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"The dangerous classes": Hugo Grotius and seventeenth-century piracy as a primitive anti-systemic movement

Eric Wilson

Abstract: This essay discusses the historical and textual representations of piracy in the writings of Hugo Grotius, primarily *De Indis/De iure praedae* (1603-1608) and the *Commentarius in Theses XI* (c. 1600). Contrary to popular belief, Grotius, in stark contrast to Jean Bodin, was not an advocate of the constitutionally homogenous Nation-State. Rather, his central concept of divisible sovereignty, the lynchpin of the constitutional theory of his early writings, unambiguously presents us with the object of the heterogeneous State. In Grotian theory, the State may be "read" as a composite construction, with a residual degree of inalienable sovereignty accruing at each unit-level. Even if only unconsciously, Grotius describes a concurrent para-political sub-division of the state between institutional Government (the "magistrates") and civil society, one that constitutes an operational system of governance within the Nation-State. Like his contemporary Johannes Althusius, Grotius' theory allows for the emergence of a wholly "private," albeit lawful, mode of authority. This is most apparent in Grotius' treatment of the mercantile trading Company and its Privateering operations. The corporatist theory of sovereignty permits the Company's private agents of violence, the legally ambivalent Privateer/Pirate, to be invested with a requisite degree of sovereignty. The Grotian theory of divisible sovereignty, investing the seventeenth-century Pirate band with legal personality, serves as a vital historical precursor to the quasi-statist (trans-) national criminal cartels of the twenty-first century. The Grotian Pirate/Privateer/Just Avenger, therefore, is a "nomad": a liminal entity that simultaneously transverses both geographical and juro-political spaces, rendering him or herself in-determinable.

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> *[A] transformation may take place, not merely in the case of individuals, as when Jephtes, Arsaces, and Viriathus instead of being leaders of brigands, became lawful chiefs, but also in the case of groups, so that those who have been robbers embracing another mode of life became a state.*
> — Hugo Grotius, *De iure belli ac pacis*

Introduction: the pirate as "judicial nomad"

In C. XI— the "Historica"[1]— of *De Indis*,[2] Hugo Grotius mentions a mysterious Portuguese renegade known only as "Rasalala" (tentatively identified as the Rajah of Lalang), a "Portuguese by origin, born in Areiro, but an apostate from the Christian faith and by no means un-renowned as the leader of the pirates in those regions" (Grotius 1964: 189). Not satisfied with abjuring Christ, Rasalala had set himself at the head of a private army and seized political power in Sidajoe.

> In compliance with a command received from the ... ruler of Tuban and from the Portuguese ... Rasalala, who had grown famous through his robberies, had gone to almost all of the Malaccas accompanied by soldiers from Tuban and by twenty Portuguese officers, with the purpose of driving the Dutch traders from the entire region ... Certainly that pirate sailed from those parts with approximately forty proas directly to Java where (so he had been given to understand) the Dutch vessels had come into port; for he was bound by an oath to capture or destroy any such vessel [that he could find]. With this end in view, he was soliciting aid in the name of the King of Tuban from the Regent of Bantam himself. From Java, Rasalala went on to Jacarta, with the intention of seizing such opportunities as might be propitious for the setting of his snares (Grotius 1964: 192).

Rasalala, like other such Pirates, or "pariah entrepreneurs,"[3] bears the sign of what anthropologists call "liminality," the traversing of cultural frontiers.

> The attribute of liminality, or of liminal *personae* ('threshold people') are necessarily ambiguous, since this condition and these persons elide or slip through the network

> of classifications that normally locate states and positions in cultural space. Liminal entities are neither here nor there; they are betwixt and between the positions assigned and arranged by law, custom, convention and ceremonial (Turner 1969: 95).

The pirate's archetypal "anti-social" status as "enemy of all mankind"— the pirate as one who takes up arms against both his natural and political family (the state)— is a dominant motif within piratical literature and jurisprudence. The "first cousin" to the Pirate, the Bandit/Brigand, also exhibits similar liminal qualities.

> The crucial fact about the bandit's social situation is its ambiguity. He is an outsider and rebel, a poor man who refuses to accept the normal rules of poverty...This draws him close to the poor; he is one of them. It sets him in opposition to the hierarchy of power, wealth and influence; he is not one of them...At the same time the bandit is, inevitably, drawn into the web of wealth and power, because, unlike other peasants, he acquires wealth and exerts power. He is "one of us" who is constantly in the process of becoming associated with "them" (Hobsbawm 1969: 87-8).

The liminal pirate/brigand constitutes an exquisitely material embodiment of the Derridean principle of iterability, "rhetorical reversibility."[4] In addition to blurring the orthodox demarcations between religious (i.e., the *renagodoes* of the Barbary Coast), racial and gender[5] (i.e., trans-sexuality and homosexuality) identities, the Pirate was the quintessential "juridical nomad" who frequently traversed the porous juridical spaces separating unlawful maritime "pariah entrepreneur" and the ostensibly "lawful" Privateer. In parallel fashion, the High Seas as juridically "empty" space *res nullius* signify a liminal cultural zone, subverting all taxonomic classifications of established juridical hierarchies. In more prosaic terms, "if you stuck to the territoriality principle, the high seas was nothing but a huge expanse of lawlessness" (Sundberg 1993: 393).[6]

It is not the least of the ironies of the history of western jurisprudence that one of the seminal texts of international public law, *De Indis* (1603-08) by Hugo Grotius (1583-1645), should be a legal defence of Privateering. Yet, it is one of the most revealing of ironies as well, pointing to the juridical legitimation of state-sponsored organized violence as the normative keystone of global governance. The primary task of *De Indis* is "to show that private trading companies were as entitled to make war as were the traditional sovereigns of Europe" (Tuck 1999: 85). The doctrinal problem confronting Grotius at the time

of textual composition was the dramatic alteration of Dutch privateering policy, the seizure of the Portuguese carrack the *Santa Catarina* in 1603 (Borschberg 2004) marking an irrevocable shift away from orthodox— and legitimate— self-defence to more legally and morally ambivalent forms of armed aggression;[7] invariably "privateering wars prolonged the functional association between war and commerce" (Perotin-Dumon 1991: 221).

De Indis is governed by two signature rhetorical stratagems: (i) the attribution of an international normative/holistic order to international politics, derived from competing variants of Natural Law (*ius naturale*), and (ii) the replication of the heterogenous political logic of the modern world-system, or the capitalist world-economy— the trans-border economic "composite of strikingly different trends of the component sectors" (Wallerstein 1996: 89)— as the juridical foundation of seventeenth-century international public order. Simply put, the Text "translates" the operational requirements of the world-economy into the terms of Naturalist jurisprudence.

From an international legal perspective, the problem was that the Portuguese regarded the Dutch Privateers as Pirates; juridically, they were both brigands in unlawful rebellion against Spain and "outlaws" within the exclusionary terms of the Treaty of Tordesillas. Similarly, the Spanish regarded all foreign vessels entering the West Indies as "piratical," in terms of *mare clausum* (Zahediah 1990: 146, 156, 160). Natives of Malabar who attempted to trade outside the Portuguese control system, and anyone else in the area who opposed them were described by the Portuguese as "cossarios" or "Malavares"; the terms were usually interchangeable. A "cossario" (in modern Portuguese "corsario") is, strictly, a corsair (Pearson 1996). "Corsair," in turn, was a generic term for maritime predator that frequently proved inseparable from "Privateer" and "Pirate."[8]

In wider legal terms, the subversive liminality of Piracy was virtually guaranteed through the inherently ambivalent juridical status of the practice: "a legalistic approach runs into the fact that there is not, and never has been an authoritative definition of piracy in international law" (Dubner 1980: 39). Privateers/pirates, operating as "juridical nomads," constituted an irreducibly chaotic element within the early capitalist world-economy of the seventeenth century. Ironically, the attempt to clearly demarcate between Piracy and Privateering was historically governed by *extra*-judicial forces; the abolition of Privateering and the subsequent universal criminalisation of Piracy were both

ultimately dependent upon States de-legitimating privatised armed forces. "Privateering generated organized Piracy. Mercenaries threatened to drag their home states into other state's wars. Mercantile companies turned their guns on each other and even on their home states. The result was probably the closest the modern system has ever come to experiencing real anarchy" (Thompson 1994: 43). At the same time, the universal de-legitimation of privatised armies was economically viable only after the States had found alternative ways of generating for themselves an adequately profitable rate of "protection rent." "Tribute-paying empires yielded diminishing returns as they drew more manpower into the maintenance and extension of such conquests. The protection rents stimulated oceanic commerce and industries which found new markets from wider trade. In ... the period of the expansion of Europe, those fields of enterprise yielded increasing return" (Lane 1979: 36).

As we should expect, irregularities of legal taxonomy parallel vicissitudes of state praxis.

> Technically, pirates were clearly distinguishable from privateers. Privateers possessed a state's authority to commit violence. They targeted only the enemies of the authorizing state ... [Yet] at the end of every war, large numbers of privateers turned pirates only to be granted new privateering commissions on the outbreak of the next war. So long as states insisted to exploit individual violence, piracy could not even be defined, much less suppressed (Thompson 1994: 140).

Piracy had to be proscribed so as to maintain the "correct" hierarchical relationship between unlawful and unlawful forms of maritime violence, such as Privateering, juridically signified by the letter of marque. However, the precise absence of any requisite form of juridical demarcation, coupled with the inherent similitude between the dyadic forms of predation, rendered a self-grounding taxonomy impossible, in both substantive and jurisdictional terms.

> The lack of a legal definition of international piracy shows the relativity that has always characterised the identity of the pirate [in] the terms employed...pirate, privateer, corsair, freebooter ... When all was said and done, the pirate was the "other"; he was a problem because he was culturally different (Perotin-Dumon 1991: 202, 210).

On closer examination, Piracy appears to be a composite or "fragmentary" concept.

> The word "piracy" is being used in certain treaties only because of its historical connotations, even though the context of the treaties demonstrates that the types of 'piracy' included therein are usually nothing more than separate domestic crimes of terrorism (which knows no boundary demarcation) joined together under the word piracy ... If this is so, then there really is no uniform offence or crime of piracy. Rather, the word piracy could constitute one or many different crimes and acts of terrorism according to the dictates of the State which is affected by the incident(s) (Dubner 1980: 39).

According to Rubin, the "word 'piracy' entered modern English usage in a vernacular sense to cover almost any interference with property rights, whether licensed or not, and was applied as a pejorative with political implications, but no clear legal meaning" (1998: 42). The minimally adequate "classical" definition of piracy appears to be "acts of depredation committed by a private ship against another ship on the high seas for private, commercial gain" (Noyes 1991: 105; also Perotin-Dumon 1991: 198);[9] the only comprehensive definitions of piracy are provided by municipal authorities exercising territorial jurisdiction (Rubin 1998: 393).

The textual stratagem of Grotius therefore turned on the discursive invalidation of Portuguese imperialism while simultaneously symbolically validating Dutch maritime predation as a lawful activity cognisable within oceanic spaces that supersede national jurisdiction; *res extra commercium*. As always, the "solution" to the dilemma lay within the rigorous application of the universal Grotian panacea of iterable Divisible Sovereignty.

Divisible sovereignty and political pluralism

The United Provinces: divisible sovereignty and heterology

The paradoxical intrastitial position of the Dutch Republic as lawful rebel against Iberian empire on the one hand and as legitimate hegemon on the other underlines the discursive correlation between a war of national liberation and Dutch leadership within the world-economy. The Grotian text had to perform the somewhat thankless task of providing an internally coherent rhetorical stratagem that would symbolically validate implicitly contradictory agendas: the creation of an inter-state system of formally equal States within the emergent core zone of Western Europe, and the legitimation of the exploitative domination of the Periphery by these same states.

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A signature characteristic of *De Indis* is the recurrent juxtaposition of contending forms of sovereignty; the binary opposition between monistic and "divisible" sovereignty forms a cardinal antinomy of both *De Indis* in particular and of the Grotian corpus as a whole. As Keene (2002) rightly points out, much of the "statist myopia" of both International Law and International Relations is the end product of a superficial, if not actually naïve, understanding of the complex cross-currents of early modern History, which leads directly, in turn, to a facile belief in an essentializing statist "presence."

> Since [Jean] Bodin, indivisibility has been integral to the concept of sovereignty itself. In international political theory, this means that whenever sovereignty is used in a theoretical context to confer unity upon the state as an acting subject, all that it conveys is that this entity is an individual by virtue of its indivisibility, which is tautological indeed. What follows from this search for the locus of sovereignty in international political theory, however necessary to its empirical testability, is thus nothing more than a logical sideshow; the essential step towards unity is already taken whenever sovereignty figures in the definition of political order. Whether thought to be upheld by an individual or a collective, or embodied in the state as a whole, sovereignty entails self-presence and self-sufficiency; that which is sovereign is immediately given to itself, conscious of itself, and thus acting for itself. That is, as it figures in international political theory, sovereignty is not an attribute of something whose existence is prior to or independent of sovereignty; rather, it is the concept of sovereignty itself which supplies this indivisibility and unity (Bartelson 1995: 28).

The main discursive differences between Bodin's *On Sovereignty* (see Franklin 2001) and Grotius' *De Indis* may be attributable to the different roles played by their respective countries (France and Holland) within the core zone of the modern world-system. France, as a non-hegemon but a "strong" state within the core, led Bodin to concentrate on the requirements of robust intra-state formation, yielding a textually constructed reification of political unity. Holland, as the nascent hegemon within the still crystallizing capitalist world-economy lay at the vital nexus between intra- and interstate crosscurrents. As a result, Grotius was committed to a discursive strategy of formulating the hegemonic requirements of maritime supremacy and world-market penetration within an international schema that permitted a plurality of political actors and stratagems.

> It is no exaggeration to say that in the seventeenth century, it was the more speculatively metaphysical system-builders [Bodin] who believed in the indivisibility of sovereignty, while the more pragmatic and constitutionally-minded experts on the law

> of nations [Grotius] were the ones who upheld the empirically verifiable doctrine that sovereignty was divisible ... [Grotian Divisibility Theory] recalls the complex hierarchies of overlapping jurisdictions that ... were symptomatic of medieval Christendom, and precisely the opposite of the modern world where political authority is believed to come in neat territorial packages labelled "sovereignty." ... The imperial constitution, the territorial sovereignty of the states and the reserved right of the emperor made it hard for lawyers to ignore the fact that, whatever the attractions of the Bodinian theory in principle, sovereignty was divided in practice (Keene 2002: 105).

As Advocaat-Fiscal of Holland and as political confidant of the Grand Pensionary Johannes van Oldenbarnevelt (1547-1619), Grotius' ruminations of primitive international legal scholarship were inevitably governed by domestic political and constitutional considerations; ordinarily, this meant legitimising the self-proclaimed national independence of the United Provinces (see Wilson 2006a). The Dutch Revolt was a regionally based internal war with oligarchic republican *libertas* protected by a decentralized and cost-efficient military organization.[10] The Grotian corpus naturally reflects both intra- and interstate concerns with both anti-sectarianism and republican ideology (Smit 1970: 48). Accordingly, *De Indis* exhibits a recurrent set of expressly juro-political concerns, including the notion of the "minimalist" State, a "minimal moral philosophy," and with what Tuck has identified as "un-theism," the systematic attempt to ground a viable form of international public order in a post-theological "naturalist" landscape. Accordingly, an early Grotian text, the *Commentarius in Theses XI* (c.1600), a wide-ranging defence of the "Dutch Revolt" as a "Just War," marks a radical departure from traditional sixteenth-century "resistance theory," primarily Monarchomachism (Van Gelderen 1985: 269-76) and Constitutionalism (Borschberg in Grotius 1994: 169-92).

Orthodox theories of resistance, or lawful rebellion, were grounded in two cardinal premises, "natural liberty" and the notion of the "inferior magistrate." Under the first, "the People" (*publicae*) are the true bearers of that legal identity and personality which historically pre-dates any particular social formation; consequently, any subsequent act of lawful political incorporation rests upon the voluntary transfer of inalienable rights from the People to the Polity. Under the second, the People possess an inalienable right to exercise lawful armed force against an otherwise legitimate public authority that has violated the conditions of the foundational act of conveyance through acts of tyranny. Broadly associated with the politically more moderate Protestant sect the Huguenots, the concept of the "Inferior Magistrate" was subjected to a more subversive doctrinal

alteration by the more radically egalitarian Calvinists, who expressly inferred an inalienable right to take up arms on the basis of "Natural Liberty" alone.

Committed to a Venetian-style oligarchy (Tuck 1993: 159), the *Commentarius* (Grotius 1994: 229) rejects radical Resistance Theory (Grotius 1994: 206-13), postulating instead a *via media* derived from that multi-purpose free-floating Grotian signifier, divisible sovereignty, here re-formulated as "residual sovereignty," one that is inherent within the secular political order, but capable of indefinite sub-division. Art. 16 provides a generic definition of sovereignty: "That supreme right to govern the state which recognizes no supreme authority among humans, such that no person(s) may, through any right [*ius*] of his own, rescind what has been enacted thereby" (Grotius 1994: 215).

The text then moves to a more detailed empirical consideration of *actus summae potestatis*, those necessary "marks" or signs of sovereignty; intriguingly, "right" is clearly associated with "power."

> Those that no one may rescind by virtue of any higher right, for example, the supreme right to introduce legislation and to withdraw it, the right to pass judgement and to grant pardon, the right to appoint magistrates and to relieve them of their office, the right to impose taxes on the people (Grotius 1994: 225).

Accordingly:

> If some marks [*acti*] rest with the prince, and others with the senate, or rather with the prince and the senate, one cannot claim that full sovereignty is either with the prince or with the senate, but [only] with the prince and the senate [together]. The prince and the senate, however, are not one but several (Grotius 1994: 229).

The *Commentarius* then provides a "primitive" theory of constitutional checks and balances, which is inseparable from a residual sovereignty that is identified with *libertas*.

> There are many benefits arising from dividing the marks of sovereignty and for this reason it is held to be prudent to keep some separate. Not least of these is that it seems to be the most convenient way of preventing tyranny (Grotius 1994: 249).

In other words, there is a conditional right of resistance, dependent in turn upon issues of historical evidence and political identity. The *Commentarius* asserts (Grotius 1994: 219, 281-3) that there is persuasive historical evidence of a continuing presence of residual sovereignty within the Dutch "People" (i.e., the

"Batavians"), institutionally expressed through the *Ordines*.[11] As the Dutch Estates never expressly conveyed to "the prince" (i.e., Spain) the power to tax, *libertas* can be legally classified as a "legitimate spoil" of *bellum iustum*, a lawful armed struggle between rival public authorities waged in pursuit of the enforcement of *ius*. "Batavian private persons" (i.e., the Dutch), in both their particular and universal aspects, are co-sovereigns with the Spanish Crown, and constitute their own form of legitimate— and self-legitimising— public authority, that greatest of all republican conceits.

> The war against Philip was at its inception a just war both in respect of its cause and with regard to [the Batavian's] defence of their marks of sovereignty. ... We have demonstrated briefly that it was legitimate for the States of Holland to convene against Philip; that the war was both just and public that was undertaken by them either unanimously or on the basis of majority decision; and that all the marks of sovereignty that once rested with Philip were [subsequently] acquired by the States [of Holland] (Grotius 1994: 283).

Divisible Sovereignty and *bellum iustum* receive even more radically republican expression in *De Indis* which provides a crucial textual/discursive linkage between the Just War waged by the Dutch East India Company (the VOC) and the republican precepts of the lawful war of national liberation.

> The power that has been bestowed upon a prince can be revoked, particularly when the prince exceeds the bounds defining his office, since in such circumstances he ceases *ipso facto* to be regarded as a prince (Grotius 1964: 289).

Herein, residual sovereignty and republicanism are neatly fused with the self-grounding legitimation of Dutch national independence.

> Since the State has no superior, it is necessarily the judge even of its own cause. Thus the assertion made by Tacitus ... was true, namely that by a provision emanating from the Divine Will, the people were to brook no other judge than themselves (Grotius 1964: 24-5).

It is tempting to discern a (sub-) textual Derridean "pun" that operationally co-joins the dyadic texts. For Derrida, "puns" are irruptions into the Text that produce in the reader an awareness, hitherto repressed, of the role played by signifiers within language and, from this, of the extreme contingency of all linguistic relationships (Culler 1983: 91-2). The iterability, or radical reversibility, of the "mark" of sovereignty as itself constitutive of Sovereignty, unintentionally belies the wholly constructivist— and, therefore, contingent—

nature of the alleged "Sovereign." *De Indis* treats the "mark" in a manner that is remarkably proto-Structuralist. The *actus* is inherently ambiguous, not identical with either *potestatis* or *ius*, but an operationally "free-floating signifier" of the lurking "presence" of Sovereignty (Borschberg in Grotius 1994: 55); "the term *actus* suggests not a diagnostic criterion which serves to indicate who possesses sovereign power, but the active exercise of some part of that power; the rendering function might be equally important" (Burton in Grotius 1994: 205). The radically contextualist nature of the *acti* highlights the extreme iterability that governs the Grotian alterity between "public" and "private" actors. Within this discursive frame, both States and Persons— which include Corporations (Gierke 1958: 70-8)— are both fully able to respectively exercise the "sovereignty function" and, thereby, acquire the signature "mark."

For Tuck, *De Indis* constitutes a seminal ("essentializing"?) moment in the Grotian Heritage.

> Grotius ... made the claim that an individual in nature (that is, before transferring any rights to a civil society [the Batavians]) was morally identical to a state, and that there were no powers possessed by a state which an individual could not possess in nature. The kind of state he had in mind, moreover, was one which was sovereign in a strong sense ... *supra republicam nihil est* (Tuck 1993: 82).[12]

The private avenger: the privatisation of jus ad bellum

The privatisation of authority yields a "Derridean pun," a double-entendre playing upon legal versus criminal "protector." The juridical blurring of "public" and "private" protection creates an element of cognitive dissonance. The Late Scholastic doctrine of "Just War" (*bellum iustum*) is a juro-theological expression of feudal dispute resolution,[13] predicated upon public warfare and lawful retaliation (Grewe 2000: 105-18, 210-18); "the legality of reprisals is conditioned upon two requirements: the authority of a superior and a just cause" (Von Elbe: 1939: 671). A crucial consideration introduced by Grotius is that the authorizing entity merely possesses the minimally requisite mark of sovereignty. "It was not necessary that the war be conducted by this highest authority itself; subordinate princes and authorities could be delegated to conduct a *bellum iusticale*" (Grewe 2000: 109). In other words, it is the legal identity of the actor that determines the justness of the conflict. This paradoxical assertion of *De Indis* is the logical corollary of an ascending, or apologetic, argument; it is an

ontologically "thin" Civil Order that gives rise to the "strong" *ius* of commutative violence in the form of *bellum iustum*.

> It is not the power to punish essentially a power that pertains to the state [*res publica*]? Not at all! On the contrary, just as every right of the magistrate comes to him from the state, so has the same right come to the state from private individuals, and similarly, the power of the state is the result of collective agreement. ... *Therefore, since no one is able to transfer a thing that he never possessed, it is evident that the right of chastisement was held by private persons before it was held by the state*. The following argument, to, has great force in this connection; the state inflicts punishment for wrongs against itself, not only upon its own subjects, but also upon foreigners; yet it denies no power over the latter from civil law, which is binding upon citizens only because they have given their consent; and therefore, the law of nature, or law of the nation, is the source from which the state receives the power in question (Grotius 1964: 91-2, emphasis added).

Notice how Grotius subtly conflates positive state law with Natural Law; the "loose" association among rights-holders, which is Civil Society, is then re-configured as a "Society of Vigilantes," subject to the transferential legitimacy of public authority. The net result is a remarkable display of iterability between contending notions of collective/public and individual/private sovereignties.

> The power of execution [is] conferred upon private individuals by a special law ... For the wars that result when arms are taken up in such circumstances should perhaps be called public rather than private, since the state undertakes these wars, *in a sense*, and gives the command for them to be waged by said individuals. Yet it is true that, in the majority of cases, *the national origins of such conflicts is the same as that of private wars*. To take one example, certain laws grant the power of direct self-defence and vengeance [Se *vindicandi potestas*; here, "vengeance-punishment"— EW] to private individuals, precisely on the ground that it is not easy to resist soldiers and collectors of public revenue through the medium of the courts [reminiscent of contemporary Sicily (see Wilson 2009)— EW]; and these particular precepts accordingly represent what we retain of natural law— the vestiges of that law, so to speak— in regard to punishment. If the state is involved, what just end can be sought by the private avenger? The answer to this question is readily found in the teachings of Seneca, the philosopher *who maintains that there are two kinds of commonwealth, the world state and the municipal state*. In other words, the private avenger has in mind *the good of the whole human race*, just as when he slays a serpent; and this goal corresponds exactly to that common good towards which, as we have said, all punishment's are directed in nature's plan (Grotius 1964: 91-2, emphasis added).

Wilson, Eric (2010) "'The dangerous classes': Hugo Grotius and seventeenth-century piracy as a primitive anti-systemic movement', *The Journal of Philosophical Economics*, IV:1, 146-183

The enigmatic figure of "The Private Avenger" is arguably the most alien— and the most under-appreciated— juridical construct within the Grotian Heritage.[14] Van Ittersum (2003) has persuasively shown that the figure was modelled on no other than Admiral Van Heemskerck, the prize-taker of the *Santa Catarina* and first cousin to Hugo Grotius. She situates the historical genesis of *De Indis* in Grotius' efforts to "disentangle" the conflicting rhetoric employed by the Dutch Admiralty Board in adjudicating the prize. Whereas Van Heemskerck justified his actions through private reliance upon *ius naturale*, the Admiralty legitimised the seizure in terms of lawful revenge, or reprisal; "what had been revenge pure and simple in the resolution of [the privateers] became punishment for transgression of the natural law in *De Jure Praedae* [sic], meted out by private individuals exercising their natural rights" (Van Ittersum 2003: 526).[15] For the modern world-system, lawful maritime predation constituted a legitimate enforcement of a naturalist form of private authority.

In terms of international legal discourse, however, lawful Privateering at once signified the inversion of the hierarchy between private and public authority marking a sub-textual conflation of Privateering with Piracy. Privateering renders iterable public/private dichotomies through a state adoption of private agency, the legitimacy of which may be effectively invalidated through non-recognition by a rival State. The Privateer is inherently "dangerous" precisely because of the self-same iterability; the radical contingency of the legal identity of the Privateer constantly invokes the "lurking presence" of the unlawful maritime predator, the Pirate. Whatever Grotius' authorial intent, whether to doctrinally clarify the verdict of the Admiralty or to legitimise the privateering actions of the VOC, *De Indis* provides a primitive model of an international private regime of global governance. "The Private Avenger" violates that most foundational of constitutional precepts, the State as sole monopoliser of organised violence. Grotian iterability and juridical inversion reach their zenith at precisely this juncture, reducing interstate relations to a collective aggregate of "private" transactions through the assignment of international legitimacy to *any* entity that is capable of exercising lawful violence as a "strong" right, or *ius*.

To appreciate the radically subversive nature of the Grotian "Just Avenger," it is necessary to come to terms, in both an historically and philosophically honest way, with the legal intractability of Privateering, both as a form of maritime

predation and as a cultural artefact in its own right; that is, as a pivotal institutional innovation of the VOC (see Thompson 1994).

> Any strategy [of maritime predation], however and whenever it was performed, was valid, provided it worked and was profitable. What we are talking about is not a choice between merchant and corsairs, but men [and women] who were sometimes one, sometimes the other, sometimes both simultaneously (Nadal 2001: 13).

The VOC's "internalisation of protection costs" was far more than a form of economic rationality; Privateering served a vital governance function, marking the sovereign identity of the Company as an international legal personality.

> [Like] the trading empire of the Portuguese king, the [trade] companies were integrated, nonspecialized enterprises, but with one remarkable difference. They were run as a business, not an empire. By producing their own protection, the companies not only expropriated the tribute, but also became able to determine quality and costs of production themselves. This meant that protection costs were brought within the range of rational calculation instead of being in the unpredictable region of "the acts of God or of the King" (Steensgaard 1981b: 259-60).

Divisible Sovereignty, when coupled with "the Private Avenger," proved endlessly self-fracturing, yielding a "hyper-iterability" that threatened to render incoherent any minimally acceptable concept of lawful Sovereignty, and, by extension, legitimate global governance; "the pirate destroys all government and all order, by breaking all those ties and bonds that unite people in a civil society under any government" (Defoe, cited in Perotin-Dumon 1991: 215). The inherently political nature of maritime predation, signified by the alteration of State practice between Privateer and Pirate, is itself the institutionalised embodiment of discursive inversion. Whatever localised success Grotius may have had in "containing" the subversive potential of the Privateer/Pirate on the micro-level of the United Provinces/VOC, the exact same dilemma was replicated on the macro-level of the capitalist world-economy.

The trading company and the protection racket

The global governance of the heteronomous High Seas logically mandated a juridical regime premised upon *ius naturale*. This is best illustrated by the indigenous laws relating to Piracy "which authorized common action of all maritime powers in the vast expanse of oceanic waters for the purpose of

maintaining maritime safety" (Perotin-Dumon 1991: 44, 64). Fernand Braudel has commented on the significance of the "great pirate belt" stretching from the West to the East Indies throughout the seventeenth century, precipitating a crisis in global governance; "the increase and ubiquity of piracy were related to the breaking up of the great empires: the Turkish and Spanish, the Empire of the Great Moghul and the decline of China under the Ming" (1972: 865). The taxonomic re-classification of the legal demarcations between Piracy and Privateering would serve as an integral component of the newly established capitalist world-economy, premised upon a discursive shift away from "closed" and towards "open" seas: *mare liberum*.

Within the euro-centric core zone, however, successful "State building" was invariably equated with the successful monopolization of violence coupled with a self-sustaining collection of "protection rent," either in the form of "tribute" or, in a more bureaucratised form, of "taxation." In Charles Tilly's classic formulation

> If protection rackets represent organized crime at its smoothest, then war making and state making— quintessential protection rackets with the advantage of legitimacy— qualify as our largest examples of organized crime. Without branding all generals and statesmen as murderers and thieves, I want to urge the value of that analogy. At least for the European experience of the last few centuries, a portrait of war makers and state makers as coercive and self-seeking entrepreneurs bears a far greater resemblance to the facts than do its chief alternatives: the idea of a social contract, the idea of an open market in which operators of armies and states offer services to willing consumers, the idea of a society whose shared aims and expectations call forth a certain kind of government (Tilly 1985: 169).

The political and economic realities of the early seventeenth century served as sufficient grounds for legitimising the status of the VOC as an autonomous military force (Hart 1993: 187-215 and McNeil 1982: 102-16).

> The VOC ... was a pure member's combine and remained remarkably true throughout the two centuries of its existence to its universal ideals, though these would imply military actions to reinforce the quest for a monopoly so dear to the post-medieval and mercantilist mentality. Armed merchantmen were not considered at all unusual in the European Middle Ages and Renaissance, and in both their charters, the Dutch and English companies had the right to their own armed forces, which today is the exclusive prerogative of material power (leaving aside the question whether the Seven Provinces of the Dutch Republic could be called a "nation" in this period) (Winius and Vink 1991: 9).

Pivotal to the hegemonic success of the VOC was the systematic internalisation of "protective costs"; the institutional integration of military and para-military activity within the lawful scope of Company activities so as to ensure the secure transit of capital assets, "guaranteed" or "forced" access to new markets, and the efficient subsidization of costs through the enforced guarantee of advantageous rates of return on capital outlays. An exact counterpart of contemporary international private security companies (see Zarate 1998),[16] the armed mercantile company efficiently subsidized "low-intensity warfare"— defined as actions that "occupy a grey area on the spectrum of conflict, representing a state that is neither war nor peace" (Uyeda cited in Zarate 1998: 81 fn. 30)— leading directly to the institutionalised "over-lapping" of Public and Private functions.

> The managers of the Company, confronted with conflicting political and economic considerations, created a new kind of balance between non-economic means and economic ends. Against the demands of the participants, the directors carried through an aggressive policy, a policy of consolidation and a policy of dividends. But they did not identify the Company with the State and they did not make the aim of the State their own. In the long run they did not forget that the Company was a privately owned business and that its owners were meant to make a profit. The result of this situation was a hybrid, neither a simple partnership for trade nor a state strategy; profit remained the ultimate aim, but under conditions which tended to make the presentation and growth of the capital as important as, or more important than, the payment of demands. At least as early as 1609, but probably already in 1606, the Heeren XVII realized that the non-economic means might be used for economic ends, and that the acts of war in the East might be turned into a profitable investment. Even if it might be a waste of time to combine the functions of soldier and merchant in one person, the Company found that it was no waste to combine economic and non-economic activities in one enterprise. The instruments of violence under the control of the Company were to some extent used for the purposes of organized plunder; they were in general used to safeguard and further economic activities, but they did not become an end in themselves (Steensgaard 1981a: 251-2).[17]

The Iberians were clearly aware of the war-making/state-building capacity of the Corporate Sovereign; the dissolution of both the WIC and the VOC were Spanish preconditions for the Armistice of 1609 (Israel 1982: 33), marking the de facto end of the Dutch Revolt (see Wilson 2006b).

It is striking to observe the various ways in which primitive modes of international juridical discourse overtly anticipate fundamental innovations in Deconstruction and Critical Legal Studies theory. In many crucial respects,

Wilson, Eric (2010) "'The dangerous classes': Hugo Grotius and seventeenth-century piracy as a primitive anti-systemic movement', *The Journal of Philosophical Economics*, IV:1, 146-183

Post-Structuralism could be persuasively viewed as a re-formulation of central tenets of early or "pre"-modern thought. The Derridean "sign" of the categorical substance of the "self-presence" of Sovereignty is an obvious and weighty example.

> Consistent with the logic of sublimation, [the modern juridical discourse of Sovereignty] places the metaphysical unity of the state in opposition to its outside, its ethical negation. The international system is marked by the absence of unity right from the start; it is pure plurality. From this opposition, everything else follows: what is listed as essential to statehood is absent in the international realm, and vice versa. The whole range of dichotomies employed in international political theory to demarcate the domestic from the international gains logical and rhetorical impact from this single ontological gesture and the systematic play of identity and difference brings into being. What makes a make State a State and thus identical with itself is the difference from what is different from identity: difference (Bartelson 1995: 28-9).

Rather arbitrarily, Grotius obviates the potentially infinite sub-divisibility of sovereignty: "Arguments that are used against the prince could by the same reasoning be used against other governors of the state; and this is the path to sedition" (Grotius 1994: 215). Although republican, *De Indis* is suffused by a patrician conservatism; the discursive requirement of providing an "apology" for a primitive Positivism is one of the main anchors of the text. As Tanaka has noted:

> It is revealing that Grotius himself completely fails to consider the possibility of right becoming separated from law. In Grotius' system, municipal law which is contrary to natural law cannot have any binding force; conversely, in the domains where municipal law is competent to restrict the freedom that individual persons possessed before states were formed, it is impossible to approve of resistance or revolution to attain natural rights (Tanaka 1993: 36).

Throughout the history of this endlessly repetitive inversion, the monopoly of organized violence has remained the constant primary signifier of the "non-invertible" dichotomy between lawful and unlawful types of statist formation. This has now been called into fundamental metaphysical question through the critical innovations of Deconstruction.

> To say that a state is externally sovereign is in the context of international political theory another way of saying that *it is a unity, whose indivisibility hinges on the presence of a monopoly of legitimate violence,* and which ideally speaks with one voice to its neighbours (Bartelson 1995: 29; see also Giddens 1985: 14).

The problem here, concerning the mark(s) of sovereignty, is that *any* agency capable of exerting effective control over organized violence is, by that fact alone, potentially eligible for legal personality. The subversive potential of this co-joining of Divisible Sovereignty and organized violence has received classic treatment by Lane (1979) in his theory of "the protection industry."

The sea-beggars as just avengers

Within the early modern world-system rhetorical inversion, subverting the juridical hierarchy between Government and Organized Crime, operates on both the micro-level of the State and the macro-level of the world-economy. Within the micro-level of the United Provinces, the Dutch Revolt, premised upon a popular application of radical Calvinist/Huguenot Resistance Theory threatened to politically fracture the Dutch patriciate.

> The political thought of Dutch Reformed Protestants was revolutionary primarily because it extended the spectrum of individual rights as developed until the Reformation. In the minimal formulation of the private person was awarded the right of freedom of conscience and, if the government ordered against God, of disobedience (Van Gelderen 1985: 262).

Within the "public" domain, the "danger" of Calvinist Natural Law theory was two-fold. In theo-political terms radical Resistance Theory (Skinner 1978: 323; also Van Gelderen 1985) promised an unlimited sub-division of sovereignty. In socio-political terms, the proletarian origins of the Calvinists threatened a wider social revolt, politically subversive paramilitary units fomenting popular secession. The example of the "Sea-Beggars" (*Watergeuzen*) is illustrative (Parker 1990). A viciously effective paramilitary marine/amphibious force recruited from the "dangerous classes" (Wallerstein 1999: 144-8)[18] of the Calvinist maritime proletariat and "legitimised" by an "official" letter of marque issued by the House of Orange, the Sea-Beggars practised Lane's "natural monopoly" of violence through shifting from Privateering to Piracy as a means of subsidizing the costs of military resistance.[19]

Within the "private" domain, the Corporate Sovereignty of the VOC was threatened by an internal bifurcation; as the bearer of the "marks of sovereignty," it was impossible for the Company to prevent the unofficial transferral of *actus summi* to "deviant" sub-groups (Scammell 1992; Cruz 1986; Boxer 1969: 296-339) within its corporate structure engaged in acts of "economic

insurgency" (Barendse 2002: 415-16).[20] Viewed as "illicit enterprise,"[21] the sub-division of Corporate Sovereignty constituted two parallel para-political networks extending throughout the whole of the Indian Ocean world system: a "Shadow Empire" (Winius 1983; Barendse 2002: 333-6, 400-10) of informal patronage systems and an underground economy of "Private Trade"[22] centred around contraband (Barendes 2002: 460-86, 405-6; Boxer 1965: 23-4, 100-3, 225-30),[23] and fraudulent book-keeping (Barendse 2002: 403-4), both a striking seventeenth-century confirmation of the "Smith thesis" of the interconnection of white-collar pariah entrepreneurialism and (semi-) organized crime. The unregulated permutation of illicit enterprise constituted an objective threat to the geo-governance of the regional world system, as the episodic "re-criminalization" of contraband proved both materially and taxonomically inseparable from the proliferation of Piracy. "Coasting trade and smuggling existed in a symbiotic relationship; exclusive trade and the one with foreign entrepots de facto existed at the local level" (Perotin-Dumon 1991: 223). For Perotin-Dumon:

> The chronic fragility of European trade monopolies was never more obvious than when piracy periodically resurfaced, when a policy of control called previous tolerance into question. Suddenly the equilibrium between exclusion and permeability would be shattered because one of the two sides had gone too far: either a state had imposed an exorbitant control that killed illegal but necessary alternatives;[24] or contraband had developed into a fully-fledged counter-system that evidently threatened official trade. ... Thus, ironically, the hegemonic nature of some merchant empires did much to keep piracy alive. As long as monopolies went along with commercial wars, piracy simply fluctuated according to the degree of a state's authority at sea. It was the linkage among trade, war, and hegemonic policies that engendered a cycle in which smuggling and piracy alternated. Enlisting European pirates into a *guerre de course* did keep them under control. To eliminate piracy as a phenomenon, however, trade monopoly had to be given up altogether (1991: 225, 226).

Ironically, far from resisting these trends, Grotius integrated the phenomenon of "deviant" Divisible Sovereignty into the discursive formation of the text. By re-appropriating maritime predation as a form of Just War, *De Indis* performs a critical discursive manoeuvre, locating Company activity within the broader juridical framework of a heterogenous World-Economy. As ontologically "primary" Natural Society is distinct from derivative Civil Society, public order suffers from a concomitant absence of a "strong" substantive category of "the Good"; the sociability of Civil Order "extended only so far as was necessary to

justify the private right of punishment [*jus gladii*]" (Tuck 1999: 88). This civil requirement of private punishment/vengeance/protection is lawfully performed by that supremely Grotian innovation, "The Private Avenger."

"Climbing out of hell": piracy as anti-systemic movement

In these terms, the "deep-sea proletariat" (Linebaugh 1991: 123) could plausibly be seen as constitutive of an early modern "anti-systemic movement."[25] Admittedly, Wallerstein restricts the historical emergence of "true" anti-systemic movements to the nineteenth century (Arrighi et al. 1987: 1), commensurate with the finalization of the modern world-system; "the central fact of the historical sociology of the late-nineteenth- and early-twentieth-century Europe has been the emergence of powerful social movements which implicitly or explicitly challenged the achievements of triumphant capitalism" (Arrighi et al. 1987: 77), structured upon the parallel developments of Organized Labour and National Liberation (Arrighi 1987: 30-1).[26] Nevertheless, an argument can be made that just as early International Law constituted a form of "primitive" global governance, Piracy functioned as a "primitive" anti-systemic movement,[27] co-determinate in extent and operation with the pre-statist **c**apitalist world-economy.[28] The severe economic dislocations of the European world system yielded a vast reservoir of vagrant workers— "masterless men" (Braudel 1982: 506-12)— prompting a corresponding obsession with capital crime among the propertied classes (see Hay 1975), the primary beneficiaries of the nascent global economy.[29] Because the structural foundation of the world-economy was network/commercial rather than institutional/statist, the morphology of the primitive anti-systemic movements exhibited a similar diffuseness. "What deprived this army of vagrant sub-proletarians of its force, in spite of the fear it inspired was its lack of cohesion ... this was not a class but a rabble" (Braudel 1982: 512);[30] a "rabble" highly prone to brigandage and organized crime (Braudel 1972: 734-56).[31] To some degree, Piracy successfully imposed a "primitive" mode of political self-consciousness upon the sporadically insurgent sub-classes: "Pirates constructed a culture of masterless men" (Rediker 1987: 286).[32] There was an element of objective geo-spatial organization.

> Was it possible to escape from this hell? Occasionally yes, but never unaided, never without accepting some kind of close reliance on other men. One had either to swim to the shore of social organization, of whatever kind, or build an alternative society from scratch, a counter-society with its own laws. The organized band of criminals—

> false salt-merchants, forgers, smugglers, brigands, and pirates, or those special communities, the army and the huge world of domestic service— were almost the only refuge for those trying to escape from the ranks of the damned. Smuggling and fraud, in order to exist, had to build a disciplined organization, with long chains of solidarity. Banditry had its chiefs, its gangs and its leaders— often noblemen. As for privateering and piracy, they actually depended upon the support of at least one city. Algiers, Tripoli, Pisa, Valetta and Segna were the bases of the Barbary Corsairs, the Knights of San Stefano, the Knights of Malta and the Uskoks, enemies of Venice (Braudel 1982: 512-13).

More important was the correspondence between Piracy and Organized Labour.[33] The sign of a radically egalitarian form of republicanism (Hill 1986; Bromley 2001; Rediker 1987: 254-87), Piracy formed an anti-authoritarian "Hydrachy," the inversion of the Absolutist "maritime state" (Linebaugh and Rediker 2000: 143-73).[34] There is a remarkable similitude between the micro- and macro-levels of piratical enterprise. On the micro-level, the Pirate/Privateer as "pariah entrepreneur" constituted the mimetic parody of the Gentlemen XVII, the signifier of "a kind of proto-individualist-anarchist attitude" (Wilson 1995: 52). On the macro-level, Piracy signified the subversive (and subverting) transformation of the deep-sea proletariat into "a floating mob with its own distinctive sense of popular justice," that would freely traverse the liminal boundaries of maritime Crime/Law.[35]

The "underground" history of maritime predation, when synthesized with the Grotian doctrine of Divisible Sovereignty, yields a fascinating juro-political hybrid; Hydrachy as the visceral expression of the potential of Grotian divisibility for juridical inversion, here manifested as trans-national organized constituting a "primitive" form of the trans-national criminal cartel.

Conclusion: divisible sovereignty and anti-systematic movements

> *Rome, the mistress of the World, was no more at first than a refuge for thieves and outlaws; and if the progress of our Pyrates had been equal to their beginning, and they had all united, and settled in some of these islands, they might, by this time, have been honoured with the name of a Commonwealth, and no Power in those parts of the World would have been able to deprive them of it.*
>
> — Daniel Defoe, "The Preface," *A General History of the Pyrates*

The discursive de-legitimation of Piracy by the State[36] takes place on three levels: (i) the symbolic validation of the statist monopolization of violence as a means of neutralizing the revolutionary potential of organized maritime labour; (ii) the taxonomic re-classification of Privateering as a "lawful" State practice as the logical corollary of the invalidation of Piracy as a "national enterprise";[37] and, (iii) the marginalisation of all international legal personalities, including non-European States, that did not conform to the taxonomic re-classifications, through the withholding of formal recognition of legal personality (De Montmorency 1918; Mossner 1972; Schwarzenberger 1950). Within the core zone, successful "State building" was invariably equated with the successful monopolization of violence coupled with a self-sustaining collection of "protection rent," either in the form of "tribute" or, in a more bureaucratised form, of "taxation" (see Hess 1998: 196 fn. 17).

Not for the first time, the discursive strategy of *De Indis*, replicating the material contours of the Capitalist World-Economy, leads to fundamental internal contradiction; Privateers/Pirates, operating as "juridical nomads," constituted an irreducibly chaotic element within the World-System. Divisible Sovereignty pluralizes the allocation of authority, effectively reducing it to an anti-essentialist act of mutual recognition of certain culturally-defined "marks" (Friedman 1990: 68-71; Lukes 1990), expressly correlated with the effective "production of protection." The discursive space opened up by *De Indis* ironically provides the basis for a more sophisticated understanding of otherwise unintelligible features of contemporary International Law and International Relations, both governed by the heterogeneous logic of the Modern World-System. The "public" text of the *Commentarius* clearly recognizes the iterable nature of authority, identified with Sovereignty; "Since he who holds a mark of Sovereignty has no overlord in respect of that mark, it follows that the right to pass judgement must necessarily be an adjunct of that mark of sovereignty (Grotius 1994: 277)." Concomitantly, the "private" text of *De Indis* invests the Corporate Sovereign with the public function of commutative justice, virtually identical with "protection."

> The slaughter of human beings is the greatest of criminal offences, a fact that accounts for the laws against assassins. Now, the Portuguese slaughtered many Hollanders in the vilest and most brutal fashion ... and therefore, the East India Company could not conscientiously have neglected to avenge its servants (Grotius 1964: 269).

The contemporary legitimation of sub-statist authority via performative recognition creates the possibility of an heterogeneous "post-international politics," centred upon a porous "two-world political universe," one unitary/state-centric and one heterogenous/multi-centric (Rosenau 1990: 186-91, 6, 11).

Although Organized Labour and National Liberation constituted the "true" anti-systemic movements, they ultimately failed to achieve a structural transformation of the modern world-system (Wallerstein 2001: 7-22). Ironically, it is the "primitive" anti-systemic movements of Piracy and trans-national criminal cartels that may prove ultimately more efficacious, as they signify more transparently the "Presence" of a multi-centric order;[38] it is therefore possible to interpret the corruption of governmental structure as the heteronomous "privatisation" of public authority.

Once the proto-deconstructive implications of Grotian discourse are clearly understood, one is led to the realization that Grotius, despite his own patrician biases, lends authorial legitimacy to an inherently heteronomous international order that potentially de-stabilises global governance. The discursive constructions of Corporate Sovereignty and the Private Avenger legitimise both the radical privatisation of public authority and the politicisation of Piracy. This becomes even clearer when we recognize that the trans-national criminal cartel is the historical nexus that links Piracy (Abhyhankar 1998) with anti-systemic movements (Schmid 1996): narco-trafficking (Naylor 1993: 35-9, 41; Williams 2002: 41),[39] weapons-trafficking (Naylor 1993, 1995), and money-laundering (Strange 1996; Duffield 2001) all serve as vital sources of revenue for National Liberation Fronts.[40]

We may never be able to ascertain with certainty to what degree the fabled Pirate utopia of "Libertalia" was an historical community or a projection of the literary imagination of Daniel Defoe or his shadowy mouthpiece "Captain Charles Johnson."[41] Of greater significance is the multiform way in which the liminality of the Pirate intersected with the overlapping crosscurrents of both the early World-Economy and the rhetorical migrations of international legal discourse. As was ordinarily the case with Grotius, the more immediate solution to the problem of "piratical sovereignty" lay within the taxonomic reclassification via Natural Law; here, "the rogue Seaman" (i.e., the Pirate) as, respectively, "bandit," "brigand," or, most potently, as politicised "rebel." The re-classification of both sets of maritime predator through the application of *ius naturale* served as a means of discursively establishing a self-legitimating

parameter governing the juro-political "space" of the lawful exercise of organized maritime violence. The sign-system of non-infinitely divisible sovereignty lay within the taxonomic re-categorization of the pirate/bandit/brigand/rebel as *Pirate omnium mortalia hostes communes*. But, once again, the presence of competing ontologies yields a surfeit of textual fissuring and a pluralizing fragmentation of juro-political identities.

Endnotes

[1] *De Indis* consists of three separate segments, or "grafts": (i) the *Historica*/C.XI, which treats the history of the Luso-Dutch inter-state rivalry in the East Indies; (ii) the *Dogmatica*/C. I, III-X, and XII-XV, which legitimizes maritime prize-taking in terms of Just War, and (iii) the Prolegomena/C. II, which functions as a separate "gloss" on the *Dogmatica*. For discussion, see Wilson (2006a).

[2] Commonly known as "The Commentary on the Law of Prize and Booty," but referred to here as De Indis; see Tuck (1993: 170).

[3] Castells (1998: 166-205): "a private agent who manages to achieve monopoly over violence in a specific territory [who] eventually becomes a public actor." See Catanzaro (1994: 270).

[4] For iterability's relationship with both "alteration" and "replication," see Gasché (1986: 212-17).

[5] "Attributes of sexlessness and anonymity are highly characteristic of liminality. In many kinds of initiation where the neophytes are both sexes, males and females are dressed alike and referred to by the same name" (Turner 1969: 102-3).

[6] See Wilson (1995: 39-69), Kinkor (2001), Appleby (2001), Rediker (2001), Burg (1983), Murray (2001a, 2001b).

[7] In economic terms, the policy shift towards aggressive maritime predation may have constituted an effort to secure a new source of "protection rent" even if only negatively through the displacement of higher protection costs to the Portuguese. "There are some protection costs which are obviously defensive—such as the cost of convoys to ward off pirates; others— such as the cost of

capturing ships of other nations engaged in competing enterprises-might be called offensive protection costs" (Lane 1979: 27).

[8] There is considerable evidence that the East Indian principalities frequently engaged in maritime actions that corresponded to contemporary European notions of Piracy. Rubin has pointed out that Malaysian rulers often employed maritime violence when enforcing local trade monopolies (1975: 122).

[9] For a comprehensive review of contemporary jurisprudence, see Sundberg (1993), who takes a refreshingly nominalist approach to the entire issue: "Many contemporary problems arise from the belief that words generally, and legal terms particularly, must have an inner meaning, just like children must have parents. Legal terms have no meaning except in relation to their practical context. The understanding of a legal term means only that one realizes how to use it in communication with others" (1993: 337). Going beyond Sundberg, I would highlight the relevance of his comments to deconstruction; that the "practical context" of legal praxis, no less that the "textual context" of literary criticism, is always unstable.

[10] "The outcome of the revolution— i.e., the confederative constitution of the Dutch Republic— seems to suggest that the provinces were simply incapable of overcoming their traditional regionalism and that provincial autonomy was the most important element in the political creed of the rebels" (Smit 1970: 52); see Downing (1992: 212-38).

[11] For Grotius, every society, "including States, is regarded as deriving its existence, in the last resort, from the Individual; and [no society] rises above the level of a system of relations established by agreement between the owners of individual rights" (Gierke 1958: 78).

[12] For Grotius, a remarkably "positivist" sentiment.

[13] "Medieval legal thought was still rooted firmly in the archaic concepts [*sic*] of revenge. Each legal injury required revenge" (Grewe 2000: 70).

[14] John Locke himself, with classic understatement, proclaimed it "a very strange doctrine" (1988: 272).

[15] Compare the position of the Dutch Admiralty Board with the speech attributed to the Pirate Captain Bellamy by Defoe: "I am a free Prince, and I

have as much Authority to make war on the whole world, as he who has a hundred sails of ships at sea, and an army of 100,000 men in the field; and this my conscience [i.e., Natural Reason] tells me" (Defoe 1999: 587).

[16] Although widely regarded as a "shocking anachronism," the revitalization of corporate mercenaries operates in tandem with the exploitation of the peripheral zone by the core zone states; "in most states where mercenaries were involved, there seemed to be vital economic interests at stake, usually mining and oil interests" (Zarate 1998: 87, 89). "Analytically, this is the road back to feudalism" (Wallerstein 1999: 132). In this way, the localized "new world disorder" engendered by the modern world-system "has given birth to [security companies], which act as surrogates for state power" (Zarate 1998: 81).

[17] This overlapping of functions was not contingent but a necessity. "Northern European merchant empires initially arose in close association with both war and commerce; when the two elements were combined in a predatory and aggressive trade, it was piracy. And commerce was equally nourished when the cargo sold in home ports had been seized rather than bought. Violence then was not a trait of piracy but more broadly of the commerce of that age. Commercial profits were linked pragmatically to considerations of war and aggression, though at the same time the state could be expected to put protective formations in place, like convoys that became a regular practice in the seventeenth century" (Perotin-Dumon 1991: 201-2). Precisely to the degree that the "private" Company could fulfill the necessary service of "protection provider" was it legitimately invested with Original Personality.

[18] Here self-consciously deployed as an historical neo-logism; the "dangerous classes" was a "concept that came into existence precisely in the early nineteenth century to describe persons or classes who had neither power, nor authority, nor social prestige, but were making political claims nonetheless" (Wallerstein 1999: 145).

[19] Herein we witness the "dangerous" migration from political to military to criminal organization, an outstanding sixteenth-century example of the convergence between wars of national liberation and trans-national "black markets." "In the summer of 1569 [William of] Orange hired some new warships in England in order to form a new war-fleet, but again after a short time the captains he appointed turned to piracy. Since Orange was unable to pay [the Sea-Beggars] an adequate wage, they had no alternative other than to support

themselves by plundering merchant shipping. It was here that the consistories came in. The Dutch colonies of refugees in England provided an ideal market for the prizes taken by the Beggars, and they very soon became the centers of a highly profitable and efficient distribution network." Appropriately enough, it was these very "Pirates" who guaranteed the first phase of the Dutch Revolt by seizing the port-city of Brill in 1572 (Parker 1990: 121, 131-5).

[20] "The VOC's success was to no small extent achieved because of the secrecy of its affairs and its decentralization at home— either of which could with hindsight appear as weaknesses" (Barendse 2002: 416).

[21] Defined as "the extension of legitimate market activities into areas normally proscribed for the pursuit of profit and in response to latent illicit demand. In this context, the loan shark is an entrepreneur in the banking industry; the drug or cigarette smuggler is a wholesaler and the fence a retailer; and the bribe-taker is a power broker" (Smith 1978: 164; see also Haller 1990).

[22] The same held true for the English East India Company (see Marshall 1997).

[23] Smuggling "became a way of life that linked the merchants of the core countries to the producers of peripheral countries they did not directly control" (Wallerstein 1980: 160).

[24] "For the pattern of commerce to be profitable the goods must continue to flow; the taxation or belligerent interdiction (or robbery) must not be so burdensome as to drive trade away; even risk-sharing through insurance must be managed in such a way that the risk does not become so great as to be insurable" (Rubin 1975: 22).

[25] For discussion, see e.g., Wallerstein (2001: 25-31; 1999: 40, 70-1, 131-2, 150-3, 204; 1991: 104-22); Arrighi et al. (1987: 1-51). "Rather than chance associations of individual criminals, eighteenth-century European pirates can now be seen as a socially deviant subculture engaged in the inchoate maritime revolt: 'a blind popular uprising, a *jacquerie* directed against sea captains and merchants, almost a slave revolt'. This spasmodic uprising was characterized more by the centrifugal binding ethos of a primitive, yet definable, proto-ideology than by centripetal motives of individual greed. It is this *gestalt* which nourished the revolt as it waged war on the entire world with astounding vigour" (Kinkor 2001: 196).

[26] For Organized Labor, see Wallerstein (2001: 117, 166, 168); for National Liberation, see Wallerstein (1999: 2-30). Anti-colonialism provided the nexus between the two movements.

[27] To a degree, this assertion is axiomatic; "opposition to oppression is co-determinous with the existence of hierarchical social systems" (Arrighi et al. 1987: 29).

[28] Some of these arguments can be followed in Braudel (1972, II: 865-91); Wallerstein (1974: 55-6, 141-3, 196, 198, 200, 211, 218, 266, 276, 280, 334, 355; 1980: 48, 51, 69, 91, 111, 128, 157-61, 163, 182, 188, 198, 238, 249, 260, 271-2); Rediker (2004: 19-37).

[29] By the beginning of the eighteenth century, "individuals had particularly good reasons for resisting the nascent European national state. The judicial system was rapidly turning into a mechanism for defending property and for producing and disciplining labor. Capital punishment was expanded with a vengeance. ... By 1800, 'at least in theory, English property law was protected by the most comprehensive system of capital punishment ever devised.' ... It is not surprising, then, that resistance to European states and society was fierce nor that it took the form of an attack on property [*lucre causa*; *animo furandi*]. Piracy was not simply or always an economic crime— the theft of private property. It was also a political act— a protest against the obvious use of state institutions to defend property and discipline labor" (Thomson 1994: 46).

[30] Braudel rightly highlights the sporadic nature of vagrant insurgency; "its spontaneous bursts of violence were isolated" (1982: 512).

[31] Again, it is most useful to regard peasant brigandage as a primitive form of anti-systemic movement, embedded within the internal political logic of the European sub-system (Wallerstein 1974: 143).

[32] In this regard, Piracy most closely resembles Hobsbawm's notion of Social Banditry. A variant of "primitive rebels," Social Bandits/Pirates are "revolutionary traditional" (Hobsbawm 1971: 5, 27, 28); see also Hobsbawm (1969: 24-9).

[33] The international maritime proletariat of the eighteenth century constituted the world's "first collective laborer" (Linebaugh and Rediker 2000: 130). "Seamen were one of the largest and most important groups of free wage

laborers in the international market of the eighteenth century ... the seamen occupied a pivotal position in the creation of international markets and a waged working class, as well as in the worldwide concentration and organization of capital and labor" (Rediker 1987: 77, and see 205-53; see also Linebaugh 1991: 123-42).

[34] "Hydrachy" denotes "two related developments of the late seventeenth century: the organization of the maritime state from above, and the self-organization of sailors from below. As ... sailors made the Atlantic a zone for the accumulation of capital, they began to join with others in faithfulness and solidarity, producing a maritime radical tradition that also made it a zone of freedom. The ship thus became both an engine of capitalism in the wake of the bourgeois revolution in England *and* a setting of resistance, a place to which and in which the ideas and practices of revolutionaries defeated and repressed by Cromwell and then by King Charles escaped, re-formed, circulated and persisted" (Linebaugh and Rediker 2000: 144-5). The State's ability to effectively repress Piracy and to re-establish disciplinary control over the maritime proletariat was, in itself, a key signifier of that State's successful transition to Absolutism; in this sense, the "de-democratization" of maritime violence served as an indispensable characteristic of juridical Modernity. See Thomson (1994: 43-54).

[35] The political transgressions of the maritime proletariat were most frequently expressed, in ascending order of seriousness, as desertion, mutiny, riot, and Piracy. "The mass resistance of [Anglo-American] sailors began in the 1620s, when they mutinied and rioted over pay and conditions; it reached a new stage when they led the urban mobs of London that inaugurated the revolutionary crisis of 1640-1" (Rediker 2004: 288-98, 156).

[36] Wholly explicable in terms of world-systems analysis: "the third pillar of liberal geo-culture was the depoliticised incorporation of the dangerous classes, which might otherwise be called the taming of the anti-systemic movements" (Wallerstein 1996: 95).

[37] The "suppression of piracy within national frameworks is important as an indicator of new State power; in particular the array of policies used to subdue pirates— including punishment or pardon, regulation or toleration— shows the concrete limits within which a State was able to assert itself" (Wallerstein 1996: 199; see also Zahedieh 1990).

[38] Rosenau expressly identifies post-international politics with the un-regulated proliferation of "sub-groupism" (Rosenau 1990: 403-12).

[39] "Those involved in political conflict or war ... are increasingly impelled to use drugs as a source of money with which to buy arms" (Arlacchi 1983: 218).

[40] The work of Robert Jackson on "Quasi-States" or "Judicial States" is pivotal in this regard (1987: 526-8). Quasi-States "are states mainly by international courtesy," correlating with the concept of Juridical Statehood, which is "derived from a right to self-determination—[a form of] negative sovereignty—without yet possessing much in the way of empirical statehood, disclosed by a capacity for effective and civil government—positive sovereignty" (1987: 528, 529).

[41] "On Saint Mary's [Island], the pirates formed what may well be the most democratic and egalitarian society in human history ... [representing] a natural extension of common mariner practices" (Rogozinski 2000: xii and 182). Rogozinski is in doubt as to the innately anti-systemic nature of the pirate "republic" of Libertalia. However, the chapters on Captains Mission and Tew which comprise the entirety of the General History's account of Libertalia have been described by a leading Defoe scholar as the author's "most remarkable and neglected work of fiction" (Schonborn in Defoe 1999: xxxvii). See Defoe's (1999) *General History*, 383-439; even if it is wholly fictitious, it still serves as a subversive parody of the luminal boundary separating the bourgeois capitalist from the pariah entrepreneur. "The laughter elicited diminishes, for Defoe has suddenly revealed another world shockingly analogous to the pirate's, a world of politicians and statesmen, in which a more sophisticated group of robbers, thieves and profligates resides" (Schornborn in Defoe 1999: xxxvii). On Defoe's sole authorship of *The General History*, see Moore (1939); for a contrary view, see Furbank and Owens (1988).

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Eric Wilson is Senior Lecturer of Public International Law, Monash University, Melbourne, Australia (Eric.Wilson@monash.edu)