

## Hugo Grotius: Christianity, natural law and the Commonwealth

In April 1622, Hugo Grotius arrived in Paris, thanks to one of the most dramatic prison breakouts of the century. He had been sentenced to life imprisonment in the prison fortress of Loevestein three years earlier, a victim of the regime change in the United Provinces which saw his friend Jan Oldenbarneveldt fall from power and Prince Maurice and his Calvinist allies gain the ascendancy. Only the ingenuity of Grotius' wife managed to save him from the damp cell in which he was confined. In Paris he could look forward to warmer and safer surroundings, but the wider situation in Europe was bleak. The conflict that would become the Thirty Years War had just begun and the temporary Truce between the Spanish and the Dutch had expired. A new phase of religious warfare was underway. As a Protestant in a Catholic country, a Dutchman in Paris, Grotius was deeply concerned by these international issues, and as a lawyer he was keen to analyse the laws which might regulate and even resolve them. In the decade which followed his great escape, he published some of the most famous works of the century, written to examine the questions of law, religion and Christianity.

The relationship between religion and politics was of acute concern to Grotius; after all, his own downfall had come about when concerns for religious orthodoxy had become entangled with political questions, particularly the decision over whether to renew the Truce with Spain. Grotius himself was fascinated by both theological and legal questions, his own, scholarly, faith was distinctive and easily misunderstood – indeed, by the end of his life he found himself accused of Catholicism and Socinianism simultaneously. Back in the 1610s, his support for the Arminian party in Holland had made him an obvious target after the victory of the Calvinists, many of whom connected what they saw as deviant religious positions with a lack of patriotism and even with treason. Meanwhile, the continuing Huguenot resistance in France and the efforts of the Bohemians to secure a Calvinist king proved that the disruptive power of religious difference was not limited to Holland alone. In his prison cell and then in Paris, Grotius wanted to offer an account of Christianity which would minimise its potential to create conflict and destruction, and to show that there were rules and laws governing human interactions which did not depend on shared interpretations of the Christian message.

In his great works of the 1620s, therefore, we see Grotius' deep concern to separate Christianity from nature, to place the Christian religion within human history and to differentiate it from the natural laws and norms appropriate to all societies. The claims he made in these years grew out of, but were different from, those of his earlier writings and although the development of his theory of natural law has been much studied, its relationship to his changing understanding of Christianity has received much less attention. It is, however, essential to view these two strands of his thought, the theological and the jurisprudential, in tandem if we are to grasp the full implications of his writing. In this paper, I will sketch the trajectory of Grotius' thinking on both natural law and Christianity, showing the close relationship between them.

Back in the 1610s, Grotius had been deeply concerned with the growing religious and political crisis in the United Provinces, a crisis which he believed was largely caused by the intolerant Calvinist clergy. Those clerics were increasingly alarmed by what they saw as the ungodly policies of the magistrates, especially the magistrates of the States of Holland who were keen to protect Arminian theologians. Grotius's sympathies lay with the Arminian or Remonstrant party, and he sought to defend the policies of the States of Holland in a number of works both published and unpublished. Perhaps the most ambitious of these was the manuscript treatise *De Imperio*, written in about 1614-5. In it, Grotius wanted to assert the rights of the magistrate over all matters of faith and church government, except those for which God had made specific provision. Though it would not be printed until after his death, the manuscript was circulated quite widely and Grotius clearly intended it to be an important contribution to the debate surrounding him.<sup>1</sup>

In the opening chapter, Grotius made clear that his argument was based upon a particular vision of the purpose of civil authority, one which he believed to be widely held – not least because, in his view, it had the authority of Aristotle behind it. According to that vision, the purpose of the supreme power was not just to secure peace and tranquillity here on earth, in this life, but also to make the people as religious as possible. Because the supreme magistrate must concern himself with all the affairs of the commonwealth, he has a duty to seek the spiritual as well as the temporal welfare of all those for whom he was responsible and his decisions must therefore be shaped by religious as well as civic and temporal concerns.<sup>2</sup> Grotius went on to argue that the magistrate must, of course, operate within the framework of divine and natural law, which prohibits some actions and commands others. But for Grotius, this framework left open quite a wide space for human determination, and thus it was the civil magistrate, as the highest and supreme authority, who must be able to decide on all matters left undetermined by divine and natural law. The role of the church was to guide and persuade people, but Grotius was insistent that it had no coercive authority and could not override the decisions of the supreme magistrate, even where this concerned faith or church order.

Aristotle's words about the purpose of the state had, of course, long been discussed, and Grotius's text fits into a long tradition of asking whether the state ought to promote spiritual as well as temporal ends.<sup>3</sup> His affirmative answer was shared by many others, both Protestant and Catholic, and he offered numerous examples in the text. These included leading Protestant authors who had defended magisterial power, like Johannes Brenz, Wolfgang Musculus, and even James I.<sup>4</sup> But Grotius also cited Catholic authors, including the leading scholastic theologians Francisco Vitoria and Francisco Suarez, and their view of this question was more subtle and complex. Grotius clearly found much of interest in their writing, especially their account of the natural law principles which guided temporal power. *De Imperio* reveals some of this engagement, and he would continue to reflect on these issues, especially after his exile.

Grotius' dependence upon Catholic sources for many of his ideas has often been discussed, and it has even been suggested that Grotius revelled in being able to use Catholic sources in defence of his own Protestant position.<sup>5</sup> Yet it is worth remembering that the confessional agenda of these

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<sup>1</sup> See the introduction to H. Van-Dam (ed.) *De Imperio Summarum Potestatum* (2 vols, Leiden, 2001).

<sup>2</sup> Ibid p. 165.

<sup>3</sup> For the wider debate see M. Kempshall *The common good in late medieval political thought* (1999)

<sup>4</sup> Grotius *De Imperio* 169

<sup>5</sup> See e.g. Martin Van Gelderen, 'From Domingo de Soto to Grotius: Theories of monarchy and civil power in Dutch political thought 1558-1598', *Il pensiero politico*, 19 (1986) pp. 163-81

Catholic authors presented serious problems for Grotius, problems which have rarely been considered in any detail. Indeed, Grotius could not use or adopt their ideas about the law of nature or of nations in any simple or straightforward way. This was partly because those ideas underpinned some of the resistance theories circulating in sixteenth century Europe,<sup>6</sup> but it was also because contemporary Catholic accounts of natural law were intimately bound up with the assertion of Papal power. Catholic natural law was well suited to the defence of the faith; it was structured in such a way that it provided important intellectual and political support for Rome – as Grotius was well aware. If we consider the rationale and the content of these authors' arguments, we will see that Grotius needed to rework them quite extensively in order to harness them to his own plans.

The sixteenth century saw a real resurgence in interest in natural law among Catholic writers, who found it a helpful explanatory tool when dealing with the central intellectual problems they faced. Most dramatically, perhaps, after the discovery of the New World, natural law became an important means of legitimising Spanish conquests. At the same time, and particularly after Papal power was challenged at the Council of Pisa and in the Reformation, it became increasingly common for Catholic authors to argue that civil authority was grounded in the natural law. This enabled them to distinguish the magistrate's power, which came from nature, from the power of the Church, which came from grace or revelation. Because the order of grace was, for them, superior to the order of nature, the Church was able to intervene in temporal affairs, where this affected the spiritual wellbeing of Catholics.<sup>7</sup> As this suggests, natural law in the Catholic account was never intended to be independent of grace or revelation – quite the reverse. The authors in this tradition were careful to show that nature and natural law can never be complete or perfect in the absence of grace, and while the sphere of nature might have its own purpose and integrity, it is always open to the divine revelation which alone can perfect it. The Catholic Church has, for them, a right and a duty to reach into the world of nature and bring it to its true destiny.

In the great works of law written by the Catholic theologians associated with the new version of Thomism, therefore, natural law is always presented as imperfect and incomplete. We see this clearly in Francisco Vitoria, often seen as the founding father of the second scholastic. When defending papal power in temporal matters, Vitoria insisted that 'human happiness is imperfect, and ordered towards the perfection of supernatural felicity'. Because the purpose of spiritual power is necessarily superior to the goal of human authority, which is the common good here on earth, so must the church be superior to the civil powers, at least in matters which concern this supernatural end. The human desire for lasting happiness brings with it an obligation to obey the church, as the only means by which a goal can be achieved, and it follows, for Vitoria, that the duties and obligations of the Christian go beyond those of nature alone.<sup>8</sup> A similar set of principles structure the writing of one of Vitoria's greatest pupils, Domingo de Soto. His *De Justitia et de Jure* begins with two books which between them cover the different laws which applied to man. The natural and human law, 'through which law man is able to reach his natural end', form the subject of the first book, while the second turns to the 'divine law, which moves us forward to supernatural felicity'.<sup>9</sup> The natural law and the civil power have their own authority, but for de Soto and Vitoria

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<sup>6</sup> A. Brett, 'Natural right and civil community: The civil philosophy of Hugo Grotius' HJ 2002, pp. 33-4

<sup>7</sup> See eg S. Tutino *Empire of Souls* (esp chapter 5) for a fuller discussion.

<sup>8</sup> F. Vitoria, *Political writings* ed. A. Pagden (Cambridge, 1991) quotation from p. 90. (Grotius's use of Vitoria is complex, because it was mediated through the *Apologia Cardinalis Bellarmini* (1611)).

<sup>9</sup> From the table of contents

these are subordinate to the spiritual power which enables men to achieve their true and ultimate good.

The same view of natural law can also be found in Francisco Suarez' *De Legibus*, and particularly in his discussion of the relationship between civil and ecclesiastical authority – part of which was specifically quoted by Grotius in *De Imperio*. The starting point for Suarez was the thought that natural law could be seen in two ways, either as the law of pure nature abstracted from any divine revelation, or as the law of nature illuminated by faith. It was clear to Suarez that even the law of pure nature mandated the creation of some kind of spiritual power, but, 'because man in pure nature either absolutely cannot love and worship God perfectly and for the sake of Him Himself, or can do so only with difficulty, therefore this [spiritual] power, considered in pure nature, always carried with it imperfection, and so it was not separated from the civil power in the supreme magistrate, morally and generally speaking'.<sup>10</sup> Since the purpose of civil power was peace and government, it followed that all thing, including religious worship, would be subordinated to it. When it came to 'the law of nature in the order of grace', that is, the law of nature under which Christians now lived, things were different. For that second natural law 'always has in it a kind of sacerdotal power, in itself supernatural and spiritual, co-natural with that grace itself'. Suarez thus held out the possibility of a kind of natural law which was not specifically Christian, and which was independent of the Catholic Church, but that possibility belonged to a time before the current order of grace. Now, the natural law contained and demanded priestly power, to mediate between men and God.<sup>11</sup> The practical implications of this position were clear to Suarez's contemporaries, for he was one of the chief defenders of papal indirect power. In an earlier work, the *Defensio Fidei*, he had even argued that a community could, under papal direction, remove a ruler who violated divine and natural law.<sup>12</sup>

Given the purpose of these Catholic texts, it is striking and perhaps surprising that Grotius sought to appropriate them to his own ends. Certainly it required some imaginative re-interpretation, as we can see if we look more closely at what Grotius took from Suarez's argument. He quoted the Jesuit's account of where spiritual power had been in the law of 'pure nature', and acknowledged that Suarez had been talking about those people who 'worshipped the true God with just their natural insight'. This kind of religion was, according to Suarez and Aquinas before him, designed merely for public peace, as we have seen, but Grotius denied any such claim. For him, the aim of the civil power according to law of nature was always the achievement of eternal life. In making this claim, Grotius simply ignored Suarez's second version of the law of nature, the one operative 'in the order of grace' and in which the church as a separate entity played a primary role. Through this omission, Grotius could apply some of what the Thomist Catholics were saying about the natural law in the time of 'pure nature' to the current state of affairs – and argue that it gave control over the church to the civil power. Later in the text, he went on to make explicit that his definition of the 'natural' was a specifically Christian one, placing the doctrine of the Trinity within

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<sup>10</sup> Unde quia homo in pura natura, vel absolute non potest, vel difficile potest diligere, et colere Deum perfecte propter seipsum; ideo potestas haec in pura natura considerate semper haberet illam imperfectionem adiunctam, propterea in supremo magistrato non esset separate a civili, moraliter seu regulariter loquendo. (DL 4.3.3.)

<sup>11</sup> loquendo autem de lege naturae in ordine gratiae, consequenter dicendum videtur, semper habuisse coniunctam potestaem aliquam sacerdotalem, in se quidem supernaturalem et spiritualem, connaturalem autem ipsi gratiae. (DL 4.3.3)

<sup>12</sup> *Defensio Fidei*, esp book 6 ch 4

the realm of natural truths.<sup>13</sup> Grotius was then able to turn the Catholic argument on its head, and to deny that natural law included any provision for clerical authority independent of the magistrate.

Although Grotius made creative use of Catholic writing, his argument was in some ways closer to mainstream, magisterial Protestantism. It had long been commonplace, in Protestant circles, to argue that the purpose of all government was the true worship of God, for them this was not something that could be left to a single, priestly caste of men or which could be separated from civil authority. As Theodore Beza argued in a famous resistance tract, reason tells us that 'the true end of all rightly ordered government is not tranquillity in this life ... but the glory of God'.<sup>14</sup> And one of the first professors of theology at the University of Leiden, Lambert Danaeu, made exactly the same point in his influential *Politices Christianae*. 'In sum', he wrote, 'the study of true piety and the fear of God or religion ought to be pursued and maintained in this world and this ought to be the end and purpose of the establishment of the godly Republic.'<sup>15</sup> Neither wished to deny that the church was important; on the contrary, because they saw the aim of ecclesiastical authority as essentially the same as that of civil power, they were insistent that the clergy must help to shape the policies of the state. Both civil and ecclesiastical power must work together to foster true piety, it was only the means and not the ends of their authority that differed.<sup>16</sup>

The foundations of the Protestants' arguments were different to those of Grotius, however. Generally speaking, it was easy for them to view civil magistrate as responsible for piety because they saw Christian faith as an internal matter which did not bring with it any new, additional duties – or at least no duties that affected the civil order. Indeed, having thrown out the concept of 'counsels of perfection' at the Reformation, most Protestants were committed to a single set of ethical duties common to all peoples, whether they were Christian or not. That set of duties was, for them, the law of nature, a law given to all human beings by God as the common standard for life on earth. As the leading Protestant ethicist Philip Melanchthon put it, the natural law was the 'knowledge of the divine law, grafted into human nature' – and he added that it told us we were created to acknowledge and worship God.<sup>17</sup> Admittedly he believed that our knowledge of this law was damaged at the Fall, but enough remained to teach men their external and civil duties and make them culpable when they fail to fulfil them. Thus the civil authorities that promoted natural law duties were also encouraging Christian ethics, in so far as this could be done by outward means. And, conversely, civil authorities that failed in their duty to uphold the natural law were violating God's order and ought to be brought back to the paths of righteousness.

In *De Imperio*, however, there are hints that Grotius saw the natural law as independent of Christianity. The rights that the magistrate had were based in natural law and those rights were not cancelled or made invalid if the magistrate did not use them correctly or in a godly fashion. It was to be hoped that the magistrate would judge correctly and wisely in religious affairs, but the quality of

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<sup>13</sup> 'since it is certain that God the Father, the Son and the Holy Ghost are one true God, to worship him is a point of natural law'. P. 209

<sup>14</sup> *Constitutionalism and Resistance* ed Franklin p. 133

<sup>15</sup> L. Danaeu, *Christianae libri septem* (1596) p. 46 In summa studium verae pietatis, ac Dei metus seu religionis & consequendae & retinendae in hoc mundo est, & esse debet finis & scopus piae Reipublicae constituendae

<sup>16</sup> As was made clear by, for example, Peter Martyr Vermigli – see *The Political Thought of Peter Martyr Vermigli* (Kingdom ed.) pp. 26, 33–4.

<sup>17</sup> *notitiam legem divinae, naturae hominis insitam* (Opera quae supersunt Omnia 21 p. 712 and 713)

this judgement was quite separate from its legitimacy.<sup>18</sup> The clergy could provide guidance and help to the civil authorities, just as trained doctors or lawyers could, but all three experts must operate within the framework provided by civil and natural law, and must respect the authority of the supreme magistrate. Yet this part of the argument was threatened by Grotius' view of Christianity itself, in which it was so strongly aligned with nature. Christ's teaching, for example, was described as 'a more explicit proclamation of eternal law', and we have seen that the Trinity was placed within the world of natural truths.<sup>19</sup> If this were so, then the natural law grounds for authority could – and perhaps should – also be Christian ones, and the distinction Grotius wanted to make between the natural basis of authority and its godly or ungodly use would start to break down.

Even in its final form, then, the manuscript text was something of a hybrid, combining several positions in unstable fashion. It allowed the magistrate plenty of authority, grounded in nature but also in a version of Christianity that blurred the difference between the spiritual and the natural. It argued that the magistrate's right was conceptually separate from his commitment to the true religion, but also argued that the best magistrate was one who worked hardest for the spiritual welfare of his people. It even suggested that the fostering of true religion was the primary duty of the magistrate. It is clear that in *De Imperio* Grotius believed in some kind of continuity between the natural and the spiritual, seeing this as the best way to preserve the state from clerical complaints, but he was beginning to see that continuity a little differently from his contemporaries. Soon, however, his efforts and those of his friends to hold the Calvinists at bay failed, and the regime to which he was connected fell decisively from power.

### III

From 1619 Grotius' life was very different – and his view of natural law and spiritual authority altered dramatically. After the coup by Prince Maurice and the Calvinists he had been placed on trial, sentenced to life imprisonment and had eventually managed to escape to Paris. Meanwhile, the revolt of the Bohemians had sparked a war in Europe which, at least in its early stages, had a strongly confessional dimension. The problems of any kind of union between state and church must have seemed abundantly clear to him, and after this point, he was always much less willing to attribute to the civil ruler any concern for the Christian faith of his subjects. Instead, he presented the Christian religion as something quite separate from the world of nature and natural law, the world in which the civil ruler was situated. Now, he saw the purpose of the state as peace and tranquillity, with no responsibility for making its people any more godly or for bringing them to eternal life. In his writings of the 1620s and after, the scope of the 'natural' was much smaller; doctrines like the Trinity and the resurrection were now placed firmly beyond its reach and anchored in the record of history instead. Using the intellectual resources available to him, including those of the Catholic tradition, Grotius sought to reimagine the sphere of nature and show that, rather than always open to completion and perfection by the spiritual power, it was in fact quite independent of it. This was, I would suggest, Grotius's most important contribution to early modern thought.

Grotius wrote two great works in the 1620s and they are best understood as interdependent and complementary, for both were designed to show that Christianity was different from the rules and norms that made human society possible. One, *De Veritate*, focused on the

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<sup>18</sup> *De Imperio* esp p. 277

<sup>19</sup> *De Imperio* p. 243

Christian side while the other, *De Jure Belli ac Pacis*, explained the laws common to all nations, laws which entailed a version of religion which was natural but not Christian. In *De Jure Belli* he offered an account of human society and natural law, one that he saw as normative, based upon more than just utility, but one that was also complete, such that it was not subject to the power of churches or clerics. Such a natural law would have to be accessible and persuasive to all, backed not by spiritual sanctions but by the needs of human society itself. But it would also need to be differentiated from the ethical and moral actions that were expected of Christians; our obligations as human beings, under the law of nature, could no longer be the same as from the duties that Christians have. Grotius wanted to limit the demands of the law of nature, but the corollary of this was his sustained effort to clear a moral space for Christian ethical action that could not and must not be coerced. And to achieve these aims, he had to reconstruct the language of natural law.

The work that first occupied Grotius during his imprisonment, and to which he returned many times in subsequent years, was his apology for the Christian religion, published as *De Veritate* in 1629. It was wildly successful: after his death in 1645, it was printed in 56 Latin and 80 vernacular editions. It has often been seen as quite a traditional work of Christian instruction, but the radical nature of *De Veritate* should not be overlooked, as I have argued elsewhere, and its unorthodox message took it well beyond what Grotius had said in *De Imperio*.<sup>20</sup> In that earlier work Grotius had argued that the main effect of Christ's ministry was to establish the church and explain the law more clearly - Christianity did not change the way that people lived their lives nor did it have much impact on structures of civil governance based in natural law. In *De Veritate*, however, Grotius saw Christianity as primarily a set of ethical precepts, higher and more perfect than any other rules. He now argued that it was precisely because Christ had brought a new set of laws which could lead people to full moral perfection that people should choose to follow Christianity.

Central to Grotius' argument in this work is his claim that Christianity will appeal to human beings who are naturally able to make their own choices in matters of religion. 'God created man free to do good or ill', he wrote, and therefore as a being with moral responsibility<sup>21</sup>. Furthermore, he commented on the 'excellence of man's understanding, and the power of choosing moral good or evil, with which he is endued, and consequently that the cause, as of reward, so of punishment, must be in himself'. Humans seek a religion whose precepts they can acknowledge as morally good, and which offers rewards to those who obey such commands. Crucially, Grotius now argued that Christianity offers such precepts, which are separate from the law of nature precisely because they are, in effect, optional extras. Furthermore, Grotius was now unwilling to accept that pre-Christian peoples had any real knowledge of life after death. In *De Imperio* this had been the basis for his claim that non-Christian rulers sought the spiritual and not just the temporal happiness of their people, but in *De Veritate* he drew back from this. Now he argued that humans knew little about any afterlife and were deeply troubled by death until Christ showed them the 'true knowledge of their End' by offering them the chance of eternal life.

*De Veritate* is not just a Christian apology, then, but a reconsideration of the nature of human beings. For it is essential to Grotius's argument that men and women are created free, that they can recognise moral good and evil and that they have power over and responsibility for their

<sup>20</sup> S. Mortimer, 'Grotius' *De Veritate*: Christianity and human nature' *Grotiana* 35 (2014) pp. 75-94

<sup>21</sup> *De Veritate* 1, 19 (There is an easily accessible English translation: H. Grotius, *On the truth of the Christian Religion*, ed. by M-R. Antognazza (Indianapolis: Liberty Fund, 2012) but here the English elaborates upon the original latin)

own actions. In so far as God has intervened directly in their affairs, it was to offer them rewards in a future life. And for that offer to be a real one, it must be possible to exist here on earth without accepting it – Grotius was adamant that God did not undercut the liberty of the human beings he had created. God did not determine the wills of human beings but he gave them ‘Law, external and internal warnings, together with threatenings and promises’,<sup>22</sup> and he did this most dramatically through the testimony of the gospels. Grotius now wanted to argue that Christianity was not part of the natural realm or included in natural law; instead it was based in human history, in the record of events and teaching in the past and in the community which honoured and remembered those historical moments.

The impact of this view of Christianity and, even more, of human beings is clear in *De Jure Belli ac Pacis*, and it shapes the entire structure of the argument. Given his insistence that Christianity, with its ethics and duties, must be voluntary and optional, Grotius needed to show that the law of nature was fully separate from the revelation brought by Christ or even the texts of the Old Testament. God had, he thought, given particular laws to particular people, but these needed to be kept distinct from the laws of nature. This was true not only when it came to the laws of Moses or even the Ten Commandments, it was even true of the laws brought by Christ to his people. It is in erecting such a strong conceptual wall between natural law and divine positive laws that Grotius was most innovative, as he himself recognised. He made this clear towards the start of *De Jure Belli*, when he said

*The New Testament I use for this Purpose, that I may shew, what cannot be elsewhere learned, what is lawful for Christians to do; which Thing itself, I have notwithstanding, contrary to what most do, distinguished from the Law of Nature; as being fully assured, that in that most holy Law a greater Sanctity is enjoined us, than the meer Law of Nature in itself requires.*<sup>23</sup>

Having eschewed all reliance on divine positive law, Grotius wanted then to argue that the principles on which the society runs must have their basis in what is common to all human beings *qua* human beings, and that is the ability to make promises, the desire to preserve themselves and the natural inclination to live in society. These abilities and desires have their own legitimacy, they can be understood in terms of ‘right’, and Grotius argues that the ‘Fountain of right’ is ‘this sociability, ... this Care of maintaining Society in a Manner conformable to the Light of human Understanding’.<sup>24</sup> As is well known, natural law for Grotius depends upon both profit and utility in this life and upon our own sociable nature. God gives us this nature, and in the scriptures he gives us motives to social affection. But the natural desires and needs which bring us into society have to do solely with our existence in this world; Grotius says nothing in *De Jure Belli* about any need for sacred rites or rituals, for expiation, or for any kind of spiritual power.

The law of nature demands that human beings recognise the existence of God, because this is important in ensuring social cohesion and moral behaviour. It says nothing, however, about churches or indeed about the need for any kind of separate society for the worship of God, and it is here that Grotius’s views on natural law are very different from those we have seen in his contemporaries. Indeed, it was not Grotius’s hypothetical exclusion of God from natural law that was innovative, but his insistent and sustained endeavour to exclude Christianity and the church. At the same time, however, Grotius did not wish to exclude religious organisations from public life or

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<sup>22</sup> Ibid – 1.19

<sup>23</sup> H. Grotius, *The Rights of War and Peace*, ed. Richard Tuck (Indianapolis, 2005) vol I p.126

<sup>24</sup> Ibid p. 85-6



from human society. For him, natural law is indifferent towards such groups, as long as they do not seek coercive power or encourage violations of this law, and it leaves open a moral and spiritual space for churches which people can join if they want to. Indeed, it is the great advantage of the way in which Grotius sets up the natural law that he leaves this possibility open, for he believes that human beings must be free to choose whether they wish to place themselves within a church or not. We have seen from *De Veritate* that Grotius thought membership of the Christian Church would be beneficial, and that the authority of that Church can be traced back not to the natural law, but to the historical ministry of Jesus and the group of disciples who decided to follow him. In *De Jure Belli*, Grotius was able to suggest that the natural law could be normative, while insulating it much more effectively than in *De Imperio* from any attempts by clerics to interpret or control it in the name of a higher good.

Grotius's version of natural law was, he thought, well suited to securing peace. It was resistant to ecclesiastical authority, and it allowed no scope for war or even force in the name of revealed religion. The only kind of coercion that is licit is coercion carried out in the service of the law of nature. It remains true that the law of nature is and must be coercive – there is not only a right but a duty upon people and states to uphold the law of nature. Kings and rulers are responsible for this across the world and they can intervene quite broadly for natural law reasons, but not for confessional ones.<sup>25</sup> But by limiting the scope of such violations to things which actually damaged the fabric of human society here on earth, Grotius hoped to limit the scale of warfare in Europe.

#### IV

Although Grotius wanted to defend natural law from the clerics, he did not want Christianity to be divorced from social and political life, nor did he wish to render it irrelevant. It is important to remember that his project was as much theological as political, and in *De Jure Belli*, as in *De Veritate*, he wanted to show that while Christianity is perfectly compatible with civil life, at its heart are new and more stringent rules. To this end, he argued that there were actions which human beings - but especially Christians - ought to do in accordance with a law of 'charity', but which they could not be obliged to do by any earthly authority. These tended to be actions of self-denial for the sake of other people, actions like not insisting on property rights or personal honour where that might harm another person. This side to his argument is often overlooked, but it forms a strong theme throughout the work.<sup>26</sup> Indeed, Grotius took care to show that the law of nature does not exhaust our moral world, that humans can and should act in a better and more altruistic way. Charity cannot be enforced, it is not a matter of right in the strict sense, but that does not make it unimportant. As he put it in book three: 'Every Thing that is conformable to Right properly so called, is not always absolutely lawful; for sometimes our Charity to our Neighbour will not suffer us to use this rigorous Right.'<sup>27</sup> And what encourages us most to act in a charitable way is the example we have of Christ, and the historical community of the church which has followed him.

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<sup>25</sup> Ibid vol ii p. 1021.

<sup>26</sup> One recent exception is Greg Conti "Jean Barbeyrac, Supererogation, and the Search for a Safe Religion," *Modern Intellectual History* 2014; see also James Turner Johnson, 'Grotius' Use of History and Charity in the Modern Transformation of the Just War Idea' in idem, *Ethics and the Use of Force* (Farnham, 2011) pp. 75-86.

<sup>27</sup> *Grotius, Rights of War Book 3* 1 1188

Christian ethics were separate from the law of nature, for Grotius, but they did not undermine or undercut it – and it was especially important to him to make this clear in a treatise on war. In the prolegomena he lamented that the recurrent warfare of the last century had encouraged a pacifist strain within Christianity, and he wanted to show that war was in fact acceptable for those who sought to follow Christ. But, as he made clear, he would ‘not suppose that, which others do, that there is nothing in the Gospel (except Points of Faith, and the Sacraments) but what is enjoined by the Law of Nature; for that, in the Sense that most Divines take it, I cannot think true.’<sup>28</sup> The usual answer to Christian pacifism, that Christ had not affected the laws of nature, was not one that Grotius wished to adopt – instead, he argued that warfare remained acceptable to Christians when it served to preserve and protect human society. The laws of Christ were real and demanding, but they did not change the fundamental principles of the natural law. Their scope was the many matters indifferent that the natural law had left undetermined. In this way, Grotius could argue that the state’s foundations were natural, that they could not be shaken by religious authorities, but that the individuals who were part of the state could still practise their Christian virtues. Christian ethics were recommended but not commanded, and the demands of charity exceeded but did not frustrate the demands of justice.

The prominent role of charity and indeed of supererogation within Grotius’s thinking is not, perhaps surprising, given his interest in Catholic theology, and in some ways Grotius is closer to his Catholic sources in these works of the 1620s than he had been in *De Imperio*. Grotius, like the Catholics, wanted to see the duties of the civil community as less perfect than Christian virtue, and by grounding this community in natural law he could, like them, leave open space for Christian fellowship and duty which went beyond the sphere of mere nature. Furthermore, in his discussion of the commands of charity Grotius was (as I have argued elsewhere) explicitly drawing on Catholic sources.<sup>29</sup> But it is important to recognise that Grotius felt he could do this because he had redefined the meaning of both natural law and ecclesiastical authority, denying that the imperfection of nature invited the guidance of spiritual or sacerdotal authority. The natural law was no more the index of perfect, Christian action for Grotius than it was for the Catholics, but whereas the Catholics saw the Church as providing the necessary supplement to the natural law, Grotius argued that its very indeterminacy offered scope for acts of individual, self-denying virtue. Christianity provided a strong motive to these actions, but Grotius did repeatedly invoke classical examples of charity, suggesting that a sense of duty beyond the law of nature was in some sense universal and common. Charity was not, for him, a sphere controlled and policed by the sacramental institution of the church, but a set of principles laid out most clearly in the gospel text and therefore accessible to all.

Grotius’ argument was far from perfectly coherent, however, and it remained vulnerable to some of the pacifists’ claims. However he tried, Grotius could not get round the fact that Jesus and the first disciples were often critical of warfare, law courts and private property – all of which formed, he thought, a legitimate part of the natural law. By emphasising the written record of the New Testament, Grotius was setting up a particular standard for Christian ethics, and he never quite managed to persuade everyone that this standard was fully compatible with the law of nature as he had described it. Towards the end of his life, as his own disdain for warfare became more pronounced and his respect for the pacifist position increased, the inherent tension within his

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<sup>28</sup> Ibid vol 1 p. 195

<sup>29</sup> ‘Law, justice and charity in a divided Christendom 1500-1625’ forthcoming in a volume edited by Martti Koskenniemi and Monica Garcia-Salmones Rovira.

argument was exposed.<sup>30</sup> If Christ were seen as commanding, or even recommending, actions which were, in fact, at odds with the natural law, then Grotius' vision of natural law would start to come apart at the seams.

Grotius' writing was hugely influential, shaping the course of later political thinking. Perhaps the main effect of Grotius's argument was, as we have seen, to draw a distinction between churches and religious organisations, which were based in history, and social life, which was governed by natural law. For Grotius and for men like John Locke who drew on his ideas, human society could now be analysed in terms of natural law, a law which was geared towards preservation and which was separate from, but compatible with, specifically Christian commitments. That separation provided the rationale for denying coercive power to clerics, and was designed to prevent them from capturing the reins of secular power. But not all contemporaries were so sanguine about this synthesis, however, fearing that it still left open the possibility that the natural realm would be invaded and overtaken by religious claims and passions, a possibility which Grotius's growing sympathy for pacifism did little to alleviate. Indeed, a small but influential minority feared that any kind of disjunction between the values of the earthly and the heavenly cities would open up the possibility of conflict and warfare. Writing in Grotius's wake, they wanted, to show that the exercise of reason would in fact entail the reordering of Christian doctrines so that they were explicitly directed towards preserving the earthly community. I don't have time to discuss this, but would suggest that we see it most clearly in the writing of Thomas Hobbes and Benedict Spinoza, both of whom made a sustained effort to harness the power not only of religion, but also of Christianity, in the service of the state.

The concerns of Spinoza and Hobbes were understandable – and they illustrate my central theme. As we have seen, the main feature of the natural law tradition had always been the space it left open for religion and for churches, a feature seen as a great virtue by many of its exponents. Catholic theologians had specifically deployed natural law in order to show how limited the state's remit was, and to argue that the state ought to obey the Church in matters concerning spiritual welfare. At the other extreme, Grotius had wanted to recast the natural law tradition so that it was no longer vulnerable to ecclesiastical power in this way, but many of his readers feared that his separation between natural law and Christianity might in fact prove to be a choice between them. For, in the final analysis, it made no psychological sense to expect someone to obey a human or even a natural law if they thought it would lead to their eternal damnation. Spinoza and Hobbes wanted to close the gaps beyond the natural law, to argue that both divine and natural law demanded a real effort to achieve peace and stability in this world. They wrestled with the issue that Grotius had raised for them: the issue of the relationship between normative principles of natural law and the Christian revelation, though neither managed to settle this satisfactorily.

Grotius' legacy was rich and varied, and I have touched on only part of it in my paper. But I hope to have shown that his views of natural law and therefore of the commonwealth cannot be understood without an appreciation of the religious commitments which they entailed. Central among these is his commitment to an individualistic, ethical form of Christianity which is clearly demarcated from the state. No less than the Catholics from whom he learned so much, Grotius'

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<sup>30</sup> E.g. he wrote in the 1640s that 'it is fitting that a Prince of a Christian people avoid all warfare, and this can be easily achieved among Christians by mutual concessions, or arbitration ... Anyone who yields up something of his own for the sake of Christ and the Church will not lose any honour by it.' *Opera Omnia Theologica* III p. 622.

understanding of natural law and civil authority was deeply religious and theological, even as he argued for a sharp distinction between Christianity and the commonwealth. At the heart of all these endeavours was his sustained attempt to explain how and why Christianity was a separate ethical and religious system, distinct from the natural laws known to human beings from the creation. By making this distinction, by placing Christianity within historical time and by basing it upon the teaching and the miracles of Jesus Christ, Grotius was altering for ever the way his fellow Europeans would think about both their religion and their political communities.