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Carlos Eduardo Suprinyak

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**GROTIUS AMONG THE ENGLISH MERCHANTS:  
*MARE LIBERUM* AND ANGLO-DUTCH RIVALRY IN THE EARLY SEVENTEENTH CENTURY**

*Carlos Eduardo Suprinyak (American University of Paris)*  
[csuprinyak@aup.edu](mailto:csuprinyak@aup.edu)

**Abstract:** Hugo Grotius was a widely read and influential figure in seventeenth-century England. Whereas later generations portrayed him as a forefather to modern theories of natural and international law, the publication of *Mare Liberum* (1609) offered a grounded argument for free trade against the restrictions imposed by the Spanish and Portuguese colonial empires. But Grotius's notion of free trade, of course, was far removed from the later ideal of Richard Cobden. His model of commercial organization was firmly anchored on the chartered mercantile company, and he served as a spokesperson for the Dutch East India Company (VOC) during the Anglo-Dutch Conferences of 1613 and 1615, which sought to appease growing tensions among Dutch and English trading interests in Asia. As the diplomatic and economic relations between England and the Dutch Republic progressively deteriorated during the early decades of the seventeenth century, Grotius's rendition of the law of nations came increasingly to be regarded as a rationalization of Dutch dominance over long-distance trade routes. English commentators, who wished to emulate Dutch success but feared aggression and subordination, had to fashion a different framework of international politics to sustain their vision of an emerging English maritime empire. Tracing the uses of *Mare Liberum* in the mercantile literature of early Stuart England, the paper will study how this foundational work of modern international thought shaped the political economic discourse of English merchants, as well as their supporters and adversaries in the political arena. Changing attitudes toward Grotius's arguments will help us identify the origins of certain ideas about empire that later came to the fore by the time of the Navigation Acts and the Anglo-Dutch wars. We will thus explore how Grotius's version of the Law of Nations – before it was retrospectively converted into a cornerstone of liberal internationalism – was entangled in concrete disputes between rival imperial projects.

**Keywords:** Hugo Grotius, *Mare Liberum*, free trade, British Empire, fisheries

**JEL Codes:** B11, B17, F52, F54

## 1. Introduction

Hugo Grotius is a thinker with many legacies. At least since the founding of the Grotius Society in 1915, his name occupies a distinguished position in contemporary legal scholarship, denoting an approach to international law that embraces an ethics-laden interpretation of natural law doctrine (Lauterpacht 1946; Jeffery 2006, pp. 85-111). His statement of the principle of the freedom of the seas, likewise, proved very influential over time (Reppy 1950; Butler 1992). Grotius has also been popular among students of political philosophy. Richard Tuck (1979, p. 58) described him as “the most important figure” in the modern history of natural rights theory, an appraisal shared by Knud Haakonssen (1985). Tuck himself later portrayed Grotius as an essential link in the transition between humanist and liberal political vocabularies during the seventeenth century, and even a precursor to the state of nature hypothesis (Tuck 1993, 1999). Hugh Trevor-Roper (1992) highlighted yet another facet of Grotius: an avowed disciple of Erasmus and influential contributor to early modern theological arguments, a connection recently reinforced by Marco Barducci (2017).

The Grotian legacy has also been deeply entrenched – though subject to much controversy – in the field of international relations. Distinguished postwar IR scholars like Martin Wight and Hedley Bull built heavily on Grotius’ *De Jure Belli ac Pacis* (1625) in their accounts of international society and international order. Wight (1966, 1991) famously popularized the typology of three competing and intertwined ‘traditions’ of Western international thought: the two extremes of Hobbesian (or Machiavellian) realism and Kantian utopian cosmopolitanism, complemented by the *via media* of Grotian rational internationalism. This tripartite scheme was further elaborated by Bull (1977), who presented Grotius as an early exponent of the notion of an international society of states kept together by tacit respect for a set of rules firmly inscribed in natural law. Through these and related works, Grotius was turned into a canonical figure in the history of international thought. As usually happens when thinkers thus become canonized, the connections between works belonging to a putative ‘Grotian tradition’ and the writings of Grotius himself grew increasingly murky (Kingsbury and Roberts 1990; Jeffery 2006, pp. 14-26).

But Grotius was not an ivory tower intellectual exclusively concerned with elaborating the abstract principles of international law, politics, and religion. For most of his life, on the contrary, his philosophical and theoretical writings were closely entangled with his personal involvement in government and diplomacy, first in his native Low Countries and then in

France. As such, Grotius was an active participant in contemporary arguments about the reconfiguration of the world order following the emergence of modern European empires. This aspect of the Grotian legacy has been discussed by David Armitage (2000, pp. 100-124), who showed how Grotius' *Mare Liberum* (1609) provided a benchmark against which British claims for an empire of the seas could be formulated. Edward Keene (2002) highlighted how certain lesser-known aspects of Grotius' account of the law of nations "have a striking proximity to the practices of colonialism and imperialism that Europeans adopted in the extra-European world" (p. 3). Peter Borschberg (2005) reconstructed the arguments of *Mare Liberum* as a rationalization of the practices of the Dutch East India Company in Asia, concluding that Grotius should be counted "among the architects of early modern colonial rule" (p. 46). The same connection between Grotius' early writings and the political agenda of Dutch mercantile elites was explored in detail by Martine van Ittersum (2006), who portrayed him as "one of the founding fathers of the First Dutch Empire" (p. xix). Focusing on transnational reception, Erik Thomson (2009) showed how *Mare Liberum* provided an imperfect blueprint for early modern European powers seeking to reinvent themselves as commercial empires, following the Dutch model.

This chapter will follow a similar path to explore how Grotius' articulation of the case for freedom of the seas was received, across the North Sea, by a group directly concerned with Dutch imperial ambitions: the English mercantile community. As we will see, the merchant pamphleteers commonly regarded as typical examples of early modern political economy – Gerard de Malynes, Edward Misselden and Thomas Mun – engaged extensively with the arguments advanced by Grotius in *Mare Liberum*. But these contemporary commentators, rather than treating the work as an authoritative account of maritime law, discussed and criticized it as a partisan piece at the service of specific political and ideological agendas. By examining the reception accorded by the English merchants to Grotius' vindication of a trading empire based on naval power, we will gain some insight into competing images about the future of the British Empire itself – one of them based on free open seas and long-distance colonial trade, the other on closed territorial seas and the fishing industry.

## **2. *Mare Liberum* and Anglo-Dutch Commercial Rivalry**

During 1607-8, Spain and the Dutch Republic conducted negotiations for a truce to the armed conflict that had raged since the rebellious United Provinces seceded from the Spanish Empire in 1581. One of the matters in dispute was Dutch access to the East Indian

spice islands, controlled by the Portuguese since the 16<sup>th</sup> century and hence indirectly by Habsburg Spain after the union of the Iberian crowns in 1580. To sustain its commercial incursions in the region, in 1602, the Dutch created the *Vereenigde Oostindische Compagnie* (VOC), a chartered mercantile company with exclusive trading rights to Asia. The VOC profited from official hostilities with Spain to follow an aggressive course in its commercial exploits, striking diplomatic agreements with native local rulers while engaging in interloping and privateering activities against Portuguese merchants. The truce negotiations thus presented a potential threat to the company's established interests, as the Spanish crown insisted on a recognition of its right to exclude other nations from the East Indian trade as a precondition for any long-term ceasefire (Clark 1934, pp. 49-50; Reppy 1950, pp. 251-8; Roelofsen 1990, pp. 105-6).<sup>1</sup>

This was the immediate context for the publication of *Mare Liberum* in 1609, the year when the Twelve Years' Truce was finally signed. Written in Latin and published anonymously, the small tract presented a case for Dutch rights of navigation and trade to the East Indies against Spanish attempts to restrict access to the region. The choice for anonymity suggests how the work was consciously designed to intervene in ongoing, politically charged arguments. Indeed, Grotius prepared it for print at the instigation of a group of VOC directors, who were engaged in a broad public campaign against the truce (van Ittersum 2006, pp. 283-358). Conversely, the use of Latin signals how the message of *Mare Liberum* was aimed at an elite international audience. To some commentators, the episode symbolizes the decisive incorporation of commercial affairs into official European political and diplomatic discourse. As framed by Erik Thomson (2009, p. 109), the debate surrounding the truce “reshaped European political thought by figuring the governance of commerce as crucial to the preservation, conservation and expansion of sovereignty”.

But this was only one chapter of Grotius' much broader involvement with the VOC. In fact, most of the material contained in *Mare Liberum* had been written a few years earlier, in response to another incident involving the Dutch company's operations in the East Indies. In 1603, as part of its war of attrition against the Iberian powers, the VOC had captured a Portuguese carrack named *Santa Catarina* off the coast of Singapore. This otherwise ordinary act of early modern privateering acquired greater significance after the ship's cargo was

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<sup>1</sup> Portuguese and Spanish claims to exclusive rights in the East Indian trade were based on the bulls of donation issued by Pope Alexander VI in 1493, which divided overseas territories – both newly discovered and yet to be discovered – into two encompassing zones, granted in possession to each of the two kingdoms.

apprehended and brought back to Europe, where it fetched a spectacular sum in auction (Borschberg 2002; Armitage 2004). As a private company, the VOC's rights to wage war on the Portuguese and lawfully seize the prize were ambiguous, to say the least. Between 1604 and 1606, Grotius worked on an elaborate legal apology for the company's actions. Though never published during his lifetime, the manuscript was later rediscovered and made publicly available under the title *De Jure Praedae*.<sup>2</sup> In this work, he justified the VOC's conduct as part of a just war prompted by Portuguese aggression against both Dutch merchants and their East Indian allies, in which the company was legally entitled to seize war prizes because acting on commission by the Dutch government (Borschberg 1999; van Ittersum 2006, pp. 1-52).

What appeared in print as *Mare Liberum* was a slightly revised version of Chapter 12 of *De Jure Praedae*. The text was cleared of references to the *Santa Catarina* incident, and the resulting argument was pitched at a higher level of generality (Armitage 2004). Grotius counteracted Iberian claims to exclusive access to the East Indies with an appeal to the principles of natural law and what he termed the 'primary' law of nations, which established as a "certain rule" that "it is lawful for any nation to go to any other and trade with it" (Grotius 2004 [1609], p. 10). He justified this principle explaining how divine providence had spread its bounty across the globe "to maintain human friendship by their mutual wants and plenty". This allowed Grotius to assert that even if the Portuguese "had been lords of those countries whither the Hollanders go, yet they should do wrong if they stopped the passage and trade of the Hollanders" (p. 12).

The other essential piece of his case rested on a theory of property rights, elaborated in the lengthy and controversial Chapter 5. "God gave all things not to this man or that but to mankind," Grotius argued, but the profitable use of certain things required they become the property of individuals (p. 22). Certain constraints, however, should be respected: first, "those things which cannot be occupied or were never occupied can be proper to none because all propriety hath its beginning from occupation"; second, property could not be lawfully instituted on "all those things which are so ordained by nature that anyone using them they may nevertheless suffice other whomsoever for the common use" (p. 24). To Grotius, the seas clearly fell under both these categories, being "so infinite that it cannot be possessed and applied to all uses, whether we respect navigation or fishing" (p. 25). This led him to conclude

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<sup>2</sup> The title is usually translated in English as *Commentary on the Law of Prize and Booty*. Even if the work has been commonly known by this name since its reappearance in the 19<sup>th</sup> century, Grotius himself referred to the manuscript as *De Rebus Indicis* (Armitage 2004).

“no part of the sea can be accompted in the territory of any people” (p. 30). Having thus discredited the Portuguese claim to exclude other nations from the sea route to the East Indies, Grotius expanded on his attempt to frame the freedom to trade as part of natural law:

Therefore, the liberty of trading is agreeable to the primary law of nations which hath a natural and perpetual cause and therefore cannot be taken away and, if it might, yet could it not but by the consent of all nations, so far off is it that any nation, by any means, may justly hinder two nations that are willing to trade between themselves. (Grotius 2004 [1609], p. 51)

In a context of overseas imperial disputes, Grotius’ defense of the natural freedom to trade carried certain implications. One of them derived from his conception of the limits imposed by nature on private property: “that all surely might use common things without the damage of all and, for the rest, every man contented with his portion should abstain from another’s” (p. 6). When extending this reasoning to the East Indian trade, Grotius asked: “What, therefore, may seem so unjust as that the Spaniards should have the whole world tributary, so that they might neither buy nor sell but at their pleasure?” (p. 56). Iberian attempts to monopolize this trade infringed on the rights of other nations to enjoy the common fruits of divine providence, and thus stood in flagrant breach of natural law. This led to a second notable implication, expounded in the final chapter. Reasserting the hierarchy between natural law and political expediency, Grotius asserted: “we wholly maintain that liberty which we have by nature, whether we have peace, truce or war with the Spaniard” (p. 57). The grievances inflicted by Spanish and Portuguese on the rest of the world should be recognized by any fair judge observing the principles of natural law. But in matters of this kind, recourse to a fair and impartial judge was often unavailable, which led Grotius to proclaim: “that which should be obtained in judgment, where justice could not be had by just war could be revenged” (p. 59). Moreover, the rights to wage just wars and punish the offenders of natural law were not restricted to sovereign rulers but could be undertaken by private parties as well. “Wherefore he that shall stop the passage and hinder the carrying out of merchandise may be resisted by way of fact,” Grotius concluded, “even without expecting any public authority” (p. 60).

While presenting his case for the freedom of trade and navigation and against the monopolistic ambitions of certain early modern overseas empires, Grotius therefore also legitimized some of the aggressive practices increasingly adopted by private actors like the VOC. By doing so, he contributed some compelling ideological groundwork for an emerging mercantile empire where chartered companies wielded significant judicial and political power (van Ittersum 2010; Barducci 2017, pp. 158-61). In the words of Peter Borschberg (2005, p. 43), “Grotius envisions a freedom of the high seas, but in actual fact this translates into a brutal

free-for-all struggle, an indivisible trinity of commerce, war and plunder,” an outlook that was “happily espoused by his political superiors and by a powerful faction among the merchant community in the early seventeenth century Netherlands”. Among his English readers, this aspect of Grotius’ argument would not be lost either.

Contrary to some of the VOC’s fears, the Twelve Years’ Truce significantly enhanced the Dutch position in the East India trade. It also inaugurated an era of heightened Anglo-Dutch commercial rivalry, partly explained by James I’s desire to preserve friendlier relations with Spain than his predecessor Elizabeth I, but also reflecting the growing success of both nations in maritime trade (Edmundson 1911, pp. 11-33). Disputes between the English and Dutch East India companies prompted the convening of two diplomatic conferences – one in London in 1613, the other at The Hague in 1615 – designed to settle colonial claims of both parties and find a workable *modus vivendi* (Borschberg 1999). In a quick reversal of roles, it was now the Dutch who stood accused of monopolistic practices by restricting the access of English merchants to the spice islands in Asia. English negotiators seized on the same rhetoric previously employed by Grotius against the Iberian powers, arguing the Dutch violated the law of nations when denying liberty of trade and navigation to others in the East Indies, thus repeating what they had formerly condemned in the Portuguese (Clark 1934).

Grotius himself was a member of the Dutch delegation sent to London for the 1613 conference, during which, in a much-commented episode, he heard the arguments of *Mare Liberum* explicitly quoted in support of the English case (Clark 1934, pp. 78-9; Borschberg 1999, pp. 241-8; Armitage 2000, pp. 111-2). His work had already crossed the North Sea, at a time when its authorship was no longer kept under much secrecy.<sup>3</sup> Stepping up once again to defend the VOC’s actions, Grotius appealed to treaties that had been signed by the company with East Indian sovereign rulers to justify its rights to exclude others from the trade. Natural law dictated, as an immutable principle, that contracts must be honored, and this overrode the prescription contained in the law of nations in favor of free trade and navigation. The contracts in question had been signed voluntarily by local rulers in return for their liberation from Portuguese yoke, and their continued enforcement was amply justified by the costs incurred by the Dutch to keep them safe from further Iberian aggression (van Ittersum 2006, pp. 359-71). Predictably, this qualification of the arguments advanced in *Mare Liberum* proved less than

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<sup>3</sup> Grotius himself had never been concerned with preserving anonymity, a precaution due to the publishing house (van Ittersum 2006, pp. 341-2). In 1614, a new edition of *Mare Liberum* was published already indicating his authorship.



convincing to the English delegates. The episode demonstrated how the discourse of natural law and the law of nations was flexible enough to accommodate different imperial claims and ambitions (van Ittersum 2016, pp. 490-2). It also shaped in important respects the context for the reception of Grotius' work in England.

### **3. The Fisheries Dispute**

There is another aspect of Anglo-Dutch relations during the early decades of the seventeenth century that significantly affected the way in which *Mare Liberum* was read and discussed in England. At the time, the North Sea was the site of a thriving fishing industry open to the competition of Dutch and British vessels. The Dutch were regularly allowed to fish off the coasts of England without paying any fees, a privilege confirmed by different treaties over the centuries (Edmundson 1911, pp. 20-1; Benson 2015). The Scottish crown, however, had been much more zealous of its sovereignty over territorial seas, seeking to protect its fishing grounds from the encroachment of foreigners. When James I acceded to the English throne in 1603, he began extending this Scottish understanding of maritime law to the whole of the British Isles (Armitage 2000, pp. 108-9). This policy dovetailed with entrenched popular convictions about the importance of the herring fisheries to Dutch naval and imperial might, which prompted initiatives by both crown and parliament to support the British fishing industry (Benson 2015).

In 1609, the same year *Mare Liberum* first came out, James issued a proclamation that forbid all foreigners from fishing in British and Irish coasts without previously securing a license. The Dutch soon protested this measure, arguing it violated the ancient privileges they had enjoyed with the acquiescence of countless predecessors of the new English king. The dispute was further pursued during a diplomatic conference held in London in 1610, when the Dutch questioned English rights to close off the seas adjoining their coasts, as these belonged in common to all humankind and could not be brought under the exclusive possession of anyone. Negotiations were concluded without any satisfactory agreement, with only James' promise of postponing the enactment of his proclamation for two years (Edmundson 1911, pp. 26-33). The result presaged a sustained legal and commercial controversy that would flare up on multiple occasions before mid-century.

The North Sea fisheries dispute thus shaped, from the very beginning, the way in which the arguments of *Mare Liberum* were perceived by British audiences. The most obvious

illustration of this pattern is William Welwod's *An Abridgement of All Sea-Lawes* (1613), one of the earliest written responses to Grotius' tract, which portrayed his defense of Dutch rights of navigation to the East Indies as an elaborate ruse to justify their trespassing on British fishing grounds. This reading found corroboration in certain passages of *Mare Liberum*, as when Grotius argued: "And the same regard that is to be had of navigation is to be had likewise of fishing, that it may remain common unto all" (Grotius 2014 [1609], p. 28). Welwod conceded Grotius's case with respect to the "great, huge, and main body of the sea", but reaffirmed the rights of sovereigns to establish dominion over the territorial waters lying within the "just and due bounds [...] properly pertaining to the nearest lands of every nation" (Welwod 2014 [1613], pp. 72-4).

The topic was frequently addressed in the English pamphlet literature over the following years. While not engaging the legal argument about rights of dominion over the seas, Tobias Gentleman's *England's Way to Win Wealth, and to employ Ships and Marriners* (1614) painted a vivid portrait of the benefits enjoyed by the Dutch from fishing off the British coasts. The author highlighted the "inestimable summes of money taken yearely for fish and herrings out of his Majesties Seas by strangers," through which they had "not onely maintained their warres many years against the Spaniard," but also "growne exceeding rich and strong in fortified Townes and beautifull Buildings, in plenty of money and gold, in trade and trafficke with all other Nations," besides having "so increased and multiplied their shipping and Marriners, that all other Nations and Countries in the world doe admire them" (Gentleman 1614, pp. 4-5). The pamphlet played upon feelings of Anglo-Dutch rivalry when describing how English fishermen were "daily skorned by these Hollands, for being so negligent of our profite, and carelesse of our fishing" (p. 44). Building on Gentleman, Robert Kayll's *The Trades Increase* (1615) advanced a more inflammatory argument in favor of stricter control of British territorial seas. Kayll stressed how the Dutch derived their wealth and might from fishing "in our owne Seas, [...] in his Maiesties dominions, on the coast of *England, Scotland, Ireland*" (Kayll 1615, p. 36). While recognizing Dutch claims of ancient privileges in this trade, he cautioned: "howsoever it pleaseth his Maiesty to allow of his royall Predecessours bounty, in tollerating the neighbour Nations to fish in his streames, yet other Princes take more straighter courses" (p. 37).

Kayll's pamphlet is also revealing for his antagonistic attitude toward long-distance colonial trade. Though this was "the best Trade in appearance", yet closer inspection revealed "how remote it is, and with what cost of purse, and losse of people followed, yet without such

satisfaction” (p. 40). The herring fisheries, by contrast, offered a much safer and reliable foundations for a maritime empire:

Wee thinke the West Indie gold to be the cause of the pride and presumption of the *Spaniards*; we may assure ourselves that our North Indies countervails that treasure, and are the onely confidence of the *Hollander* even by breeding sea-men, and increasing of shipping in that abundance, as that hereby they both swarme every where, and *France, Spaine* and the East Countries are full of their shipping. (Kayll 1615, p. 47)

Sir Dudley Digges came to the rescue of the East India Company with *The Defence of Trade* (1615), where he commended the goal of reviving the British fishing industry but warned against the danger of leaving the colonial trade in the hands of the Dutch, despite the latter being England’s “best assured friends” both “in reason of state, and through band of Religion” (Digges 1615, p. 4). A similar message was advanced in an anonymous pamphlet titled *Britaines Busse* (1615), which further promoted the case of the North Sea herring fisheries while striving to portray them as complementary, rather than opposed to the East India trade.

The prospect of recapturing for Britain part of the extraordinary gains derived by the Dutch from the fisheries moved James to action once again in 1617, imposing a toll on Dutch vessels fishing off the coast of Scotland. This quickly turned into a sour diplomatic incident after one Scottish official was captured and taken as prisoner to Holland by Dutch captains who refused to pay the toll (Edmundson 1911, pp. 50-5; Benson 2015, pp. 450-1). Meanwhile, tensions between the two mercantile companies in the East Indies escalated once again, prompting the dispatch of yet another Dutch embassy to London, in 1618, to discuss a peaceful settlement of disputes. By now, Grotius had fallen from grace after recent political upheavals in the United Provinces culminating in the execution of Johan van Oldenbarneveldt, his longtime patron. As the Dutch envoys insisted on the rights of their people, under the law of nations, to fish on British coasts, James told them the misfortunes of Grotius “should be a warning to others not to accept his theories” (van Ittersum 2010, p. 390). These charged negotiations provided the occasion for the first drafting of John Selden’s celebrated rejoinder to Grotius, *Mare Clausum* (1635), which defended British rights of dominion and sovereignty over the Northern seas.

As suggested by David Armitage (2000, pp. 103-5), during the early decades of the seventeenth century, Britain was struggling to square the circle between her ambitions for unimpeded commercial expansion overseas and the desire to establish more secure and stable bases for a maritime empire at home. This translated into a readiness to embrace the principles

of *mare liberum* when applied to the open seas, while sticking closely to a policy of *mare clausum* on the territorial seas adjoining the British and Irish coasts (Loth 1995, pp. 717-22). In both cases, British imperial ideology was developed against the background of growing Anglo-Dutch rivalry – between chartered mercantile companies in Asia, or fishing vessels in the North Sea. But the relative importance of these two planes of commercial and maritime expansion for the strength and opulence of the British empire was a matter of dispute.

#### **4. *Mare Liberum* vs *Mare Clausum* in the English Mercantile Literature**

During the first half of the 1620s, England was hit by a severe economic depression caused by disruptions in the European cloth trade, an early reflection of the seismic movements brought about by the Thirty Years' War. The depression prompted much public discussion about the economic maladies afflicting the kingdom and the remedies appropriate for relieving them. Some of the written interventions in this debate later came to be considered landmark works in the canon of early modern political economy. The pamphlets of Thomas Mun (1621, 1664), Gerard de Malynes (1622, 1623) and Edward Misselden (1622, 1623), to mention the most conspicuous examples, were drafted to engage ongoing political arguments about the dire conditions of the English economy, long before they became symbols of 'mercantilist' doctrine (Supple 1964, pp. 197-224; Magnusson 1994, pp. 60-93; Suprinyak 2016). As such, they echoed many of the background conditions and arguments mentioned in the previous sections.

What may be more surprising to current readers are the frequent references to *Mare Liberum* found in the writings of these merchant pamphleteers. Even if Richard Hakluyt had prepared an English translation of Grotius' tract already by the mid-1610s, this only circulated in manuscript form at the time, so it remains unclear how widely accessible it was to average readers.<sup>4</sup> But one should not be too astounded by the prospect of an early modern English merchant engaging a Latin text on the principles of maritime law, as much as this may conflict with pre-conceived images of these pamphleteers as vulgar pleaders for vested interests. As shown by Andrea Finkelstein (2000), early modern merchants typically belonged to an urban elite that displayed remarkable levels of literacy and erudition. Both Malynes and Misselden regularly engaged ancient classics and contemporary humanist scholarship, quoting from sources in Greek, Latin and Hebrew. While less prone to learned discourse, Mun (1664, p. 8)

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<sup>4</sup> This translation, possibly commissioned by the English East India Company itself, only survived as a manuscript until very recently, when it became the basis for the Liberty Fund edition of *The Free Sea* (Armitage 2004).

nonetheless suggested when describing the ideal qualities of a perfect merchant: “although there be no necessity that [he] should be a great Scholar; yet it is (at least) required, that in his youth he learn the Latine tongue, which will better enable him in all the rest of his endeavours”.

Mun’s first pamphlet, *A Discourse of Trade, From England unto the East Indies* (1621), does not contain any explicit allusions to *Mare Liberum*. But as an apologia for the activities of the English East India Company against its domestic detractors, it is steeped in the language of imperial expansion and Anglo-Dutch rivalry. Mun portrays the opening of the sea route to the East Indies via the Cape of Good Hope as a victory for Christendom, as it diverted the European trade in Asian commodities away from the Ottoman empire (Mun 1621, pp. 4-9). But even if all of Europe ultimately stood to gain from the new arrangements, this did not preclude the emergence of disputes between different national interests, as witnessed by recent altercations between the English and Dutch companies (pp. 37-8). Mun expressed some cautious optimism that merchants of both nations could find the means for a peaceful coexistence, following the more recent rounds of diplomatic negotiations. He then proceeded to identify the true causes of England’s economic troubles, only to run again into another instance of commercial strife with the Dutch Republic, this time much closer to home. After listing the fishing industry as one possible channel for boosting English trade and employment, Mun observed: “The Dutch in particular, are said to reape such an infinite wealth yearely by this fishing Trade, that without more certain knowledge thereof I dare not set the sum, it seemeth so incredible” (p. 57).

Whereas Mun only obliquely touched upon the maritime claims in dispute between England and the United Provinces, Edward Misselden’s *Free Trade, or the Meanes to Make Trade Flourish* (1622) addressed the problem head-on. Andrea Finkelstein (2000, p. 9) called attention to how Misselden reproduces a passage from Grotius on commercial intercourse and the law of nature, without acknowledging the source. But there are plenty of other occasions where the pamphlet explicitly engages the arguments of *Mare Liberum*. Misselden’s critical attitude, perhaps surprising at first given his choice of title, is perfectly in line with the reception accorded to Grotius’ tract among English readers at the time. When discussing the inconveniences brought about by the “encroaching of strangers, in fishing upon our coasts,” Misselden (1622, p. 35) described how “not onely the *bread* is taken out of the subiects *mouth*, but that infinite *wealth*, which *God* hath made *proper* and *peculiar* unto *Us*, is become *common* unto *them*.” He then continued:

I am not ignorant that a learned man of that side, pressing hard on a treatise entitled *Mare liberum*, the Community and freedom of the *Sea* against the *Portugall* trade unto the *East Indies*: doth cunningly and obliquely [...] defend and maintaine, in the fift chapter thereof, their *Fishing* upon our *Coasts*. (Misselden 1622, p. 36)

The pamphlet next invoked Welwod's *De Dominio Maris* (1615) – an elaboration of the critique contained in his previous *An Abridgment of All Sea-Lawes* – to support England's claims for sovereignty over territorial seas:

To part of that Treatise, there is an answer entitled, *De Dominio Maris*, to which I refer those that desire further satisfaction in this matter. But in my judgment, [...] the author of *Mare liberum*, though otherwise very learned, strayneth his Arguments for that purpose beyond their strength. For *Ius* is said to be *Scriptum*, or *Non Scriptum*. And *Non Scriptum* is *Consuetudo*. And *Consuetudo non minus est species iuris, quam ius scriptum*. And by both these, the *proprieties* of the Seas may be proved, to belong to those *Princes* and *Countries*, to which they are next *adiacent*. (Misselden 1622, p. 37)

Misselden was careful not to challenge Grotius' arguments for Dutch rights in the East India trade, only denying their applicability to the fisheries dispute. Later in the pamphlet, however, he singled out both the colonial and the fishing trade as sources of abuse inflicted by strangers that caused damage to the king's honor, to public revenue, and the wellbeing of the commonwealth. Such abuses came from either friends or foes. Even if Misselden classified the Dutch among the former, he did not hesitate to highlight how, "by *Usurpation*, those Friends of ours, deprive us of our *East India Trade*, and *Fishing*" (p. 98). But his envisioned solution was distinct for each of these grievances. Regarding the East Indian trade, Misselden hoped the two companies could devise a way to operate on a strongly collaborative manner to present a unified front in their dealings with local rulers and traders (pp. 112-5). When it came to the fishing business, conversely, he was much less magnanimous:

For the *Fishing*, the infinite treasure that Strangers search out of our Seas, the variety of Trade that thereby they purchase, the multitude of *Mariners* they breed, the Fleets of Shipping they maintaine, me thinkes should every of them apart, or all of them together, be unto us as some many provocations to rouse us up to the exercise thereof: Whereby his *Maiestie* might receive such a Tolle of Custome of them, as other Princes doe in like case, and be once againe *Lorde and Master* of the Seas, for all the dispute of the author of *Mare liberum*: and the Native subiect encouraged by some Immunity or Privilege, to lay hold on that benefit, which God and Nature hath brought home to our doors. (Misselden 1622, pp. 125-6)

Misselden thus seemed much more concerned with establishing the English case for *mare clausum* in the North Sea fisheries than using the principle of *mare liberum* to safeguard English access to the East Indies. A rather similar attitude can be discerned in Gerard de Malynes' critical rejoinder, *The Maintenance of Free Trade* (1622). While antagonizing

Misselden in many of his central claims, Malynes (1622, p. 27) agreed the most desirable course of action in the East Indies involved some form of close cooperation between the English and Dutch companies: one could only expect larger and growing gains “when the said parties shall be united in *True Love*,” and thus better equipped to deal with local agents and interests. Likewise, he concurred the English had every right to charge duties of foreigners who fished on their coasts, and should do so both to enrich the kingdom’s coffers and to stimulate the domestic fishing industry (pp. 42-4). Malynes then listed the precedents established by several other European maritime kingdoms to conclude:

These exemplary Actions have long determined the question of *Mare liberum*, touching the *Communitie of freedom of the Seas*, which is acknowledged to be so, for *Navigation*, without that the same doth any manner of way prejudice the *Distinct Dominion of the Seas of all Princes* concerning fishing; that is to say, the fishing Trade. So that it is superfluous to alleage the opinions of *Orators* and *Poets* about the fishing heretofore in the *Mediterranean Seas*, neither doth it belong to this place to cite the determinations of the learned *Civilians* which are mentioned in the treatise *De Dominio Maris*. (Malynes 1622, p. 45)

Once again, we see a clear hierarchy of priorities when dealing with the arguments about maritime law in dispute at the time. Malynes conceded Grotius’ case with respect to navigation, and subscribed to the same natural law argument according to which “God caused nature to distribute her benefites, or his blessings to severall *Climates*, supplying the barrenesse of some things in one countrey, with the fruitfulness and store of other countries, to the end that interchangeably one Common-weale should live with an other” (pp. 58-9). But these considerations came in second when addressing the matter of fishing rights on territorial seas.

That same year, Malynes also published the first edition of his *Consuetudo, vel Lex Mercatoria, or the Ancient Law-Merchant* (1622), a compendium on mercantile law destined to become a landmark work in the field (de Ruysscher 2020). Even if the work contained no explicit references to *Mare Liberum*, Malynes (1622b, p. 3) made it clear where he stood already in the opening pages, claiming the law of nations exhorted sovereigns to preserve “a communitie of the Seas for navigation,” while also entitling them to “a distinct dominion of the seas adioyning to the territories and iurisdiction of their countries,” which comprised the right to impose “duties for the fishing in their Seas, Streams, and Dominions”. In later chapters addressing the principles of community and dominion of the seas, Malynes reinforced how, “according to the common right of mankind, *Iure Gentium*, the navigation through all the world, is no lesse free and open to everie one, than the use of the ayre” (p. 182). This was then followed by a lengthy demonstration, based on natural law and historical precedent, of English

rights to dominion over the seas “in places of fishing” (pp. 185-92). Malynes drove his point home in a chapter dedicated to the fishing trade, where he built on Gentleman’s *England’s Way to Win Wealth* to describe the herring fisheries as the “chiefest trade and principall Gold-mine” of the Dutch, “whereby many thousands of their people of trades and occupations are set on worke, maintained, and doe prosper” (p. 242).

## 5. A Fishing Empire?

In another pamphlet published a year later, titled *The Center of the Circle of Commerce* (1623), Malynes followed in the footsteps of Robert Kayll to question the profits derived by England from the East Indian trade. The fishing trade, he argued, “will effectually improve our exportations, and afford much more benefit than any *Persian* or East India Trade can doe, if his Maiestie were pleased to encourage them with prevelidges and immunities, as the worthiness of the action deserveth” (Malynes 1623, p. 127). As a member of the East India Company’s Court of Directors, Thomas Mun naturally held a much more approving opinion of its business. In *England’s Treasure by Foraign Trade* – posthumously published in 1664 but widely accepted to have been written during the 1620s (Gould 1955; Muchmore 1970) – he praised both staple and long-distance trade, on which rested the prosperity of mercantile republics like Venice, Genoa, and the Low Countries (Mun 1664, pp. 23-4). But even for a seasoned colonial merchant like himself, the North Sea fisheries still retained their allure. After arguing the luxury habits of the nobility were not necessarily damaging to the commonwealth if channeled to goods of domestic manufacture, Mun added:

But if any man say, that when the people want work, then the Fishing-trade would be a better employment, and far more profitable; I subscribe willingly. For in that great business there is means enough to employ both rich and poor, whereof there hath been much said and written. (Mun 1664, p. 149-50)

Chapter XIX of *England’s Treasure* consists in a long elucidation of the different effects proceeding from ‘natural’ and ‘artificial’ riches, structured around a comparison between England and the Dutch Republic. Just as the English were rendered “vicious and excessive” by the abundance of natural riches, shamefully neglecting such valuable trades as “the Fishing in his Majesty’s Seas of *England, Scotland, and Ireland*,” the Dutch stood out as a prime example of people who, “having little or nothing in their own Territories, do notwithstanding purchase great wealth and strength by their industrious commerce with strangers” (pp. 178-83). But rather than see this almost exclusive reliance on artificial riches as



a mark of unending success, Mun implied this constituted their signal weakness. The Dutch waged war on the mighty Spanish and controlled the markets of all Europe, but to do so “they have little foundation besides the Fishing, *which is permitted them in his Majesties Seas*, being indeed the means of an incredible wealth and strength, both by Sea and Land” (p. 186). Without this foundation, he continued, “it is apparent that they cannot long subsist in Sovereignty,” since “the whole building of their wealth and strength both by Sea and Land must fall” (p. 187).

Having thus shown how “the glory and power of these *Netherlanders* consisteth in this *fishing of Herrings, Ling and Cod in His Majesties Seas*,” Mun then proceeded to inquire about “what right or title they have thereunto, and how they are able to possess and keep the same against all other Nations” (p. 188). While Grotius had appealed to precedent and the law of nations, Mun was clearly of a different opinion:

[...] it is not the *Netherlandish* author of *Mare Liberum*, that can intitle them to Fish in his Majesties Seas. For besides the justice of the cause, and examples of other Countreys, which might be alleged, I will only say, that such titles would be sooner decided by swords, than with words (Mun 1664, p. 188)

The English might have reasons to condone Dutch fishing in their coasts on grounds of political expediency. So long as the Dutch remained “in perfect league with England, and in war with Spain,” this act of magnanimity would make them “ever bound to acknowledge their strong alliance with *England*, above all other Nations, for there is none that hath the like good means to lend them such a powerful maintenance” (pp. 189-90). But as Dutch maritime power thus rested on precarious foundations, the English had no reason to stand in awe of their North Sea rivals: “The *United Provinces* (we know) are like a fair bird suited with goodly borrowed plumes; but if every Fowl should take his feather, this bird would rest neer naked” (p. 196).

Thomas Mun, the East India merchant, was thus ready to subscribe to a vision of commercial and maritime empire where the command of territorial possessions close to home, rather than long-distance trade routes, was the foundation of power and opulence. Others were more willing to bet on colonial trade as the key to imperial success. In his *Englands Exchequer, or a Discourse of the Sea and Navigation* (1625), John Hagthorpe stressed how “the glory and sovereignty at sea, hath at this day three Competitors, the English, Dutch, and Spanish Nations, between whom, though there were no open hostilitie, yet is there a politique secret warre, by striving to undermine and beat each other, out of their trade” (Hagthorpe 1625, p. 7). To fight this ‘secret war’, he added, “it seemes not onely profitable, but right necessarie to continue the East Indian trade, & if it be possible to settle also a West Indian like the Hollanders have

begunne” (p. 20). Dutch expansion in the colonial trade, in other words, had “imposed upon us a meere necessity of doing something in the same kinde” (p. 21).

More often, however, the herring fisheries and the colonies were treated as complementary foundations of a solid maritime empire. Moreover, concern with the North Sea fishing trade persisted even as England expanded its overseas colonial empire. Two decades later, on the eve of the Civil Wars, Henry Robinson’s *Englands Safety, in Trades Encrease* (1641) once again exhorted his English compatriots to “show our selves sole Sovereaigne of the Sea, and with our Trident Scepter give laws [...] to all nations” (Robinson 1641, p. 2). After claiming the English fisheries to be “a treasure equall to that of both Indies,” he concluded in capital letters: “unless the fishing imployment and East India traffique be followed and enlarged, other Nations will gaine upon us, our trade infallibly decline daily, and the whole State with the same speede and paces post on to poverty and utter ruine” (p. 49). The image of a thriving maritime empire firmly grounded in the British Isles and their fishing trade remained powerful among the English merchants.

The importance of the fisheries dispute in Anglo-Dutch relations during the early decades of the seventeenth century determined the context for the contemporary reception of *Mare Liberum* in England. Grotius was read and appropriated by English merchants, but not as the authoritative source on maritime and international law that later generations would see. On the contrary, his tract was interpreted as a partisan piece at the service of specific political and ideological agendas. As the English hesitated between the fishing industry and the colonial trade as the core of their imperial project, *Mare Liberum* became entangled in arguments about rights of dominion over territorial seas – rather than serving as a manifesto for the freedom of trade and navigation as principles inscribed in divine and natural law. To paraphrase Peter Borschberg (2005, p. 47), the fate of *Mare Liberum* in the hands of English merchants makes it clear that free trade and politics have never been neatly separated in practice, reinforcing how “issues of trade and commerce have been, and may always remain, inseparably coupled with the tenets of political expediency”.

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