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To cite this article: Mikki Stelder (2021): The colonial difference in Hugo Grotius: rational man, slavery and Indigenous dispossession, Postcolonial Studies, DOI: [10.1080/13688790.2021.1979297](https://doi.org/10.1080/13688790.2021.1979297)

To link to this article: <https://doi.org/10.1080/13688790.2021.1979297>



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Published online: 12 Oct 2021.



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The colonial difference in Hugo Grotius: rational man, slavery and Indigenous dispossession

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ABSTRACT

(Post)colonial Dutch historiography remains saturated with the myth of the Dutch as benevolent and sometimes even reluctant imperialists geared toward trade rather than settlement. In this article, I seek to unsettle some common presumptions made on the basis of this myth through a re-reading of the work of Dutch lawyer, humanist and state ideologue Hugo Grotius. In particular, I hone in on his writings on slavery and Indigenous (dis)possession to show how colonial and racial violence structure his construction of the free sovereign subject. In doing so, I seek to intervene in existing critical scholarship on Grotius that continues to position the undifferentiated sovereign subject at the heart of his legal thought and positions him as a friend of Indigenous peoples. Applying colonial difference as a lens for reading Grotius's work, I argue that his legal framework set up the very conditions of possibility for colonial conquest by constructing a Dutch propertied subject as universal.

KEYWORDS

Hugo Grotius; Indigenous dispossession; slavery; Dutch empire; colonialism

In the 2019 inaugural lecture 'Some Cursory Remarks on Race, Mixture and Law by Three Dutch Jurists', Dutch legal scholar Betty de Hart opens by lamenting the fact that European legal scholars tend to uphold a positive(ist) understanding of European legal systems as 'historically democratic, liberal, tolerant and non-racist (again, with the exception of the Nazi legal system), even anti-racist'.¹ De Hart suggests that it is about time scholars of European legal systems take issue with how race thinking has influenced law, regulations and legal scholarship.

De Hart's lecture is a response to Gloria Wekker's call to explore how race, racism and whiteness operate within the Dutch cultural archive. Wekker draws on the work of Edward Said. She writes that the cultural archive is steeped in 'white innocence', or a Dutch self-perception of an ethical, small, just and tolerant nation that doesn't do race.² The cultural archive gives us a sense of self, determines how we look at the world, influences the way we think and feel, and, as de Hart argues, is also based on law and legal thought.³ De Hart suggests that the legal archive belongs to the cultural archive.⁴ In deploying the term 'legal archive', she is particularly interested in how

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Renisa Mawani uses the term. Mawani argues that few have tried to conceptualize what constitutes a legal archive and how it might influence what we think of as law. Mawani defines the legal archive as not only made up of rules and laws, but often also as a collection of hegemonic narrations of the past that are not always already connected to law.⁵

De Hart's lecture situates the beginning of Dutch legal thinking about race in the nineteenth century and examines its transformation of eugenicist myths into law. But what about earlier legal epistemologies, which have contributed to the ways that racialized difference is administrated, calculated and conceived? Sylvia Wynter draws attention to how Europeans in the modern/colonial world described themselves at/as the centre of the human. She calls this process an 'overrepresentation of Man', which at the same time invented Indigenous and Black peoples 'as the physical referent of the projected irrational/subrational Human Other to its civic humanist rational self-conception'.⁶ In this article, I am particularly interested in this tension in the work of Dutch East India Company (VOC) spokesman and humanist, Hugo Grotius, and examine how his thinking about (Dutch) Man and his 'human Others' formed the conditions of possibility for legal epistemologies of slavery and Indigenous (dis)possession. Using the term '(dis)possession' I draw attention to how Indigenous dispossession and possession of Indigenous bodies as slave labour go hand in hand in Grotius.⁷

How does 'colonial difference' operate within Grotian imaginaries of (dis)possession and slavery?⁸ Engaging Grotius on these terms, I question some of the primary assumptions underlying even the most critical engagements with Grotius's oeuvre, namely that an undifferentiated, free sovereign subject lies at the heart of his legal-political philosophy; that the international legal order he envisioned was 'non-discriminatory' and 'universal', although it bi-furcated the international world order based on colonialism; and that his ideas on contract were based on mutual 'reciprocity', 'consent' and 'recognition'.⁹ Drawing attention to the entanglements between Grotian ideas of rational man, slavery, and Indigenous (dis)possession, I distance myself from many of the liberal humanist assumptions that continue to underpin studies of his legal framework.

The Grotian imaginary has played a fundamental role in international legal thinking for four hundred years. Throughout the nineteenth and twentieth centuries, alongside Alberto Gentili and Francisco Vitoria, Grotius was hailed as the founding father of modern law and subjective rights. It is only in the past two decades that his work has come under critical scrutiny.¹⁰ While such critical scholarship has opened up new avenues to engage his oeuvre, it largely applies a universalist perspective to his legal philosophy and only rarely addresses the epistemological and ontological underpinnings of his writings. Grotian scholars have thus largely overlooked the relationship between his construction of early humanist (Dutch) Man, Indigenous (dis)possession and slavery. Whenever the topic of enslavement or Indigenous (dis)possession is discussed, it is set in a paradoxical relationship with Grotius's notion of individual rights and freedom. However, as I argue in this article, Grotius's construction of non-European peoples as enslaveable and (dis)possessable was precisely what enabled the Dutch/European, free, rational Man as a legal person to be established in the first place. Thinking about the relationship between colonial-racial violence and Dutch rational Man in Grotius as co-constitutive rather than paradoxical is inspired by scholarship in Black, postcolonial, and critical Indigenous scholarship that draws attention to how colonial difference constitutes the modern subject of humanism. Such work demands a deeper understanding of the role of legal thinking in the construction of liberal humanism, and the racial,

gendered, capitalist and colonial violence that is foundational to its notions of freedom and the sovereign subject.¹¹ The humanist construction of man is founded on the exclusion of racial and sexual others. Grotius's rational Man is no exception.

This article engages Grotius on different terms and seeks to open up a critical grammar for thinking through his construction of the sovereign subject. I aim to expand the historical focus of scholars such as De Hart, by showing the relevance of the seventeenth century in creating the conditions for Dutch colonial-racial epistemologies and their contemporary reverberations. By doing so, I endeavour to disrupt the continuity of historiographical accounts that posit Dutch expansion occurred without empire formation and that Grotius was interested in benevolent commerce, rather than violent colonization.¹²

This article begins to consider how Dutch colonial-racial conceptions of self and other(ness) shape Grotian conceptions of the human and establish a Calvinist, propriety, rational (Dutch) Man at the centre of his legal thinking. Reading slavery and dispossession as deeply entangled with ideas about who constitutes the true sovereign subject and as foundational to Grotius's thinking on law and justice places Grotius's understanding of the sovereign subject, freedom and contract in a new light.

Letter to the Sultan

In the Winter of 1606–1607, Grotius drafted a series of peculiar letters on behalf of the directors of the VOC. The letters were addressed to the rulers of Tidore, Johor, Patani, Ternate, Jakarta, Batam, Banda, Ambon and Siau. Penned in the first decade of Dutch imperialist expansion in Asia, these letters were meant to introduce Southeast Asian polities to the VOC. In these letters, Grotius explained that the Dutch, who were 'more inclined to commerce than all other people', had decided to unite their regional companies into one large shareholder corporation, holding monopoly title to trade in Asia.¹³ The VOC was not only founded to 'protect [the Dutch] from the Spanish and Portuguese [*who have unjustly sought to proscribe free trade throughout the world*]', but also to be most diligent in liberating East Indian princes and nations from Iberian tyranny'.¹⁴ In his letter to the Sultan of Tidore, for instance, Grotius boasted about the fact that the Dutch had captured a Portuguese fortress in the sultanate and had thereby contributed to the Sultan's liberation. In the same letter, he urged the sultan to settle his dispute with the King of Ternate, as it might 'hamper the execution of [Dutch] plans' to expand its presence in Asia. Grotius admonished the Sultan, as he 'did the King of Ternate', to resolve the dispute and become allies with the Dutch. 'Strife and discord among East Indian princes', Grotius worried, 'has always served to strengthen the position of the [*Spanish and*] Portuguese'.¹⁵ Thus, Grotius urged Indigenous rulers to become allies to the Dutch in exchange for trading rights and protection.

In the final paragraph of his letter to the Sultan of Tidore, Grotius expresses his concerns about neighbouring European states' interest in expanding their own presence in Southeast Asia. He was troubled by the French and the British, who, at the time, had peaceful relations with the Portuguese. In order to prevent their expansion, Grotius asked the Sultan to grant exclusive trading rights to and maintain a military alliance with the VOC.

These letters were written around the same time as Grotius was writing his *De Rebus Indicis*, or *On the Affairs of the Indies*, which was later translated as *De Iure Praeidea* or *Commentary on the Law of Prize and Booty*, and the pamphlet *Mare Liberum*, or *The*

Freedom of the Seas.¹⁶ Although *De Indis* was written between 1603 and 1609, it was only discovered, translated and published in English in the nineteenth century. It served as a preliminary study for Grotius' famous text *De Jure Belli ac Pacis* (*DJBP*), or *The Rights of War and Peace*, which is still a foundational work for international law today. While most references to the Dutch in *DJBP* have been obscured, Grotius's thinking about the Dutch colonial encounter is implicit throughout the text.

Grotius was contracted to write *De Indis* on request of the VOC. In the Edict of 1602, the States General conveyed the authority to the VOC to attack Portuguese and Spanish ships in foreign waters and sign contracts with and invade native lands. Grotius composed *De Indis* as a response to the capture of the Portuguese carrack called the *Sta. Catarina* off the coast of present day Singapore. The VOC was intent on showing that the capture of the carrack by VOC employee Jacob van Heemskerck was a public and private act of war, and that it was justified that the Dutch/VOC kept the booty for Company and state. It comes as no surprise, perhaps, that Grotius's opening remarks proclaim that through Dutch commerce with Asia 'the wealth of [the Dutch] state is chiefly if not entirely sustained'.¹⁷ Grotius used the case of the *Sta. Catarina* as a foundational legal precedent to unfold his universal law of war and booty and his *mare liberum* doctrine, even though the case is not mentioned in his manifesto.

Grotius's unique contribution to the universal law of war consisted of what he himself describes 'a fixed order of teaching, the right proportion of divine and human law mixed together with the dictates of philosophy'.¹⁸ He crafted 'legends and patriotic explanations for the superiority of the Dutch brand and its economic model' to bolster his legal writings.¹⁹ Grotius anchored ideas of just war, property and sovereignty to the case of the ship's capture in the hope that it would set a legal precedent for future cases.²⁰ His work not only influenced European thought of his contemporaries, such as Locke. In the nineteenth century, his work experienced a revival among imperialist powers.²¹

In her introduction to the most recent publication of *De Indis*, Ittersum argues that Grotius was one of the first modern legal thinkers to position the sovereign subject as 'the starting point of his political and legal philosophy'.²² The notion of an undifferentiated sovereign subject remains unchallenged. Although contemporary studies scrutinize the impact of Dutch colonial endeavours in Southeast Asia as central to *De Indis*, they continue to disregard the ontological colonial difference at the heart of his thinking about the sovereign subject. Descriptions of rational Man and his Others were the driving force behind *De Indis*, return in *The Rights of War and Peace*, and structure Grotius's arguments about Indigenous (dis)possession and enslavement. Instead of celebrating Grotius's liberal-humanist triumph of undifferentiated rational free Man, or positioning the practice of the VOC as paradoxical to this Grotian notion, I pay attention to how the notion of a particular kind of free sovereign subject emerges in Grotius's work. In doing so, I show that European Christian Man appears in the text as a subject who acquires his humanity through the conquest of lands and bodies. By contrast, Grotius positions non-Christians as worthy of expulsion and/or bondage, which is not simply the effect of treaty making or 'conflict', but is constitutive of his notion of the sovereign subject as propertied, Christian, European and male. Keeping colonial interest at the centre, Grotius's writings give rise to a particular form of Dutch liberal humanism that signified a departure from Iberian modes of conquest and developed a decidedly capitalist understanding of the human that deeply influenced the consolidation of European imperial and epistemic power across the globe.

Studying the relationship between Grotius' theories and practice, Ittersum argues that Grotius genuinely believed that the Dutch were friends and liberators of Indigenous peoples in the early days of the VOC, which led him to – at the time – rather unusual conclusion that Europeans could trade with non-Christians.²³ However, in these letters, it becomes clear that Grotius, and by extension the VOC, ultimately viewed Indigenous polities as key players in the development of trade, and at the same time, as subordinate to Dutch commercial and colonial success. Although deeply critical of the VOC's influence on Grotius's work, Ittersum and others continue to foreground the undifferentiated sovereign subject, equal trade between Christians and non-Christians, and international peace as central to Grotius's oeuvre. Undoing such positive(ist) attachments to his contributions, I will show how Grotius's framework deliberately pre-empts Indigenous resistance and slave revolts through his use of a differentiated notion of the sovereign subject, the right to property acquisition, and contract. Grotius's letters to Asian rulers augur that Indigenous people should be forewarned – the Dutch would demand unlimited access to their lands, peoples and resources and use their experiences in Asia to expand their power across the globe.²⁴

Of property and contract

In the *Prolegomena of De Indis*, Grotius outlines nine 'rules' (principles) and thirteen 'laws' (precepts) in a specific fixed order.²⁵ His first rule 'What God has shown to be His Will, that is law' serves as the foundational principle for Grotius' understanding of his primary legal precepts. Law I states, '*it shall be permissible to defend [one's own] life and to shun that which proves injurious*'. Law II dictates, '*it shall be permissible to acquire for oneself, and to retain, those things which are useful for life*'.²⁶ Here, Grotius turns the story of Creation into a tale of Man's self-preservation, which he translates into the need of the Dutch to pursue their own interests, which they purportedly pursue above all with modesty and virtue, as: 'the first principle of a man's duty relates to himself.'²⁷ For Grotius this is the primary expression of love. In the *Prolegomena*, he not only first articulates the idea of rational merchant Man, he also places this Man in relation to a recurring theory of the body and bodily attachments, which he repeatedly draws upon to delineate the differences between rational Man and his Others. He begins by acknowledging that humans are vulnerable corporeal entities that can to be benefited or injured by one another. This quality is found in animals 'who were given their corporeal members' and in the hands and feet of humans 'as instruments for the two functions of repelling and attaching'.²⁸ These two functions are God's will, as they are both necessary for 'being' and for 'well-being'. Grotius not only places legal principles into a hierarchy, he also asserts that the very 'well-being' of Man dictates that 'in a universal sense, moreover, *inferior things were given for use by their superiors*. Plants and herbs, for example were given to beasts, and beasts – as well as *all things* in general – to man, inasmuch as *man excels in worth all other created things*'.²⁹ As God had bestowed such gifts on 'the human race', or Man, it was imperative for Grotius that 'the acquisition of possession by individuals' of lands, peoples and things was also understood as God's will.³⁰ Although not everything could be owned, everything was subjected to a notion of property.

Grotius deems Man's pursuit of his own interests an act of self-love and love of others, which he considered especially prominent in Dutch Man, as Man is 'peculiarly endowed

... with the sovereign attribute of reason', which is the result of God's imprint of His own mind upon Man.³¹ At the same time, Man's love of others is an expression of affection, which manifests itself in the law of nations that is based on a consensus among all nations that leads to Rule II 'what the common consent of mankind has shown to be the will of all, that is law'.³² In this case, the law of nations is a strictly European construction.

For Grotius, rational Man is intimately intertwined with becoming a propertied subject, who is interchangeably presented as virtuous, moral, just, honourable and beneficial. Man's *being* resides in his rational acquisition of private property to the exclusion of all others. In Law I, Grotius constitutes what I call *the right of conquest as a matter of self-defence*, and in Law II the act virtuous acquisition, which I argue is more aptly described as *the right of extraction*. Throughout *De Indis*, the right to conquest and extraction are within the purview of the Dutch, who pursue their self-interest as what Grotius deems a matter of virtue, benevolence, love and justice. Consequently, he does not consider Indigenous people to be entitled to the same rights, as they do not possess the same rational faculty needed to defend and acquire property.

Grotius further developed who is considered more capable of taking possession of property and claiming ownership in *DJBP*. 'Offence against nature', became a key theme which created the 'grounds for intervention in order to punish breaches of natural law' based on the supposedly improper practices of non-European peoples.³³ Furthermore, proper cultivation and demarcation of land were key to establishing ownership. Improper cultivation, particularly among Native Americans, rendered the land *res nullius*, or unclaimed and in wait of being possessed by the Dutch.³⁴ Grotius ideas on labour and cultivation were further developed by Locke in his *Two Treatises of Government*.

Anthony Anghie discusses how Grotius's legal framework set up the very conditions of possibility for the colonization of lands and of law, and argues that the birth of modernity as we know it must be traced to the conquest of the Americas *and* to the birth of the VOC.³⁵ Grotius is not just a legal scholar, as his theories were deeply influenced by his philosophical conception of the human and his involvements in local and colonial affairs. His work transformed conceptions of the human prominent in the Valladolid debates of the sixteenth century regarding the humanity of the native. Instead, he positioned inviolable contract and Man's right to private property, self-defence and extraction at the centre of his notion of universal Man. His ideas highlight the benevolent Calvinist, Dutch, merchant Man whose virtue, honour and benevolence both entitled him to innocently acquire Indigenous land and enslave non-European peoples, which Grotius deemed to be for their own good and protection.

Enslavement and natural law

In *On the Rights of War and Peace (DJBP)*, Grotius spends a remarkable amount of time explicating the position of the slave and the master. Although he uses the Latin term *servitus* to reference multiple forms of bondage and servitude, each is attributed meaning in relation to ideas about the slave and enslavement.³⁶ In Book II, Grotius's thoughts on enslavement reflect certain categories found in Roman and natural law, particularly the concept of 'voluntary slavery', and his ideas on voluntary bondage are later reiterated in his writings on inviolable contract.

Although Grotius argues that while slavery did not exist in a state of nature because everything was held in common, ‘voluntary slavery’ did exist according to natural law. Although every ‘human’ being is born free, Man’s free will might lead him to subject himself to the will of another and become his slave. In this scenario, Grotius sees the relation between slave and master as a relation of mutual benevolence in which the slave subjects herself to the master in exchange for aliments. Her children will equally remain slaves as they have to pay off their debt to the master who cared for them in childhood.

Many legal scholars have understood Grotius’s conception of slavery as a notable departure from Aristotle’s idea that some men are slaves by nature.³⁷ However, this scholarship has not paid enough attention to the relationship between the idea of voluntary slavery in *DJBP* and Grotius’s descriptions on the mind of the slave in *De Indis*.

In Chapters VI and VII of the *De Indis*, Grotius unfolds his theory of the subject, which is explicitly understood as the subjected. Grotius uses descriptions of bodily attachment to describe the relationship between the master/magistrate and the subject based on a theory of (dis)possession and ownership, whereby the master is not a subject. He takes the slave as an illustration of this relationship, for which he uses the household as a metaphor: ‘A household consists, as it were, in a multitude of bodies directed by one mind; and absolutely every person who serves another is an instrument, wherefore we refer to those whose labour we utilise, as our “hands.” Let us apply the designation, “subjects,” then, to all such persons.’ The master operates as the head of the household, while his subjects constitute his hands. That relationship also relies on an internal hierarchy in which ‘every person who serves another is an instrument’.³⁸ For Grotius, subjects are citizens, women, children, slaves and the insane. However, a fundamental difference between slavery and these other forms of bondage remains – *only non-Christians can be enslaved*. This is based on a limited rational faculty that he deems is present in the slave which makes her particularly suitable to being subjected to bondage. Furthermore, only the enslaved can be fully dispossessed of their property, whereas children, women and the insane have been granted property rights under the law of nations, even as the governance of their property is given over to the *pater familias*.³⁹

Grotius concedes to Aristotle’s conception that ‘certain persons are by nature slaves, not because God did not create man as a free being, but because there are some individuals whose character is such that it is expedient for them to be governed by another’s sovereign will rather than by their own’.⁴⁰ In other words, he re-interprets Aristotle’s idea of ‘slave by nature’ as the idea of voluntary subjection that is not simply based on free will, but on a particular rational faculty found in those deemed naturally inclined to give up their freedom. Becoming a slave is thus a question of free will. Access to the full rational faculty essentially defines Grotius’s Man as forged in God’s image and thus renders this Christian, European Man unenslavable. In addition to full access to the rational faculty, a capacity for virtue also differentiates a free man from an enslaved person. ‘Virtue desirable in a slave’, Grotius argues, ‘is not the perfect form required of one who commands but rather the form necessary for servile purposes’, this virtue is ‘limited in extent’.⁴¹ Although a slave is not deprived by nature of ‘all claim to virtue’, they ‘cannot be placed on a level with free men, since they do not possess, “the deliberative faculty”’.⁴² He thus concludes that both virtue and mind lacking in a slave, who

consequentially requires the benevolent paternalism of the master. Grotius conceptualizes voluntary slavery by conjuring the benevolent master who uplifts his slaves from poverty – a common trope within Dutch discourses of slavery, which corresponds to a particular form of colonial-racial humanism that runs through Dutch history until today.

Enslavement and the law of nations

Book III of *DJBP* discusses enslavement under the law of nations and prize law. Here, Dutch merchants possessed the right to enslave persons who had become a prisoners of war. This right was very often deployed as a justification for slave raids on the African continent, which characterized enslavement as an act of reparations based on just war doctrine.⁴³ In a similar vein, Grotius portrayed the act of seizing Indigenous lands through war or ‘voluntary’ contract as just reparations, consensual agreement, or benevolent guidance. Grotius utilizes Vitoria’s writings on just war and slavery. As Anghie notes, Vitoria found it justifiable under conditions of war to seize all enemy goods and ‘carry all enemy-subjects off into captivity, whether they be guilty or guiltless’. Vitoria considered non-Christians, or what he termed ‘pagans’ perpetually enslavable under the conditions of just war.⁴⁴ Grotius extends Vitoria’s writings by arguing that the conqueror had the right to enslave the non-Christian population even under *unjust* conditions of war and that punishment under conditions of war was part of natural, not civil law. In both cases, the enslaved must not resist their fate.⁴⁵

Under the law of nations and natural law, the master had the right to punish or kill the enslaved with impunity and under the protection of the law.⁴⁶ For Grotius, slavery became a matter of ‘privilege conferred on the conquerors’ based on the fact that otherwise ‘they might simply slaughter’ the captives.⁴⁷ Here, too, slavery is framed as an act of benevolence. The master would subsequently be entitled to the property of the enslaved, which in the case of enslaved women also included her children. ‘Neither do only they become slaves’ he wrote ‘but their posterity for ever; for whosoever is born of a woman after she is a slave, is born a slave’.⁴⁸ Her womb would become ‘*servitio subjectum uterum*’, a womb subject to bondage.

What differentiates a slave from other forms of bondage is connected to what became known as the *partus sequitur ventrem doctrine* in the United States. Black feminist thinkers have drawn attention to how the wombs of Black enslaved women were forced to reproduce white supremacist racial capitalism.⁴⁹ Grotius’s early colonialist rendition of this Roman doctrine sheds light on the ways its genealogy reaches beyond the (legal) colonization of enslaved Black women’s bodies in the U.S. and draws attention to how it enabled early colonialist expansion and the enslavement of Indigenous peoples across oceans. His legal writings are thus instrumental in the modern-colonial transformation of this Roman doctrine into a decidedly racial-capitalist form.⁵⁰

Grotian scholars rarely discuss slavery and are largely concerned with his distinction between voluntary slavery under Roman and natural law, and slavery under the law of nations. Studies of the former have emphasized the paradox between Grotius’s ideas of freedom and voluntary slavery, while those on the latter have specifically focused on the question of slavery and war. None of these studies however have paid attention to the ideological and material effects of one very fundamental feature of Grotius’ framework for the justification of slavery: Christians cannot enslave other Christians. In

other words, none of these studies have paid attention to *colonial difference*, that is, not simply the influence of the colonial context in his work, but more importantly the ways in which his writings rely upon and are structured by this ontological difference based on Christian male supremacy. Colonial difference gives meaning to Grotius's ideas about slavery and the slave, either in the context of voluntary or involuntary slavery. Focusing on this fundamental feature enables a different examination of the relationship between Grotius's legal writings and the colonial-racial thought which informs it.

Although Grotius was not a scientific eugenicist, his ideas about slavery and rational faculty play a key role in considering the body and difference in his conception of Christian Man as universal human. Two decades later, his friend Caspar Barlaeus would write '[Africans] tolerate hard labor very well ... Born as though destined to endure natural hardships and the miseries of slavery'.⁵¹ For Grotius, the Dutch (propertied) Man par excellence embodied the rational faculty and thus occupied the position of the free sovereign subject. The only freedom available to a slave was the freedom to subject herself or be subjected to the master. Access to this rational faculty meant that Christians could never become slaves. This was not only impossible under natural law, but even the supposedly unbiased law of nations would forbid it.⁵² Christian captives could only be used in a prisoner exchange. In the case of involuntary subjection, access to the rational faculty distinguished the rational political subject, which Sylvia Wynter terms Man1, from his Others, who, according to Grotius, are subrational/irrational subjected, enslaveable and colonizable beings under any form of law.⁵³

For Grotius, slavery was a promising institution. Like trade, slavery was the (un)intended effect of (un)just warfare, or – more succinctly – of a Dutch imperialist mission. Christians were eager to show the enslaved that their benevolent treatment would encourage the enslaved not only accept their lot, but also to see the light of Christ.⁵⁴ In a similar vein, the Dutch viewed commerce as a primary motor for spreading Christianity across the globe. As Ileana Porrás argues, Grotius attributed a 'providential function of commerce' to show how virtuous commerce could help the natives accept the light of Christ.⁵⁵ This enabled him to set the Dutch apart from the violent Christianizing missions of their Iberian counterparts in the Americas. Hence, according to Grotius resisting the Dutch would constitute a threat to the 'profit of the entire human race'.⁵⁶

Although Christians could never become slaves, by converting to Christianity the enslaved and colonized could not (re)gain their sovereignty or the possibility of manumission. Conditions of (in)voluntary slavery bound the enslaved and their offspring to the master for life through the introduction of perpetual ownership and inviolable contract. This shows that the distinction between Christians and non-Christians was further differentiated as European and non-European. For Grotius, conversion emphasized that 'Christianity shows that [the slaves] should be patient, rather than engage in acts, which, though permitted, might offend those whose spirits are foreign to Christianity or are otherwise weak'.⁵⁷ This too is a point where Grotius differentiates slavery from other forms of bondage. Although, for Grotius, subjects are generally subordinated to the will of the magistrate, in *De Indis*, he describes situations in which 'reason might rebel'.⁵⁸ Grotius thus introduces the right for citizens to revolt against their magistrate on the basis of just cause in order to justify the Dutch revolt against Iberian rule.⁵⁹ In the context of slavery, however, 'reason must not rebel' – a slave is morally obliged to accept her lot and refrain from resistance or fugitivity. Grotius also utilizes the

concept of *postliminium* to justify the (re-)capture of runaway or manumitted slaves, which court cases frequently employed to justify the (re-)capture of slaves regardless if they resided on so-called free soil or not. The right to *postliminium* designates the recovery of property after capture in war, which includes the recovery of property rights over slaves, ‘even after they have been alienated several times or manumitted’.⁶⁰ In other words, Grotius pre-empted slave revolts and argued that it is unjust to resist a master, as the master is simply exercising his property rights, which are to be protected at all cost. Centring the pre-emption of revolt more firmly within a Grotian legal framework that is informed by colonial difference shows that the free sovereign subject is always already differentiated. In his articulation, the predisposition of the ‘subrational/irrational’ slave is to become property – and property must not revolt. For Grotius, access to and the defence of property is the primary condition of being human and, if threatened, necessitates the use of violence. According to natural law, while a Christian male is most naturally entitled to these forms of ownership, non-Christians are deemed worthy of subjection and bondage.

Unlike his Protestant humanist counterparts, Grotius is often considered a unique thinker because he argued that it was just for Christians to engage in trade with ‘infidels’. However, by linking Grotian ideas on rational Man to slavery and (dis)possession, it becomes clear that Grotius did not consider non-Christians as equal trading partners, but as potential colonial and/or enslaveable property. This not only hinged upon just war doctrine but equally upon the non-Christian’s ‘lack’ or ‘underdevelopment’ of a rational faculty, which enabled Grotius to introduce legal justifications for Indigenous (dis)possession that directly corresponded to his ideas on slavery.

Indigenous (dis)possession

In Chapter XII of *De Indis*, Grotius establishes four precepts: universal free trade; the impossibility to divest ‘infidels’ of their property because they are ‘infidels;’ the sea is free; and, one nation cannot hold exclusive trading right through seizure, papal grant, or prescription. Grotian scholars portray the second claim – ‘Infidels cannot be divested of public or private rights of ownership merely because they are infidels, whether on the ground of discovery, or in virtue of a papal grant, or on grounds of war’⁶¹ – alongside his introduction of trade with non-Christians as a sign that he considered non-Christians and Christians to be equal. If ‘infidels’ cannot be divested of their property based on discovery, papal grants, or Iberian declarations of war, nor can exclusive trading rights be granted on these grounds, then how does Grotius justify such actions? What was at stake for Grotius was not the portrayal of Indigenous peoples as equals, but rather the need to formulate a legal justification of imperial expansion that diverted from Iberian claims to world domination based on papal grants and Christianizing missions as grounds for conquest.

Grotius saw free trade and navigation as a purview of the Dutch. To engage in trade was to serve God’s purpose. Grotius also argued that engaging in trade with the Dutch might even help non-Christians see the light of Christ. In one fell swoop, Grotius deems Portuguese dominance as a crime against nature and frames the trading contracts drafted by the Dutch as that which makes them ‘saviours of the Orient’.⁶² For Grotius, trade was thus a new kind of Christianizing mission and a way to pre-empt modes of

Indigenous resistance against Dutch colonial encroachment. Alongside legitimizing trade with non-Christians, Grotius introduced the notion of *pacta sunt servanda* or ‘treaties must be honoured’. Grotius deemed treaties absolute, perpetual and unbreakable. While Grotius was drafting his legal frameworks, Dutch merchants were engaged in enforcing and coercing Indigenous peoples to sign away parts or all of their lands through contracts with the Dutch, which were written according to *Dutch* standards. If a contract was broken, the Dutch would take Indigenous lands as acts of just reparations. Alternatively, refusing to sign a trading contract with the Dutch would constitute a breach of the natural law of freedom of trade, which served as a just cause of conquest. In 1612, Jacob L’Hermite wrote that resistance to Dutch encroachment in the Banda Islands could only be curbed if they were ‘totally conquered or with proper guarantee brought to reason or entirely extirpated’, which occurred in 1621 with the Banda Islands genocide.⁶³ Although many scholars see Grotius’s emphasis on free trade as counterintuitive to his insistence on Dutch monopoly contracts during the 1613–1615 colonial conferences, it seems that these were co-constitutive. Grotius never wrote ‘the right to carry on trade with another nation cannot become the exclusive possession of a particular party’ period. He argued that exclusive trading rights could not be established through seizure, papal grant, or prescription, but that they could be through contract.

In *De Indis* and *DIBP*, Grotius argued that some are naturally inclined to enter into contracts that do not benefit them in the same way as the other signee. This is especially pronounced within the colonial context in which such contracts were based on the ontological predisposition to rule and be ruled. European colonizers readily employed Grotian ideas on absolute and perpetual contract to coerce Indigenous peoples into signing away all or parts of their lands and livelihoods, and to procure captive Africans on the African continent.

Rather than radically break with Spanish ideas about the Christianizing mission and the prohibition of trade with non-Christians, Grotius introduced absolute contract as an alternative form of colonialism that would, in a sense, render Indigenous peoples responsible for their own dispossession. Refusal to engage in treaties and contracts, and Indigenous resistance to Dutch encroachment were pre-empted. Grotius considered the Iberian model for dispossessing Indigenous peoples of their lands on the basis of their non-Christianity to be incomplete. For Grotius, a just cause for invasion consisted of non-Christians resisting free trade and the establishment of trading posts, the improper cultivation of lands, or breaking contract.

Grotian ideas about slavery and the acquisition of extra-European territories are closely intertwined. Although in the European context Grotius was one of the first legal thinkers to define sovereignty separate from internal distinctions among Christians, outside Europe his understanding of sovereignty was deeply entangled with a notion of the sovereign subject based on colonial difference. He tied voluntary subjection to the concept of perpetual bondage and the servile disposition of non-Christians. Voluntary subjection through contract consolidated a different kind of colonial-racial humanism rooted in the ontological distinction between rational Christian man and his sub-rational/irrational non-Christians others. The native’s non-Christianity on its own no longer constituted grounds for colonization, but resistance to Dutch free trade, improper cultivation, or breach of contract did serve as legal justifications for colonization. If Indigenous people would resist Dutch encroachment, they were involuntarily subjected.

Grotius's legal framework emerged hand in hand with VOC policies and actions in Southeast Asia, and with the activities of private corporations, and later the Dutch West India Company in the Americas. For instance, in 1609 regarding the treaty with Ambon, VOC official van der Haghen wrote, 'by entering into a good alliance and treaty with the inhabitants, the way was paved for conquest and occupation of those lands'. According to him, the conquest of Banda had 'opened the gate to freely exploit the surrounding islands and the Moluccas'.⁶⁴ Contrary to the arguments of Grotian scholars, the practice *and* legal theory of treaty making was based on a *differentiated* sovereign subject based on ideals of proper governance and cultivation. Although Arthur Weststeijn argues, 'treaties with indigenous people were the lubricants of early-modern Dutch colonial expansion', he wrongly assumes that in Grotius treaties were 'based on consent' and that only in colonial practice 'consent implied obligation, and obligation ... implied intimidation'.⁶⁵ By attempting to salvage a notion of the universal human in Grotius, scholars have erased the racial, colonial and gendered underpinnings that formed the conditions of possibility for its emergence.

De Indis is riddled with references to the differences between Dutch, Iberian and Indigenous modes of being. In order to bolster his establishment of Christian (Dutch) Man as the true universal subject, Grotius dabbles in early modern race-thinking – describing the 'unspeakable love affairs' of Persians, lawless Nomads and that 'we may truthfully *deny the existence of any nation that does not cherish some innate conception of divinity and practice some form of divine worship*'.⁶⁶ The military skills of the Rajah [of Demak/Java] were impressive 'in the highest degree possible to a man of that race'.⁶⁷

Besides characterizing non-Europeans as 'subrational/irrational', Grotius portrays the Portuguese as failed Christians. His attempts relied on descriptions of body and blood prominent in early modern hierarchization of difference. Grotius argued that the Portuguese were 'not seriously regarded, among Christians, as Christians', which he deemed to be the result of 'the avarice and vileness of the blood that has been intermingled with their race'.⁶⁸ Although it is not mentioned in this text, Grotius refers here to *Al-Andalus* and the rule of the Islamic Moors over the Iberian Peninsula. The term 'black' in the Black Legend takes on a particularly anti-Black character. Before the Spanish (*re*)*conquista*, he seems to suggest, the Portuguese Catholic faith was compromised through miscegenation with the Islamic Moors. Grotius considered the Portuguese 'race' no longer pure, using Dutch Calvinism as a standard of measure for racial purity. Grotius faults the Portuguese for exporting their 'vile' predisposition across the globe.

By contrast, Dutch merchants were divine and 'free from every rapacious inclination, superior to all others in sexual temperance and in their whole way of life, and characterised by the most profound reverence for the laws, for the magistrates, and above all for religion'.⁶⁹ A careful reading of *De Indis* thus reveals that early humanist thinking about rationality and racial purity are intimately intertwined. The commercial predisposition of the Dutch, made them the ideal people to venture overseas for trade and spread the Gospel by conducting themselves according to the standard of Dutch virtue and innocence. Grotius believed the Dutch were the 'saviours of the Orient' and assumed that every Asian ruler wanted to know 'what land had nurtured men so brave and just, what government ordered their affairs'.⁷⁰

Such descriptions are far from innocent. They form the ontological backbone of his legal framework and serve as philosophical justifications for Indigenous (dis)possession

and enslavement. He not only professes that a slave possesses a servile and partial rational faculty, but also that improper non-Christian governance would be a just cause for Dutch invasion. Hence, within a Grotian legal framework treaty making and colonial violence were co-constitutive forces that served to expand Dutch empire. Law emerged as an act to protect the colonizers and as a tool to justify unrestrained colonial wars. As Anghie argues, ‘*Just war doctrine*, of course, was also especially useful to justify war against non-European peoples who resisted the expanding European trading Empires.’⁷¹

Contrarily, Weststeijn argues that Dutch colonial officials could ‘claim the right to punish indigenous peoples and rulers in case treaties were violated, precisely because these rulers and peoples were considered to be equal partners who had freely signed those treaties.’⁷² Although contract is central to a Grotian understanding of empire formation, the supposed equality between Dutch and Indigenous people is over-stated here, if not outright problematic. By stressing consent, Weststeijn reifies the ideological underpinnings he seeks to undo. Like Ittersum, he overlooks the ontological distinction at the heart of Grotian thinking about the sovereign subject. Mutuality and consent are framed from an entirely Dutch perspective, while at the same time Indigenous modes of governance are deemed, especially in the case of Native Americans, as pre-historic. The Dutch were well aware of the absence of a concept of land-as-property among Native Americans and used this to claim lands as *res nullius*. Private property acquisition was at the heart of what constituted the human – if a people did not have such a concept, they were deemed irrational/subrational.⁷³

Within a European context, Grotius enables Christian subjects to resist their master/magistrate where reason might rebel, rooted in a justification of Dutch rebellion against Habsburg domination. Just as Christians cannot enslave other Christians, it is also impossible for Christians to colonize other Christians. In a colonial context, non-Christians were not permitted to resist Dutch encroachment as this would constitute a breach of natural law. For Grotius, Indigenous peoples did not possess the rational capacity to rebel against the sovereign/master, because that capacity was only attributed to Christians. Consequentially, as a free sovereign subject par excellence, Dutch rational man could never be colonized.

In *De jure belli ac pacis* (*DJBP*) Grotius further developed the idea that commercial relationships between the Dutch and the native were forged in ‘good faith’ to aid non-Christians to ‘see the light of reason and accept the doctrine of Christianity’.⁷⁴ Here, Grotius’s idea of volitional subjection is articulated in another manner, that is, foreign (hence, non-Christian) nations could collectively decide to surrender their sovereignty to the invader, either in the hope of achieving a higher form of civilization, for want of protection, or through force. Each effectively establishes a valid contract that conveys perpetual ownership to the invading party. In other words, Grotius transformed aggressive acts of (dis)possession and conquest into acts of volition, due to the so-called natural disposition of enslaved and Indigenous people to be ruled. In describing other just causes of (dis)possession, Grotius discusses a foreign nation’s right to invade and claim ownership over a territory uninvolved in the war, in order to prevent the enemy from ‘seiz[ing] the place and caus[ing] irreparable damage’.⁷⁵ Of course, Grotius writes that sovereignty should be restored to the rightful owner, but he fails to mention when or how this would occur.⁷⁶ Such claims allowed the Dutch to conquer overseas territories as strategic outposts to defend themselves against other European

forces. Grotius presented conquest as an act of benevolence where the invader ‘wages war to save a people from oppression’, which serve as a valid ground for a contract.⁷⁷ Through *pacta sunt servanda*, Grotius integrated the conditions of possibility for conquest into his theories and opened the door for violent colonization if Indigenous peoples did not honour a contract, and simultaneously established the propertied subject as the central characteristic of the human. Contract breach entitled merchants and settlers to use violence to colonize lands and enslave populations as just punishment.

Dutch notions of free trade and contract were also alien to Southeast Asians, for whom the freedom of the seas was distinctly separate from military endeavours.⁷⁸ Although Westejn shows that notions of treaty making between Dutch and Indigenous peoples across the globe were incommensurable, he still concludes that such agreements were based on consent. While I do acknowledge that Indigenous peoples did indeed have their own legal strategies to resist Dutch encroachment, and that some even thought it prudent to engage in military alliances against Iberian power,⁷⁹ I am specifically interested in *how* colonial difference legally pre-empts Indigenous resistance to Dutch encroachment and enslavement. This colonial difference was based on a Christian supremacist and masculinist perspective on what constitutes the human bound to proper cultivation and appropriation of territory. In addition, understandings of treaty in the Americas and Southeast Asia were incommensurable with *pacta sunt servanda*. Within Southeast Asian contexts the treaty as a whole – not individual clauses – held symbolic importance, the concept of perpetuity did not exist, and contracts were considered temporary agreements.⁸⁰

Looking at Grotius from the perspective of conquest-through-contract, or what I call *contract colonialism*, debunks the myth that the Dutch were interested in commerce rather than colonization. Introducing *contract colonialism*, based on the imposition of private property rights and a notion of the propertied subject, does not make Grotius a ‘reluctant imperialist’. Instead, by positing his ideas of involuntary and voluntary subjection, Grotius develops a pre-emptive logic of conquest – Indigenous people must not resist. Consent can be voluntary, tacit, or forced. Furthermore, by hinging Dutch state formation upon its presence in Southeast Asia, he renders conquest inevitable and benevolent in both peace and war. Because Grotius did not consider non-Christianity alone enough to justify Indigenous (dis)possession, he devised a regime of private property rights and a notion of ‘inviolable contract’ to render Indigenous resistance to European free trade (a.k.a. invasion) a breach of natural law.

Although Grotius recognized Indigenous sovereignty to the extent of its usefulness for Dutch acquisition of land, obtaining exclusive trading rights and profit, or establishing a just cause of war, he certainly did not recognize Indigenous peoples as equals. This is particularly clear in his depictions of non-Europeans and the Portuguese.⁸¹ For Grotius, Indigenous sovereignty was always already divisible and in want of Dutch guidance. The divine predisposition of the Dutch as a maritime power would not only save Indigenous peoples from Iberian rule, but also from themselves. Indigenous ‘subrational’ governance and cultivation, and resistance to Dutch trade necessitated colonization as a means to save Indigenous peoples. Grotius’s characterization of the superiority of the Dutch relies on race thinking that is embedded in contemplations regarding the weather, ocean, sexuality, bodily fluids, rationality, property, and religiosity. Thus, the establishment of a Dutch, white, Calvinist, male, propertied, free, rational individual

forms the core of his theories of just war, prize and booty, natural law and liberal humanism. Further, this particular embodiment of European Man should lead Indigenous peoples to accept the true faith and surrender their lands and livelihoods to the protectorate of the benevolent and innocent Dutch. Much like slavery, Grotius considers Indigenous (dis)possession to be the result of Indigenous volition, resistance to free trade, improper cultivation/governance and a lack of a full rational faculty. The relationship between Indigenous (dis)possession and enslavement are deeply entwined in his construction of colonial conquest as Dutch Calvinist (capitalist) benevolence and the virtuous pursuit of profit for the benefit of the common (Dutch) good. In an attempt to disarticulate Dutch modes of conquest from those of the Iberians and to justify attacks on Iberian ships in extra-European waters, Grotius devised a legal framework in the service of Dutch imperial expansion. The heart of this framework was colonial difference that justified enslavement and Indigenous dispossession by other means.

Conclusion

Although new work on Grotius emphasizes the impact of the colonial situation in South-east Asia, it largely still affirms the idea of the undifferentiated sovereign subject. Here, I have shown how the relationship between the free sovereign subject and the Dutch colonial enterprise is co-constitutive – whereby the native is always already constituted as external to universal Man. Grotius mobilized colonial difference to pre-empt Indigenous resistance *and* Dutch culpability under a European legal regime, which created a framework for advancing capitalism and/as colonial conquest.

Christian supremacy was newly consolidated, by placing contract and treaty at the nexus of the colonial project and its justificatory logics. Both in the case of voluntary (treaty) and involuntary (war) subjection, colonization and slavery are considered (Dutch) acts of benevolence and an effect of the rightful pursuit of profit. The right to enslave and colonize were consolidated on the basis of a doctrine of war and free trade. In this context, ‘consent’ emerged as consent to enslavement and/as consent to colonization, and was explained using the ontological distinction between Christians and non-Christians, and in the case of conversion to Christianity, the distinction between European and non-European. Grotius cited Christian supremacy, free trade, and absolute contract in order to pre-empt Indigenous and slave resistance. His legal writings drew from a cultural and legal archive that expanded far beyond the law. Although he strategically included discussions of certain elements of Iberian legal thought, he endeavoured to formulate a colonial legal framework that was distinct from Portuguese and Spanish claims to empire.⁸² To achieve this, he situated free trade and the propertied subject at the heart of the colonial project. Colonial difference structured both Dutch colonial actions overseas *and* Grotian ideas of universal law.

(Post)colonial Dutch historiography is saturated with the myth of the Dutch as benevolent and sometimes even reluctant imperialists geared toward trade rather than settlement. Interested in the impact of a Grotian imaginary, rather than Grotius’s intentions, I have unsettled some common presumptions made on the basis of this myth. Applying colonial difference as a lens for reading Grotius reveals that his legal framework set up the very conditions of possibility for colonial conquest and settlement by establishing the entitled Dutch propertied subject as universal. Grotius moulds Dutch-style

imperialism and conquest into narratives of commerce, rationality, virtue and modesty. Grotian theories of subjective rights, property and contract not only justify these acts, they also render colonial and racial violence abstract as well as inevitable, benevolent, just and innocent. Grotius's construction of the Dutch, free, propertied, racially pure, rational Man could only emerge through the construction of non-Europeans as 'irrational/subrational' and thus enslaveable and (dis)possessable peoples.

As one of the first articulations of Dutch white innocence, Grotius's writings have greatly impacted (legal) thought on imperialism, colonialism and enslavement. Hence, if Grotian constructions of Dutch innocence operate to elide, abstract and naturalize colonialism, racial violence and Indigenous (dis)possession, how might a discussion of his legacy contribute to wider public conversations on racism and capitalism in The Netherlands and the role of Dutch global power today? Reading Grotius in this way shows that ideas of Dutch state formation, Dutch liberal humanism, and Dutchness itself are unimaginable without colonial and racial violence. Due to the fact that Grotius's writings later became deeply influential for French, British, and U.S. imperialism, it is necessary to further research the effects of Grotius's legacy across empires and how his work resonates today within capitalist and (neo)colonial imaginaries that drive contemporary international law. Grotius described colonization and slavery as acts of benevolence and rendered them 'inevitable' by grounding them in just war and natural law doctrines – which he based on the Dutch predisposition to go overseas and engage in the right to *conquest as self-defence* (Law I) and *the right to extract resources and peoples* (Law II) as natural rights of the propertied subject. He inscribed colonial and racial violence into the law by presenting universal Man as Dutch, Calvinist and white, and Indigenous peoples as voluntary and involuntary slaves/colonized whose (dis)possession was necessitated by their lack of a full 'rational' capacity, which is always already distinct from that of Dutch Calvinist merchants. Looking at Grotius's writings on slavery and Indigenous (dis)possession in light of its great impact on other colonial powers and contemporary international law might open up new avenues for addressing the effect of the Grotian imaginary on the present. In preparing the globe for an inevitable colonialist-capitalism – a truly Dutch invention and virtue – Grotius arrives at the ultimate justification for Indigenous and Black (dis)possession and death. By turning to Grotian notions of property, Indigenous (dis)possession and enslavement, I hope to have opened up another way of working through his legacy and the deeply insidious ways in which imperialist, colonialist and racial-capitalist violence continues to permeate the present.

Notes

1. Betty de Hart, *Some Cursory Remarks on Race, Mixture and Law by Three Dutch Jurists*, Tilburg: Wolf Legal Publishers, 2019, p 1.
2. Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race*, Durham, NC: Duke UP, 2016, pp 16–18.
3. Wekker, *White Innocence*, pp 19–20.
4. Hart, *Some Cursory Remarks*, pp 1–2.
5. Renisa Mawani, 'Law's Archive', *Annual Review of Law and Social Science* 8, 2012, pp 337–365.
6. Sylvia Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation – an Argument', *The New Centennial Review* 3(3), 2003, pp 281–282.

7. For more on '(dis)possession', see: Maile Arvin, *Possessing Polynesians: The Science of Settler Colonial Whiteness in Hawai'i and Oceania*, Durham, NC: Duke UP, 2019, pp 13–20.
8. For 'colonial difference' see, for instance: Walter D. Mignolo, *The Darker Side of Western Modernity*, Durham, NC: Duke UP, 2011, pp 149–180; Édouard Glissant, *Poetics of Relation*, Ann Arbor, MI: University of Michigan Press, 1997; Franz Fanon, *Black Skin, White Mask*, New York: Grove Press, 2008.
9. Martine Julia van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies*, Leiden-Boston: Brill, 2006; Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics*, Cambridge: Cambridge University Press, 2002; Arthur Weststeijn, 'Love Alone is not Enough', in Saliha Belmessous (ed), *Empire by Treaty: Negotiating European Expansion, 1600–1900*, Oxford: Oxford UP, 2014.
10. See for instance: Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford UP, 1999), pp 78–108; Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories*; Keene, *Beyond the Anarchical Society*; Eric Wilson, *The Savage Republic: De Indis of Hugo Grotius, Republicanism and Dutch Hegemony within the Early Modern World-System (1600–1619)*, Leiden-Boston: Brill, 2008; Lauren Benton, *A Search for Sovereignty: Law and Geographies in European Empires 1400–1900*, New York: New York UP, 2014, pp 104–161. For notable exceptions see: Renisa Mawani, *Across Oceans of Law*, Durham, NC: Duke UP, 2016; Ileana Porras, 'Constructing International Law in the East Indian Seas: Property, Sovereignty, Commerce and War in Hugo Grotius' *De Iure Praedae* - The Law of Prize and Booty, or on How to Distinguish Pirates from Merchants,' *Brooklyn Journal of International Law* 31, 2006, pp 741–804; Anthony Anghie, 'The Grotian Lecture: International Law in a Time of Change: Should International Law Lead or Follow?,' *Amherst University International Legal Review* 26(5), 2010, pp 1315–1476; and, Samera Esmeir, 'Bandung: Reflections on the Sea, the World and Colonialism', in *Bandung. Global History and International Law: Critical Past and Pending Futures*, Cambridge: Cambridge University Press, 2017, pp 81–94.
11. For a genealogy of freedom in the Dutch context, see: Egbert Martina and Miguel Peres dos Santos 2018. 'A Genealogy of Freedom', *Geographies of Freedom*, 5 December 2019. <https://geographiesoffreedom.wordpress.com/2018/12/05/a-genealogy-of-freedom/>. On (liberal) humanism and colonial violence see, for instance: Wynter, 'Unsettling the Coloniality'; Lisa Lowe, *The Intimacies of Four Continents*, Durham, NC: Duke UP, 2015; Samera Esmeir, *Juridical Humanity: A Colonial History*, Stanford: Stanford UP, 2012.
12. Pieter C Emmer and Wim Klooster, 'The Dutch Atlantic, 1600–1800 Expansion Without Empire', *Itinerario* 23(2), July 1999, pp 48–96; Mark Meuwese, *Brothers in Arms, Partners in Trade: Dutch-Indigenous Alliances in the Atlantic World, 1595–1674*, Leiden-Boston: Brill, 2011; Kerry Ward, *Networks of Empire: Forced Migration in the Dutch East India Company*, Cambridge: Cambridge University Press, 2009, pp 5, 31, 50; Martine Julia van Ittersum, 'The Long Goodbye Hugo Grotius' Justification of Dutch Expansion Overseas, 1615–1645', *History of European Ideas* 386, 2010, p 393; Jurrien van Goor, *Prelude to Colonialism: The Dutch in Asia*, Hilversum: Uitgeverij Verloren, 2004, p 20.
13. For the letters, see: Correspondence from The Directors of the United East India Company to the Sultan of Tidore, drafted by Hugo Grotius, Winter 1606–1607, Supplement I, folio 344–466, Grotius Papers, Dutch National Archives, The Hague, The Netherlands. The letter to the Sultan of Tidore covers folios 365–366.
14. Correspondence, folio 365–366.
15. Correspondence, folio 365–366.
16. Throughout this article, I will refer to *De Indis* as a shorthand for *De rebus Indicis*.
17. Grotius, *Commentary*, p 10.
18. Grotius, *Commentary*, p 552.
19. Alison Rieser, 'Clupea Liberum', in *Blue Legalities: The Life and Laws of the Ocean*, Durham, NC: Duke University Press, 2020, p 216.

20. Hugo Grotius, *Commentary on the Law of Prize and Booty*, Gwladys Williams and Walter Zeydel (trans), Indianapolis: Liberty Fund, 2006, pp 14–15.
21. Martine Julia van Ittersum, ‘A Miracle Mirrored? The Reception of Dutch Economic and Political Thought in Europe in the Seventeenth Century’, *Low Countries Historical Review* 127(4), 2012, pp 83–99.
22. Grotius, *Commentary*, p XVIII.
23. Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories*.
24. R P Anand, *On the Origin and Development of the Freedom of the Seas*, The Hague: Martinus Nijhoff 1983, p 93; Anghie, ‘The Grotian Lecture’.
25. Porras, ‘Constructing International Law’, p 766.
26. Grotius, *Commentary*, p 23 (emphasis in original).
27. Porras, ‘Constructing International Law’, p 767.
28. Grotius, *Commentary*, p 23.
29. Grotius, *Commentary*, pp 23–24 (my emphasis).
30. Grotius, *Commentary*, p 24.
31. Grotius, *Commentary*, p 24.
32. Grotius, *Commentary*, p 25.
33. Richard Tuck, ‘Introduction’, in *The Rights of War and Peace*, Indianapolis: Liberty Fund, 2005, p xxviii.
34. Elizabeth A Sutton, *Capitalism and Cartography in the Dutch Golden Age*, Chicago: University of Chicago Press, p 119.
35. Anthony Anghie, ‘Toward a Postcolonial International Law’, in Prabhar Singh and Benoit Mayer (eds), *Critical International Law*, Oxford: Oxford University Press, 2014.
36. I take issue here with Gustaaf van Nifterik’s article ‘Hugo Grotius on Slavery’, *Grotiana* 22/23, 2001/2002, pp 233–244. He argues that the Grotian notion *servitus* must not be confused with racial slavery. I use the term ‘the slave’ only in the context that the figure appears as such in Grotius’ writings.
37. Nifterik, ‘Hugo Grotius’, pp 233–244; Cairns, *Enlightenment*, pp 364–398.
38. Grotius, *Commentary*, pp 94–95.
39. Hugo Grotius, *The Rights of War and Peace, Book I, II and III*, Jean Barbeyrac and Richard Tuck (eds), Indianapolis: Liberty Fund, 2005, p 459.
40. Grotius, *Commentary*, p 95.
41. Grotius, *Commentary*, p 114.
42. Grotius, *Commentary*, p 115.
43. Martti Koskeniemi, ‘Imagining the Rule of Law: Rereading the Grotian “Tradition”’, *The European Journal of International Law* 30(1), 2019, p 32; Walter Rodney, *West Africa and the Atlantic Slave Trade*, Historical Association of Tanzania, 1967.
44. Anghie, ‘Toward a Postcolonial International Law’, p 133.
45. John W Cairns, ‘Stoicism, Slavery, and Law: Grotian Jurisprudence and its Reception’, in John W Cairns (ed), *Enlightenment, Legal Education and Critique*, Edinburgh: Edinburgh UP, 2015, p 379.
46. Grotius, *The Rights*, Book III, Chapter VII.III.
47. Grotius, *The Rights*, Chapter VII.V.
48. Grotius, *The Rights*, Book III, Chapter VII.II.
49. On *partus sequitur ventrem* in British and U.S. slave law see, for instance: Jennifer L Morgan, ‘*Partus sequitur ventrem*: Law, Race, and Reproduction in Colonial Slavery’, *Small Axe* 22(1), 2018, pp 1–17; Saidiya Hartman, ‘The Belly of the World: A Note on Black Women’s Labors’, *Souls: A Critical Journal of Black Politics, Culture, and Society* 18(1), January–March 2016, pp 166–173.
50. This doctrine cannot, however, be separated from anti-Blackness. Already at that time, Dutch colonizers were engaged in debates on the character of the enslaved constructed racial differences. For ‘racial capitalism’ see: Cedric Robinson, *Black Marxism: The Making of the Black Radical Tradition*, Chapel Hill: The University of North Carolina Press, 2000.

51. See, for instance: Caspar van Baerle, *The History of Brazil under the Governorship of Count Johan Maurits van Naussau, 1637–1644*, Gainesville: University of Florida Press, p 124.
52. Grotius, *The Rights Book III*, Chapter VII.IX, Book III.
53. Wynter, 'Unsettling the Coloniality', p 318.
54. Cairns, *Enlightenment*, p 377.
55. Porras, 'Constructing International Law', p 761.
56. Grotius, *Commentary*, p 361.
57. Cairns, *Enlightenment*, p 379.
58. Grotius, *Commentary*, pp 114–115.
59. Grotius, *Commentary*, pp 114–118.
60. Cairns, *Enlightenment*, pp 377–380.
61. Grotius, *Commentary*, pp 300–301.
62. Porras, 'Constructing International Law', p 764.
63. Weststeijn, *Love Alone*, p 37.
64. Weststeijn, *Love Alone*, p 33.
65. Weststeijn, *Love Alone*, pp 20–22.
66. Grotius, *Commentary*, p 369.
67. Grotius, *Commentary*, pp 256 and 266.
68. Grotius, *Commentary*, p 384.
69. Grotius, *Commentary*, p 369.
70. Grotius, *Commentary*, p 457.
71. Anghie, 'The Grotius Lecture', pp 1322–1323.
72. Weststeijn, 'Love Is Not Enough', p 42.
73. See also: Sutton, *Capitalism*, pp 112–122.
74. Grotius, *Commentary*, p 454.
75. Grotius, *The Rights Book III*, p 195.
76. Grotius, *The Rights of War and Peace, Book I, II and III*, p 195.
77. Cairns, *Enlightenment*, p 374.
78. Anand, *Origin and Development*, pp 124–153.
79. Belmessous, *Native Claims: Indigenous Law against Empire 1500–1920*.
80. Weststeijn, 'Love Alone', p 41.
81. For ontological description of the Portuguese see, Grotius, *Commentary*, p 480.
82. Johannes Thumfart, 'On Grotius's Mare Liberum and Vitoria's *De Indis*. Following Agamben and Schmitt', *Grotiana* 30, 2009, pp 65–87.

Acknowledgment

The author would like to express their gratitude to the *xʷməθkʷəṅəm* (Musqueam), *Skwxwú7mesh Úxwumixw* (Squamish), *səlilwətał* (Tselet-Waututh), and *shíshálh* (Sechelt) peoples on whose traditional, ancestral and unceded territories this article was written. Thank you Dr. Renisa Mawani for your guidance on this journey.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This project has received funding from the  European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie [grant agreement No 838904].

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