

# Grotius on Citizenship and Political Community<sup>1</sup>

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What are the salient features of Grotius' theory of citizenship? The question acquires renewed relevance as the Westphalian system of sovereign states, established and undergirded by 'Grotian' international law, is replaced by new forms of political organization in what some identify as a new 'Grotian moment'.<sup>2</sup> This paper explores Grotius' writing on citizenship and political community to reach three main conclusions. First, Grotius combines classical moral concerns with a focus on human rationality: he sees reason as the means to a better and more noble morality. Second, a key theme of Grotius' thought is his focus on political order: good citizens strive to preserve their political institutions and further the common good. Third, Grotius balances a strong defence of individual rights with an emphasis on the shared duties of citizenship.

Though his works have seemingly always been lauded, the interpretation of Grotius' writings has changed in subtle yet crucial ways. The introduction to a collection of essays about Grotius and international relations tellingly observes that even *De Jure Belli ac Pacis* 'has in some measure evolved away from its author,' and hints that there may be 'a need for revisions of some standard views about Grotius'.<sup>3</sup> In attempting such a revision, I focus on Grotius' thinking on citizenship and political community. Though today neglected in favour of his ideas on the freedom of the seas and the notion of

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<sup>2</sup> Boutros Boutros-Ghali, 'The Role of International Law in the Twenty First Century: A Grotian Moment,' *Fordham International Law Journal* 18 (1995) p. 1609-16.

<sup>3</sup> Hedley Bull, Benedict Kingsbury, and Adam Roberts, eds., *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1990), p. 5 and p. 2.

just war, Grotius' concern with citizenship clearly reflects his attempts to revise classical thought in order to address contemporary issues.<sup>4</sup>

The notion of citizenship is today generally regarded as inextricably linked to, and largely a result of, the development of modern democracy. Indeed, many argue that the ideal of citizenship found its clearest expression in the French Revolution with the *Déclaration des droits de l'homme et du citoyen* (1789), while some even claim that the French revolution 'invented' both the national citizen and the legally homogenous national citizenry.<sup>5</sup> Others acknowledge that the concept had precursors – such as in the Greek *poleis* and republican Rome. But they likewise tend to identify the development of the notion of citizenship with the rise of modern nation-states following the French Revolution.<sup>6</sup> Yet questions of citizenship were also debated in the seventeenth century. Indeed, citizenship was as much a pre-occupation for Grotius as it would be for the French revolutionaries a century and a half later. Grotius has important things to say about citizenship, and his positions deserve examination. Such a re-examination is relevant today as we enter what some term 'another Grotian moment.'<sup>7</sup> It is also necessary in order to elucidate how Grotian views of citizenship influenced subsequent thinking about the nature of political community.

• *Reason and the proper role of citizens in politics*

In the early seventeenth century, theorizing about the proper role of citizens in politics was generally limited to the small circles of elites in the various European capitals who shared in ruling and were the sole beneficiaries of the few privileges and responsibilities of citizenship (as distinguished from subjecthood) then existent.<sup>8</sup> Over the course of the next century, Enlightenment

4 Religious turmoil and massive political transformations in Europe and the burgeoning colonies culminated in the disintegration of the Holy Roman Empire and the curtailment of Habsburg power with the peace of Westphalia (1648) three years after Grotius' death.

5 Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge MA: Harvard University Press, 1992) 46–47.

6 Reinhard Bendix, *Nation-building and Citizenship: Studies of our Changing Social Order*, New enl. ed. (Berkeley: University of California Press, 1977); T. H. Marshall, *Citizenship and Social Class and other Essays* (Cambridge: Cambridge University Press, 1950).

7 Boutros Boutros-Ghali, 'The Role of International Law in the Twenty First Century: A Grotian Moment.'

8 Richard D. Brown, *The Strength of a People: The Idea of an Informed Citizenry in America, 1650–1870* (Chapel Hill: University of North Carolina Press, 1996) commences with a description of the emergence of such debates in Tudor and Stuart England.

thinkers expanded upon and changed the terms of these debates, setting themselves apart from the classically-inspired writers of earlier ages. While he much admires antiquity, Grotius also identifies some deficiencies. In *Bewijs van de Ware Godsdienst*, for example, he faults the ancient oracles for not providing a systematic body of moral laws.<sup>9</sup> Grotius can be seen as retaining the best of classical thought while preparing the groundwork for the Enlightenment project.

Yet many Enlightenment thinkers were not impressed with Grotius' efforts. Rousseau, for example, criticized his method. According to Rousseau, Grotius' 'most persistent mode of reasoning is always to establish right by fact. One could use a more rational method, but not one more favourable to tyrants.'<sup>10</sup> Grotius is today most famous for his theories of just war, and it is often asserted that his way of thinking pervaded the discussions leading to the peace of Westphalia. A constant problem with tracing the development of the 'Grotian school', however, is the fact that the 'Grotian myth ballooned at a time when the reading of his works was on the decline'; such thinkers as Montesquieu and Rousseau knew Grotius only indirectly through Pufendorf.<sup>11</sup> Furthermore, others have noted how 'different aspects of Grotius' work produce political theories of markedly different kinds.'<sup>12</sup> Both of these considerations create difficulties for anyone wishing to reconstruct a coherent picture of Grotian thought.

Despite these problems, however, Grotius can be seen as heralding 'modern' political thought.<sup>13</sup> One argument in favour of this view is that Grotius, in a clear break with the past, promoted the quintessentially modern idea of the rational individual. The natural law tradition of which Grotius is a key

9 He writes: 'Noit hebben zy gegeven / Een algemeene wet, waer nae de mensch sou leven. / En reghten syne paën, noit hebben sy getoont / Waermeê de ware deugd hierna sou zijn geloont.' *Bewijs van de Ware Godsdienst*, 109.

10 Jean-Jacques Rousseau, *Du contrat social* livre I § 2.

11 Christian Gellinek, *Pax optima rerum: Friedensessays zu Grotius und Goethe* (New York: P. Lang, 1984) 97.

12 Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: Clarendon Press, 1991) 3.

13 One particularly ardent admirer goes so far as to state that *De Jure Belli ac Pacis* 'may be considered as nearly original, in its general platform, as any work of man in an advanced state of civilization and learning can be. It is more so, perhaps, than those of Montesquieu and Smith. No one had before gone to the foundations of international law so as to raise a complete and consistent superstructure; few had handled even separate parts, or laid down any satisfactory rules concerning it.' Henry Hallam, *Introduction to the Literature of Europe* (fourth edition, London, 1847), vol. II, p. 545.

figure heralded a new conception of citizenship. In contrast with most earlier thinkers, Grotius saw the individual as the primary unit upon which the rest of society is constructed. He based his whole theoretical structure on the rights of individuals, whether against the state or against the then overweening influence of the Spanish branch of the Habsburgs.<sup>14</sup> This view of Grotius as iconoclast is shared by Ido De Haan, who writes that the natural law tradition – and Grotius in particular – heralded a new age of political theories allied against the ‘aristocratic republicanism’ of the past.<sup>15</sup> Bernard Manin concurs, specifying that Grotius and those who followed his lead – Hobbes, Pufendorf, Locke, and Rousseau – all shared the belief that consent constitutes the sole source of legitimate authority and forms the basis of political obligation.<sup>16</sup>

Despite the attractiveness of the view that Grotius heralded a new era in political thought, and that the ‘Grotian moment’ which culminated in the Westphalian peace represents a decisive break with the past, however, an alternative reading is possible. In this interpretation, Grotius remains firmly rooted in the thought of classical antiquity. Thus Richard Cox argues that ‘Grotius still looks mainly to the classics of antiquity whereas Hobbes explicitly sets out to build anew.’<sup>17</sup> Furthermore, Grotius’ view of the location of civil power ‘also links him to the classical tradition and separates him from the modern idea of “sovereignty”, as the latter emerges in the writings of men such as Hobbes.’<sup>18</sup> This alternative view of Grotius as a classical rather than modern thinker appears equally plausible. Reading him, one is immediately struck by how Grotius’ norms and values seem so conservative.

14 John Neville Figgis, *From Gerson to Grotius: 1414-1625* (Cambridge: Cambridge University Press, 1907), pp. 193-194, 213.

15 Ido de Haan, *Zelfbestuur en staatsbeheer: het politieke debat over burgerschap en rechtsstaat in de twintigste eeuw* (Amsterdam: Amsterdam University Press, 1993) 23-25.

16 Bernard Manin, *The Principles of Representative Government* (Cambridge; New York: Cambridge University Press, 1997) 84. See also *ibid.*, p.157. Though see *ibid.*, p.176.

17 The full citation is ‘Grotius’ work appeared...less than two decades prior to the *De Cive* (1642) of Thomas Hobbes. But in spite of this proximity in time, and in spite of a superficial agreement, such as the common use of the concept of the “law of nature”, the fact is that Grotius still looks mainly to the classics of antiquity whereas Hobbes explicitly sets out to build anew. The basic disagreement concerns the question whether man is indeed by nature a rational and social animal; in turning to Hobbes we turn to the iconoclast who states the essence of the modern view of man and natural law.’ Richard H. Cox, ‘Hugo Grotius’ in Leo Strauss and Joseph Cropsey, eds., *History of Political Philosophy*, 3rd edition (University of Chicago Press, 1987) p. 394.

18 Cox in Strauss and Cropsey, eds., *History of Political Philosophy*, p. 391.

For example, Grotius draws more heavily on Roman and biblical than Greek authors, while one of the changes associated with the Enlightenment project is precisely the turn from imperial Rome to republican Athens. Voltaire may have had this in mind when he criticized Grotius' 'old-fashioned way of thinking'.<sup>19</sup> More important is Grotius' use of the concept of *ratio*. Despite his heavy reliance on the concept, Grotius never defines what he means by it. He instead 'simply starts from the principle that human reason has manifested itself in the thinking of the Ancients so powerfully and unequivocally that it would be entirely superfluous to specify its boundary or to think twice about the certainty it offers.' The way in which Grotius defines reason and the way in which later rationalists and deists do so differ so greatly because reason for Grotius is not an autonomous entity – that is, *ratio* must answer to divine revelation, not the reverse. Divine revelation perfects the rationality of the ancients, and ultimately determines what is reason. Thus the source of Grotius' 'right reason' is religious as much as classical.<sup>20</sup>

Such an appeal to reason or *ratio* dominates also in Cicero, who notes that 'true law is right reason in agreement with nature; it is of universal application, unchanging and everlasting.'<sup>21</sup> Reason is the source of man's desire for society. Grotius' preoccupation with universal rules derived from right reason suggests that he was strongly influenced by Cicero's notion of *humani generis societas*, a society of mankind rather than of states. This phrase appears in a number of places in Cicero's works, particularly in *De officiis*.<sup>22</sup> Grotius' focus on man as a rational and reasonable animal was picked up by subsequent authors. David Hume's appreciation of Grotius, for example, 'rested on the widespread belief that...Grotius had instituted a distinctive new approach to questions of justice' precisely because of his focus on man as a rational being with an instinct for sociability.<sup>23</sup> Grotius, writing with

19 Gellinek, *Pax optima rerum: Friedensessais zu Grotius und Goethe* 93–94.

20 Hugo Grotius and G. H. M. Posthumus Meyjes, *Meletius, sive, De iis quae inter Christianos conveniunt epistola* (Leiden: Brill, 1988) 29. Posthumus Meyjes cites J. Huizinga, 'Grotius' plaats in de geschiedenis van den menschelijken geest', in *Tien Studiën*, Haarlem 1926, pp. 117–125; reprinted in *Verzamelde Werken* II, Haarlem, 1948, pp. 382–388.

21 Cicero, *Republic*, book III § XXII.

22 Bederman, David J. 'Reception of the Classical Tradition in International Law: Grotius' *De Jure Belli ac Pacis*,' *Emory International Law Review* 10 (1996) 1–53, pp. 15–16.

23 Buckle, *Natural Law and the Theory of Property: Grotius to Hume* 1.

Cicero's model of the *virtus* clearly in mind, focuses on reason and rationality as the means to a better and more noble morality.<sup>24</sup>

In addition to the question of human rationality, another vigorous debate in the late sixteenth and early seventeenth centuries concerned the question of the ideal form of government. Participants in the debate sided either with the *thèse royale*, which argued for the supremacy of monarchy, or with the *thèse parlementaire*, which preferred a more representative system of government in which citizens play a key role in politics. Defenders of the monarchical form of government argued that rule by a king was the 'true nature' of the regime of a particular country. The most vigorous proponents of the *thèse royale*, such as Bodin and Budé, subscribed to the ideal of absolute sovereignty. Luther was not unsympathetic to this view, nor was Calvin, whose *Christian Institutes* (1559) continued to expound the view that subjects must obey their rulers, irrespective of the ways in which rulers use the political authority granted them by God.<sup>25</sup> Works such as Martin Luther's *On Secular Authority* (1523) set out 'to assert the fundamental liberty and equality of all Christians, and to subject all hierarchies and earthly superiors to this fundamental liberty and equality.' Yet Luther conceived of the 'polity as a relationship between superiors and inferiors, rulers and subjects, public and private persons. Unlike Calvin, he did not qualify this with any civic humanist notions of private persons as citizens (for Luther they are 'subjects'). Rulers are 'superiors', 'princes' (*Fürsten*) and 'lords and masters' (*Herren*). The emphasis...is throughout on the right to command, the duty to obey, and the mastery over resources to ensure compliance with commands.'<sup>26</sup>

Some questioned the appropriateness and justness of monarchical thinking. François Hotman's *Francogallia* (1573), which appeared shortly after the St Bartholomew's Day Massacre of Huguenots (1572), argued in favour of representative institutions against absolutist monarchical tendencies, and

24 Cicero identifies four cardinal virtues: practical wisdom (*prudentia*), justice (*iustitia*), courage (*fortitudo*, *magnitudo animi*), and appropriateness (*decorum*). These personal qualities are not inborn, according to Cicero, but acquired, learned and chosen. See, for example, *De Officiis* 1, ii, 5. Cf. Plato *The Laws* 1, 631.

25 Calvin enjoined his readers to 'take the greatest possible care never to hold in contempt, or trespass upon, the plenitude of authority of magistrates whose majesty it is for us to venerate... even when it is exercised by individuals who are unworthy of it and do their best to defile it by their wickedness. And even if the punishment of unbridled tyranny is the Lord's vengeance, we are not to imagine, that it is we ourselves who have been called upon to inflict it.' Harro Höpfl, *Luther and Calvin on Secular Authority* (Cambridge: Cambridge University Press, 1991).

26 Höpfl, *Luther and Calvin on Secular Authority*, x, xiv.

other writings in this vein gained prominence as time progressed. Grotius favours this 'aristocratic' tradition<sup>27</sup> over the *thèse royale* when he states that 'the true king of a people may lose his sovereignty and become subject to the people; and he who in reality is not a king, but only the foremost citizen, can be made king with absolute power, and the supreme authority, which was wholly in the power of either king or people, can be divided between them.'<sup>28</sup> Grotius cited neither Luther nor Calvin in *De Jure Belli ac Pacis* and, though he cites Hotman, it is Hotman's *Anti-Tribonianus* and *Quaestiones Illustres* that receive mention. Similarly, the only references to Bodin in *De Jure Belli ac Pacis* are thirteen citations of Bodin's *De Republica*, none to *Six Livres de la République* (1576).

Commending French writers who were attempting 'to introduce history into their study of laws,' Grotius singles out Bodin and Hotman and notes that 'their statements and lines of reasoning will frequently supply us with material in searching out the truth.' It today seems exceedingly strange to group Hotman with Bodin when their conclusions were so different. After all, Bodin was a protagonist of the *thèse royale* while Hotman represented the diametrical antithesis of this view. Bodin argued that representative institutions derive their authority from the sovereign, who can justly neglect the advice of such institutions.<sup>29</sup> Hotman disagreed entirely. Forcing these two authors together seems peculiar at the very least, but Grotius immediately cautions that his own work should not be read as favourable to one side or the other: 'If any one thinks that I have had in view any controversies of our own times...he will do me an injustice. With all truthfulness I aver that, just as mathematicians treat their figures as abstracted from bodies, so in treating laws I have withdrawn my mind from every particular fact.'<sup>30</sup>

27 A. A. M. Kinneging, *Aristocracy, Antiquity, and History: Classicism in Political Thought* (New Brunswick, N.J.: Transaction Publishers, 1997) 237, writes that this 'aristocratic tradition in political thought can best be seen as a protracted intellectual attempt to define the limits of the power of the central government under the head of the king. It is the reflection of a debate with royalist ideologists, the expounders of the *thèse royale*, who asserted that there ought to be no such limits.'

28 *DJBP* II.IV.XI.

29 Bodin, *Six Livres de la République* (ed. and transl. as *Six Books of the Commonwealth* by M.J. Tooley, Oxford: Basil Blackwell), pp. 106-7

30 *DJBP*, Prologomena 55, 58. In II.IX.VIII, Grotius affirms that it makes no difference to the rights of a people whether it is governed by monarchy, aristocracy, or democracy, and he repeats the argument of *Liber De Antiquitate Reipublicæ Batavicae* that the sovereign power of states without a king rests in the people. A change of government simply implies that one (king or representative assembly) takes the place previously occupied by the other.

Grotius lists a number of cases where sovereign power is held absolutely by a monarch, explicitly countering Hotman's argument that this is impossible since free men cannot be treated as property. Distinguishing personal liberty from civil liberty, he dismisses the claim that a monarch's transfer of sovereign authority to his son is like the transfer of a slave from father to son. When the patron of a free man allots the man to one of his children, affirms Grotius, it is not a transfer of ownership but simply the transfer of a certain right over the man, who remains free. Thus 'when a people is transferred this is not, strictly speaking, a transfer of the individuals but of the perpetual right of governing them in their totality as a people.' Grotius' monarchical credentials seem clear. In the very next section, however, he goes on to show that there are also cases in which sovereign authority is not held absolutely, and subsequently shows that there are also cases in which not full but only intermediate governmental authority is held absolutely. 'Just as personal liberty, then, excludes subjection to a master, so civil liberty excludes subjection to a king and any other form of control.'<sup>31</sup> From the modern perspective, it is easy to see Rousseau's frustration. But perhaps it is too easy to adopt the perspective which equates absolute sovereignty with the ability to make arbitrary judgements.<sup>32</sup> Grotius attempts to finesse the issue by cataloguing the 'evils' that arise from the opinion that sovereignty always resides in the people. Though he does 'not deny that in the case of most states the benefit of those who are governed is the primary consideration', it is simply not true that 'everywhere and without exception...it is permissible for the people to restrain and punish kings whenever they make a bad use of their power.'<sup>33</sup> As these passages indicate, Grotius is quite concerned with maintaining political order.

31 *DJBP* I.III.XII-XIV.

32 Some suggest that absolute and arbitrary did not become synonyms until the 19<sup>th</sup> century, and Bodin's sovereignty is not inconsistent with tolerating plural advice-giving parliaments. If this is correct, then the difference between the *thèse royale* and the *thèse aristocratique* may have been more nuanced than we think. And Grotius was not alone in wanting to finesse the issue. Montesquieu, identified as the great supporter of the *thèse aristocratique*, nevertheless offers an absolutist sounding definition of sovereignty when he first brings up the subject: 'In a monarchy, the prince is the source of all political and civil power' (*L'Esprit des Lois*, book II, ch. 4). See Nicholas Henshall, *The Myth of Absolutism: Change and Continuity in Early Modern European History* (London: Longman 1992) esp. pp. 13, 205, 209; Stephen Holmes, 'The Constitution of Sovereignty in Jean Bodin', in Holmes, *Passions and Constraints* (Chicago: University of Chicago Press 1995); Michael Mosher, 'Monarchy's Paradox: Honor in the Face of Pouvoir Absolu', in Montesquieu et al., *Montesquieu's Science of Politics: Essays on the Spirit of Laws* (Lanham MD: Rowman & Littlefield, 2001). I thank Michael Mosher for these suggestions.

33 *DJBP* I.III.VIII.14, 1.

- *Political order and the nature of society*

A key theme of Grotius' thought is the focus on political order. He notes that it is 'to the interest of human society that governments be established on a sure basis and beyond the hazard of dispute.' He also approvingly cites Augustus, who opined that ' "He is a good man and a good citizen who does not wish the present condition of the state changed"; and who, as Alcibiades says in Thucydides, "will preserve the form of government which he received".'<sup>34</sup> Patriotism is thus coupled with a defence of order to provide a definition of the ideal citizen. At least part of this predilection can be attributed to the context in which Grotius was writing. The year 1618 had seen the start of the Thirty Years War, while hostilities between the United Provinces and Spain – on hold since 1609 – had resumed in 1621, thus the political order of Europe was being shaken.

For Grotius, a citizen is under a pecuniary obligation to the state for the meeting of public needs, and public rights are superior to private rights since they are exercised by the community over its members for the sake of the common good.<sup>35</sup> Furthermore, Grotius affirms, municipal laws are 'binding even upon foreigners, the reason being that for the government of a people it is morally necessary that foreigners who mingle with them even temporarily – as happens when foreigners enter a country – should conform to the institutions of that people.'<sup>36</sup> What is striking here is the centrality of the state in Grotius' thought. Indeed, Grotius goes so far as to write that the rights of a people are extinguished when the political order under which they live is destroyed. Thus, if the 'essential parts' of a people disappear, collective rights disappear too, and individuals may be deprived of the right of government or even become subject to slavery.<sup>37</sup> For a modern theorist, the notion that the citizens of a country annexed by another could legitimately be enslaved would be unthinkable.

In addition to the duty to uphold the public sphere (not least as guarantor of their rights!), Grotius' *cives optimi* or 'best citizens' have a duty 'to demand with votive offerings the best possible rulers and to tolerate them such as they may be, willingly to bear the burdens imposed and to accept commands even if they are difficult to accept, provided they do not run counter to God's commands – a tenet which is extremely serviceable in

<sup>34</sup> *DJBP* II.IV.VIII.3.

<sup>35</sup> *DJBP* I.I.VI.

<sup>36</sup> *DJBP* II.II.V

<sup>37</sup> *DJBP* II.IX.IV-X.

maintaining the status quo of the body-politic'.<sup>38</sup> As this description of the desirability of political order indicates, Grotius' supposed republicanism is sharply tempered. Granted, Grotius argued forcefully in favour of the eminent historical foundations of the Dutch republic, but he does not thereby extend the republican ideal to all societies.<sup>39</sup> Quite the contrary: votive subjects fulfilling their vows of obedience to the monarch in gratitude and devotion do not constitute a republic of free citizens. It is simply the case that some societies are monarchies while others are not.<sup>40</sup> Grotius approvingly cites Livy's position that 'All the best citizens rejoice in the present state of government', and he seems far removed indeed from agreeing with Rousseau's idea of the *volonté générale*, let alone modern participatory democracy theorists.<sup>41</sup>

For Grotius, the purpose of government is to create an orderly environment in which individuals safely and properly exercise the rights that are intrinsically theirs as human beings. This leads to a somewhat vague position on the right of people to shake off the yoke of a tyrant. Against revolutionary thinking, Grotius approvingly cites Joseph: it 'is indeed honourable to fight for liberty, but that ought to have been done formerly. But if those who have once been conquered and have obeyed for a long time shake off the yoke, they act like desperadoes and not like lovers of liberty.' This suggests that Grotius always favours order over revolution. Yet, in the very next section, he writes that he thinks 'it not in the least open to doubt that long indifference...on the part of a king may suffice to warrant a people in recovering their freedom, on the ground of presumed abandonment of sovereign rights.'<sup>42</sup> Thus the republican interpretation of Grotius does hold a certain validity. So long as kings do not exhibit 'long indifference', however, the continued obedience of subjects, even under difficult circumstances, is to be praised.

The notion of hierarchy is central in the Grotian conception of citizenship; the defence of equality for all humans is noticeable by its absence.

<sup>38</sup> Meletius, 74.

<sup>39</sup> For a more elaborate discussion of Dutch republican thought in the seventeenth century, see Eco O.G. Haitisma Mulier, *The Myth of Venice and Dutch Republican Thought in the Seventeenth Century* (Assen, Netherlands: Van Gorcum, 1980). Citing Kossmann, Haitisma Mulier notes that while Hotman attempted to increase the power of the aristocracy compared to that of the monarch, Grotius generally defended the status quo.

<sup>40</sup> *DJBP* I.III.XII, XIII.

<sup>41</sup> *DJBP* II.IV.VIII.3.

<sup>42</sup> *DJBP* II.IV.XIV.

Instead, Grotius was influenced by the pervasive hierarchical organisation of society promoted by the Roman conception of citizenship, and his writings echo the words of classical theorists. As Cicero notes, it is ‘natural’ that rulers should govern citizens with reason while slaves are dominated more harshly.<sup>43</sup> Certain individuals (those with the status of citizen) should be governed as sons, while other individuals (those who do not exhibit ‘ready obedience’) should be restrained like slaves. Grotius echoes this position when he declares that if for any reason, including ‘conditions as a result of caprice on the part of him who holds the sovereign power, unjust treatment be inflicted on us, we ought to endure it rather than resist by force.’<sup>44</sup> Yet the origin and rightful tenure of sovereign power differ from state to state. Grotius’ *Liber De Antiquitate Reipublicæ Batavicae* (1610) explicitly appeals to the legitimacy of the illustrious past of the Batavian Republic, whose ‘natural form’ is that of aristocratic and representative rather than monarchical sovereignty. Thus an Augustan conservatism can justify the Dutch revolt against the excesses of the Spanish monarch.

• *Rights and duties of citizenship*

Modern discussions of citizenship often centre around questions of rights. Grotius, too, employs the language of rights: ‘reason...and the nature of society...do not prohibit all use of force, but only that use of force which is in conflict with society, that is which attempts to take away the rights of another.’<sup>45</sup> Equating ‘society’ with the rights of others in this way is noteworthy. Combined with Grotius’ spirited defence of private property<sup>46</sup>, this move can be interpreted as defining citizenship in terms of individual rights against the state – and thus as a defence of the private against intrusion by the public. But it is important to be clear about the kind of rights Grotius means.

43 Cicero, Republic, book III § xxv: ‘we must distinguish different kinds of domination and subjection. For the mind is said to rule over the body, and also over lust; but it rules over the body as a king governs his subjects, or a father his children, whereas it rules over lust as a master rules his slaves, restraining it and breaking its power. So kings, commanders, magistrates, senators, and popular assemblies govern citizens as the mind governs the body; but the master’s restraint of his slaves is like the restraint exercised by the best part of the mind, the reason, over its own evil and weak elements...the parts of the body are ruled like sons on account of their ready obedience, but the evil parts of the mind are restrained with a stricter curb, like slaves.’

44 *DJBP* I.IV.1. Cf. II-VI.

45 *DJBP* I.II.1

46 E.g. *DJBP* II.1.

Grotius pairs rights with duties, or *officia*, which form a central theme of many of his works. In *Meletius*, Grotius divides duties into four categories: duties to God, duties to mankind, duties to society, and duties to oneself. The order is important, and Grotius writes that classical philosophers and political leaders were wrong not to give first priority to duties to God.<sup>47</sup> They either neglected religious worship or treated it as an institution to be maintained by law. Ancient philosophers and legislators wrongly ignored the necessity of religious observance to public morality.<sup>48</sup>

After duties to God come duties to mankind. The chief duty to mankind, or *humana officia*, is friendship on the ground of shared humanity. In other words, the good citizen 'excludes nobody from his love...Nor does he, like Aristotle, set barbarians apart from Greeks as though they were a different species or subject them to injuries or even servitude. But nature persuades him that these people too are humans and therefore should be considered brothers.'<sup>49</sup> In inveighing against servitude in this way, Grotius is not at all saying that slavery itself is unjust, only that whole peoples should not be enslaved, though he later wavers on that point. This is evident at several points in *De Jure Belli ac Pacis*, where he points to 'the error of those that denied all subjection...as inconsistent with Christian liberty.'<sup>50</sup> Grotius admits that there are no slaves in the state of nature, and thus that those who argue that slavery is contrary to nature are right in a certain sense. But he goes right on to affirm that, nevertheless, 'it is not in conflict with natural

47 *Meletius*, 60: 'we cannot sufficiently reproach almost all the authors from antiquity on the subject of duties and moral, who either passed this over in total silence even though this is the most important thing, or only enjoined it in so far as it is part of the obedience due to state institutions to such an extent that Varro and others did not hesitate to write that religions should be maintained out of respect for the law, however false they and their gods were.' Grotius adds that 'Christian teaching for that reason easily surpasses all philosophers and legislators in that it impresses on people that it is necessary to worship, love and venerate God everywhere and at all times. This is its constant aim, this is what it is all about.'

48 Grotius' view of the proper relationship between religion and politics is a key theme in much Grotian scholarship. In particular, there has been considerable scholarly debate about whether Grotius was really sincere when he wrote that 'we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him' (Kelsey translation of the Prolegomena to DJBP, p.9). See M.B. Crowe, 'The 'Impious Hypothesis': A Paradox in Hugo Grotius?' *Tijdschrift voor Filosofie* 38 (1976), James St. Leger, *The 'Etiam si Daremus' of Hugo Grotius: A Study in the Origins of International Law* (Roma: 1962), and Leonard F.M. Besselink, 'The impious hypothesis revisited', *Grotiana*, vol. 9, 1988, pp. 3-63.

49 *Meletius*, 60.

50 *DJBP* II.V.XXIX.

justice that slavery should have its origin in a human act.’ Thus, for example, those who surrender themselves or are captured in war become slaves, as do their children.<sup>51</sup> Furthermore, the law of nations accords a much larger place than natural law to slavery, confirming its legitimacy.

Of course, the master’s rights over slaves are limited by duties – such as providing sustenance – though slaves do not thereby gain the right to resist a master’s wishes.<sup>52</sup> Grotius affirms, for example, that a master cannot rightly kill his slave unless the slave has committed a capital crime, though noting that there are many societies in which the master who has killed a slave goes unpunished, just like the father who has killed a child.<sup>53</sup> In addition, slaves cannot rightfully be forced to perform an illegal act, and they are generally exempt from military service, though this exemption ‘must be understood as subject to exception in cases of extreme necessity.’<sup>54</sup> Thus this particular duty of friendship towards *humanum* does not extend so far as to forbid slavery. It does, however, urge compassion and prohibit or at least mollify vengeance. ‘Aristotle and Cicero recommend revenge as being consistent with nature,’ writes Grotius, so ‘preference is to be given to the Platonists and Stoics, who commanded not to retaliate for injustice.’<sup>55</sup>

Most interesting of the four categories of duties, from our perspective, are the duties to society. These partly concern duties to the family and partly duties to the *res publica*, since the order on which human society is based comprises two elements: the family and the state.<sup>56</sup> The duties of the good Christian citizen in the familial realm include renouncing promiscuity and rejecting indiscriminate marriage. ‘Thus the Christian law demands indissoluble bonds of matrimony without divorce. Most of the Oriental peoples and even the Jews have acted contrary to this law, and it is virtually only the Romans who are to be praised because for six hundred years they preserved

51 *DJBP* III.VII.I, II.

52 *DJBP* III.VII.VII.

53 *DJBP* II.V.XXVIII.

54 *DJBP* II.XXVI.III and I.V.IV.

55 *Meletius*, 69. Furthermore, good Christian citizens should ‘be kind when instructing those who err in respect of religion and morals. One of the things abominable to the Athenians was not to show the right way. How great a distance is there between this goodness and charity toward all people, including enemies, and the practices of many peoples like the Spartans of old, whose entire education was aimed at murder and plunder and not at the pursuit of peace!’ *Meletius*, 70.

56 ‘Ordo quo constant res humanæ duplex est: familia, deinde respublica.’ *Meletius*, 71. Christianity, declares Grotius, ‘gives for either the best possible rules that can be said or thought.’

marital fidelity intact.’ The Roman model of familial duties is also evident in Grotius’ description of the ‘mutual duties of parents, children and spouses between them, a lenient leadership on the one hand and a lasting obedience on the other’.<sup>57</sup> Such strict duties to the family are not quite the same ones embodied in the French revolutionary definition of citizenship.<sup>58</sup>

The second element of the duties to society are the duties to the *res publica*. Grotius claims that observation of these *officia* by good Christians makes them *cives optimi*—the best citizens. Observation of the duties to the state, he notes, ensures that ‘good people are at the same time the best citizens.’<sup>59</sup> This conflation of good people with the best citizens is striking in its content: ‘For not only the tribunes of the people but anyone invested with authority is sacrosanct to Christians, since their power has been given to them by God. Under Christian laws, there is no question of the population being incited to hatred of kings and rulers by inflammatory speeches of Stoics, no seditions are preached, but everybody is urged to be content with the polity he has received.’<sup>60</sup> The *cives optimi* to which Grotius refers look distinctly different from the revolutionary partisans of *liberté, égalité* and *fraternité*.

Finally, among the duties to oneself Grotius mentions Christian charity, in an injunction sounding very much like the Roman duty of sharing one’s wealth: ‘As to wealth, we should be on our guard against the immoderate and endlessly increasing avarice which destroys the heart and ruins tranquillity.’ Every citizen ‘is commanded to acquire by honest work what is necessary for himself and his family. Should God give something on top of that, [...the citizen] should relieve the destitution of others with his own affluence.’<sup>61</sup> This fits with the view that the modern idea of privacy developed during the nineteenth century.<sup>62</sup>

<sup>57</sup> Meletius, 73.

<sup>58</sup> But see Carole Pateman, *Participation and Democratic Theory* (Cambridge University Press, 1970), arguing that the ideal of the universal citizen excluded women by confining them to the private sphere of family. The question of the relationship between (public) citizenship and (private) family has also been explored by many other feminist scholars.

<sup>59</sup> ‘Ad rempublicam quod attinet, tales sunt Christianorum leges, ut appareat ipsorum maxime exemplo eosdem esse et viros bonos et cives optimos.’ Meletius, 74.

<sup>60</sup> Meletius, 74.

<sup>61</sup> Meletius, 78.

<sup>62</sup> ‘The writers of the seventeenth and eighteenth centuries would have been shocked by J. S. Mill’s contention that ‘the only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute.’ Kinneging, *Aristocracy, Antiquity, and History* 156.

- *Conclusion*

Grotius' *cives optimi* are not the revolutionary *citoyens* of the late eighteenth century. Ideal citizens are endowed not only with reason but also with a concern for order and stability, a respect for authority, and a strong sense of duty and obligation. Scottish Enlightenment thinkers such as Hume and Smith are right to consider innovative Grotius' view of humans as rational beings with an instinct for sociability. At the same time, however, thinkers such as Voltaire or Rousseau are not unreasonable in criticizing Grotius' old-fashioned or excessively legalistic thinking. By examining his thinking on citizenship, this paper demonstrates that Grotius can be read both as a modern thinker, as Hume and other admirers maintain, and also as firmly rooted in classical thought, as the Straussian interpretation (which privileges Hobbes as making the 'clean break with the past') holds. For Grotius, the origin and nature of sovereignty differs from society to society. Governmental authority rests on some foundations in some locations and on very different foundations elsewhere. Yet rights depend on maintaining political order: if the 'natural' regime of a society falls, the rights of citizens can be extinguished, and the citizens of such a fallen state even enslaved. This justifies bad governance by a monarch answerable only to God. In terms of the rights and duties of citizenship, too, Grotius oscillates between a strong defence of individual liberty and an equally strong appeal to the duty to uphold the public order. *Cives optimi* are content with the political order which God has provided for them, and balance the rights of citizenship with duties.

