

# A Common Humanity? From Poetry to Philosophy in Hugo Grotius

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*This essay shows how Hugo Grotius (1583–1646) made use of classical poetry and drama, especially that of Lucan, Euripides, and Seneca, in developing his thought on the treatment of captives, prisoners of war, and slaves, and argues that his method was humanist and philological. From his early publishing projects to “The Rights of War and Peace” (De Iure Belli ac Pacis, 1625), Grotius developed an account of common social experience, a formal mechanism to represent dialogue with difference, and a refusal to apply categorical distinctions positing natural difference among peoples. His engagements with classical poetry and drama are thus an important piece of the story of early modern thought.*

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## INTRODUCTION

HOMER’S EPIC THE *Iliad* was the subject of Simone Weil’s reflections on violence, writing as she did in the summer and autumn of 1940, after the fall of France to the Nazis: “The true hero, the true subject, the center of the *Iliad* is force.” So begins her essay, “The *Iliad*, or the Poem of Force.” For Weil, force is that “*x* that turns anybody who is subjected to it into a thing.” Force is pitiless: all fear it; all bow to it. Weil believed that the only justice of war is that Ares “kills those who kill.” As she points to the similes of the *Iliad*, which liken warriors to fire, flood, wind, wild beasts, frightened animals, trees, water, sand, “to anything in nature that is set into motion by the violence of external forces,” Weil asserts that battles demand that warriors lose their humanity; indeed, in battle they become pure “momentum.”<sup>1</sup> By accepting the wantonness of war,

The author wishes to thank the editors of *English Literary Renaissance* for the occasion to flesh out these thoughts at the Dan S. Collins Lecture, University of Massachusetts, Amherst, and members of the British Imperial History Workshop, University of Chicago, who gave acute comments. Thanks to Jessica Wolfe, David Norbrook, and Steven Pincus for the opportunity to deepen thought about this material.

<sup>1</sup> Weil, 13, 22.

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doi: 10.1017/rqx.2022.441

Weil renders human misery the tragic precondition against which she might set the Christian Gospels' teaching of justice and love.

If Weil's bleak response to the *Iliad* was prompted by the twentieth-century destruction of Europe, Hugo Grotius (1583–1645) wrote his foundational treatise on the laws of war, *The Rights of War and Peace* (*De Iure Belli ac Pacis* 1625)<sup>2</sup> as witness to other disasters promulgated in and by Europe on the globe. For the Dutchman, the fall of Troy was the human disaster of antiquity, but it had also spawned profound thinking and imagining on war, as it had done for so many early modern writers.<sup>3</sup> Unlike Weil, Grotius took the view that, as he put it, "there are laws of war just as there are laws of peace."<sup>4</sup> Purposing his work for "the interest of Mankind," Grotius insisted that there can be a natural justice.<sup>5</sup> Yet this is not simply a philosophical starting point; it is one based upon the evidence of social experience as recounted in literature. Early in his *Prolegomena*, he warrants that claim with a quotation from a play by Euripides, and the specific voice he cites is that of a woman held captive. The lines come from Euripides's play depicting the aftermath of Troy's fall, *Helen*—notably, a play that condemns war and one in which members of different nationalities are in conflict about morality. And it is striking that he chooses the voice of Helen, that most hated of women, to warrant a claim about the existence of natural justice. Surely an odd character with which to begin, but it is her speech situation that interests Grotius, not solely her words. Helen is being forced into a marriage with her captor, and pleads as a foreign captive. Yet there she is, at the start, or near the start, of Grotius's magisterial treatise on the laws of war. Grotius writes that Euripides honors the laws of mutual relations among states, and cites what Helen says to the Egyptian priestess:

For you, who know the fate of men and gods  
What is, what shall be, shameful would it be  
To know not what is just.<sup>6</sup>

<sup>2</sup> All further references to this work will be titled *De Iure Belli*.

<sup>3</sup> On the legacy of Homer's *Iliad*, see Wolfe, 2015.

<sup>4</sup> Grotius, 2005, 103 (*Prolegomena* 37: "Sunt et belli sunt et pacis iura"), citing Livy, *History of Rome* 5.27[6], also cited in Grotius, 2006, 193 (*Praedae*); Grotius, 1950, fol. 56.

<sup>5</sup> Grotius, 2005, 75.

<sup>6</sup> Grotius, 1925, 9 (*Prolegomena* 7); Grotius, 1913, \*4: "Nam turpe esset, cum scias hominum ac Deum / Quod est eritque, iusta te haud cognoscere"; cf. Euripides, 2002, 116–17 (*Helen* 922–23); Grotius, 2005, 76; not in Grotius, 2012; cf. Grotius, 1626, 326 (*Excerpta*). Multiple editions of *De Iure Belli* are cited here, and below, for comparative purposes; translations into English of Grotius's Latin citations of Euripides are from the Loeb editions of the Greek—see Euripides, 1995 and Euripides, 2002.

Chiding the priest for not knowing the supposed universality of justice, Helen adopts the only form of free speech allowed a captive, that of supplication. There's surely an irony here: Helen is all too memorable as the prime cause of war in the *Iliad*; even here, she is working a scheme.<sup>7</sup> Set seven years after the Trojan War's end, *Helen* is not a tragedy but rather, with its mixed tone, a Skeptical rewriting of the origins and outcomes of that war.

Indeed, echoing throughout Grotius's three books on the laws of war is the legacy of Troy, not only its valiant heroes and its record of human suffering but also precepts learned from its aftermath. This is the Troy not of the *Iliad* but that mediated by Greek and Roman drama, classical philosophy, Roman jurisprudence, and biblical history. While Helen's supplication fails spectacularly to earn freedom from foreign captivity, Grotius nevertheless takes Helen's words at face value in his *Prolegomena*, as if to say that not only does a miscreant woman like Helen possess reason, but also that such a Helen has a claim on justice. Her position as a faithless wife or a captive in war, indeed, as a slave, does not remove her moral personhood. Even from her lowly position, Helen casts shame on those who are ignorant of justice.<sup>8</sup> Shame and reproach recognize an understanding of one's obligations to others. Given Helen's equivocal status, the point Grotius makes this early in *De Iure Belli* is that, whoever the speaker, and whatever their position relative to their personal behavior or conditions of freedom or unfreedom, even despite their nationality, verily, arguments about justice cross enemy lines. The standard national oppositions (usually, in Greek drama, Persia/Sparta versus Athens) do not apply. In Grotius's collection of excerpts from Greek drama published almost contemporaneously with *De Iure Belli*, his *Excerpta* (1626), this passage from *Helen* is translated into Latin and given a marginal index annotation: "Jurisprudencia."<sup>9</sup>

What on earth could the morally dubious Helen contribute to jurisprudence? Helen is, as it were, a synecdoche. This paper ponders how Hugo Grotius, an eminent historian and practitioner of law, jurisprudence, and theology, put imaginative literature, specifically the classical drama, to work, particularly with reference to treatment of enemies, captives, and hostages: all categories of persons highly interesting to historians of slavery and human

<sup>7</sup> On the literary legacy of Helen, see Maguire.

<sup>8</sup> *Turpe* is also the translation Grotius makes for ὄνειδος, in Euripides, 1995, 54 (*Heraclidae* 463), as cited in Grotius, 1626, 318.

<sup>9</sup> "Jurisprudence": Grotius, 1626, 326. Cf. Cicero, 1977, 211 (*On the Republic* 3.33): "True law is right reason, consonant with nature, spread through all peoples. It is constant and eternal; it summons to duty by its orders. . . . There will not be one law at Rome and another at Athens, one now and another later, but all nations at all times will be bound by this one eternal and unchangeable law."

rights. The paper locates the jurist's thought in the world of the emerging institutions of colonialism and slavery by explaining how he learned to think with the classics. There are two major claims: first, that to understand what Grotius was doing in his work demands engagement with his classical humanism—that is, with his literary entanglement in Greek and Roman imaginative literature. I am at pains to show how Grotius was not only a reader of the classics but was also part of the humanist philological enterprise of producing them for a reading public through print. Indeed, his allusions to his literary sources ought not be seen simply as ornamental embellishments but rather as forming an important quality of his work. Through them, Grotius represents participation in a dramatic conversation, enacting a formal principle of equity. Indeed, this humanist hermeneutic method distinguishes Grotius from other early modern political theorists such as Thomas Hobbes, whose geometric model was a scientific method.<sup>10</sup>

The second claim is that although Grotius did not challenge the existence of slavery in his own day, he nonetheless refrained from applying those distinctions that had posited natural difference between peoples in the ancient world, and that would come to justify racialized slavery. As is well known, Grotius was among the earliest to insist upon a boldly secular framework for laws of war in early modernity, a point worth highlighting when European wars of religion were claiming a devastation of blood inside and outside Europe and when the concept of holy war or Christian violence against non-Christians was commonly taken as a just ground of war, colonial conquest, and slavery.<sup>11</sup> And while the ancient world was one without Christianity, it nonetheless parsed humans into ethnocentric categories—namely, civilized and barbarian. Significantly, Grotius resisted this duality, voiding the idea that some groups or races were naturally inferior and, therefore, merited slavery. Slaves were determined by status—that is, by laws, not by nature. In refusing an ethnic identification or natural superiority of civilized against barbarian, he thus did not clear a path to Enlightenment discourses of race and political ecology, founded as they were on ethnographic distinctions between civilized and savage. Nonetheless, even with a vision of a common humanity and a Stoical cosmopolitanism, Grotius did not challenge the morality of slavery in *De Iure Belli*; indeed, Grotius refrained from taking a moral stand against contemporary practices of slavery and the forms of unfreedom his work legitimated. Recent

<sup>10</sup> Humanism here is taken not as today's humanism, secular humanism, or humanitarianism, but rather in reference to Renaissance humanism, those who "read and interpreted the classical tradition": see King, ix.

<sup>11</sup> On the tension between necessities of war and humane treatment in Grotius, see Ohlin and May, esp. 74–77.

scholarship has reversed the cheery portrait of Grotius as the so-called father of international law to show just how formative Grotius's views were in the erection of a system of global, colonial slavery and Dutch imperialism.<sup>12</sup> As John Cairns argues, "What Grotius provided in *De Iure Belli ac Pacis* was an ideological support for the institution of slavery that was becoming important to the economies of the maritime colonial powers."<sup>13</sup> Yet, by recovering the philological and humanist aspects of his thought, I show that there is not a straight line from Grotius to forms of racialized slavery as arose in later tradition, and with whose legacy the modern humanities disciplines are reckoning, albeit belatedly. Working from the resources of classical literature, it is shown here that Grotius did not introduce a wholly, distinctively new form of reasoning about humanity, and situating his thought within a Northern humanist literary milieu brings complex and important pieces from the ancient world to the story of slavery in modernity. Through close, intertextual readings Grotius mined empirical and philosophical resources from the deep past in order to construct solutions to newly global contexts. Thus, his Renaissance methods were a ground for his philosophical work.

### THINKING WITH THE CLASSICS

Historians of international law seem little interested in Grotius's literary investments and, in turn, the most widely used modern translation of *De Iure Belli* has stripped the majority of his literary allusions from view.<sup>14</sup> Commenting on his "exhibitionist learning," and "indiscriminate and confusing eclecticism in the use of sources," the international theorist Hersch Lauterpacht considers Grotius's literary citations as "defects of method" and corrects this problem by distilling the thought of the jurist into a series of abstract headings.<sup>15</sup> While admiring the way Grotius draws upon the wisdom of the ages, Leiden law professor Benjamin Marius Telders berates his "surplusage" and "prolix irrelevancies," indeed, castigating the whole work as "bowed down by a plethora of literary, philosophical, theological, and municipal baggage." Voltaire, similarly, dismisses him for his pedantry.<sup>16</sup> Those few political theorists who have

<sup>12</sup> Van Ittersum, 2016b, 100, 99. See also Anghie; Benton.

<sup>13</sup> Cairns, 230–31. For seventeenth-century colonial law, see Davis, 246–55. On Grotius's validation of slavery, see Lauterpacht, 12–14, 43–45; Pagden.

<sup>14</sup> For instance, Telders, 1948; and much is suppressed in the selections translated by Neff in Grotius, 2012.

<sup>15</sup> Lauerpacht, 4, 5, 3, 12; and see Telders, 1948.

<sup>16</sup> Telders, 1940, 31, 30, 31; Voltaire, 5.

taken note of Grotius's massive scholarship and source hunting characterize these as typical of their age and representing an outdated "way of thinking."<sup>17</sup> Literature and philological study have lost out to abstractions of political theory and, as a result, the distinctive contribution of imaginative literature, epic, and drama to the understanding of Grotius has been missed.<sup>18</sup> The approach here considers the resources of literature as themselves affording modes of argument. Indeed, a close reading of Grotius's engagement with literary classics has been hampered by the translations commonly taught or excerpted that remove these aspects as incidental or extraneous. But that is itself a matter worth examining. What is it about the kind of thinking that literary citation invited that seems extraneous to the supposedly more serious matter of political theory? Especially at a time when the texts of classical literature were common, accessible across national lines to the educated elites composing and consuming legal, political, and theoretical texts across early modern Europe, there is a case for exploring the ways that literature contributed to the construction of modes of thought.<sup>19</sup> Upon restoring his industrious literary work—his classical philology, translation, compilation, and imitation—to view, it can be seen how Grotius's engagements with classical literature help to illuminate key issues in his jurisprudential thought as regards foreigners and slaves, and as regards the treatment of those held captive through war.

Scholarship in the discipline of literature has, on the other hand, insisted upon the ethical valence of Grotius's poetry and drama, what Arthur Eyffinger has called his "cultural agenda" of Stoic ethics.<sup>20</sup> For the most part, Grotius's poetry and drama have been studied by scholars within the Dutch literary tradition, with his early poetic works noted as models for John Milton's handling of a biblical theme in *Paradise Lost*.<sup>21</sup> Nonetheless, Grotius has been missing from those cultural histories of Renaissance humanism that have excavated the heroism (and also the petty rivalries and grubby fingers) of those early modern intellectuals, editors, commentators, text excavators, and innovative European printers who conducted "commerce with the classics."<sup>22</sup> The approach here is indebted to that work in the history of reading and text making. Once we see how the Dutchman brought questions from

<sup>17</sup> Roelofsen, 74; and see Lang, astute on classical thought combining normative and empirical resources for Grotius.

<sup>18</sup> Straumann, 2015, 5, whose book does so much to revive the classical intellectual sources for Grotius, makes no mention of Lucan, for example, nor of Euripides.

<sup>19</sup> Warren, 2015 and 2019; Meron; Leo.

<sup>20</sup> See Eyffinger, 2013, 212; Eyffinger, 1982; Rabbie, 1990.

<sup>21</sup> Exceptions are Eyffinger, 1982; Eyffinger, 2001.

<sup>22</sup> Grafton, 1997; see also Jardine and Grafton.

classical imaginative literature to his thinking about early international affairs, we can understand this neglected part of his oeuvre as a resource in the long history of political thought. Grotius was not reading for examples, or disguising political critique through allegorical reading, but was reading philosophically, investigating those moral principles that overrode national, confessional, and even temporal identities. Through traffic with the classics, he asserted a form of common humanity that differed from Enlightenment thought on difference, and defined a system of international relations apart from Christianity.

Grotius shaped his thought in *De Iure Belli* through encounter with classical literature. He faced up to its odd tonalities, its representations of those facing atrocity; its voicing the aftermath of rape, violation, and exile; and its portrayal of cultures in conflict: a literature offering speech to foreigners, women, and the despised or enslaved, where malevolence could be justified and where there was no redemption. Stoicism was a deep well of his thought, and to that philosophical outlook must be added the literary provisions from Greek drama, in particular those plays concerned with the aftermath of Troy. These, as will be shown, were not only a quarry for his ideas about universal social obligation but also were a representation of situated utterance. Helen's appeal to the priestess as supplicant is an instance of a kind of "powerful powerlessness," as Whittington has characterized the gesture of supplication, an interpersonal encounter that reverses the deferential structures of dominance and that also demands participation in response.<sup>23</sup> Grotius understood that theater's formal ethic of multivocality presented a situation for observing the conditions for, and performance of, justice conceived as a fundamental aspect of sociability. Indeed, with his notion of sociability, Grotius looks to classical literature, and to Euripidean tragedy in particular, as a means of attaining distance from the potential solipsism of individual perspective and of voiding its political correlate of pure self-interest. This is a political view of tragedy. I follow the thought of the late, brilliant political theorist Peter Euben, who insisted on the connection between the political resource of Athenian democracy and the culture of tragic theatrical performance.<sup>24</sup> That dramatic confrontation was an essential component of Grotius's vision of sociality. By staging equity, reckoning with others' perspectives, and including the voices of the losers of battle or victimized captives, among other things, drama opened the potential for reversibility in positions of conqueror and vanquished. As in the *Helen* passage that inaugurates *De Iure Belli*, shame or modesty also evoke that aspect of forbearance, self-restraint, and moderation: not simply personal emotions, but a provision of purported, and common, humanity. This sense of dignity is not a Christian concept of sin

<sup>23</sup> Whittington, 15–18.

<sup>24</sup> Euben, xi–xii. On Grotius's debt to Euripides, see Eyffinger, 2001.

or guilt, but a sociable affect, an opportunity to observe oneself as among others, even to create the kind of ironic distance invited by the mode of literature.

### GROTIUS: TRANSLATOR AND EDITOR

It was, of course, an early modern European habit to think with the classics, especially as a foil for contemporary comment and means of evading censorship for extreme ideas; so, too, was it essential to a habit of commonplacing.<sup>25</sup> Thus, Greek tragedy and Roman Stoic philosophy were in the cogs of the jurist's thinking. During his liberal arts education at Leiden, Grotius had built up a substantial collection of Greek and Roman authors. His copy of Seneca's *Tragoediae* was an inexpensive contemporary edition purchased for ten stivers, as he mentioned in a letter to Daniel Heinsius (1580–1655) in 1610.<sup>26</sup> It was well used and well quoted in his *De Iure Belli*. Indeed, Grotius's Netherlands had for two generations been a center for international printing and the study of classical authors. In Leiden in 1580, Louis Elzevir put out a duodecimo series of classical authors, building up a strong tradition of classical scholarship.<sup>27</sup> Leiden also produced the translator Wilhelm Canter (1542–75), a specialist in Greek textual criticism, who brought out editions of the three Greek tragedians and also edited the editio princeps of the *Eclogae* of Stobaeus for the Plantin Press; his edition of Euripides was printed by Plantin in 1571. A second generation of humanists continued these traditions: Leiden was home to the great philologist, Neo-Stoic Justius Lipsius (1547–1606), as well as to G. J. Vossius (1577–1649), professor of rhetoric, and Joseph Scaliger (1540–1609), chair of history, who had written a commentary on Euripidean tragedy and who was Grotius's teacher.<sup>28</sup> And Dutch scholarship maintained a high level in the seventeenth century with Daniel Heinsius, another protégé of Scaliger and Vossius, forming part of Grotius's circle.<sup>29</sup>

Grotius was a poet of war before he became a great jurisprudential thinker. Indeed, in his early poems Grotius celebrated Prince Maurice of Orange who liberated the Seven Provinces from Spain. Grotius lauded Maurice variously in his poetry: his victories, in “Epigrammata de rebus gestis ductu Principis

<sup>25</sup> On censorship, see A. Patterson; on commonplacing, see Blair, 62–116; Moss; on rhetoric, see Hankins.

<sup>26</sup> On Grotius's book ownership, see van Ittersum, 2015; Rabbie, 1993; also see Van Ittersum, 2016a. On Leiden, see Grafton, 2001.

<sup>27</sup> See Pettegree and Der Weduwen; on Euripides's publication in Europe, see Hirsch; for England, see Pollard; Demetriou and Pollard.

<sup>28</sup> On Euripides, see Scaliger, 1567, 118–28.

<sup>29</sup> Wilson, 179–84 (who makes no mention of Grotius). On Grotius's work with Stobaeus's *Dicta Poetarum* (1623), Grotius, 1623 and Eyffinger, 2001.



Mauritii”; his scientific interests, in “Mathematica Principis Mauritii”; and his statesmanship, in “De Patria,” where the prince was praised for his respect for the law and his mild exercise of power.<sup>30</sup> More ambitious literary work was to come. Grotius took on the project of editing and annotating an edition of Lucan’s *De bello civili* (*Pharsalia*), an epic poem composed during the tyrannical reign of Nero retelling the civil wars and the death of the Roman republic and the emperors who followed, which he published in 1614.<sup>31</sup> Though criticized by Quintilian and, long after him, Joseph Scaliger, for being more oratorical than poetic,<sup>32</sup> Lucan’s ten-book opus was a Renaissance thought-generator for questions of legitimacy, force, and right of conquest. Writers including Christopher Marlowe, Henry Parker, and Samuel Daniel would try their hands at translating this work which was, astonishingly, a resource for both republican and anti-republican thought.<sup>33</sup> It was said that Grotius carried Lucan around in his pocket.<sup>34</sup> Throughout Grotius’s *De Iure Belli*, there are many mentions of Lucan; for instance, in considering why men would go to war in the first place, a long, beautiful quotation from *Pharsalia* is supplied that indicts luxury as a cause.<sup>35</sup> When Caesar prompts safety only for his own side Grotius expands the claim to include all humanity, citing lines from *Pharsalia*, book 7: “But we must understand by the word *cives* not the inhabitants of this or that country [*non huius aut illius regionis*], but all those who are members of that great state, which comprehends all mankind [*ex humano genere constatis cives*].”<sup>36</sup> In dialogue with Caesar, through Lucan, Grotius professes an early form of cosmopolitan thought, one that imposes a moral universalism upon heterogeneity. All this Lucan finds its way into *De Iure Belli*. Not simply oratorical exercises, then, Grotius’s poetic engagements

<sup>30</sup> Grotius, 1988, 550 (“De Patria” [1602–03] 20–21); for Grotius’s lengthy depiction of battles Maurice fought, see Grotius, 1617 (“Epigrammata in Illustrissimi Principis curru veliferos” [1603]).

<sup>31</sup> Grotius, 1614. On the printing of this volume, see Witkam. On Lucan’s literary influence on Grotius’s other poetry, see Brouwers.

<sup>32</sup> Quintilian, 300–01 (*Institutio Oratoriam* 10.1.90): “Lucan is ardent, passionate, particularly distinguished for his *sententiae*, and (if I may say what I think) more to be imitated by orators than by poets”; Scaliger, 1964, 114, 325 (*Poetices Libri Septem* 3.26.6); and see Baca.

<sup>33</sup> For Lucan’s early modern English reception, see Braund; Paleit; Hardie. For Renaissance views of Lucan’s pro-monarchism, see Bond; for Lucan as anti-Virgilian, see Quint; Armitage, 73, on Grotius’s taking Lucan as a “freedom-loving” poet.

<sup>34</sup> Gellinek, 53.

<sup>35</sup> Grotius, 2005, 220 (*Rights* 1.2.7), citing Lucan, 201–03 (*Civil War* 4.374, 382); and see Grotius, 1614, 81 (*Pharsalia*).

<sup>36</sup> Cf. Lucan, 392 (*Civil War* 7.312). Grotius, 1993, 760; Grotius, 2005, 1453 (*Rights* 3.11.16.4); not in Grotius, 2012.

with classical sources were a serious investigation of war and its causes, motives, and realities.

In his 1614 published edition, Grotius presented a clean, re-edited Latin text of the ten books of Lucan's poem, with new textual and philological notes, along with a detailed index of topics. In his annotations it can be seen how Grotius pondered ethics and warfare, thoughts that would emerge more fully in *De Iure Belli* over a decade later. For instance, his note on book 1, line 2 of Lucan's *Pharsalia* takes up the matter of just war: "Of war I sing, war worse than civil . . . and of the legality conferred on crime."<sup>37</sup> Grotius focuses attention on what is meant by the "legality conferred on crime" ("Iusque datum sceleri"), there offering a paraphrase—"licence made out of crime. In one name were wrapped together many injustices"—and in a note giving relevant sententiae from Seneca and Cyprianus.<sup>38</sup> This is a philosophical, not a philological note, a consideration of the ways war is justified or distinguished from murder—it is from Seneca that he derives the distinction between public and private warfare.<sup>39</sup> He comments on Caesar's unrestrained violence during his march through unconquered territory,<sup>40</sup> denounces spoil as an incitement to war,<sup>41</sup> commends refraining from taking spoil,<sup>42</sup> and distinguishes who it is lawful, and who not lawful, to conscript.<sup>43</sup> Further, in these notes he decides what is necessary and what is legal<sup>44</sup> and what is meant by fighting for a just

<sup>37</sup> Grotius, 1614, 262 (*Pharsaliam* [Notae] 1.2); Lucan, 3. Compare: "rage licensed" in May, close to the Grotius translation.

<sup>38</sup> Grotius, 1614, 262: "Licentiam factam sceleribus. Uno enim belli civilis nomine infinitae teguntur iniuriae"; cf. Seneca, 1925, 77 (from epistle 95): "Deeds that would be punished by loss of life when committed in secret, are praised by use because uniformed generals have carried them out"; and from a proverb attributed to Cyprianus, "Homicidium, cum admittunt singuli [crimen est; virtus vocatur cum publice geritur]"—that is, "when individuals commit it, murder is a crime; but when done publicly, it's a virtue."

<sup>39</sup> Just cause for warfare is a recurring theme noted by Grotius, 1614 (in notes to *Pharsalia* at 3.150, 7.339, 8.523).

<sup>40</sup> Grotius, 1614, 265 (on *Pharsalia* 2.442).

<sup>41</sup> Grotius, 1614, 265 (on *Pharsalia* 3.150).

<sup>42</sup> On Caesar's spoils, Grotius amends Lucan's text to suit his note's purpose, at Grotius, 1614, 265 (*Pharsalia* 3.1.150), changing Lucan's singular verb (indicating Caesar) to the plural (indicating Caesar's men), as he will, again, in his emendation at 4.186, where it is the collective choice in war, not the singular (Grotius, 1614, 266), thus entering the question of private versus public booty. Cato's restraint is glossed at *Pharsalia* 9.299, a moderation earning praise in Grotius, 2006, 200.

<sup>43</sup> Grotius, 1614, 265 (on *Pharsalia* 3.329).

<sup>44</sup> Grotius, 1614, 275 (on *Pharsalia* 8.523).

cause, which Grotius calls “iustum bellum” in his annotations;<sup>45</sup> urges victory not solely for one man’s cause, but for “all humanity” (“generis humani”);<sup>46</sup> slates the dangers of empire;<sup>47</sup> and comments on the origin of the law of nature.<sup>48</sup> All these, among many others, are topics arising in *De Iure Belli*.<sup>49</sup> While his modern biographer may be puzzled that Grotius “was able to summon up the concentration, leisure and energy for it in such turbulent times,”<sup>50</sup> these notes make clear that Grotius read and annotated Lucan not simply for leisure, strictly speaking, but in order to understand the habits and justice of acts in war and causes of war. He read in his commitment to humanist learning in the widest sense—that is, as an ethical discipline and a wisdom cultivated from ancient works in which habits of thought and social observation could ground political action. Through Lucan, as in his political thought, Grotius sought to understand constitutional principle as it confronted force.

All the while he was in the state service to the republic, then, as jurist, moralist, historian, theologian, politician, and ambassador, Grotius was a prolific poet, philologist, dramatist, and editor of imaginative literature. His literary works punctuate his employment writing: *Adamus Exul* (1601) and *Christus Patiens* (1608) were coextant with the creations of *De Jure Praedae* (1604/06) and *Mare Liberum* (1609); soon to follow was his edition of Lucan’s *Pharsalia* (1614). After being sentenced to life imprisonment in the wake of a Calvinist coup d’état in 1618, he was incarcerated in the fortress of Loevestein, from which he escaped in 1621, hidden in a chest of books large enough for a man because of the prodigious number of books he had in his possession there.<sup>51</sup> Indeed, erudition and classical engagement had been his activities while incarcerated. An inventory of thirty-one volumes the Dutchman requested be sent from the shelves of his library in Rotterdam to Loevestein Castle reveals his reading preferences at the time: legal texts and the Greek

<sup>45</sup> Grotius, 1614, 267 (on *Pharsalia* 4.230).

<sup>46</sup> Grotius, 1614, 274 (on *Pharsalia* 8.128).

<sup>47</sup> Grotius, 1614 (on *Pharsalia* 10.43). Grotius on the dangers of empire is outside the scope of this essay: see Weststeijn; Tuck, 1993, 154–201.

<sup>48</sup> Grotius, 1614 (*Pharsalia* 9.578); cited also in Grotius, 2006, 20 (prolegomena, *De Praedae*).

<sup>49</sup> Grotius cites Seneca the Elder, 286–87 (*Controversiae* 9), a sententia he quotes again in Grotius, 2006, 111 (*De Praedae*); Grotius, 2005, 435 (*Rights* 2.2.6.4).

<sup>50</sup> Nellen, 181; Lauerpacht, 3: his literary activity “has proved of ephemeral value.” Gellinek, 53–56, gives a more measured assessment.

<sup>51</sup> For the inventory of Grotius’s books in 1618, which included Seneca’s *Tragedies* (1611, ed. Heinsius) and a Dutch version of Lucan’s *Pharsalia*, see Molhuysen.

and Roman classics.<sup>52</sup> Borrowing books from his friends, and with his own, it was in prison that Grotius began preparing works I will consider below: his Stobaeus edition (1623), selected speeches and dialogue from classical Greek drama, his *Excerpta ex Tragoediis et Comoediis Graecis* (1626), as well as a Latin verse translation of Euripides's *Phoenician Women* (1630).<sup>53</sup> Indeed, it was the constant flow of books in and out of the castle that provided the means for his escape. His reading continued for the rest of his career. Taking his exile in Paris, he was able to make use of the great private library of De Thou, of which it was said at the time, "one who has not seen the library of De Thou has not seen Paris," and there he began to write *De Iure Belli* in 1623, a work published in the first instance in 1625.<sup>54</sup> While he was preparing *De Iure Belli* he was simultaneously preparing his *Excerpta* and Euripides's *Phoenician Women*, begun in Loevestein, as well as his notes on Seneca. After this period of imprisonment, exile, and poverty, Grotius was appointed ambassador of Sweden to France in 1634, from which position he worked to negotiate a treaty for the end of the Thirty Years' War before his death following a shipwreck in 1645.

### GROTIUS'S EURIPIDEAN WORK: FROM PHILOLOGY TO PHILOSOPHY

In his magisterial recent biography, Henk Nellen comments that Grotius's literary endeavors were "merely incidental" to his major project of finding work in Hamburg after his escape and preparing the case for his return to Holland.<sup>55</sup> Yet there is more to it than this. If Lucan helped Grotius think about war, Euripides spoke for his personal sufferings. In a letter to a friend from exile in 1623, for example, he quoted words taken from Euripides's *Phoenician Women* to illustrate that the heaviest burden for an exile was the loss of freedom to speak.<sup>56</sup> From that play, he alluded to the interchange between Jocasta and the banished Polynices, in which the mother asks, "What is it like to be deprived of your country? Is it a great calamity?" Polynices answers, "The greatest: the reality far surpasses the description." That's not enough for Jocasta, and

<sup>52</sup> While in prison, he borrowed books from friends G. Vossius and the Leiden orientalist Thomas Erpenius (1584–1624); for his philological work, see Van Ittersum, 2016a, 371, 372; Raddemaker.

<sup>53</sup> See Gellinek, 1983, for a good overview.

<sup>54</sup> Nellen, 369; Reeves, 14. For changes in editions between the first (Paris, 1625) to the final, authorially produced *De Iure* (1646), see Ter Meulen and Diermanse, 222–32.

<sup>55</sup> Nellen, 464.

<sup>56</sup> Nellen, 320, citing Grotius's letter to P. Dupuy, 21 July 1623, with a reference to these lines from *Phoenissae* (388–91).

she pushes him again, until finally he answers, “One thing is most important: no free speech [παρρησίαν],” to which Jocasta agrees, “A slave’s lot this, not saying what you think.” Agreeing, Polynices responds: “You must endure the follies of your ruler.”<sup>57</sup> This must have been a comfort to Grotius after his fall. But it was something more. Euripides, first to use the term *parrhesia* (boldness of speech), was known for his representation of freedom of speech.<sup>58</sup> This freedom of speech, so beloved of the Athenians, is translated into the language of liberty. Grotius renders the Greek as: “More importantly, there is no liberty of speech [*loquendi nulla libertas adest*] here.”<sup>59</sup>

Not simply “incidental work” then, Euripides and the Greek dramatists were valuable for reasons other than personal ones and beyond their strict application in scholarship and philology. Euripides, Erasmus’s favorite, hailed by Aristotle as “the most tragic of the poets,”<sup>60</sup> was first published in 1495 and, among the Greek playwrights, had the highest number of Greek and Latin editions printed before 1600.<sup>61</sup> For his rhetorical ornamentation and his morality, Euripides was the subject of a series of lectures by Melanchthon from the 1530s to 1560, incorporated into the editions of his student William Xylander.<sup>62</sup> While in prison, Grotius took up the vogue and translated Euripides’s play *The Phoenician Women* into Latin, publishing it in 1630. He also translated into Latin verse the plays *Iphigenia in Tauris* and *The Suppliant Women*, believing Euripides the best of the Greek tragedians.<sup>63</sup> His was not the humanism of the heroic edition-making or allegorizing sort, as he avoided the textual, historical, and philological cruces that had possessed warring humanists of the previous generation. Rather, Grotius edited as a poet and statesman; he thoughtfully curated the classics for moral purpose, as had done Justus Lipsius, deploying those aspects of antiquity that could help the current situation; as Lipsius had written, “I made philology into philosophy.”<sup>64</sup>

In his introductory note to his Latin translation of *Phoenician Women*, Grotius claimed not only that it was the best play of the best classical dramatist, but also that its greatness was due to the theme of justice. He observed that Cicero had quoted lines from the play on the topic of injustice in *Of Duties*. As Grotius name-checks Cicero in his prolegomena to *Phoenician Women*, he

<sup>57</sup> Euripides, 2002, 248–49 (*Phoenician Women* 386–91); *parrhesia*: παρρησίαν at 391.

<sup>58</sup> On *parrhesia* and the Homeric legacy, see Wolfe, 2015, 287–88.

<sup>59</sup> Grotius, 1626, 178–79 (*Excerpta*), with “Exilium” as the marginal index gloss for these lines; cf. Grotius, 1630, 35 (*Phoenissae*).

<sup>60</sup> Aristotle, 4985 (*Poetics* 1453a29–30).

<sup>61</sup> Hirsch.

<sup>62</sup> For Melanchthon, see Rhein.

<sup>63</sup> Gellinek, 49–50.

<sup>64</sup> On Renaissance editing, see Grafton, 1985, 640, citing “ego e Philologia Philosophiam feci,” from Lipsius, letter of 3 November 1603.

is drawn to those classical literary tyrants who overturned justice: Eteocles, Creon, Oedipus. Eteocles was singularly unjust for arguing against justice on the ground of necessity. Cicero had cited Eteocles's lines from Euripides<sup>65</sup> in *On Duties* (3.82), where he also cited *Phoenician Women* (524–25): “If justice must be violated for sovereignty’s sake, it must be violated; you may indulge your scruples elsewhere,” adding dryly, “He [Caesar] deserved to die for having exempted the one thing that is the most criminal of all.”<sup>66</sup> Grotius takes the meaning of these lines a little differently from Cicero, however. Both in his Latin translation of the Euripides play and in the excerpted commonplaces published in 1626, Grotius replaces Cicero’s “ius” with “iura,” making what was a grammatical singular into a plural (“Nam iura si violanda, regni gratia / Violanda, pietas caeterum vitae regat”). By taking “ius” to mean “the laws” (“If the laws must be violated”),<sup>67</sup> Grotius retreats from the higher claims of justice or the abstract meaning of injustice and turns to the laws of humans (“iura”). In the Greek of Euripides, the word is *injustice* (ἀδικεῖν).<sup>68</sup> Grotius forges a political commentary on tyrants as breakers of laws. Indeed, in these chains of association and layered commentary may be seen the shaping of the jurist’s thought, sculpted through his interpretation of Cicero’s reading of the works of Euripides. If annotation is conversation, as Jessica Wolfe has asserted, then Grotius was in true conversation with Euripides and Cicero as he thought through distinctions between abstract principles justice and human laws: issues of the conditions of speech, distinctions between right (*ius*) and laws, and between justice and the laws of peoples (*ius gentium*).<sup>69</sup>

With great industry, then, the Dutchman extended and refined the legacies of the Renaissance philologists and text hunters. He saw through the press the Stobaeus anthology *Dicta Poetarum quae apud Ioannem Stobaeum Exstant* (Paris, 1623) which was the first large body of Euripidean fragments to be printed. For that, Grotius worked with an assortment of materials from the hands of great philologists: Conrad Gesner’s *Stobaeus* (1543), collections of Dirk Canter (1545–1617), emendations of J. J. Scaliger (1540–1609), and supplements of A. Schott (1552–1629).<sup>70</sup> In 1626, Grotius brought out his own

<sup>65</sup> Grotius, 1630, fol. A5<sup>v</sup> (dedicatory letter to *Phoenissae*), 12–13 (prolegomena, citing Cicero), 14 (on Eteocles: “qui omnia jura divina atque humana pervertisset propter eum”). On Grotius’s admiration for Euripides, see Eyffinger, 2013, 210.

<sup>66</sup> Cicero, 1991, 131; cf. Cicero, 1913, 356 (*On Duties* 3.21): “Nam si violandum est ius, regnandi gratia / Violandum est; aliis rebus pietatem colas.” On these lines as commonplace in the Renaissance, see Starr; on Shakespeare’s quoting them, Sohmer.

<sup>67</sup> Grotius, 1630, 43; also in Grotius, 1626, 182 (*Excerpta*).

<sup>68</sup> Euripides, 2002, 262 (*Phoenician Women* 524).

<sup>69</sup> Wolfe, 2018.

<sup>70</sup> Gruys, 300–08; Collard.

prison work, a collection of *sententiae* from classical tragedies and comedies, *Excerpta ex Tragoediis et Comoediis Graecis, tum quae Exstant, tum quae Perierunt* (Paris, 1626): 1,006 pages of extracts in folio, arranged by author and play, plus an index and an alphabetical list of sources, with commonplacing topics sprinkled around in the margins. The *Excerpta* represent Grotius's own selection from his edition of Stobaeus.<sup>71</sup> Ordered with an eye to their application, these excerpts and the topics printed in the margins on the fragments reveal a kind of authorial intention. These were not merely the quarries for eloquent illustrations and *sententiae*, but rather also give evidence for the shaping of his political ideas.

From the printed marginal points in his *Excerpta* can be distilled the topics Grotius was finding in his authors that would populate the theory in *De Iure Belli*. There are, to be sure, the usual commonplacing headings ("Amicitia," "Eloquentia," "Coniugi bona et mala," "Iustitia," "Tyrannis," and "Regnum"). But there are, too, some rather Grotian ones: on the divine origin of property,<sup>72</sup> for example, and on "pax victoria melior."<sup>73</sup> As might be expected, there is plenty of interest in "Ius" and "Iustitia": "Exempli Ius" for *Troades*; and God a lover of justice ("Deus amans Iustitiae") for *Helen*;<sup>74</sup> another for "Iustitia in Helen,"<sup>75</sup> glossing a speech of the supplicant Helen, on the universality of justice, that reads: "The sky is the common possession of all mortals, and so is the earth, on which men should not hold other men's property or take it by force."<sup>76</sup> To Grotius, Euripides was particularly useful for thinking about non-European peoples, "Barbari": in a debate over whether barbarians indeed possess laws, a topic highly relevant to the early international world and rights of conquest and war.<sup>77</sup> On the one hand,

<sup>71</sup> Collard, 245; Grotius, 1623. See Eyffinger, 2013, at 212; for an overview of this philological work, see Gellinek, 44–53.

<sup>72</sup> Grotius, 1626, 184, where the marginal gloss in *Excerpta* is "Dei proprietates rerum, penes homines procutatio." There Grotius glosses lines from *Phoenician Women* (555–58), which he translates as "Non possidemus propria mortales bona, / Sed ius deorum, nostra dispensatio est" (cf. Euripides, 2002, 267: "Mortals do not own wealth as their own property: we merely hold what is the gods' and look after it").

<sup>73</sup> Grotius, 1626, 188 (*Excerpta*).

<sup>74</sup> Grotius, 1626, 302 and, for "Deus amans Iustitiae," 326 (*Excerpta*).

<sup>75</sup> Grotius, 1626, 328 (*Excerpta*).

<sup>76</sup> Euripides, 2002, 117 (*Helen* 905–08), cited in Grotius, 1626, 326, translated as: "Communis aether hominibus, tellus quoque; / In qua ampliare cuique sic fas est domum, / Ut ab alienis rebus at vi temperet," with an indexical marginal gloss, "Deus amans Iustitiae" ("God a lover of justice"). This and all unattributed translations are my own.

<sup>77</sup> Grotius, 1626, 232; other instances of *Excerpta* marginal pointing to "Barbari" are to be found in *Iph. in Aulis* and in *Bacchus* at Grotius, 1626, 282 and 306. On the barbarian as a conceptual boundary productive of privileged Greek identity, see Hall.



Grotius notes that no law prevents “barbarian” behavior (“nulla lex prohibet nefas”), and, on the other, he observes that “Ius naturae ubique idem,” that the law of nature is the same everywhere.<sup>78</sup> In *De Iure Belli*, Grotius chooses this latter answer against this charge against barbarians, as will be shown below.<sup>79</sup>

In his *Excerpta*, moreover, it is plain to see, war topics abound. Lines from *Phoenician Women* prompt a marginal gloss of “causa belli” (“justification for war”), as Grotius sums up the lines “they are coming to the land with justice [δικη] on their side,” and translates them as “Iure in hos fines eunt.”<sup>80</sup> Words from Euripides’s *Suppliants* are given a marginal point: “Causa belli.” The prompt there is Theseus’s mother Aethra, who spurs her son to war against the Thebans on behalf of the victims of injustice: “You are setting out in a just cause [δικη].”<sup>81</sup> Another passage from *Suppliants* is glossed, “Deliberatio de bello” (“Deliberation on war”). There Grotius characterizes the Herald’s long speech contemplating the merits of war and peace (“When a war comes to be voted on by the people, no one reckons on his own death . . . how much better for mortals is peace than war”).<sup>82</sup> These marginal headings give a clear portrait of a reader looking to understand war, justice, law, and the like, the excerpts a workshop of the thought that is to come. Exploring his engagements with Greek and Roman drama through this erudition of translating, organizing, and collecting draws insight into a number of the topics Grotius was formulating: what was just and what was merely legal, as well as concepts of humanity, sociality, justice, freedom of speech, and proper rule.

### DRAMA OF DIGNITY

While these resources may be considered simply empirical materials culled from classical learning in order to ornament Grotius’s humanist *De Iure Belli*, the suggestion here is that they do more than furnish his argument with pleasing sententiae. At times, the dramatic situation is remarked upon when Grotius places them in his argument. For instance, very early in his *De Iure Belli* are two examples from Euripides’s tragedies *The Phoenician Women* and *Andromache*, cited to establish that there is a principle of justice above national law. Each instance offers thoughts on justice, yet in *De Iure Belli* Grotius preserves the dramatic scenario—namely, that these words emerge in theatrical situations of conversation between

<sup>78</sup> Grotius, 1626, 232; Euripides, 1995, 289 (*Andromache* 173–76).

<sup>79</sup> Euripides, 1995, 297 (*Andromache* 244); cited in Grotius, 1626, 234.

<sup>80</sup> Grotius, 1626, 176 (*Phoenissae* 154–55); Euripides, 2002, 226–27.

<sup>81</sup> Grotius, 1626, 252–53 (*Suppliants* 326–31, 328).

<sup>82</sup> Grotius 1626, 258–60 (*Suppliants* 479–93).



members of two differing national groups. The claim illustrated is that justice is knowable to all, as Grotius had vaunted in his *Prolegomena*: “I have made it my concern to refer the proofs of things touching the law of nature to certain fundamental conceptions which are beyond question, so that no one can deny them without doing violence to himself.”<sup>83</sup> To make his point, Grotius continues, “Therefore Euripides in his *Phoenissae* makes Polynices, whose cause he would have to be represented manifestly just, deliver himself thus: I speak not things hard to be understood, / But such as, founded on the rules of equity and the good / Are known alike to the learned and the simple.”<sup>84</sup> Grotius renders that one word in Euripides’s Greek (ἐνδιχ’) as a richer concept, taking up more words, in his Latin—“quae regulis aequi et boni”—sentiments strongly echoing the opening definition of justice in Roman law: “Jus est ars boni et aequi” (“law is the art of goodness and equity”).<sup>85</sup>

What could simply be a *sententia*, culled from one of many possible wise sayings of poets or orators, becomes something more, as the jurist wants his readers to act as if listening along with that chorus. His text continues even after the quotation, inviting his readers to share in the reaction to these lines with those on stage: “And he [Euripides] immediately adds the Judgment of the Chorus (which consisted of Women and those too Barbarians) approving what he said.”<sup>86</sup> Not only redefining what is just as that which is equitable and good, the author also approves the reaction and judgment supplied by the play context, summarizing what was not excerpted in his *Excerpta* but what he read in the play, the chorus who respond, “Though I was not brought up in Greece, to me you seem to be speaking sensibly.”<sup>87</sup> The ideas of justice, “equity and the good,” are common to all. Dignity is to be accorded to all voices.

As if this assent of the chorus is not enough, Grotius brings in another voice from a different Euripidean play, *Andromache*: that of a slave. This is also a scene where the good is asserted across national lines. This play depicts the fate of the Trojan Andromache, Hector’s wife, forcibly deported to Greece and enslaved now to Achilles’s son. In the play, Andromache is to suffer the fatal jealousy of

<sup>83</sup> Grotius, 2012, 12; cf. Grotius, 2005, 110–11 (*Preliminary Discourse* 40).

<sup>84</sup> Grotius, 2005, 111; not in Grotius, 2012. In Grotius, 1630, 40 (*Phoenissiae* 494–96), cf. Euripides, 2002, 260–61, Grotius translates Polynices’s speech into Latin as: “Haec sum profatus . . . haud ambagibus / Implicita, sed quae, regulis aequi & boni / Suffulta, doctis pariter & rudibus patent.” Grotius, 1626, 182, extracts these lines under the marginal index head of “Denuntiatio” (Declaration), taking Polynices’s statement of what he will do if he does not receive justice as a declaration of war.

<sup>85</sup> Mommsen and Krueger, 29 (*Digest* 1.1.1).

<sup>86</sup> Grotius, 2005, 111; cf. Grotius, 1913, [\*7]: “Statimque addit chori (constat is autem ex feminis iisque barbaris) iudicium, dicta approbantis.”

<sup>87</sup> Euripides, 2002, 261 (*Phoenician Women* 496–97).

the legitimate wife, the Spartan Hermione. Early in the drama, Hermione arrogantly rebukes Andromache with a slur commonly used by the civilized against the barbarian: “We do not govern our State by the Laws of Barbarians [ὁ βαρβάρων νόμοισιν οἰκοῦμεν πόλιν]”; Grotius renders this into Latin as: “Non barbarorum more in urbe hac vivitur.” Refuting the ethnic difference, Andromache replies: “What is dishonourable or dishonest among them, bears the same Character also among us.” Or, “What’s shameful is shameful, here as well as there [“*qua turpia illis, hic quoque haut culpa vacat*”].<sup>88</sup> A foundation of common dignity is the bracing for this claim.

Grotius cites the entire interchange in the prolegomena of *De Jure*, both the insult and the rebuke. Are the good and just particular to one people, or are they the same everywhere? Andromache’s remark confirms the latter. This finding is achieved not simply through a pithy quotation—though there is that—but also through a record of a debate. By choosing a situation that crosses nationalities, as in his earlier excerpt from *Helen*, the jurist posits a moral status common to all humans: all are under the umbrella of one justice. This is, I think, why he is interested in these hard-won truths of captives, including women. In 1626, when Grotius gives the Latin translation of this interchange of the Trojan slave and the Spartan mistress in his *Excerpta*, there is given a marginal index topic: “Ius naturae ubique idem” (“the law of nature is the same everywhere”).<sup>89</sup> This arcing of one law over all, I suggest, is in the neighborhood of not simply commonality, but also of human dignity.

Tragedy often represents circumstances beyond one’s control, a reconciliation of agency to fated necessity.<sup>90</sup> However, Grotius does not represent the voices of these captives, supplicants, or foreigners as lamentably caught in a tragic press of fate. Of course, the Aristotelian account of compassion gives the cognitive elements triggering sympathy,<sup>91</sup> and the first ingredient of Aristotle’s theory of tragedy is that in order for pity to be created, the matter ought to be taken seriously. Empathy has been taken as psychologically important as a guide to ethics, and compassion through activities like fictional identification in novel reading is seen as a training ground for the kind of sympathy that would emerge as fellow feeling in those Enlightenment doctrines of “humanity.”<sup>92</sup> In Grotius’s jurisprudence, in which the slave was made by a

<sup>88</sup> Grotius, 2005, 111; Euripides, 1995, 296–97 (*Andromache* 242, 243). And see Grotius, 1626, 235 (*Excerpta*), these lines given the marginal note “Ius naturae ubique idem” (“The law of nature is everywhere the same”).

<sup>89</sup> Grotius, 2005, 112.

<sup>90</sup> See Smith and Bloemendal; see Reiss.

<sup>91</sup> Aristotle, 4732–33 (*Rhetoric* 1386).

<sup>92</sup> Nussbaum, 330; Hunt.

legal—not a natural—category, status was reversible. There is a sense in *Andromache*, and in all of the jurist's representations of his enslaved captives from Greek drama in his *De Iure Belli*, that the enslaved do not lose their dignity, their freedom to speak, or their sense of justice, even if they have lost the power to act autonomously. This was a principle in all his writings in *De Iure* regarding war captives: the enslaved did not lose all and become a species of thing. While they may be without legal agency (for the moment), their voices are capable of uttering truths about justice and morality. Slavery was, for Grotius, not a form of “social death.”<sup>93</sup>

### IS THE VICTOR ALLOWED TO DO WHATEVER HE PLEASES?

Instead of emancipation or abolition, however, Grotius advocates moderation toward those under one's power. The notion of what might now be called war crimes is of vital interest in Grotius's *De Iure Belli*: are there limits to conduct in war? To this question, Grotius answers, no—that is, not by law. The slaughter of noncombatants, women, and infants has been allowed by the common custom of nations, as the *Iliad*, Thucydides, Tacitus, and Virgil all give gruesome testimony.<sup>94</sup> If Euripides was the locus of thought regarding justice as vouched by captive women and foreigners, Seneca was the source to examine the affective requirements for a dignified, or even equitable, framework for human relations, a sociable morality grounded in mastery of the passions. With his account of the aftermath of Troy, Grotius offers a wary characterization of the amoral Pyrrhus from Seneca's *The Trojan Women*. There, Grotius finds Pyrrhus's statement that “the victor is allowed to do whatever he pleases,” a license that extends even to the slaughter of infants and women.<sup>95</sup> But those laws of nations that have delivered up such gory precedents must not be confused with morality. As has been shown, Grotius is interested in the dialogue in tragedy: the speech situation, the retort. As if his own work is a drama with a plot, there are six chapters that intervene between Pyrrhus's statement in *The Trojan Women* and Agamemnon's reply. In those intervening six chapters, Grotius shows precedents for the sorts of inhumane treatment in war that are

<sup>93</sup> O. Patterson. The restoration of the humanity of the enslaved was a main feature of abolitionist and antislavery movements in the nineteenth-century United States (for instance, in speeches of Frederick Douglass; Charles Sumner); see Nimako and Willemsen; Davis, 42–44.

<sup>94</sup> Grotius, 2005, 1283–84 (*Rights* 3.4.9).

<sup>95</sup> “Quodcunque libuit facere, victori licet”: Seneca, 2018, 170–71 (*Trojan Women* 335). Note Grotius turns to Seneca's Pyrrhus and not to Virgil's, whose rampage in the *Aeneid* (2.526–58), became a topos on the question of limits to violence; see Murrin, 204–06. On license and permissibility, see Tierney, 228–29; and, on enforcement, see Stumpf, 65.

permissible by law, many of them from those very pagans he used to exemplify principles of justice. From his reading of the *Iliad*, the innocent and soldiers are victims alike. There, too, he finds indiscriminate killing; slaughtering of women, old men, and children; spoil; plunder; booty; and the selling or enslaving of captives—atrocities for which Grotius concedes permission in the law. From the *Iliad*, he cites “little ones hurled to the ground in dread conflict, and my sons’ wives dragged off at the deadly hands of the Achaeans”<sup>96</sup> and from the *Aeneid*, Pyrrhus’s killing of Priam is taken to demonstrate that the slaughtering of old men is not legally exempted.<sup>97</sup> Another instance of what may be done in war is the killing of a woman captive: the proof text, another heart-wrenching moment from a tragic classical work, *Ciris*, in which the punished woman, Scylla, laments, “now, now it is wickedness that has conquered all,” begging for death rather than the punishment to which she has been consigned: “Would that at least, by the law of war, you had killed me, your captive!”<sup>98</sup> Here, captive women’s mistreatment is presented as permissible.

Even so, there are legal limits: rape (*stupra*) is one of those things which are not legal in war, a rare exception to all the depredations Grotius listed.<sup>99</sup> Rape is illegal not because it is an assault on the body, or rights, or of the autonomy of the other.<sup>100</sup> It is so because it is not appropriate to men’s humanity: it is a signal loss of the warrior’s self-control. Grotius does admit that there are some who consider rape in the time of war legitimate while others find it impermissible; he approves those who hold the latter view for their better sense (“*melius alii*”),<sup>101</sup> considering as they do not only the injury but perform “unrestrained lust,” that which exceeds what is necessary for war.<sup>102</sup> There should be as much punishment for rapes occurring in war as is accorded those occurring in peacetime.<sup>103</sup> That extremity of human behavior, the thing that makes rape in war illegal even if almost everything else is permitted, is the working of an unrestrained lust, a loss of self-control. Appealing repeatedly to the concept of equity, the last chapters of his *De Iure Belli* are taken up with moderation toward enemies and a

<sup>96</sup> Grotius, 2005, 1282 (*Rights* 2.4.8.2); cf. Homer, 2:456–57 (*Iliad* 22.61).

<sup>97</sup> Grotius, 2005, 1284 (*Aeneid* 2.550).

<sup>98</sup> Scylla: “iam iam scelus omnia vicit . . . at belli saltem captivam lege necasses,” in Virgil, 475, 477 (*Ciris* 427, 447).

<sup>99</sup> Grotius, 2005, 464 (*Rights* 3.4.19).

<sup>100</sup> Reasons for which Walzer, 133–38, finds rape unacceptable, in line with a liberal account of human rights.

<sup>101</sup> Grotius, 2005, 464.

<sup>102</sup> Grotius, 2012, 356.

<sup>103</sup> Grotius, 2012, 356; Grotius, 2005, 1300. In contrast to Alberico Gentili, Grotius does not consider widespread rape to be grounds for humanitarian intervention; see Nussbaum, 126.

reduction of cruelty in war, with praise for those who refrain from drawing their swords against the defeated.<sup>104</sup>

Yet just because most, if not all, horrific actions are permissible by law, this does not make them right. Quite a long time after this run of chapters on legal atrocity Grotius returns to the moment earlier cited in Seneca's *Trojan Women*, where Pyrrhus, speaking to King Agamemnon, licenses harsh treatment of captives in war ("No law commands to spare the captive slave" and "The Victor's Will is an assured Law").<sup>105</sup> At last, a dramatic six chapters later, in chapter 10 of his third book of *De Iure Belli*, Grotius shows that Pyrrhus's words are not the end of the dialogue in Seneca's play. Agamemnon retorts: "What law forbids not, Honor doth restrain" ("quod non vetat lex, hoc vetat fieri pudor").<sup>106</sup>

Grotius thus opens this new chapter with a significant retraction of what violence is right in treatment of captives and in war conduct, and here he lays privilege to the good over the permissible. With a wry sense of humor, Grotius claims that that "which I seemed to grant, yet did I not grant to them."<sup>107</sup> Thus, he voids his approval. It's true, the jurist admits, many things were deemed to be "right and lawful"<sup>108</sup> or "'lawful' or 'permissible'"<sup>109</sup>—that is, "testatus sum juris esse aut licere"<sup>110</sup>—but indeed they are actually contrary to the idea of "justice properly so called."<sup>111</sup> Here is where Grotius's Stoicism, his sense of moderation and tempering of the passions of war that incline to cruelty, emerges. Stating powerfully that those "who abstain from such Things, act in a manner more honest and more commendable in the Opinion of good Men" ("What law does not forbid, a sense of restraint forbids"—Seneca),<sup>112</sup> Grotius explains that what is meant by "pudor" ("honor") is not reputation—that is, not simply as the esteem of other men ("non tam hominum & famae"<sup>113</sup>)—but also "a respect for equity and justice, at least a constant Adherence to that which is most just and most honest [*quam*

<sup>104</sup> Aspects highlighted in Cairns.

<sup>105</sup> Grotius, 2005, 1279, 1285 (3.4.5.2; 3.4.10.1), citing Seneca, 2018, 170–71 (*Trojan Women* 335, 333).

<sup>106</sup> Grotius, 2005, 1411; Seneca, 2018, 170 (*Trojan Women* 334).

<sup>107</sup> "Eripienda": Grotius, 2012, 384; Grotius, 2005, 1411 (3.10.1.1). For Lauterpacht, 6–8, the only critic I have encountered who considers this passage; the Senecan quotation is an instance of the uncertainties regarding natural law in this work.

<sup>108</sup> Grotius, 2005, 1411.

<sup>109</sup> Grotius, 2012, 384.

<sup>110</sup> Grotius, 1913, 508.

<sup>111</sup> Grotius, 2005, 1411.

<sup>112</sup> Grotius, 2005, 1411; not in Grotius, 2012; and see Seneca, 2018, 170–71 (*Trojan Women* 334).

<sup>113</sup> Grotius, 1913, 508.

*aequi & boni, aut certe ejus quot aequius meliusque est, respectum significat*].”<sup>114</sup> Indeed, from the language of debt obligation and matters of fiduciary trust in Justinian’s *Institutes*, “Justitia and Pudor, Justice and Honour [are] joined together [*justitiam cum pudore conjugi*].”<sup>115</sup> For Grotius, not everything was permissible in war; not everything could be justified by expedience. This is not, therefore, reason of state (i.e., Machiavellian) or moral indifference, which he attributes to Carneades, who is challenged in the *Prolegomena* to his work.<sup>116</sup> Rather than arising from imperatives of punishment or personal liberty, the moralism that grounds the jurist’s work is instead a concept of social obligation.<sup>117</sup>

Confirmation for his claim is a string of judgments by Seneca vouching a morality higher than the law, which Grotius adds to the notes. From Seneca’s *De ira*, he cites:

How small a matter is it, to be a good man, only so far as the laws require? How much larger is the rule of duty than of right? How many things does natural affection, humanity, liberality, Justice and faith demand. Which are all beyond the reach of the civil laws. Where one may see he puts a difference between *jus* and *justitia*, right and justice. He means by right, that which is actionable in the courts of judicature.<sup>118</sup>

As regards the master’s right over his slaves, Grotius seizes on a warrant from Seneca’s *De clementia* that appeals to a higher principle of equity and good behavior: “As to our bond servants we must consider, not what we may without danger of the law put upon them, but what the nature of equity and honesty would allow, which obliges us to be merciful to our prisoners, and those

<sup>114</sup> Grotius, 2005, 1411–12; Grotius, 1913, 508.

<sup>115</sup> Grotius, 2005, 1412; Grotius, 1913, 508. Not in Grotius, 2012.

<sup>116</sup> Attacking a logic of expedience, Grotius raises the specter of the figure of the Greek Skeptical philosopher Carneades in his prolegomena (Grotius, 2005, 79), naming Carneades and citing Lactantius, who is summarizing the defense of injustice from Cicero, *On the Republic*. See Draper; Tuck, 1983 and 1993, 56. For the view that Grotius’s target is not the Neo-Skepticism of Montaigne or Charron, but rather reason of state, see Mautner.

<sup>117</sup> Haggemacher. In some ways it is an old debate between Scholasticism and humanism: Sommerville; Haakonssen, 2002; Haakonssen, 1985, 241; in contrast, Tuck, 1999, 1993, and 1979. See Straumann, 2015, 88–95, on Grotius’s response to Carnadean skepticism.

<sup>118</sup> Grotius, 2005, 1413–14; not in Grotius, 2012; cf. Seneca, 1928, 224–25 (*De Ira* 2.28.2): “how limited is the innocence whose standard virtue is the law [*ad legem bonum esse*]! How much more comprehensive is the principle of duty [*officiorum*] than that of law [*iuris regula*]! How many are the demands laid upon us by the sense of duty, humanity, generosity, justice, integrity [*pietas, humanitas, liberalitas, iustitia, fides exigunt*]—all of which lie outside the statute books!”

purchased with our own money.”<sup>119</sup> A third Senecan quotation also stresses a morality higher than the law alone when treating the enslaved. This he derives from Seneca’s notion of a common right of animal life: “Indeed every thing is lawful with regard to a slave, considered as such: but there are some things which are not lawful with regard to a slave, considered as a man, according to the common right of animals.” And, concluding this thought with a quotation from Seneca’s words from *De clementia*, Grotius rounds off his support from Stoical philosophy for a morality above the law: “although the law allows anything in dealing with a slave, yet in dealing with [him as a] human being [*quod in hominem*] there is an extreme which the right common to all living creatures [*commune ius animantium*] refuses to allow.”<sup>120</sup>

By equity, then, and by a Stoical ethos, Grotius avers the rights of the slave. The jurist refrains from asking for pity for the captive as a ground for a common humanity, whether as sharing suffering or grieving together in loss. The captive is, rather, an emblem for how one day can bring catastrophe to anyone; as Hecuba supplicates to her captor, Odysseus: “I too was once someone of importance, but now I am so no longer: a single day has stolen all my happiness from me,” a plangency Grotius translates in his *Excerpta* of 1626.<sup>121</sup> Grotius’s biblical drama *Sophompaneas* (1635) told a similar tale of sharp reversal in the story of Joseph, who was sold into slavery in Egypt, fell into service of the pharaoh’s courtier Potiphar, rose to eminence, and then was finally reunited with his family—a career reflecting the Dutchman’s own predicament of falling low in imprisonment and exile, and his hopes of rising again, as he would later in the Swedish court. The drama highlighted fortune’s caprice, rewarding Joseph and his family with religious toleration in Egypt for the Hebrew people.<sup>122</sup> As Grotius wrote in his *Remonstrantie* (1615), also arguing in favor of

<sup>119</sup> Grotius, 2005, 1414; Grotius, 1913, 509; cf. Seneca, 1928, 407–09 (*De Clementia* 1.18): “Even in the case of a human chattel [*in mancipo*] you should consider not how much he can be made to suffer without retaliating [*non quantum illud impune possit pati*], but how much you are permitted to inflict by the principles of equity and right [*quantum tibi permittat aequi bonique natura*], which require that mercy [*parcere*] should be shown even to captives and purchased slaves.”

<sup>120</sup> Grotius, 2005, 1414, citing Seneca, 1928, 408–09 (*De clementia* 1.18): “cum in servum omnia liceant, est aliquid, quod in hominem licere commune ius animantium vetet.”

<sup>121</sup> Euripides, 1995, 425; Grotius, 1626, 154–55, further citing *Hecuba*: “Those who have power ought not to exercise it wrongfully, nor when they are fortunate should they imagine that they will be so forever” (*Hecuba* 282–83); and, “moreover in your country there is a law [*νόμος*] laid down, the same for free men and slaves, concerning the shedding of blood” (*Hecuba* 291–92). *Hecuba* is the first among the Euripides plays Grotius excerpted in 1626.

<sup>122</sup> On the Senecan elements in Grotius’s drama, see Eyffinger, 2001; Nellen, 478–85, on the biographical parallels.



freedoms for resident Jews in the Netherlands in his own time, the right of hospitality to foreigners arises out of a “natural kinship, which is common to all people,” from which “springs hospitality, which is recommended to us not only by Scripture, but also by the pagan authors, and involves receiving strangers and treating them well.”<sup>123</sup> And in *De Iure*, he confirms the principle of inherent sociality: by nature, humans had a “desire for fellowship” and a “care of maintaining society.”<sup>124</sup> These were philosophical, no less than religious questions, as were found in his 1642 rebuttal to the suggestion that Indigenous Amerindians were evidence of polygenesis—that is, separately formed races. Grotius insisted that all humans were descended from one ancestor and comprised one species, and thus there were not distinct races.<sup>125</sup> Thus Grotius rejected the polygenesis concept, gaining currency among avant-garde theologians such as Isaac de La Peyrère, who purported that Adam was not the parent of all humans on Earth and that there were different species.

Freedom was only for some, however: Grotius’s *Sophompaneas*, seen as a spot of philosemitism, nonetheless has a slave chorus of “Aethiopian women,” depicted as Black Africans.<sup>126</sup> Voicing one third of the lines in the play, they seem outspoken and yet content to serve the virtuous Joseph’s wife, even though they have been taken from their native land. Onstage for the duration of a play, these vocal women seem background to a story that is principally concerned with the sale of free men to foreign princes and hospitality to the stranger. Grotius is unconcerned with their attaining freedom, and leaves their status uncontested. If *Sophompaneas* vaunted the heroics of endurance, whereby time, fortune, or the powerful might render a reprieve or even a reversal of circumstance, it also avowed that slavery was a lot one could endure. Rather than seeing in the captive a figure for tragic necessity, Grotius provides a scenario where slave and free coexist, but under one humanity. The jurist’s interest in classical tragedy, and in particular the speeches of the enslaved women, is not strictly fatalism, nor embellishment, but rather the way that

<sup>123</sup> Kromhout and Offenberg, 202; cf. De Wilde, 410–11; and contrast with Pagden, who takes such universalism as masking the European projects of empire.

<sup>124</sup> Grotius, 2005, 84, 85; Grotius, 1993, 8–9: “cum societates appetitu eccellente . . . societatis custodia”; Grotius, 1913, [\*4<sup>v</sup>]; cf. Grotius, 2012, 3. In Grotius’s note here, he cites Seneca, 1935, 240–43 (*De Beneficiis* 4.18); and see Straumann, 2003–04.

<sup>125</sup> Grotius, 1642, in dispute of the polygenetic theory (that Adam was the father of the Jewish race only), as would be put forward in the 1640s by Isaac de La Peyrère in the manuscript of his *Praedamitae* (1655), which Grotius had seen before its publication. The common origin of all humankind was a theologically dangerous opinion, but it could also be a brace against natural or racial ideas of slavery. See J. Smith, 102–13; Rubiés; Poole.

<sup>126</sup> Grotius, 1635, 12–14: “Curly hair . . . flat noses and wide nostrils and our skin is marked by the heat of the all too closely shining sun.”



this particular early modern humanist opened up a space of reflection about a humanity common to the slave and the free.

## HUMAN NATURE AND SLAVERY IN GROTIUS

Grotius wrote that a person could choose to become a slave—which led Rousseau to characterize Grotius's political theory as most "favorable to tyrants."<sup>127</sup> It may seem a contradiction that the writer gave slavery legitimacy by mediating his views through a Greek and Roman drama that also mediated his views of a common justice. Although Grotius's account of human nature began not with ethnic identity but with a principle of freedom, his politics were not those of emancipation. There were others, however, who did challenge the emerging institutions of enslavement, such as Grotius's Dutch contemporary, Gerbrand Adriaensz Bredero (1585–1618), who condemned the practice of trading slaves in his drama, *Moortje* (The little Moor, performed 1615 and published 1617), written in the newly independent Dutch Republic and as a rebuke to Spanish and Portuguese practices.<sup>128</sup> This was in a brief window during the struggle between the emerging Dutch Republic and the Habsburg Empire when there were republican voices opposing slavery and the slave trade as part of their anti-Spanish sentiment.<sup>129</sup> A Dutch West India Company committee was established to consider the moral implications of the slave trade (the minutes are lost to history), with Willem Usselincx (1567–1647) among those opposing instituting slavery in these colonies.<sup>130</sup> However, after the Dutch establishment in Brazil, economic drive silenced such moral concerns.<sup>131</sup> Grotius was one of those who declined to speak against, and who supplied justification for, the rights of slavers and the existence of slavery as an institution under the law.

His position was that of a Stoic, who considered freedom to be internal to one's condition, but this, it is important to note, was compatible with slavery on different grounds than were Aristotelian biopolitics or early modern polygenesis. Grotius's challenge to racialized or naturalized accounts of slavery is powerful nevertheless. In *De Iure Belli*, he adopts the framework for the law of slavery

<sup>127</sup> Rousseau, 51. On Grotius's notion of a people's voluntary right to surrender, see Tuck, 1979, 79; Lee, 259–68; Nyquist, 212–14 and 223–26.

<sup>128</sup> Emmer, 13; Bredero.

<sup>129</sup> Brandon and Fatah-Black, 90.

<sup>130</sup> On debates among the Dutch over colonialism and slavery in the period 1628–47, especially the worry about moral degeneration and the use of Roman history, see important work by Weststeijn, 497–99; Schmidt, 170–71.

<sup>131</sup> Emmer, 13–14. See also Boxer; Emmer and Klooster.

from Roman law,<sup>132</sup> where slavery was part of the laws of peoples, the *ius gentium*. It originated in war, not in natural slavishness; it was a matter, strictly, of law, not of morality or biology. While condemning Portuguese atrocities against the Dutch, Grotius in *Jure Praedae* (1604) was outraged they had delivered “into perpetual slavery the men whom they themselves have captured, a practice denounced by all the jurists as impermissible even in a legitimate war between Christians, since it is contrary to established law.”<sup>133</sup> The jurist himself cites Aristotle that “some Men are naturally Slaves, that is, turned for Slavery,”<sup>134</sup> but he did not endorse that view. Rather, he considered slavery to be contrary to the law of nature.<sup>135</sup> “By nature,” Grotius wrote, “a man’s life is his own, not indeed to destroy, but to safeguard; also his own are his body, limbs, reputation, humour, and the acts of his will.”<sup>136</sup> Nature did not make slaves; men did. And he devotes three chapters of his *De Iure Belli* to slavery: in book 2, chapter 5 (“De acquisitione originaria iuris in personas”); in book 3, chapter 7 (“De iure in captivos”); and in book 3, chapter 14 (“Temperamentum circa captos”). One could surrender oneself to complete slavery, which was the perpetual giving of labor in exchange for the necessities of life, and this is permissible if it is “without excessive harshness if kept within natural limits.”<sup>137</sup> Slavery falls under the *ius gentium*, the laws of peoples.<sup>138</sup> The premise is that people possess an originary freedom; per Grotius, “There

<sup>132</sup> Grotius, 2005, 264 (*Rights* 1.3.8), setting up his argument to dispute the following: “As Aristotle said, some men are naturally slaves, that is, turned for slavery. And some nations also are of such a temper, that they know better how to obey than to command”; Grotius, 2012, 52 (citing Aristotle, *Politics* 1.5). And see Cairns; Van Nifterik; for Aristotle on slavery, see Aristotle, 4273–75 (*Politics* 1.5 [at 1255a]).

<sup>133</sup> Grotius, 2005, 373–74. Whether this applies only to war between Christians is not made clear here, but the examples are from ancient Greek literature (e.g., Homer); the law citations are to Roman and canon law. Outrage at the captivity of the Dutch is also at 387.

<sup>134</sup> Grotius, 2005, 264 (*Rights* 1.3.7).

<sup>135</sup> Grotius, 2005, 1360. Grotius, 1913, 490: “est contra naturalem esse hanc servitutem” (*Rights* 3.7.1); Grotius, 2005, 1105: “No man is naturally a Slave” (*Rights* 222.11); cf. Grotius, 2012, 303. On Grotius and slavery, see Cairns, 200; on natural slavery in Stoic thought, see Garnsey, 138–45.

<sup>136</sup> Grotius, 2005, 885 (*Rights* 2.17.2); cf. Grotius, 2012, 252. These are “inalienable” rights, as explained in Grotius, 1926, 71 (*Jurisprudence* 2.1.41), a work written ca. 1620, also during Grotius’s imprisonment at Loevestein. On those things “that cannot possibly belong to somebody else,” see Van Nifterik, 238.

<sup>137</sup> Grotius, 1913, 158: “in terminis naturalibus, nihil habet si nimiae acerbatis” (*Rights* 2.5.27); Grotius, 2005, 557; cf. Grotius, 2013, 135.

<sup>138</sup> See Cairns, 206–10.

is no Man by Nature Slave to another.”<sup>139</sup> Yet that freedom is compatible with voluntary enslavement,<sup>140</sup> indeed, under the law of nations even the slave’s desire for liberty did not justify revolt, and slaves captured in wars should not run away but should bear their conditions patiently, their descendants born into slavery. Only cruelty justifies slaves running away.<sup>141</sup> Enslavement, however, does not give the enslaver right of life and death over the slave.<sup>142</sup> Slavery in Grotius belongs to the law of obligations, not of right: the master owes support and aliment to the enslaved under his power.<sup>143</sup>

Though external enslavement may be valid by law, however, it is nonetheless unjust in its “intrinsic nature” to enslave captives of war.<sup>144</sup> Grotius justifies war slavery with numerous quotations from classical history, while also noting exceptions from Muslim practice and in his own day; indeed, he claims, it would be better for Christians not to do this.<sup>145</sup> Careful to distinguish captivity of the body from that of the mind, Grotius follows Stoic thought. A voluntary slave may be that captive whose life is spared on the condition of his servitude. Like the Stoics, he considered legal slavery as a social fact.<sup>146</sup>

Some of Grotius’s discussion of slavery seems to speak to his contemporary moment, indeed.<sup>147</sup> As Grotius had it, humans can make slaves by law and criminals may become slaves. But a people may not justly fight a war of conquest over another people it fancied fit for slavery or had taken as closer to beasts on account of their different origins.<sup>148</sup> In so claiming, Grotius repeatedly challenged the distinction between civilized and barbarian as central to slave conquest theory, whether in its Aristotelian natural slavery or Christian holy warfare

<sup>139</sup> Grotius, 2005, 1360 (*Rights* 3.7.1); cf. Grotius, 2012, 368.

<sup>140</sup> Tuck, 1979, 71.

<sup>141</sup> Grotius, 2005, 1321 (*Rights* 3.6.3); on descendants of slaves, see Grotius, 2005, 559–60 (*Rights*, 2.5.29.1–2); cruelty justifying running away, Grotius, 2005, 561 (*Rights* 2.5.29.2).

<sup>142</sup> Grotius, 2012, 135; Grotius, 2005, 558 (*Rights* 2.5.28).

<sup>143</sup> Grotius, 2005, 557–58 (*Rights* 2.5.27.2); cf. Grotius, 2012, 135; Van Nifterik.

<sup>144</sup> Grotius, 1913, 492: “inuria si id quod rei intrinsicum est fectetur.” A definition of the notion of “intrinsic nature” is Grotius, 2012, 371: “an Injustice in respect to the Nature of the Thing itself,” cf. Grotius, 2005, 1368 (*Rights* 3.7.6.4).

<sup>145</sup> Grotius, 2012, 372–73 (*Rights* 3.7.8–9); Grotius, 2005, 1371–73; Grotius, 1913, 493 (and with a marginal citation to “Vict[oria], *de jure belli*”).

<sup>146</sup> Garnsey, 132. For Grotius’s lexis involving internality, e.g., “the mind,” see Grotius, 2012, 370; for “the conscience,” see Grotius, 2005, 1367 (*Rights* 3.7.6.3). For notions of “inalienable,” see Grotius, 2012, 369; Grotius, 2005, 1363 (*Rights* 3.7.4); from “inalienabilia” (Grotius, 1913, 491).

<sup>147</sup> See Nyquist, 226, on the application of Grotius’s war slavery doctrine in the European transatlantic slave trade.

<sup>148</sup> Grotius, 2005, 1105 (*Rights* 3.7.1). On the Iberian debate, see Bennett, 108–10.

guises, such as had formed the justification for conquest of the Indians by Sepúlveda. It was also a tacit blow against the commercial militarism of the Dutch VOC in Brazil and in the East Indies, which had conquered then deported survivors to be slave workers, for example in the Banda Islands (1609–21), establishing a Dutch hegemony in Indonesia enduring until 1940.<sup>149</sup> Grotius refused the conversion logic of a civilizing mission for non-Christians, breaking with the terms of debate among the scholastics. He, like Francisco de Vitoria (ca. 1483–1546), sought a common framework for those inside and outside of Christianity.<sup>150</sup> The Dutchman scorned the Christian just war tradition against infidels, which had guided European relations with Saracens and, in his insistence on moderation, he implicitly took part in anti-Spanish republican discourse that highlighted cruelties against the Indians.<sup>151</sup>

Grotius has a complex view of slavery, which he considered in its several historical varieties of bondage and serfdom, as well as in the form of philosophical unfreedom. Although the jurist wrote, “There is no man by nature slave to another, that is, in his primitive state considered, independently of any human fact . . . slavery is against nature,” nonetheless human laws could fashion slaves.<sup>152</sup> Though Grotius holds a broadly inclusive view of one humanity and of the charity due to all peoples, even to the slave, there is not a language of emancipation to ground an account of slavery as a moral wrong. Enslavement *per se* is not among the list of inhumane actions he berates in this work. Inhumanity, however, is morally reprehensible. He writes in response to the inhumanity (*immanitatis*) he is witnessing of the “lack of restraint in relation to war” (“*pudendam bellandi licentiam*”). With the lexis of moral conduct and shame (*pudendam*), Grotius makes his case for taming the monstrosity of war.<sup>153</sup>

Unlike the natural law legacy of Aquinas, which could justify forms of slavery for those thought to be without reason, Grotius did not consider others (for the

<sup>149</sup> See Brunstetter and Zartner. I note the relevant dispute among scholars of whether or not Grotius, following Roman law, subscribed to the idea that *ius naturale* was common to all animates—that is, whether he refused the distinction between human and animal that characterized early Lutheran and Calvinist jurists (as claims Brett, 69). A contrary view is held by Straumann, 2015, 90–91, claiming Grotius rejected Ulpian’s definition of natural law that included all living things.

<sup>150</sup> Vitoria’s *De Potestate Civile* is cited in Grotius, 2004, 14–15; also cited approvingly in Grotius, 2005, 1457 (*Rights* 12.1.1), cf. Vitoria, 323–24 (“On the Law of War” [*De Iure Belli*] 52, 56), in condemning theft of land and atrocities in war.

<sup>151</sup> On Dutch republican anti-Spanish rhetoric in the Caribbean, see Schmidt.

<sup>152</sup> Grotius, 2005, 1360 (*Rights* 3.7.1). On Grotius and slavery, Van Nifterik; Cairns.

<sup>153</sup> Grotius, 2005, 106 (*Prolegomena* 29–30); cf. Grotius, 1913 [\*6<sup>v</sup>].

European: infidels, barbarians, heathens, indigenes) to be monsters. Rather than through the law—by which slaves can be made—Grotius wishes to provide an ethical substrate that would make the equitable recognition of a common humanity an instrument of restraint for the captor or enslaver. In his eighteenth-century translation, Jean Barbeyrac (1674–1744) Christianizes these under the umbrella concept of “the law of Charity,”<sup>154</sup> and it may be that the golden rule seems to be at the bottom, a Christian notion Grotius deems best.<sup>155</sup> Nonetheless, Christianity is not the only form of a universal care for others. Grotius’s Latin includes a rather broader, less theologically coded range of terms, and those outside a specifically Christian lexicon, to describe that which reaches farther than law. Charity (*caritatis*) is certainly there,<sup>156</sup> but so also are concepts of law (*lex dilectionis*) and duty (*officium*) of care.<sup>157</sup> What is beyond the strictness of law is distributed among the concepts of equity, duty, care, and even humanity: a Stoical lexis that frames humanity as applying to all.

Even as *De Iure Belli* took the existence of war slaves as legally justifiable, it also saw the enslaved as within, and not outside, the law. Therefore, humane treatment of captives was warranted. As he saw it, “the law of nature is shared between the free and the enslaved” (“*ius naturae commune liberis & servis*”), a summation he put in a marginal gloss to lines from Euripides’s *Hecuba*.<sup>158</sup> For his *Excerpta* he had translated from *Hecuba*, “there is a law laid down, the same for free men and slaves, concerning the shedding of blood.” The philological work of translation exposes the purpose for which these lines tend. From the Greek:

νόμος δ' ἐν ὑμῖν τοῖς τ' ἐλευθέροις ἴσος  
καὶ τοῖσι δούλοις αἵματος κεῖται πέρι.<sup>159</sup>

<sup>154</sup> Grotius, 2005, 398.

<sup>155</sup> “Law of Charity” from Grotius, 2005, 398 (*Rights* 2.1.4.1), as a translation of “*lex dilectionis*” (Grotius, 1913, 102), a law of love of goodwill. The Christian framework of this translation is evident from the multiple terms Barbeyrac translated as *charity*, including *officium* (duty) (Grotius, 1913, 565; Grotius, 2005, 1531 [*Rights* 3.18.4]) and *humanitas* (humanity) (Grotius, 1913, 542; Grotius, 2005, 1479 [*Rights* 3.13.4]). *Humanitas* was what Grotius used instead of *caritas* (charity) as regards moderation toward the enemy. See Tierney on the significance of rationality to natural law.

<sup>156</sup> Grotius, 2005, 1478 (*Rights* 3.13.4); Grotius, 1913, 542, a section titled “*Humanitatis esse summo jure hic non uti*,” that is, as Barbeyrac translates it, “Humanity bids us not to use this Right to the utmost.”

<sup>157</sup> Grotius, 2005, 1531.

<sup>158</sup> Marginal gloss for *Hecuba* (291–92) at Grotius, 1626, 154; cf. Euripides, 1995, 424–25.

<sup>159</sup> Euripides, 1995, 424–25 (*Hecuba* 291–92).

Grotius transforms this into Latin lines in his *Excerpta*:

Nos Marte captos, vosque libertas quibus  
Superest, ubi agitur vita, lex eadem tenet.<sup>160</sup>

For we whom Mars has made captive, and for you to whom liberty  
Remains . . . the same law holds.

Grotius has chosen to translate the Greek word for *bondsman* (δούλοις) to make it explicit that these are those captured by war (“Nos Marte captos”). Lyrically, Grotius puts these war captives and those living under the condition of freedom (“ἐλευθέροις ἴσος”) in the very same line of poetry, rendering the “We [enslaved]” and the “you [under freedom]” balanced and equivalent in weight. Both are held by the same law, as the marginal gloss indicates by pointing to this statement as an instance of natural law, which is common to the free and the enslaved (“Ius naturae commune libertis & servis”). This slide between the war slave and the slave may seem minor—indeed Hecuba is a war slave—but it highlights that Grotius is thinking about war slavery specifically, not only slavery in general. Grotius’s translation challenges the view that war slavery is a form of absolute dominion.<sup>161</sup> Some right, a subjective right, remains for the war captive, who is held to a common law, a law of nature that objects to the shedding of blood.

Grotius’s engagement with dramatic literature was not solely a means of producing sympathy or compassion, giving voice to the vulnerable. Grotius did not have a Hegelian-tragic view of life; that is, he did not pit fate or necessity as against human self-consciousness. Instead of seeking to inspire pity or sympathy, in *De Iure Belli* the tragic characters are brought forward to represent the humanity of the defeated, not their victimhood. The formal conditions of reversability of status, by which queens like Helen can become slaves and then queens again, meant that the jurisprudential concept of equity could be taken as a formal aesthetic and moral principle. Roman law allowed slaves no legal personality, with no rights of redress but flight. But from his notion of sociality, Grotius took the formal quality of equity, rather than legal entitlement or even compassion, for the provision of a common humanity.

<sup>160</sup> Grotius, 1626, 154 (*Hecuba* 291–92).

<sup>161</sup> That there is a common law to both disrupts the account of dominion given by Nyquist, 8, 18, which collapses Grotius’s distinction between what is permissible and what is good.

## METHOD: HUMANIST OR SCIENTIFIC?

In stacking up his evidence, Grotius avers that “the opinions of poets and orators are not of so great weight,” and that he uses them simply for “ornament.”<sup>162</sup> However, as has been argued here, this late humanist is not entirely right about his own method.<sup>163</sup> It may be that Grotius’s defensiveness about the place of literature in this work records an early moment for the debate between humanism and a scientific method. In *De Iure Praedae*, Grotius had likened his approach to that of the mathematicians, who based their arguments upon “broad axioms on which all persons are easily agreed” (a statement that Richard Tuck equates to a break with humanism).<sup>164</sup> However, in *De Iure Belli*, Grotius makes no such analogy. Rather, he turns to his library of compendious knowledge to arrive at generalities:

In investigating this law, I have benefited from the testimony of philosophers, historians, poets, and, lastly, orators. One should not naively believe whatever they say, since they are often loyal to a particular party, program, or cause; but what is affirmed by many people at different times and places to be obvious must be presumed to rest on some universal reason [“ad causam universalem”]. In the issues we are considering, this reason can only be either a correct deduction from the principles of our nature, or some general agreement. The former means that it is a law of nature, the latter that it is a law of nations.<sup>165</sup>

His method will be a counter to those who have, as he sees it, committed any one of a number of follies: for example, selecting evidence only where it served their interest, failing to distinguish “that which is truly and in every Respect lawful, and that which only produces a certain external effect,” following slavishly the teachings of others (i.e., Aristotle), or, like Carneades the Skeptic, doubting that truth is attainable in such things.<sup>166</sup> He is, too, aware of the need for a clean, direct style, faulting predecessors for jumbling up their concepts without any system.<sup>167</sup> Grotius, instead, takes up those minimal things that are self-evident as the foundations for his book, those things that are true apart from interest. This was built upon a social, not strictly a philosophical

<sup>162</sup> Grotius, 2005, 124 (*Prolegomena* 48).

<sup>163</sup> On Grotius’s appreciation of eloquence, see Ziskind; Roelofsen.

<sup>164</sup> Tuck, 1993, 171; cf. Grotius, 2006, 17.

<sup>165</sup> Grotius, “Prolegomena to the First Edition of *De Iure Belli Ac Pacis* [Paris, 1625],” translated by Richard Tuck, in Grotius, 2005, 1756; cf. Grotius, 1913, [\*8]: “sed quod ubi multi diversis temporibus ac locis idem pro certo affirmant, id ad causam universalem referri debeat.” The passage is reworked in the later translation by Barbeyrac; see Grotius, 2005, 111–12.

<sup>166</sup> Grotius, 2005, 113, 110, 113–30; on Carneades at 79.

<sup>167</sup> Grotius, 2005, 132, 109: “sine ordine” (“without order”).

approach. Classical literature could supply examples, and indeed analyzing these could produce thought quite different to the mathematical method taken up by, for example, Samuel Pufendorf; or to the geometric mode of Thomas Hobbes.

This humanist sense of poetry and drama as a common resource is a different conception of how literature works than has usually been understood in the construction of human rights discourse, in which imaginative writing is seen as arousing sympathy across distance.<sup>168</sup> What has been described here is instead closer to a strand of human rights thinking that is about dignity, seen by the late Ronald Dworkin as the most basic moral value.<sup>169</sup> The concept of dignity emerges out of analysis of the moral injury of torture, for example, that summons a shared humanity of suffering, as in J. M. Bernstein's important work on torture and dignity.<sup>170</sup> By insisting on the processual experience of negotiating with those unlike ourselves, Grotius is drawn to Greek tragedy's staging of difference, and to the Stoical lexicon of self-control, with close reading (philology) taking place across history. That forces a recognition of a situation of shared space, whether that be the space of the theater, literature, or history, or the space of nations coexisting, fashioned from the formal premises of intelligibility and commonality.

The exploration here thus suggests that the perspective of a literary historian might benefit those of the historians of ideas, philosophers, and jurisprudential theorists, and clarify how essential the endowments of imaginative writing were to Grotius in his practice of jurisprudential reasoning. These eclectic but focused resources from classical imaginative literature pose important questions for the treatment of the unfree, that is, those subjugated or made captive in war, of which there are so many in ancient literature. Grotius's way of thinking through literature, even as it could justify slavery, did not foment a racializing discourse that would come to dominate the slave trade. Instead, from that fund of social experience found in classical drama and epic, and not from universal reason, Grotius produced thinking about war captives in respect to what he designated as a common humanity. His voicing the captives not only contributed to a general conception of personhood but also to an account of those binding moral requirements based on the dignity of the human person. His is not a liberal concept of rights.

<sup>168</sup> See, for example, Hunt, 38–69, 98.

<sup>169</sup> Waldron. For a critique of dignity, see Moyn, 19–33.

<sup>170</sup> Bernstein, 259.



## GUERNICA

Adorno recounts the following story about Picasso. “an officer of the Nazi occupation forces visited the painter in his studio and, pointing to *Guernica*, asked: ‘Did you do that?’ Picasso is said to have answered, ‘No, you did.’”<sup>171</sup> Turning attention away from the victim to the perpetrators, Europeans included, Grotius, too, sheds awareness on a wider vision of justice as equity owed to others that can constrain the immorality of war. Responsibility is with the abusers of a common humanity, those who break the social bonds, those perpetrators of injustice to which a world of literature calls to pay attention. One of the main purposes of this essay is to situate the history of the laws of nature, of just warfare and its treatments of captives, within the history of European humanist literature, drawing together the disciplines of political thought and literature. Imperial warfare and the rise of the early modern practices of unfree labor and exploitation are interconnected through these literary as well as legal and theological resources. The reinstatement of imaginative genres, texts mediating and creating space for reflection, self-awareness, and distance, brings a long-neglected tool, a mirror that offers self-reflection and awareness of just those devastations.

<sup>171</sup> Adorno, 189–90.

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