LEGAL UNIVERSALISM AND COLONIAL LEGITIMACY: GROTIUS, PUFENDORF, WOLFF, AND DE VATTEL IN COMPARATIVE PERSPECTIVE

HUKUKİ EVRENSELCİLİK VE SÖMÜRGECİ MEŞRUİYET: GROTIUS, PUFENDORF, WOLFF VE DE VATTEL'İN KARŞILAŞTIRMALI PERSPEKTİFTEN İNCELENMESİ

Araştırma Makalesi

Selin KUL[*]
Pınar GÖZEN ERCAN[**]

ÖZ

Bu makale, Hugo Grotius, Samuel Pufendorf, Christian Wolff ve Emmerich de Vattel'in modern uluslararası hukukun temellerine yaptığı entelektüel katkıları eleştirel bir bakışla incelemekte ve bu düşünürlerin hukuki felsefelerinin evrenselci hedeflerle Avrupa-merkezci hukuk ve sömürgeci yapılar arasındaki uzlaşmayı nasıl sağladığına odaklanmaktadır. Doğal hukuk temelinde evrensel bir hukuk düzenini teşvik ettikleri için geleneksel olarak yüceltilen bu Grotius sonrası düşünürler, aynı zamanda Avrupa'nın sömürgeci yayılmacılığını meşrulaştıran hukuki doktrinlerin inşasında da belirleyici bir rol oynamışlardır.

DOI: 10.32957/hacettepehdf.1670207

Makalenin Geliş Tarihi: 04.04.2025 **Makalenin Kabul Tarihi:** 10.06.2025

[*] Araştırma Görevlisi, Hacettepe Üniversitesi İktisadi ve İdari Bilimler Fakültesi Uluslararası İlişkiler Bölümü Devletler Hukuku Anabilim Dalı

E-posta: selinkul@hacettepe.edu.tr

ORCID: 0000-0002-1102-4214

[**] Prof. Dr., Hacettepe Üniversitesi İktisadi ve İdari Bilimler Fakültesi Uluslararası İlişkiler Bölümü Devletler Hukuku Anabilim Dalı

E-posta: mpgozen@hacettepe.edu.tr

ORCID: 0000-0002-6713-1641

Bu makale sorumlu yazarın Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Uluslararası İlişkiler Ana Bilim Dalı Uluslararası İlişkiler (İngilizce) Bilim Dalı'nda hazırlanmakta olan doktora tez çalışmasından üretilmiştir.

Bu makale Hacettepe Üniversitesi Hukuk Fakültesi Dergisi Araştırma ve Yayın Etiği kurallarına uygun olarak hazırlanmıştır.

Grotius'un mirası üzerine düşüncelerini inşa eden Pufendorf, Wolff ve de Vattel, devlet egemenliği ve erken dönem hukuk pozitivizmi gibi gelişen kavramları kurumsallaştıran normatif çerçeveler geliştirmişlerdir. Bu çerçeveler her ne kadar evrensellik ve eşitlik iddialarıyla temellendirilmiş olsa da çoğu zaman Avrupalı olmayan toplumları dışlayarak, toprakların gaspı, ticaret tekellerinin korunması ve egemenliğin farklılaştırılması gibi uygulamaları meşrulaştırmak suretiyle sömürgeci hiyerarşilerin yeniden üretilmesine hizmet etmiştir. Bu makale, adı geçen düşünürleri kendi tarihsel bağlamlarında ele almakta ve onları yalnızca dönemlerinin tarafsız filozofları ya da hukuk kuramcıları olarak değerlendiren hâkim yorumları sorgulamaktadır.

Eleştirel hukuk çalışmaları merceğinden hareketle karşılaştırmalı bir yaklaşım benimseyen bu makale, uluslararası hukukun kilit figürlerinin evrensel hukuk normları kisvesi altında Avrupa-merkezci bir dünya düzenini ne ölçüde şekillendirdiğini ve sürdürdüğünü irdelemektedir. Bu bağlamda makale, uluslararası hukukun kurucu anlatılarına gömülü olan sömürgeci mirası ifşa eden tartışmalara katkı sunmakta ve mevcut yapının daha adil ve kapsayıcı bir biçimde yeniden inşa edilmesi gerektiğini vurgulamaktadır.

Anahtar Kelimeler Grotius sonrası düşünürler, evrenselcilik, Avrupa-merkezcilik, sömürgecilik, doğal hukuk

ABSTRACT

This article critically examines the intellectual contributions of Hugo Grotius, Samuel Pufendorf, Christian Wolff, and Emmerich de Vattel to the foundations of modern international law, focusing on how their legal philosophies reconciled universalist aspirations with Eurocentric legal and colonial structures. While traditionally celebrated for promoting a universal legal order grounded in natural law, these post-Grotian thinkers were also instrumental in constructing legal doctrines that legitimized European colonial expansion.

Building on Grotius's legacy, Pufendorf, Wolff, and de Vattel developed normative frameworks that institutionalized emerging notions of state sovereignty and early legal positivism. Although these frameworks were couched in claims of universality and equality, they often reproduced colonial hierarchies by marginalizing non-European peoples and validating territorial conquest, trade monopolies, and differentiated sovereignty. This article situates these thinkers within their historical context and challenges prevailing interpretations that treat them solely as neutral philosophers or legal theorists of their time.

By adopting a comparative approach informed by critical legal studies, the article interrogates the extent to which these pivotal figures in international law actively shaped and sustained a Eurocentric world order under the guise of universal legal norms. In doing so, it contributes to broader debates on the colonial legacy embedded within the foundational narratives of international legal thought and calls for the reimagining of a more inclusive and equitable international legal framework

Keywords Post-Grotian thinkers, universalism, Eurocentrism, colonialism, natural law

EXTENDED SUMMARY

This article offers a critical examination of the foundational thinkers of modern international law, focusing specifically on the post-Grotian figures of Samuel Pufendorf, Christian Wolff, and Emmerich de Vattel, alongside their predecessor Hugo Grotius. It interrogates the extent to which these thinkers, traditionally celebrated for universalizing international legal principles, also contributed to the legitimization of European colonial expansion. Employing a comparative framework grounded in critical legal studies, the article reveals how these legal theorists reconciled their claims to universality with the Eurocentric structures and imperial interests of their time.

The article begins by situating Hugo Grotius within the historical context of the early 17th century, a period marked by the decline of Spanish hegemony and the rise of maritime empires like the Dutch Republic and England. Grotius, often regarded as the father of secular international law, developed a legal framework in *De Jure Belli ac Pacis* and *Mare Liberum* that promoted natural law principles and the freedom of the seas. While Grotius is frequently credited with advocating for a universal legal order, the article shows that his arguments also served Dutch colonial interests. His legal philosophy justified trade expansion, challenged Portuguese and Spanish monopolies, and offered legal grounds for Dutch naval interventions under the guise of just war theory. His framework subtly marginalized non-European societies by framing indigenous peoples' land as unused or improperly cultivated, thereby legitimizing occupation.

The analysis then shifts to the post-Grotian thinkers, beginning with Samuel Pufendorf. While Pufendorf is known for advancing natural law theory and laying the groundwork for early legal positivism, the article demonstrates that his theories tended to reinforce state sovereignty in ways that indirectly sanctioned colonial practices. Pufendorf rejected the idea that trade rights were natural and upheld the right of states to refuse foreign entry. He opposed conquest for civilizational purposes but emphasized the primacy of state interests and order over individual or indigenous rights. Although he acknowledged the property rights of nomadic and non-European societies, these rights were ultimately subordinated to the sovereign state's prerogative to maintain peace and stability. Thus, Pufendorf's legal philosophy offered a universalism that was conditional and often aligned with the colonial logic of state control.

Christian Wolff built upon Pufendorf's legacy while integrating a more systematic philosophical approach. His concept of *civitas maxima* imagined a universal legal community governed by natural law, wherein all nations were theoretically equal participants. However, Wolff's model was deeply embedded in Eurocentric hierarchies. His inclusion of nations in the *civitas maxima* was contingent on their perceived level of civilization, which in practice privileged European standards. Wolff acknowledged the partial rights of nomadic and indigenous groups but maintained that only "civilized nations" could fully participate in the global legal order. He avoided direct critique of European colonialism but implicitly supported the idea that

so-called barbarian societies needed to be educated by more advanced nations before they could be recognized as sovereign equals.

Emmerich de Vattel, often considered a disciple of Wolff, further entrenched the realist and sovereignty-centered perspective in international legal thought. In *Le Droit des Gens*, he emphasized the law of sovereigns and rejected the notion of a natural society among nations. De Vattel argued that the law of nations should reflect the interests and consent of states rather than abstract moral principles. Although he acknowledged the illegality of conquering "civilized empires", he justified the colonization of nomadic societies as lacking effective occupation and failing to utilize land productively. De Vattel's framework thus privileged settled, agricultural societies and treated land not permanently cultivated as open to appropriation.

This article emphasizes that while these post-Grotian thinkers articulated seemingly universal principles, their frameworks were shaped by and complicit in the colonial realities of their time. They helped institutionalize legal norms that justified European domination and the dispossession of non-European peoples. The claim to universality in their legal thought often masked Eurocentric assumptions about civilization, sovereignty, and legal personhood. Although their writings include elements that can be interpreted as recognizing the dignity and rights of all peoples, these were overshadowed by the ways in which their theories reinforced colonial hierarchies.

By undertaking a comparative analysis, the article demonstrates that Grotius, Pufendorf, Wolff, and de Vattel did not merely reflect the prejudices of their era but were active participants in the construction of an exclusionary legal order. Their contributions laid the ideological and normative foundations for a global legal system that, while outwardly committed to universality, structurally privileged European powers and legal traditions. This foundational asymmetry continues to affect the operation and legitimacy of international law today.

The article concludes by calling for a critical reassessment of the intellectual origins of international law. It argues that any genuine commitment to a universal and inclusive legal framework must begin with confronting the colonial legacies embedded in its formation. By reexamining the works of pivotal thinkers through a critical lens, scholars can contribute to the development of a more equitable and historically conscious international legal order.

INTRODUCTION

The late 16th and early 17th centuries were a period of profound transformation in international law, driven by shifting European power dynamics and colonial expansion. As Spanish dominance waned, emerging powers like England and the Dutch Republic consolidated their colonial ambitions through the East and West India Companies, which

played pivotal roles in global trade and imperial competition. During this period, the emergence of the modern concept of state sovereignty prompted the development of legal frameworks to justify and facilitate colonial expansion.

Hugo Grotius—often regarded as the founder of secular international law—rose to prominence in this evolving legal landscape. His seminal work, *De Jure Belli ac Pacis*, is often celebrated for laying the groundwork of secular international law and articulating ostensibly universal norms rooted in natural law. Grotius's vision, while groundbreaking, also provided a legal rationale for Dutch commercial and colonial expansion.[1] This dual legacy—promoting universal norms[2] while legitimizing European interests—would deeply influence subsequent thinkers. Grotius's influence resonated especially in Protestant countries such as Sweden, Switzerland, and the Dutch Republic. Grotius's natural law theory significantly contributed to a shift in international legal thinking, wherein sovereign states came to be recognized as the primary actors of international law. This perspective has been supported by scholars like Onuma and Bull, who argue that Grotius's secular natural law laid the groundwork for a state-centric legal order.[3] Nevertheless, others such as Koskenniemi have offered a more critical reading, suggesting that Grotius's universalism was not entirely free from Eurocentric or theological underpinnings, raising questions about the neutrality of this so-called paradigm shift.[4]

---

1 Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005); China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Haymarket Books 2005); Martine Julia van Ittersum, 'The Long Goodbye: Hugo Grotius' Justification of Dutch Expansion Overseas, 1615–1645' (2010) 36(4) History of European Ideas 386.

2 See Christoph Stumpf, 'Hugo Grotius and the Universal Rule of Law' in Anthony Carty and Janne Nijman (eds), *Morality and Responsibility of Rulers: European and Chinese Origins of a Rule of Law as Justice for World Order* (Oxford University Press 2018); Henry Wheaton, *Elements of International Law* (8th ed, Little, Brown and Company 1836; reprinted by Clarendon Press, Oxford 1936).

3 See Yasuaki Onuma, 'Hugo Grotius' (*Encyclopedia Britannica*, 2025) https://www.britannica.com accessed 23 May 2025; Hedley Bull, 'The Importance of Grotius in International Relations' in Hedley Bull, Benedict Kingsbury and Adam Roberts (eds), *Hugo Grotius and International Relations* (Clarendon Press 1990).

4 See Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Lakimiesliiton Kustannus 1989).

Post-Grotian theorists such as Samuel Pufendorf, Christian Wolff, and Emmerich de Vattel are frequently portrayed as architects of a cosmopolitan legal order, as they contributed to the evolution of international law by articulating universalist legal theories grounded in both natural law and early positivist traditions. While they are credited with institutionalizing key principles of modern international law, they operated within a geopolitical context marked by colonialism, economic exploitation, and Eurocentric ideologies as well. In this respect, their works have received substantial scholarly attention for their contributions to enlightened natural law theory[5] and advancing positivist legal theory.[6]

Yet, the existing literature often treats them primarily as historical figures rather than as active participants in shaping and legitimizing the legal narratives that underpinned colonial expansion. The extent to which post-Grotian thinkers, building on Grotius's legacy, collectively functioned as architects of an exclusionary legal order remains largely unexamined. For instance, while postcolonial legal scholars such as Antony Anghie and Martti Koskenniemi critically examine[7] the role of international law in legitimizing European colonial expansion—often referencing the historical context of

---

[5] See Francis Stephen Ruddy, 'International Law and the Enlightenment: Vattel and the 18th Century' (1969) 3(4) International Lawyer 839, 843; Georg Cavallar, 'Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitanism?' (2008) 10 *Journal of the History of International Law* 181, 185; Bilal Erdem Denk, 'Uluslararası Hukukun Dayanağına İlişkin Görüşlerin Dönemsellikleri Sorunu: Doğal Hukuk Görüşü Örneği' (2011) 3(5) *Bilge Strateji* 93, 115; Hakkı Hakan Erkiner, 'Uluslararası Hukuk Düşüncesinde Klâsik Öğretinin Kuruluşu: Hugo Grotius ve Postgrotien Yazarlar Samuel von Pufendorf, Richard Zouche, Cornelius van Bynkershoek ve Samuel Rachel'e İlişkin İnceleme ve Değerlendirme' (2012) 18(3) *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 3, 140; Celal Yeşilçayır, 'Hugo Grotius'un Doğal Hukuk Düşüncesine Kazandırdığı Paradigmal Dönüşüm' (2020) 30 *FLSF (Felsefe ve Sosyal Bilimler Dergisi)* 241, 258; Ere Nokkala, 'The Development of the Law of Nations: Wolff and Vattel' in Peter Schröder (ed), *Concepts and Contexts of Vattel's Political and Legal Thought* (Cambridge University Press 2021) 64, 83; Peter Schröder, 'Concepts and Contexts of Vattel's Political and Legal Thought: An Introduction' in Peter Schröder (ed), *Concepts and Contexts of Vattel's Political and Legal Thought* (Cambridge University Press 2021) 1, 24.

[6] See, for example, Alexander Orakhelashvili, 'The Origins of Consensual Positivism: Pufendorf, Wolff and Vattel' in Alexander Orakhelashvili (ed), *Research Handbook on the Theory and History of International Law* (Edward Elgar 2020).

[7] Anghie (n 1); Koskenniemi (n 4). See also Paul Keal, '"Just Backward Children": International Law and the Conquest of Non-European Peoples' (1995) 49(2) *Australian Journal of International Affairs*; and Brett Bowden, 'The Colonial Origins of International Law: European Expansion and the Classical Standard of Civilization' (2005) 7 *Journal of the History of International Law*.

post-Grotian thought—their analyses do not directly engage with the writings of Grotius,[8] Pufendorf, Wolff, or de Vattel, nor do they provide a systematic comparison of their legal frameworks. Cavallar, on the other hand, historically contextualizes the ideas and critically examines the cosmopolitan ideals of Vitoria, Grotius, Pufendorf, Wolff, and de Vattel.[9] However, he does not engage in a systematic comparison or interrogate how these thinkers reinforced the reproduction of Eurocentric legal structures.

Addressing this gap, this article examines how the claims to universality in the legal philosophies of Grotius, Pufendorf, Wolff, and de Vattel functioned as instruments of colonial legitimacy. With its comparative analysis and by applying a critical legal studies lens, it explores how these post-Grotian thinkers—often celebrated for their universality—were in fact complicit in producing exclusionary doctrines that shaped international legal order. The central question guiding this inquiry, therefore, is: In what ways did the 18th century intellectual frameworks developed by post-Grotian thinkers—particularly Pufendorf, Wolff, and de Vattel—navigate the tension between universalist legal ideals and Eurocentric structures, and how far did their visions of international law serve to legitimize European colonial expansion?

The article begins by situating Grotius within his historical context and analyzing the foundational role he played. It then compares the legal theories of Pufendorf, Wolff, and de Vattel, revealing their shared contributions to a Eurocentric and exclusionary international legal order. Ultimately, the article contends that these thinkers should not merely be seen as products of their time but as agents who actively constructed legal narratives that legitimated colonialism—legacies that endure in the international legal system and global governance today.

---

[8] As a precursor to these thinkers, Grotius has been the subject of a wide range of works that critically engages with his ideas, particularly highlighting the limitations of his universalist vision and the ways in which his legal doctrines served colonial interests. See, for example, Mortimer Sellers, 'Universalism' in Jean d'Aspremont and John Haskell (eds), *Tipping Points in International Law: Commitment and Critique* (Cambridge University Press 2021); Janne E Nijman, 'Grotius' "Rule of Law" and the Human Sense of Justice: An Afterword to Martti Koskenniemi's Foreword' (2019) 30(4) *European Journal of International Law* 1105, 1114; Michael P Scharf, 'Hugo Grotius and the Concept of Grotian Moments in International Law' (2022) 54 *Case W Res J Intl L* 17.

[9] See Cavallar (n 5).

I. GROTIUS'S ERA: THE TURBULENT FOUNDATIONS OF MODERN LEGAL THOUGHT

A. Brief Assessment of the Era

In the 16th century, the Salamanca School played a formative role in shaping international law (then known as *ius gentium*) by grounding it in natural law principles. While its legal theory was deeply rooted in religious doctrines, the School carried a claim to secular universality, advocating that natural law encompassed all and applied universally to all humanity. Its legal and moral framework was not only the basis for critical debates on the legality and legitimacy of warfare, trade, and missionary activity, but also became instrumental in providing ideological and legal justifications for geographical discoveries and colonial expansion. In laying the intellectual foundations of a Eurocentric international order, Salamanca thinkers advanced the rhetoric of moral equality and natural rights—yet these very ideals were often deployed to legitimize the subjugation of non-European societies. As such, the Salamanca School's contributions represent a profound yet paradoxical legacy: while advancing foundational concepts in international legal thought, they also supplied the normative basis for colonial practices and domination.[10]

The transition into the state system, witnessed by the representatives of the Salamanca School, also initiated a new process for international law. The European State System, shaped by the Treaty of Westphalia in 1648, emerged as *Jus Publicum Europæum* and redefined *ius gentium*. Following the upheavals of the Thirty Years' War, France emerged as the dominant power in Europe, a status reflected in its central role in the Peace of Westphalia negotiations held in Münster and Osnabrück. Meanwhile, the policies pursued against Spain by Cromwell's England signaled the decline of Spain's dominance.[11] Moreover, the 1648 Münster Hispano-Dutch Treaty officially recognized the Dutch right to "navigation and trade in the East and West Indies", and the Anglo-

[10] See Gustavo Gozzi, *Rights and Civilizations: A History and Philosophy of International Law* (Cambridge University Press 2019) 3–24; Anghie (n 1) 13-31.

[11] Wilhelm Georg Grewe, *The Epochs of International Law* (Walter de Gruyter 2000) 279.

Spanish Treaties of America signed in Madrid in 1667 and 1670 not only acknowledged English and Dutch colonial holdings but also broke the Spanish colonial monopoly.[12] The increasing dominance of the English, and particularly the Dutch East India Companies, marked a significant shift in global power dynamics, signaling the end of Spanish hegemony. The Spanish Crown's reluctance to acknowledge the legal equality of other colonial powers—particularly in terms of recognized territorial ownership and status—became increasingly unsustainable in the face of emerging European rivals.[13] During this process, overseas colonial expansion areas, referred to as "lines of amity" among European powers, were given an international legal status distinct from that of European territories. They were designated as stateless areas subject to discovery, occupation, conquest, and division among colonial powers. However, according to Grewe, these lines did not render colonial regions lawless; rather, they established an international legal framework that governed discovery and occupation. They merely granted each nation the right to sovereignty within a geographically limited overseas region.[14] They represented a self-negation of the universal interstate legal system,[15] as such a system, by definition, should not have served as a stage for power struggles.

As developments unfolded, the foundations of a new era began to take shape—one in which sovereign states emerged as the primary actors responsible for maintaining political balance and upholding a universal system of international law. The transition from the Spanish era to this state-centric order was marked by a revolutionary shift in the distribution of power within Europe, driven largely by colonial expansion.[16] This transformation set in motion a trajectory that would eventually culminate in wars over sovereignty among these nation-states.

Geographical discoveries accelerated the growth of commercial capital, fueled the rapid expansion of the world market, increased the circulation of goods, and intensified

---

[12] Grewe (n 11) 160.

[13] Mieville (n 1) 182.

[14] Grewe (n 11) 160.

[15] Mieville (n 1) 182.

[16] Mieville (n 1) 179.

competition among European powers for Asian commodities and American riches. The emergence of the colonial system, among other developments, contributed to the dismantling of feudal barriers to production, paving the way for transformative events that reshaped the 16th and 17th centuries. In this new era, another key actor that lost its influence and colonial monopoly alongside Spain was the Papacy, as the newly established balance of power system could no longer be governed by the Papal authority.[17]

In this process, the evolving interstate system was not the sole foundation for the development of the emerging international legal order; the character and structure of individual states also played a role. According to Weber, the modern state—composed of integrated yet differentiated social bodies—emerged from an unprecedented constellation. While fostering and reshaping capitalism in a way that extended beyond individual nations, it was simultaneously shaped by capitalism itself. This caused the early capitalist system to expand into a new form covering a broad area in northern Alpine Europe, starting from the Italian city republics and the Flemish trading centers in the North Sea.[18] The modern state, which can be characterized by its ability to produce the organizational efficiency necessary for the expansion of the capitalist system, providing securely protected lands with sufficient infrastructure for the transportation of goods, information and money, rose in deep interaction with capitalism, fueled by the general economic improvement triggered by colonial movements in Europe. Consequently, as a product of the expanding capitalist economy, a decision-making unit centered around the sovereign state emerged. The contours of this unit, which was on the rise from the 16th century onwards, became evident in the development of international legal institutions and corresponding legal thought lines.

During this period, when sovereign states had yet to consolidate their hegemony over commercial and colonial systems, chartered companies served as vital instruments for political actors navigating the legal ambiguities of imperial expansion and colonial

---

[17] Grewe (n 11) 137, 142.

[18] Grewe (n 11) 164, 165.

possessions. The East India Companies, with their ambiguous legal status, played a crucial role as actors that strengthened sovereign colonial states.[19] In this context, the 17th century "battle of the books" between Hugo Grotius and John Selden was, at its core, a legal manifestation of the conflicts arising from the activities of European trading companies. In 1603, Dutch Admiral Heemskerck, operating under a company that later merged with the Dutch East India Company (*Verenigde Oostindische Compagnie*), seized in the Indian Ocean a Portuguese vessel, the Catharina. This act directly challenged Portuguese dominance over regional trade networks. To justify the seizure, the Dutch argued that Portugal had established an unlawful trade monopoly in the Indian Ocean, restricting free commerce for other nations. Portuguese claims to exclusive trading rights were based on papal decrees from the 15th and 16th centuries, which the Dutch refused to recognize, asserting instead that the seas should remain open to all. By framing the conflict as a "just war", the Dutch sought to legitimize their use of force, arguing that breaking an illegitimate monopoly was a lawful cause for military action. However, this maneuver provoked resistance from Anabaptist shareholders—a pacifist Christian sect that opposed violence on religious grounds—within the Dutch East India Company. Concerned that such dissent might undermine their colonial trade operations, the Dutch authorities enlisted Grotius to construct a legal justification for the seizure. His subsequent defense of free navigation and open trade routes, later formalized in *Mare Liberum* (1608), countered Portuguese claims and helped lay the ideological foundation for modern maritime law.[20]

B. Grotius's Legacy: Architect of Universal Law and Colonial Justifications

In *Mare Liberum* (1608), Grotius advocated free seas and trade based on universal legal principles, legitimizing aggressive wars to open trade routes. Conversely, in *Mare Clausum*, Selden defended England's sovereignty over the seas, prioritizing national

---

[19] Grewe (n 11), 266.

[20] Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford University Press 1999) 79, 81.

interests over universal legal norms.[21] This debate exemplified the broader tension between national sovereignty and universally binding law. Grotius' reliance on natural law played a crucial role in justifying European imperialism and cultural dominance under the guise of universal legal principles, laying the groundwork for modern international law.

Grotius's understanding of international law was significantly shaped by the Salamanca School. Drawing on Vitoria, who justified Spanish conquests in the Americas, Grotius defended the Dutch right to free trade, aiming to develop a new natural law framework that surpassed both the Salamanca School's influence and Renaissance skepticism.[22] He framed travel, trade, and the shared use of property as universal rights, rejecting Portugal's monopoly over the seas. In the fifth chapter of *Mare Liberum*, he asserted that no state could claim exclusive control over the Indian Ocean, arguing that all nations should benefit equally from maritime freedom. To reinforce his claim that free trade was a "natural and perpetual cause" and a fundamental principle of the law of nations, Grotius cited classical sources such as the works of Ulpian, Aristotle, and Seneca.[23] Furthermore, he contended that discovery and occupation were insufficient grounds for exclusive ownership. Even the Pope, he argued, lacked the authority to grant Portugal such claims, as "no one can transfer ownership of something that does not belong to them".[24]

Grotius's advocacy for universal trade freedom included recognizing the equal rights of indigenous populations in the East Indies. Yet, in practice, his argument primarily served to justify Dutch commercial expansion by challenging Spanish trade monopoly, thereby reinforcing European dominance in global trade.[25] He countered Portugal's arguments by asserting that mere discovery does not justify exclusive

---

[21] Tuck (n 20) 80, 81.

[22] Richard Tuck, 'Grotius and Selden' in JH Burns (ed), *The Cambridge History of Political Thought, 1450–1700* (Cambridge University Press 1991) 499.

[23] Gozzi (n 10) 27.

[24] Gozzi (n 10) 30.

[25] Georg Cavallar, *The Rights of Strangers: Theories of International Hospitality, The Global Community, and Political Justice Since Vitoria* (Routledge 2016) 145.

ownership and that indigenous peoples retain their rights regardless of their religion. Seizing their property, he argued, constituted theft and plunder. While he emphasized cultural diversity and opposed its instrumentalization for Western dominance, his legal framework still reinforced European superiority under the guise of universalism.[26] His arguments subtly delegitimized Portuguese conquests while aligning with Dutch colonial ambitions, reflecting his family's vested interests in the Dutch East India Company.[27]

Grotius rejected Portugal's justification for war in the East Indies, arguing that since the Portuguese had established trade peacefully, they had no legitimate territorial claims. He equated their policies with Spanish conquests, where European powers often justified wars by citing the rejection of Christianity or the imposition of trade barriers. However, he highlighted that Portugal faced no such obstacles in the East Indies, as trade continued freely without religious propagation—revealing that their motives were purely economic.[28] Consequently, he deemed Portugal's war policies legally unfounded.

Grotius's property theory marginalized nomadic populations, privileging European agrarian societies. He argued that unused lands should be accessible to foreigners, and if inadequately utilized by the natives, could be occupied without consent.[29] This logic reinforced European colonial expansion by providing a legal framework for territorial acquisition through occupation and war.

In *De Jure Belli ac Pacis* (1625), Grotius asserted that war could be used as a means of justice, even against those committing "sins contrary to nature".[30] This vague concept allowed Western powers to justify their colonial interventions. He further argued that intervention was legitimate if a state's laws violated natural law, effectively granting Europe the right to impose its legal norms on non-Western societies.[31] His hierarchy

---

[26] Gozzi (n 10) 32, 35.

[27] John D Haskell, 'Hugo Grotius in the Contemporary Memory of International Law: Secularism, Liberalism, and the Politics of Restatement and Denial' (2011) 25(2) *Emory International Law Review* 273.

[28] Gozzi (n 10) 34.

[29] Cavallar (n 5) 197.

[30] Cavallar (n 5) 196.

[31] Gozzi (n 10) 35.

placed European legal standards above indigenous laws under the guise of universal justice. While acknowledging non-European regions, Grotius promoted a "humanitarian" rationale for intervention in their affairs. Drawing on Seneca, he justified war against rulers who oppressed their people, claiming that while subjects could not resist their sovereigns, external actors could intervene on their behalf.[32] His argument became the foundation of the modern principle of humanitarian intervention.[33]

Grotius's reinterpretation of just war theory sought to reconcile universal normative authority with Christian political order.[34] His legal philosophy aimed to unify European Christians against external threats, preventing internal instability while securing European dominance.[35] His conception of freedom primarily favored European ruling elites, particularly against non-European societies. In *The Truth of the Christian Religion*, Grotius harshly criticized non-Christian traditions, portraying Judaism and Islam as incompatible with rational civilization. He deemed Jewish laws archaic and accused Islam of being a violent and coercive faith that suppressed intellectual inquiry.[36] His universalism, though foundational to secular modern law, remained deeply exclusionary, offering only a limited tolerance for religious diversity while reinforcing Western supremacy.[37]

Grotius's legal theories aimed at unifying Christian Europe, reinforcing his role in shaping modern international law. While promoting Dutch colonial and trade expansion, he developed a sophisticated natural law system that separated *ius naturale* from *ius gentium*.[38] In *De Jure Belli ac Pacis*, he defined natural law as rational principles guiding

---

[32] Gozzi (n 10) 36.

[33] Hersch Lauterpacht, 'The Grotian Tradition in International Law' (1946) 23 *British Yearbook of International Law* 46.

[34] For further readings on just war theory, see Fulya A Ereker, 'İlkçağlardan Günümüze Haklı Savaş Kavramı' (2004) 1(3) *Uluslararası İlişkiler Dergisi* 1; Erkiner (n 5); F Şeyda Türkay Kahraman, 'Hugo Grotius Anlayışının Uluslararası Uyuşmazlıkların Çözüm Yollarına Etkileri' (2019) 25(2) *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 925.

[35] Haskell (n 27) 276.

[36] Haskell (n 27) 283.

[37] Haskell (n 27) 296.

[38] Stumpf (n 2) 187.

human actions, with divine will merely affirming them.[39] Unlike scholastic thought, Grotius reconstructed law as a system of personal obligations rooted in human reason rather than divine command.[40]

His minimalist Christianity sought to establish common ground among Christian sects to avoid disrupting Dutch relations with Catholic Spain and Portugal. He presented universal principles asserting God's judgment over humanity while strategically downplaying sectarian differences.[41] However, despite his attempt to secularize natural law, Protestant Reformation ideals remained embedded in his work. Christianity, though no longer institutionally central, retained dominance in his legal framework. Violations of natural and international law, Grotius argued, were not only legal offenses but also transgressions against divine order.[42]

Grotius upheld the supremacy of law through natural and arbitrary divine law. While natural law universally bound all humans from creation, arbitrary divine law applied only to those aware of it, thus lacking universal applicability despite shaping an international order. Human law, meanwhile, emerged from national legislatures or interstate agreements. For Grotius, natural law remained the ultimate criterion for legal validity, whereas divine law governed only those informed of its principles.[43]

Differentiating natural law from international law, Grotius viewed the latter as state agreements rather than divine mandates. While Gentili equated *ius gentium* with divine law, Grotius classified it as human law.[44] Citing Themistius, he asserted that wise rulers should govern not just their nations but all humanity.[45] His legal philosophy upheld international law as a collective state construct, yet he maintained that universal binding

---

39 Gozzi (n 10) 39.

40 Stumpf (n 2) 189.

41 Haskell (n 27) 273, 274.

42 Stumpf (n 2) 189.

43 Ibid.

44 Stumpf (n 2) 190.

45 Gozzi (n 10) 40.

power rested solely in natural law, with divine law applying exclusively to Christians.[46] Though he moved beyond theological perspectives toward a human-centered legal system, his framework still privileged European norms over non-European societies.

Grotius is widely recognized as the father of modern international law for advocating a form of liberal universalism that sought to integrate diverse religious and political systems. His vision replaced the medieval *res publica Christiana* with a European nation-state order based on sovereignty, religious neutrality, and power balance. However, while he is often credited with secularizing international law,[47] scholars like Nussbaum and Janis argue that his ideas remained deeply rooted in a Christian universalist heritage. This foundation, they contend, was essential to his framework's ability to reconcile notions of freedom and fraternity among different religious communities, while still reinforcing European hegemony.[48]

Although Grotius's legal philosophy presented itself as a universalist framework, it was deeply rooted in Christian supremacy. He positioned Christianity as the foundation of international law, asserting that the law of nations should be shaped within this religious paradigm.[49] While he advocated for religious tolerance, his notion of freedom remained tied to a Christian rational order that justified the conquest of non-conforming societies. This perspective aligned more closely with the Catholic humanist tradition than with modern liberal democracy, as it legitimized the dominance of Christian states over non-Christian groups under the guise of natural law.[50]

Ultimately, while Grotius laid the intellectual foundations of international law, his vision remained Eurocentric and exclusionary. His legal theories, rather than ensuring religious neutrality, reinforced Western dominance by embedding Christian doctrines into the legal framework. By justifying Christian wars as necessary for peace, he maintained

---

46 Stumpf (n 2) 190.

47 Lauterpacht (n 33) 24, 25.

48 Arthur Nussbaum, *A Concise History of the Law of Nations* (Macmillan 1947); Mark W Janis, 'Religion and The Literature of International Law: Some Standard Texts' in Mark W Janis and Carolyn Evans (eds), *Religion and International Law* (Martinus Nijhoff, Leiden 2004).

49 Janis (n 48) 121, 126.

50 Haskell (n 27) 275.

a double standard that legitimized colonial expansion while applying more flexible principles when European states' interests were at stake. Thus, his so-called universalism was primarily a legal mechanism for sustaining Western supremacy. As international law evolved in the post-Grotian era, figures such as Pufendorf, Wolff, and de Vattel would further refine or challenge these ideas, shaping the modern discourse on the universality of law.

II. THE POST-GROTIAN ERA AND THE UNIVERSAL RULE OF LAW: PUFENDORF, WOLFF AND DE VATTEL

In the post-Grotian era, the increasing centrality of states as the primary subjects of international law, coupled with the rise of positivist legal theory, marked a pivotal shift. During this period, international law evolved under the enduring influence of natural law, while a new paradigm centered on state sovereignty began to take shape. Building on Grotius's foundational ideas, legal theorists developed frameworks grounded in natural law principles.

Among the most influential figures in advancing this Grotian transformation was Samuel Pufendorf, whose work helped bridge classical natural law theory and emerging conceptions of state-centric international order. Born in 1632 in Saxony as the son of a Lutheran pastor and later serving the Swedish crown, Pufendorf published in 1672 his *magnum opus*, *De iure naturae et gentium libri octo*. Although heavily influenced by Grotius, Pufendorf's contributions to international law diverged in critical ways. Notably, Pufendorf rejected Grotius's distinction between *ius naturale* and voluntary or positive *ius gentium*, criticizing his reliance on consensus among peoples as the foundation of international law. Instead, Pufendorf sought to base the autonomy of states entirely on natural law principles.[51]

Pufendorf laid the foundation for the doctrine of "state interests", asserting that a state's autonomy and national interests should, under certain conditions, override treaty obligations. He argued that treaties bind states only during peacetime, whereas in wartime

[51] Gozzi (n 10) 55.

all obligations are nullified. Central to Pufendorf's philosophy was the idea of a sovereign system where states pursue their interests in a manner consistent with justice, asserting that utility and morality do not conflict. He maintained that state interests, when aligned with moral principles, ultimately yield long-term benefits. For him, while unjust actions might deliver immediate gains, they would inevitably fail to sustain lasting advantage.[52]

The interplay between state interests and justice, particularly in international relations, held a prominent place in Pufendorf's thought. He advocated reciprocity in dealings between nations, arguing that a people's courtesy to others should be met with similar courtesy in return. In this context, he rejected Francisco de Vitoria's assertion that Spaniards were entitled to trade on the lands of the *Indios*, instead defending the sovereign right of every nation to determine whether to allow foreign access.[53] Furthermore, Pufendorf strongly opposed the destruction of nations under the pretext of "civilizing missions", rejecting justifications for conquest based on notions of spreading civilization. He dismissed arguments that Europeans could intervene in other regions to end practices like cannibalism or human sacrifice, emphasizing state sovereignty over universal moral claims.

Pufendorf argued that intervention was justified only when harm was inflicted upon the citizens of one state by another, and even then, only if the victims had entered the foreign territory as innocent visitors. In contrast, states had no obligation to protect hostile foreign visitors.[54] While refraining from explicitly denouncing European colonial motives, Pufendorf's arguments indirectly imposed significant limitations on such practices. He viewed hospitality as one of humanity's fundamental duties, contending that turning away foreigners without just cause, once admitted, was inhumane.[55] Although this notion shares similarities with Kant's cosmopolitan principle of hospitality, Pufendorf regarded it not only as a moral obligation but also as a duty that serves the

---

[52] Gozzi (n 10) 56, 58.

[53] Gozzi (n 10) 59.

[54] Cavallar (n 5) 200.

[55] Gozzi (n 10) 60.

interests of the state.[56] He argued that property rights inherently include the right to determine whether to share one's property with others. However, he acknowledged that hospitality has limits, pragmatically noting that an uncontrolled influx of migrants could harm local communities.[57]

Pufendorf also maintained that land was originally intended for all humanity and that unclaimed territories remained common property until distributed. He argued that the rights of peoples were superior to those claimed by the West through conquest.[58] He unequivocally affirmed that all individuals possess equal and natural freedom.[59] Rejecting Grotius's argument that nomadic populations lacked property rights due to their failure to cultivate land permanently, Pufendorf opposed the appropriation of such lands by others. Instead, he argued that they should remain the collective property of humanity.[60]

Despite his divergence from modern European state ideologies, Pufendorf incorporated non-European societies into his analyses, highlighting, for instance, the Chinese people's avoidance of foreign contact, which he justified as a sovereign right. Contrary to Vitoria's claims, Pufendorf argued that the right to trade was neither natural nor coercive and that local peoples retained the sovereign right to refuse trade within their territories. However, he dismissed the notion of unilateral privileges as unjust, asserting that equitable arrangements resembling neighborly generosity were a more appropriate norm.[61] Consequently, while ostensibly defending universal legal norms, Pufendorf effectively legitimized Japan's decision to admit Dutch traders while excluding others under the guise of respecting sovereignty.

Although Pufendorf's philosophy appears to offer a universal framework for international and natural law, his state-centric approach ultimately circumscribed this universality and indirectly legitimized colonial expansion. By shifting the source of law

---

56 Cavallar (n 25) 206.

57 Cavallar (n 5) 199.

58 Gozzi (n 10) 61.

59 Gozzi (n 10) 62.

60 Cavallar (n 25), 199.

61 Cavallar (n 25) 198.

from divine authority to the state and transforming natural law into a framework guided by state rationality, Pufendorf's theories have been interpreted as containing latent positivist elements.[62] While his rejection of Vitoria's absolute hospitality and his recognition of indigenous land rights might seem anti-colonial, Pufendorf's emphasis on state sovereignty indirectly sanctioned European states' control over indigenous peoples under the guise of maintaining "peace and order". Although his concept of moral entities (*entia moralia*) provided a framework for how individuals should exercise their freedoms, and contributed to a universal legal understanding of equality and dignity,[63] this vision of cosmopolitanism fell short of achieving genuine universal justice. Ultimately, Pufendorf's natural law system, while acknowledging indigenous rights, subordinated these rights to the interests of state sovereignty and order, reinforcing his reputation as a thinker whose ideas indirectly supported colonial ambitions.

Following Pufendorf, Christian Wolff and Emmerich de Vattel emerged as key figures who both extended and critiqued the Grotian tradition, seeking to address its theoretical and practical limitations. Pivotal in shaping the transition to positive international law, they tackled the enduring challenge of reconciling natural law with the evolving framework of international law. While Wolff laid the philosophical groundwork for a universal legal order based on natural law, de Vattel redirected Grotian principles toward a more practical application within the context of state sovereignty. Both thinkers criticized their predecessors, including Grotius and Pufendorf, for attempting to construct the law of nations (*ius gentium*) on abstract general principles rather than addressing the realities of state practice.[64]

In his 1749 work, *Jus Gentium Methodo Scientifica Pertractatum* (The Law of Nations Treated According to the Scientific Method), Wolff outlined four key components of the law of nations, placing primary importance on necessary law (*ius gentium necessarium*), which he described as directly applicable to nations and states.

---

62 Ruddy (n 5) 841.

63 Gozzi (n 10) 62.

64 Charles Covell, *The Law of Nations in Political Thought* (Palgrave Macmillan 2009) 91.

This necessary law, binding by conscience and immutable in nature, was deemed universally applicable to all nations and states, thus allowing no exemption from its obligations.[65] The second component, voluntary law (*ius gentium voluntarium),* derived from necessary law and carried a binding normative force with universal applicability. However, voluntary law included necessary adaptations to align with the shared interests of nations and states. Wolff identified two additional components: conventional law of nations (*ius gentium pactitium*), rooted in treaties, and customary law of nations (*ius gentium consuetudinarium*) based on long-standing practices. He argued that both conventional and customary laws were rooted in voluntary law, which, in turn, derived from necessary law and ultimately from natural law. Voluntary law, according to Wolff, functioned as positive law of nations (*ius gentium positivum*), reliant on presumed consent for voluntary law, explicit consent for conventional law, and tacit consent for customary law.[66]

Wolff argued that nations, like free individuals in the state of nature, exist within a natural condition and are therefore subject to natural law. Just as individuals are bound by natural law, he maintained that the world's nations are likewise governed by a natural law of nations, which he termed *ius gentium necessarium*. However, when natural law is applied to the society of nations, it deviates from its original state in human nature, allowing for voluntary modifications in certain circumstances.[67] This adaptation gives rise to a voluntary law of nations (*ius gentium voluntarium*), derived from the necessities of natural law. Thus, Wolff sought to bridge the gap between natural and positive law identified in Grotius's theory by introducing the concept of *ius gentium voluntarium*, a framework intended to meet normative standards without being entirely reliant on the will of states.

Wolff clarified the status of voluntary law by situating its origins and application within a unique societal framework among nations, which he termed *civitas maxima* (i.e.

---

65 Covell, (n 64) 92.

66 Covell (n 64) 93.

67 Gozzi (n 10) 149.

the greatest commonwealth). He described this entity as a superior state to which all nations and states should belong as members or citizens. This collective entity aimed to ensure the common good, governed by its own legal system that universally applied binding laws to all states. Within this framework, sovereignty was equally distributed among all peoples, with no nation gaining privileges based on power. In this sense, *civitas maxima* could be understood as a form of democratic governance.[68] Notably, *civitas maxima* had its own government, led by a leader responsible for aligning the will of nations with natural law and codifying laws to reflect this harmony. The resulting legal framework, classified as voluntary law, was fundamentally grounded in natural law, as Wolff contended that voluntary law was derived from necessary law.[69]

The primary objective of Wolff's *civitas maxima* was to demonstrate that nations and states are bound by a universal and necessary legal order based on natural law. This idea also underscored the adaptability of natural law to the specific conditions of nations and states. Voluntary law, as conceived within the *civitas maxima* framework, applied natural law principles to the unique circumstances of international relations. Wolff's model of universal law, transcending domestic legal systems, relied on the assumption of natural equality among states and the necessity of an international society. Furthermore, Wolff's vision of political cosmopolitanism, particularly his argument for a supranational legal framework, significantly influenced subsequent thinkers, most notably Immanuel Kant—who was close to the cosmopolitan school and developed his own regulative ideal of a limited republican world government inspired by Wolff's notion of *civitas maxima*.[70]

In his views on non-European societies, Wolff mirrored the attitudes of his contemporaries. He defended China's economic isolationist policies, recognizing its right to safeguard its moral and material integrity, yet criticized the long-term weakening effects of avoiding foreign trade. On matters of commerce, Wolff positioned state authority as supreme, asserting that nations could not be compelled to adopt foreign

---

[68] Gozzi (n 10) 151.

[69] Covell (n 64) 94.

[70] Georg Cavallar, *Kant's Embedded Cosmopolitanism: History, Philosophy and Education for World Citizens* (De Gruyter 2015) 49.

religions or tolerate external impositions. He emphasized that given the difficulty of determining the "true" religion, all religions should be treated equally before the law.[71]

While Wolff refrained from exclusively associating sovereignty and statehood with European criteria, he argued that communities lacking civil sovereignty could not be classified as nations. Nevertheless, he recognized the partial property rights of nomadic societies, maintaining that their lands could not be appropriated without consent. Similarly, he acknowledged the property rights of indigenous peoples, contending that any intervention or occupation would only be justified if the intervening state was prepared to face reciprocal occupation.[72] Wolff's silence on European colonial practices and occupations is notable since he deliberately avoided direct criticism of such policies. Moreover, he frequently argued that nations should first become civilized to be included in the *civitas maxima*,[73] subtly reflecting a moderated colonial perspective in his writings. According to Wolff, the norms of the democratic *civitas maxima* would be established by practices sanctioned by "more civilized" nations.[74] This notion implicitly supported the idea that "barbarian societies" required education by civilized nations to participate effectively in the *civitas maxima* framework.

In conclusion, Wolff's understanding of international law was embedded in a Eurocentric framework, anchoring sovereignty and the nation-state concept within Western normative values. Despite this, his work made significant ethical and theoretical contributions to cosmopolitanism. While shaped by Western moral standards and unable to fully escape the imposition of European norms, his cosmopolitanism nonetheless emphasized a universal ethic of equality and dignity for all, demonstrating sensitivity toward diverse cultural traditions. His analysis of positive international norms, and particularly his *civitas maxima* model, laid a crucial groundwork for broadening the scope of universal law. Thus, although Wolff's ideas did not fully align with colonialist

---

71 Cavallar (n 5) 201.

72 Cavallar (n 5) 202.

73 Bowden (n 7) 15.

74 Cavallar (n 5) 204.

ideologies, his theoretical contributions to cosmopolitanism remain pivotal in modern international law's evolution.

Wolff's work had significantly influenced his contemporary, Emmerich de Vattel, who is often regarded as his student. Like Wolff, de Vattel emphasized that international law should not be imposed solely through natural law but should instead be based on the mutual consent and interests of nations, forming a foundation of positive law. In this regard, de Vattel further distanced himself from Pufendorf, arguing that the law of nations should reflect the unique status of each nation. He was skeptical of the universality of natural law and contended that international law should adopt a more pragmatic and realistic approach. Consequently, de Vattel's objections to Wolff's *civitas maxima* underscored the fundamental differences in their perspectives.

Examining de Vattel's realist approach necessitates starting with one of his most significant works, *Le Droit des Gens* (*The Law of Nations*) of 1758. In the preface, de Vattel praised Grotius as "a great man who grasped the truth", yet he criticized him for lacking scientific precision in connecting the law of nations to natural law.[75] Here, de Vattel's emphasis on positivism, which would become one of his greatest contributions to international law, began to emerge. While Grotius separated natural law from the law of nations and acknowledged the existence of an international natural law, de Vattel took a critical stance, asserting that the law of nations cannot be applied to states in the same way natural law applies to individuals.[76] De Vattel's approach is based on the existence of a law of nations that operates independently among states. Rejecting Hobbes's claim that the law of nations is simply natural law applied to states, de Vattel argued that natural law must be adapted in practice. Thus, he distanced himself from his predecessors, grounding the rules of international law in the practical dynamics of interstate relations, introducing significant reform in the process. As noted by Koskenniemi, his reform made

[75] Gozzi (n 10) 64.

[76] Gozzi (n 10) 65.

Le Droit des Gens one of the most widely used legal texts in the second half of the 19th century.[77]

De Vattel stated that his work was intended for sovereign states and their rulers, emphasizing that the law of nations was fundamentally "the law of sovereigns" and should primarily serve their needs.[78] He defined sovereignty as more or less the condition of any nation governing itself without dependence on external power. Therefore, in de Vattel's legal framework, sovereign states—defined as any politically independent entity—are the primary actors. This independence, he emphasized, is entirely separate from any overarching legal order like Wolff's *civitas maxima*. While de Vattel agreed with Wolff that states should adapt natural law principles in practice, he criticized Wolff's *civitas maxima* model for lacking a solid foundation to establish universal rules of the law of nations that sovereign states could follow.

According to de Vattel, there is no natural society among nations, and each sovereign state claims and exercises absolute independence from others. Furthermore, he rejected the "intrinsic resemblance" between states and individuals, arguing that states operate under different dynamics, with treaties forming the basis of their interactions. Drawing from the European example, de Vattel described Europe as a system of independent states whose political balance is governed by the interwoven interests of these states.[79] This system, shaped by ongoing negotiations among rulers and ministers, protects the sovereignty of each member while striving to maintain order and freedom based on shared interests. Thus, a balance of power emerges, preventing any single authority from dominating or imposing its laws on others.

De Vattel's realist approach—centered on the primacy of sovereignty—is most clearly reflected in his emphasis on two types of natural law that form the basis of the law of nations: "internal and conscience-based law" and "voluntary law of nations". The former is regarded as a sacred law that nations must adhere to in all their actions, while

---

77 Koskenniemi (n 4) 89.

78 Gozzi (n 10) 65.

79 Gozzi (n 10) 67.

the latter governs mutual relations to ensure general welfare and security. Although distinct, these two types of law are interconnected, and de Vattel considers this system as foundational to the law of nations.[80] De Vattel's realism becomes even more apparent when he introduced another type of law derived from the will or consent of nations: a contractual law of nations, based on agreements and treaties that establish rights and obligations unique to the contracting parties.[81] Consequently, de Vattel's view of universal law is one where state consent takes precedence, subordinating it to sovereignty.

This emphasis on sovereignty extends to issues such as territorial defense, trade relations, and colonial ventures. According to de Vattel, states have the authority to accept or reject foreigners based on security interests. While every nation has freedom in its commercial activities, if these activities harm another state, that state may revoke and prohibit trade rights. For instance, the Spanish conquest of the Indies relied on baseless claims. Similarly, when they attacked the Americas, they justified their actions by accusing the indigenous peoples of refusing to trade—an argument that Vattel dismissed as mere greed.[82]

Regarding territorial ownership, de Vattel adhered to the classical understanding of natural law, arguing that all land was initially designated for humanity's common use. No nation, he contended, may claim exclusive ownership of land to prevent others from using it for their common needs. Nations can only acquire sovereign rights over specific territories through actual occupation, settlement, or effective use of unoccupied lands.[83] However, de Vattel's interpretation of universal rule of law prioritized settled agricultural communities, excluding nomadic peoples from this framework. He also categorized nomadic groups, likening them to the "ancient Germans" and "modern Tartars", and thus, deemed dangerous for their tendency toward plunder, while portraying indigenous Americans as more peaceful. Even so, he suggested that indigenous lands may be opened for settlement, provided that sufficient space is left for the natives. In contrast, Arab

---

80 Gozzi (n 10) 66.

81 Gozzi (n 10) 66.

82 Gozzi (n 10) 68.

83 Gozzi (n 10) 69.

territories, even if underutilized, should remain under their control unless absolutely necessary.[84] De Vattel's classifications are utilitarian, favoring agriculture as a superior mode of existence. He emphasized the necessity for nations to cultivate their lands, arguing that if their territories fail to meet their needs, they have a right to expand their borders.[85] Since nomads lack permanent settlements, de Vattel described their land use as "uncertain occupation", rendering them ineffective in securing their position. For him, while the conquest of "civilized empires" like Peru and Mexico was clearly illegal, the establishment of colonies in North America was justified due to the presence of nomadic societies.[86]

Though de Vattel's theory has been celebrated for its cosmopolitan aspirations, it too provided a legal framework that legitimized colonialism and Eurocentrism. His understanding of natural law recognized the civilized status of empires like Peru and Mexico while maintaining a familiar distinction between "civilized" and "savage" peoples. Consistent with the ethos of his time, de Vattel emphasized European superiority over primitive nomadic societies, as evidenced in his argument that such societies lack property rights due to their failure to establish settlements and practice agriculture, making their lands available for appropriation by more productive nations.[87] This perspective placed his universal legal framework on contested ground. Moreover, de Vattel's broader legal theory is not without its flaws. While his work has been praised as a refined synthesis of natural law theory and contemporary state practices, offering more palatable principles under the guise of universal rationality, it centers on state sovereignty and veers toward legal positivism by excluding individuals and families. In this regard, de Vattel laid the foundations for 19th century classical international legal theory, indirectly reinforcing European dominance.

Ultimately, post-Grotian thinkers such as Pufendorf, Wolff, and de Vattel endeavored to establish a universal legal order by positioning natural law as the

---

84 Cavallar (n 5) 205.

85 Gozzi (n 10) 69.

86 Cavallar (n 5) 206.

87 Gozzi (n 10) 70.

cornerstone of modern international legal theory. However, their theories, while building on Grotius's legacy, failed to fully detach themselves from the colonial context and background of international law. In their works, the universality of natural law served not to include non-Western societies but to reinforce European colonial dominance. The legacy of Grotius's discourse on free trade and the freedom of the seas, repurposed to suit colonial ambitions, was expanded by Pufendorf, Wolff, and de Vattel, laying the groundwork for an international legal system ideologically aligned with colonialism. Despite some seemingly anti-colonial elements, these thinkers constructed concepts that limited the sovereignty, territorial rights, and freedoms of non-Western peoples, ultimately strengthening a Eurocentric world order. Consequently, the contributions of post-Grotian thinkers to international law cannot be considered independently of Europe's colonial legacy. Although their theories aspired to expand the reach of universal law, they ultimately fell short of ensuring its inclusivity and instead reinforced the colonial hierarchies they purported to transcend.

CONCLUSION

The foundational figures of international legal theory—Grotius, Pufendorf, Wolff, and de Vattel—advanced a conception of universality that was deeply embedded in Eurocentric assumptions. While framed as impartial and inclusive, their legal frameworks often excluded non-European peoples and legitimized colonial conquest. Under the guise of universal natural law, they constructed a legal order that prioritized European sovereignty, property regimes, and civilizational hierarchies.

Grotius's secularization of natural law laid the groundwork for a doctrine that blended humanitarian ideals with commercial interests. Post-Grotian thinkers expanded on this foundation while adapting their theories to evolving notions of state sovereignty and positive law. However, their concepts of universality consistently reproduced colonial hierarchies. Pufendorf emphasized the moral obligations of states but privileged sovereign interests over indigenous rights. Wolff's *civitas maxima* posited a universal legal order, yet confined access to those deemed "civilized". De Vattel codified a realist, sovereignty-based framework that undermined the rights of nomadic and non-agricultural peoples. The universalist claims of these legal thinkers were neither neutral nor inclusive.

Instead, their theories served as ideological tools to justify and institutionalize colonial domination. Therefore, reassessing these thinkers is essential not only for understanding the Eurocentric legacy of international law, but also for confronting its ongoing impact. Today's global legal order still reflects the asymmetries they helped entrench, where powerful states manipulate legal norms and codification processes while weaker ones face structural marginalization and remain entrapped in a loop of mistrust. All in all, any meaningful commitment to a truly universal international legal system must begin with a critical reexamination of its intellectual origins. By challenging the presumed neutrality of these foundational narratives and integrating non-European perspectives, we can begin to reconstruct a more equitable framework for global justice.

BIBLIOGRAPHY

Anghie A, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005).

Bowden B, 'The Colonial Origins of International Law: European Expansion and the Classical Standard of Civilization' (2005) 7 *Journal of the History of International Law* 1, 23.

Bull H, 'The Importance of Grotius in International Relations' in H Bull, B Kingsbury and A Roberts (eds), *Hugo Grotius and International Relations* (Clarendon Press 1990).

Cavallar G, 'Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitanism?' (2008) 10 *Journal of the History of International Law* 181, 209.

Cavallar G, *Kant's Embedded Cosmopolitanism: History, Philosophy and Education for World Citizens* (De Gruyter 2015).

Cavallar G, *The Rights of Strangers: Theories of International Hospitality, The Global Community, and Political Justice Since Vitoria* (Routledge 2016).

Covell C, *The Law of Nations in Political Thought* (Palgrave Macmillan 2009).

Denk BE, 'Uluslararası Hukukun Dayanağına İlişkin Görüşlerin Dönemsellikleri Sorunu: Doğal Hukuk Görüşü Örneği' (2011) 3(5) *Bilge Strateji* 93, 126.

Ereker F A, *'İlkçağlardan Günümüze Haklı Savaş Kavramı'* (2004) 1(3) Uluslararası İlişkiler Dergisi 1, 36.

Erkiner HH, 'Uluslararası Hukuk Düşüncesinde Klâsik Öğretinin Kuruluşu: Hugo Grotius ve Postgrotien Yazarlar Samuel von Pufendorf, Richard Zouche, Cornelius van Bynkershoek

ve Samuel Rachel'e İlişkin İnceleme ve Değerlendirme' (2012) 18(3) *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 3, 140.

Gozzi G, *Rights and Civilizations: A History and Philosophy of International Law* (Cambridge University Press, 2019).

Grewe W G, *The Epochs of International Law* (Walter de Gruyter 2000).

Haskell J D, 'Hugo Grotius in the Contemporary Memory of International Law: Secularism, Liberalism, and the Politics of Restatement and Denial' (2011) 25(2) *Emory International Law Review* 269, 296.

Janis ME, 'Religion and The Literature of International Law: Some Standard Texts' in ME Janis and C Evans (eds), *Religion and International Law* (Martinus Nijhoff, Leiden 2004)

Kahraman F Ş T, 'Hugo Grotius Anlayışının Uluslararası Uyuşmazlıkların Çözüm Yollarına Etkileri' (2019) 25(2) *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 925, 947.

Keal P, '"Just Backward Children": International Law and the Conquest of Non-European Peoples' (1995) 49(2) *Australian Journal of International Affairs* 191, 206.

Keal P, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (Cambridge University Press 2003).

Koskenniemi M, *From Apology to Utopia: The Structure of International Legal Argument* (Lakimiesliiton Kustannus 1989).

Lauterpacht H, 'The Grotian Tradition in International Law' (1946) 23 *British Yearbook of International Law* 1, 53.

Miéville C, *Between Equal Rights: A Marxist Theory of International Law* (Haymarket Books 2005).

Nijman JE, 'Grotius' "Rule of Law" and the Human Sense of Justice: An Afterword to Martti Koskenniemi's Foreword' (2019) 30(4) *European Journal of International Law* 1105, 1114.

Nokkala E, 'The Development of the Law of Nations: Wolff and Vattel' in P Schröder (ed), *Concepts and Contexts of Vattel's Political and Legal Thought* (Cambridge University Press 2021).

Nussbaum A, *A Concise History of the Law of Nations* (Macmillan 1947).

Onuma Y, 'Hugo Grotius' (*Encyclopaedia Britannica*, 2025) https://www.britannica.com accessed 23 May 2025.

Orakhelashvili A, 'The Origins of Consensual Positivism: Pufendorf, Wolff and Vattel' in Alexander Orakhelashvili (ed), *Research Handbook on the Theory and History of International Law* (Edward Elgar 2020).

Ruddy FS, 'International Law and the Enlightenment: Vattel and the 18th Century' (1969) 3(4) *International Lawyer* 839, 858.

Scharf MP, 'Hugo Grotius and the Concept of Grotian Moments in International Law' (2022) 54 *Case Western Reserve Journal of International Law* 17.

Schröder P, 'Concepts and Contexts of Vattel's Political and Legal Thought: An Introduction' in P Schröder (ed), *Concepts and Contexts of Vattel's Political and Legal Thought* (Cambridge University Press 2021).

Sellers MN, 'Universalism' in d'Aspremont J and Haskell J (eds), *Tipping Points in International Law: Commitment and Critique* (Cambridge University Press 2021).

Stumpf C, 'Hugo Grotius and the Universal Rule of Law' in Carty A and Nijman J (eds), *Morality and Responsibility of Rulers: European and Chinese Origins of a Rule of Law as Justice for World Order* (Oxford University Press 2018).

Tuck R, 'Grotius and Selden' in JH Burns (ed), *The Cambridge History of Political Thought, 1450–1700* (Cambridge University Press 1991).

Tuck R, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford University Press 1999).

Van Ittersum MJ, 'The Long Goodbye: Hugo Grotius' Justification of Dutch Expansion Overseas, 1615–1645' (2010) 36(4) *History of European Ideas* 386.

Wheaton H, *Elements of International Law* (8th ed, Little, Brown and Company 1836; reprinted by Clarendon Press, Oxford 1936).

Williams RA, (1990) *The American Indian in Western legal thought: The discourses of conquest* (New York: Oxford University Press).

Yeşilçayır C, 'Hugo Grotius'un Doğal Hukuk Düşüncesine Kazandırdığı Paradigmal Dönüşüm' (2020) 30 *FLSF (Felsefe ve Sosyal Bilimler Dergisi)* 241, 258.