



# Hobbes and the Foundations of Modern International Thought

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## Hobbes and the Foundations of Modern International Thought<sup>†</sup>

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Profecto utrumque verè dictum est,  
Homo homini Deus, & Homo homini Lupus.  
Illud si concives inter se; Hoc, si civitates comparemus.  
(Hobbes, De Cive)<sup>1</sup>

Quentin Skinner concluded The Foundations of Modern Political Thought (1978) with the claim that '[b]y the beginning of the seventeenth century, the concept of the State -- its nature, its powers, its right to command obedience -- had come to be regarded as the most important object of analysis in European political thought.' For confirmation of this, he quoted Thomas Hobbes who, in the preface to De Cive (1642), declared that 'the aim of "civil science" is "to make a more curious search into the rights of states and duties of subjects".<sup>2</sup> The Foundations was dedicated to the historical examination of just how the state became the central analytical object of political thought and how the groundwork for a recognisably modern concept of the state had been laid. Fundamental to this concept was the state's independence from 'any external or

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<sup>1</sup> Thomas Hobbes, De Cive: The Latin Version, ed. Howard Warrender (Oxford, 1983), 73; 'There are two maxims which are surely both true: Man is a God to man, and Man is a wolf to Man. The former is true of the relations of citizens with each other, the latter of relations between commonwealths': Thomas Hobbes, On the Citizen, ed. Richard Tuck and Michael Silverthorne (Cambridge, 1998), 3. On this passage see François Tricaud, "'Homo homini Deus", "Homo homini Lupus": Recherche des Sources des deux Formules de Hobbes', in Reinhart Koselleck and Roman Schnur, eds., Hobbes-Forschungen (Berlin, 1969), 61-70.

<sup>2</sup> Quentin Skinner, The Foundations of Modern Political Thought, 2 vols. (Cambridge, 1978), II: The Age of Reformation, 349; '... in jure civitatis, civiumque officiis investigandis opus est': Hobbes, De Cive, ed. Warrender, 78. Compare Skinner, 'From the State of Princes to the Person of the State', in Skinner, Visions of Politics, 3 vols. (Cambridge, 2002), II: Renaissance Virtues, 368-413; Skinner, 'Hobbes and the Purely Artificial Person of the State', in Skinner, Visions of Politics, III: Hobbes and Civil Science, 177-208.

superior power.<sup>3</sup> Yet, save for a brief but suggestive account of neo-Scholastic conceptions of the law of nations, the Foundations included no treatment of the state in its nature, its powers or its rights as an international actor.<sup>4</sup> The concept of the state traced by Skinner defined it almost entirely in terms of its internal, domestic or municipal capacities. The relations between states had apparently not yet become an important object of political or historical analysis.

The absence from the Foundations of any extended treatment of what might be called the foundations of modern international thought was typical for the time at which the book appeared. In the same year that the Foundations was published, W. B. Gallie, Skinner's predecessor in the Cambridge Chair of Political Science, commented that 'thoughts ... about the roles and causes of war and the possibilities of peace between the peoples of the world' had formed 'an enterprise which the ablest minds of previous ages had, with very few exceptions, either ignored or by-passed.' Gallie argued that the foundations of modern international thought were laid much later, during the eighteenth century, 'in the writings of Montesquieu, Voltaire, Rousseau, and Vattel among others.'<sup>5</sup> Taken together, Skinner's and Gallie's accounts implied that the foundations of modern political thought were distinct from those of modern international thought and that each possessed a distinct chronology, genealogy and canon of fundamental thinkers.

For Skinner, as for most political theorists, Hobbes was the 'first ... modern theorist of the sovereign state.'<sup>6</sup> This was the state as sovereign over its subjects rather than as a sovereign among sovereigns. The balance of Hobbes's own writings justified this focus on the internal dimension of the state. Hobbes had much less to say about the relations between states than many scholars -- particularly theorists of international relations -- would like him to have said. In comparison with his treatment of the domestic powers and rights of the sovereign, his reflections on the law of nations, on the rights of states as international actors and on the behaviour of states in relation to one another were scattered and terse. For this reason, students of Hobbes's political theory

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<sup>3</sup> Skinner, The Foundations of Modern Political Thought, II, 351.

<sup>4</sup> Skinner, The Foundations of Modern Political Thought, II, 151-54.

<sup>5</sup> W. B. Gallie, Philosophers of Peace and War: Kant, Clausewitz, Marx, Engels and Tolstoy (Cambridge, 1978), 1; compare F. H. Hinsley, Power and the Pursuit of Peace: Theory and Practice in the Relations between States (Cambridge, 1963).

<sup>6</sup> Skinner, 'From the State of Princes to the Person of the State', in Skinner, Visions of Politics, II, 413.

have generally seen his international theory as marginal to the central concerns of his civil science: 'The external relations of Leviathan are for them on the fringe of Hobbes' theory.'<sup>7</sup>

The relative silence of Hobbes and of his philosophical commentators on this matter contrasts starkly with his canonical position among the founding fathers of international thought: 'No student of international relations theory, it seems, can afford to disregard Hobbes's contribution to that field.'<sup>8</sup> Within the conventional typologies of international relations theory, Hobbes stands between Hugo Grotius and Immanuel Kant as the presiding genius of one of three major traditions of international theory: the Hobbesian 'Realist' theory of international anarchy, the Grotian 'Rationalist' theory of international solidarity, and the Kantian 'Revolutionist' theory of international society.<sup>9</sup> There is clearly a problem here for historians, political theorists and international relations theorists alike. If Hobbes's contribution to international thought was so fundamental, how could it have been overlooked for so long? And how did he come to be accepted as a foundational figure in the history of international thought if his reflections on the subject were so meagre?

Amid the vast amount of commentary on Hobbes as an international theorist there is little that could be described as being of a genuinely historical character.<sup>10</sup> Accordingly, the first part of this essay will lay out Hobbes's

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<sup>7</sup> Murray Forsyth, 'Thomas Hobbes and the External Relations of States', British Journal of International Studies, 5 (1979), 196. For an early exception, see David Gauthier, The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes (Oxford, 1969), 207-12.

<sup>8</sup> Noel Malcolm, 'Hobbes's Theory of International Relations', in Malcolm, Aspects of Hobbes (Oxford, 2002), 432.

<sup>9</sup> Martin Wight, 'An Anatomy of International Thought', Review of International Studies, 13 (1987), 221-27; Wight, International Theory: The Three Traditions, ed. Gabriele Wight and Brian Porter (Leicester, 1991).

<sup>10</sup> As well as Forsyth, 'Thomas Hobbes and the External Relations of States', and Malcolm, 'Hobbes's Theory of International Relations', in Malcolm, Aspects of Hobbes, see especially Mark A. Heller, 'The Use and Abuse of Hobbes: The State of Nature in International Relations', Polity, 13 (1980), 21-32; Hedley Bull, 'Hobbes and the International Anarchy', Social Research, 48 (1981), 717-38; Cornelia Navari, 'Hobbes and the "Hobbesian Tradition" in International Thought', Millennium: Journal of International Studies, 11 (1982), 203-22; Donald W. Hanson, 'Thomas Hobbes's "Highway to Peace"', International Organization, 38 (1984), 329-54; Timo Airaksinen and Martin A. Bertman, eds., Hobbes: War Among Nations (Aldershot, 1989); Peter Caws, ed., The Causes of Quarrel: Essays on Peace, War, and Thomas Hobbes (Boston, 1989); Laurie M. Johnson, Thucydides, Hobbes, and the Interpretation of Realism (DeKalb, 1993); Raino

conceptions of the relation between states across the course of his career.<sup>11</sup> As this survey will show, the full range of Hobbes's writings provides a more expansive and nuanced set of reflections on the state in its international capacity than could be inferred from most treatments of the subject. No previous attempt has been made to either to trace the afterlife of Hobbes's reflections, in large part because there has been little study of the reception of his works more generally in the period since the mid-eighteenth century.<sup>12</sup> The second part of the essay will then survey the afterlife of Hobbes's international thought from the seventeenth century to the twentieth in order to show just how recent is the adoption of Hobbes as a -- if not the -- theorist of international anarchy.

The earliest statement on the subject of international relations attributable to Hobbes comes from the 'Discourse of Laws' contained in the Horae Subsecivae

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Malnes, The Hobbesian Theory of International Conflict (Oslo, 1993); Michael W. Doyle, Ways of War and Peace: Realism, Liberalism, and Socialism (New York, 1997), 111-36; David Boucher, Political Theories of International Relations: From Thucydides to the Present (Oxford, 1998), 145-67; Dieter Hüning, "'Inter arma silent leges': Naturrecht, Staat und Völkerrecht bei Thomas Hobbes', in Rüdiger Voigt, ed., Der Leviathan (Baden-Baden, 1999), 129-63; Richard Tuck, The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant (Oxford, 1999), 126-39; Kinji Akashi, 'Hobbes's Relevance to the Modern Law of Nations', Journal of the History of International Law, 2 (2000), 199-216; Georg Cavallar, The Rights of Strangers: Theories of International Hospitality, the Global Community, and Political Justice since Vitoria (Aldershot, 2002), 173-91; Peter Schröder, 'Natural Law, Sovereignty and International Law: A Comparative Perspective', in Ian Hunter and David Saunders, eds., Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought (Basingstoke, 2002), 204-18; Howard Williams, Kant's Critique of Hobbes: Sovereignty and Cosmopolitanism (Cardiff, 2003); Charles Covell, Hobbes, Realism and the Tradition of International Law (Basingstoke, 2004).

<sup>11</sup> This essay deals only with Hobbes's firsthand statements; any full survey of his knowledge of international relations would also have to include his translations of Fulgenzio Micanzio's letters to the second Earl of Devonshire on foreign affairs (1615-26), Chatsworth, Hobbes MS 73.Aa, transcribed in British Library, Additional MS 11309, and of Thucydides, Eight Bookes of the Peloponnesian Warre (London, 1629).

<sup>12</sup> There is as yet no comprehensive survey of Hobbes's late eighteenth- and nineteenth-century reception comparable to Noel Malcolm, 'Hobbes and the European Republic of Letters', in Malcolm, Aspects of Hobbes, 457-545, or Yves Glaziou, Hobbes en France au XVIIIe siècle (Paris, 1993), though see Mark Francis, 'The Nineteenth-Century Theory of Sovereignty and Thomas Hobbes', History of Political Thought, 1 (1980), 517-40; Richard Tuck, Hobbes (Oxford, 1989), 96-98; and James E. Crimmins, 'Bentham and Hobbes: An Issue of Influence', Journal of the History of Ideas, 63 (2002), 677-96.

(1620), a volume of essays credited to Hobbes's pupil, William Cavendish, later the second Earl of Devonshire. There the author (who stylometric analysis has suggested may have been Hobbes)<sup>13</sup> provided the following entirely conventional definition of the 'three branches that mens Lawes do spread themselves into, every one stricter then other':

The Law of Nature, which we enjoy in common with al other living creatures. The Law of Nations, which is common to all men in generall: and the Municipall Law of every Nation, which is peculiar and proper to this or that Country, and ours to us as Englishmen.

That of Nature, which is the ground or foundation of the rest, produceth such actions amongst us, as are common to every living creature, and not only incident to men: as for example, the commixture of severall sexes, which we call Marriage, generation, education, and the like; these actions belong to all living creatures as well as to us. The Lawes of Nations bee those rules which reason hath prescribed to all men in generall, and such as all Nations one with another doe allow and observe for just.<sup>14</sup>

This definition was conventional because drawn almost word for word from the opening pages of the Digest of Roman law, a text whose fundamental importance for early-modern political thought Skinner has repeatedly stressed.<sup>15</sup> The first paragraph of the Digest distinguished public law (which concerned religious affairs, the priesthood and offices of state) from private law. It then divided private law into three parts: the ius naturale, the ius gentium and the ius civile [collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus]. In words that would be followed exactly by the author of the 'Discourse of Laws', it stated that the ius naturale is common to all animals and out of it comes marriage, procreation and child-rearing, while the ius gentium 'the law of nations, is that which all human peoples observe.' The source of the ius naturale was instinct; that of the ius gentium, human agreement. They therefore obliged human beings in different ways. It could thus be concluded of the ius gentium: 'That it is not co-extensive with natural law can be grasped easily, since this latter

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<sup>13</sup> Noel B. Reynolds and John L. Hilton, 'Thomas Hobbes and the Authorship of the Horae Subsecivae', History of Political Thought, 14 (1994), 361-80.

<sup>14</sup> Horae Subsecivae. Observations and Discourses (London, 1620), 517-18 (contractions expanded).

<sup>15</sup> Quentin Skinner, Liberty Before Liberalism (Cambridge, 1998), 39-41; Skinner, 'John Milton and the Politics of Slavery' and 'Liberty and the English Civil War', in Skinner, Visions of Politics, II, 289-91, 313.

is common to all animals whereas ius gentium is common only to human beings among themselves.<sup>16</sup> Though both could be distinguished from the ius civile, the internal law of particular communities, the ius gentium could not be assimilated to the ius naturale. The medieval and early-modern theory of natural law would thereafter rest on this trichotomy with its fundamental distinction between the law of nature and the law of nations.<sup>17</sup>

The definitions of the laws of nature and of nations in the Horae Subsecivae stand in marked contrast to what would become Hobbes's standard account in the successive versions of his civil science from the Elements of Law (1640) through De Cive (1642) to Leviathan (1651; 1668). If the passage from the 'Discourse of Laws' can be attributed to Hobbes, then his later treatments of the law of nature and of nations represented a clear break with that early triadic definition.<sup>18</sup> Hobbes's mature conception of the law of nations differed in three basic ways from the account offered in the 'Discourse of Laws': first, it derived the law of nature from reason alone; second, it distinguished firmly between the law of nature and the right of nature (a distinction that later writers, such as Samuel Pufendorf, would not observe as scrupulously as Hobbes); and, third, it collapsed the law of nations into the law of nature.

Hobbes's later statements were much closer to the jurist Gaius's definition, also found the first chapter of the Digest, which distinguished the ius civile proper to each particular society from 'the law which natural reason has

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<sup>16</sup> The Digest of Justinian, ed. Theodor Mommsen and Paul Krueger, trans. Alan Watson, 4 vols. (Philadelphia, 1985), I. 1. 1, §§ 2-4: 'Ius gentium est quo, gentes humanae utuntur. quod a naturali recedere facile intellegere licet, quia illud omnibus animalibus, hoc solis hominibus inter se commune sit'; Max Kaser, Ius gentium (Cologne, 1993), 64-70. This passage is usually attributed to Ulpian.

<sup>17</sup> Merio Scattola, 'Before and After Natural Law: Models of Natural Law in Ancient and Modern Times', in T. J. Hochstrasser and Peter Schröder, eds., Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment (Dordrecht, 2003), 10-11.

<sup>18</sup> The fact that the passage is such a literal paraphrase of the Digest makes it inapt for the kind of analysis applied in Reynolds and Hilton, 'Thomas Hobbes and the Authorship of the Horae Subsecivae'. Thomas Hobbes, Three Discourses: A Critical Modern Edition of a Newly Identified Work of the Young Hobbes, ed. Noel B. Reynolds and Arlene W. Saxonhouse (Chicago, 1995), supplies little information on the sources of the discourses and, hence, no indication of whether other passages might also be paraphrases. For further evidence of such borrowing in the text see Andrew Huxley, 'The Aphorismi and A Discourse of Laws: Bacon, Cavendish, and Hobbes 1615-1620', Historical Journal, 47 (2004), 399-412.

established among all human beings ... among all observed in equal measure ... called ius gentium, as being the law which all nations observe.'<sup>19</sup> This produced a dichotomous taxonomy of law in which the law of nature applied both to individuals and to commonwealths and the civil law was distinguished from it as the positive commands of sovereigns. Hobbes's use of the distinction between the law of nations and the civil law would help to create two competing afterlives for Hobbes as a foundational figure both for the seventeenth- and eighteenth-century discipline of the law of nature and nations and for nineteenth-century legal positivism. His later reputation as a denier of international law and as a theorist of international anarchy would spring from these competing conceptions of him as at once a naturalist and a positivist, depending on whether he was considered as an international theorist or as a political theorist.

In his first mature account of the law of nations, Hobbes noted in the Elements of Law that previous writers on the law of nature could not agree whether it represents 'the consent of all nations, or the wisest and most civil nations' or 'the consent of all mankind' because 'it is not agreed upon, who shall judge which nations are the wisest.' He concluded instead that '[t]here can be ... no other law of nature than reason, nor no other precepts of NATURAL LAW, than those which declare unto us the ways of peace.' Later in the work, he asserted that 'right [ius] is that liberty which law leaveth us; and laws [leges] those restraints by which we agree mutually to abridge one another's liberty' before applying that distinction to a tripartite division of law crucially different from that found in the Digest and in the Horae Subsecivae: 'whatsoever a man does that liveth in a commonwealth, jure, he doth it jure civili, jure naturae, and jure divino.' This division omitted the law of nations as strictly impertinent to the internal affairs of a commonwealth and irrelevant to its citizens as individuals and substituted instead the ius divinum as the third source of obligation in civil society. Individuals are not the subjects of the ius gentium; commonwealths in their capacity as artificial persons are. The ius gentium therefore only appeared as an afterthought in the very last sentence of the Elements of Law: 'And thus much concerning the elements and general grounds of law natural and politic.

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<sup>19</sup> Gaius, Institutiones, I. 3: 'quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur' (also in Digest, I. 1. 9); Kaser, Ius gentium, 20-22.



As for the law of nations, it is the same with the law of nature. For that which is the law of nature between man and man, before the constitution of commonwealth, is the law of nations between sovereign and sovereign after.'<sup>20</sup>

Hobbes elaborated this rather cursory statement in De Cive, a work whose central themes -- 'men's duties, first as men, then as citizens and lastly as Christians' -- he defined as constituting 'the elements of the law of nature and of nations [iuris naturalis gentiumque elementa], the origin and force of justice, and the essence of the Christian Religion.'<sup>21</sup> After once more distinguishing law from right, Hobbes elaborated his definition of natural law in its application first to individuals and then to states:

Natural law can again be divided into the natural law of men, which alone has come to be called the law of nature, and the natural law of commonwealths, which may be spoken of as the law of nations [lex Gentium], but which is commonly called the right of nations [ius Gentium]. The precepts of both are the same: but because commonwealths once instituted take on the personal qualities of men, what we call a natural law in speaking of the duties of individual men is called the right of Nations, when applied to whole commonwealths, peoples or nations. And the Elements of natural law and natural right which we have been teaching may, when transferred to whole commonwealths and nations, be regarded as the Elements of the laws and of the right of Nations [Et quae legis & iuris naturalis Elementa hactenus tradita sunt, translata ad civitates et gentes integras, pro legum et iuris Gentium Elementis sumi possunt].<sup>22</sup>

This was the clearest statement Hobbes would ever give of his rationale for identifying the law of nations with the law of nature. In the Leviathan, he would say only, 'Concerning the Offices of one Sovereign to another, which are comprehended in that Law, which is commonly called the Law of Nations, I need not say any thing in this place; because the Law of Nations, and the Law of Nature, is the same thing' in so far as 'every Sovereign hath the same Right, in procuring the safety of his People, that any particular man can have, in procuring

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<sup>20</sup> Thomas Hobbes, The Elements of Law, Natural and Politic (1640), ed. Ferdinand Tönnies, 2nd edn., introd. M. M. Goldsmith (London, 1969), 75, 186, 190.

<sup>21</sup> Hobbes, De Cive, ed. Warrender, 77; Hobbes, On the Citizen, ed. Tuck and Silverthorne, 7.

<sup>22</sup> Hobbes, De Cive, ed. Warrender, 207-08 (De Cive, XIV. 4); Hobbes, On the Citizen, ed. Tuck and Silverthorne, 156.

his own safety.'<sup>23</sup> This left implicit what Hobbes had made explicit in De Cive: that the commonwealth once constituted as an artificial person took on the characteristics and the capacities of the fearful, self-defensive individuals who fabricated it. However, he did not necessarily imply that individuals in the state of nature could be understood reciprocally as possessing 'the characteristics of sovereign states.'<sup>24</sup> The analogy between pre-civil individuals and commonwealths was imperfect and only made sense for Hobbes once states had been constituted as persons; to describe individuals as possessing the characteristics of states would beg the question of just what characteristics a state in fact possessed.

When Hobbes came to offer the final version of his account of the relation between the law of nature and the law of nations in the Latin Leviathan (1668), he repeated that they are the same [idem sunt] and expanded on his definition in the English Leviathan by asserting that 'whatever a particular man could do before commonwealths were constituted, a commonwealth can do according to the ius gentium.'<sup>25</sup> What exactly a commonwealth could do, he said, could be found in the list of the laws of nature earlier in his work. Hobbes left it to his readers to provide an account of the rights of commonwealths in the state of nature, though without any recognition that his account had changed over time. For example, in the Elements of Law, Hobbes had specified (as the twelfth law of nature), 'That men allow commerce and traffic indifferently to one another' and illustrated the principle with the example (also used earlier by Grotius in the same connection) of the war between the Athenians and the Megareans.<sup>26</sup> Hobbes's subsequent enumerations of the laws of nature in De Cive and Leviathan omitted without explanation this stipulation that commerce must be unhindered. By contrast, the thirteenth law of nature, 'That all messengers of

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<sup>23</sup> Thomas Hobbes, Leviathan, ed. Richard Tuck, rev. edn. (Cambridge, 1996), 244.

<sup>24</sup> Tuck, The Rights of War and Peace, 129.

<sup>25</sup> 'De officiis summorum imperantium versus se invicem nihil dicam, nisi quod contineatur in legibus supra commemoratis. Nam ius gentium et ius naturae idem sunt. Quod potuit fieri ante civitates constitutas a quolibet homine, idem fieri potest per ius gentium a qualibet civitate ...': Hobbes, Leviathan (1668), in Thomae Hobbes Malmesburiensis Opera Philosophica Quae Latine Scripsit Omnia, ed. Sir William Molesworth, 5 vols. (London, 1839-45), III, 253.

<sup>26</sup> Hobbes, The Elements of Law, ed. Tönnies, 87; [Hugo Grotius,] Mare Liberum (Leiden, 1609), 3, alluding to Diodorus Siculus, Bibliotheca historica, XII. 39, and Plutarch, Pericles, XXIX.

peace, and such as are employed to maintain amity between man and man, may safely come and go', did recur in those later enumerations, even though in De Cive it was one of the very few laws of nature to have no equivalent in the divine law.<sup>27</sup> Hobbes may have come to think that the right of free trade needed no separate stipulation once the general law of treating everyone else equally had been stated, but he clearly came to believe that it was unenforceable in the state of nature, where there is 'no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea.'<sup>28</sup> He thereby accommodated his account of the law of nations to his account of the law of nature: what could not be rightfully (or practicably) claimed by individuals in the state of nature could hardly be claimed by commonwealths in their relations with one another.

It was on the basis of his assimilation of the law of nations to the law of nature that Hobbes identified the international arena as a still existing state of nature. Indeed, apart from 'the savage people in many places of America', commonwealths in their relations with one another provided the most striking and enduring evidence for the existence of that state of nature.<sup>29</sup> Hobbes seems to have made that discovery between writing the Elements of Law and De Cive. In the Elements, his account of the foundations of international relations was as cursory as his treatment of the ius gentium. Hobbes there took the ius in bello to be a specifically personal matter: '[t]here is ... little to be said concerning the laws that men are to observe towards one another in time of war, wherein every man's being and well-being is the rule of his actions.' Beyond that, his treatment of commonwealths as international actors was descriptive rather than normative and concerned only 'the means of levying soldiers, and of having money, arms, ships, and fortified places in readiness for defence; and partly, in the avoiding of unnecessary wars.'<sup>30</sup>

In De Cive, Hobbes offered for the first time the full range of descriptive and normative characteristics of commonwealths as international actors that would also be found, with some modification and elaboration, in Leviathan. Answering the criticism that he had overestimated the primacy of fear as the

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<sup>27</sup> Hobbes, De Cive, ed. Warrender, 115 (De Cive, III. 19, where diplomatic immunity becomes the fourteenth law of nature); Hobbes, On the Citizen, ed. Tuck and Silverthorne, 51 ; Hobbes, Leviathan, ed. Tuck, 108 (where it is the fifteenth law of nature).

<sup>28</sup> Hobbes, Leviathan, ed. Tuck, 89.

<sup>29</sup> Hobbes, Leviathan, ed. Tuck, 89.

<sup>30</sup> Hobbes, The Elements of Law, ed. Tönnies, 101, 184.

fundamental motive for human action in the state of nature, Hobbes adduced the evidence of the relations between commonwealths, which 'guard their frontiers with fortresses, their cities with walls, through fear of neighbouring countries'; '[a]ll commonwealths and individuals behave in this way, and thus admit their fear and distrust of each other.' That fearful defensiveness defined the very nature of commonwealths when seen from the outside: 'And what else are countries but so many camps fortified against each other with garrisons and arms [totidem castra praesidiis et armis contra se invicem munita], and their state ... is to be regarded as a natural state, i. e. a state of war?'. Thus, Hobbes concluded, 'hostility is adequately shown by distrust, and by the fact that the borders of their commonwealths, Kingdoms and empires, armed and garrisoned, with the posture and appearance of gladiators [statu vultuque gladiatorio], look across at each other like enemies, even when they are not striking each other.'<sup>31</sup>

In the Leviathan, this image would become even more decisive evidence for the existence of the state of nature: 'though there had never been any time, wherein particular men were in a condition of warre one against another; yet in all times, Kings, and Persons of Sovereigne authority, because of their Independency, are in continuall jealousies, and in the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the Frontiers of their Kingdomes; and continuall Spyes upon their neighbours, which is a posture of War.'<sup>32</sup> On this basis, there could be no hope of peace among commonwealths: as the Lawyer explained in Hobbes's Dialogue Between a Philosopher and a Student of the Common Laws of England (1666), 'You are not to expect such a Peace between two Nations, because there is no Common Power in this World to punish their Injustice: mutual fear may keep them quiet for a time, but upon every visible advantage they will invade one another.'<sup>33</sup> However, Hobbes did not infer from this posture of hostility that mutual fear would give rise to an international Leviathan, to liberate commonwealths from the dangers of the state of nature as

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<sup>31</sup> Hobbes, De Cive, ed. Warrender, 93, 180, 277-78 (De Cive, I. 2, X. 17, XV. 27); Hobbes, On the Citizen, ed. Tuck and Silverthorne, 25, 126, 231-32. The source of information on gladiators most readily accessible to Hobbes would have been Justus Lipsius, Saturnaliū Sermonum libri duo, Qui de Gladiatoribus (Antwerp, 1585, and later editions).

<sup>32</sup> Hobbes, Leviathan, ed. Tuck, 90.

<sup>33</sup> Thomas Hobbes, A Dialogue Between a Philosopher and a Student of the Common Laws of England (1666), ed. Joseph Cropsey (Chicago, 1971), 57.

the institution of the sovereign freed individuals from those perils. The two cases were incomparable 'because [sovereigns] uphold thereby, the Industry of their Subjects; there does not follow from it, that misery, which accompanies the Liberty of particular men.'<sup>34</sup> The international state of nature was not equivalent to the interpersonal state of nature and was therefore insusceptible to parallel remedies for its inconveniencies.<sup>35</sup>

Hobbes's scattered reflections on the law of nations, on the behaviour of states and on the relations between them, gave rise to two major but distinguishable conceptions with which his name would become associated in later international thought. The first, and most fundamental, was that the law of nations was simply the law of nature applied to commonwealths. The second, and presently the one identified as most characteristically Hobbesian, was that the international realm is a state of nature populated by fearful and competitive actors. These two concepts were not to be found in tandem in Hobbes's works before the composition of De Cive in 1641 nor did he elaborate or elucidate them after their appearance in Leviathan in 1651, save for their later translation into Latin in 1668. His failure to expound them systematically had three lasting consequences for his reputation and for the reception of his political philosophy. The first, arising initially in the seventeenth century, was to sharpen the division between naturalism and positivism in international law. The second, which emerged in the eighteenth and nineteenth centuries, was to distinguish his conception of the law of nations from his conception of the international state of nature. The third, arising from the previous two in the twentieth century, was to identify Hobbes as the classic theorist of international anarchy. This last is the most recent and the most contingent but remains the basis of Hobbes's reputation as a theorist of international relations.

The positivist response to Hobbes's naturalism originated even before the appearance of Leviathan with the publication in 1650 of the Iuris et Iudicii Faecialis, sive Iuris Inter Gentes by the Royalist professor of civil law at Oxford, Richard Zouche. Zouche's later reputation as 'the first real positivist' in the history of international law rests on the distinction he made in that work

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<sup>34</sup> Hobbes, Leviathan, ed. Tuck, 90.

<sup>35</sup> Heller, 'The Use and Abuse of Hobbes'; S. J. Hoekstra, 'The Savage, the Citizen, and the Foole: The Compulsion for Civil Society in the Philosophy of Thomas Hobbes' (unpub. D.Phil, University of Oxford, 1998), 69-84.

between the ius gentium and the ius inter gentes.<sup>36</sup> The ius gentium comprised all those elements common to the laws of various nations, such as the distinctions between freedom and slavery or private property and public property. This law of nations had to be distinguished from the law between nations, the ius inter gentes, which comprised the laws different peoples or nations observed in their dealings with one another, such as the laws of war and commerce.<sup>37</sup> According to this definition, the ius inter gentes was the product of convention and agreement and did not derive from any other source of law, natural or divine. Yet in an earlier manuscript version of his treatise, Zouche had originally defined the ius inter gentes as that which is common among diverse sovereigns or peoples and which is derived from the precepts of God, nature or nations, a definition derived from Gaius's in the Digest.<sup>38</sup> Zouche had clearly changed his mind about the definition of the ius inter gentes before 1650 and found it necessary to distinguish it from both the ius gentium and the ius naturae. The impulse for this shift seems to have been his reading of Hobbes on the law of nature and nations. There is no sign that Zouche had read any of Hobbes's works by the time he composed the manuscript version of the Iuris Faecialis, but De Cive did appear in the footnotes to the first chapter of the printed version.<sup>39</sup> Zouche may therefore have been the first legal theorist to resist Hobbes's conflation of the law of nations with the law of nature.

Within the later tradition of natural jurisprudence, from Pufendorf to Vattel and beyond, Hobbes would be acclaimed as a fundamental innovator on the basis of that conflation. By the late eighteenth century, the relationship between the two forms of law appeared to be the primary question in determining the basis of obligation itself. As the first anglophone historian of the law of nations, Robert Ward, put it in 1795: 'Upon the whole ... the great points of difference concerning the mode of its structure, seem to turn upon this; Whether the Law of Nations is merely the Law of nature as it concerns man, and

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<sup>36</sup> Arthur Nussbaum, A Concise History of the Law of Nations (New York, 1947), 122.

<sup>37</sup> Richard Zouche, Iuris et Iudicii Faecialis, sive, Iuris Inter Gentes (Oxford, 1650), 3.

<sup>38</sup> 'Ius inter Gentes est quod in Communionem inter diversos Principes vel populos obtinet, et deducitur ab Institutis divinis, Naturae et Gentium': [Richard Zouche,] Iuris Faecialis. Sive Iuris et Iudicii inter Gentes Explicatio, BL, Add. MS 48190, fol. 14<sup>r</sup>.

<sup>39</sup> Zouche, Iuris et Iudicii Faecialis, 3.

nothing more; or whether it is not composed of certain positive Institutions founded upon consent.' Ward took Hobbes, Pufendorf and Burlamaqui to be the key proponents of the first position; Suárez, Grotius, Huber, Bynkershoek, 'and in general the more recent authors, declare for the last.'<sup>40</sup> Pufendorf asked, 'Whether or no there be any such thing as a particular and positive Law of Nations, contradistinct to the Law of Nature?' and immediately answered his own question by quoting De Cive, XIV. 4: 'Thus Mr. Hobbes divides natural Law, into the natural Law of Men, and the natural Law of States, commonly called the Law of Nations. He observes, That the precepts of both are the same .... This opinion we, for our Part, readily subscribe to.'<sup>41</sup> Burlamaqui concurred, after quoting the same passage from De Cive: 'There is no room to question the reality and certainty of such a law of nations obligatory of its own nature, and to which nations, or the sovereigns that rule them, ought to submit.'<sup>42</sup> By the time Emer de Vattel published his Droit des gens in 1758, Hobbes's contribution had become foundational but not incontrovertible: 'Hobbes ... was the first, to my knowledge, to give us a distinct though imperfect idea of the Law of Nations ... His statement that the Law of Nations is the natural law applied to States or Nations is sound. But ... he was mistaken in thinking that the natural law did not necessarily undergo any change in being thus applied.'<sup>43</sup>

Before the twentieth century, Hobbes's conception of the international state of nature attracted much less comment and approval than his naturalist

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<sup>40</sup> Robert Ward, An Enquiry into the Foundation and History of the Law of Nations in Europe, From the Time of the Greeks and Romans, to the Age of Grotius, 2 vols. (London, 1795), I, 4.

<sup>41</sup> Samuel Pufendorf, Of the Law of Nature and Nations (1672), trans. Basil Kennett, 4th edn. (London, 1729), 149-50 (De Jure Naturae et Gentium, II. 3. 23); compare Robert Sharrock, Hypothesis Ethike, De Officiis Secundum Naturae Ius (Oxford, 1660), 229; Samuel Rachel, De Jure Naturae et Gentium Dissertationes (Kiel, 1676), 306; James Wilson, 'Lectures on Law' (1790-91), in The Works of James Wilson, ed. Robert Green McCloskey, 2 vols. (Cambridge, Mass., 1967), I, 151 (quoting Pufendorf).

<sup>42</sup> Jean Jacques Burlamaqui, The Principles of Natural Law (1748), trans. Thomas Nugent (London, 1748), 195-96 (Les Principes du droit naturel, VI. 5).

<sup>43</sup> Emer de Vattel, The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns (1758), trans. Charles G. Fenwick (Washington, DC, 1916), 5a-6a (Le Droit des gens, 'Preface'); Emmanuelle Jouannet, Emer de Vattel et l'émergence doctrinale du droit international classique (Paris, 1998), 39-52.

conception of the law of nations.<sup>44</sup> His early critics had attacked his conception of the interpersonal state of nature on the grounds that it made untenable assumptions about human motivation (as Grotius was the first to charge) or that it imported features of the civil state of humanity back into the pre-civil state (as Montesquieu contended, anticipating Rousseau).<sup>45</sup> However, they did not argue that his account of the relations between states was necessarily incorrect for the same reasons that his account of the relations between atomised individuals was incorrect. In fact, the very exiguousness of Hobbes's empirical account of international relations helped to ensure almost two centuries of silence on the subject. Throughout the nineteenth century, neither the first textbooks on international relations nor the first studies of Hobbes's thought found it necessary to treat him as an international theorist. For example, he did not appear alongside Grotius and Pufendorf in the most widely used American text on international relations of the nineteenth century, Theodore Woolsey's Introduction to the Study of International Law (1860), a work that would also be foundational for the emergent discipline of political science in the United States.<sup>46</sup> Similarly, none of Hobbes's nineteenth-century British students so much as mentioned his reflections on international relations or the law of nations,<sup>47</sup>

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<sup>44</sup> A distinguished early exception was Leibniz, who commented favourably on Hobbes's image of interstate relations as gladiatorial: G. W. Leibniz, Codex Iuris Gentium, 'Praefatio' (1693), in Leibniz: Political Writings, ed. Patrick Riley, 2nd edn. (Cambridge, 1988), 166.

<sup>45</sup> 'Putat inter homines omnes a nature esse bellum et alia quaedam habet nostris non congruentia': Hugo Grotius to Willem de Groot, 11 April 1643, in Briefwisseling van Hugo Grotius, ed. P. C. Molhuysen, B. L. Meulenbroek and H. J. M. Nellen, 17 vols. (The Hague, 1928-2001), XIV, 199; 'Hobbes demande pourquoi, si les hommes ne sont pas naturellement en état de guerre, ils vont toujours armés? et pourquoi ils ont des clefs pour fermer leurs maisons? Mais on ne sent pas que l'on attribue aux hommes avant cet établissement des sociétés, ce qui ne peut leur arriver qu'après cet établissement, qui leur fait trouver des motifs pour s'attaquer et pour se défendre': Charles Secondat, baron de Montesquieu, L'Esprit des Lois (1748), ed. R. Derathé, 2 vols. (Paris, 1973), I, 10.

<sup>46</sup> Theodore D. Woolsey, Introduction to the Study of International Law, Devised as an Aid in Teaching, and in Historical Studies (Boston, 1860); Brian C. Schmidt, The Political Discourse of Anarchy: A Disciplinary History of International Relations (Albany, NY, 1998), 52-54.

<sup>47</sup> William Whewell, Lectures on the History of Moral Philosophy in England (London, 1852), 14-35; F. D. Maurice, Modern Philosophy (London, 1862), 235-90; George Croom Robertson, Hobbes (Edinburgh, 1886); James Fitzjames Stephen, Horae Sabbaticae, 2nd ser. (London, 1892), 1-70; Leslie Stephen, Hobbes (London, 1904).



while glancing allusions to his views on 'Völkerrecht' appeared only in the second edition of Ferdinand Tönnies's study of Hobbes in 1912.<sup>48</sup>

Hobbes was only identified as a theorist of international anarchy once a consensus had emerged that the international realm was indeed anarchic. That consensus was the product of nineteenth- and early twentieth-century developments internal to the emerging modern disciplines of political science and international law.<sup>49</sup> It rested on a series of propositions, each of which had to be established before the 'discourse of anarchy' could be seen as plausible and coherent. First, it had to be accepted that the domestic and the international realms were analytically distinct. Then, the norms relevant to each realm had to be identified and distinguished. On that basis, it could be argued that states in their international capacity were unconstrained by any norms equivalent formally or obligatorily to those that applied to their own subjects. States were accordingly independent not just of one another but of any superior. Because they were atomistic they were agonistic: in the absence of any external authority, their relations were governed only by force. They therefore stood in relation to one another as competitive actors within an international state of nature. Hobbes's conflation of the law of nature with the law of nations would not support such a sharp analytical distinction between the internal and the external spheres. Though he admitted that the insecurity of individuals in the state of nature was strictly incomparable to that created by the competition between sovereigns, Hobbes assumed an essential analogy between the relations between individuals and the relations between states as international persons.

Hobbes's conception of municipal law led to very different conclusions about the separation between the foreign and the domestic and about the nature of international relations. For the second generation of English Utilitarians and their nineteenth-century heirs, Hobbes was not the founder of international legal naturalism; instead, he was the godfather of legal positivism, the theory of law as command 'set by political superiors to political inferiors', as his admirer the analytical jurist John Austin put it. Judged according to this strictly anti-naturalist definition of law, what had come to be called 'international law' could not be called law at all because it issued from no superior authority: it was therefore no more than what Austin notoriously described as 'positive

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<sup>48</sup> Ferdinand Tönnies, Hobbes, Leben und Lehre (Stuttgart, 1896); Tönnies, Thomas Hobbes, der Man und der Denker (Osterwieck, 1912), 165, 169.

<sup>49</sup> Schmidt, The Political Discourse of Anarchy, chs. 3, 5.

international morality.<sup>50</sup> States in their relations with one another were unconstrained by any higher authority because the norms specific to the international and the domestic spheres were distinct and incommensurable. Within a tradition of juristic positivism that owed more to Hegel than to Austin, Hobbes similarly appeared as a denier of international law and as a proponent of the division between the external and the internal. In the words of Carl Schmitt, writing a century after Austin: 'The state has its order in, not outside, itself. ... Hobbes was the first to state precisely that in international law states face one another "in a state of nature." ... Security exists only in the state. Extra civitatem nulla securitas.'<sup>51</sup>

Hobbes did not directly inspire the conception of the relations between states as fundamentally anarchic. It was instead the proponents of a 'discourse of anarchy' in international relations who co-opted Hobbes to support their theory and the opponents of that discourse who likewise invoked Hobbes to discredit it.<sup>52</sup> Juristic theorists of that state argued that 'theoretical isolation is the prime condition of its existence as a state, and its political independence is one of its essential attributes. This is what Hobbes meant in saying that, in regard to one another, separate states are to be viewed as in a "state of nature"'.<sup>53</sup> In such a condition, 'every independent political community is, by virtue of its independence, in a State of Nature towards other communities.'<sup>54</sup> With states thus 'a law unto themselves', it followed that '[t]he condition of the world, from an international point of view, has long been one of polite anarchy.'<sup>55</sup> Pluralist critics of the juristic theory of the state contended that it not only described but in fact created a condition of international anarchy; they, too, invoked Hobbes in

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<sup>50</sup> John Austin, The Province of Jurisprudence Determined (1832), ed. Wilfrid E. Rumble (Cambridge, 1995), 19, 112, 171, 229-33 (note).

<sup>51</sup> Carl Schmitt, The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol (1938), trans. George Schwab and Erna Hilfstein (Westport, CT, 1996), 47-48.

<sup>52</sup> Schmidt, The Political Discourse of Anarchy, 232-33.

<sup>53</sup> Stephen Leacock, Elements of Political Science (Boston, 1906), 89; compare Westel Woodbury Willoughby, 'The Juristic Theory of the State', American Political Science Review, 12 (1918), 207.

<sup>54</sup> James Bryce, International Relations (New York, 1922), 5.

<sup>55</sup> David Jayne Hill, World Organization as Affected by the Nature of the Modern State (New York, 1911), 14, 15.

support of their contentions.<sup>56</sup> Conformity to the theory of sovereignty as independence ensured that 'the condition of international society would, indeed, be that which Hobbes in his day conceived it to be.'<sup>57</sup> 'The state is irresponsible', Harold Laski concluded, summing up this line of criticism: 'It owes no obligation save that which is made by itself to any other community or group of communities. In the hinterland between states man is to his neighbour what Hobbes say was true of him in the state of nature -- nasty, mean, brutish.'<sup>58</sup>

Hobbes assumed his place among the founders of international thought as much in spite of as because of his own statements on the law of nations and the relations between states. Like many later critics of an allegedly 'Hobbesian' account of international relations, he recognised the limited analytical utility of the analogy between individuals and international persons in a state of nature.<sup>59</sup> He acknowledged that, though states could be just as fearful, vainglorious and competitive as individuals in their relations with one another, they were not vulnerable to the same degree nor was their existence as fragile. Agreements and exchanges were possible both in the interpersonal state of nature and the international state of nature. If the Hobbesian theory of international relations rests on a conception of international anarchy characterised by interstate competition without any possibility of cooperation, then Hobbes himself was no Hobbesian.

The standard account of Hobbes as an international theorist arose in conditions not of his own making. Positivists battled naturalists, pluralist theorists of the state criticised juristic theorists, and political scientists defined their discipline against international law and international relations theory. Hobbes could be invoked on both sides of each dispute. The naturalists pointed to his conflation of the law of nations with the law of nature as a foundational insight, while the positivists invoked Hobbes's command theory of law to deny

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<sup>56</sup> Schmidt, The Political Discourse of Anarchy, 164-87; on the pluralists and their debts to Hobbes see David Runciman, Pluralism and the Personality of the State (Cambridge, 1997).

<sup>57</sup> James W. Garner, 'Limitations on National Sovereignty in International Relations', American Political Science Review, 19 (1925), 23-24.

<sup>58</sup> H. J. Laski, 'International Government and National Sovereignty', in The Problems of Peace, 1st ser. (London, 1927), 291.

<sup>59</sup> Edwin DeWitt Dickinson, 'The Analogy Between Natural Persons and International Persons in the Law of Nations', Yale Law Journal, 26 (1916-17), 564-91; Hedley Bull, The Anarchical Society: A Study of Order in World Politics (New York, 1977), 46-51.

the validity of international law as law. Anglo-American juristic theorists turned to Hobbes for their conception of legal personality much as their German counterparts turned to Hegel; critics of their monistic theory of sovereignty invoked Hobbes to warn against the consequences of invoking such a theory when describing the relations between states. Among political scientists, Hobbes's concept of the state would earn him a canonical place as one of the founders of modern political thought. Among international relations theorists, he would be baptised retrospectively as one of the founders of modern international thought, as he had once been hailed by the natural lawyers as a pivotal figure for their discipline.

Hobbes's successors identified him as the originator of the fundamental division between the domestic and the foreign, the inside and the outside of the state. That division rested on a further distinction, also endowed with a Hobbesian pedigree, between the internal realm of positive law and the external realm governed by the law of nature and nations. With the rise of international positivism in the era after the Vienna settlement of 1815, Hobbes came to be identified as one of the first theorists of what would later be called the 'Westphalian system' of sovereign states: after all, could it have been just a coincidence that Leviathan was published in 1651, only three years after the Peace of Westphalia in 1648?<sup>60</sup> It hardly mattered that Hobbes had first laid down the major elements of his conceptions of international relations and the law of nations in the Elements of Law and De Cive, well before 1648, or that he never displayed any knowledge of the terms or consequences of the Peace of Westphalia, unlike Pufendorf, for example.<sup>61</sup> Even if he had, he would hardly have inferred from them the emergence of a positive system of mutually recognised sovereign states: that would be the product of a much later 'myth of 1648', which preceded by almost a century the myth of Hobbes the theorist of international anarchy.<sup>62</sup>

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<sup>60</sup> For a recent example, see Williams, Kant's Critique of Hobbes, 1: 'Hobbes's publication of the justification for the modern state coincided with what is often regarded as the birth of the "Westphalian system".'

<sup>61</sup> Samuel Pufendorf, The Present State of Germany (1667), trans. Edmund Bohun (London, 1690), 135-96; Peter Schröder, 'The Constitution of the Holy Roman Empire after 1648: Samuel Pufendorf's Assessment in his Monzambano', The Historical Journal, 42 (1999), 961-83.

<sup>62</sup> Stephen D. Krasner, 'Westphalia and All That', in Judith Goldstein and Robert O. Keohane, eds., Ideas and Foreign Policy: Beliefs, Institutions, and Political Change (Ithaca, 1993), 235-64; Andreas Osiander, 'Sovereignty, International

Self-consciously post-modern international thought has deconstructed the opposition of naturalism and positivism and has collapsed the distinction between the internal and the external dimensions of the state.<sup>63</sup> It has demolished the historical and conceptual foundations of the Westphalian order and has proclaimed the advent of 'post-sovereignty.'<sup>64</sup> The contingent conditions and overdetermining theories that gave rise to the 'Hobbesian' theory of international relations have now either been unsettled theoretically or discredited historically. This has occurred in tandem with an expansion of the definition of political theory itself to include the international, the global and the cosmopolitan.<sup>65</sup> There are already signs that the boundaries of the history of political thought are being redefined to take account of that expansion.<sup>66</sup> This bodes well for the future study of the foundations of modern international thought.

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Relations, and the Westphalian Myth', International Organization, 55 (2001), 251-88; Edward Keene, Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics (Cambridge, 2002), 20-22; Benno Teschke, The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations (London, 2003).

<sup>63</sup> Martti Koskeniemi, From Apology to Utopia: The Structure of International Legal Argument (Helsinki, 1989); R. B. J. Walker, Inside/Outside: International Relations as Political Theory (Cambridge, 1993).

<sup>64</sup> Jens Bartelson, A Genealogy of Sovereignty (Cambridge, 1995); Stephen D. Krasner, Sovereignty: Organized Hypocrisy (Princeton, 1999).

<sup>65</sup> For example, Charles R. Beitz, Political Theory and International Relations, 2nd edn. (Princeton, 1999); Howard Williams, International Relations in Political Theory (Basingstoke, 1990); Brian C. Schmidt, 'Together Again: Reuniting Political Theory and International Relations Theory', British Journal of Politics and International Relations, 4 (2002), 115-40.

<sup>66</sup> For example, Tuck, The Rights of War and Peace: International Relations in Political Thought: Texts from the Ancient Greeks to the First World War, ed. Chris Brown, Terry Nardin and Nicholas Rengger (Cambridge, 2002); Duncan S. A. Bell, 'International Relations: The Dawn of a Historiographical Turn?', British Journal of Politics and International Relations, 3 (2001), 115-26.

