Lea Campos Boralevi raises the important point that the Hebrew Republic was fitted into a comparative framework natural to humanistic syncretism in her “Harrington’s ‘Machiavellian’ anti-Machiavellism,” at 114-5. To this framework Harrington added human prudence as a natural source that could draw on, but was independent from, historical exemplars. Moreover, in Sections 1.2.2-6 below we will see the deliberate exclusion of Israel as a viable model.
Now whether I have rightly transcribed these Principles of a Common-wealth out of Nature, I shall appeal unto God and to the world. Unto God in the Fabrick of the Common-wealth of Israel: and unto the world in the universal Series of ancient prudence.\footnote{Oceana, 15.}

Moreover, when Harrington gives a detailed account of the agrarian in Oceana, he never praises Israel’s without pointing out its in-built causes of failure, and/or drawing historical parallels. For instance, he attributes the success of both Sparta and Israel to the equality grounded in their agrarian laws, and their failure to their inequality in rotation. The consequence in both states is the Senators’ usurpation of power to appoint their successors by ordination. It is this corrupt political practice, together with excommunication and communism, that the Essenes transmitted to the Christian Church.\footnote{Oceana, 26, 149-50. Cf. Harrington, The Prerogative of Popular Government (London, 1658), “An Answer to Three Objections,” 2-3, comparing the violence of monarchy in Israel and Rome.} Similarly, when Harrington praises the Hebrew Republic’s practice of efficiently and wisely dividing people into orders according to an elaborate system, he immediately praises the Spartans for doing likewise.\footnote{Oceana, 59-60.} Harrington’s complex discussion of lists, tribes and groups invokes Israel, Sparta, Rome and other models; never Israel only.\footnote{Oceana, 68 ff.} Lord Archon puts “the right of Suprem Judicature in the People” with reference to the constant practice of all commonwealths, including Israel, Athens, Sparta, Rome and Venice.\footnote{Oceana, 184-7.} He vindicates popular elections with reference to the historical experience of Israel, Athens and Rome,\footnote{Oceana, 199.} and the salaries of magistrates by citing the Sanhedrin, the Athenian Senate of the Bean and the Areopagites, Sparta, Venice, and the handsomely paid Counsellors and States General in Holland.\footnote{Oceana, 202. See also Prerogative, II.iv.42 that both Sparta’s Agrarian and Senate had “strange resemblances to that of Israel.”} For reasons of religion and policy, universities provide the educational framework best suited to Oceana.\footnote{Oceana, 256.} For reasons of religion and policy, universities provide the educational framework best suited to Oceana.\footnote{Oceana, 202. See also Prerogative, II.iv.42 that both Sparta’s Agrarian and Senate had “strange resemblances to that of Israel.”} Israel, Athens, Sparta, Rome, Venice, Holland and Switzerland introduced the same system for the same reasons.\footnote{Oceana, 218-20.} Stability demands magistracy to be civil, not religious, even...
when it establishes or rules on national religion, or anything connected to religion, including public education. Religious titles are bestowed upon civil magistrates to bolster their authority, not to suggest that their function can be usurped by church officials. Harrington’s Erastian model is supported by the examples of Moses, Athens, Sparta, Rome, Venice, Holland, and other historical and contemporary cases. In Lord Archon’s account the military rituals of the biblical Israel – such as convening an army, marshalling the troops, sacrifices before battle, or selecting officers by lot – had both strong religious foundations and clear parallels in Roman history.

VII.1.2.2. The irreproducibility of the divine polity

Harrington’s second group of secularising techniques aims to show why the Hebrew Republic cannot be reproduced. The citizen, soldier and voter cannot understand the Bible. Prudence demands that the specialists, who can, must have no political influence. Historical precedents confirm that they must not: “Wherefore, neither the honour borne by the Israelitish, Roman, nor any other Commonwealth that I have shewn, unto their Ecclesiasticks consisted in being governed by them, but in consu’ting them in matter of Religion; upon whose responsa, or Oracles, they did afterwards as they thought fit.” Even the Hebrew Republic is not a counter-example. Moses ruled as civil magistrate. Although he was a prophet, his rule was civilian, shown i.a. by his investment of the Sanhedrin. Athens, Sparta and Rome similarly gave religious titles to civil magistrates. Although senates, congregations, comitia and elections were protected by an aura of religious trappings, they remained civil institutions, and religious matters were firmly subservient to public order. When civil and ecclesiastical laws were identical in the exceptional and irreproducible case of the Hebrew Republic, government was still civil, and fully comparable to other historical states. It is pointless to claim, let alone contest, religious legitimacy derived from the Hebrew Republic.

The legal continuity of the correct institutional arrangement that pertained to Israel, namely civil magistrates’ control over ecclesiastical laws and education, and prophets guaranteeing individual freedom of conscience, was broken under the tyrannies of Herod, Pilate and Tiberius, and by the absence of post-biblical prophets. Regarding the expansion of

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725 Oceana, 221-3.
726 Oceana, 230-1.
727 Oceana, 220-2.
728 Oceana, 221.
729 Cf. Prerogative, II.iii.27-9.
730 Oceana, 221-2.
731 Oceana, 27-8, 65. See also Prerogative, I.3.19-20.
well-ordered commonwealths, Harrington’s outline of colonial models names Israel as unique for being “democratic,” having used lots to divide Canaan. Soon thereafter we read that the first division of land matched neither the geography nor their form of government. The installation of a king was unwise, unprecedented and not to be repeated:

for if the Israelites (through their Democraticall Ballance being fixed by their Agrarian stood firme,) be yet found to have elected Kings, it was because their Territory lying open they were perpetually invaded, and being perpetually invaded turned themselves to any thing, which through the want of experience they thought might be a remedy; whence their mistake in election of their Kings, (under whom they gain’d nothing, but to the contrary lost all they had acquired by their Common-wealth, both Estates and Liberties;) is not only apparent, but without parallel.

Harrington’s first-person analysis is reiterated by Lord Archon, who emphasises that Israel, despite its perfectly balanced agrarian, fell only because under the pressure of invasions the people replaced God with a king, “which being an Accident, the like whereof is not to be found in any other People so planted,” and “besides the Course of Nature.”

Another, more symbolic institution, namely raising one’s hands toward Heaven in search of clearer instruction, is adopted by Oceana from the Hebrew Republic. Harrington makes it exceedingly clear that in Israel the prophets gained true knowledge, while Oceana relies on reason, “pretendeth not unto infallibility,” and respects private “Liberty of Conscience.” As the prophets’ role as guardians of freedom of conscience came to an end, likewise none of the power or political significance of the Hebrew Republic’s custom of raising one’s arms carries over to Oceana.

VII.1.2.3 Good things not from the divine polity
In addition to treating most institutions of the Hebrew Republic as one of several, not only comparable but equally compelling historical cases, and showing its few unique institutions to

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732 Oceana, 41. See also Prerogative, I.3.19-20, II.iii.28-9.
733 Oceana, 43. Cf. Oceana, 258, and Prerogative, I.3.13-14, on the narrowness and smallness of Israel, which made usury prudent.
734 Oceana, 98-100; at 99.
735 Oceana, 65.
736 Oceana, 27-8.
737 Regarding Israel’s irreproducibility, note that Harrington occasionally suggests that the divine polity cannot be a potential model because too many details have been lost, including its agrarian. Prerogative, l.xi.89.
be irreproducible, Harrington also describes several important Oceanic institutions that are adopted from, and/or justified with reference to, models other than the divine polity.

Jethro is a key figure for this technique. Harrington invokes him often. Early on he systematically discusses several institutions of the divine polity, such as the divisions into groups of various sizes, the meritocratic election of natural aristocracy into a representative body, the mixed constitution, popular sovereignty, public assemblies, the agrarian laws, the use of the ballot, the Sanhedrin, and the central and local courts. Harrington cites numerous biblical passages to support his occasionally controversial reconstruction of these institutions, before concluding that

these being that part of this Common-Wealth which was instituted by Moses upon the advice of Jethro the Priest of Midian, (Exo. 18.) as I conceive an Heathen; are unto me a sufficient warrant even from God himself who confirmed them, to make farther use of humane prudence where ever I find, bearing a testimony unto it self, whether in Heathen Common-wealths or others.  

From a string of biblical passages, Harrington then builds the argument that most of the biblical polity’s institutions come from a pagan priest. God did not suggest them, but God’s approval justifies using them, and using any other non-biblical historical institution that conforms to human prudence. An historical review of states follows. The brief introduction between “The Second Part of the Preliminaries” and the actual text of “The Modell of the Common-Wealth of Oceana,” entitled “The Councill of Legislators, shewing the Art of making a Common-Wealth” on the contents page but simply “The Councill of Legislators” in the running text, explains the first creation of “an immortal Common-wealth.”

And such was the Art whereby my Lord Archon (taking Counsel of the Common-wealth of Israel as of Moses; and of the rest of Common-wealths, as of Jethro) framed the Modell of the Common-wealth of Oceana.

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738 Oceana, 14-8.
739 Oceana, 18. See Rosenblatt, Renaissance, 151 for Jethro’s significance for Selden; and Job in a similar role: 155-7.
740 Oceana, 1.
741 Oceana, 52.
742 Oceana, 54.
As the main text of “The Modell” opens, Harrington compares Lord Archon to Moses and Lycurgus as other lawgivers. The next time Lord Archon is explicitly called a first lawgiver is near the very end of the book, where the first of the young Commissioners of the Proposers calls him superior to bloodthirsty founders like Alexander, and semi-successful ones like Solon, Lycurgus, Brutus, and Publicola. Lord Archon is compared favourably to Scipio, then shown god-like, “shrunk into Clouds, he seeks obscurity in a Nation that sees by his light.” Moses does not make this final list.

Yet Harrington’s subversion, then elimination of the conventional image of Moses as divine legislator, is more than a framing device. In addition to the long list of specific institutions that Moses is shown in “The Councill of Legislators” to have learned from Jethro, Harrington’s first illustration of ancient prudence in “The Modell of the Common-wealth of Oceana”

is taken out of the Common-wealth of Israel; So Moses hearkened unto the voice of (Jethro) his Father-in-Law, and did all that he had said. And Moses chose able men out of all Israel, and made them heads over the people, (Tribunes as it is in the vulgar Latine; or Phylarches, that is) Princes of the Tribes, sitting (Sellis Curulibus, saith Grotius) upon twelve Thrones...

The literature required to contextualise Harrington’s use of Jethro is prohibitively large. Let it suffice to note that Harrington is doing several things here. First, he draws on Rabbinic discussions of Jethro and on Rabbinic qualifications of the simplistic view of Jewish laws as divine, pure, and simple. Jethro is a highly controversial figure in both Jewish and Christian traditions. Four reasons among many are his worship of the true God in Exod. 18; his unclear status as a leader of the Midianites; the Tanakh’s debated use of several names to refer to him (Jethro, Hobab, Reuel, Keni, Heber, etc.); and Moses’s implementation of his counsel regarding key institutions of the holy commonwealth. In Oceana Harrington does not touch on the debates about Jethro’s names, nor on his status as priest and/or prince, or on Jethro’s conversion. He refers to him by one name, and not only states but emphasises that Jethro was

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43 Oceana, 55.
44 Oceana, 295, mis-paginated as 195. Cf. Prerogative, II.iii.26 and 31, on the functions of Romulus as “the Protector of the common-wealth,” and why Moses was different.
45 Oceana, 56.
46 Some Tannaim, for instance, thought that Jethro converted to Moses’s religion before advising him. Others thought he remained a Midianite, and his praise of the true God is a warning to Jews who praise little, or without soul. See e.g. Babylonian Talmud, Zevachim, 116a.
a heathen priest. The down-scaling of the Hebrew Republic’s divine authority in Oceana is unmitigated by Jethro’s ambiguities. Harrington’s numerous uses of Jethro are all designed to undermine the uniqueness of the divine polity.

The two components of this strategy are establishing that the biblical polity’s institutions are wholly comparable with other historical states’, without claim to exceptional status of any kind, and showing that Moses derived a range of these institutions from Jethro. Harrington’s main sources of inspiration for the first component are Sigoniuss’s institutional comparisons in De republica Hebraeorum, discussed in chapter III above, and the use of Jethro in the distinction between natural and specific laws developed in Grotius’s De iure belli ac pacis and De veritate, as shown in chapter IV, and in Selden’s De iure naturali. The historicising desacralisation of OT institutions by insisting on their pagan and non-Jewish priestly origin draws more heavily on Selden’s De Synedriis, a major source for Oceana. I will return to Harrington’s use of these sources.

The second implication of these and other Jethro-related passages in Oceana is Harrington’s subversion of strong versions of the claim to Jewish laws’ divinity. In this he is assisted by references to Grotius and Selden, who knew the sources better, composed treatments that were technically more compelling (due partly to their wider knowledge of languages, texts, and exegetical traditions), and who also offered politically explosive conclusions about, among other things, the priesthood’s lack of independent authority to tax or legislate; the inapplicability of biblical precepts in public and international law; and the futility of claiming legitimacy on the basis of descent from, or analogy with, any particular interpretation of the Hebrew commonwealth. Religious anger was also aroused by Grotius’s and Selden’s treatment of this polity as fully comparable with other historical states. We find the same historicisation, comparison without special status, and instrumentalisation for a political agenda, in Harrington’s treatment of Israel. An economic illustration of all three is Harrington’s parallel in the citation above between the Jewish princes’, Athenian phylarchs’, and Roman tribunes’ use of the curule chair, which continued to have regal and imperial meaning under James II (Figures 6 and 7).

747 Harrington describes Jethro for the first time as “king and priest in the commonwealth of Midian” in Prerogative, I.iii.20.
Figure 6. *King James VI and I*. By Paulus van Somer I, ca. 1600. Museo del Prado, Madrid
Grotius’s treatment of Jethro is also relevant. In *De veritate* V.vii Grotius distinguishes between universally binding natural laws and the ceremonial and civil laws specific to the OT Jews that are given in the Bible. In support he mentions that Moses did not exhort Jethro to follow Jewish rites. Barbeyrac comments in his 1724 French edition of Grotius’s *De iure belli ac pacis*, I.xvi, which concerns the same distinction, that the same argument appears in *De veritate* with the crucial addition of Jethro. The Jethro passage is absent from *Bewijs*, the first version of which Grotius finished in captivity in 1620, and first published in 1622. *De veritate*, based on *Bewijs*, appeared two years after *De iure belli ac pacis*. There seems to be no mention of Jethro

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753 Grotius, *Bewys Van den Waren Godsdienst* (1622, n.a.). For its history see Heering, *Grotius*, chapter 1; and chapter IV above.
in Grotius’s correspondence before 1634. The central role Harrington accords this figure was therefore inspired by De veritate, or by someone who elaborated Jethro’s role in the distinction between the Hebrew Republic’s natural and civil laws that Grotius developed in De veritate. Harrington’s use of Jethro to qualify the authority of divine laws, his comparison of OT tribal leaders to non-biblical magistrates, and historicisation of Jesus’ promise and terminology, serve his intention to create a common ground for all the sects that drew on the Bible for political inspiration, and to construct on that ground a demonstration that ancient prudence, illustrated by the biblical commonwealth, supports his system of agrarian laws, popular sovereignty, elected aristocracy, orders and ranks, bicameral parliament, and criticism of monarchy as suitable for England. The third point to make about this illustrative Oceana passage is that Harrington adapts his sources, from the Bible to Grotius, to his idiosyncratic republican agenda.

Liljegren rightly identifies Grotius’s commentary on Matt. 19:28 as the source that Harrington’s marginal note refers to. There Grotius explains that Jesus told the Apostles that they will rule with him, on twelve thrones, because the Hebrew term he used equates with praeefectura, governors or princes of the tribes who sat in judgement in sellis curulibus, and whose majesty in ancient Israel approximated that of kings. Grotius interprets Matthew’s Greek description of Jesus’ promise to the Apostles in the light of the Hebrew term for governor, and puts it in the historical context of the divine polity as a tribal federation. He elucidates the historical context with reference to non-biblical states and Greek and Roman institutional terminology, and to other biblical passages, namely Luke 22:29, Acts 26:7, and James 1:1. Harrington adopts this exegesis to Exod. 18:24 and Num. 1:16, neither of which features in Grotius’s explication of Matt. 19:28, or anywhere near. Back-projecting Grotius’s

755 For Wansleben’s recognition of the significance of Harrington’s Jethro, see Mahlberg, “Wansleben’s Harrington.” Jethro’s superior skills and authority in designing Israel’s constitution is the first objection to the Prerogative that Henry Vane the Younger (1613-62) raises in A Needful Corrective or Ballance in Popular Government (London, 1660).
756 Harrington explains his approach to Selden and Grotius in Prerogative, II.iii.27, II.iv.42, II.v.53-5. Harrington describes his indebtedness to the technical skills and authority of Grotius and Selden, and his adaptation of their arguments to his own purpose, in The Prerogative, II.iii.27: “the truth is in all that is Talmudical, I am assisted by Selden Grotius, and their quotations out of the Rabbis, having in this learning so little skil, that if I miscalled none of them, I shewed you a good part of my acquaintance with them. Nor I am wedded unto Grotius or Selden, whom sometimes I follow, and sometimes I leave, making use of their learning, but of my own reason.” See also Prerogative, II.iv.42: “in this therefore I shall follow Selden the ablest Talmudist of our age, or any,” and Harrington’s strong disagreement with Grotius in Prerogative, II.v.53-5.
757 James Harrington’s Oceana, ed. S.B. Liljegren (Lund and Heidelberg, 1924), 289.
758 Some reasons why biblical exegeses based on the distinctive linguistic, philosophical and religious characteristics of Hellenistic Jews were already highly contentious are described in Somos, Secularisation, 145-8.
reading from the New to the Old Testament, it is Harrington who draws a strongly republican conclusion with regard to the character of the divine polity, in which not kings, not even the top tier of princes, but tribal leaders or tribunes (added by Harrington to the comparisons) sat on the curule chairs.  

Harrington’s unnamed source here is Sigonius, *De republica Hebraeorum* VII.v, “De Principibus tribuum, seu Philarchis.” Here the Bolognese legal historian describes the second tier of government, after his treatment of Israel’s *reges* and *principes* in VII.iv and before “De Principibus familiarum, seu Patriarchis” (VII.vi). Sigonius alone cites in one short chapter all the biblical loci that Harrington uses in the passage cited above, and more. His interpretation is similarly republican: ‘Synagoga’ means the general assembly of the whole people. Yet the powers Sigonius ascribes to the phylarchs fall far short of Harrington’s argument. In Sigonius they collectively advise the king, and sit in judgment over the tribes. On p. 360 of the 1583 Frankfurt edition Sigonius notes that they each had their own seat (“Habuerunt autem singuli sedem suam”), and this is what Christ was referring to in Matthew 19: “For there is no question that Christ has in mind the ancient republic of the Hebrews, which flourished in the time of David.” The emphasis on Jethro’s pagan influence on Moses is likewise present in *De republica Hebraeorum*, VI.vi and VII.i.

The importance of Sigonius’s *De antiquo iure Italae* (Venice, 1560) and *Historiarum de regno Italiae libri xv* (Basel and Frankfurt, 1575) for *Oceana* is sometimes discussed, that of *De republica Hebraeorum* less so. Through Harrington’s particular string of biblical references in the above *Oceana* passage (absent from the Talmud, Vulgate, Geneva, AV, Selden, or Grotius); through his explicit use of other books by Sigonius; given his references to *De republica* 

760 Harrington mentions these chairs again in *Prerogative* II.ii.18 in a different context, that of imperial government over provinces. Cf. *Prerogative*, II.iii.32-3, inserting the biblical “*sat in the gates of each City*” into his description of judges of inferior courts.

761 Thus in the 1583 Cologne edition. The 1583 Frankfurt has *Phylarchis*. For the story of the two editions see Guido Bartolucci, “Introduction” in Carolo Sigonio, *The Hebrew Republic* (tr. Peter Weytzer, Shalem, 2010). Note that this translation seeks to convey the meaning of the original and therefore, e.g., renders *princps* in Book VII variably as “princes,” “chiefs,” or “heads.” McCuaig suggests that Bodin adapted to the Roman nobility Sigonius’s account of *novi homines* who reached curule office, “which was at that time Sigonio’s distinctive intellectual property.” Sigonio, 236. For more on the relevance of *homines navi* to the main theses of this book, see chapter II, section 2.2. above.

762 For ‘*string theory*’ for tracing secondary sources see Somos, *Secularisation*, chapter V, and chapter VI above, on Hobbes.

763 Tr. P. Weytzer, in Sigonio, *Hebrew Republic*, 285. The original runs, “*quàm ad veterem Hebraeorum remp. respexit, qua Daudis tempore floruit.*”

Hebraeorum in the 1656 Pian Piano and the later Prerogative, and because Sigonius’s De republica Hebraeorum both contains passages on Jethro’s pagan inspiration and lends itself readily to the same sort of political comparison of biblical institutions that Harrington pursues here; we can safely assume that Harrington used De republica Hebraeorum for Oceana. Identifying this source in turn underscores the deliberateness of Harrington’s conflation of the top two tiers of government, and the radicalness of his transformation of the twelve judges into tribunes or princes who represent popular sovereignty and define the form of the divinely approved government.

In addition to popular sovereignty and the magistracy, another institution traced to Jethro has similarly profound implications. Discussing education and the national provisions for establishing and governing universities, Harrington writes,

The Education that answers unto Religion in our Government is that of the Universities. Moses the Divine Legislator was not only learned in all the Learning of the Egyptians, but took into the Fabrick of his Common-wealth the Learning of the Midianites in the advice of Jethro: and his Foundation of an University laid in the Tabernacle, and finisht in the Temple, became that Pinacle from whence all the Learning in the World hath taken wing; as the Philosophy of the Stoicks, from the Pharisees; that of the Epicureans, from the Sadduces; and from the Learning of the Jews, so often quoted by our SAVIOUR, and fulfilled in Him, the Christian Religion.

Systemic comparisons with Athens, Sparta, Rome, Venice, Holland, and Switzerland follow, to show that Oceana, like all these, needs universities. Putting the biblical commonwealth on an equal footing with other historical states, and the Bible with pagan texts, was already a

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765 Despite emphasis on De antiquo’s impact on Harrington, e.g. in Nelson, Hebrew Republic, 84, I believe that the reference to Sigonius on “the commonwealth of the Hebrews” in Pian Piano (London, 1656), 55, is to De republica Hebraeorum. Harrington’s De republica Hebraeorum reference is explicit in Prerogative, II.iii.33. Beside the Oceana passage discussed here, another adaptation from De Republica Hebraeorum is suggested by Harrington’s specific string of biblical references in his account of God’s various ways of consulting the people (Oceana, 28).

766 Cf. Harrington’s similar move in Prerogative, I.xii.101, where he builds on Grotius to construct his own version of the magisterial roles, limited terms, and elections of the Judges (Shophet). This marks a shift, as the next time he refers to these officers, in Prerogative, III.iii.32, he calls them “Judges of the inferior Courts.” From Prerogative, III.iv.38 onward they are “Judges of the inferior Courts, or Jethronian praefectures.” The Jethronian origin of the institution is stressed many more times, but they are no longer called tribunes or princes, and are not shown on curule chairs. A possible reason why their power is de-emphasised is that Harrington realised that many of them had undeniable religious functions. He plays this down, explaining that at first only priests and Levites were learned enough to be in the Jethronian Court or Lesser Sanhedrin, but this later changed completely. Prerogative, II.iv.43-5.

767 Oceana, 218. One institution that Harrington does not trace to Jethro is the division of Canaan by lot. Midian was a patriarchy, unlike Israel. Prerogative, I.iii.19-20.
controversial move. For Christian humanists, however, Israel’s antiquity and chronological primacy compensated, to an extent, for calling into question its exclusive or universal religious legitimacy. Harrington took a step further still. As arguments for *Hebraica veritas* were undermined, and the Hebrew Republic was shown as not only comparable to others, but not even the original or at least first of the states, there was little left to base any sort of exclusive authority claim on, and hard to escape the inference of contingency and particularity in the historical rise and current self-understanding of Christian civilisation.

Harrington’s transformation of Jethro from either a pagan, a convert to the true faith, or at least a liminal figure in Christianity’s self-understanding, into a figure of great authority and the inventor of so many of the divinely approved Hebrew Republic’s institutions, fits well with the other ertenicist and secularising set of exegetical techniques in *Oceana* that are analysed here. Later we will see Eldad and Medad, and Nicodemus play a similar role, and one finds Harrington in *The Prerogative*, like Grotius and Selden before him, transform Melchizedek in another step of what seems to be his systematic programme to reinterpret liminal and ambivalent biblical figures, and build around them Erastian and historicised biblical interpretations to support his political agenda. Harrington’s sources for this spectacular transformation of Jethro deserve further study. A few hints in Sigoniuss’s *De Republica Hebraearum* are relevant, but Selden’s three-volume *De Synedriis* (1650, 1653, 1655) is probably the main inspiration. A similarly major reassessment of the Moses-Jethro relationship, together with the comparison of Hebrew and Roman history and institutions, is found in *Moses and Jethro* by Ferdinand Bol, dated to 1655-6, right around *Oceana*’s composition and publication. Moses is traditionally portrayed as superior to Jethro. A 1610 painting by Adam Elsheimer or one of his followers begins to break the mould, but the hierarchical elevation of Jethro above Moses does not take place until Bol (Fig.s 8 and 9).

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Figure 8. *The Meeting of Moses and Jethro*, by Adriaen van Stalbemt, after Adam Elsheimer, ca. 1610. With kind permission of Germanisches Nationalmuseum, Nürnberg
Figure 9. Moses and Jethro. By Ferdinand Bol, ca. 1655-6. With kind permission of The State Heritage Museum, St. Petersburg
Jethro is not Harrington’s only vehicle for deriving defining features of Oceana from sources emphatically other than the divine polity. The curious relationship between nature and Scripture in Harrington has always fascinated readers. The best of human prudence is inferred from nature and is, according to Harrington, merely exemplified – and badly at that – by the biblical polity. This re prioritisation substantiates further the interpretation of Oceana as an irenicist and secularising text, one addressed to men with beliefs so diverse that their common ground had to be large enough to render most Christian tenets indistinct. Harrington does not stop here but, as we saw, undermines the uniqueness, adequacy and applicability of the biblical model, the reliability of the biblical text, and offers extra-biblical institutions for emulation. The rule of law is another such:

But that we may observe a little farther how the Heathen Polititians have written, not onely out of nature, but as it were out of Scripture: As in the Common-wealth of Israel, God is said to have been King; so the Common-wealth where the Law is King, is said by Aristotle to be Kingdom of God.

Although the secondary literature sometimes points to Harrington’s justification of ballots by reference to the Urim and Thummim, there is no such justification in Oceana when ballots are first proposed. Lord Archon’s justification of ballots likewise draws on cases from Athens to Venice, and with no biblical model. One suspects that in addition to their controversial religious connotations, another reason why Harrington relied less on Urim and Thummim than it is now sometimes recognised is that they hardly fit his advocacy of the secret ballot, and of votes that go beyond yes/no choices. These mismatches between voting institutions in Oceana and the biblical polity in turn may explain why he never refers to specific biblical passages on the Urim and Thummim or other cases of Jewish cleromancy, and even when he mentions them, he does so in the broadest possible terms.

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770 Champion, Pillars, 170-222.
771 Harrington’s proximity to Hobbes on several key issues has been noted by many, including Harrington himself. The flavour of Harrington’s secularising, politique irenicism is also close to William Chillingworth, who is said to have briefly taught Harrington at Oxford before his short-lived conversion to Catholicism, and to The Great Tew Circle. See Lucius Cary’s critique in the Discourse on Infallibility (1645, enlarged ed.s 1651, 1660) and idem, “The Lord of Faulklands Reply,” in Sir Lucius Cary, Late Lord Viscount of Falkland, His Discourse on Infallibility with an Answer to it: And His Lordships Reply, Never Before Published (London, 1651), e.g. 117-9.
772 Oceana, 19.
773 Oceana, 60-1.
774 Oceana, 134.
Another key institution in Oceana, the figure of the lawgiver and the divine statesman, is constructed without direct parallels or even references to the biblical polity.\(^{775}\) Earlier we saw cases of Harrington derogating from Moses’s status with praises of Jethro, and omitting Moses from lists of lawgivers. The extended debate and central set-piece of the work, concerning the establishment of republics for preservation or increase, is conducted without any reference to biblical models.\(^{776}\) The immortality gained through the commonwealth, like Harrington’s aforementioned portraits of the divine statesman, rings as neoplatonic (and Roman) as Scipio’s Dream. Its description not only contains no biblical references, it also ignores Christianity’s potential relevance to politics and beyond: “the glory of a man on Earth can go no higher, and if he fall he riseth, and comes sooner unto that reward which is so much higher as Heaven is above Earth.”\(^{777}\)

The cumulative effect of these copious but scattered examples becomes evident in Lord Archon’s famous concluding speech to the army, with its textual echoes to Cromwell’s speeches.\(^{778}\) One way in which it is a rhetorical masterpiece is that it combines biblical allusions and language that have been described as “apocalyptic” and “rhapsodic” with a complete neglect of the Bible as a source of institutional models. Whenever biblical language is used in this speech, it never leads to policy advice.\(^{779}\) No part of the Bible is cited in discussions of empire, of holding, dividing, conducting war, or colonising. Rome is the main model, and the biblical polity is deprioritised.\(^{780}\)

A possible objection to this statement is the benignity of Oceana’s imperialism. Archon cites willingness “to help the Lord against the mighty” from Judges 5:23 as one of the two marks that a nation is ready for liberty.\(^{781}\) The passage, known as the Curse or Sin of Meroz, was a prominent locus in Christian international relations theory. Meroz is cursed for neutrality and not coming to the aid of Israel. Although in this case Archon cites a biblical passage, the two marks that a nation conquered by Oceana is ready for independence are explained and analysed in non-biblical terms. Such a nation must “bee capable of an equal Agrarian,” and help Oceana further expand.\(^{782}\) Rome had a similar policy, and a modern-day realist (in international

\(^{775}\) Oceana, 80, 125-6, 289 (first page of The Corollary, misnumbered as 189).

\(^{776}\) Oceana, 165-73.

\(^{777}\) Oceana, 229.


\(^{779}\) Oceana, 255-85.

\(^{780}\) Cf. Oceana, 221, and Prerogative, i.i.4-5, i.v.28-9, i.viii.46-7, i.x.74-6, 82 on Rome as the best historical paradigm despite the divine ordainment of Israel. An important comparison is with Selden’s view of Rome, discussed and linked to Harrington’s in chapter V above.

\(^{781}\) Oceana, 269.

\(^{782}\) Oceana, 269-71.
relations) would have no trouble understanding Harrington’s account. There is no requirement to learn, adopt, or submit to Oceana’s religion, ecclesiastical hierarchy, rulings and laws in religious matters, or anything of the kind.\textsuperscript{783}

VII.1.2.4 The unsuitability of the divine polity
We established that in order to irenically accommodate a range of conflicting views regarding the nature of Israel and the desirability of its emulation, Harrington deployed diverse rhetorical techniques to deny the divinely ordained polity’s relevance to Oceana. It is helpful to group these techniques into strategies, however arbitrary. In the group showing the non-specialness of the divine polity, we saw Harrington systematically presenting Israel’s full comparability with other historical states. Several schemes have conventionally existed in Christianity to relegate Judaism to a now invalid stage of religious truth and divine grace: Christians are the new Jews, and/or the new law supplanted the old, for instance. Grotius, Cunaeus, and Selden transformed these schemes into a political criticism of those contemporaries who claimed legitimacy from direct descent from, or even analogy with, the biblical polity.\textsuperscript{784} Inspired by the insistence of these politique secularisers on the prohibitive discontinuities and legitimacy ruptures already within the biblical story, Harrington’s second group of arguments showed why Oceana and its institutions cannot reproduce Israel. Conversely, the third group provides the non-biblical foundations for Oceana’s institutions. The fourth group contains arguments that logically complete the exclusion of the possibility that Oceana can rely on biblical models for anything. They discuss cases in which Israel is not one of many models, but unsuitable for emulation.

First, Harrington does not propose that Oceana follow Israel’s system of rotation, which was as fatally unequal as Sparta’s.\textsuperscript{785} On the vexed issue of ecclesiastical laws, Harrington asserts the civil magistracy’s control and supports a “national Religion,” which entails a clergy endowed but not landed. Unlike Hobbes, Harrington upholds the individual’s freedom of conscience matter-of-factly, without reference to a utilitarian calculus based on the promise of salvation or the necessity of social harmony, or to the meaninglessness of encroaching on private conscience without the means to either monitor or enforce belief. Harrington claims

\textsuperscript{783} Selden also regards the Roman empire as the paradigm of imperialism, but still does not think it was soft enough, not so much in terms of permissiveness as in allowing local customs to survive and prevail in colonies where they did not threaten Rome’s authority as much as the imposition of Roman values did. “Notes to Fortescue,” \textit{De laudibus}, cap. xvii, note 6, p. 9.

\textsuperscript{784} For Grotius and Cunaeus see Somos, \textit{Secularisation}, and chapters II and III above. On Selden’s inversion of such schemes into secularising arguments, see chapter V. Many Interregnum proposals to model England on Israel are discussed in Liljegren, “Harrington.”

\textsuperscript{785} Oceano, 26.
that Erastianism, national religion, and private liberty of conscience form a time-tested combination, citing Israel, Athens and Rome.\textsuperscript{786} He notes that Israel is a special case, as its ecclesiastical and civil laws were the same. However, he flatly denies that the priests or Levites had any jurisdiction. Commands to obey them (e.g. Deut. 17:10) refer to the Sanhedrin, of which the occasional Levite may have been a member.\textsuperscript{787} It was not the priests, but the prophets and their disciples who guarded personal freedom of conscience. The institution of Christian congregations derives from prophets and disciples, not from Israel’s ecclesiastical hierarchy, which cannot provide a valid, let alone binding, model for Oceana.\textsuperscript{788} Moreover, the liberty of conscience that Israel achieved through this arrangement was discontinued under Herod, Pilate, and Tiberius; legitimacy claims cannot descend from its civil hierarchy, either. The democratic first occupation of Israel, the constant invasions due to its terrain’s openness, and the mistake of electing a king as its unparalleled consequence, have been discussed earlier as cases for Israel’s irreproducibility.\textsuperscript{789} Harrington could have turned these to millenarian advantage and argued that England was uniquely similar to Israel because of its openness, and/or its ancient democratic constitution. Since none of the institutions that follow from Israel’s uniqueness are recommended in \textit{Oceana}, the same features become reasons why Israel is an unsuitable model to follow.

The proper role of the clergy raises another set of institutional questions where Harrington regards Israel as an unsuitable model. He vindicates Erastianism and the stark limitation of the clergy’s role to consultation and education, subject to civil approval, with reference to Rome, Israel, and Athens.\textsuperscript{790} The civil magistrate governed religious conduct, hierarchy, and instruction in all three states. Their religions are equivalent historical examples, and equally subordinate to civil rule. Furthermore, Oceana need not imitate them, let alone claim continuity of legitimacy:

\begin{quote}
I do not mind you of these things, as if for the matter there were any parallel to be drawn out of their superstitions to our Religion; but to shew that for the manner, ancient prudence is as well a rule in divine as humane things.\textsuperscript{791}
\end{quote}

\textsuperscript{786} \textit{Oceana}, 27-9.
\textsuperscript{787} Cf. \textit{Prerogative}, II.iv.43-5, explaining that at first only priests and Levites were learned enough to be in the Jethronian Court or Lesser Sanhedrin, but that his later changed completely.
\textsuperscript{788} \textit{Oceana}, 27-8, 65. We will see later Harrington change the \textit{explanans} of the origin of primitive Christian institutions from the prophets and the Apostles to Roman provincial government. Against those who think that prophets and Apostles are the root that should be considered, Harrington shows that it is Roman provincial government.
\textsuperscript{789} \textit{Oceana}, 41, 43, 98-100.
\textsuperscript{791} \textit{Oceana}, 222.
Having neutralised millenarian claims of continuity from the biblical polity, Harrington’s next step is to desacralise Christian church institutions. He argues that when the Apostles visited the first congregations to ordain elders, they adopted the existing political practice of holding up hands to elect officials (chirotonia), and that many of the congregations themselves were cities and countries with proper republican governments, established or re-founded by Rome.792

There are two points to note here. First, Harrington’s insistence that all non-Catholic Christian congregations, even English parishes, continue a Roman political institution, not a divinely inspired or ordained one, follows and develops Scaliger, Selden, Vossius, and others who reduced sacred history to an history of Christian institutions.793 Second, Harrington uses Christianity’s institutional continuity from Rome to show that there is no historical or legal justification for the separation of civil and ecclesiastical government.794 While elsewhere in Oceana he proffers strong arguments for the superiority of civil magistracy, in this important passage Harrington continues the substitution of “two swords” and “two cities” theories with a theory of indivisible government by invoking individual freedom of conscience. Parallel civil and ecclesiastical governments and jurisdictions have no historical support, he argues, and Catholic states, like Venice, have two choices. They can surrender their sovereignty, curtail liberty of conscience, and embed multiple institutional sources of domestic conflict (Church-State rivalry, individual resistance to limited freedom, and the susceptibility of a people unskilled in theology to popular demagogues in case of competing religious authorities); or they can try to eliminate de facto church government by ignoring the Pope, establishing institutions designed specifically for obfuscation and delay, and strictly excluding from public office anyone related to the Catholic hierarchy.795 Harrington’s famous adage, “An ounce of wisdom is worth a pound of Clergy,” is anticlerical but non-obviously so, insofar as it concerns political prudence, not

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792 Oceana 64-5, 149-50, passim. See also Prerogative, II.iii and iv. Discussed in more and evolved detail throughout Prerogative, II, including the argument that the Apostles only used chirothesia in these few cases (including the ordination of Paul and Barnabas) in order to please the Christian Jews who were already deceived by, and used to, the post-exilic Talmudists’ self-aggrandizing corruption of chirotonia into superstitious chirothesia. Prerogative, II.iv.45-6, 50, passim.

793 This is complemented by Harrington’s limited endorsement of ancient constitutionalism. Harrington responds to Wren that he could have brought ancient Switzerland and Holland into his scheme, using Tacitus’s account of their pre-Christian liberty to corroborate the ubiquity of popular sovereignty. Liberties pre-date Christianity there, and the primitive Christian institutions propagated Roman liberties. On Vossius see Rademaker, Vossius; idem, “Inleiding,” and Wickenden, Vossius. Somos, Secularisation, chapter II. For Vossius’s English reception in general, see Collins, Allegiance, 48-51. See Pocock’s various formulations that republicans, including Harrington, are concerned with secular, not sacred time.

794 Oceana, 222, “Now that these Cittys... ordaineth her Pastor.”

795 Harrington supports his analysis by referring to some of many famous papal-Venetian conflicts, including the 1202 Siege of Zara and the 1606-7 Venetian Interdict.
wisdom in general. Yet given Harrington’s stress on liberty of conscience, his call upon
citizens to constantly monitor that their priests keep to their place, his thorough-going
historicisation of Christianity, and the undoing of Israel’s special relevance to politics,
complement and transform this Erastianism into secularisation. This in turn makes excellent
sense as a corollary of Harrington’s main intention to create common ground for the New
Model Army, for England, and for the British empire.

The seventy elders are a recurring theme in Oceana, unsurprisingly in light of
Harrington’s interest in the proper nature and role of the clergy and aristocracy, since the
elders were a stock theme in arguments for and against both. Lord Archon in a speech in
council considers them under both religious and political aspects. He argues that the seventy
were elected by the people, but began to ordain their own successors “without any Divine
precept for it.” Their imposition of hands (chirothesia) marked Israel’s shift from popular to
aristocratic republic. The Apostles tried to remedy this usurpation when they used chirstonia
at the appointment of elders in the congregations that invited and authorised them. Despite their
efforts, and contrary to divine precepts, imposition and investiture passed into the early
church.

In addition to its legitimacy and political and ecclesiastical institutions, the immortality
of Oceana is not conferred by Israel, either. Much has been made of the constitutional,
neoplatonic, organic, millenarian, and utopian aspects of Harrington’s proposed remedy to the
decline of all commonwealths, and the following is by no means the only interesting
consideration. Lord Archon explains that the commonwealth is the people, the people never
die, therefore the commonwealth is immortal, if rightly ordered. Sinful citizens can still make a
perfect commonwealth. In this formulation, immortality seems simply to mean that mankind is
immortal as a race. If a state implements effective wards against conquest and depopulation, it
may “be as immortal, or long-lived as the World.” Oceana’s immortality depends on the
reproductive passion, which Harrington develops from admittedly Grotian natural sociability,
common to beasts, and wicked and righteous men. When Wren explicitly raises the point that
men are not beasts, Harrington reaffirms his Grotian stance. Millenarianism, even morality,

796 Oceana, 223, in the context of 222-4.
797 Oceana, 149.
798 Oceana, 149-50. Moses only ordained Joshua because of military exigency, before the Hebrew Republic came
into existence. Prerogative, II.iii.31, II.iv.41-2.
felicity that a people can ask, or God can give, is an equal and well-ordered commonwealth. Such a one among the
Israelites as the reign of God; and such a one (for the same reason) may be among Christians the reign of Christ,
though not everyone in the Christian commonwealth should be any more a Christian indeed, than everyone in the
Israelite commonwealth was an Israelite indeed.”
are not relevant to this. Israel and Athens, Archon continues, died not a natural but a violent death, arising from either “Contradiction or Inequality.” They are emphatically not models for Oceana.

VII.1.2.5 Harrington against the Bible

Even if we bracket the complexities involved in referring to “the Bible” as a single and authoritative text, we find that the political instrumentalisation of Scripture is as old as whatever one chooses to mean by the term. In this sense there is nothing original about Grotius, Selden, Hobbes and many others developing exegeses to match political agendas. Rather, the inextricable intertwining of European politics and Christianity for thirteen centuries or so prompts one to reframe the inquiry. What offended religious sensibilities was not necessarily the combination of politics and theology as such. It is certainly meaningful to talk of the political instrumentalisation of religion in the case of Machiavelli, Gentillet, Bodin, and others who developed heterodox and contentious Bible interpretations in the context, and for the purposes, of contemporary political analysis. That their interpretations were contentious and subservient to their politics is confirmed by their reception. Politique as a label was first, and later foremost, used specifically to signal a thinker’s prioritisation of political over theological interests.801 (I will not consider here the questions of whether and how centuries after a text’s publication, professional historians of political thought can transcend an author’s, and his or her contemporary readers’, understanding of a text’s meaning, let alone its significance; the recovery of plausible meaning and apposite context seems a sufficiently tall order.) In sum, reception is indispensable to gauging meaning. If a writer brought the Bible into a political work and offered notably unconventional interpretations, one can safely broach the subject of the political instrumentalisation of religion. It is less clear when one can talk of the same in the writings of a theologian, priest, monk, or in prima facie theological works in general. It is not impossible (consider, for instance, of Grotius’s De veritate), but the criteria for distinguishing the political instrumentalisation of religion from, say, the religious instrumentalisation of politics, are harder to establish.

Fortunately these and similar interpretative problems are irrelevant here. As mentioned, Oceana is a political work, and the causes and meaning of Harrington’s highly idiosyncratic biblical exegeses are relatively easy to understand. The fifth group of secularising techniques focuses on biblical criticisms, especially those that are integral to Harrington’s theses on popular sovereignty, Church-state relations, and imperialism.

VII.1.2.5.1 Popular sovereignty

In the sixth order of *Oceana*, Harrington criticises English translations of Acts 14:23 and Rom. 10:17. A *propos* the first passage, Harrington argues that the people and not the Apostles have the right to elect their pastors and elders. In the case of Rom. 10:17, which he cites in part as “*Faith cometh by hearing,*” Harrington’s point is that despite Paul’s obvious meaning, namely that preaching is important and can save both Gentiles and Jews, the verse makes better sense as a warning that preaching is powerful; therefore it must be controlled by the civil magistrate, who can allow the clergy to research, formulate, and preach the word of God within the constitutional framework of a regulated national religion. Pocock notes that Harrington’s Erastian reinterpretation of Romans comes from chapter 43 of *Leviathan*, but misses that Harrington takes his particular reading of Acts 14:23 entirely and directly from chapter 42.

Like Acts 14:23, the next idiosyncratic Harringtonian exegesis also concerns popular sovereignty.

> the purity of the Suffrage in a popular Government is the health, if not the life of it; seeing the Soul is no otherwise breathed into the Soveraign Power, then by the Suffrage of the People. Wherefore no wonder if Postellus be of opinion, that this use of the Ball is the very same with that which was of the Bean in Athens; or, that others, by the Text concerning Eldad and Medad, derive it from the Common-wealth of Israel.

Eldad and Medad remained in the camp and prophesied, while God gave the spirit of prophecy to the seventy elders who left the camp with Moses. A young man ran to Moses to report and demand that Moses reproach those two. Moses berated him for envy, and wished that all

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802 *Oceana*, 64-5.
803 Pocock in Harrington, *Works*, Part One, 217n2. Note, however, that while Hobbes thinks that learning by hearing is the natural way, in Harrington’s reflection on Hobbes here the “naturall way” to understand Scripture, i.e. through reason, is impossible. Although Pocock is right to show that their Erastian conclusions are identical, Harrington considers the process whereby specialists in ancient history, languages and theology first decipher Scripture, then the civil magistrate authorises its teaching and preaching, to be artificial. The paragraph that follows Harrington’s development of Romans, beginning with “The *Common-wealth* having thus performed…,” is remarkable for presenting the process as artificial reason, and showing that even this is hamstrung by epistemic boundaries. Since “*a Common-wealth* is not to presume upon that which is supernaturall,” and even artificial reason is inadequate, Harrington seems skeptical of the extent to which the real meaning of Scripture can be recovered. Instead of dwelling on Scripture’s knowability, when his central concern, political stability, is sufficiently addressed by the constitutional arrangements that guarantee the magistracy’s control over religious doctrine, preaching and education, Harrington moves on to discussing the parish system.

804 *Oceana*, 120.
Israelites were prophets, with the Lord’s spirit upon them (Num. 11:24-29). Hobbes used this passage twice in *Leviathan*, chapter 36: firstly to show that the seventy prophets were subordinate to Moses and that the spirit of God meant assisting Moses in government, and secondly, to argue that one should come to the Sovereign to establish whether prophecies are true or not. Hobbes repeats the former point in chapter 40, strongly emphasising that the spirit of God that came upon the seventy elders signifies not an autonomous gift of prophecy, but the mental recognition of their duty to obey Moses. Lord Archon, Harrington’s thinly disguised Cromwell, uses this passage to elaborate on the way in which suffrage is the right expression of popular sovereignty, which is the true soul of the republic. His interpretation of Eldad and Medad suggests that these two, who stayed in the war camp, gained their prophetic powers from the people, in contradistinction from Moses and the seventy.

This reading contradicts Harrington’s description of the seventy elders as first elected by the people, and later usurping authority by ordaining their successors by imposition of hands instead of popular election. According to Harrington, this marked the shift from a popular to an aristocratic republic. It was this corrupt practice that was introduced into the Christian church by the Apostles, even though they tried to signal the popular election and the authorisation of elders by holding up hands, instead of imposing them. A possible though unlikely resolution is that “by the Text concerning Eldad and Medad” Harrington meant the pertinent biblical section in general, and chose to refer to it by the two independent prophets rather than invoke Moses and the seventy.

Without claiming that Harrington fully thought through his reference to Num. 11 in *Oceana*, one can speculate that he included it (and perhaps these two prophets in particular) in opposition to Hobbes’s pro-Sovereign interpretation, or perhaps the “others” he mentions in the passage cited did exist and he was tapping into an existing, and at the time well known, usage of Eldad and Medad as symbols of voting and popular sovereignty. In any case, it is a conspicuously inappropriate passage to cite in support of popular sovereignty, and of suffrage

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806 *Prerogative*, II.iii.27-31 handles the same passages and situation more coherently: the 12 territorial tribes (i.e. not the Levites) chose 6 men each. Their names were put into an urn. 70 slips marked “Presbyter” and two blank slips were placed in another urn. Drawing lots after prayer established the 70 elders and the two who remained; in this case, Eldad and Medad. The more incoherent account in *Oceana* suggests that Harrington may have worked this out in response to the criticism in Wren, *Considerations*. Also see *Prerogative*, II.iv.40.
in particular, and it is a notable instance of Harrington’s political instrumentalisation of the Bible.\footnote{For instance, Milton’s quasi-millenarian argument for popular sovereignty, based on the same passage, omits Eldad and Medad, and refers only to the time when all people become prophets. \textit{Areopagitica: A Speech of Mr. Milton for the Liberty of Unlicensed Printing to the Parliament of England} (London, 1644), 32.}

The same applies to Eccl. 1:4 and Prov. 31:14-23. Harrington stretches both spectacularly. First, he reasserts that rightly arranged, Oceana’s government can be immortal, “seeing one Generation cometh, & another goeth, but the Earth remaineth firme for ever.”\footnote{\textit{Oceana}, 190. AV has “the earth abideth.” Pocock mistakenly gives Eccl. 1:3 as the source, in Harrington, \textit{Works}, 287.} Harrington’s use inverts the original meaning, where mortality is invoked to show that pride in man’s work is vanity of vanities. Individuals die; generations die. In contrast with human achievements, the sun, winds, rivers and seas move along seemingly eternal circles, and man’s comprehension and senses are too poor to grasp even nature. Harrington cites the passage to support the opposite, namely that man-built Oceana can be immortal, partly because the succession of human generations is in principle never-ending, and partly because its constitution can be arranged in mechanical perfection.

\begin{quote}
The Senate the People and the Magistracy, or the Parliament so Constituted (as you have seen) is the Guardian of this Commonwealth, and the Husband of such a Wife as is elegantly described by Solomon. Shee is like the Merchants Ship, Shee bringeth her food from farre. She considereth a Field and buyeth it: With the fruit of her hands She Planteth a Vineyard: Shee conceived that her Merchandise is good: She stretcheth forth her hands to the poor: Shee is not afraid of the Snow for her Houshold, for all her houshold are clothed with Scarlet: Shee maketh herself Coverings of her Tapestry; Her cloathing is Silke and Purple; Her Husband is known (by his Robes) in the Gates, when he sitteth amongst the Senators of the Land.\footnote{\textit{Oceana}, 191.}
\end{quote}

Unlike with Eccl. 1:4, this source is given on the margin, as Prov. 31. It is in fact a selective quotation, consisting of Prov. 31:14, 16, part of 18, part of 20, and all of 21-23. Of the omitted verses, 15 and 19 are probably insignificant. (Prov. 31:19 describes the wife’s spinning, which could have been omitted deliberately, if Harrington intended to de-emphasise a traditional and major English industry. However, he cites the later passages on tapestry and cloathing in full.) By contrast, Harrington’s omission of Prov. 31:17 is interesting: “She girdeth her loins with strength, and strengthened her arms.” Recall that this is the twenty-fourth order of \textit{Oceana},
which deals with England’s future policies in Scotland and Ireland, and the omission is from the characterisation of the people (the wife), under the guidance and protection of Parliament (the husband). Harrington proposes that if Scotland and Ireland adopted rotation and other ideal arrangements, they should be allowed to send deputies to both houses in Westminster. Given contemporary events and controversies, including the schemes for re-settling Scotland and/or Ireland with New Model Army soldiers, it would exceed Harrington’s Machiavellism to emphasise arming the people when they are being distinguished – even conjugally – from their republican government.\footnote{This may be the reason for his omission of the evocative, militant Prov. 31:17.} Beyond omissions of partial and whole verses, Harrington also alters the phrasing. Prov. 31:18’s Vulgate gustavit, rendered as “perceiveth” in AV and some other English versions (including the 1568 Bishop’s Bible), is changed by Harrington to “conceived.” The Geneva translations give “She feeleth that her marchandise is good.” The Douay-Rheims, similarly to Wycliffe’s 1395 translation, has “She hath tasted and seen that her traffic is good.” Harrington’s version seems new; he inserts “her [tapestry]” into Prov. 31:22.\footnote{Both these seem insignificant compared to 31:23 where, as Pocock notes, Harrington adds “by his Robes” to the AV. He also changes “elders” to “senators,” reversing a trend: the Vulgate’s \textit{cum senatoribus terrae} was translated as “senatours of erthe” by Wycliffe and “the senators of the land” in Douay-Rheims, but as “the Elders of the land” in the Geneva Bible. Oceana’s government is the husband; the people are the wife, recalling Christ and the Church. Harrington’s choice of “senators” instead of “elders” fits his scheme perfectly. A readiness to substantially rework direct biblical quotations to fit an agenda of constitutional reform has been shown above in Cunaeus, Grotius, Selden, and Hobbes. Harrington can be added to the list, although only a few such cases are discussed here in detail.\footnote{\textit{A directly relevant but more limited point, namely that Hobbes and Harrington historicised the divine polity and rendered it fully comparable to other polities, has been made often, from Matthew Wren to Zagorin and Pocock.}}

Another striking instance occurs in Lord Archon’s disquisition on education, scriptural authority, and church government. Universities can best supply Oceana’s need for training and research in ancient prudence and religion. Hebrew and Greek are required, but it takes a

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\textit{VII.1.2.5.2 Church-state relations: education, Scripture, Erastianism}

Another striking instance occurs in Lord Archon’s disquisition on education, scriptural authority, and church government. Universities can best supply Oceana’s need for training and research in ancient prudence and religion. Hebrew and Greek are required, but it takes a
lifetime to acquire the proficiency needed for biblical exegesis. In addition, thorough historical knowledge is indispensable for contextualising Scripture properly.

Again, this is apparent to us in daily Conversation, that if four or five Persons that have lived together be talking, another speaking the same Language may come in, and yet understand very little of their Discourse, in that it relateth unto Circumstances, Persons, Things, Times and Places which he knoweth not. It is no otherwise with a Man, having no insight of the times in which they were written, and the Circumstances unto which they relate, in the reading of ancient Books, whether they be Divine or humane. For example, when we fall upon the discourse about Baptisme and Regeneration, that was between our Saviour and Nicodemus, where Christ reproacheth him of his Ignorance in this manner: Art thou a Doctor in Israel, and understandest not these things? What shall we think of it? or, Wherefore should a Doctor in Israel have understood these things more than another, but that both Baptisme and Regeneration (as was shewed at large by my Lord Phosphorus) were Doctrines held in Israel? Instance in one place of a hundred, which he that hath not mastered the circumstances unto which they relate, cannot understand. Wherefore to the understanding of the Scripture, it is necessary to have ancient Languages, and the knowledge of ancient times... 813

Several points demand attention in this extraordinary passage. First, Harrington’s neutralisation of a highly controversial biblical passage owes a great deal to Scaliger and Selden, who raised historicisation to the level where it became an effective remedy against Bible-based political legitimacy claims. I discuss the originality and secularising effect of this historicisation elsewhere, but Harrington’s use of it is worth noting. 814

Second, Harrington rewrites John 3:10, the passage he quotes directly, in important ways. Jesus is talking to Nicodemus who, like Jethro, is one of the key liminal figures in Christian historical self-understanding. In the Christian scripture Nicodemus features only in the Gospel of John, where he appears three times: he debates with Jesus (John 3:1-21), tries to stop the other Pharisees condemning Jesus without a trial (John 7:50-51), and helps Joseph of

813 Oceana, 220. Compare Harrington’s intent “not be above the vulgar capacity” and make Greek and Latin terms, practices and concepts, accessible to those who read only English. Prerogative, II, “Order of the Discourse.”
814 Somos, Secularisation.
Arimathea move and bury Jesus’s body (John 19:30-40).\(^{815}\) He is a Pharisee and a member of the Sanhedrin. He is further identified as princeps Iudaeorum in John 3:1 and called magister Israel by Jesus (John 3:10). The AV, like Wycliffe, Luther, the Bishop’s and the Douay-Rheims Bibles, translates this magister as “Master;” the Geneva opts for “Teacher.” The princeps Iudaeorum of John 3:1 is translated by Wycliffe as “a prince of the Jews” and as “a ruler of the Jews” in the Bishop’s, the Douay-Rheims, the Geneva and the AV. To my knowledge, Harrington’s choice of “Doctor” in an ostensible direct biblical citation is unprecedented in English.

The most probable inspiration is Sigonius, De republica Hebraeorum, V.x. Sigonius discusses Nicodemus and Gamaliel, another Pharisee, member of the Sanhedrin and Catholic saint who is closely associated with Nicodemus. Unlike Nicodemus, Gamaliel was known as a great doctor of Jewish law, teacher of Paul, and protector of the Apostles (Acts 5:34-39; 22:3). Acts 5:34 calls Gamaliel legis doctor and, without specifying his source, Sigonius writes that Jesus calls Nicodemus legis magistrum.\(^{816}\) Harrington’s adoption of Nicodemus’s status reaffirms that he read and used Sigonius’s De republica Hebraeorum already in Oceana.\(^{817}\) Yet the borrowing is not uncreative. It seems unlikely that Harrington simply confused Nicodemus and Gamaliel. The biblical passage he cites is absent from Sigonius, who mis-paraphrases Nicodemus’s description in a way than Harrington does not, and in Harrington’s version Jesus is not discussing law with Nicodemus. Sigonius’s usage, together with Harrington’s emphasis on the doctrinal debate between Jesus and Nicodemus, explain Harrington’s choice to have Jesus call Nicodemus a “Doctor in Israel.” At the same time it raises the question why Harrington

815 The emphasis on John, at the expense of the Synoptic Gospels, was a distinctive Arminian trait. Six biblical passages were cited in the 1610 Remonstrantie, four from John, one from The First Epistle of John, and one from Acts; none from the Synoptics. See ed. P. Schaff, The Creeds of Christendom (repr. Grand Rapids: Baker Books, 1996), vol. 3, 545ff. Other details in Somos, Secularisation, 101-3, 106, 145-6, 173. The Waldensians were another sect that preferred John over the Synoptic Gospels. This preference can be traced back to the Cathars, who also liked the Gnostic “Gospel of the Secret Supper,” a.k.a. “John’s Interrogation.” See W. Barnstone, “Gospel of the Secret Supper,” in The Gnostic Bible, eds. W. Barnstone and M. Meyer (Boston: Shambhala, 2003), 727-50. The Waldensians featured prominently in early modern Protestant polemic since at least the 1545 Massacre of Mérindol, and many regarded them as precursors of the Reformation. Milton and Cromwell both wrote in their defence in 1655, the year before Oceana’s publication.

816 Sigonius, De Repubica Hebraeorum, V.x, 269-71, on 270. Sigonius’s modern editor/translator speculates that Sigonius is mis-citing John 3:10, changing magister Israel to legis magistrum. See Sigonius, The Hebrew Republic, transl. of De Repubica Hebraeorum, 358 n360. This is possible, but Sigonius rarely makes this sort of mistake, especially when it is central to his argument. He frequently identifies his biblical passages, but not in this case. My third reason for keeping an open mind about Sigonius’s source for this claim is the existence of texts, including commentaries on versions of “The Gospel of Nicodemus,” where Sigonius could have found this phrase, instead of mis-citing John 3:10.

817 Pocock, “Lipsius and Harrington.” Another adaptation from De repubica Hebraeorum, suggested by Harrington’s specific string of biblical references, occurs on Oceana, 28, concerning the various ways in which God consults the people.
foregoes the opportunity to present Nicodemus as a constitutional authority on par with Jethro.

Nicodemus seems ideal for Harrington’s purposes: a non-Christian sympathetic to the true faith, a Pharisee, and member of the Sanhedrin. According to Flavius Josephus, Pharisees in general, and Pharisee members of the Sanhedrin in particular were supported by the people against the aristocratic Sadducees. Josephus was a cardinal figure in seventeenth-century discussions of the Hebrew Republic, as well as of ancient prudence more broadly.\textsuperscript{818} Regarding Nicodemus’s faith, Catholics considered him a ‘secret disciple’ who overcame his timidity and eventually chose martyrdom. Nicodemus was canonised early, at a date I was unable to establish. However, in the 1544 *Excuse à messieurs les Nicodemites*, Calvin chose Nicodemus as the eponym for a group and a set of timid and dissembling behaviours, designed to hide or misrepresent religious convictions under political pressure. The term came into use among Catholics and Protestants to refer to secret adherents of beliefs other than their national religion, and to humanists, Socinians, Arians, and others whose heresy was suspected but could not be proved.\textsuperscript{819}

In sum, Nicodemus was a liminal figure between Christianity and Judaism as well as the label for a *politique* group and behaviour to which, judging from his views on religious intervention in both public behaviour and private conscience, one imagines Harrington to be more sympathetic than toward its Calvinist persecution. All these connotations – Pharisee, member of the Sanhedrin, Jewish, crypto-Christian, proud martyr and saint, and timid dissembler – were well-established and in wide use by the mid-seventeenth century. In terms of the structure and material of *Oceana*, there is little to prevent Harrington from drawing on Josephus to present Nicodemus as a Senate member, supported by the people in the Hebrew Commonwealth. His choice of “Doctor” and the rest of the passage cited may hold a clue as to why he decided not to tap any, or any combination, of these opportunities.


Figure 10. Rembrandt, Nicodemus talking to Jesus in the night. Museum Boymans-van Beuningen, Rotterdam

Third, Harrington makes several claims that were certain to outrage almost any Christian theologian: that the key passage supporting baptism, and the notion of being born again in Christ, was not an explanation of the origin of the new law, but a reminder to a forgetful Jew of a Jewish institution; and that this historicisation of an iconically Christian doctrinal innovation,
as a simple reminder of an already established Jewish custom, exemplifies a hundred other misconstruals of the New Testament. Scaliger, Vossius and Selden are the obvious places to look for the origin of Harrington’s unusual claim that baptism and religious rebirth are originally Jewish institutions, and that Jesus meant them in that context rather than instituting something new. However, none of these likely sources prepare for Harrington’s link between Christian baptism and religious rebirth in Judaism. In Hebrew sources the use of the ritual bath (Mikvah) for menstruating women, ‘polluted’ men and converts comes closest to Harrington’s sense; but the associations with regeneration or rebirth that Harrington claims are tenuous or absent. The difference between the meaning and practice of Jewish and Christian immersions is heavily emphasised in the New Testament itself. Unsurprisingly, Harrington’s aforementioned possible sources, which trace many Christian institutions to Jewish origins (to the outrage of their peers), do not make this claim about baptism.

VII.1.2.5.3 English imperialism: Roman versus Hebrew models
Harrington is well known as a self-confessed follower of Machiavelli and a proponent of the Roman imperial model for England. A less well-known fact is Harrington’s political instrumentalisation of the Bible to support his depiction of the Jews as a great military nation. This topos is absent from Sigonius, but prominent in Cunaeus and Josephus. Harrington discusses the military prowess and organisation of the Hebrew Republic in Machiavellian terms and in parallel with Roman military institutions and virtue. His most probable source for this is Cunaeus’s De republica Hebraeorum. Harrington names this source in Oceana, though in a different connection. As detailed above, Cunaeus fit the Hebrew Republic into a comparative constitutional framework, and presented it as an expansionary armed republic from which no legitimacy claims can be derived. He also compared its agrarian laws with those of ancient Rome, and framed them in terms of a Machiavellian and provincial republican analysis of expansion predicated on citizen-soldier-farmers, and of the decline and fall of nations as caused by aristocratic greed and revolutionary populism.

Important parts of Cunaeus’s Machiavellianisation of the Hebrew Republic found their way to Harrington. It is important not to overstate the case and ascribe all Harringtonian techniques for neutralising the Bible-based legitimacy claims of the Interregnum to Cunaeus, or to imply that these borrowings were unconstructive. What is fair to say is that Cunaeus had a defining and complex impact on Harrington. Before we can adumbrate some of his contributions, it is helpful to point toward three major indirect conduits of Cunaeus’s
arguments: Grotius, Vossius, and Selden. Unilinear and monogenic reconstructions of meaning are rarely convincing, in any case.

There is compelling evidence that Grotius, Vossius and Cunaeus developed their secularising techniques in close collaboration.\textsuperscript{820} Grotius is cited in Harrington’s works often. Matthew Wren famously attacked him for this, although the meaning of this accusation is not straightforward. Wren’s application of the Grotian label differs, for instance, from Richard Baxter’s coinage of “Grotian religion” in interesting ways.\textsuperscript{821} Baxter accused Thomas Pierce, Peter Heylyn and others of following Grotius in sacrificing religious truth for the sake of social order, and pursuing irenicist and ecumenist projects at the expense of subsuming church autonomy to – here Baxter wavers over time – either Rome or the British government. Wren, himself close to Grotius’s brand of Erastianism (though perhaps even closer to Hobbes’s), accused Harrington instead of naively adopting Grotius’s view on natural sociability and on the existence of law independently from the person of the legislator or (in a worse arrangement) legislators.\textsuperscript{822} Baxter’s Puritan construction of Grotian enemies pivots around his eclectic assertion of religion’s supremacy to politics. Wren’s Grotians, by contrast, wrongly posit a providential guarantee for the sociability and wisdom of the people. Book II of Harrington’s \textit{Prerogative} attacks Hammond for the (according to Harrington) Grotian assumption that a universal law of nations exists. In England in the 1650s Grotius, like Caesar, came close to being all things to all men.\textsuperscript{823}

While the influence of Grotius on Harrington is considerable, the portrayal of Jewish military valour and the inapplicability of Mosaic laws in \textit{Oceana} came from Cunaeus. Legal discontinuities within the biblical story and the historicisation of the Hebrew Republic are used often by both,\textsuperscript{824} but more prominently in Cunaeus. Natural sociability in Harrington comes from Grotius, as Wren pointed out, and the use of Jethro and Nicodemus from neither Grotius nor Cunaeus, but Sigonius. Harrington’s odd assertion in \textit{The Prerogative} that Israel, Holland

\begin{footnotes}
\item[822] For Harrington’s defense and affirmation of Grotian natural sociability see \textit{Prerogative}, l.v.23-4.
\item[823] \textit{Face} pedantic objections restricted to pointing out obvious distinctions between them, I am sympathetic to Trevor-Roper’s joint description of French, Dutch and English Arminians. However, unlike largely retrospective counter-arguments, the primary sources for the reception of Arminianism also problematise his presentation of the ‘indivisibility, the universality, of the Arminian movement.’ H. Trevor-Roper, “The Religious Origins of the Enlightenment,” in \textit{idem, The Crisis of the Seventeenth Century: Religion, the Reformation, and Social Change} (Harper & Row, 1967; repr. Liberty, 1999), 179-218.
\item[824] Emphasis on biblical discontinuities in Hobbes and Harrington are compared by Pocock, “Introduction,” 79, and were recognised by Wren, \textit{Considerations}, 41, cited by Pocock, “Introduction,” 89.
\end{footnotes}
and Genoa could rightly use money instead of land in their republican expansion, because their landmass was limited, is patterned on the Dutch Machiavellianisation of the Hebrew Republic.\textsuperscript{825}

Harrington’s account of the divine polity in Machiavellian terms includes, among other institutions, emphasis on the military valour of the Jews, the relationship between their kings, priests, prophets, aristocrats and people, the insistence on the sovereignty of the people even over God when he was their king, and the inappropriateness of the divine polity’s colonial practices. Like Cunaeus, it is through Machiavellisation that Harrington renders the Hebrew Republic fully comparable to Rome. It is necessary to further explore the nature of this Machiavellisation and the new footing on which it places the comparison with Rome in order to grasp the significance of, and the extent to which, Harrington makes it impossible to use the Hebrew Republic as a model for England. After discussing the good but inimitable features of Israel, and its bad institutions unfit for emulation, then doing the same for the Roman republic, Harrington adds a higher level of political analysis on top of comparativism, and chooses Rome as the most authoritative object lesson for England.

The theoretical foundations of using historical models to inform future imperial practice connect Harrington and Selden. They both reject old-fashioned comparativism and argue that universal laws and political rules cannot be derived from a systematic comparison of any number of polities and constitutions, past or present.\textsuperscript{826} At the same time, they both defend their historicisation of the Hebrew Republic and its inclusion in a comparative scheme that negates its special status, and they justify their use of Rome as an historical paradigm in similar terms. Selden shows in \textit{Mare clausum} that universal consent, presented by others as derivable from the common legal practice of historical and contemporary states and forming the core of all legal systems, is illusory, and could not supply evidence and details of natural law even if it existed. Land-locked states, for instance, have nothing to say about maritime affairs; and past empires all had weaknesses and fell.\textsuperscript{827} Similarly, Rome and a few other states are paradigmatic for current international law and imperialism not because Roman law is the source of \textit{ius gentium}, as many lawyers argue, but because they were successful and acted in a civilised manner. When Wren challenged Harrington to include more states in his comparative scheme, Harrington countered in \textit{The Prerogative} that it is not the number of states included

\textsuperscript{825} See chapters II and III above.

\textsuperscript{826} Cf. Somos, \textit{Secularisation}, chapter III on universal and particular, tragedy, political science and history in Heinsius.

\textsuperscript{827} Selden, \textit{Mare clausum}, I.xxiv.
that matters, and that Rome is a great illustration not because it is a definitive source of laws and institutions, but because of its domestic and imperial success.\footnote{Prerogative, I.i.4-5, with Harrington ridiculing Wren’s challenge to broaden the basis of comparison to add Babylon, Persia, Egypt, China, and Amazonia to Israel, Greece and Rome. There is an interesting comparison with Mersenne’s suggestion in 1645 that Bochart extends Geographia sacra to Egyptian and Chinese history in order to refute claims that their histories predate the reconstructed biblical Creation. Shalev, Sacred Words, 162.3. Wren’s mockery of Harrington as following Grotius in complaining about those who confuse ius gentium with Roman ius civile (Considerations 28, answered in Prerogative, I.v.28-9) could be just as easily directed against Selden. Also see Oceana, 221 and Prerogative, II.i.9-10, for the story of Rome and the Privernates as a sign of “the Genius of the Roman Common-wealth” (p. 10); but Prerogative, II.i.14 on Romans leaving occupied states’ monarchies intact. Selden’s and Harrington’s approach to deriving law and political prudence from history is in interesting contrast with Scaliger’s and Vossius’s omnivorous comparativism, and with Grotius’s legal standard of the universal consent of nations. It also differs from the “mathematical” or “mechanical” approach that seeks to identify hard-and-fast rules. Harrington restates his counter-argument to Wren’s comparativist challenge several times, e.g. Prerogative, I.viii.46-7, I.x.74-6, 82. Cf. Cary, “Reply,” 136-7. In a related argument, Harrington defends his selective handling of evidence by claiming to write “an Epitome,” not a systematic study. Prerogative, I.viii.117. And I.xii.119: “A Politicall is like a naturall body. Commonwealths resemble and differ, as men resemble and differ; among whom you shall not see two faces, or two dispositions, that are alike.” (Cf. Grotius: “Every nation has its own morals and a nature of its own, and particular institutions corresponding to them. Once you start trying to transfer these to another structure, the outcome will as likely as not be a completely dissimilar duplicate.” De republica emendanda. Oceana’s differences from Rome, Venice, and other models are as great as the similarities. Oceana has “a soul or Genius, altogether new in the World.” Cf. reference to Bacon’s Essay 29, on time as the greatest innovator, and new medicine being better than the old, in Prerogative, I.x.101. In the same spirit Prerogative, II asks “the Grandee, or Learned Common-wealths-man,” whether Oceana’s new genius is less addicted to the nobility and the clergy than before. “Advertisement,” heading 4.}{828}

Comparativism and historicisation are key defences of these politiques against divine legitimacy claims, but they are not the whole story. It is equally important to note that at the higher level of political prudence, established through the study of history, Selden and Harrington chose Rome and not Israel as their paradigm. Arguably Milton went the other way, ascribing to Israel the exact same political prudence as Selden and Harrington attributed to Rome. This prudence is based on history, comparisons, and the choice of a single model that is most informative but still leaves the reader free to infer truths that can be learned from, but not found in, either the paradigmatic case or the totality of historical cases.

The whole Judaic law is either political, and to take pattern by that, no Christian nation ever thought itself obliged in conscience; or moral, which contains in it the observation of whatsoever is substantially, and perpetually true and good, either in religion, or course of life. That which is thus moral, besides what we fetch from those unwritten laws and ideas which nature hath engraven in us, the Gospel, as stands with her dignity most, lectures to us from her own authentic handwriting and command, not copies out from the borrowed manuscript of a subservient scroll, by way of imitating.\footnote{Milton, The Reason of Church-Government Urged Against Prelatry (London: John Rothwell, 1642, but dated 1641), 21, though see its chapters III and IV in general.}{829}
This is also a secularising counter-argument to chosen nation theories, but does not go as far as Selden and Harrington, who agree with the distance introduced from the divine polity, but also replace it with Rome as the paradigmatic model of prudence.

Recognising this connection between Selden’s and Harrington’s comparativism and historicisation and the prudential superstructure built on them not only confirms a host of connections between their refusal to vindicate Parliament based on the Sanhedrin and their arsenal for countering the enthusiasts, but also sharpens the question why Selden shifted paradigmatic prudence from imperial Rome in \textit{Mare clausum} to the Noahide precepts in \textit{De iure naturali}. The previous argument, namely that this was a smart way to build common ground between various enthusiasts while simultaneously depriving them of all divine legitimacy claims, remains credible as far as it goes, but in the light of Harrington’s successful choice not to follow this shift, it seems incomplete. What was it that Selden found in the Noahide precepts, but not in Rome?

From chapter V on Selden above we know that the answer is neither divine approval, nor universal consensus. The most likely solution is antiquity. As precedents and the growing body of past decisions informed common law, so the Noahide precepts came to represent the original and most usable body of law before its dispersion and variegation into diverse legal systems. The \textit{Hebraica veritas} is no longer \textit{prisca theologia}, merely \textit{prisca sapientia} dressed theologically.\footnote{830} This transformation of humanist historicisation has been noticed recently in Selden, as well as in other formulations in Hobbes and Harrington, but not in a satisfactory, let alone connected, manner.\footnote{831}

Moreover, there is a parallel parallel whereby both Selden and Harrington reinterpret the relationship between the natural and the national. States’ and nations’ practice can conform to a common mould of right behaviour, moral realisation and political necessity, but if one cannot find either any, or overwhelming, historical evidence in support of a moral, legal or political truth, one can still reject the results of comparativism in favour of the truth. It is possible to find a common core of law, politics or religion, but it is also possible to arrive at truths without regard for the actual experience of mankind until now.\footnote{832} We saw how Selden

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  \item \footnote{832} See the short discussion on integrated humanist reconsiderations of the optical, mathematical, literary, theological and constitutional connections between verisimilitude, probability, and prudence in Somos, \textit{Secularisation}, 56-8, 122f-88, 126-69, 287-95, 313-5, 372-3, and chapter V.
\end{itemize}
\end{footnotesize}
and Harrington applied this principle to set limits to the applicability of historical models to current problems, and also how these limits can be transcended by inferring lessons in prudence from historical studies, instead of merely assessing the desirability of emulating certain institutions on the basis of epistemically arrogant deductions of hard rules from Scripture, history, and/or reason. Selden, like Harrington, applies this natural-national relationship to religion: “That there are many national gods, but only one natural,” Selden writes,

So that as of old in the Jewish Church, so also in the Christian, the use of humane Reason among the vulgar, though free in other things, yet when it dived into the contemplation or debate of Religious matters, it hath often been most deservedly restrained, by certain set-Maxims, Principles, and Rules of holy Writ, as Religious Bolts and Bars upon the Soul; lest it should wantonize and wander, either into the old Errors of most Ages and Nations, or after the new devices of a rambling phansie. And truly, such a cours as this hath ever been observed in Religious Government.833

These aspects of how Cunaeus, Selden, Milton and Harrington considered the identity and meaning of historical paradigms illustrates the context in which Harrington’s preference for Rome over Israel as both a direct model for certain constitutional arrangements – such as empowering local courts to support provincial republicanism – and as the heuristic, supra-historical paradigm of political prudence can be understood, and its importance for the history of secularisation and soft, adaptable imperialism can be recognised. Irenic secularisation is the best description of the politics behind Harrington’s rejection of the Hebrew Republic as either a direct model for English constitutional reform, or a source of human prudence superior to Rome.

There are numerous instances in Oceana of Harrington following Cunaeus’s depiction of the divine polity in Machiavellian terms. Oceana’s practice of sorting the citizen army into units and calling the distinct legions, tribes and other units to battle are compared to Roman and Israelite practices, the latter attested by Judges 20:9 and 1 Sam. 11:7. Oddly, Harrington uses the latter passage, in which Saul cuts up oxen and sends out the pieces as a call to arms

833 Selden, Dominion, I.vii.43. Cf. Leviathan, 52-55, and Harrington, Oceana, 289: “It hath been a Maxime with Legislators, not to give Checks unto the present Superstition, but to make the best use of it, as that which is always the most powerfull with the People.”
and a threat to those who refuse to rally, to support property limits for those who can serve in the militia. Machiavelli is invoked in his discussion of the parallel Roman practices.\(^{834}\)

In another instance, Harrington reverses the Bible’s account of the divine polity to support his politics. Rome fell due to its unequal agrarian.

But your C.W. is founded upon an equal Agrarian, and if the earth be given unto the Sonnes of men, this ballance, is the ballance of justice, such an one as in having due regard unto the different industry, or different men, yet faithfully judgeth the poor. And the King that faithfully judgeth the poor, his Throne shall be established for ever, much more the Commonwealth; seeing that equality which is the necessary dissolution of Monarchy, is the generation, the very life and soul of a Commonwealth; And now, if ever, I may be excusable, seeing that the Throne of the Commonwealth may be established for ever, is consonant unto the holy Scriptures.\(^{835}\)

It is hard to miss the satirical tone. The first citation is from Psalm 115:16: “The heaven, even the heavens, are the LORD’S: but the earth hath he given to the children of men.” It is a psalm of praise and contrasts the heathen’s inanimate idols with the living Lord. He gave the earth to men and shall be praised here and now, as the dead cannot praise him. The second passage is from Prov. 29:14 (given erroneously on the margin as Prov. 20:14). In the single instance in Oceana where Harrington explicitly invokes the Bible to support his scheme, he reverses its meaning twice. Firstly, because the King – who is, according to the Bible, safe if he faithfully judges the poor – is overthrown by the same equality. Secondly, because what sustains the King in Prov. 20, sustains in Oceana the Commonwealth instead.

Harrington combines several genres, or features of genres, in Oceana. The author’s awareness and adoption of formal characteristics of utopias and romances have been excellently discussed.\(^{836}\) The full significance of the satirical register, increasingly prominent in The Prerogative and The Art of Lawgiving, has been occluded by the ad hominem and provocative polemic Harrington is known for.\(^{837}\) Behind what appears to be personal attacks of

\(^{834}\) Oceana, 230-1.

\(^{835}\) Oceana, 258. Cf. Oceana, 271, “Now if you adde… Psal. 110.3,” for the argument that the Father’s Kingdom was a republic, therefore the Son’s will be, too.


purely historical or no interest, one finds that the satirical register is often foundational, and deploys stylistic and argumentative elements lifted from a self-aware tradition of political satires that came into full bloom by the mid-seventeenth century. These presented subjects, including monarchy, clerical authority and Christianity, rather than only literary, invented or ad hoc opponents, in an irreverent and systematically subversive fashion, drawing attention to their irreparable, institutional shortcomings beyond the individual failures of kings, priests, uncritical or cocksure believers, and daft polemicists. Harrington’s theatrical affectations are similarly underexplored and yet to be integrated into interpretations of his works, including Oceana and the conspicuously theatrical Prerogative.

For the present purpose, let it suffice to bring in another heavily satirical treatment of the Bible in Oceana. The passage in question, Lord Archon’s speech after his “Epitome of the whole Common-Wealth,” uses a concentration of biblical phrases to mark the transition to pure satire.

My Lords, If you will have fewer Orders in a Commonwealth you will have more, for where she is not perfect at first, every day, every houre will produce a new Order, the end whereof is to have no Order at all, but to grinde with the clack of some Demagoge; Is hee providing already for his golden Thumb? Lift up your head; Away with Ambition, that fulsome complexion of a States-man, tempered like Sylla’s (Luto cum sanguine) with blood and muck. And the Lord give unto his Senators wisdome, and make our faces to shine, that we may be a light unto them that sit in darkness,

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838 Somos, Secularisation, chapters III-IV, on Menippean satires as a secularising genre. The satirical register is often heard throughout The Prerogative. Harrington’s citation of Juvenal’s difficile est Satyram non scribere (Satire I.30) in the Preface to The Prerogative, justifying an attack on university theologians, echoes Cunaeus’s use of the same excuse in a letter to Casaubon concerning Sardi venales. Another shared feature of these works is the use of Erasmus, whom both Cunaeus and Harrington position as an authority who suffered for his moderation and non-partisanship, and whose writings they promptly mis-appropriate for their own agenda. For The Prerogative, II.i, see Pocock’s notes in Harrington, Works, 503-6. Worden’s emphasis on Oceana’s irony is valuable, but on balance I think his interpretation is questionable. B. Worden, “Harrington’s Oceana: Origins and Aftermath, 1651-1660,” in ed. D. Wootton, Republicanism, Liberty, and Commercial Society, 1649-1776 (Stanford, 1994), 111-38. Given Oceana’s genesis, and the large overlap between Harrington’s consistently held views, and those spoken by Lord Archon, reading the whole Oceana as an anti-tribute to Cromwell both exaggerates and misses the point. To my mind, the satirical register is loud but not the only one. Policy recommendations, Machiavellian analysis, pamphlet-style polemic with enthusiasts, and neoplatonist utopia are others. Worden occasionally mistakes Harrington’s satire on politics in general, following i.a. Boccalini, as satire against Lord Archon. Much of the satire is not against Archon, but against the enthusiasts.

839 D. Norbrook, Writing the English Republic (Cambridge, 1999), 363-4. The beginning of The Prerogative gives several references to the book as a play. However, I.xii.132-3 also describes voting and rotation as a play, which helps participants understand, enact and internalise political cohesion, and remember its practice.

840 Oceana, 273-80.
and the shadow of death, to guide their feet in the way of peace. ---- In the Name of
God, What’s the matter! ----

Lord Archon’s speech is interrupted by the howling of Philadelphus, the Secretary of the
Council, who has just read a letter from Boccalini, “Secretary of Parnassus,” about a theatrical
showdown between Caesar and Andrea Doria, staged by the Phaebean king. Archon’s biblical
citation, ending with Shandyesquely punctuated exasperation, is a composite eclectic enough
to segue easily into the satire that continues until the end of the Epitome.

Harrington gives no marginal reference to the Bible passage that is cited. It is based
partly on Psalm 105:22, where God is said “To bind his princes at his pleasure, and teach his
senators wisdom.” The next element, the shining face, is a recurring biblical theme denoting
prophetic or blessed status. The Lord’s face is said to shine (e.g. Num. 6:25; Ps. 4:6; Ps. 31:16;
Ps. 80:3; Ps. 119:135; Dan. 9:17; Rev. 1:16), as is Christ’s (Matt. 17:2), but in this case Archon
asks the Lord to make the legislators’ face shine. The obvious source is Exod. 34:29, where
Moses’s face shines as he returns with the tablets. “[T]hat we may be a light unto them that sit
in the darkness” comes from Zacharias’s prophecy about his son, John the Baptist (Luke 1:79),
cited with slight variations from the AV. Pocock deciphers Harrington’s composite text of Ps.
breathless crescendo of Scripture-heaping is absurd by the time he calls upon senators to
become like John the Baptist: neither biblical politicians, nor a soteriological culmination.
Oceana’s concluding tone is the same with which The Prerogative, and the De la Court
brothers’ Consideratien van Staat begin. Trajano Boccalini (1556-1613) is named and cited in
all three texts, published within three years, and a major inspiration for their political
orientation; except Boccalini does not satirise the Bible.

Finally, let me suggest that Harrington’s imperial vision is not without irony either, and
that he uses the Bible to express it. In the preceding passage, Lord Archon weighs the pros and
cons of various means of pursuing enlightened imperialism:

841 Oceana, 281.
842 Harrington, Works, 337 n2.
843 J. De la Court and P. De la Court, Consideratien en exempelen van staat… (Amsterdam: Ian Iacobsz
Dommerkracht, 1660), rev. ed. of Consideratien van Staat, ofte Polytike Weeg-schaal (Amsterdam: Iacob Volkertsz
Zinbreker, 1661).
844 For Boccalini and the De la Court brothers see A. Weststeijn, “The Power of “Pliant Stuff”: Fables and Frankness
Commercial Republicanism, 129-32, passim.
Lying lips are an abomination unto the Lord, if setting up for liberty you impose yoaks, hee will assuredly destroy you; On the other side, to go about a work of this nature, by a League without an head, is to abdicate that Magistracy, wherewithall hee hath not only indued you, but whereof hee will require an account of you; for *cursed is hee that doth the work of the Lord negligently*. Wherefore you are to take the course of Rome: if you have subdued a Nation that is capable of liberty, you shall make them a present of it...  

Harrington’s unspecified citation in support of expansion comes from Jer. 48:10 (given by Pocock as 48:16). It is subverted twice. First, “negligently” is often rendered as “fraudulently.” The Bishop’s Bible gives “fraudulently,” Douay-Rheims and the AV have “deceitfully,” and Coverdale and the Geneva Bible have “negligently.” Harrington’s choice to translate the Vulgate’s *fraudulenter* as “negligently” would not matter, had it not been exactly his point here to distinguish between the fraudulent and the negligent pursuit of the Lord’s work.

Secondly, he omits the second half of the Jeremiah verse, well-known in connection with the aforementioned Curse of Meroz (AV, Judges 5:23): “Cursed be he that doeth the work of the Lord deceitfully, and cursed be he that keepeth back his sword from blood.” There is a strikingly sinister and violent undertone to Lord Archon’s portrayal of Oceana’s ostensibly benign imperialism. This fits in with other evidence that Harrington had doubts about Cromwell’s Irish and Scottish campaigns, and his designs for an overseas empire. The point here is that Harrington substantially and tendentiously modified biblical passages, used them satirically in political arguments, and rendered some of them noticeably inappropriate to the subject matter in hand. This fits in with the rest of the evidence presented here and shows his alleged Hebraic republicanism in a new light.  

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845 Oceana, 268.
847 For the diplomatic rumour that Cromwell planned to become “emperor of the seas occidentalis” see i.a. Armitage, Ideological, 119-20. In another case, Harrington describes Oceana’s imperial mission in powerful biblical language, only to conclude that Machiavelli is the most relevant, and at his most relevant, to Oceana’s republican expansion, and that Rome should be the model for it. “A Commonwealth, I say... the Paragon, the Common-wealth of Rome.” Oceana, 259-61.
848 Nelson, Hebrew Republic.
VII.1.2.6 Harrington against the enthusiasts

The final group contains Harrington’s attacks against the clergy, and the enthusiasts. Anticlericalism has always been recognised as a prominent feature of his thought. The extent of Harrington’s opposition to theocratic and millenarian visions for England’s future, described partly in this chapter, is less often noted, though equally clear. His insistence on the unity of government and the impossibility of parallel civil and ecclesiastical regimes attacks not only the established Anglican clergy, but also any episcopalian, presbyterian and congregationalist system that hinges on the authority of bishops, the self-sufficiency of a presbyterian polity and its independence from civil government, or the spiritual and governmental autonomy of local churches. The satisfaction of finding the anticlericalism that one expects today in Harrington (and in Selden or Hobbes) may obscure the fact that it is difficult to think of any variety of Interregnum political theology that Oceana could accommodate. Contrary to his recent reputation as a millenarian and an advocate of replicating the Hebrew Republic, Harrington’s Erastianism seems particularly hard-headed in the light of his neutralisation of the divine polity, which is as deliberate and systematic as the Leiden Circle’s or Selden’s.

This is not to deny the importance of religious features in Harrington’s writings, from the neoplatonic account of government to Lord Archon’s biblical language. The irenicist purpose and the long list of precedents, from Plato to Hobbes, of constructing similar rhetorical strategies to make non-religious ideas compelling and/or memorable through the use of religious language and imagery, can amply account for such features. They are not only present, but cardinal to Oceana, addressed as it is to a seventeenth-century audience with pervasive religious sensibilities. A starkly secular set of proposals for reforming England would have been easily dismissed as ungodly. Humanism, the Reformation and the Civil War made anticlericalism increasingly fashionable and protean. Despite its shifting target, it became a common language for advocating unified government, civil supremacy, freedom of conscience, and certain forms of toleration. Anticlericalism was often limited to criticisms of the established clergy, whether Protestant or Roman Catholic. Yet it also offered a familiar set of tropes and an easy way to expand the argument against any combination of politics and theology, if one so wished. The onus is on attentive reading to distinguish between anticlerical arguments that sought to supplant past, present, and feared political theologies with new ones, and between secularising expansions of anticlericalism into a rejection of every form of religious interference with politics, including not only churches but also individual claims, for

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849 Pocock points out that this, “to say the least, unorthodox” feature of Harrington’s thought is shared by Hobbes and Wren. Pocock, “Introduction,” 89-92, at 89. Also see Prerogative, II.iv.47-8, II.v.53.
850 Evrigenis and Somos, “Wrestling.”
instance to exemptions due to being a prophet, a heresiarch, or absolved from civil obedience by a religious authority.\textsuperscript{851}

Examples of Harrington’s anticlericalism that belong to the latter type include his appeals for individual “liberty of conscience.” Freedom of conscience and of speech allowed Paul to reason with the Athenians, and Cicero to demolish Rome’s civil religion with impunity.

But there is a meanness and poornesse in modern prudence, not only unto the damage of Civil Government, but of Religion it self: for to make a man in matter of Religion, which admitting not of sensible demonstration (jurare in verba Magistri) engage to believe no otherwise then is believed by my Lord Bishop, or Goodman Presbyter, is a Pedantisme, that hath made the sword to be a rod in the hands of School-masters: by which means, whereas Christian Religion is the farthest off any from countenancing War, there never was a War of Religion but since Christianity.\textsuperscript{852}

The Pope’s denial of freedom of conscience caused the “execrable custom, never known in the world before, of fighting for Religion, and denying the Magistrate to have any Jurisdiction of it; whereas the Magistrate’s losing the power of Religion, loseth the liberty of conscience which in that case hath nothing to protect it.”\textsuperscript{853} The inference that non-papal denial of the same freedom of conscience would be equally catastrophic is inescapable. Catholics, episcopalians and Presbyterians are named and ridiculed. As noted above, it is hard to imagine that Adamites, Anabaptists, Congregationalists, Diggers, Familists, Fifth Monarchists, Independents, Muggletonians, Quakers, or other radical, anti-trinitarian, puritan, dissenting, or separatist sects would fare any better by the standards that Harrington sets. He uses the established tropes of anticlericalism – material greed, powerlust, epistemic arrogance, deception, the cynical encouragement of superstition, base immorality – to create the starting point for a consensus among his readers, who had perilously diverse religious convictions, and to develop a compromise in the shape of Erastian government and individual freedom of conscience as the best guarantees of social stability, as well as of freedom of religion.

Another feature of Oceana, the established national church, is further indication that Harrington had not only the political interference of the Anglican clergy but also the dissenters

\textsuperscript{851} Book I of The Prerogative ends with Harrington telescoping two passages from Wren, making him state that Harrington declared war on all priests, some of whom Wren asked to target his stance on “the Jewish Commonwealth” in their counter-attack (I.xii.134). This is Harrington’s justification for pre-emption in Book II.

\textsuperscript{852} Oceana, 28. Cf. Prerogative, I.xi.90, I.xii.114-5. The Machiavellian echo is unmistakable.

\textsuperscript{853} Oceana, 28-9.
and the “godly republicans” in the cross-hairs.\textsuperscript{854} His anticlericalism is still subordinate to his irenicism. Civil control over church legislation, revenues, appointments, and the religious instruction of the people could allow for religious pluralism.\textsuperscript{855} Yet Harrington seems to have thought that the best way to contain religion as a dangerous political factor is for the national church to provide religious education at universities on the basis of the impartial and “right Application of Reason unto Scripture, which is the Foundation of National Religion.”\textsuperscript{856} Given his times, and the role of seventeenth-century university graduates in formulating and popularising dissent, it may seem surprising that he saw no need for further measures to contain politically influential religious speculation.

Yet Harrington also attacks the enthusiasts several times without the blanketing device of anticlericalism. He adopts and adapts Machiavelli’s discussion of partisanship to England and its “Saints” in “The Second Part of the Preliminaries.” He reduces the demands of refractory enthusiasts to two types: calls for a national religion, and for freedom of conscience. The two are compatible, he explains; therefore the enthusiasts’ behaviour is mere factiousness. Appellations of holiness and saintliness are likewise unjustifiable.

The \textit{Saintship of a people} as to \textit{Government} consisteth in the election of \textit{Magistrates} fearing \textit{God}, and hating \textit{covetousnesse}, and not in their confining themselves, or being confined unto men of this, or that \textit{party or profession}.\textsuperscript{857}

In his response to Epimonus, Lord Archon later paints a vivid picture of the damage inflicted on the country, the great houses, cathedrals, monuments, private and public buildings by the enthusiasts, iconoclasts, and other rebels under religious pretext.\textsuperscript{858} Divine laws, whether given universally to mankind, to Christians, or specifically to the Hebrew Republic, do not become

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\begin{itemize}
  \item \textsuperscript{855} See e.g. Thomas More, \textit{De optimo reip. statv, deque nova insula Vtopia, libellus uere aureus, nec minus salutaris quam festiuis} (Leuven, 1516).
  \item \textsuperscript{856} \textit{Oceana}, 128-30, at 130. Cf. Cary, “Reply.” To Harrington’s imposition of a national religion, however, Lord Falkland preferred the Christian Stoicism of respecting established beliefs, however dubious, as long as they did not threaten order and liberty. Cary, “Reply,” 120-3, 131, 138-42, 157, etc. His denial of \textit{de iure divino} bishops, but acceptance of episcopelianism over the more destabilising Presbyterianism, makes sense in the same irenicist \textit{politique}, secularising context as Harrington’s \textit{Oceana}.
  \item \textsuperscript{857} \textit{Oceana}, 47: See Pocock, in Harrington, \textit{Oceana} (Cambridge, 1992), 64 n27. Cf. \textit{Prerogative}, I.viii.37: irrespective of the particulars of their schemes, the desires of those who invoke Religion to justify sedition are either Liberty, Power, or Riches, exactly as with all seditions. Also see Pocock, “Introduction,” 108-9. This adds the Machiavellian analysis of religious factionalism to Lucius Cary’s critique of it in the \textit{Discourse on Infallibility} (London, 1\textsuperscript{st} ed. 1646, 2\textsuperscript{nd} ed. 1651, 3\textsuperscript{rd} ed. 1660).
  \item \textsuperscript{858} \textit{Oceana}, 203-4.
\end{itemize}
binding civil laws, unless accepted by vote. Until then God’s so-called laws, whether or not they are co-terminous with the natural laws of prudential politics, remain mere proposals.\footnote{See \textit{Prerogative}, I.vii.33-4 for an emphatic formulation.}

\textbf{VII.1.3 Conclusion}

whimsies, and freaks of mother-wit
Harrington, \textit{Oceana} (London, 1656), 190

There is no institution that Harrington recommends for emulation that comes from the Hebrew Republic alone. There is no institution in the Hebrew Republic that he recommends for emulation directly, without qualifications. When he recommends an institution from the Hebrew Republic for emulation (with qualifications), he always adds other historical exemplars to prove and explain the institution’s merits. Harrington never argues that any of these institutions should be emulated because of their divine origin; he accords the Hebrew Republic the same status as other historical cases. Further, he recommends numerous institutions for emulation from models other than the Hebrew Republic. He also gives several reasons why the Hebrew Republic’s various institutions cannot be replicated. He gives other cases, including the shift to monarchy, when they \textit{should not} be replicated.\footnote{Also see \textit{Prerogative}, I.x.78.} Although the Hebrew Republic was instituted by God, Harrington emphasises that its recommendable institutions were designed by Jethro, a pagan. Its laws were proposed by God, directly or through human prudence, but debated and enacted by the people. In designing, proposing, and making laws, Harrington ascribes unusually minor roles to the Father and the Son, and emphasises that they never ordained anything discordant with purely human prudence.\footnote{prerogative, “The Epistle to the Reader;” I.vii.33-4, 391-3, 421-2 in \textit{Works, The Art of Law-Giving} Book II, Conclusion.} Harrington’s Bible exegeses are not only modified to suit his argument, occasionally they are idiosyncratic beyond the breaking-point of credibility.

At his most rhapsodic, Harrington describes Oceana in biblical terms, often from the Psalms. The millenarian language, the portrayal of Oceana as the redeemer and magister of the world, entrusted with the sacred mission to judge the nations’ capacity for liberty and donate it where appropriate, does not translate into a single proposal for constitutional reform. There are dozens of such recommendations, from the complex organisation of the people into orders, through systems of election, rotation and ballot, to the agrarian laws and imperial expansion. When Harrington justifies a proposed reform, he does it mostly with reference to Rome, occasionally Sparta, Athens, or Venice. In line with Scaliger’s, Grotius’s, Cunaeus’s and

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\footnote{See \textit{Prerogative}, I.vii.33-4 for an emphatic formulation.}

\footnote{Also see \textit{Prerogative}, I.x.78.}

\footnote{prerogative, “The Epistle to the Reader;” I.vii.33-4, 391-3, 421-2 in \textit{Works, The Art of Law-Giving} Book II, Conclusion.}
Selden’s emphases on the discontinuities between the divine polity and all later polities, from Saul’s kingdom to the broad range of post-Reformation aspiring theocrats, Oceana does not rely on any biblical justification that would make it a plaything of warring sects and rival denominations. Not only does the occasional biblical language and references to the divine polity not provide any of the substantial elements of Oceana, Harrington goes out of his way to make it impossible for enthusiasts of any colour to uphold divine legitimacy claims. Parts of *Oceana* are couched in biblical language to maximise acceptability among all denominations to whom the Hebrew Republic was the lowest acceptable common denominator.

My argument is not that Harrington was an atheist, or that he simply denied the importance of divine laws and providence. *Oceana* is not a theological treatise, but a constitutional design for stability. It had to assume a modicum of millenarian language, and none of its content. Cromwell’s “healing and settling” agenda similarly required both balancing competing religious claims upon politics, and limiting the intrusion of all of them. Harrington’s reduction of divine laws relevant to politics to human prudence, conformable to nature and reason, is not atheism; but it is a tectonic shift in intellectual history toward the reprioritisation of natural over divine laws. Neither do *Oceana*’s secularising techniques reveal Harrington as self-contradictory or deceitful. In the mid-seventeenth century, it was *politique* to adopt the Hebrew Republic as a rhetorical trope. Irenicist secularisers, however, had to make sure that no actual substance crossed over, rendering their recommendations open to endless and zero-sum theological debate. Harrington’s property reforms in *Oceana* refer to the Jubilee, but draw from them no more than from the Licinian Laws. Similarly, his justification of the ballot with reference to the Urim and Thummim masks an adaptation of the Athenian and Roman voting systems. The same holds for Oceana’s empire, bicameral parliament, popular sovereignty, use of orders and ballots, citizen militia, and so on.

Elements of the substance of my claim, though not the formulation and significance, have been proposed before. Hill, Pocock and others have interpreted Harrington’s comprehensive anticlericalism, advocacy of institutionalised toleration and freedom of conscience, and his treatment of the divine polity, as a well-designed series of secularising techniques, including the emphasis on the Hebrew Republic’s human, even non-Jewish origin; the prioritisation of political over religious imperatives in accounting for its institutions (including the agrarian); the historicisation of several features upon which seventeenth-century
legitimacy claims were based; and several explanations why Israel is not a suitable model for England.\footnote{Christopher Hill, Puritanism and Revolution: Studies in Interpretation of the English Revolution of the 17th Century (London, 1958), 308-9. Pocock, “Introduction,” 79-80, 89, 120-1. Zagorin, Culture.} “Secularising,” “secularised” and “secularisation” have sometimes been used to describe this, although hesitantly and with qualifications that warrant revisiting the term’s definition and use, not its abandonment.\footnote{Pocock, “Introduction,” 143, 147-8. “[C]oldly secular” in Hill, Puritanism, 308. Zagorin, Culture, 100-6. D.J. Elazar, Covenant and Civil Society (Transaction, 1998), 62, applies the same term, “secularized” to Harrington’s Israel as to covenant in Hobbes, Spinoza and Locke.} Warnings have also been issued against reading Harrington as an atheist, or committed to secularism as a norm.\footnote{Pocock, “Introduction,”” 78, 90. In addition, many components, including several secularising techniques and the key insight that irenicism requires them, have been identified in writings from the same political and intellectual context, even though the term “secularisation” was not applied to them. See Pocock, “Introduction,” 12-13 on Goodgroom and Vane, and 22 on Philip Hunton. I disagree with Pocock’s characterisation of this process as choices narrowing to a template where classical and Christian models collapsing, political association and a Sovereign come to be perceived as necessary for self-preservation. On the one hand, religious sociability remained a seriously entertained alternative, and on the other hand, neither similarities nor differences between Hobbes, Harrington, Wren, Nedham and others can be reduced to this template. Pocock, “Introduction,” 32-3. Note also that some narrowly partisan proposals, perhaps including Vane’s Healing Question, could pose as irenic. Techniques like those analysed here, and the objective of social stability, are both required by my definition of secularisation.} These are perfectly valid. This chapter offered Oceana, particularly its treatment of the Hebrew Republic, as an important instance of secularisation, which is an historical and intellectual process motivated primarily by a search for a new social order. The value of the contribution offered here depends not on discovering Harrington’s removal of religion from politics (disjointed parts of which have already been highlighted by others), but on the credibility of my claims concerning irenicism and stability as the leitmotiv of Harrington’s constitutional reform\footnote{A point made i.a. by Pocock, Machiavellian Moment, 378-96, convincingly showing Cromwell surrounded by millenarians but unwilling to turn enthusiasm to his advantage. G. Burgess, “Repacifying the Polity: The Responses of Hobbes and Harrington to the ‘Crisis of the Common Law,’” in eds. I. Gentles et al, Soldiers, Writers and Statesmen of the English Revolution (Cambridge, 1998). I. Scott, “Classical Republicanism in Seventeenth-Century England and the Netherlands,” in eds. van Gelderen and Skinner, Republicanism, Vol. 1, 61-81, at 72-3. My addition is that Harrington identified theological politics as the cost of peace. To a great degree, Oceana matches Cromwell’s balancing act between joining the millenarians, and losing their support. Book II of Prerogative also contains relevant and conspicuous cases of Harrington’s instrumentalisation of biblical exegesis.} and the programmatic nature of his commitment to secularisation that is illustrated here.\footnote{Harrington’s atheism could be construed from passages like Prerogative, I.9.56, where Harrington likens the Gothic to the Egyptian decline after they allowed the clergy to own land. Meddling with politics, the people’s descent into superstition, a War of Religion, and the transformation of the clergy into the third estate are among the consequences. Machiavelli’s and Gibbon’s attribution of the fall of Rome to Christianity is translated into Harrington’s own time. Also see Prerogative II.iii.26-7 on blurring religion and superstition in characterising Christianity, and II.iii.33, 35 and 42 on strong formulations that God did nothing more than Solon, Lycurgus and Romulus for the Hebrew Commonwealth. Prerogative II.v.55 rejects Christian interpretations for the sole reason that they are not consonant with Harrington’s view of justice and equity, therefore the interpretation must be wrong. At the other extreme, a counter-argument to my interpretation would refer to Oceana, 28; Prerogative, I.xi.90, I.xii.124-5. Neither do I agree that “Harrington’s Oceana furnished the first English republican prescription for a civil religion.” Scott, Commonwealth Principles, 51. Both these claims, namely that Harrington was an atheist or a biblical politicians, can cite very few passages in support, taken out of context. Here I tried to analyse a convincingly larger number of passages, concerning the cardinal Harringtonian tenets, and show how they connected, their historical context, and their objective.}
few decades’ invaluable reassessment of the place of religion in early modern political theory, developed in reaction to the “Marxist and Whiggist visions”\(^\text{867}\) of an unstoppable and linear march toward a questionably rationalised modernity, has made it both possible and necessary to refine our understanding of secularisation. That religious justifications faded out from mainstream political, legal, and scientific argumentation is a stubborn historical fact. Reclaiming “secularisation” as a term in a more sophisticated framework seems preferable to disavowing even its commonsensical meaning due to its specialised misuses in the past. \(^\text{868}\) But instead of engaging with limited and limiting terminological debates from the latter half of the twentieth century at length (which I have done elsewhere), the definition of irenicist secularisation in *Oceana* can be allowed to emerge from the evidence.

VII.2 *The Prerogative of Popular Government*: balance of money, languages of corruption, and the republican patronage of the world

I indeed think that, supposing for the moment the Campus Martius were divided and two feet of standing room were assigned to each of you, still you would prefer to have the enjoyment of the whole in common than to have a small part of it as your own.

*Cicero, De leg. agr. II.xxxi.85, 460-1.*

James Harrington is best known today for *The Commonwealth of Oceana* (1656). \(^\text{869}\) One of this book’s most astute critics was Matthew Wren, a Hobbesian Anglican. Wren’s objections in *Considerations on Mr. Harrington’s Common-wealth of Oceana: restrained to the first part of the preliminaries* (1657), and the decline of Oliver Cromwell’s health, explain several shifts between Harrington’s *Oceana* and *The Prerogative of Popular Government* (1657). One shift is the de-emphasis of *Oceana’s* benevolent Protector as the source of prudence, and Harrington’s new emphasis on political scientists as experts with specialised knowledge unavailable to both people and princes. Another shift is from land as the balance of property toward a mixed political economy, consisting of most states with their domestic stability and imperial ambition grounded in land, and states like Holland, the biblical Israel and perhaps Genoa, that illustrate the feasibility of substituting money for land in special circumstances.

\(^{867}\) Champion, *Pillars*, 23.


\(^{869}\) References to *The Prerogative* are particularly scarce in the secondary literature.
Three features distinguish states of the latter type. They already have money at their founding moment; they are geographically prevented from land-based expansion (either by land scarcity or changing natural borders); and their religion supports international trade, but due to its underlying secularising and republican morality, it prevents both priestly encroachment on politics and the corruption of morals that is axiomatically associated with trade and empire. The states based on the balance of money expand not via land, but banking and trade, yet they remain republican. In *The Prerogative* Harrington derives general rules from these exceptions, for instance that banks create republics, and *vice versa*. A sophisticated theory of necessary inequality also follows. States must have some, so that the rich can and will use economies of scale to innovate; but not so much as to provoke unrest.

One reason why these shifts between the two books remain unappreciated is that they cut across current genealogies in several ways. Harrington is pivotal in Pocock’s etiology of republicanism as the first English political humanist, importer of economy-blind Machiavellism into England, and origin of “neo-Harringtonianism,” a Country Whig critique of luxury, standing armies, central banks, and the corruption emanating from Court and Parliament. According to Pocock neo-Harringtonianism, which informs both the American and French Revolutions, recognises the civic value of a combination of landed and commercial interests, in contrast with Harrington, who shared Machiavelli’s deprioritisation of economical factors in political science. To understand the mid-seventeenth-century constitutional experiments that had a profound impact also on the eighteenth-century revolutions, this account should be re-examined. Pocock’s brilliant historical imagination trapped many of his followers and critics, and some of the last few decades’ work on the rise of the modern state hurtled down blind alleys as a result.

I would like to challenge this prevailing account on six connected, yet distinct and separable points. Firstly, Harrington is not really a Machiavellian. Although he praises the Florentine often, he disagrees with almost everything he wrote. Machiavelli is wrong, according

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871. The Jews were fighters, but not merchants, until they first lost their land, then settled in too narrow a strip: Cunaeus, *De republica Hebraeorum*, I.4, 20-21. Harrington, *Prerogative*, l.ii.96-7.
872. *Prerogative*, l.iii.17.
873. *Prerogative*, l.iii.17.
874. One corollary is that levelling is not in the people’s true interest, according to Harrington. *Oceana*, 199-201, *Prerogative*, l.iii.44, etc.
877. The strong version of this claim is that Pocock’s brilliance notwithstanding, the Harringtonian/neo-Harringtonian distinction is not only subject to criticism, but its harms outweigh its benefits to a degree that we should try to undo it from the literature.
to Harrington, about the inevitability of all states’ decline; about the forms of government; about ignoring the aristocracy in the prince-people dynamic; the agrarian; the necessity of tumult; the role of fortune; and so on. Harrington’s repeated praise of Machiavelli is a puzzle (for me), but certainly not a load-bearing building block in a straightforward genealogy of Machiavellism.

Secondly, neither Machiavelli nor Harrington deprioritised economic factors in the way Pocock, and many of his critics, describe. Machiavelli, as chapter III.1 has shown, had a comprehensive and high-level theory of labour. Harrington crafted commercial republicanism by linking banks to republics and by positing “the balance of money” in The Prerogative.877

Thirdly, both writers should be understood in relation to (reacting to and adapting) the distinct strand of republicanism that was based on the ideal of farmer-soldier-citizens. This tradition goes back at least to Xenophon and Cicero and runs through Alberti, Lodovico Guicciardini and Althusius to John Adams, Paine, St. John de Crèvecœur and Jefferson. It was to this tradition that Sigonius added a provincial (Paduan) dimension which, in contradistinction from Milanese and Florentine civic humanisms, emphasised agrarian laws, local government, and colonial projects as instruments of relatively small states navigating the pernicious rivalries of large states. Sigonius also applied the ancient Athenian, Spartan, Roman, and feudal Italian categories of local government (including tribes and courts) and colonialism that emerged from his systematic comparisons to the biblical Israel. This was the comparative framework that Cunaeus extended by adapting Machiavelli’s analysis of politics to the biblical Israel, which he presented as armed, agrarian, expansionary, and potentially immortal thanks to the political instrumentalisation of its religion by Moses, its Machiavellian prince.

These were the components that Harrington, drawing heavily on Sigonius and Cunaeus, combined in positing the balance of property (land) in Oceana as the foundation of all government, neutralised Israel as a model, and proposed a British and republican version of benign imperialism.878 The international public law governing political and commercial relations between the provinces, the mother country and the metropolis are detailed i.a. in Prerogative, l.iv; and II.ii.20-22. The influence of Sigonius and the provincial strand of republican imperialism is ubiquitous. Harrington calls his landmark contribution of secularising soft imperialism “the patronage of the world.” If a state or region met two conditions, namely readiness to implement the appropriate agrarian and willingness to help England expand, it came under

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877 Even descriptions that predate Pocock and acknowledge that commerce had a role in Harrington’s thought tend to suffer from neglecting The Prerogative, and working from Oceana alone. Russell Smith, Harrington, 35.

878 The strong version of this claim is that one can not understand the texts discussed here without at least a partial survey of the history of Greek, Jewish and Roman agrarian laws. E.g. no cogent reading of Oceana without Plato’s Laws and Cicero’s three agrarian orations, no Cunaeus without Maimonides, etc.
England’s protection, and set up its own parliament, and/or obtained representation in Westminster. Among the benefits bestowed by Harrington’s empire are protection and freedom of conscience (not, i.e., simply freedom of religion), both of which are in turn essential for keeping the republican empire peaceful and perpetual.\textsuperscript{879} The idea behind the balance of property is not simply that money can take flight, therefore people without land have partial or false interest in the common good.\textsuperscript{880} The farming component of the \textit{kalokagathia} of Xenophon’s Ischomachus, popularised by Bruni, Bracciolini and Alberti, matures by the time of Sigonius into a theory of educating ideal citizens who not only cherish individual economic independence and collective interdependence, but move readily between the sword and the plough whenever their republic embarks on a colonial adventure. Also inspired by his Dutch experience and readings,\textsuperscript{881} and responding i.a. to Wren’s challenge, this is the model that Harrington inherited and commercialised in \textit{The Prerogative}.\textsuperscript{882}

A major trick to updating classical to commercial republicanism, or in other words to reconciling classical republican virtues with the pursuit of industry and trade, is free ports like Antwerp and Amsterdam as described, for instance, by Lodovico Guicciardini. Building on Machiavelli, Sigonius and Cunaeus, Harrington constructed a unique and highly influential model for English colonial republicanism. It combines territorial conquest and settlement with commercial and industrial expansion channelled through Holland, which is uniquely immune to the corrupting influence of industry and trade. It is so because of its historical experience of land scarcity and dependence on money as a tool and resource, to be used instead of land for long-term returns. There, commercial \textit{fides} translates into political trust because if the Dutch break their word in commerce, they lose their main means of survival. France, by contrast, can afford to abuse commercial policy and turn it into a self-aggrandising instrument of reason of state, thanks to its rich and fertile land.

In my reading, Harrington’s system in \textit{The Prerogative} prefigures variables and projects that the mainstream of current literature regards as long-eighteenth-century innovations. One reason may be the poverty of historiography on seventeenth-century English economic thought, or that mid-seventeenth-century texts are normally mined for thoughts on extra-European commercial and colonial expansion. Virtually all major figures in early modern English

\textsuperscript{879} \textit{Oceana}, 259, 271, \textit{Prerogative}, II.ii.19, etc.
\textsuperscript{880} \textit{Prerogative}, I.iii.11.
\textsuperscript{882} See e.g. \textit{Oceana} 199-201. \textit{Prerogative}, I.ii.11-17, I.vii.45, I.ix.63.
economic thought write about the virtues, dangers, and means of occupying and holding more of America, the Indies, and Africa. Harrington seldom does. Instead, he recommends that England gets its domestic arrangements in order (introducing tribes and divisions, a bicameral parliament, agrarian laws, freeholding citizen militia, etc.), occupies Europe, and uses Holland as a free port to trade internationally, while maintaining and spreading republican virtue. He also warns that if England fails to do so, the country most likely to successfully follow this course is France.\footnote{883} Holland’s balance of money, i.e. its unique ability to remain uncorrupted and stable despite commerce, is a key element introduced in The Prerogative that makes this scheme possible.

Such projects are familiar to us from England from the early eighteenth century, from France after the 1690s, and Germany from the mid-eighteenth century. This template is a dominant discourse in Europe by the second half of the eighteenth century. How can France, how can Prussia, how can Britain become “the friend of man,” the law-giver and arbiter of international relations, or occupy everything and create an enlightened absolutist super-state, federal only in name, but spreading virtue and light? These questions in these forms are, according to currently predominant views, not supposed to be written in the 1650s. The value of a close and contextual re-reading of The Prerogative therefore has several benefits.

In my interpretation, Harrington’s Holland in The Prerogative looks very much like Fénelon’s Salentum. To my knowledge this continuity, developed below, does not appear in the pertaining scholarly literature of the last few decades. Machiavelli, Sigonius and Cunaeus are crucial in this link not only for the obvious reason that they explain how Harrington got to his commercial republican model with Holland as a giant free port for Europe, using Machiavelli’s theory of labour, Sigonius’s interpretation of Roman and feudal systems of law and their import for provincial and colonial autonomy, together with his deep constitutional comparison of Israel’s and Rome’s tribal assemblies, sortition, provincial government and popular sovereignty, and Cunaeus’s militarisation of Israel and comparison of the Roman agrarian with the Jewish Jubilee. This link also explains why Fénelon rejected Claude Fleury’s (1640-1723) combination of the idealised republic of simple manners and no commerce with the biblical polity (Mœurs des Israelites, 1681) as a source of Télémaque, in favour of a commercial republican model and one which, patterned on Harrington (or perhaps on an intermediary like De la Court),\footnote{884} relies neither on the biblical model, which proved inherently divisive and irresolvably contentious and thus unable to frame the debate over state reform, nor on the

\footnote{883} Prerogative, I.ix.60.  
Roman republican one, which was almost equally contentious (and would have been certainly more dangerous to invoke in a morality tale for *le Petit Dauphin*), but instead on a fictional one, placed in the Homeric world. Harrington’s 1656 *Oceana* links up with *Les avenüres de Télémaque* (1694; 1699). Both in genre and policy advice, Fénelon’s choices become clearer in this light.

Additional benefits of this genealogy include showing the limits of debating whether English republican imperialism is neo-Roman or neo-Greek, and that the construction of the history of feudalism, as part of this republican imperialism, was not a justification for a clean break, but part of English republican self-understanding as a natural development. Pocock’s and others’ work on common law contributed to this misunderstanding and overemphasis on early modern diagnoses of feudalism as an “inherently unstable” system. Harrington used the tradition discussed here, accommodating agriculture, commerce, empire and the republican form, to offer a transition for Britain. The transition was predicated on the assumptions that the balance of property in England has shifted since Henry VII, and Scotland and Ireland were in relatively stable alliance or state of dependence. Contrary to Pocock’s insistence, this Harringtonian transitional recipe involved neither a violent nor a clean break with England’s feudal past. The Country did not discover Harrington in 1675 or 1698. Likewise, Harrington always knew that the Country was there, and built its interests into a project that did not disappear in 1660, before reappearing with Shaftesbury in 1675.

The problem Pocock points out, namely that in “neo-Harringtonian” historiography the feudalism that Harrington allegedly rejected turned into an ancient constitutionalist argument for maintaining the property qualifications of franchise, similarly dissipates on closer inspection. Harrington, but also Selden and as far as I can see Henry Hammond (1605-60), understood the uniqueness of the common law without failing to see its similarities with other legal philosophies with a comparable potential for, and track record of adaptation. Here it is worth recalling again the Paduan education in civil law received by some of the foremost theorists of the English Reformation and of English sovereignty, including the distinction

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885 This strategic irony was partly explained in Somos, “Ironic Secularisation.”


887 I agree with Scott, *Commonwealth Principles*, that political thinkers were oblivious to neither Greek nor Roman sources, and their choice or mixture of sources does not in itself indicate ideological allegiance.

888 Pocock, “Machiavelli, Harrington,” 120.

889 E.g. *Oceana*, 203-4, on reasons to stop destroying country estates. Also see the numerous passages against levelling.
between the office and the man, and the ability to envision non-monarchical governments with an authority comparable to the ambitions of Henry VIII and James VI/I. Moreover, the great legal authorities that seventeenth-century constitutional reformers looked up to, even during the Civil Wars, were English, etatist, and for the most part Catholic. The fact that Glanvill, Bracton, Ralph de Hengham, even the canonist William Lyndwood and others before Henry VIII were Catholics, often devout, did not stop them from asserting and extending the cognisance of English common law, nor did it make their sixteenth- and seventeenth-century professional heirs reject them on account of their Catholicism.890

Pocock’s and others’ unduly stark overemphasis on the discontinuities between early modern views of English common law, and the Civil Wars and commercial modernity, has obscured the cases in which early modern thinkers developed commercial republicanism as a natural development from, not the abrogation of, a feudalism that accommodated the interplay of commercial free cities and large territorial states. The most striking evidence for this proposition may be by an admitted fan of Harrington, John Adams, in his A Dissertation on the Canon and Feudal Law (1765).891 Adams, despite the benefit of being a colonist in a soon-to-be-independent extra-European country, and despite his enthusiastic embrace of anticlericalism and anti-tyrannical tropes, nevertheless acknowledges feudalism’s and even the Catholic Church’s contributions to modern liberty. For instance, they protected Europe against barbarism, while also usurping authority from the people. In Adams’s account the Reformation, Puritans, their expulsion, and Westminster have similarly both supported and hindered the rise of liberty in their own ways; but these are perhaps less striking confirmations of my thesis on Harrington’s and Selden’s appreciation of feudalism, and their view of republicanism as a natural next step, than Adams’s grudging nods to feudal and even canon law at a revolutionary moment. Note that throughout his long life Adams had always regarded James Otis’s 1761 speech, published in 1763 as The Rights of the British Colonies Asserted and Proved, as the

890 Geoffrey Robertson’s point that before 1648 the constitutional debates were limited to the powers of the monarchy and Parliament is well taken. The Tyrannicide Brief (Chatto & Windus, 2005). Blair Worden similarly denies the validity and utility of using “republicanism” as a concept and term for the first, and for some of the second, half of the seventeenth century. Robertson is also right to challenge the emphasis Quentin Skinner and others have placed on neo-Roman texts in the constitutional thought of the English Civil Wars. However, his attribution of the revolutionary, regidical and republican impulse to the combination of “biblical republicanism” and the common law is partly insightful, partly self-contradictory, and partly untrue. Cicero was as important a source as Calvin; and many shades of biblical republicanism, including extreme anti-Catholic ones, are antithetical to the common law. For more on Rome’s influence on seventeenth-century England, beyond the Civil Wars and political thought, see Freya Cox Jensen, Reading the Roman Republic in Early Modern England (Brill, 2012).

891 On Otis and Adams praising and following Harrington see Russell Smith, Harrington, chapter VIII. Another important means of transmission between Harrington and the Founders is Cato’s Letters (1720-23) by John Trenchard and Thomas Gordon. See e.g. Letter 35, “Of publick spirit,” 1721, in Cato’s Letters, ed. Ronald Hamowy (Liberty, 1995), I.253 on the agrarian, Letter 106 (1722), II.748-9 on the Harringtonian system of colonies to settle veterans or to advance trade, and 750 on soft imperialism.
declaration of American liberty. Given Adams’s later disillusionments with both the people and the founders, it is fair to say that it was the height of his revolutionary zeal when he grudgingly complimented feudalism and praised whole-heartedly the common law.

Fourthly, the texts simply do not bear out the claim that Harrington and Harringtonians reject feudalism in toto in favour of new near-utopias, while neo-Harringtonians incorporate the ancient constitution into their theory of property and vindication of anti-absolutist, aristocratic government. The texts are more varied (e.g. Harrington invokes the Gothic balance in support of his argument) and the correlation is absent.

Fifthly, the “neo-Harringtonian” criticism of the Court and Parliament is not the source of the language of corruption associated with luxury, improper influence and dependence, “placemen,” cronyism, the loss of civic virtue due to moveable wealth and standing armies, and other specific fears, that gave eighteenth-century Americans the main ideological tools for criticising Britain and justifying their independence. The “anti-corruption principle” distilled by constitutional lawyers and historians from a broad array of colonial American texts, and then linked to Pocock’s ascription of a specific language of corruption to the neo-Harringtonian Country, is increasingly recognised as a major orientational feature in any valid interpretation of the Constitution. I submit that this is wrong, and the idioms of corruption used around the

894 See e.g. Prerogative, I.vii for Harrington’s view of how the ancient constitution, the common law, and civil law traditions inform one another. Pocock’s distinction between Harringtonianism and neo-Harringtonianism colours recent accounts of seventeenth-century Dutch debates, in which “the Batavian myth” is said to function similarly to “the Gothic balance.” A good criticism of how ancient constitutionalism impoverished the legal history of colonial America is in Craig Yirush, Settlers, Liberty, and Empire: The Roots of Early American Political Theory, 1675-1775 (Cambridge, 2011), 8.
895 Pocock, “Machiavelli,” 125-32, 140. Essays in Pocock, Virtue, 48, 107. Perhaps the parallel Dutch debate, outlined in Arthur Weststeijn, “Republican Empire: Colonialism, Commerce and Corruption in the Dutch Golden Age,” Renaissance Studies 26:4 (2012), 491-509, holds clues to the real story of the evolving English idiom of corruption. That the classical republican concern with corruption remains important for Harrington is shown not only by the solution he proposed in the Prerogative – namely a British empire of Europe with Holland as a free port uncorruptable by luxury due to its unique balance of money – but also by the terms of the challenge he sought to answer. Wren objected to Oceana that money is better for a great imperial expansion than any balance of land (Considerations, 14-16; also see 32). Replying in the Prerogative, Harrington agreed with the premise but offered his solution in order to keep England free from the corruptive influence of money.
turn of the eighteenth century, and adopted and adapted by the Founders, are at least as straightforwardly Machiavellian as they are “neo-Harringtonian;” and other sources play a comparably important role.

One implication is that the anti-corruption principle used in constitutional interpretation to frame an array of specific current issues, from campaign finance reform to constitutional conventions, relies on the wrong hermeneutical genealogy of the founding texts. In fact the principle is both broader and carries greater authority than current literature suggests. Instead of stemming from a piecemeal but historically and institutionally consistently narrow, post-1675 neo-Harringtonian, Country Whig critique of an overweening Parliament and Court, corrupted and bent on corrupting the people by addicting them to luxury and enslaving them through taxation and public debt to finance unjustifiable wars,\(^897\) the anti-corruption principle developed by seventeenth- and eighteenth-century American colonists and Founders (both English and Dutch) drew on a richer tradition of republicanism and concern with corruption going back at least to Plato and Aristotle, and Cicero and Livy. One corollary of this is that the anti-corruption principle is only derivatively a criticism of politicians, and primarily a corrective and aspirational claim about republican citizenship. Another corollary is that the anti-corruption principle, rightly construed, encompasses a normative stance on representation and civic responsibility, issues that are rarely and tangentially discussed in its current postulations.

Pocock’s reading of Harrington needs to be amended, but so do many dependent developments and challenges. Some critics question why Harrington should be taken as representative of early modern republicanism. Others argue that Pocock is wrong to date “neo-Harringtonianism” to 1675 (and sometimes 1698), because the Glorious Revolution is the watershed that marks the recognition of commerce as a first-order, irreducible reason of state. The sixth and final connected, but separable correction to the Pocockian vision of Harrington begins with the point that the project that unravels when *Oceana* and *The Prerogative* are read together is not a strange aberration, or a template before its time. In my view, the commercialisation of Harrington’s republicanism, dubbed “neo-Harringtonianism,” begins with Harrington. There is no “sudden and traumatic discovery of capital” between Harrington’s and

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This is because the inquiry is predicated on an erroneous restriction of the Founders’ meaning to “neo-Harringtonian” criticisms of Court and Parliament. This error of restriction, leading to an overly narrow foundation and scope of the anti-corruption principle, is shared to date by all constitutional lawyers and legal historians working on the subject, who invariably reference Pocock.

\(^897\) This is why the “anti-slavery principle” of constitutional interpretation is directly connected to anti-corruption. See Jack M. Balkin and Sanford Levinson, “The Dangerous Thirteenth Amendment,” *Columbia Law Review* 112 (2012), 1459-1500.
the mature eighteenth-century Court Whig positions. We simply have not traced Harrington’s reception at all well. There was no rediscovery, because he was not forgotten. Harrington was read and cited by Locke, Shaftesbury, and many English and American statesmen, administrators, colonisers and colonists from the start. In addition to the issues outlined above, I also think (though currently this is the least-researched part of this chapter) that the 1651 Navigation Act shaped Harrington’s scheme, and Harrington’s scheme in turn shaped several Restoration laws, including the 1660 extension of the Navigation Act, paying off the New Model Army, provisions for numerous proprietary and Crown colonies, and so on. Holland, the American colonies, and France produced several constitutional designs between the 1670s and the 1800s that are explicitly Harringtonian. Thus, the European empire story has been a valid alternative to global empire since Harrington, and is not an innovation of “the long eighteenth century.” Harrington’s invention of the balance of property, including the balance of money, is the key to unlocking this story.

Even if components of my argument need more work, hopefully this shows several merits of rethinking Harrington’s thesis in full, including The Prerogative, on property as the foundation and deep constitution of both domestic and international public order. If for no other reason, at least because adding the balance of money to the picture brings questions about the true significance of public debt – in this context the direct opposite of what the balance of property, in both land and money, was supposed to accomplish – into clearer focus.

If so, and if works like the A Compendious or Briefe Examination distinguished between merchants, craftsmen, and farmers who profited by an increase in prices, and labourers, statesmen, and farmers who were harmed, it follows that the only way the new balance could work for them was if small farmers were assured of a steady income. This result required a balance of property that would dismantle the power of the larger industrial, commercial, and political forces, and replace it with something that was more geared towards the needs of local communities. It also required a level of political complexity that we might not be able to reproduce today. The consequences of this are profound, and I think that this is the reason why Harrington’s work is not forgotten.

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898 Pocock’s phrase for this gap is in Virtue, 108. See also Machiavellian Moment, chapter XIII. Pocock himself raises the problem his genealogy creates on Virtue, 259: “What remains not fully explained is how an ideology stressing Roman warrior – civic values and the independence that came best from real property possessed the appeal it visibly had for towns dwellers…” The answer is that agriculture was added to the warrior and civic values, which brought colonialism into a unitary framework of political analysis; and that with Harrington, via Cunaeus, it was transformed in special cases into commerce and banking. Highly relevant is the seamless transformation of the laus urbis genre to include commerce among the virtues of cities: see chapter III above. Prerogative, I.xi.97-99 (no doubt using a Dutch source). See passages cited above, and Prerogative, I.xi.96-7, where Harrington explains to Wren that Oceana is not Sparta, and allows and enjoys the use of money.

899 Henry Neville, William Penn, John Toland, and Walter Moyle are reasonably well-studied conduits, but Anthony Ashley Cooper requires more work. Great clues to follow up include Russell Smith, Harrington, 137-9 and Thomas Leng, “Shaftesbury’s Aristocratic Empire,” in ed. John Spurr, Anthony Ashley Cooper, First Earl of Shaftesbury, 1621-1683 (Ashgate, 2010), 101-25 and William Petty (esp. Russell Smith, Harrington, 130-1).


901 Russell Smith, Harrington, 100-1, 103, 122!

902 See the sources in fn886 above.

903 Harrington’s claim that the balance of property is his invention, and the beginning of political science: Prerogative, I.i.ii.20.
servants, and gentry who suffered a loss, then some English republican agrarian proposals (not Diggers or communitarians, but perhaps the Levellers) can be interpreted as viewing the redistribution of land into individual small landholdings as not only a guarantee of a modicum of self-sufficiency in food, but also as a hedge against inflation. What Lilburne’s urban poor lose in wages, they can recoup in savings or, if their farming leads to some surplus, profit from rising food prices. It is important to note that this was not Harrington’s agrarian proposal, which was as far from redistributive Levelling as it was from the Gracchi. Harrington’s numerous condemnations of the Levellers should give a clue.

Both Roman events and early modern imperialism proved Cicero wrong. Holland preferred individual strips, and was indeed praised for it. Cunaeus incorporated land scarcity into his analysis of the biblical polity, and Harrington took it a step further, inferring from land scarcity the insufficiency of private landholdings, and hence Israel’s and Holland’s unique balance in money. Taxation is Jubilee, applied to money.

This particular configuration of the desirability of a republican constitution at home, the value of global commerce, a keen awareness of the military risks posed by commercial alliances, and the pervasive importance of maintaining virtue through arms – thus, for instance, the naivete of trying to establish unarmed neutrality on the grounds of commercial relations alone – is best exemplified by Alexander Hamilton (1755/7-1804), one of the chief architects of the American republic.

905 See William Stafford’s Compendious or Briefe Examination of Certayne Ordinary Complaints of Divers of Our Countrymen in These Our Dayes, A. D. 1581 (London, 1876), 27-9, 33.
906 Nedham makes the same point in Excellencie, 48-52.
CHAPTER EIGHT

TRUST, POWER, AND ARMED NEUTRALITY: HAMILTON’S POLITICAL ECONOMY AND EARLY AMERICAN STATE-BUILDING

For the mere name of imperium is hateful and greatly feared, however insignificant the possessor of it may be, because, when they have left the city, it is not their own name, but yours, that they abuse. How then will it be, do you think, when these decemvirs roam about the world with imperium, with the rods of office, with that picked band of young surveyors? What do you think will be the feelings, the apprehension, the danger threatening the unhappy nations?

Cicero, De leg. agr. II.xvii.45, 418-9

VIII.1 Introduction

In this Thesis I set out to explain the connection between soft imperialism and secularisation by illustrating developments in legal history along at least two dimensions in each chapter: from the agrarian and kalos kagathos to provincial republicanism and the neutralisation of biblical politics, and from exceptionalism and imperialism under limited resources to popular sovereignty and commercial republicanism as a determinant of constitutional reform. There are many ways this final chapter could be written in the same spirit of economy and strategic illustration. One excellent way would be to analyse how Harringtonian notions were developed in Cato’s Letters (1720-23), and the influence of these texts on American independence. Another obvious route is the intellectual and political agenda that the younger Thomas Hollis (1720-74) pursued to transfer, promote, and expand the scope of “English liberty,” into which he fitted American colonists’ and several Founding Fathers’ early works in a way not short of visionary. Another, more original and tempting method would be a survey of key texts and legal and administrative choices by Thomas Pownall (1722-1805), the fascinating and now neglected pro-American governor of the Province of Massachusetts Bay, then Westminster MP. An easily justifiable and wonderful alternative is to discuss John Adams (1735-1826), whose praise of Harrington, idiosyncratic explanation for American independence (which he dated from James Otis’s 1761 speech against British writs of assistance), previous appearances in these chapters (including his reappraisal of feudalism in light of Sigonius), works on constitutional law and public service i.a. as Vice President, then President, make him a better
figure to analyse in order to bring this Thesis to a close than one could possibly invent. Even a chapter on Thomas Jefferson’s (1743-1826) religious minimalism, “Gothick balance” and anticlerical and agrarian republicanism, or the transformation of secularising principles into a system of commercial sovereignty and intergenerational welfare redistribution that undergird the new republic’s encouragement of self-reliance and education of *hominæ novi* in Thomas Paine’s excellent and Harringtonian *Agrarian Justice* (1797), would do.  

At the end of this Thesis’s arc, any of these imaginary and desirable chapters would seem more rigorous than a chapter on Hamilton. Yet despite the risk of over-stretching and fragmenting the narrative, the case of Hamilton is potentially more rewarding than the others. One reason is that the ways and lineages of soft imperialism’s connection to constitutional reform presented so far are powerfully complemented by Hamilton’s formally coherent systematisation of a commercial republic’s demands on the soft imperialism of the empire-builder, and his call on Britain to honour concomitant obligations and norms. Figures as different as Paine, Jefferson, Adams, and Edmund Burke agreed that Britain violated its obligations, and the colonies have a legitimate grievance that can lead to a right to secede unless they are made whole. Hamilton agreed, but instead of the usual *tabula rasa* of independence, he developed ways of maintaining a remarkable range of substantive legal continuities. Collectively, these add up to nothing less than a constitutionally, intrinsically justified revolution. While other Founders invoked natural law, international law, corporate law (in the case of chartered colonies with their own historical constitutions) and the common law to justify a break with Britain, at considerable personal and political cost Hamilton insisted that whenever the law dictates, America honours Tories’ right to property in the colonies, observes the treaties that have not been breached, preserves the common law system and institutions where they exist in the colonies, and honours even the war debts contracted in pursuit of independence.

This ostensibly conservative revolution would make him a prime candidate for testing this Thesis’s claims concerning the enduring impact of the legal features of secularising and commercial republicanism, and the provincial republicanism so suitable for colonisation. However, Hamilton’s revolution is deceptively conservative, and has far more more to say about modern states than it may first appear. From the assumption of war debts, he created a national currency and credit. He worked out and tirelessly explained that a strong executive, a central bank, and a federal navy and judiciary are among the imperatives that follow from the recognition that modern republics must be commercial. And unlike the pacifist critics of

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<sup>907</sup> For some of Harrington’s reception in America see Smith, *Harrington and his Oceana*.  

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Grotius’s *Mare liberum*, or the unjustified faith that, according to Harrington, Venice put in others’ commercial dependence upon them, it is Hamilton’s formulation and ordering of these republican, commercial, and military priorities, and his constitutional design of corresponding powers and institutions, that created not the first modern empire (which is Selden’s) but the first modern state from the ground up. This is why the effect of Harrington’s doctrine of the balance of money as a viable foundation; the provincial republicanism of Sigonius and Jethro; the way the common law and its rules of recognition foster rather than inhibit legal evolution and expansion without compromising its coherence; the effect of soft imperialism in spreading the rights and norms produced by an historically contingent process, and how they came to be mistaken for universal ones; the transformation of agrarian republicanism into a mixed economy of private enterprise, strategic state intervention and a social safety net; and the Machiavellian-English Paduan-Harringtonian virtues of energy in the forms of industry, commerce, and arms, are best cashed in with a concluding look at Hamilton’s revolution.

VIII.1.1 Claims
This chapter makes three specific claims. The first is that Hamilton was one of the most original statesmen to understand that sovereign debt is an integral part of modern sovereignty. The second is that Hamilton formulated his recognisably modern notion of sovereignty under the combined influence of David Hume, Adam Smith and the League of Armed Neutrality, convoked by Catherine the Great in 1780 and disbanded with the Peace of Paris in 1783. The third claim, which follows from the other two, is that Hamilton has long been misunderstood as a protectionist, and that the so-called American School of Economics and the related “National System” are not Hamiltonian. Ultimately, I suggest that closer attention to the details of connections within Hamilton’s constitutional design, and their international dimension, reveals that he intended America not to be protectionist but to partake of the diplomatic and economic benefits of armed neutrality, which in turn formulated a new principle of commercial republican sovereignty.

VIII.1.2 Context: America and the League of Armed Neutrality
Catherine II of Russia created the first League of Armed Neutrality (1780-83) during the War of American Independence (1775-83). Speculation about her intentions continues to this day. Those who think that Catherine had the civilising effects of commerce foremost on her mind point to her seemingly altruistic role in the War of Bavarian Succession (1778-9), where she effectively embodied the ideal of an enlightened mediator and third-party arbitrator. Skeptics
point out the moral, legal and political cover afforded by the League of Armed Neutrality to Catherine’s expansion of the Russian fleet, in order to advance her commercial ambitions and her “Greek project.”

The War of American Independence is mentioned rarely and at best as a tangential event that allowed Catherine to weaken further the British position, while retaining the appearance of a benevolent neutral state intent on liberating commerce from the shackles of war. The profound connection between Hamilton’s vision, the original constitutional design of the United States, and the League of Armed Neutrality remains unexplored.

Among other influences, the League alerted Hamilton to the possibility of gaining substantial and much-needed military and financial advantages, provided that the new republic was set up with a strong executive, a common currency, a centralised banking system, and a programme of economic stimulus that began with the new government providing a well-designed, selectively protectionist hothouse for national industry and enterprise, but ended with a fully free market integrated in the global economy and protected by carefully balanced neutrality agreements from entanglement in the commercial and naval jealousy and warfare that was rampant among the modern European states. Today we take the existence and importance of these US institutions – a federal government, a common currency, a standing army, a navy, the principle of potential neutrality in foreign affairs – for granted. They were extremely controversial in Hamilton’s time. Among the Founding Fathers his vision was closest by far to the US that we know now, and the clarity of his vision owes more to the League, and to the story so far told, than has been hitherto recognised.

In spite of its short lifespan, the League left an indelible mark through a series of diplomatic, military and commercial manoeuvres. It formalised and institutionalised a new principle of international law among commercial states that were contesting one another’s Seldений imperialist claims, while figuring out their own. It demonstrated that unlike in previous times, when popes routinely excommunicated those who traded with infidels or with other excommunicates, every act of trade could be plausibly construed by the trading partners’ enemies as an act of war, and the argument for free seas was plausible, by the end of the eighteenth century the discourse of commercial interests has become sophisticated enough in international relations to provide a just cause – or an effective pretext of one – for armed

\[908\] For informed speculation see Isabel De Madariaga Britain, Russia, and the Armed Neutrality of 1780 (Yale, 1962), 71, 84, 95, 142, 152, 170, 374.

\[909\] Although many sources came to light since its publication, W.P. Cresson’s Francis Dana: A Puritan Diplomat at the Court of Catherine the Great (New York, Lincoln Mac Veagh The Dial Press, 1930) remains a useful diplomatic history. See especially chapters 19 and 24. De Madariaga makes useful short references to the role of the US in the strategic calculations of Russia, France and Britain, including pp. 10, 14-5, 99, 106-10, 153, 223-4, 229, 245, 324, 331, 338. Similar brief references are made to Russia in American diplomacy by Samuel Flagg Bemis, Jay’s Treaty: A Study in Commerce and Diplomacy (2nd ed., Yale, 1962), 314, 344.
neutrality and a formal separation between commerce and war. After the Renaissance, commerce gradually became a primary concern, with increasing urgency as Spanish, Portuguese, French, British and Dutch colonial and commercial expansion showed just how much power and wealth was at stake in the right understanding of political economy in the new age.\footnote{For the best account of this process see István Hont, Jealousy of Trade.}

As Hume pointed out in the “Essay on the Balance of Power,” the concept of neutrality is as old as the history of international relations.\footnote{One could argue that Hume was the first to formulate the commercial-military notion of the balance of power in a way that could inspire Catherine and Hamilton. Davenant’s famous Balance of Power and Balance of Trade writings gave prominence to the idiom, but remained restricted to a Machiavellian warning against military overreach, supplemented with a praise of commercial expansion and free trade efficiency.} As commerce became an increasingly sophisticated instrument of foreign policy, the freedom to trade came to be recognised as an integral part of modern sovereignty. Commercially disadvantaged and/or ambitious states could therefore rally around Catherine’s declaration of the right to armed neutrality. Although the League failed to create an enduring check on Britain, it benefited Russia substantially. It enabled Catherine to enlarge the merchant fleet, expand trade in the Atlantic and the Mediterranean, and build up economic and military strength against Turkey and Sweden without having to take sides on the Western front.\footnote{De Madariaga, Armed Neutrality, chapter 7.} The terms of the 1783 Peace of Paris, which ended both the League and the American War of Independence, proved two hypotheses: first, that military and commercial calculations can be formally decoupled in international law – trade can continue without having to join the ongoing wars – and the prospect of long-term commercial benefits are an insufficient motivation to refrain from military aggression in pursuit of immediate gains.\footnote{De Madariaga, Armed Neutrality, chapters 17 and 18.} Harkening back to Harrington’s insight that Venice was, at best, a model for republics for preservation, not expansion, neutrality was shown to be good, but viable only when armed.

It is as part of this story that the League of Armed Neutrality emerges as a rich but seldom appreciated context for the founding of the United States. The existence and accomplishments of the League underscored the \textit{ex post facto} inference, and the political acts based thereon, that the link between modern commerce and international relations is a two-way one. One corollary of this was that if a balance of power were to hold, it had to be maintained both strategically and commercially. To remain neutral in war, a state had to be prudent in her commercial arrangements; conversely, the development and deployment of commercial policies could make or break a sovereign nation. Another corollary was that
commercial decisions were not derivative but an integral part of modern sovereignty. It also showed that it would be naive to rely on the civilising effect of commerce in the short run. Unarmed neutrality is suicidal.

The League alerted the perceptive Hamilton to the conditions in which the emerging United States could attain sovereignty, comprising both military and commercial independence. Neutrality played a key role in Hamilton’s writings, including polemical pamphlets like the *Full Vindication* (1774), the *Continentalist* (1781-2), the *Federalist Papers* of 1787-8, the Pacificus writings against Madison occasioned by Washington’s *Proclamation of Neutrality* in 1793, and his seminal reports to Congress as Secretary of the Treasury from 1789 to 1795. To show the direct and fundamental connection between the League of Armed Neutrality and Hamilton’s constitutional design, these texts will be examined briefly and in chronological order, in the context of his career.

**VIII.2 Common law, Adam Smith, and war: the making of an American Machiavelli, 1774-86**

Hamilton’s interest in neutrality was already evident before the League. In his first pamphlet, *A Full Vindication of the Measures of Congress* (1774), in which he defended the First Continental Congress’s convocation and its imposition of a trade embargo on British goods, the nineteen-year-old Hamilton gave a remarkably far-sighted treatment of the dilemma posed to the Colonies by the European wars. A student at King’s College (later Columbia University) at the time, the *Vindication* shows that in addition to thoroughly absorbing his reading of Machiavelli, Grotius, Hobbes, Pufendorf, Vattel, Locke, Hume, Steuart and Postlethwayt, Hamilton ably and innovatively combined political, legal and economic arguments. Already in 1774 neutrality was the issue that Hamilton identified as the most incisive to the Gordian knot of commerce, geopolitics, and international law. Yet his notion of neutrality was still very broad. He saw neutrality as a force that operated on multiple levels, from pre-political civil society – where natural rights and duties exist, and neutrality by the observer of an injury constitutes an injury itself – through sovereign states’ internal affairs, to the inner workings of the British Empire. Due to his legal studies and practice after 1781, Hamilton’s usage of the term gained a more limited, technical meaning; but its importance in his thinking remained constant.

The publication of Adam Smith’s *Wealth of Nations* in 1776, and the achievements of the League before its demise in 1783, inspired a fundamental re-evaluation of neutrality in

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Hamilton’s mind. His writings reflect a systematic awareness and thorough understanding of the opportunities offered to the young commercial republic by the international will to counter-balance British domination. The League presented a strong case that rightly constituted, the United States could benefit from the rivalry among the naval powers of Europe both in its short-term bid for independance, and in the long run. To do this, the new state required a specific character, including a stronger union, a central bank, army, navy, and a strong executive. To the Harringtonian choice between the corrupting effects of commerce upon republicanism, and a return to tyranny in the absence of trade and banks, armed neutrality added a third scenario that met Machiavellian and Harringtonian desiderata. It offered a balance between invigorating military development and eternal watchfulness, and essentially peaceful, mutually beneficial commercial interaction.

Once the English republican tradition, Adam Smith, and the League brought his individual worldview into cohesion, we see Hamilton expounding the same coherent view of politics and economics for the rest of his life. Each report to Congress is connected to the others. Every Federalist paper he wrote is inseparably joined with the others. The system underpinning his arguments is always the same: if the US stayed neutral, it would make others compete for its diplomatic favours, which in turn would allow enough breathing space to build up its own industry. This agenda required a strong executive and a unified economy, with a single currency, a system of national debt, federally set tariffs, and a system of taxation. Once industry and economy were up and running, US protectionism would be dropped.

In 1776, there was still a long way to go before Hamilton’s combination of commercial republicanism and the power of free trade principles in the Wealth of Nations successfully combined and manifested in American constitutional design. Much of Hamilton’s early political capital came from his post as Washington’s aide-de-camp, speechwriter, and closest advisor in 1777-81. He was also Washington’s French interpreter and amanuensis, and supported the French both personally and officially. He formed close friendships with French sympathisers, most famously with the Marquis de Lafayette (1757-1834). After the American-French victory at Yorktown in 1781, Hamilton resigned his commission and, following a brief stay in Albany, set up a legal practice in New York, specialising in maritime cases. He also defended Loyalists from state transgressions against the 1783 Treaty of Paris. Resentment against Loyalists’ person and property escalated as American soldiers began to return home. He quickly gained notoriety, and was almost lynched in 1784, at the height of anti-Tory sentiment, for defending

the British merchant Waddington, who occupied the New York brewery of a Mrs. Rutgers, a patriot widow, after she fled British occupation. She sued Waddington under the New York Trespass Act which, together with the Citation and Confiscation Acts, attacked Loyalists.

The New York State Constitution had adopted English common law. This enabled Hamilton to argue that since the law of nations was part of common law, the state legislature’s decision must be consistent with the law of nations. For this he specified Vattel as the standard and prime authority, and called for the Trespass Act to be repealed. It is easy to find in these speeches the early foundations of the principles of implied powers and judicial review, both of which are associated with Hamilton. James Duane, mayor of New York, presided as judge. His verdict required Waddington to pay less than one-tenth the damages sued for. Popular outrage followed, with a conspiracy to oust Duane and Lynch Hamilton.

Hamilton eventually worked on hundreds of legal cases, but in these early years he specialised in defending Loyalists from state transgressions against the 1783 Treaty of Paris. The theme that keeps reoccurring in Hamilton’s legal papers from this period is his concern to establish the supremacy of federal powers, including the power to make international treaties, over overzealous state legislatures. He was afraid that a popular act of violence against a Loyalist would be inappropriately handled by a state, and this could plunge the whole country back into war. This theme remains prominent in all his later writings, and illustrates how parts of his political agenda, from a strong executive to judicial review and neutrality international relations, were inextricably and tightly bound together. Chernow explains:

The treatment of the Tories sensitized Hamilton to the extraordinary danger of allowing state laws to supersede national treaties, making manifest the need for a Constitution that would be supreme law of the land. For him, the vendetta against New York’s Tories threatened the whole political, economic, and constitutional edifice that he visualized for America.

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917 See also *Federalist* 78 and *Camillus* III and IV in Lodge V. Also Malcolm A. Misuraca, review of Goebel’s edition of *The Law Practice of Alexander Hamilton*, in *California Law Review*, 53 (March 1965), 407-17, especially 414. This interpretation of the momentous, prefigurative importance of these early Hamilton speeches is confirmed if one recalls that in 1785 John Jay, later first Chief Justice of the US Supreme Court, agreed with Hamilton’s defense, and that in 1786 John Marshall similarly defended a British aristocrat’s right to a sizeable part of Virginia in *Hite v. Fairfax*. Later as Chief Justice he wrote the *Marbury v. Madison* opinion that firmly established judicial review. Jefferson’s and Madison’s stringent opposition to both principles also illustrate how interconnected these issues were. Louis M. Hacker, *Alexander Hamilton in the American Tradition* (McGraw-Hill, 1957, 1964) draws out the connection between Hamilton’s foundation of a national bank and his doctrine of implied powers: 156-8.
Although *Rutgers v. Waddington* remains the *cause célèbre* of Hamilton’s legal career, neither it nor the maritime disputes were unrepresentative of his whole constitutional vision. Goebel, the editor of Hamilton’s legal papers, writes,

The war cases were among the first lawsuits that Alexander Hamilton argued after starting the practice of law. In these approximately sixty-five cases he was confronted, for the first time as a lawyer, with the question of the relationships of power within the federal system.

Hamilton’s legal practice from 1783 is the context that unites his domestic and foreign concerns, and explains how the concept of neutrality we saw in the *Vindication* was transformed by the implications of Catherine’s achievements. While dealing with maritime cases and disputes like *Rutgers v. Waddington*, he experienced both international and domestic difficulties of neutrality. The Treaty of Paris, the execution of which Hamilton set out to defend, was part and parcel of a complex package of military and commercial treaties known as the Peace of Paris. Therein Catherine’s efforts were finally cashed in: the right to free trade returned to the Atlantic, the Russian Navy was acknowledged as a major power, and Russia’s neutrality toward Western powers was formally recognised. Catherine was free to concentrate on Poland, Sweden and Turkey, without compromising the financial and naval benefits from Western trade and diplomacy. Previous British accusations of having entered the war by virtue of trading with belligerents were dropped: armed neutrality proved itself a viable principle.919 The ability to trade, renegotiate if necessary the definition of naval stock and contraband, stay out of dangerous alliances and benefit from the economic situation created by wars, blockades and embargoes, are among the prizes of armed neutrality that Catherine acquired.

Hamilton recognised this, and hoped to secure the same advantages for the United States. His letter of 24 March, 1783 to Washington shows that right after North’s resignation, during the Peace of Paris negotiations, he already regarded neutrality as the next logical step. Where Catherine’s game ended, Hamilton’s began.

I congratulate your Excellency on this happy conclusion of your labors. It now only remains to make solid establishments within, to perpetuate our Union, to prevent

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our being a ball in the hands of European powers, bandied against each other at their pleasure; in fine to make our independence truly a blessing.\textsuperscript{920}

How could this blessing be won? One place to look for his constructive reply is the \textit{Federalist Papers}, where Hamilton’s philosophical and legal understanding of the domestic and foreign benefits of armed neutrality reappears for the first time in a powerfully coherent system.

VIII.3 Political economy and the constitutional design in the Federalist Papers, 1787-8
Busy as his law practice kept him, Hamilton did not abandon constitutional design. He played a major role in the 1786 Annapolis Convention and the Philadelphia Convention of 1787, and we find him orchestrating and writing most of the \textit{Federalist Papers} in an effort to convince New York to ratify the Constitution. The wider importance of these articles was recognised by contemporaries, and they are still regarded as one of the key authorities in the constitutional history of the United States. As shown below, Hamilton’s legal experience with neutrality and maritime cases serves to inform the various parts of his complex but coherent argument, from the establishment of an American navy to the desirability of a national currency. Much but not all of the \textit{Federalist Papers}’ rich economic discussion relates directly to neutrality, and only a small sample of its neutrality-related passages are discussed here.

Similarly to Locke, Hamilton had a unified vision that he seldom expressed in its entirety – perhaps his \textit{Federalist Papers} come close – yet he adhered to it with great consistency and precision in all his work. However, his writings mostly address specific issues, as and when a practical, political problem demanded. Although he rarely had the luxury of setting out his political theory in its full complexity, his system is nevertheless lucid and easy to reconstruct in all its interconnectedness. There are several ways of re-presenting the \textit{Federalists} that show the significance of neutrality in Hamilton’s thought. One is to cite some of the passages that connect neutrality to four basic \textit{desiderata}: a strong union, a powerful executive, a federal economy, and a navy. Sovereignty, economic and strategic security, and the pre-eminence of federal over state law, are related features of the proposed Union that Hamilton ties to neutrality. Reasons for a strong executive include unitary control over foreign affairs, economic guidance, and putting a personal face to sovereign credit. Elements of an integrated federal economy that Hamilton connects to neutrality include the power to tax, debt assumption, public debt, and a common currency. However obvious these US institutions

\textsuperscript{920} Lodge, IX.327. On the same day Hamilton and William Floyd wrote a letter to George Clinton, in which Hamilton outlines many of the ideas that reappear in the \textit{Federalist}. Ed. H. C. Syrett, The Papers of Alexander Hamilton (Columbia, 1962), vol. 3.
appear now, it is important to remember how enormously controversial they were at the time, and how ferocious the opposition was that Hamilton had to overcome to implement these proposals.

VIII.3.1 A strong union and a federal judiciary

In *Federalist* 7, Hamilton argues that the survival of the US demands neutrality, which in turn requires a stronger union.

The probability of incompatible alliances between the different States or confederacies and different foreign nations, and the effects of this situation upon the peace of the whole, have been sufficiently unfolded in some preceding papers. From the view they have exhibited of this part of the subject, this conclusion is to be drawn, that America, if not connected at all, or only by the feeble tie of a simple league, offensive and defensive, would, by the operation of such jarring alliances, be gradually entangled in all the pernicious labyrinths of European politics and wars; and by the destructive contentions of the parts into which she was divided, would be likely to become a prey to the artifices and machinations of powers equally the enemies of them all. Divide et impera must be the motto of every nation that either hates or fears us.  

In *Federalist* 22 Hamilton explains that the intention and ability to maintain neutrality is a *sine qua non* of American sovereignty. *Federalist* 72 is another very rich text for our argument. On Hume’s writings on public debt and sovereign creditworthiness Hamilton builds a self-contained treatise on how a new country can acquire and preserve a healthy sovereign debt rating, which is essentially determined by international recognition and the new country’s perceived stability and probability of survival. Sovereignty has a market value. Territorially defined nation-states can disappear through conquest, but they cannot go so bankrupt that they remain without the prospect of recovery. As long as sovereignty is credible, credit never completely dries up; and a state’s credit rises as it becomes more creditable.

The globalisation of commerce, information and war leads inevitably to the conclusion that territory is a limited resource, and sovereign states are unique economic players. This is the confirmation and up-date of Selden’s argument in *Mare clausum* against Grotius’s free

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922 *Federalist*, 148-9, “Suppose, for instance... regarded as imaginary.”
923 *Federalist*, 435-40.
trade principle. Grotius, like others, drew on natural law and the impossibility of excluding others from infinite resources to demonstrate the universal right to free trade on high seas. By contrast, Selden extended dominion to the high seas, denied the infinity of resources, and rendered control over both land and the seas integral to sovereignty. When Hamilton advocates free trade and armed neutrality, he does so within a carefully designed framework of state control over strategically sensitive trade; the protection of infant economies at home; and as a means to resist and avoid the globalised war of European powers. The additional, ingenious Harringtonian move is to transform these imperatives into centripetal forces to create a brand new state.

Hamilton realised better than any of his peers that the US founding moment was a unique opportunity to acquire and use credit, and not just any credit, but the credit of a potentially long-lasting state. It brought an accordingly unique set of tasks, including the construction of creditworthiness for the new country, and persuading Americans that the fate of their political project was intrinsically linked to their financial credit abroad. Franklin, Jefferson, Adams and others saw at first hand that France and the United Provinces would not lend money to the American Revolution at anything approaching normal interest rates, before the 1777 Saratoga victories made the Revolution creditable. Hamilton thought several steps ahead, and built on the connection between strength of arms and financial creditworthiness to propose that the latter can now be used to enhance American military might, and build up from loans a navy and a standing army.

Two essential conditions for being able to do this in the founding period were establishing a reputation for creditworthiness, and attaining neutrality. That meant not squandering nascent military capabilities on a European entanglement that would ruin the US, whether through military defeat or through burdensome alliances and commitments, even for occasional victories in alliance with a European power – with any European power. Hamilton’s system, in sum, finds in armed neutrality a way to negotiate an entry into the existing system of irreconcilable, exceptionalist imperialisms, and combines lessons from Selden and Hobbes on sovereignty with the Harringtonian creation of a new republic that can have industry and commerce without the corruption of morals, by making the industry and commerce as balanced and open-ended as Adam Smith has shown they can be.

In *Federalist* 81 Hamilton sets out to show that to safeguard neutrality, federal law must become pre-eminent. He uses prize cases as the most convincing and comprehensible illustration of the thesis that only strong federal institutions, including the Supreme Court, can
guarantee through neutrality the safety of the nation and of individual states. The cases he references arose in the wake of the 1783 settlements and belonged to the League of Armed Neutrality debate. The potentially devastating effect of interstate disputes concerning the cognisance and legitimacy of admiralty courts is also the best illustration in Federalist 83 for the limits of trial by jury, and the need for a united US judiciary.

The weight put on armed neutrality in these passages is remarkable. Hamilton assumed that readers will find the potential benefits of American neutrality so clear and convincing that the institutional means of achieving it – such as centralised maritime dispute settlement – needed no further justification. His rhetorical strategy for discussing trial by jury, admiralty courts, common law courts, special jury, the Supreme Court, equally hinge on this assumption.

VIII.3.2 A strong executive and foreign policy
In Federalist 15, entitled “The Insufficiency of the Present Confederation to Preserve the Union,” Hamilton uses the same well-developed, interconnected arguments to move from his advocacy of a stronger union to promoting a strong executive. He argues that throughout their long history, European powers have followed a learning curve in their foreign affairs. As things stood at the end of the eighteenth century, with large-scale naval wars, colonies, globalised commercial interests and war debts in place, a present or future permutation of alliances was bound to entangle the young republic in a conflict that would adversely affect its chances of survival. Whether the US joined forces with Britain, France, Spain or the Netherlands, the outcome would be disastrous for America. To prevent this, the states must form a closer union. The threat of entanglement was imminent and serious enough to activate a Hobbesian rationale for the creation of a powerful executive; neutrality cannot be achieved otherwise.

Hamilton’s argument for a strong and small executive in charge of foreign treaties and war mirrors the instrumentalisation of neutrality that he used to support a centralised judiciary. In Federalist 70 and 77 Hamilton, and in 64 Jay, lay out the unparalleled benefits of a strong executive running foreign affairs. Control over international treaties and foreign relations is essential to the safety of the people. Speed, decisiveness, the necessary secrecy, technical expertise (unavailable under public scrutiny and deliberation) and individual

924 Federalist, 490, “The following train... public justice and security.”
925 “As, on the one hand, the form of the provision... the danger of encumbering the government with any constitutional provisions the propriety of which is not indisputable.”
926 Federalist, 501-2 and 504-5, “I feel a deep and deliberate... not indisputable.”
927 Hont, Jealousy, chapter 2 and 365-8.
928 Federalist, 108-111. “There is nothing absurd... from the constitution of human nature.”
accountability are the five qualities that make a small, strong executive the best guardian of
the nation’s foreign affairs. Larger assemblies – including Congress, but also state legislatures
like New York’s – and a weak federation with substantial state rights in foreign policy offer
none of these, and are therefore unable to dispatch foreign affairs in a way as to harvest the
strategic and commercial benefits of armed neutrality. Using yet another configuration of these
elements, in *Federalist* 80 Hamilton powerfully restates the case for a strong executive
dictating federal foreign policy. ⑨②⑨

VIII.3.3 Strategic security and a federal economy

The desirability of armed neutrality dictated the establishment of a federal economic policy
and specific characteristics for domestic institutions as well. The direct connections Hamilton
drew between the existential threat to the young republic and its institutions include a
common currency, control of the mint, taxes, tariffs, protective duties, import quotas, and so
on. The assumption of state debts and the creation of a national bank and a common currency
followed from the same logic that underpinned the general need for a comprehensive federal
economic policy。⑨③①

A major rhetorical challenge in the *Federalist Papers* was to show side by side
commerce’s benefits and the disadvantages of selfishness. Much of Hamilton’s strategy for
convincing New York to ratify rested on expounding the numerous advantages of a more
unified American economy. Economies of scale, division of labour and value added by a
common market, bank and currency are ubiquitous in the *Federalist*. However, the tighter
unification of state economies required central control, ranging from internal regulation
through stimulating key industries to setting skilled labour immigration quotas and foreign
trade policy.

Federal taxation, required for defense, was one of the most divisive and passionately
debated issues. In *Federalist* 7, 34 and others, Hamilton argued that the federal government
must have open-ended powers of taxation, commensurate with its responsibility for the
nation’s survival. A central control over the whole country’s financial affairs was required to
keep the United States out of Europe’s commercial wars, which was the only way to achieve

⑨②⑨ *Federalist*, 476-7. “A distinction may perhaps be imagined between cases arising upon treaties and the laws of
nations and those which may stand merely on the footing of the municipal law… The most important part of them
are, by the present Confederation, submitted to federal jurisdiction.”

⑨③① The links between these institutions are most clearly drawn in *Federalist* 7 and 80. Hamilton’s *Second Report
on Public Credit* led to the founding of the first US national bank, in spite of ferocious opposition from Jefferson. For
a brief overview of early US financial troubles including hyperinflation, loss of credit and competing currencies see
and maintain sovereignty. Note that his historical insights into the unholy matrimony of commercial and military jealousies, induced by the protracted erosion of European feudalism and sanctioned by a reckless abuse of financial instruments like public debt, owe a lot to Hume and Smith.931

VIII.3.4 State-building: the army and the navy
Like Catherine, Hamilton did not subscribe to the view that commerce automatically civilised nations, and would in time create grounds for unarmed neutrality under the influence of enlightened self-interest. Neutrality, if it were to serve real-life interests, had to be of the armed variety.932 Another sign of the influence of British and Russian imperialism on Hamilton is his insistence on building a navy. While neutrality and its commercial and diplomatic benefits were theoretically available to all, the great European powers had less reason to implement them. Britain, and France under Napoleon’s Continental System, continued trying to combine commercial and military logic in an expansionist and monarchical system. Russia and the US did not have much of a navy when they implemented armed neutrality.933 From their strategic position, the catch-up opportunity afforded by neutrality was more significant and enticing than the benefits available to established, long-competing powers. The new powers had the additional incentive of using neutrality as a shield to build up their merchant and armed fleets.

The US adoption of armed neutrality was by no means a foregone conclusion. Hamilton’s unwavering advocacy is unusual and best explained by the combination of factors explored in this Thesis. The idea of a federal navy provoked vehement resistance from anti-federalists and considerable skepticism among federalists as well.934 The tax burden and a shifting of military command away from the states were the two main objections. In Federalist 34 and 83 Hamilton argues compellingly that a navy is essential for US salus populi, encompassing both security and prosperity. It is impossible to foresee exactly what the

932 Federalist 6, 56-7. “But notwithstanding the concurring testimony of experience... for an answer to these inquiries.”
933 A Continental navy was established in 1775, but it was too small to make a difference in the War of Independence. Congress auctioned off the Alliance, the last remaining vessel, in 1785.
934 The debate in the 1780s was fierce, but even as late as 1794 Madison could in all seriousness suggest that instead of building a navy to protect American shipping from pirates and pirateers, the US should hire the Portuguese or another European navy for defense. For his and Jefferson’s opposition to an American navy see Frederick C. Leiner, The End of Barbary Terror (Oxford, 2007), 20-1. For Madison’s change of heart, 46-51. Ralph Ketcham, James Madison: a Biography (Virginia, 1990), 351-2.
creation and maintenance of the navy will require, since it will shrink and expand in accordance with circumstances. The formula in Federalist 34 is, “if we mean to be a commercial people, it must form a part of our policy to be able one day to defend that commerce. The support of a navy and of naval wars would involve contingencies that must baffle all the efforts of political arithmetic.” The only institutional guarantee that the navy will always be able to fulfil its functions is to place decisions affecting its size and resources in the hands of a strong executive.

In a different configuration of the same components Hamilton argues in Federalist 11 that a strong union entails powers of federal taxation and the creation of a navy. Through protection of trade, and government intervention when necessary, the union equipped with taxation powers and a navy will create an economy that is strengthened by diversification of production and free and efficient internal trade, and will make US commerce globally competitive. The efficiency of free trade is harnessed through diversification and, after the founding moment, through full exposure to international competition. As long as the federal navy can guarantee the security of American merchant fleets, and the US stays out of European wars – i.e. remains armed and neutral – the economy will thrive.

Interestingly, in Federalist 8 Hamilton invokes industry and commerce to justify replacing citizen militias with a standing army. This looks anti-Machiavellian only on the naive view that Machiavelli wanted everyone to carry arms as part of everyone’s virtue. The virtue of artisans, farmers, priests and others was to be cultivated by different means. To make the case for a standing army, Hamilton could have chosen the danger of tumult and popular violence – which, as we saw, he experienced in New York – the division of labour, the age-old argument about the benefits of everyone keeping to their class or office, the need for the federal government to have some authority over state government, and a commander who could exercise dispatch and power for the benefit of the whole federation’s interest, or a range of

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935 Hamilton’s doctrine of implied powers rested on the distinction between necessity and non-necessity in political affairs. One of the arguments for a national bank that he used successfully against Jefferson and others was that the right to define what is and what is not an emergency, and the ability to collect resources sufficient to counter existential threats, belong to every government by definition. Accordingly, the mandate of a national bank and of the government’s ability to raise money must be loosely defined and open-ended. The difficulty of maintaining this distinction resembles other historical cases in which emergency powers became routine institutions: see Ioannis Evrigenis, Fear of Enemies and Collective Action (Cambridge, 2008). “Implied powers” in Hamilton’s usage referred to economical and judicial arrangements as well. Hacker, Hamilton, 156-9. Note that Hamilton routinely used Hobbesian phraseology. See Federalist nos. 8, 34, 59 and 65 and Hobbes, Leviathan, ed. R. Tuck (Cambridge, 1996), 173. Hamilton cited Hobbes as early as the 1774 Vindication. When he left university for the battlefield in 1776, Hobbes was one of the authors he took with him to battle. Hacker, Hamilton, 39.

936 Federalist 34, 208.

937 Federalist, 89-90, “To this great national... unity of government.”

938 Federalist, 89, “The necessity of naval protection... in the productions of different States.” See also Federalist 83.
other arguments. That he chose agriculture, industry and commerce, i.e. the other forms of Machiavellian energy and virtue, is significant.939

It may, perhaps, be asked, by way of objection to this, why did not standing armies spring up out of the contentions which so often distracted the ancient republics of Greece? Different answers, equally satisfactory, may be given to this question. The industrious habits of the people of the present day, absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce, are incompatible with the condition of a nation of soldiers, which was the true condition of the people of those republics. The means of revenue, which have been so greatly multiplied by the increase of gold and silver and of the arts of industry, and the science of finance, which is the offspring of modern times, concurring with the habits of nations, have produced an entire revolution in the system of war, and have rendered disciplined armies, distinct from the body of the citizens, the inseparable companions of frequent hostility.

In addition to sharing Catherine’s means and ends to armed neutrality, Hamilton peppered the Federalist (e.g. 11, 22, 72) with specific references to the neutrality debates surrounding the 1783 settlement. It is clear from how he used the overwhelmingly powerful desirability of this particular kind of neutrality as a motive for setting up certain institutions that unlike Madison, for instance, in both the Federalist and the Helvidius letters discussed below, Hamilton connected neutrality to commerce and the European wars.

The details of the system drawn from his insight into the League’s significance require elucidation. Adapting armed neutrality’s benefits to the founding moment, Hamilton saw that the first small burst of credit that came with a declaration of sovereignty and independence could be used to build up military might, but only for defensive purposes. The rise of America’s naval power, he argued, will in turn further strengthen American credit abroad, provided that the country remained neutral, and used military power only for self-defence. This virtuous circle of military self-sufficiency and independence – leading to financial credit, leading to military might, and better credit – is the bonanza of armed neutrality. Hence Hamilton’s unpopular view that the Union should assume state debts, instead of massive defaults or patchwork state resolutions.940 International recognition, military resources sufficient for self-

939 Hamilton’s argument, based on commerce and the division of labour does not, for instance, follow Smith’s train of thought that standing armies are more efficient, and compatible with republics if the sovereign is well liked. Wealth of Nations, V.I.i.222-9.
940 Hacker, Hamilton, 93-139.
defence, a prosperous economy, an energetic government, and a good credit history were all required for setting the virtuous cycle in motion. Catherine showed that it was possible to legally and rhetorically decouple commerce and war, and that one could sustain and develop one’s economy through trade without being inevitably caught up in a web of strategic and commercial jealousies. The League allowed Hamilton to develop and push through his particular combination of neutrality, while simultaneously kick-starting an economy using sovereign bonds and a new, history-less currency and government.941 Thanks to the English republican tradition and Catherine the Great, Hamilton formed a plan that put the US ahead of Europe on the learning curve described in Federalist 15. In contrast with the dissenting religious colonists’, or nineteenth-century evangelists’, Hamilton’s American exceptionalism was secular, commercial and republican.942 This is the vision that he took with him to political office.

VIII.4 Secretary of the Treasury and the Proclamation of Neutrality: 1789-95
In 1789 Hamilton became the first Secretary of the Treasury, a post he held until his resignation in 1795. He became the chief architect of the financial institutions that enabled the spectacular US ascendency. Nobody disputes that the Reports he gave to Congress during this period had an enormously formative impact. While his polemical Vindication, Continentalist, Federalist, Pacificus letters and the other texts examined here often give more direct evidence of the influence of Catherine’s League on the evolution of Hamilton’s thought, these famous Reports also show his continued interest in armed neutrality. In the 1791 Report on Manufactures, Hamilton’s policy recommendations recreate the logic laid out in the Federalists, and in his detailed treatment of appropriate government intervention we see a constant awareness of the strategic importance of naval stores and of the necessity of treating them differently than other goods to which purely economic principles apply.

VIII.4.1 Report on Manufactures
Hamilton begins the Report by stating that its aim is “to render the United States independent on foreign nations for military and other essential supplies.” The second paragraph explains the interdependence between domestic and foreign trade, and the “expediency of encouraging manufactures in the United States.” Next, Hamilton disputes Jefferson’s and others’


942 Federalist, 11. “There are appearances to authorize... the irresistible and unchangeable course of nature.”
Physiocratic position that agriculture is the only productive activity.\textsuperscript{943} Several sophisticated economic arguments follow, about added value, innovation, per unit productivity, division of labour and the like. Hamilton believed that technological innovation\textsuperscript{944} and the immigration of skilled workers from Europe were two key preconditions of US economic growth that required active encouragement from the government.\textsuperscript{945} Neither is the Machiavellian foundation absent from these technical discussions:

II.5 When all the different kinds of industry obtain in a community, each individual can find his proper element, and can call into activity the whole vigor of his nature. And the community is benefited by the services of its respective members, in the manner in which each can serve it with most effect.

II.6 To cherish and stimulate the activity of the human mind, by multiplying the objects of enterprise, is not among the least considerable of the expedients by which the wealth of a nation may be promoted.

Throughout the \textit{Report}, Hamilton emphasises that regulation of the domestic market is a great way to kick-start agriculture and industry, but domestic market forces must be closely aligned with the country’s international trade. In section II.7, for instance, he allows that the stimulation of domestic markets for the redistribution of agricultural surplus is an excellent idea, but adds that demand for agricultural products comes from the working class, the creation and survival of which depends on manufactures.\textsuperscript{946} Therefore US manufactures must become internationally competitive to assure a steady domestic demand for agricultural goods. Hamilton tried to appease Southern states and landed interest by pointing out the range of benefits from a diversified, yet well-integrated economy under a centralised regulation. Nor did he forget to draw his political opponents’ attention to the direct link between landed interest and neutrality maintained by a strong executive.\textsuperscript{947} He showed how industrial and agricultural interests were intertwined, and Jefferson’s Physiocratic-ancient constitutionalist vision of a

\textsuperscript{943} See also II.7, “It is a primary object... buying nothing.” Lodge IV, 95-6.
\textsuperscript{944} Section III contains a sophisticated explanation of why industries and innovation need the government’s initial protection, but also why they should be left to market forces once they are up and running. E.g. “The apprehension of failing... governments are indispensable.” Lodge IV, 105-6.
\textsuperscript{945} Hamilton’s argument for a federal policy on skilled labour immigration follows Hume, “Of Commerce,” \textit{Selected Essays}, 160-5.
\textsuperscript{946} We saw the identical argument in Harrington, \textit{Prerogative}.
\textsuperscript{947} Lodge IV, 95-9, 137-8.
rural and virtuous republic was untenably naive in an age when international trade and military considerations were so interdependent.\textsuperscript{948}

In a crucial passage Hamilton gives another complete formulation of how the institutions discussed in the \textit{Federalist} are interconnected. His preference for free trade and the US economy's diversification and rapid development is evident, as is the connection he saw between the path dependences set by European history, on the one hand, and the most prudent trajectory for US foreign policy and trade, on the other.

If the system of perfect liberty to industry and commerce were the prevailing system of nations, the arguments which dissuade a country, in the predicament of the United States, from the zealous pursuit of manufactures, would doubtless have great force... In such a state of things, each country would have the full benefit of its peculiar advantages to compensate for its deficiencies or disadvantages. If one nation were in a condition to supply manufactured articles on better terms than another, that other might find an abundant indemnification in a superior capacity to furnish the produce of the soil. And a free exchange, mutually beneficial, of the commodities which each was able to supply, on the best terms, might be carried on between them, supporting, in full vigor, the industry of each... But the system which has been mentioned is far from characterizing the general policy of nations. The prevalent one has been regulated by an opposite spirit. The consequence of it is, that the United States are, to a certain extent, in the situation of a country precluded from foreign commerce...

Remarks of this kind are not made in the spirit of complaint. It is for the nations whose regulations are alluded to, to judge for themselves, whether, by aiming at too much, they do not lose more than they gain. It is for the United States to consider by what means they can render themselves least dependent on the combinations, right or wrong, of foreign policy.\textsuperscript{949}

The establishment of a central bank, regulatory environment for private banks, the presence and attraction of foreign capital, and government oversight over money circulation are all duly touched upon, with shifting emphases but the same substance as in the \textit{Federalist}, and organised around the focal points of neutrality and a strong executive. Hamilton addresses the

\begin{footnotes}
\item[948] “It may be observed... in the event, must be greater.” Lodge IV, 99-100.
\item[949] Lodge IV, 100-2.
\end{footnotes}
popular fear of the public debt, a suspected instrument of surrendering sovereignty, and draws a picture of national benefits derived from creating domestic and international interdependencies.\textsuperscript{950}

Yet he also acknowledges the limits of its usefulness. Echoing Hume, he argues that public debt can have good and bad consequences, or rather these are seldom unmixed.\textsuperscript{951} The circulation of money stimulates economic activity, and so creates some wealth by itself; but an overlarge debt can ruin the country’s credit and fuel dependence on debt as a substitute for industry and development.\textsuperscript{952} The right balance is a delicate one:

Where this critical point is, cannot be pronounced; but it is impossible to believe that there is not such a point. And as the vicissitudes of nations beget a perpetual tendency to the accumulation of debt, there ought to be, in every government, a perpetual, anxious, and unceasing effort to reduce that which at any time exists, as fast as shall be practicable, consistently with integrity and good faith.\textsuperscript{953}

The relentless contemporary attacks on Hamilton’s alleged fondness for debt were motivated by politics, not facts.\textsuperscript{954} Hamilton tried to define as precisely as possible the limits and conditions under which public debt was useful. He also repeatedly pointed out that economic protectionism in any form, whether as tariffs or bonuses or government-sponsored projects, encouragement of immigration and suchlike, has a strictly bounded utility beyond which it turns harmful. Free markets are efficient. The US government must assist fledgling companies and industries to overcome barriers to entry, but refrain from institutionalising protected and inefficient modes of production.\textsuperscript{955} His distinction between the necessities of the founding moment and the normal running of a state is clear-cut. Neither did Hamilton forget to draw his political opponents’ attention to the direct link between landed interest and foreign policy:

\begin{quote}
“It is not impossible… This is the funded debt.” Lodge IV, 116-8.

Hamilton wrote to Robert Morris about public debt and a national bank as early as April 1781: “The truth is, in human affairs there is no good, pure and unmixed; every advantage has two sides; and wisdom consists in availing themselves of the good, and guarding as much as possible against the bad.” Lodge, III, 361. Also Report on Manufactures, Lodge IV, 125-6. Cf. Hume, “Of Public Credit,” Selected Essays, especially 205. Hont, Jealousy, chapter 4.


Lodge IV, 126.

Jefferson’s and Madison’s attacks are the best known, but Chernow’s biography shows that there was virtually no opponent who did not make this accusation.

Lodge IV, 130-1 “But, though it were true… reduction of it.”
\end{quote}
As in most countries, domestic supplies maintain a very considerable competition with such foreign productions of the soil as are imported for sale, if the extensive establishment of manufactories in the United States does not create a similar competition in respect to manufactured articles, it appears to be clearly deducible, from the considerations which have been mentioned, that they must sustain a double loss in their exchanges with foreign nations, strongly conducive to an unfavorable balance of trade, and very prejudicial to their interests.

These disadvantages press, with no small weight, on the landed interest of the country. In seasons of peace, they cause a serious deduction from the intrinsic value of the products of the soil. In the time of a war, which should either involve ourselves, or another nation possessing a considerable share of our carrying trade, the charges on the transportation of our commodities, bulky as most of them are, could hardly fail to prove a grievous burthen to the farmer, while obliged to depend, in so great a degree as he now does, upon foreign markets, for the vent of the surplus of his labor.

Hamilton then systematically goes through the correct use of duties, tariffs, bounties, premiums and other instruments. Throughout the Report he consistently distinguishes what is appropriate in the critical “present state of things,” for “an infant manufacture,” from what will become appropriate once the US economy is up and running, and drawing stimulus, economies of scale, efficiency and innovation from the free market. On reaching this stage, the government must eliminate bounties and protective tariffs, because open trade optimises the production and availability of all goods, including the naval stores required for defence. Yet the specific nature and timing of both protective and anti-protective measures must remain responsive to other nations’ policies:

An argument for exemptions of this kind, in the United States, is to be derived from the practice, as far as their necessities have permitted, of those nations whom we are to meet as competitors in our own and in foreign markets.

Seldom acknowledged by historians and explicators of “the American System of Economics,” Hamilton’s profound reliance on Smith in this famous Report has been established beyond doubt since 1893. Rabbeno, Bourne, Hacker, Chernow and others have supplied detailed lists of textual correspondences between the Report and the Wealth of Nations, ranging from long
To show that the Report supports my broader argument that Hamilton’s American institution-building came from an original synthesis inspired by the English republican tradition, Hume, Smith and Catherine, it is enough to call attention to the contrast between the two rationales in his recommendations, for naval stores and other goods. Paper, glass, sugar and similar goods are treated from a purely economic perspective, with attention to present and foreseeable American consumption and the advisability of promoting domestic manufactures, as opposed to relying on imports. By contrast, Hamilton advises on naval stores like wood, flax and hemp based first and foremost on the military implications of the proposed regulatory policy, and with consistent attention to the issues he encountered as a lawyer.

For instance, the whole section on “Wood” is a strategic calculation about US absolute advantage in ship-building over Europe. Under “Flax and hemp,” we find an attempt to replicate Britain’s trade policy that stimulated the creation and maintenance of a powerful navy. Gunpowder, cotton and wool production and associated manufacturing must also be carefully protected in the initial phase of the country’s development, using skilled immigrants and machinery as much as possible to gain strategic independence quickly. As soon as that is secured, bounties and protective tariffs must be eliminated to maximise market efficiency. Hamilton suggests repeatedly that the government encourage the establishment of private societies for the improvement of manufactures. He himself was famously involved in a few.\textsuperscript{957} This further corroborates the view that he saw government intervention as a temporary measure, required in the founding moment but jettisoned for the benefits of free markets and enterprise as soon as the military and strategic emergency was over. Hamilton’s

\textsuperscript{956} Edward G. Bourne, “Alexander Hamilton and Adam Smith,” The Quarterly Journal of Economics, 8:3 (April 1894), 328-44, identifies and prints 20 parallel passages. Bourne credits Ugo Rabbeno’s 1893 Protezionismo Americano: Saggi Storici di Politica Commerciale (Milan: Fratelli Dumolard) with first realising the extent of Smith’s influence. Yet Hacker in 1957 described an unbroken tradition of misinterpretation: “It is extraordinary how Hamilton has been misread throughout history, by both his fellow countrymen and his admirers abroad. Because he saw the need for industrialization as the road to welfare, or progress, and because he made the case for the support of infant industries so eloquently, his advocacy of protection has been pondered over and repeated again and again. But we have lost sight of the fact that he regarded governmental assistance (of which protective tariffs constituted but one and the least desirable of the devices to be employed) as an expedient necessary only because new, young, and underdeveloped nations were unequal in a race where the more powerful nations had every advantage for the very reason that their governments used intervention on their behalf. His own preferences are clear. He follows Adam Smith so plainly and completely that one can only express wonder that the Hamilton text has been misunderstood for so long.” Hamilton, 12. Like Rabbeno, Bourne and Chernow, Hacker provides side-by-side comparisons between the Wealth of Nations and the Report on Manufactures; e.g. 150-2, 168-170, 182-3. For opposing views see e.g. M.D. Chan, Aristotle and Hamilton on Commerce and Statesmanship (Missouri, 2006), 154-8, and Peter McNamara, Political Economy and Statesmanship: Smith, Hamilton and the Foundation of the Commercial Republic (DeKalb: North Illinois University Press, 1998).

\textsuperscript{957} As Hacker writes about the Society for establishing Useful Manufactures and Hamilton: “His correspondence indicates that the preparation of his Report on Manufactures and the inception of the S.U.M. went hand in hand; the company in fact, was to be a gigantic demonstration of his belief that Americans had the desire and the capacities to begin manufacturing enterprises at once.” Hamilton, 188. Chernow, Hamilton, 372-88.
recommendations were adopted, and the US began growing at a spectacular rate by every indicator, from production and exports to ever-improving foreign credit.\textsuperscript{958} Thanks to Hamilton’s good offices, the gap between potential American sovereignty and actual sovereign credit was reduced to a minimum.

VIII.4.2 The Proclamation of Neutrality and the pamphlet wars

It is often said that the First Party System solidified around reactions to the French Revolution.\textsuperscript{959} Yet as we saw in the Federalist Papers Hamilton, founder of the Federalist Party, was equally wary of being drawn into a European war on the side of the ancien régime. Washington’s Proclamation of Neutrality in April 1793 was a compromise between the factions: against Hamilton’s advice Genêt (previously at the St. Petersburg embassy, until pronounced persona non grata by Catherine in 1792) was officially received by Washington as France’s ambassador. At the same time, and against fervent protests by Jefferson and Madison,\textsuperscript{960} Washington declared neutrality. Genêt soon began to abuse his status to recruit and arm American privateers against Britain, organise and dispatch volunteers against Spain in Florida, and try to force the US into the European wars by any means necessary. The frigate Embuscade, which carried Genêt to South Carolina, captured the British Grange in American waters and hauled her to Philadelphia, to be received by an enthusiastic crowd. Pro-French passions ran so high that, according to a disapproving letter from Adams to Jefferson, the crowd “threatened to drag Washington out of his house and effect a revolution in the government or compel it to declare war in favour of the French Revolution and against England.”\textsuperscript{961}

Although not Hamilton’s puppet, as his adversaries portrayed him, Washington consulted Hamilton more closely than anyone else on the Proclamation of Neutrality. The central paragraph of the short text reads,

\begin{quote}
And I do hereby also make known, that whatsoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of
\end{quote}

\textsuperscript{958} Hacker, Hamilton, 179-86.


\textsuperscript{960} Chernow, Hamilton, 435-6.

\textsuperscript{961} 30 June, 1813. in ed. Lance Banning, Liberty and Order: The First American Party Struggle (Liberty, 2004). For a superb description of these colourful events see Chernow, Hamilton, chapter 23.
nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the modern usage of nations, will not receive the protection of the United States, against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all persons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the Powers at war, or any of them.

The Proclamation also triggered a veritable pamphlet war between Hamilton and Madison, writing as Jefferson’s reluctant proxy. Hamilton’s nom de plume was Pacificus, and later Americanus. Madison’s was Helvidius. Passions ran high, and interest in these pamphlets was extraordinary even by revolutionary standards. Contemporaries knew exactly whose pamphlets they were reading.

Hamilton argued that the Proclamation was just and appropriate, because enlightened self-interest dictated that the United States refrain from entering the war on France’s side. Commerce would suffer, and the US cannot help France anyway. Previous treaties are invalid, because France has a new government. The US owes no ideological allegiance to France out of republican solidarity, either. Some regard Hamilton’s draft of the Proclamation and his pamphlets as the beginning of American realism, the fountainhead of a tradition one must return to. Madison’s principal counterargument throughout the exchange was that Washington’s Proclamation cannot be more than a suggestion or guideline, since it is an “extraordinary doctrine” that the power to make war and treaties is executive. Only Congress can decide the response to France’s request for military aid.

Hamilton’s rejoinder powerfully re-states many of the points we saw in the Federalist. A new argument was that the French Edict of Fraternity, which offered military assistance “to every people who wish to recover their liberty,” amounted to a French declaration of war.

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962 Jefferson implored Madison, “Nobody answers him and his doctrines will therefore be taken for confessed. For God’s sake, my dear Sir, take up your pen, select the most striking heresies and cut him to pieces in the face of the public. There is nobody else who can and will enter the lists against him.” Loss, Introduction to The Letters of Pacificus and Helvidius (Washington, 1845), ix. Ketcham, Madison, 345-8, 359.

963 Loss, Introduction.

against the world. This was, moreover, an unjust war, relying wholly on pre-emption. It may be just to assist a nation that already gave clear evidence of its determination to throw off the monarchical yoke, but it is unjust to offer a blanket excuse and “an open patronage of a revolution.”\textsuperscript{965} The US-French treaty of defensive alliance does not cover this offensive declaration. In discussing self-interest and the reasonable conditions under which international treaties remain binding, Vattel was Hamilton’s primary authority. In his “realist” account of events, Hamilton pointed out that France did not come to America’s aid until the Saratoga victory for the same reason: enlightened self-interest dictated caution. Repeatedly, Hamilton gave short shrift to the argument, advanced by Jefferson and Paine among others, that ideology united all republics in alliance. This was mere self-seeking French propaganda that has unfortunately fooled many Americans.

Madison’s reply revolves around a level-headed questioning of the power Hamilton assigns to the executive. It also shows, however, that Madison did not fully grasp the new US opportunities afforded by Catherine’s transformation of neutrality. In the second Helvidius letter he claims that as far as international law is concerned, neutrality simply means peace, and Washington and Hamilton had nothing to gain from using “neutrality” instead.

Neutrality means peace, with an allusion to the circumstance of other nations being at war. The term has no reference to the existence or nonexistence of treaties or alliances between the nation at peace and the nations at war. The laws incident to a state of neutrality, are the laws incident to a state of peace...\textsuperscript{966}

In Letter III Madison contends that the right to receive ambassadors does not imply any right over foreign policy, merely “to provide for a particular mode of communication, almost grown into a right among modern nations.”\textsuperscript{967} He attacks Hamilton ferociously for trying to derive substantive foreign policy powers from the constitutional provision that authorised Washington to decide Genêt’s accreditation.\textsuperscript{968} In his final, fifth Helvidius letter, Madison analyses the European conflict very conventionally, in terms of purely military alliances, having little to do with commercial interests. It is obvious throughout this polemic that Hamilton had a much clearer understanding of both the recent developments and larger significance of armed neutrality than Madison.

\textsuperscript{965} Pacificus II, 22.
\textsuperscript{966} Letters, 69-74. Passage cited on 72.
\textsuperscript{967} Letters, 76.
\textsuperscript{968} See also Letters, 94-7: “Proclamation” is a mere statement, with no binding power. Madison’s target here is Washington, not only Hamilton.
Hamilton’s direct treatment of neutrality from the perspective of the naval balance of power comes in Pacifcus VIII. He sketches the history of recent alliances and points out that Austria and Prussia, not maritime powers, are basically unaffected by considerations of neutrality, which properly speaking only makes sense among maritime powers (47). Spain, Holland and Britain are the major players against whom France hopes to enlist the United States, and Madison irresponsibly transforms this dangerous manoeuvre into a theoretical problem.

In February 1794 Hamilton rejoins the fray, this time as Americanus. First, he summarises superbly the complex arguments in the Federalist. Then he argues that the US cannot help France on land or sea, and the most efficient aid it could give would be licensing privateers to harass “the commerce of the maritime enemies of France” (113) – but the disruption of trade would back-fire. Importantly, Britain has better domestic and international credit than France or the US. This would counteract any damage to Britain from the interruption of trade, and leave both France and the US worse off for their trouble. What brought Britain under pressure by 1783, Hamilton argues, was not naval warfare per se but the combination of military alliances between belligerents, with the commercial alliances between belligerents and non-combatants. Americanus is further evidence that the League showed Hamilton the potential in armed neutrality and a way out of destructive jealousy of trade. Hamilton realised that it would be a colossal mistake to ignore its potential. With unique insight he generalised from the pattern, and even suggested that the arrangements that forced Britain to the table in 1783 may now have been put in place against revolutionary France.970

In Americanus II, published on 8 February, 1791, Hamilton revisits familiar ground and applies the same logic to the question of the French alliance that he did to the Union in the Federalist. The US navy is not strong enough yet. Engagement on France’s side would ruin American commerce, and thereby ruin agriculture, industry, and government. A reckless war would destroy credit, a cornerstone of national security.971 The French Revolution handed the US a golden opportunity to remain neutral without fear of retribution even if an exhausted France overcame the allied opponents. If France lost, the victors may partition her, but will become quickly divided over the prize, and the US again has nothing to fear. Neutrality, with armed insistence on the right to trade, is the most advisable course of action.972 It either sets a

969 As we saw in chapter V, Selden made a similar point about customary international law being limited, for instance with land-bound states having no input on the law of the seas.
970 Americanus I, 114.
971 “All who are not willfully blind... disgrace of a national bankruptcy.” Americanus II, 115-6.
972 Americanus II, 118-25.
virtuous set of long-term trading relations in motion, or ensures a brief period of peace and trade and allows the US to prepare for war.

The contrast between Hamilton’s and Washington’s position, and that of Jefferson and Madison, is best explained in terms of the change in international law brought about by Catherine’s 1780 Declaration of Neutrality, and the proof of its effectiveness in the 1783 settlements. Establishing sovereign credit and enlarging the navy were two objectives that both Catherine and Hamilton hoped to achieve by announcing their commitment to armed neutrality. Hamilton understood the new international law environment better than his peers, and the League of Armed Neutrality gave him a template, a map to the main features and available resources.

This proved useful very quickly in navigating the risks of British or French entanglement. In November 1793 William Pitt’s ministry instructed British ships to intercept neutral vessels sailing to or from the French West Indies. They soon captured more than 250 American merchant ships, and dragged off the sailors. The American public was enraged, and the pro-French faction called for blood. Yet it was not the latter but Hamilton who drew up contingency plans for Washington to raise a 20-thousand strong coastal defense and impose embargo on Britain. A mere proclamation of neutrality was evidently insufficient without an armed force to support it. Hamilton’s Cabinet Paper to Washington on 14 April, 1794 about the prospect of war with Britain shows that he understood well that only a strategy of armed neutrality preserves the credible threat of an intervention on one side or another, and that this threat can be sufficient to ward off demands to join a war. Reweaving the same set of connections between domestic and foreign political and economic institutions and transactions that he drew in the Federalist and the Pacificus-Americanus pamphlets, Hamilton explained to Washington that pro-French American zealotry must be resisted out of cold-headed calculation, not (as his political opponents insisted) out of sentimental attachment to Britain.

The cutting off of intercourse with Great Britain, to distress her seriously, must extend to the prohibition of all her commodities, indirectly as well as directly; else it will have no other operation than to transfer the trade between the two countries to the hands of foreigners, to our disadvantage more than to that of Great Britain. If it extends to the total prohibition of her commodities, however brought, it deprives us of a supply, for which no substitute can be found elsewhere.

973 De Madariaga, Armed Neutrality, chapter 3.
— a supply necessary to us in peace, and more necessary to us if we are to go to war.974

After this letter Washington decided to send Hamilton to London to negotiate a settlement. Due to government infighting eventually Jay was dispatched, with detailed instructions from Hamilton. In the meantime Hamilton continued to meet with George Hammond, the British minister to the US. After a passionate remonstrance about the injuries Britain caused the US, Hamilton assured Hammond that America will not support France.975

Hamilton advised Jay to bargain with Britain for a mutual exchange of most favoured nation status. The Jay Treaty, signed in November 1794, averted war and boosted trade between the two countries. Reparations were paid for the captured American ships, and six British forts were evacuated. In Joseph Ellis’s words, the Jay Treaty was “a precocious preview of the Monroe Doctrine (1823), for it linked American security and economic development to the British fleet, which provided a protective shield of incalculable value throughout the nineteenth century. Mostly, it postponed war with England until America was economically and politically more capable of fighting one.”976

Moreover, the Treaty was negotiated and signed as Britain tried to block French attempts in 1793-4 to facilitate the resurrection of the First League of Armed Neutrality. Denmark and Sweden announced their Armed Neutrality Convention on 27 March, 1794, but France failed to orchestrate a wider initiative against Britain.977 Yet the Americans made full use of the pressure put on Britain by this prospect. Jay was instructed to bargain for contraband and blockade clauses explicitly lifted from Catherine’s 1780 Declaration, and to approach the ministers of Russia, Denmark and Sweden in London in 1794 to discuss an alliance of armed neutrality, should Britain fail to meet American demands.978 Instead, Britain

974 Lodge V, 109.
976 Founding Brothers, 137. In 1794-6 Monroe was Minister to France and, like Jefferson, well-known for his Revolutionary sympathies and opposition to Jay’s Treaty.
977 Bemis, Jay’s Treaty, 303-15.
978 Bemis, Jay’s Treaty, 289-98. W. Allison Phillips, Neutrality: its History, Economics and Law in Four Volumes (Octagon Books, 1976), Vol. II The Napoleonic Period, chapters III-IV. Bemis argues that when Hamilton told Hammond that the US would not join this abortive league, he weakened Jay’s negotiating power. Jay’s Treaty, 337-44. Thomas thinks that Hamilton’s gambit was intended to gain further benefits for the US, and succeeded: the consequent British concessions were better than a potential Danish-Swedish alliance, weak to begin with and rendered ineffective by Russia’s refusal to join. C.M. Thomas, American Neutrality in 1793: a Study in Cabinet Government (Columbia, 1931). Phillips shows how the uncompromising tone of Randolph’s instructions and Hamilton’s result-oriented approach together gave Jay the creative ambiguity required for his task. Phillips, Neutrality, 61. This is an interesting and important debate, but does not fundamentally affect my argument that the
chose to make the aforementioned concessions. Such were the prizes from armed neutrality. Hamilton, the Treaty’s chief architect, used the First League and the proposed one to navigate successfully between war and alliance with Britain by decoupling war from commerce. Catherine’s formula proved to be powerful and reproducible.

In spite of his political misgivings about France, Hamilton was later to suggest the exact same clause for the Convention of 1800 that ended the Quasi-War.\(^979\) His recommendations for these two treaties illustrate the shift caused by 1783 in his concept of armed neutrality. In contrast with most of his peers, who favoured either Britain or France, in both treaties Hamilton wanted previous military alliances declared null and void, replaced by a reciprocal granting of most favoured nation status.

VIII.4.3 Second Report on Public Credit
On 16 and 21 January, 1795 Hamilton delivered his last report as Secretary of the Treasury, and resigned on the 31\(^{st}\). The Second Report on Public Credit is a long vindication of his policies, and a vision for America’s future. It includes a detailed plan for the total elimination of public debt within 30 years, showing once again Hamilton’s distinction between emergency and non-emergency periods.\(^980\) As in all his writings after 1774, neutrality played a central role in this final Report. In spite of fierce opposition from every corner, including former allies like Madison and Jefferson, all proposals that Hamilton put forward as Secretary of the Treasury were adopted. His opponents eventually bowed to his Seldenian-Hobbesian-Harringtonian-Smithian logic that called for a Union under a strong executive, capable of setting up a navy and kick-starting the processes – including credit through debt assumption, a central bank and currency, and federal projects for industry and infrastructure – that enabled the US to benefit from the economies of scale, utilities and redistributive efficiencies of a newly created market economy, and become a sovereign state in a globalised economy.

VIII.5 Farewell to Arms, 1795-
On returning to private law practice, Hamilton’s greatest asset was his reputation for an unparalleled understanding of admiralty law, and was frequently employed by the growing insurance business in New York. His pamphlet defense of the Proclamation was followed by

League was a major and rarely appreciated influence on Hamilton’s constitutional design, and on his practical politics.\(^979\) Richard C. Rohrs, “The Federalist Party and the Convention of 1800,” Diplomatic History 12 (1988), 237-60. \(^980\) Hamilton argued for a degree of open-ended formulation in the founding texts, given the unforeseeable dividing line between emergency and non-emergency. Federalist 34, 207: “Constitutions of civil government... to limit that capacity.” Also see Federalist 85.
another large-scale polemical enterprise, known as the Camillus Essays or “The Defence” (of the Jay Treaty). It consisted of 38 articles, 10 written by Rufus King, the rest by Hamilton, and published 22 July, 1795 – 9 January, 1796. Hamilton’s contribution runs to nearly one hundred thousand words, and revisits the arguments discussed above. Two new elements salient to our present inquiry are the argument that the Jay Treaty prevented war with Britain and so public debt need not be raised to evil proportions, and a string of enlightening statements about the circumstances and time frame in which the founding moment’s emergency will give way to the ordinary course of American commercial and foreign policy.

When Washington asked for help with his 1796 Farewell Address, Hamilton drafted an eloquent document that reiterated the logic of Armed Neutrality. Commerce is an integral part of modern sovereignty but is, paradoxically, stifled by regulation and other interventionist exercises of sovereignty. Jealousy of trade and the anachronistic spiral of dangerous feudal alliances must be countered with armed neutrality, in accordance with the new realism that befits the commercial age.

The great rule of conduct for us in regard to foreign nations is in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop. Europe has a set of primary interests which to us have none; or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns... If we remain one people under an efficient government. the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel.
Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of

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981 Camillus II, Lodge V, 201-2.
982 “A very powerful state... our strength.” Camillus II, Lodge V, 206-7.
Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor or caprice?...

Harmony, liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand; neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of commerce, but forcing nothing; [...] constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that, by such acceptance, it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more...

After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take, a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it, with moderation, perseverance, and firmness. The considerations which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe that, according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all.984

Contemporaries and historians alike acknowledged the enormous influence of Washington’s Farewell Address in convincing politicians and the public about the desirability of this particular brand of armed neutrality. Hamilton also wrote a draft for Washington’s Address to Congress on 7 December, 1796.

A systematic plan for the creation of a moderate navy appears to me recommended by very weighty considerations. An active commerce demands a naval power to protect it, besides the dangers from wars, in which a maritime state is a party. It is a truth, which our own experience has confirmed, that the most equitable and sincere neutrality is not sufficient to exempt a state from the depredations of other nations at war with each other. It is essential to induce

984 Lodge VIII, 210-2.
them to respect that neutrality, that there shall be an organized force ready to vindicate the national flag. This may even prevent the necessity of going into war by discouraging from those insults and infractions of right, which sometimes proceed to an extreme that leaves no alternative.\textsuperscript{985}

France viewed the Jay Treaty as a violation of the 1778 French-US Treaty of Alliance. Relations deteriorated, and in June 1795 Secretary of State Timothy Pickering reported to Congress that the French had captured 316 American merchant vessels in the previous 11 months. The damage was comparable to the British assault between Pitt’s orders in November 1793 and the Jay Treaty of November 1794. Yet peace was unattainable, partly due to French domestic events. Following another year of ineffective defense and negotiations, Congress rescinded all treaties with France. The Quasi-War began. It is estimated that more than 2,000 vessels were captured by the French before hostilities ceased with the Convention of 1800 with Napoleon. It marked the end of American alliances for the next century, and was in many ways the crowning achievement of Hamilton’s neutrality policy – as well as a verification of his doubts about a US-French republican ideological alliance.

While scholars and contemporaries were right to draw attention to a break between Hamilton’s pro-French stance in the early days of the War of Independence and his later distaste for the French Revolution’s excesses, I submit that Hamilton did not change his basic position. Even during the \textit{Proclamation of Neutrality}, the Jay Treaty, the Quasi-War and other anti-French measures, his continued support and express admiration for the French nation and his many friendships, including Lafayette’s and Talleyrand’s, show that Jefferson and Madison accused him wrongly of taking an anti-French position due to pro-British personal bias.\textsuperscript{986} Hamilton’s reluctance to form too close an union with Revolutionary France was presaged by the reluctance to allow the ancien régime to use American ports to attack British ships. He did not advocate a classic ploy designed to maintain European balance of power, first siding with France when Britain was strong, and switching sides as the pendulum swung. Instead, his fear of US entanglement and his grasp of the importance of neutrality remained consistent. The same map that Hamilton drew from the League’s achievements by 1783 explain his successful

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985 Lodge VIII, 218-9. \\
\end{flushright}
navigation between the Scylla of reactionary pro-British position and the Charybdis of overly costly support for France.\textsuperscript{987}

The example set by the Machiavelli, Harrington, and the League, I suggest, was one reason why Hamilton opposed a close alliance with France. He saw, more clearly than most, the dangers of replacing one colonial master with another, and successfully prevent US involvement on the side of either France or the First and Second Coalitions. Moreover, he realised that a French alliance would upset the imbalance among European powers. The preservation of this imbalance was in the US interest, but it could not be safely achieved through military engagement on any side. It had to be done through commerce and neutrality. In turn, the double strategic imperative of maintaining this international imbalance and reaching economic maturity at home – from central bank to federal taxes and powers to shape trade policies – could now be coupled in a way as to defeat or at least silence those who opposed the creation of a strong federal state. The usually distinct literatures on two-level games and on the incurable theoretical ambiguity of emergency in constitutional theory are equally useful in uncovering Hamilton’s life-long strategy.\textsuperscript{988}

VIII.6 Hamilton’s American System

Machiavelli, Hobbes, Harrington, Vattel, Hume, Smith and the achievements of the League of Armed Neutrality before its demise in 1783 inspired a fundamental reappraisal of neutrality in Hamilton’s thought. The League showed him how the United States could benefit from rivalry among European naval powers, not only temporarily, but in the long run. For this the new state required a specific character, including a stronger union, a central bank, army, navy, and a strong executive. To a spiral of corrupting, self-destructive luxury or vicious, mutually destructive jealousy of trade, armed neutrality added a third scenario, consisting of constituting a commercial republic characterised by vigorous development and eternal watchfulness, coupled with essentially peaceful, mutually beneficial international trade. It was an original, innovative alternative, offering at worst a “safe zone” or resting point of meta-stability between conflicts, and a peaceful yet commercially dynamic new world order at best.


\textsuperscript{988} Hammond wrote in a dispatch to London that Hamilton will defend American neutrality because “any event which might endanger the external tranquility of the United States would be as fatal to the systems he has formed for the benefit of his country as to his... personal reputation and... his... ambition.” Hammond to Grenville, 2 April, 1793, cited by Chernow, \textit{Hamilton}, 439. Bemis, \textit{Jay’s Treaty}, 141. Robert D. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” in \textit{International Organization}. 42 (Summer 1988), 427-460. On emergency see Evrigenis, \textit{Fear of Enemies}. 

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The prominence of military concerns does not mean that Hamilton rejected Smith’s vision. Once the military and political emergency associated with the founding moment was over, Hamilton wanted American protectionism eliminated. However, the emergency powers he built into America’s economic system, ranging from national debt to government powers over trade policy and economic stimuli, proved too useful to later politicians to resist. This is why Hamilton is said to have established the “American System of Economics,” which played a prominent role until the 1970s. Henry Clay, Friedrich List and H.C. Carey were among those who followed in Hamilton’s footsteps, and Jefferson, John Q. Adams and Lincoln were largely responsible for turning Hamilton’s emergency measures into permanent institutions. Clay was the first to name and codify “the American System” in the early nineteenth century – as against the “British System” of Smith – insisting that this was the true Hamiltonian legacy. The “American System” in turn was the most formative influence on Friedrich List and his “National System.”

The Hamiltonian or American System is habitually described as a kind of mercantilism that endogenises the notion of comparative advantage. Nothing could be further from Hamilton’s position. He was an admirer of Smith and Hume but, being both a pragmatist and visionary, he was prepared to temporarily subjugate long-term economic utility to short-term military imperatives, when absolutely necessary. In non-emergencies though, the implementation of his envisioned institutions was worth sacrificing short-term military gains for. In order not to foreclose the option of peaceable trade relations with Britain, the French alliance had to be resisted, and vice versa. For Hamilton, an emergency had to be clear and present to override political considerations; the emergency behind his interventionist policies was made elastic by others. Although it is impossible in a founding moment to set in stone the criteria for distinguishing emergency and non-emergency in the distant, unknowable future, Hamilton got very close to doing the impossible. His instructions for extinguishing the national debt, withdrawing at some definite future time public funds from all enterprise (including large-scale infrastructural projects) and his trust in the efficiency of free markets have already been discussed.

989 Although the story of these Systems is too long to discuss here, one could argue that Hamilton is misunderstood in America like List is misunderstood in Japan. Neither protectionist nor utopian, they both wanted a corrective historical moment when the playing field is levelled before free trade and its concomitant domestic and international consequences are set loose. Controlling British commercial power was one challenge that Hamilton and List were equally concerned about, but this did not set them at loggerheads with Smith. Perhaps Hamilton’s most illuminating statement here is the long citation above from the Report on Manufactures, Lodge IV, 100-2.

990 Other examples include Federalist 35, where in direct contradiction to Adam Smith, Wealth of Nations, I.xi.278, Hamilton names not landholders, artisans, manufacturers, professional politicians or philosophers as the people’s best representatives, but merchants, because they aggregate the whole nation’s interest. Foreshadowing the Report on Manufactures and the First Report on Credit, Federalist 35 sets clear limits to the utility of federal taxes, duties,
His vision was of a market economy, initially bounded by military planning, yet designed to expand and swiftly transcend the restrictive strategic imperative. To describe it as mere “developmental capitalism” is to miss Hamilton’s unambivalent contrast between emergency and normal politics, and to superimpose his appreciation of a founding moment’s armed necessity on all aspects of his long-term vision for a peaceful US in a stable, free-trading global economy. One could argue that under certain conditions, such as the existence of free-trading modern states with armed neutrality as an accepted component of their sovereignty, Hamilton’s system allows for the theoretical possibility that conventional, military emergencies cease to exist, and civilising and pacifying effects of commerce begin to accrue from free trade’s utility-maximising effects. Such utopian statements absent, it is enough to remember his series of clear and persistent distinctions between founding moments and business as usual to realise that “developmental capitalist” is as ill-fitting a label as “protectionist,” “mercantilist,” or “Smith’s American opponent.”

As we saw, too few take full account of the influence of Machiavelli’s virtue, provincial republicanism, Selden’s anti-Grotian version of an international order of fully possessable world of limited resources, Hobbes’s strong executive, Harrington’s popular and commercial republicanism, and Smith, Hume and Catherine, on Hamilton’s supposedly mercantilist political economy. One possible reason why Hamilton’s system has not been explored in sufficient depth is a failure to grasp his distinction between the founding moment, when the essential framework must be set up by a strong central authority, and the normal mode of operation, in which the efficiency of the market must be captured by the maximum possible reliance on individual self-interest, initiative and ingenuity. Another reason is that the emergency powers Hamilton had designed proved extremely useful to the powers that be: historical events may have simply obscured important details of Hamilton’s blueprint. Jefferson was an most inveterate political opponent, yet as President he used the financing mechanisms that Hamilton put in place to raise funds for the Louisiana Purchase in 1803. The “American System” is the ideology for the regular use of the same mechanisms beyond their intended date of expiry, designed by Hamilton for the founding moment, with precise provisions for their phase-out.

tariffs and other interventionist measures. He fears that excessive and improper use of these instruments will hamper the economy’s natural development. 211-2 “Suppose, as has been contended… from the consumer.” In Federalist 60, Hamilton explains that the federal government must be careful not to create any monopolies because — emergency notwithstanding — monopolies are inefficient.

991 Camillus X, Lodge V, 290-3.
VIII.7 Conclusion

Hamilton made an unmatched contribution to the institutional design of the United States. A strong President, a standing army, a national navy, central bank, common currency, implied powers – it is only in Hamilton’s vision that we find all these elements combined durably and effectively. Each is connected to the other. The assumption of state debts gave rise to a centralised debt which, instead of crippling the young country as many had feared, saved its international credit and underpinned the creation of a national currency and economic policy. The navy enabled the expansion of overseas trade, and the executive provided the necessary energy and decisiveness. Elements of other Founders’ thought, like Jefferson’s agrarian republic, Madison’s outsourced national defence or Patrick Henry’s tax-supported Christian churches, seem improbable now. Machiavelli, Selden, Hobbes, Harrington, Hume, Smith and Catherine helped Hamilton create a clairvoyant institutional model at a time when few could predict, let alone implement, the institutions of a modern state system. Given the uncertainties of the time, the physical and intellectual difficulties and the political opposition to overcome, the framework that Hamilton envisaged turned out to be amazingly long-lasting.

Of course, ideas other than Selden’s, Hobbes’s, Harrington’s, Hume’s, Smith’s and Catherine’s have exerted a formative influence on Hamilton. He was an avid reader of Machiavelli, importantly, and there are clear links between Machiavelli’s exhortation to independence in arms and other resources, and Hamilton’s own views on neutrality. Machiavelli may have also inspired Hamilton’s views on the US standing army, navy, system of foreign alliances, and strong executive.\footnote{The Prince, tr. and ed. William J. Connell (Bedford/ St. Martin’s, 2005), chapter 6, 56; chapter 11, 73; chapter 12, 77; chapter 13, 81. Harper looks at Hamilton’s neutrality in Machiavellian terms in American Machiavelli, 104. J.G. A. Pocock, The Machiavellian Moment, 462 and 529.} Machiavelli’s view of energy’s role in the republic, and the sense in which agriculture, manufacture and commerce are fungible insofar as strategic priorities can safely rebalance them as long as idleness is avoided and the population remains active, is present and vital in Hamilton’s system.\footnote{Also in James Wilson (1742-98), Founding Father, drafter of the Constitution, and one of the first SCOTUS Justices. Like Hamilton, a lesson he draws from Rome’s decline is that constitutional design is the key to fending off idleness and conserving a virtuous national character. See e.g. “Oration on the Adoption of the Constitution,” 4 July, 1788, in Collected Works, eds. K.L. Hall and M.D. Hall (Liberty, 2007), I.290-1. On agriculture, virtue and law in biblical Israel, Egypt, Babylon, Greece, the Germanic tribes, Peru, and England: “On the History of Property” (c. 1790), I.389-95.} However, Harrington’s proof of concept that an immortal republic can be built on the balance of money, and a benign federal empire can use free ports or commercial colonies to preserve republican virtue, was also required for Hamilton’s ingenious move of creating centripetal forces and a very new,
previously unseen constitution out of the embattled colonies’ demographic, military, and economic necessities.

The nature of these influences should not be misunderstood. Direct textual borrowings, as in Hamilton’s case from Machiavelli, Vattel and Smith, are important. So are the claims of novelty and originality that we find in Grotius, Selden, Hobbes and Harrington, who all emphasised the lack of intellectual precedents for diverse parts of their system. The fact that the face value of some of these claims is evidently untrue, and the author knew this to be the case, means that such claims are strategic signals, for instance to restate a well-know truth without the accumulated baggage of commentaries, debates, and e.g. republican vs. pro-monarchy diversifications. Even when no such claim is made, and the intellectual lineage is explicit, the acknowledged borrowing itself can be deceptive (as with Harrington and Venice), or so transformative as to eliminate the analytical value of the connection. Intellectual innovation, especially in constitutional reform, is not linear, cannot be fitted to clinical standards, and common sense and judgement will always have a role in clarifying its genealogy. Just as Bacon, Selden and Harrington insisted that the utility of history is limited if one’s vision is restricted to a guiding set of examples, rather than the elements of wisdom and prudence, so one should understand Hamilton’s claims to novel constitutional solutions to historically unprecedented challenges of commercial and military complexity to be nevertheless intrinsically tied to the method of innovation that he found in the common law and the history of seventeenth-century English and Dutch reforms, and in Renaissance and early modern prudential lessons drawn from biblical, Greek, Roman, Byzantine, and medieval European history.

This is not to say, either, that the common law view of constitutional evolution, and early modern understandings of ancient history’s lessons, leave Hamilton without any claim to originality. One notes, for instance, how his economic vision dovetailed with the Founders’ conviction that the country was an unprecedented, exceptional experiment in liberty, enlightened reason, and the creation of a state from the ground up, without an history of unity and identity remotely comparable to any other state’s. He shrewdly saw that if the US joined any side in the European wars, it would only obtain another master. In spite of its brief duration, Hamilton saw the League as fundamentally different from the short-lived and shifting European alliances castigated in the Federalist Papers. One difference was that Catherine constructed a plausible ideology that allowed anyone to decouple commerce and war when it became convenient. Another was that the Peace of Paris gave effective recognition to Catherine’s principle of armed neutrality. The League alerted Hamilton to the possibility of
gaining substantial and much-needed military and financial advantages, provided that the new republic was set up with a strong executive, a common currency, a centralised banking system, and a detailed programme that began with the new government providing a well-designed, selectively protectionist hothouse for national industry and enterprise, and ended with a free market integrated in the global economy and protected by carefully balanced neutrality agreements from the commercial and naval jealousy and warfare rampant amongst the European states. Adding the League of Armed Neutrality to the context of Hamilton’s work helps elucidate his economic and political principles better than the strictly domestic, US context that historians today often focus on.

To shape public and international law, Hamilton used the leverage provided by the League to brilliant advantage. Essentially, he proposed that the young commercial republic free-rides on the logic of armed neutrality, which dictates more urgently to long-existing states than to a former colony. The relative losers in the great game advocated free trade, at least partly to weaken the winners’ chokehold on international trade. The relative winners crafted their colonies’ economies through taxes and treaties, and retained control over their trade and navy. Hamilton understood that independence was a risky proposition but sovereignty, public credit and the ability to make commercial treaties had real and substantial economic value that in turn fostered political power. The League transcended the predictable eighteenth-century logic of both ever-shifting alliances and impracticable schemes for universal government. It offered Hamilton the most pristine formulation of the new character of deep-seated European interests in the age of commerce, and thereby showed him a way to quickly establish an American economy that could pool resources, kick-start growth, unite the country and provide for adequate defence. The separation of war and commerce allowed him to play along and off of Armed Neutrality; yet he could always bridge the gap and convince his domestic audience that his commercial ideas were matters of state security. Placing Hamilton’s work in this context explains his economic and political principles better than it has been done before, and puts him among the major economic and strategic thinkers of the eighteenth century. The armed, industrious, commercial republic of the United States, with elections, a rotation of offices, a two-chamber government, a standing army and navy, a federal structure with emphasis on provincial governments, founded on a balance of money and protected by armed neutrality, and about to become the single most important model for the revolutionary reform of the European state systems, is the natural capstone for the arc drawn in this Thesis.

994 Recognised and described as such in Federalist 8, 11, 15 and elsewhere.
CHAPTER NINE

CONCLUSION AND OUTLOOK

The ambition for this Thesis was to take a small but relatively reliable step toward demonstrating the necessity and benefits of a historically more self-aware legal theory and practice in resolving and preventing conflicts that have a religious dimension.

The core argument began from the point that contrary to Iberian and French colonial projects, some Dutch and English thinkers worked out a way to encounter non-European rulers and legal systems without a pressing need to take a position on issues like missionary obligation, forcible conversion, slavery, or non-Christians’ right to property and sovereignty. Broadly speaking, this colonial advantage was a corollary of the secularisation originally performed to secure domestic stability in a time of religious conflict. One crucial move was to undermine the theological claim of epistemic superiority over law, from Christian just war theories to the use of the Bible in domestic legitimacy claims. The new system proved extremely effective in securing non-European co-operation and saving the economic and ideological costs of non-secular commercial and colonial expansion. It created, structured, and maintained the British Empire before its possible nineteenth-century retheologisation. Identifying its distinctive features incidentally aids analyses of the decline of the Spanish, Portuguese and French early modern imperial projects, while also creating the terms and parameters for a reconsideration and comparison of Enlightenment American, French, and Prussian exceptionalisms.

Thus, in the conceptual structure of this Thesis, the examination of connections between aspects of Renaissance and early modern Dutch and English secularisation in constitutional and public law on the one hand, and secularising soft imperialism as a factor in the unlikely colonial and commercial success of these small sea-faring Protestant nations on the other, is meant to open up a new vantage point on eighteenth- and nineteenth-century exceptionalisms and retheologisation. This design also seems like a cost-effective way to shed new light on the reasons and ways in which public international law has later become desensitised to the historical contingency of secularisation as a process, and of secularism as a norm. If I succeeded in showing that the Dutch exceptionalism in Grotius’s De veritate, and British exceptionalism in Selden’s Mare clausum and in Harrington’s “patronage of the world,” were constructed not as variants of but alternatives to the millenarian and chosen nation
exceptionalisms of many of their contemporaries, and that there is something still relevant about the process whereby commercial creditworthiness came to replace Christian redeemability as a criterion of participating as an equal in relationships governed by international law, then the civilising mission in Selden, or the liberating mission in Harrington, can be usefully contrasted with the role of evangelism in Victorian imperialism, or the irremediably contestable moral foundation of the Prussian and French “friend of mankind” and the American “Empire of Liberty” global constitutionalism doctrines.

Even when the question of how secularisation resumed after the First World War is answered, more work remains to be done to draw analytical and prudential value for the present from seventeenth-century Dutch and English secularisation. The first obvious thing to do is to make explicit the connections between this Thesis and my book, *Secularisation and the Leiden Circle*. The second is to analyse a great deal more Selden, especially *De iure naturali*. The third is to start a systematic comparison with contemporary Catholic lawyers’ anti-secularising arguments. Fourthly, eight new chapters should be added:

- Francis Bacon: Mind, Law and Empire;
- ‘Every Country Hath its Machiavell, Every Age its Lucian’: Anti-Theological Characters, Anatomies and Menippean Satires of Jonson, Donne, and Godwin;
- Regicidal Models of Law: Quakers, Levellers, Adamites, and Secularisers of Citizenship, Authorisation, Sovereignty and Christ;
- The Pragmatic Millenarian Imperialisms of Purchas, Winstanley, Winthrop, John Robinson and Robert Blackborne;
- Epistemology, Law and Religion in John Locke;
- The Conservative Mainstream of Soft Imperialism and Secularisation in Constitutional Law: Bulstrode Whitelocke, Matthew Hale and John Vaughan
- *Deus in Machinam*: The Royal Society’s Pantheistic Empiricism;
- Secularisation for the People: Early American Constitutional Law and Institutional Design.

These new chapters would strengthen the Thesis in five important ways. First, they would remove its partial dependence on the illustrative method, by filling in chronological gaps. Secondly, by adding literature, physics and medicine to economics, politics, theology and law, they would enhance one of the Thesis’s strengths, namely that the complex story of secularisation presented here played out across distinct genres and disciplines – a variety that in itself, independently from the details of the textual analysis, speaks to the core contention
that secularisation was, in retrospect, unavoidable, given the often tested and consistently failed alternatives of either re-establishing doctrinal monopoly, or accommodating rival religious truth claims in politics and law. The third advantage of these additions would be to bring in and reinterpret important figures, like Bacon, Locke, Hale, Bulstrode and Vaughan. The fourth reason why these chapters are necessary and sufficient additions is that they remove the source selection bias. By focusing on secularising texts only, this Thesis may have given the impression that most of the literature from this period had a similar character. Far from it; the texts discussed here were strikingly unconventional. Similarly to the fruits of a comprehensive reading of Catholic imperialists, Protestants like Winstanley, Purchas, Blacborne and others would also show that there were vigorous and competing religious schemes for public and international law reforms throughout this period, and bring out the clarity and purpose of Grotius’s, Selden’s, Hobbes’s and others’ secularising counter-arguments by contrast.

The fifth and final benefit of these added chapters is depth. I submit that in 2014 this argument only makes sense as a Thesis in Law. This is only in part because Cicero, Smith, Sigonius, Selden, Cunaeus and Grotius were both academic and practising lawyers, and carried the titles, honours and other hallmarks of the profession. While that accounts for this work’s relevance to Law, and vice versa, it does not explain why only Law is an appropriate field. The reason is that in 2014 only the legal discipline seems to have the range and skills required for such a study. It is unclear how or when the shift happened, but it is evident. Political Science would regard the historical sensibilities integral to this work as harmless at best, at worst irrelevant. As an History Thesis, the ambition to prepare the groundwork for informed and effective reforms would be out of place. Historically and politically informed reform proposals today seem to come exclusively from lawyers. In my experience of working at universities and consultancies in the UK, Germany, the Netherlands and the US, the type of reasoning, which unites history with socio-economic and legal analysis and actual recommendations for improvement, and which placed not only the aforementioned lawyers but also Aristotle, Machiavelli and Hobbes into the Political Science canon, are only possible in Law today. Only Law seems to have retained the skills, flexibility, motivation and credibility for this kind of work.

This, therefore, is a direction that can only benefit from further reconnaissance. The materials presented here, while directly relevant in subject and scope, have not exhausted the relevant subfields and methods of law. Attention has been paid to legal theory, legal history,
economic practice, but not to contracts, treaties, the administrative law of colonies,\textsuperscript{995} and other approaches that would yield fascinating insights into the interplay of secularisation and soft imperialism.

The fifth way in which this Thesis should be developed follows naturally from what has been said before. A good history of secularisation and soft imperialism will make practical reform proposals possible, and put historical self-awareness to good use by crafting better public and international law in the face of persistent conflicts that have a religious dimension.

Samenvatting

**Variaties van secularisatie in Engels en Nederlands internationaal- publiekrecht**

Het streven van dit proefschrift is om een kleine, doch relatief betrouwbare stap te zetten richting het aantonen van de noodzaak en de voordelen van een historisch zelfbewustere rechtstheorie en -praktijk voor het voorkomen en oplossen van conflicten met een religieuze dimensie.

Het kernargument begint met het inzicht dat, in tegenstelling tot Iberische en Franse koloniale projecten, een aantal invloedrijke Nederlandse en Engelse denkers een manier hebben uitgewerkt om niet-Europese heersers en rechtsstelsels te benaderen zonder een dringende behoefte om daarbij een standpunt in te nemen met betrekking tot zaken als de missionaire verplichting, gedwongen bekening, slavernij, of het eigendomsrecht en de soevereiniteit van niet-christenen. Over het algemeen was dit koloniale voordeel een uitvloeisel van seculariserende gedachten en maatregelen die genomen waren om de binnenlandse stabiliteit te verbeteren in een tijd van religieuze conflicten. Een cruciale zet was de onderrichting van de theologische aanspraak op epistemische superieure over het recht, van Christelijk gerechtvaardigd oorlogstheorieën tot het gebruik van de Bijbel voor legitimiteitsaanvrakgen binnen de landsgrenzen. Het nieuwe systeem toonde aan effectief te zijn in het waarborgen van niet-Europese samenwerking en in het besparen van economische en ideologische schade van niet-seculiere commerciële en koloniale expansie. Dit creëerde en structureerde het Britse Rijk en hielt het tevens in stand tot aan zijn negentiende-eeuwse re-theologisatie. Het identificeren van de onderscheidende kenmerken draagt ook bij aan het verklaren van het verval van de Spaanse, Portugese en Franse vroegmoderne imperiale projecten, terwijl het ook de voorwaarden en parameters creëert voor een heroverweging en vergelijking van het Amerikaanse, Franse en Pruisische verlichtings-exceptionalisme.

Indien het dus wordt opgevat als een historisch contingent, cumulatief en onvolledig proces, en indien het op zijn minst gezien wordt als het gedeeltelijk onvoorziene gevolg van de onvolmaakte ontwerpen voor stabilititeit en vrede, dan kan secularisatie een valide en bruiptaar begrip zijn bij het analyseren van belangrijke ontwikkelingen in de geschiedenis van het recht, met inbegrip van de de-prioritering van goddelijke weten in de hiërarchie van wetten, de verwerping van het goddelijk recht van koningen en het concurrentievoordeel van vroegmoderne Engels en Nederlands 'soft'-imperialisme ten opzichte van grote katholieke concurrenten.

Het proefschrift is zodanig gestructureerd dat het onderzoek naar verbanden tussen aspecten van de Renaissance en vroegmoderne Nederlandse en Engelse secularisatie in termen van constitutioneel- en publiekrecht aan de ene kant, en seculariserend 'soft'-imperialisme als factor van het onwaarschijnlijke koloniale en commerciële succes van deze kleine zeevarende Protestantse naties aan de andere
kant, een nieuw gezichtspunt opent in het achttiende- en negentiende-eeuwse exceptionalisme en de re-theologisatie in deze periode. Dit ontwerp dient ook als een kosteneffectieve manier om nieuw licht te werpen op de redenen waarom en de wijzen waarop het internationaal publiekrecht later ongevoelig is geworden voor de historische contingentie van secularisatie als een proces en voor het secularisme als norm.

Een beter begrip van secularisatie, zoals voorgesteld is in dit proefschrift, is een essentiële voorwaarde voor het overwinnen van herhaalde mislukkingen van moderne staten en de moderne internationale orde om conflicten met een religieuze dimensie te voorkomen en op te lossen.
Varieties of Secularisation in English and Dutch Public and International Law

Summary

The ambition of this Thesis is to take a small, but relatively reliable step toward demonstrating the necessity and benefits of historically more self-aware legal theory and practice in preventing and resolving conflicts that have a religious dimension.

The core argument begins with the insight that contrary to Iberian and French colonial projects, some influential Dutch and English thinkers worked out a way to encounter non-European rulers and legal systems without a pressing need to take a position on issues like missionary obligation, forcible conversion, slavery, or non-Christians’ right to property and sovereignty. Broadly speaking, this colonial advantage was a corollary of secularising ideas and steps taken to improve domestic stability in a time of religious conflict. One crucial move was to undermine the theological claim of epistemic superiority over law, from Christian just war theories to the use of the Bible in domestic legitimacy claims. The new system proved effective in securing non-European co-operation and saving the economic and ideological costs of non-secular commercial and colonial expansion. It created, structured, and maintained the British Empire before its nineteenth-century retheologisation. Identifying its distinctive features also helps to account for the decline of the Spanish, Portuguese and French early modern imperial projects, while it also creates the terms and parameters for a reconsideration and comparison of Enlightenment American, French, and Prussian exceptionalisms.

If understood therefore as a historically contingent, cumulative and incomplete process, and at least partially the unintended consequence of limited designs for stability and peace, secularisation can be a valid and useful concept in analysing major developments in legal history, including the deprioritisation of divine laws in the hierarchy of laws, the refutation of the divine right of kings, and the competitive advantage of early modern English and Dutch soft imperialism over large Catholic competitors.

The Thesis is structured such that the examination of connections between aspects of Renaissance and early modern Dutch and English secularisation in constitutional and public law on the one hand, and secularising soft imperialism as a factor in the unlikely colonial and commercial success of these small sea-faring Protestant nations on the other, opens up a new vantage point on eighteenth- and nineteenth-century exceptionalisms and retheologisation. This design also serves as a cost-effective way to shed new light on the reasons and ways in which public international law has later become desensitised to the historical contingency of secularisation as a process, and of secularism as a norm.
A better understanding of secularisation along the lines suggested in this Thesis is an essential prerequisite to overcoming recurring failures of modern states and the modern international order to prevent and resolve conflicts with a religious dimension.
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