Beyond the Anarchical Society

Grotius, Colonialism and Order in World Politics

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Contents

1 The orthodox theory of order in world politics

Nowadays, order in modern world politics is usually described in terms of the norms, rules and institutions of the European society of states. The distinguishing characteristic of this international society is that it acknowledges the existence of different political systems and cultures in the world, and attempts to facilitate their peaceful coexistence with one another by promoting toleration. It tries to achieve this goal through the normative principle of the reciprocal recognition of sovereignty: each state is supposed to recognize the independent sovereignty of the others within their territorially defined spheres of domestic jurisdiction. Thus no state is allowed to interfere in the internal affairs of another, and each has the space to develop its own way of life as it chooses. Numerous implications for the structure of international order follow from this starting point. Because each state is an independent sovereign, there is by definition no central authority that can lay down and enforce international law, maintain peace and security, or compel the members of international society to act in ways that are contrary to their national interests. The institutions of the society of states therefore have to be able to cope with extreme decentralization, even anarchy. For example, the integrity of the system and the independence of its individual members are primarily maintained by the highly flexible and voluntaristic institution of the balance of power, albeit sometimes with the addition of a special managing role for the great powers. Another important example is the distinctive character of modern international law: in line with positivist doctrines, and in contrast with theories of natural law, the only foundation for legally binding rules in international society is the volition of states, and the scope of international law is therefore restricted to rules to which states have given their consent.

At the risk of stating the obvious, the theory that order in modern world politics is built upon a society of states like this rests on two propositions: that the modern international system is composed of states, in other words that it is a 'states-system'; and that in their relations with one another, states do indeed constitute something that can reasonably be

described as a 'society'.[1] Both of these propositions have a long history in political and legal thought. The idea of a states-system originated about 200 years ago. In its current form, as a description of a system of mutually independent states who recognize each other's territorial sovereignty, it was developed by late eighteenth and early nineteenth-century conservative historians who wanted to present a picture of European public order that would legitimize their efforts to contain the French Revolution and undermine the Napoleonic imperial system; they worked out the notion of a states-system (*Staatensystem*) to achieve that end. The proposition that international relations can be described as a society is even older. This idea was first developed in the sixteenth and seventeenth centuries, by legal scholars who tried to describe the binding force of the law of nations (*ius gentium*) in terms of a society of nations (*societas gentium*). As one would expect, their understanding of society was heavily coloured by their jurisprudential interests: the crucial evidence for the existence of a society, on this view, is the existence of an authoritative legal order, and international society is synonymous with an order of binding norms and rules that applies to all rulers and peoples.

The theory of the modern society of states that scholars use today is a combination of these two strands of thought: the political-historical concept of a states-system and the legal concept of a *societas gentium*. But it is important to notice that current scholarship typically *begins* with the idea of a states-system, and only then adds the proposition that an international society exists, suggesting that having established a systematic pattern of relations with one another, states then go on to constitute a society by making a collective commitment to observe certain shared norms, obey general rules and participate in common institutions.[2] Ironically, that is a reversal of the chronological order in which the concepts actually emerged in political and legal thought, where the idea of a *societas gentium* preceded the idea of a states-system by over one hundred years. It should immediately be obvious that this transposition might lead to problems. In the first place, the contemporary theory of order in modern world politics relies on an account of the historical development of European public order that is highly polemical, having been designed by reactionaries to suit their needs in the struggle against Revolutionary France and the Napoleonic Empire. Secondly, it offers an interpretation of sixteenth and seventeenth-century legal thought about international society that is largely carried out in terms of a pattern of order and a set of normative principles that were, for the most part, quite unknown to

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[1] One of the clearest examples of this argument is Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), ch. 1.
[2] *Ibid.*, p. 13.

the theorists concerned; it refracts earlier theories through the prism of later ones. The current conventional wisdom about the society of states is therefore suspect both in its description of the pattern of order in the modern international system and in its treatment of the concerns of earlier legal theories of international society.

Unfortunately, most people take the orthodox theory of order in modern world politics at face value. Few have investigated the sources for its concept of the states-system to ask what might have been left out by the counter-revolutionaries who invented the idea; nor have many scholars questioned the accuracy of the prevailing interpretation of the older legal concept of international society. I will explore both of these issues here, with the intention of demonstrating the limitations of the orthodox theory. Like the conventional approach, I will begin with the concept of a states-system, explaining exactly where this idea came from, and what was left out of it, deliberately or otherwise; I will also look at how the concept has been developed in contemporary theories of the society of states, where despite considerable additions the most serious original flaws of the concept have not been corrected. Then I will look at orthodox accounts of the concept of international society, charting the confusions and distortions that have been created by the effort to fit sixteenth and early seventeenth-century legal theories into the context of eighteenth and nineteenth-century political debates. As I indicated in the introduction, throughout this chapter my focus will be on the 'English school' (or the British committee on the theory of international politics), and especially Hedley Bull, whose theory of the 'anarchical society' of states has been hugely influential in contemporary international relations theory, and which I consider to be a reasonable proxy for the entire contemporary literature on modern international society. Nevertheless, it is worth repeating that the English school should in no way be thought of as having originally developed this way of thinking about order in modern world politics: the orthodox theory that I am describing here has been a part of mainstream scholarship for over a hundred and fifty years, as the influence of the new counter-revolutionary history of the states-system began to make itself felt among both political and legal theorists.

The origins of the idea of a states-system

When the members of the English school began to construct a theory of international relations, they agreed that their work ought to include an historical analysis of the distinctive characteristics of modern world politics. To bring that element into their research programme, they decided to focus on the comparative history of states-systems. In many ways, that

was the obvious choice. One of the British committee's leading members, Herbert Butterfield, had great respect for the original authors of the concept of a states-system – the 'Göttingen' or 'German historical school' – whom he saw, with good reason, as the founders of modern historiography.[3] Their thesis that the distinction between the medieval and modern worlds can be understood in terms of the development of a decentralized system of mutually independent sovereign states, a *Staaten-system*, has exercised a pervasive influence on historical, sociological and political theoretical scholarship over the last 200 years, and continues to do so today; the English school are hardly alone in having fallen under its spell.[4] And, in any case, the members of the English school firmly believed that by studying the European states-system they could uncover phenomena of general and lasting significance for contemporary world politics, if only because, as Bull observed, Europe's long period of global dominance had attached a unique importance to that particular way of organizing international affairs.[5]

Nevertheless, we should not lose sight of the fact that the decision to focus on states-systems had serious implications for the orientation and unfolding of the English school's research programme. In adopting this idea as their organizing concept, the British committee were aware that they were committing themselves to a particular theory of modern history that had been developed in the late eighteenth and early nineteenth centuries by scholars who were 'apologists or protagonists' for the European states-system at a time when it was facing a mortal threat from the French

[3] Herbert Butterfield, *Man on his Past* (Cambridge University Press, 1955). See also Butterfield, *The Origins of History* (London: Eyre Methuen, 1981). The most famous member of the German historical school, and the most influential in terms of the development of modern historical method, was Leopold von Ranke, but on the idea of a states-system the key thinker was A.H.L. Heeren. So far as the English school's historical research programme was concerned, the *Ur*-text, so to speak, was Heeren, *Manual of the History of the Political System of Europe and its Colonies, from its Formation at the Close of the Fifteenth Century to its Re-Establishment upon the Fall of Napoleon*, translated from the 5th German edn, 2 vols. (Oxford: D.A. Talboys, 1834) (the 1st edn was published in 1809). See Bull, *The Anarchical Society*, p. 12; Martin Wight, *Systems of States* (Leicester University Press, 1977), pp. 20–1; Adam Watson, 'Hedley Bull, States Systems and International Societies', *Review of International Studies*, 13 (1987), 147–53; and Watson, 'Systems of States', *Review of International Studies*, 16 (1990), 99–109.

[4] For an interesting historical attack on this widespread assumption, albeit one that follows a rather different tack from my own, see Nicholas Henshall, *The Myth of Absolutism: Change and Continuity in Early Modern European Monarchy* (London: Longman, 1992).

[5] Hedley Bull, 'The Emergence of a Universal International Society', in Bull and Adam Watson (eds.), *The Expansion of International Society* (Oxford: Clarendon Press, 1984), p.124; on its relevance to contemporary world politics, see also Watson, *The Evolution of International Society* (London: Routledge, 1992), p. 196. I ought to add that I strongly disagree with Bull on that point, as will become clear in due course.

Revolution.[6] The idea of a states-system was originally developed as part of the attempt to justify certain normative principles as the authentic basis for order in modern world politics; for all the merits of the concept as a way of highlighting genuinely important dimensions of modern and contemporary international relations, its initial purpose was to stigmatize the French Revolution, and especially the Napoleonic imperial system, as unlawful in terms of the 'traditional' principles of European public law and order. Like all good propaganda, the historical concept of the states-system contained a substantial kernel of truth, but presented in a distorted way. It exaggerated the significance of some aspects of modern world politics, while down-playing or even ignoring others that were not so helpful to the counter-revolutionary cause. Such distortions may well be inherent in any historical narrative, and the reactionaries were no less scrupulous than their opponents, but I submit that it is unacceptable to take their history for granted as an objective description of order in modern world politics.

Although several scholars have complained about the problems that flow from conceptualizing modern world history in terms of the idea of a states-system,[7] the reasons *why* the orthodox perspective is a distorted one are not fully appreciated at present because far too little attention has been paid to the sources that the counter-revolutionaries used to construct their account of the modern states-system. It is therefore impossible to understand what they were including and, just as importantly, what they were leaving out. The trouble here is that most scholarship on pre-revolutionary thought has concentrated overwhelmingly on speculation about natural law and the law of nations as the root of modern thinking about the European political system, usually tracing a path from Hugo Grotius, through Samuel Pufendorf, to Emerich de Vattel. Certainly, Pufendorf was one of the first to use the idea of a states-system, although he meant something completely different by that term from the way it is now understood. It must also be acknowledged that Vattel's description of the European political system looks remarkably like the orthodox conception of international society in use today:

The constant attention of sovereigns to all that goes on, the custom of resident ministers, the continual negotiations that take place, make of modern Europe a sort of Republic, whose members – each independent, but all bound together by a common interest – unite for the maintenance of order and the preservation of

[6] Bull, *The Anarchical Society*, p. 12.
[7] For a recent discussion of this point, and in my view a very perceptive one, see the introduction to James Muldoon, *Empire and Order: The Concept of Empire, 800–1800* (London: Macmillan, 2000).

liberty. This is what has given rise to the well-known principle of the balance of power.[8]

That does sound familiar, but for all the apparent similarities, Vattel was *not* the main source for the idea of the states-system that the English school put at the centre of their historical research programme. To suppose that he was is to overlook a crucial element of his conception of the European political system and its legal foundation. The early modern legal theorists mentioned above were primarily trying to discern, through rational speculation, principles of natural law that could be used as a general normative framework for the family of nations. By the middle of the eighteenth century, as illustrated *par excellence* by Vattel, this approach was increasingly linked to the belief that revolutions were justifiable if a ruler had violated the fundamental principles of natural law, and that interventions in support of revolutions in other states might be justified on the same grounds.[9] Of course, that was precisely the conclusion that the counter-revolutionaries wanted to avoid, and in consequence they were wary of adopting the natural lawyers' conception of the European political system. They occasionally acknowledged Grotius's reputation, but did not use his or any other earlier theories of natural law to any great extent.[10]

Nevertheless, with the French revolutionary armies in the ascendant and with the prospect of Napoleonic hegemony looming, the reactionaries were more desperate than ever for an account of European public law that would justify the principle that the liberty of individual states should be respected; their problem was that they needed an argument that would support this point without jeopardizing monarchical dynasticism. The solution lay in a quite distinct, and now somewhat neglected, literature on the law of nations that had also been developing since the mid-seventeenth century. In contrast with the more abstract, rationalist approach of the natural lawyers and the *philosophes*, this literature was based on the empirical analysis of treaties: a typical work would present a collection of the texts of some important agreements, with a commentary on the negotiation process that had led to them and an analysis of the implications of their provisions for the rights and duties of individual rulers.[11] With

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[8] Emerich de Vattel, *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Sovereigns*, trans. C.G. Fenwick (Washington: Carnegie Institution, 1916), p. 251.

[9] *Ibid.*, p. 340. As I will explain in more detail in chapter 2, Grotius had developed a completely different way of justifying resistance, and arguably a rather more opaque one, based on the divisibility of the sovereign power rather than appeal to natural law.

[10] See, for example, Heeren, *History of the Political System of Europe*, vol. I, p. 173.

[11] For example, Frederic Leonard, *Recueil des Traitez de Paix . . . depuis pres de Troi Siecles*, 6 vols. (Paris, 1693); 'S.W.', *A General Collection of Treatys . . . from 1648 to the Present*, 4 vols. (London, 1710–32); Jean-Yves de Saint-Prest, *Histoire des Traités de Paix . . . depuis*

only a few exceptions, the treaties in question had been made by dynastic rulers, and usually involved the transfer of specific prerogatives from one family to another. They thus served the counter-revolutionary purpose well in so far as they trapped France, like other states, in a restraining web of treaty obligations, while reinforcing the claim that European public order as a whole rested on the principle of respect for the lawful rights of dynastic rulers codified in the treaties.[12] This led easily enough to the conclusion that the European system had traditionally been a 'system of predominant monarchies', which, the reactionaries added, had performed a valuable function by limiting the potential for disorder and conflict by 'preventing the people from taking a more active part in public affairs'.[13] The republicanism of the French revolutionaries, their interventions on behalf of revolutions elsewhere and their 'sophistical' notion of popular sovereignty, could be labelled not merely as subversive and unlawful, but as destructive of the sensible 'cabinet policy' that had been an indispensable element of order in the European system over the preceding century and a half.[14]

Although it reinforced the rights of dynastic monarchs, the mere analysis of treaties was not quite enough, however. Unfortunately for the counter-revolutionaries, the historical literature on prior agreements between European rulers did not fully endorse the idea that the basic principle of the European legal order was the preservation of the mutual independence of the members of the states-system. On the contrary, the close reading of treaties often pointed towards patterns of overlapping rights and privileges, more a system of mutual dependency than the reverse. An excellent example was the constitution of the Holy Roman Empire as codified by the Peace of Westphalia, a subject particularly dear to the heart of the historians at the University of Göttingen (arguably,

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la Paix de Vervins, 2 vols. (Amsterdam, 1725); Jean Dumont, *Corps Universel Diplomatique du Droit des Gens . . . depuis le Regne de l'Empereur Charlemagne*, 6 vols. (Amsterdam, 1726); and G.F. de Martens, *Summary of the Law of Nations, Founded on the Treaties and Customs of the Modern Nations of Europe*, trans. William Cobbett (Philadelphia, 1795). Martens, incidentally, was a professor at the University of Göttingen, which perhaps provides an institutional connection explaining the importance of this line of argument to the counter-revolutionaries, and especially Heeren. For some biographical details, see Arthur Nussbaum, *A Concise History of the Law of Nations* (New York: Macmillan, 1947), pp. 163–77.

[12] For an interesting early version of this line of argument, which almost anticipates the later fusion of treaty obligations with the balance of power made by the counter-revolutionaries, see Jean Dumont, *Les Soupirs de l'Europe, Or the Groans of Europe at the Prospect of the Present Posture of Affairs*, anonymous translator (1713), especially pp. 32, 75 and 84ff. Dumont was one of the most highly respected international legal historians of the eighteenth century.

[13] Heeren, *History of the Political System of Europe*, vol. I, p. 9.

[14] *Ibid.*, vol. I, p. 10 and vol. II, p. 162.

the leading centre of counter-revolutionary historical scholarship). At the core of the imperial constitution was the idea of 'territorial sovereignty' (*Landeshoheit*), which defined the specific bundles of prerogatives – often known as the 'German liberties' – that were held by the imperial electors, princes and so on, in contrast to the 'reserved rights' held by the emperor himself. Of course, this was not 'territorial sovereignty' as we would understand it today, and it certainly did not equate to outright independence. One of the pre-revolutionary Göttingen experts on the subject, Johann Stephan Pütter, maintained that the Westphalian settlement had not simply worked against imperial despotism, but also served to prevent the estates from abusing their limited rights of territorial sovereignty by claiming to be completely independent entities. In this respect, he likened the imperial constitution to arrangements in other carefully balanced 'compound' bodies with mixed constitutional systems, such as the United Provinces of the Netherlands and the United States of America.[15] That posed a serious problem for the later counter-revolutionary scholars: if the French could establish their own set of 'reserved rights' through treaties, the new imperial system (or 'federal' system, as the French preferred to call it) might even be legitimized as the successor to the old one.[16] Ostensibly, the counter-revolutionaries wanted to present themselves as the defenders of the traditional liberties of the German and other states, but they were hardly going to commit themselves to that role if it merely meant replacing the Habsburg dynasty with a Napoleonic one at the head of a revitalized European empire.

Not unlike Vattel's fusion of the theory of natural law with the practice of the balance of power, the solution was to build a bridge between

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[15] Johann Stephan Pütter, *An Historical Development of the Present Political Constitution of the Germanic Empire*, trans. Josiah Dornford, 3 vols. (London, 1790), vol. II, pp. 168ff.

[16] Although not articulated in quite these terms, something like this argument was made by the French themselves, who argued that they were actually *restoring* the traditional European pattern of law and order after its destruction by the expansiveness of Russia and Prussia, and by the rival commercial and maritime system established by Great Britain: Alexandre Maurice Blanc de Lanautte, Comte d'Hauterive, *De l'Etat de la France à la Fin de l'An VIII* (Paris: Henrics, 1800). The power of Hauterive's thesis is evident from the fact that one of the first counter-revolutionary responses was to deny that the Peace of Westphalia had created a general European system at all: Friedrich von Gentz, *On the State of Europe before and after the French Revolution; Being an Answer to the Work Entitled De l'État de la France à la Fin de l'An VIII*, trans. John Charles Herries, 2nd edn (London: Hatchard, 1803). This argument ran perilously close to ruling out the idea of a traditional legal order that the Revolution was subverting, and in later counter-revolutionary works the central position of the Westphalian settlement as the foundation of the European balance of power was largely restored. For an interesting discussion of some of the international legal issues raised by the Napoleonic system, and an illustration of how quickly the counter-revolutionary position found its way into mainstream textbooks on international law, see William Manning, *Commentaries on the Law of Nations* (London: Sweet, 1839), ch. 10.

the empirical studies on European treaties and the numerous pre-revolutionary books on the strategic nature of the European system, which had long argued that it was in the common interest of all rulers to operate a balance of power that would guarantee their mutual independence.[17] A vital early text in the counter-revolutionary arsenal by C.W. Koch[18] (subsequently revised by his colleague F. Schoell) made precisely this move, producing an account of the modern European political system that captures the core elements of current thinking about international society in a way that has undergone remarkably little change in the 200 years since the book first appeared. From a starting point rooted in the empirical-historical analysis of European treaties, Koch developed a much more wide-ranging analysis of the underlying principles of the balance of power and mutual independence in the European system as a whole than was usually the case in earlier historical works, which had tended to focus on the details of individual treaties. His central point was that:

The object of this system is to maintain public order, to protect the weak against the strong, to put obstacles in the way of the ambitious projects of conquerors, and to prevent dissensions that might lead to the calamities of war. Uniting the different sovereigns of Europe in a common interest, it commits them to sacrificing their individual desires to the general good, and creates, so to speak, one family.[19]

Unlike Vattel's thesis, however, Koch's account of this system rested not upon natural law but upon the normative and legal order furnished by treaties. The system's foundation, he argued, was the Peace of Westphalia, which had established the basic conventions of modern international affairs and had been 'constantly refreshed by all the subsequent treaties up to the French Revolution': the Peace was thus 'the turning-point of

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[17] The early works on the balance of power had typically been nervous about the threat from Spain: the leading example is Henri, Duc de Rohan, *A Treatise of the Interests of the Princes and States of Christendom*, trans. 'H.H.' (Paris: Thomas Brown, 1640). By the late seventeenth century, Spain had been replaced by France as the likely candidate for world monarchy: see François Paul de Lisola, *The Buckler of State and Justice* (London: James Fisher, 1667); Slingsby Bethel, *The Interest of Princes and States* (London: John Wickins, 1680); and John Campbell, *The Present State of Europe, Explaining the Interests, Connections, Political and Commercial Views of its Several Powers*, 3rd edn (London: Longman, 1752).

[18] Koch's attitude to the Revolution was more complex than some of the other counter-revolutionaries. He was a deputy *extraordinaire* to the French National Assembly (seeking recognition for the rights of Protestants in Alsace, for which the Peace of Westphalia may well have been an important touchstone), was imprisoned during the terror, and briefly served in the Tribunate before its suppression by Napoleon, when he retired from public life to return to academia in Strasbourg.

[19] C.W. Koch and Frederic Schoell, *Histoire Abrégé des Traités de Paix, entre les Puissances de l'Europe, depuis la Paix de Westphalie*, revised edition (Paris: Gide, 1817), p. 3; this and the following citations are my translation (1st edn published *c*. 1797).

modern politics'.[20] Its unique significance was asserted on the grounds that the Westphalian treaties had confirmed the German states 'for ever in the exercise of their territorial supremacy [*supériorité territoriale*] and in the other rights, prerogatives and privileges that they had hitherto enjoyed'; it had thus set them up as 'a barrier against the other powers', and hence as the foundation of the balance of power in Europe as a whole.[21] At a stroke, Koch had provided exactly what the counter-revolutionaries needed: an account of the traditional pattern of public order in the European political system that highlighted the importance of the balance of power between mutually independent sovereigns, but derived the legitimacy of that system from agreements between dynastic rulers rather than abstract principles of natural law.

Koch's description of the development of the European political system from its Westphalian origins was one of the principal sources for the book that eventually became the starting point for the English school's own historical research programme: A.H.L. Heeren's *Manual of the History of the Political System of Europe* (originally written in German).[22] Apart from his observations about the importance of monarchical government to maintaining political order in general, to which I have already alluded, Heeren's main claim was that the 'essential property' of the European states-system was its 'internal freedom; that is, the stability and mutual independence of its members'.[23] Like Koch, he saw a considerable role for Westphalia in this respect: while he admitted that the Peace had not dealt with all the important political relations on the European continent, it was 'by settling the leading political maxims that the Peace of Westphalia became the foundation of the subsequent policy of Europe'.[24] Crucially, the Peace had attached a new importance to the imperial constitution

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[20] *Ibid.*, p. 6, my translation. The same affirmation about the significance of the Westphalian treaties was also made in C.W. Koch, *Table des Traités entre la France et les Puissances Étrangères, depuis la Paix de Westphalie jusqu'a nos Jours*, 2 vols. (Basle: Decker, 1802), p. 5, and Koch, *History of the Revolutions in Europe*, including additions by Schoell, trans. Andrew Chrichton, 3 vols., *Constable's Miscellany*, 33–5 (Edinburgh: Constable, 1828), pp. 63ff. Few other treaty historians had attached so much significance to the Peace; most, indeed, tended to go back to much earlier treaties as their starting point, and regarded Westphalia as part of a continuum, although it was acknowledged as special because of the widespread participation of so many different rulers.

[21] Koch and Schoell, *Histoire Abrégé*, pp. 6 and 182.

[22] Heeren quite rightly described Koch's *Histoire Abrégé* as 'very important, and indeed, indispensable' to his own work: Heeren, *History of the Political System of Europe*, vol. II, p. 262. It was the only source to which he referred for his account of the crucial period from the death of Frederick the Great in 1766 to the French Revolution. For the English school's discussions of the importance of Heeren, see note 3 above. If any one person invented the orthodox history of modern Europe in terms of the evolution of the states-system, Koch has as good a claim as any; one might almost call the English school's theory of international society a Koch and Bull story.

[23] Heeren, *History of the Political System of Europe*, vol. I, p. 6.

[24] *Ibid.*, vol. II, p. 162.

as the linch-pin of European order, 'indissolubly connected with the maintenance of the balance of power', and this had been achieved by ensuring that '[t]he imperial power was now constitutionally restricted within the narrowest limits; the princes were in the fullest sense rulers of their respective states'.[25] Pütter's earlier point about the proximity between the empire and mixed republican systems like the United Provinces or the United States was grudgingly acknowledged in the admission that the empire was 'a federation under a limited sovereign', but really Heeren saw the imperial constitution in a quite different light, as an example for all of Europe of how a states-system should be organized on the basis of mutual independence and respect for those rights of territorial sovereignty which rendered the princes effectively independent rulers.[26]

The states-system in the English school's research programme

The English school derived its core historical proposition about the normative structure of modern international society from Heeren: that it rests on a system of states, the character of which is defined by the principle of internal freedom, established by agreements between states that reflect their common interest in mutual independence. 'It is this feature', Heeren had argued, 'which distinguishes such a system from one of an opposite class, that is, where an acknowledged preponderance of one of its members exists.'[27] Or, as Adam Watson put it, reflecting on the British committee's choice of an historical research programme: 'The European system since Westphalia – that is, during most of its existence – has theoretically been a society of independent states who all recognize each other as such. The committee accepted the theory.'[28]

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[25] *Ibid.*, vol. II, p. 160–1.
[26] *Ibid.*, vol. II, p. 161. Heeren was contemptuously dismissive about the Dutch Republic, describing it as an 'imperfectly formed' polity that would lead to no republican enthusiasm in the rest of Europe (*ibid.*, vol. II, p. 114). As for the Americans, he remarked (in, I imagine, something of a sneering tone) that 'the state of society in these colonies' inevitably led to a 'considerable leaven of republicanism' (*ibid.*, vol. I, p. 182). On the other hand, he thought that the German Empire was a wonderful arrangement that showed how small states could coexist with large ones (*ibid.*, vol. I, p. 12). Gradually, partly thanks to Heeren's influence, international lawyers began to move from the rather restricted imperial concept of territorial sovereignty contained in the idea of *Landeshoheit*, to a more broadly applicable notion of *Staatshoheit*: see Jean Louis Klüber, *Droit des Gens Moderne de L'Europe*, 2 vols. (Stuttgart: Cotta, 1819), p. 40, and, for his reference to Heeren, see pp. 27–8n.
[27] Heeren, *History of the Political System of Europe*, vol. I, p. viii.
[28] Watson, 'Systems of States', 103. Note the slip here in labelling this theory in terms of the concept of *society*. As I have shown, the idea of the states-system and the idea of a *societas gentium* really originated from completely distinct literatures.

Of course, the English school realized that they could not simply re-
peat Heeren's point of view and leave it at that. Quite a bit had happened
in the 150 years since Heeren produced his argument, to put it mildly,
and they dedicated the bulk of their efforts to trying to bring his concep-
tion of the modern states-system 'down to the present'.[29] In up-dating
Heeren, the English school added two new strands to the original his-
torical narrative of the states-system. First, as I mentioned earlier, they
adopted Wight's suggestion that they should focus on the *comparative*
study of states-systems in different periods and places. Wight's view of
the importance of comparison undoubtedly reflected the influence upon
him of Arnold Toynbee, whose efforts had been directed at a massive
comparative study of the different civilizations of the world. In effect,
the English school substituted Heeren's conception of the states-system
for Toynbee's idea of civilizational systems; as they saw it, this gave their
work more of a specifically international flavour.[30] They produced a host
of studies of different states-systems – such as the Greek city-state system
or the Chinese system of 'warring states' – and, again for purposes of com-
parison, a series of contrasting studies of fundamentally different ways of
organizing international relations – such as the Islamic system. Many
of these discussions were eventually pulled together in Watson's work
on *The Evolution of International Society*, which envisioned a 'spectrum' of
different forms of international political systems, ranging from rela-
tively centralized and hierarchical imperial systems to the more anarchi-
cal states-systems based on the mutual independence of their members.[31]
This conceptual scheme, somewhat richer than Heeren's, allowed Watson
to chart the 'swings of the pendulum' in world politics between the impe-
rial and the mutual independency ends of the spectrum of international
political organization. In his view of modern world politics, however,
Watson tended to stick quite closely to Heeren's original thesis, arguing
that, despite occasional movements towards imperialist centralization and
hegemony, the modern states-system has on the whole remained firmly
in line with the principle of mutual independence.

The second new theme that the English school introduced was a study
of the changes that had taken place to the European system in the years
since its 're-establishment' after the fall of Napoleon. Within Europe it-
self, the most important change involved the abandonment of Heeren's
cherished beliefs that legitimacy in the system rested on the 'sacred-
ness' of the principle of dynastic succession. Instead, and as one of the

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[29] Watson, 'Hedley Bull, States Systems and International Societies', 150.
[30] Arnold Toynbee, *A Study of History*, 11 vols. (Oxford University Press, 1954).
[31] Watson, *The Evolution of International Society*, and see also the numerous unpublished
papers on these topics in the *British Committee Papers* at the RIIA Library.

lingering after-effects of the French Revolution, the nineteenth century witnessed the establishment of a new principle of legitimacy: national self-determination.[32] The old society of absolutist monarchical states gave way to a new society of nation-states. Although this provoked serious disagreements about how the territorial boundaries around the different national units should be drawn, ultimately leading to another great crisis of the states-system in the twentieth century over the 'German question', the basic principle that the independence of states should be respected was not fundamentally challenged by this development. The English school also paid a great deal of attention to another change in the scope of the states-system: its expansion to the world beyond Europe, with the recognition of non-European peoples as sovereign states during the late nineteenth and twentieth centuries. Again, this posed profound questions for the pattern of order that the states-system embodied, especially by suggesting that in practice its internal harmony may to a certain degree have depended on cultural values and understandings that were so deeply shared by its original European members that there had never been much need to make them explicit parts of the states-system's formal legal and institutional structure. The English school confronted this issue by examining how a standard of civilization was established as a criterion for the acceptance of new members to the society of states, requiring them to undergo certain changes to their domestic political and legal systems before they would be granted recognition as equal and independent sovereign states.[33]

The imposition of the standard of civilization did not solve all the problems involved in the expansion of international society to embrace a much more multicultural membership. As Bull argued, once non-European states had been incorporated into the society of states, they began to question various other aspects of its internal organization, leading to what he called a 'revolt against the West', particularly as non-European states began to insist upon more comprehensive rules governing racial discrimination, uniting the international society against the apartheid regime in South Africa. More controversially, they also developed a radical conception of a 'New International Economic Order' that actively promoted greater equality in the global distribution of wealth. Bull pointed out that the non-European states were not always subversive, however; even the 'revolt against the West' had in some respects reinforced the traditional structure of the states-system, since the new states were generally keen to

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[32] James Mayall, *Nationalism and International Society* (Cambridge University Press, 1990).
[33] As well as Bull, *The Anarchical Society*, a more sustained discussion is offered in Gerrit Gong, *The Standard of Civilization in International Society* (Oxford: Clarendon Press, 1984).

assert their prerogatives as equal and independent sovereigns as the basis for sustaining or enlarging their influence in world politics.[34] Nevertheless, Bull still believed that the survival of the states-system and society of states in contemporary world politics would ultimately depend on its ability to create a genuinely cosmopolitan culture, not one based solely on Western values and the 'culture of modernity', that would be able to attract support from both European and non-European peoples.

It would be quite unfair to underplay the importance of these additions to the original theory of the states-system, but it would be wrong to suppose that they are enough to give us a proper account of order in modern world politics. The counter-revolutionary description of the development of European public order does not just need up-dating; it needs to be expanded with respect to its description of early modern world politics. There are two crucial gaps that ought be addressed. First, its hostility to the French Revolution reflects a general antipathy towards republican forms of government, expressed through the contention that the European system was a system of monarchies, where republics like the Dutch achieved little more than grudging recognition. Several contemporary historians have noted that this is a serious understatement of the importance of republicanism to the development of modern European politics, and have attempted to recover a sense both of the role that republics played in early modern Europe, and the relevance of republican political ideas to modern international thought as well.[35]

A second gap, and if anything a more serious one, is the lack of a proper account of the development of international political and legal order beyond Europe. Heeren certainly did not neglect the colonies; indeed they were a central feature of his book. But what is crucial is that he viewed the possession of colonies and the control of extra-European trade merely as material ingredients within the European balance of power. The normative character of relations between European and non-European peoples, or between European governments and their colonial settlers, did not interest him. This could be explained in several ways. It may well have been the case that he simply did not see it as relevant to the central

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[34] Hedley Bull, 'The Revolt against the West', in Bull and Watson, *The Expansion of International Society*, pp. 217–28, and see also Robert Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge University Press, 1990).

[35] Some works on the Dutch Republic, notably Marjolein 't Hart, *The Making of a Bourgeois State: War, Politics and Finance during the Dutch Revolt* (Manchester University Press, 1993), have gone a long way to dispelling some of Heeren's myths about the weakness and ineffectiveness of that form of government on the European stage. On republicanism in Europe more generally, see Robert Oresko, G.C. Gibbs and H.M. Scott (eds.), *Royal and Republican Sovereignty in Early Modern Europe* (Cambridge University Press, 1997), and on international relations theory, Nicholas Onuf, *The Republican Legacy in International Politics* (Cambridge University Press, 1998).

question he was trying to address, namely the legal basis of European public order, as threatened by Napoleon. But there may have been less straightforward reasons: he was trying to stigmatize the Napoleonic imperial system within Europe, and it hardly would have suited that purpose to call attention to the increasingly consolidated British imperial system in the world beyond Europe. Indeed, some French apologists had already accused the British of undermining the Westphalian order precisely on those grounds, and the counter-revolutionaries were anxious to defuse that criticism by treating the colonies as essentially irrelevant to questions about order and legitimacy in world politics altogether.[36] Heeren may also have been mindful of the republican sympathies that the British colonies in America had already had great success in defending: he would have been loath to grant their dangerously radical beliefs any formative role in the structure of modern international legal order.

The English school did not ignore the extra-European world either, but they only turned their attention to it in the later nineteenth century in order to depict the process of the expansion of international society. To all intents and purposes, they accepted Heeren's focus on the European states-system in the earlier period, adding no reflections on how relations between European and non-European peoples had developed over the centuries before questions about the latter's entry into the society of states came on to the agenda. In so doing, however, they had to respond to a very perceptive criticism of the orthodox history of the states-system that was advanced in the 1960s by Charles Alexandrowicz. Alexandrowicz was interested in a contemporary dispute about the treatment of non-Europeans as 'new' states: many of them, he argued, had enjoyed full recognition of their sovereignty in the sixteenth and seventeenth centuries, as evidenced by their treatment in the works of scholars on the law of nations such as Grotius. He took this to imply the existence of a universal family of nations in the early modern period, based on natural law. During the eighteenth and nineteenth centuries, he continued, the new school of positivist international lawyers shrank the family of nations, effectively evicting non-Europeans from membership, and forcing them to apply for readmission on less favourable terms, or subjecting them to outright imperial subjection.[37]

Wight did not reject this argument out of hand, and cautiously agreed that it might be plausible to treat Grotius as having offered a 'dualistic or

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[36] This is a key theme in the dispute between Hauterive, *De L'Etat de la France*, and Gentz, *On the State of Europe*.

[37] Charles Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies* (Oxford: Clarendon Press, 1967), and also 'Empirical and Doctrinal Positivism in International Law', *British Year Book of International Law*, 47 (1974–5), 286–9.

concentric conception of international society', with a universal family of nations surrounding a core of European states in Christendom.[38] Bull, however, was much more hostile. He attacked Alexandrowicz's position on the grounds that the natural law conception of a universal international society was merely hypothetical, and that in any case relations between European and non-European states were not carried on in such a way as to constitute a 'society' because 'they were not united by a perception of common interests, nor by a structure of generally agreed rules setting out their rights and duties in relation to one another, nor did they cooperate in the working of common international institutions'.[39] Bull contended that natural law was merely asserted unilaterally by the Europeans as a rationale for their exercise of colonial and imperial domination over non-European peoples, and he added that it is simply a matter of fact that Europeans have been the dominant military and commercial actors in modern world politics, so it is quite right and proper to devote the bulk of our attention to the arrangements that they worked out in their own society of states.[40]

Although other scholars appear to have been convinced by Bull's argument here,[41] I think it is extremely weak. The first part of the argument is so perfectly circular that it could have been written with a compass: Bull asserts that the natural law position was hypothetical because no international society existed beyond Europe; then, because natural law is only hypothetical, he uses a positivist conception of what an international society is to show that no international society existed beyond Europe. His observation, which in any event is empirically highly debatable, that European and non-European peoples were not united by common interests, a structure of 'generally agreed rules' and collective participation in common institutions, could hardly be of interest to a natural lawyer, who would see a *societas gentium* arising in a quite different way, from the already binding force of a normative and legal code that is a given feature of the natural order of things, and applies to all peoples and rulers whether they agree to it or not. All Bull is really doing here is accusing the natural lawyers of not being positive international lawyers; while that is true enough, it is hardly a compelling criticism of their position.

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[38] Wight, *Systems of States*, p. 128. His own earlier interests in British colonial administration may well have led him to look favourably on Alexandrowicz's argument, but his works on that topic do not seem closely relevant to the position: see Wight, *The Gold Coast Legislative Council* (London: Faber and Faber, 1947), and *British Colonial Constitutions* (Oxford: Clarendon Press, 1952).
[39] Bull, 'The Emergence of a Universal International Society', p. 117.
[40] *Ibid.*, p. 124.   [41] For example, Gong, *Standard of Civilization*.

Secondly, Bull's point that natural law was a rationale for colonialism and imperialism seems to undermine his contention that it was merely hypothetical. Clearly, in fact, natural lawyers were saying something very important indeed about the practices that European states were engaged in outside Europe; to dismiss them as abstract metaphysicians who were increasingly out of touch with the real world of modern politics seems hardly fair, if at the same time we are to blame them for providing the justification upon which two of the most significant forces shaping the modern world were founded. Nor do I find it particularly disturbing that they were asserting this rationale unilaterally and without regard for the wishes of non-European states. As I have already noted, that risks presupposing a positivist doctrine that international society rests on the consent of its members, but it is also worth bearing in mind that the European states-system was asserted in a unilateral way with respect to those groups who were excluded from it, such as the old supranational institutions of medieval Christendom or, in its original context, the French revolutionaries and builders of the Napoleonic imperial system.

The third problem with Bull's argument is that it is a non-sequitur to say that the fact of European dominance means that, whether we like it or not, we should devote the bulk of our attention to the evolution of the European states-system. Since, as Bull obviously realized, European dominance was primarily exercised through practices of colonialism and imperialism, rationalised through natural law arguments, we should devote the bulk of our attention to the forms of international governance that Europeans created in their colonial and imperial systems. To the extent that the fact of European dominance ought to dictate what our research programme on order in modern world politics should be, it directs us *away* from the European states-system, not towards it. Bull was therefore inadvertently supplying as good a reason as one could wish for to justify a study of order in modern world politics completely at odds with his own: an examination of the links between natural law theory and the extra-European political and legal order based on colonial and imperial systems. That does not mean that I am embracing Alexandrowicz's position and completely rejecting Bull's. In his anxiety to load all of the blame for colonialism and imperialism onto the positive lawyers and the Göttingen historians of the European states-system, Alexandrowicz adopted far too rosy a view of early modern natural law. Bull was quite right, in my view, to insist on the importance of natural law to extra-European international politics in its colonial and imperial periods. In a sense, they were both right, since colonizers and imperialists were not particularly choosy as to whether they got their justification from the one legal doctrine or

the other; the eclectic approach of Grotius suited them perfectly in that respect.

I think that that is sufficient to illustrate some of the historiographical problems that are created by the orthodox idea that order in modern world politics is fundamentally defined by the European states-system. But, as we have just seen, the English school, and especially Bull, usually talked about the legal concept of an international society, rather than the notion of a states-system as such. I want to turn now to asking how this blend was achieved, and with what consequences for our understanding of early modern international legal thought, and that of Grotius in particular.

The concept of international society and the 'Grotian tradition'

The second strand of the English school's research programme was an analysis of the history of political and legal thought about international relations, particularly in an effort to identify and develop the special *via media* that they saw as integral to 'Western values'.[42] To locate this middle way, Wight distinguished between three different traditions of 'international theory' (realism, rationalism and revolutionism), each of which had its own particular conception of international society, theory of mankind, theory of war, theory of ethics and so on.[43] Bull tentatively suggested that this scheme of three traditions may have been derived from Otto von Gierke.[44] Gierke had argued that, as early modern theorists of natural law progressively moved away from medieval conceptions of world monarchy, they began to use instead a novel idea of a society of nations (*societas gentium*) to preserve a belief in the efficacy of the law of nations. They were attacked from two sides as they did so: exponents of a strictly absolutist or unitary conception of sovereignty, such as Thomas Hobbes, denied the existence of a *societas gentium* because they found it illogical to place any constraints on the independent will of the sovereign; at the same time, though, there were several thinkers who felt that the idea of a mere society of nations was insufficient, and argued for the creation of a new world-state or empire to replace the old medieval *dominus mundi*.[45]

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[42] Martin Wight, 'Western Values in International Relations', in Herbert Butterfield and Wight (eds.), *Diplomatic Investigations: Essays on the Theory of International Politics* (London: George Allen and Unwin, 1966), pp. 89–131.

[43] Martin Wight, *International Theory: The Three Traditions* (Leicester University Press, 1991).

[44] Hedley Bull, 'Martin Wight and the Theory of International Relations', in Wight, *International Theory*, p. xviii.

[45] Otto von Gierke, *Natural Law and the Theory of Society*, trans. Ernest Barker (Boston: Beacon Press, 1957), p. 85.

This gives rise, then, to a picture of three traditions of international political thought, contrasting theorists of absolute state sovereignty with theorists of a world-state and, in between these two extremes, theorists who uphold the idea of a *societas gentium* as a pragmatic way of defending the efficacy of moral principles and legal rules in international affairs, without insisting on the need for a single *dominus mundi*.

Gierke's brief statement of this line of argument may well have provided, as Bull suggested, the 'germ' of Wight's more elaborate treatise, and it certainly informed Bull's own version of the three traditions, as we will see in a moment.[46] But it is surprising, and revealing, that Bull did not mention another important source for Wight's scheme: histories of international legal thought. Another tripartite distinction appears, for example, in T.J. Lawrence's classic textbook on *The Principles of International Law*, to which Wight frequently referred in his main published essay on the history of international thought.[47] This is important because Lawrence's version differed from Gierke's in a crucial respect. Like most other international lawyers, Lawrence was interested in a disagreement that did not result from the controversy surrounding the concept of a *societas gentium*, but rather from the fact that the more narrowly jurisprudential idea of the *jus gentium* (law of nations) had come to have two distinct senses in the early seventeenth century. On the one hand, Lawrence argued, in its classical Roman sense it was little more than another term for natural law; on the other, it gradually came to be associated with volitional or positive law, established through agreements between states.[48] He maintained that modern juristic debates subsequently revolved around this disagreement about the sources of the *jus gentium*. Some, most famously Samuel Pufendorf, clung to the old view that the law of nations was simply a part of natural law; others, like Richard Zouch, adopted the positivist position and argued that the *jus gentium* depended entirely upon the consent of states.[49] In between, there was an 'eclectic' position, often called Grotian because Grotius was its most celebrated exponent, although run a close second by Vattel, which attempted to derive international legal obligations from both natural law and state volition

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[46] Bull, 'Martin Wight and the Theory of International Relations', p. xviii.
[47] Wight, 'Western Values in International Relations', pp. 101, 102, 112n and 120n. By contrast, Wight did not refer to Gierke once in that essay, although he did use language which clearly reflects a Gierkean influence. To his credit, Bull confessed himself unsure as to whether or not Wight had indeed read the relevant passage in Gierke's book. See also T.J. Lawrence, *The Principles of International Law*, 5th edn (Boston: D.C. Heath, 1910).
[48] Lawrence, *The Principles of International Law*, p. 39.
[49] Zouch is often used as an example in the literature. Nevertheless, in my view the most important architects of legal positivism were the historians of European treaties that I discussed in the previous section, especially Jean Dumont and G.F. de Martens.

simultaneously.[50] The key point here is that students of legal thought like Lawrence generally did not see this as a dispute about whether or not an international society existed, or whether or not the existing international society should be replaced by some kind of world-state. The disagreement, as they saw it, was essentially *internal* to the *societas gentium*, and was sustained by differing views on the sources, and to a degree also the content, of the normative principles and legal obligations that they all agreed were binding upon its members.

I think that the distinguishing characteristic of Wight's history of ideas is that is was neither purely Gierkean nor purely jurisprudential, but sought to combine both. His intention was to unify these two approaches to the study of international relations, an ambitious goal that he hinted at by coining the new label, 'international theory'. Wight used this rather vague term to describe his subject matter because he did not want to commit himself to the historical study of either political or legal thinking about international relations in isolation. On the contrary, his goal was to overcome the 'unhappy partition' that had previously arisen to divide those 'philosophically minded international lawyers' that Lawrence had talked about from the 'internationally minded political philosophers' like Machiavelli, Hobbes and Althusius, with whom Gierke had primarily been concerned.[51] Wight's project was to treat both groups as involved in the development of a single field of 'international theory', to show how they had furnished international relations with its political philosophical foundations, while simultaneously acknowledging that the bulk of speculation explicitly concerned with international affairs had, at least until the twentieth century, been conducted more or less exclusively in jurisprudential terms about the law of nations.[52]

The main problem with Wight's scheme is that this purpose, however admirable it may have been in itself, entangled him in all sorts of difficulties when he tried to explain precisely what was at stake in the debate between the three traditions. At the most fundamental level, the exceptionally broad scope of his enquiry raised the question of whether the three traditions were involved in a disagreement in the wider Gierkean sense about the existence of a *societas gentium*, or in the rather narrower legal sense about the precise sources of the *jus gentium* within a *societas gentium* that everyone took for granted. Wight oscillated between the two. On the one hand, he argued that each tradition had its own distinctive

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[50] For example, Amos Hershey, *The Essentials of International Public Law* (New York: Macmillan, 1912), p. 62.
[51] Wight, *International Theory*, p. 3.
[52] *Ibid.*, p. 1, and Martin Wight, 'Why Is There No International Theory?', in Butterfield and Wight (eds.), *Diplomatic Investigations*, pp. 18–19.