Sir Daniel Dun's *Mare liberum* and the 1613 Anglo-Dutch Conference*

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Abstract

This article recovers the annotations and manuscript notes made by Sir Daniel Dun, an English jurist and diplomatic representative, in his copy of Hugo Grotius's *Mare liberum*. These annotations, this article suggests, were written as the English diplomatic strategy towards the 1613 Anglo-Dutch conference was being drafted, and constitute a valuable insight into the

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intellectual history of the event. Building on the literature on the early modern diplomatic origins of the establishment of modern international law, this article argues that Dun's annotations add considerable nuance to the claims made by George Norman Clark and Willem van Eysinga in their seminal 1951 study of the conference. Dun's copy of *Mare liberum* shows that Roman law and, in particular, the Digest and the Rhodian maritime law, remained influential in early seventeenth-century English debates with the Dutch over the right to trade. By carefully studying Dun's annotations, his marginalia, and their relationship to the conference, this article sheds new light on the English reception of Grotius and its relationship to debates about the sources of imperial legal authority.

Keywords

Hugo Grotius – Daniel Dun – *Mare liberum* – commercial imperialism – book history

I. Introduction

The 1613 Anglo-Dutch conference was an iconic moment in the history of international law, when the possibility of uniting the Protestant Churches and three leading joint-stock companies in Europe, namely the French, Dutch, and English, East India Companies, could be seriously discussed over dinner. The dinner brought together members of the Dutch and English delegations, and Hugo Grotius sat next to his English counterpart, Sir Daniel Dun (c. 1545-1617).[1] This article draws attention to the recently discovered annotations and manuscript notes that Dun, an English lawyer and diplomatic representative, placed on his copy of Hugo Grotius's 1609 *Mare liberum,* often described as the founding document of capitalism, liberalism, imperialism.[2] This discovery contributes to a longstanding debate in the

1 George N. Clark and Willem J. M. van Eysinga, *The Colonial Conferences between England and the Netherlands in 1613 and 1615*, Bibliotheca Visseriana 17 (Lugduni Batavorum [Leiden]: Brill 1940-51), 75.

2 In 2017 Dániel Margócsy and Mark Somos accidentally discovered that the Royal College of Physicians ('RCP') held an extraordinary copy, formerly owned and annotated by Sir Daniel Dun, with forty-seven pages of notes tipped in, and bound with Sebastianus Medices' 1598 *Tractatus de venatione, piscatione et aucupio*. The RCP staff kindly sent some partial photographs that did not allow for a satisfactory analysis. Due to the RCP's major reorganisation, we were unable to obtain complete details until late 2020, when the RCP informed us that they

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history of international law. Seventy years ago, George Norman Clark, professor of history at Oxford and Cambridge, and Willem van Eysinga, member of the Permanent Court of Arbitration and Dutch delegate to the 1919 Paris Peace Conference and, until 1931, to the League of Nations, published two volumes on the 1613-15 Dutch-English negotiations in which they attributed the failure of the negotiations to the difference between Dutch and English views on the relationship between Roman and international law. 'In the Netherlands', they explained, 'the Roman lawyers were the expert men of affairs *par excellence*', while the English were relatively ignorant of Roman law, its concepts, and its terminology, and concluded that it did not have the same significance in determining the English approach to international law. Instead, English jurists prioritised the commercial over the legal and political aspects of the dispute between the East India companies.[3]

Since the 1930 s, historians of the seventeenth century have expanded our understanding of early modern corporations, the English reception of Grotius's work, and Grotius's role in the development of international law.[4] Clark and van Eysinga suggested that James I appointed Dun, judge of the High Court of Admiralty, as part of this eventually failed Roman law revival. The annotations in Dun's copy add nuance and sharpen a number of claims made by Clark and van Eysinga. Dun did indeed draw on Roman Law in order to engage with *Mare liberum*, and this allowed him to discuss diplomacy in a political language that he shared with Grotius. Ultimately, however, economic considerations about English trade superseded discussions about Roman Law. This article studies the context of the conference, and suggests that Daniel Dun drew on the Digest and the Rhodian law when

digitised the entire copy, together with several other books formerly owned by Sir Daniel Dun. This extraordinary document has just become available to all, digitised (albeit incorrectly, as detailed below) at <http://WDAgo.com/s/0192a350>. For a review of *Mare liberum*'s influence see Mark Somos, 'Open and Closed Seas: The Grotius-Selden Dialogue at the Heart of Liberal Imperialism' in: Edward Cavanagh (ed.), *Empire and Legal Thought: Ideas and Institutions from Antiquity to Modernity* (Leiden: Brill 2020), 322-361.

3 Clark and van Eysinga, (n. 1), 53.

4 Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press 2011), 201; Marco Barducci, *Hugo Grotius and the Century of Revolution, 1613-1718. Transnational Reception in English Political Thought* (Oxford: Oxford University Press 2017); Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press 1999). This article contributes to the argument that the Leiden Circle, in the early seventeenth century, further influenced European approaches to natural philosophy and textual analyses of ancient sources, including the Bible. See Mark Somos, *Secularisation and the Leiden Circle* (Leiden: Brill 2011), in particular, 389-390; Mark Somos, Secularization In De Iure Praedae: From Bible Criticism To International Law, in: Hans Blom (ed.), *Property, Piracy and Punishment: Hugo Grotius on War and Booty in De iure praedae* (Leiden: Brill 2009), 147-191 (149-151).

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preparing his notes on *Mare liberum*. The following pages thus incorporate Dun's reading of Grotius into the reception history of *Mare liberum*, and draw attention to the role of debates on Roman law and economics in the construction of international law.

II. The Anglo-Dutch 1613 Conference

When in 1613 Hugo Grotius travelled to England to meet King James I, he was aware that two radical proposals were set to be discussed: the establishment of an ecumenical council of all Protestant Churches and the union of the largest commercial corporations in Europe.[5]

In the early seventeenth century, repeated clashes in the Spice Islands between officials of the Dutch Vereenigde Oostindische Compagnie (VOC), and captains of the English East India Company (EIC), encouraged the pursuit of a diplomatic solution.[6] The 1613 Conference threw into relief the range of overlapping interests at the core of Anglo-Dutch relations. Confessionalism, the struggle against the Iberian empires, and scholarly debates about native peoples, the law of nations, and contracts, all influenced the discussions between the Dutch and the English representatives.[7] Perhaps, diplomats on both sides hoped, cooperation between the two corporations could resolve the tensions between the two empires and generate new commercial opportunities.[8] In March 1612, building on the argument that the Anglo-Dutch alliance could undermine the Iberian powers in the region, Dutch negotiators proposed the union of the two companies, the VOC and the EIC.[9] One of the Dutch envoys sent to negotiate the matter was Hugo Grotius. The VOC was represented by Reynier Pauw and his son Michiel,

5 King James I had, a year earlier, expressed and reiterated his lack of interest in Grotius's plan to unite the Protestant Churches. See Edwin Rabbie, Grotius, James I, and the Ius Circa Sacra, Grotiana 24/25 (2003/2004), 25-40 (30-31).

6 Clark and van Eysinga, (n. 1), 22-42. For a comparison of the origins and structures of the two companies see Holden Furber, *Rival Empires of Trade in the Orient 1600-1800* (Minnesota: University of Minnesota Press 1976), 185-272 and, more recently, Adam Clulow and Tristan Mostert (eds.), The Dutch and the English East India Companies: Diplomacy, Trade and Violence in Early Modern Asia (Amsterdam: Amsterdam University Press 2018).

7 Clark and van Eysinga, (n. 1), 42-96; Martine J. van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies 1595-1615* (Leiden: Brill 2006), 359-371; Henk J. M. Nellen, *Hugo Grotius: A Lifelong Struggle for Peace in Church and State, 1583-1645* (Leiden: Brill 2014), 149-162; Peter Borschberg, 'Hugo Grotius, East India Trade and the King of Johor', Journal of Southeast Asian Studies 30 (1999), 225-248.

8 George N. Clark, 'Grotius's East India Mission to England', Transactions of the Grotius Society 20 (1934), 45-84 (57-58).

9 Clark and van Eysinga, (n. 1), 58-60.

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Dirck Meerman, and VOC director Jacob Boreel.[10] Another delegate, Johan Boreel, Jacob's son, may have had a hand in leaking and publishing *Mare liberum* in 1609, perhaps with Grotius's tacit consent, in the face of Oldenbarnevelt's request that Grotius should suspend its publication.[11] Grotius joined the delegation at short notice.[12] Daniel Dun, on the other side, was the legal official who generated and developed the main arguments for the English delegation.[13]

Free trade as an *ius gentium* right had been a part of the English negotiating position since the preparations for the conference. In the context of these preparations Robert Cecil, 1st Earl of Salisbury sent a petition drafted by EIC merchants to Sir Ralph Winwood, ambassador to the States-General. In the cover letter Salisbury explained:

> 'that the East-India Marchants have complained of divers Wrongs and ill Offices which have been offered them by the Hollanders; who not respecting the Friendship that is between his Majesty and the United Provinces, and contrary to that generall Law of Nations which admitteth a Communion and Liberty of Commerce, would seek so much as lyes in them to hinder and excluide the English from tradeing in those Parts.'[14]

These themes built on English political thought. The writings of the antiquarian John Dee first supplied England with a maritime definition of empire that provided an alternative to the Iberian imperial claims based on territorial possessions.[15] The maritime definition of empire generated novel spatial interpretations. The writer Richard Hakluyt, in a brief that was aimed to encourage Queen Elizabeth to grant the English East India Company a charter, suggested that sovereignty had to be maintained through the use and

10 Nellen (n. 7), 149-150.

11 Mark Somos and Daniel Margocsy, 'Pirating Mare liberum', Grotiana 38 (2017), 176-210 (178).

12 Peter Borschberg, *Hugo Grotius, the Portuguese and Free Trade in the East Indies* (Singapore: NUS Press 2011), 43.

13 On the members of both commissions see Clark (n. 8), 64-67 and van Ittersum (n. 7), 373-376.

14 Clark and van Eysinga, (n. 1), Annexe 4, 47. 'Friendship' was not an idle rhetorical device. In most of his publications by 1612, including the Parallelon, De republica emendanda and Mare liberum, Grotius developed an extensive account of virtues, with friendship chief among them, to serve as a stable foundation and constant corrective to law among nations. Mark Somos, 'Grotius and Virtue' in: Randall Lesaffer/Janne E. Nijman (eds), *The Cambridge Companion to Hugo Grotius* (New York: Cambridge University Press 2019). The States-General's response to the EIC petition contained the VOC's allegations against the EIC and set the practical arrangements for the 1613 conference in motion. See Clark and van Eysinga, (n. 1), Annexes 6 and 7, 50-52, Annexes 11 and 12, 56-58.

15 David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press 2000), 105-106.

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improvement of a space, and the Portuguese Empire could therefore not claim sovereignty over the East Indies since the areas they controlled were rather small compared to the 'infinit' number of places and jurisdictions in the region.[16] Indeed, regarding the East Indies, the Dutch and the English shared an interest in undermining the Iberian powers, and Grotius, first in his memorandum for the Gentlemen XVII and then in his meeting with James I, exploited this argument.[17] The Dutch, he argued before the King of England, had contractually protected the natives from the Spaniards, and the shareholders of the Dutch company had failed to profit from the enterprise. England, he argued, hoped to take advantage of the work carried out by the Dutch without investing at the same rate and, in doing so, threatened to both undermine Dutch efforts and revitalise Spain's power in the region, thereby harming both Dutch and English interests.[18]

In response, James I asked a number of commissioners to study the matter and to report to the Privy Council with their opinions on the Dutch proposals. Grotius described the British delegation, eventually appointed by the King and by the East India Company to meet the Dutch in 1613, as consisting of 'Ser Thomas Smith, ridder, Ser Daniel Dunne, ridder, rechter ter admiraliteyt ende meester van de requesten, Ser Christoffel Parkins, ridder, medemeester van de requesten, Clement Edmont, schildknaep, clerck van den Raedt, Willem Groenwel, Robbert Middleton ended Robbert Bel, coopluyden ende gecommitteerden van de Engelsche Oost-Indische Compaignie'.[19] This was accurate and also indicative of Grotius' information and priorities. Sir Thomas Smith or Smythe (c. 1558-1625) was indeed knighted in 1603 ('ridder') but he was also the first Governor of the East India Company, treasurer of the Virginia Company and Member of Parliament (MP). Sir Christopher Perkins (c. 1547-1622) was a Jesuit priest turned diplomat, mercantile agent and MP, and Dun's deputy as master of requests ('medemeester van de requesten'). Sir Clement Edmondes (c. 1568-1622) was Clerk of the Privy Council, as Grotius reported, but Edmondes had also fought extensively in Holland and became an MP by 1609. His role in the Dutch negotiations was to continue long after Grotius' and Dun's ended. William Greenwell, Robert Middleton and Robert Bell were appointed by the EIC to the negotiations, as Grotius correctly noted, but the last two belonged to families that were particularly influential within the EIC.

16 Stern (n. 4), 55.

17 van Ittersum (n. 7), 360.

18 Clark and van Eysinga, (n. 1), 63-64.

19 Early June 1613 report reprinted in Clark and van Eysinga, (n. 1), Annexe 46, 138. Also see report of Dutch delegation, early May 1615. Clark and van Eysinga, (n. 1), Annexe 93, 246.

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One of the members of the Council who signed the commission was Julius Caesar, and it is likely that his involvement in this process influenced his later notes on *Mare liberum*.[20] Five of the seven commissioners had worked on corporate ventures: four of the commissioners were members of the East India Company, and Dun himself had been involved with a number of corporate enterprises.[21] Between 1613 and 1615, scholars have suggested, the English focused their criticism on Grotius's reliance on the contracts the Dutch had made with the locals. Where the Spaniards had claimed to have acted in order to save souls, the English argued, the Dutch were now claiming to defend the natives.[22] During the negotiations, those who had been advised to study and report to the Privy Council saw themselves exercising more influence than they had expected. Crucially, their views emerged as a response to Grotius's initial proposal and, therefore, a more nuanced analysis of *Mare liberum* would only serve to sharpen the English diplomatic strategy.

In historical accounts of Grotius's role in this episode of high imperial politics, his reputation has not fared particularly well. Notwithstanding the ultimate irony of the English delegation using Grotius's own arguments against him, scholarship has rightly focused on the centrality of Grotius's arguments on free trade and sovereignty at the conference. The 1613 diplomatic gathering in many ways represented the high point of Grotius's political and diplomatic career. Yet scholars have shown Grotius the diplomat to have been far less adept than the scholar. According to sources written from the English perspective, during the negotiations Grotius appeared an over excited and pompous performer. He was described by one writer as 'a simple fellow', 'a smatterer', versed only in a few arcane topics of rehearsed conversation.[23] The English character assassination continued at the hands of James I. Grotius's meetings with James were an additional and secret reason for his presence in England at the time of the conference. He had been tasked with gaining support from the King for the ecclesiastical policy of the States of Holland. The Counter-Remonstrants had claimed the support of James for their cause because of his apparent condemnation of Arminius. Grotius sought instead to persuade James to recognise the legitimacy of the Remonstrants. Over several conversations about delicate and incendiary issues of theological doctrine, Grotius sought to persuade James of the merits of another cause dear to his heart, that of a union of Protestant Churches across the Christian world. According to the accounts of Archbishop Abbot and

20 Clark and van Eysinga, (n. 1), 66 n. C.

21 Clark and van Eysinga, (n. 1), 66.

22 Clark and van Eysinga, (n. 1), 78. On the discursive strategies deployed during the conferences see van Ittersum (n. 7), 396-481.

23 *Rabbie* (n. 5), 34.

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Isaac Casaubon, Grotius pressed the cause of religious union rather clumsily, leading James to dismiss him as a 'pedant full of words'.[24] Such characterisations reflect, in part, the growing commercial and imperial rivalry at stake in Anglo-Dutch relations. But recent scholarship has continued to highlight Grotius's struggles in the diplomatic sphere, when towards the end of his life he served a largely unsuccessful tenure as Sweden's ambassador to France.[25]

Grotius's English diplomatic rivals were learned, and frequently drew on the same sources as Grotius, or engaged with other contemporary thinkers. Grotius's reliance on Covarruvias's ideas has been acknowledged before, and Dun noted Grotius's invocations of the Spaniard's work. Dun also drafted three pages of citations with significant emendations from what appears to be the 1604 Venetian edition of *Didaci Covarruvias*.[26] The intellectual connections between many of the English and Scottish jurists, thinkers, and representatives, who responded to Grotius has, in turn, been understated. Daniel Dun owned a copy of William Welwood's first work, *The Sea Law of Scotland* (1590), and Welwood, a professor of law and geometry in Scotland, dedicated his *Abridgement of all Sea-Lawes*, a commentary on *Mare liberum* published in 1613, to Dun.[27] Dun was also involved in the establishment of the Plymouth Company with Richard Hakluyt, who famously translated *Mare liberum* between 1609 and 1616.[28] Finally, Dun, during his 1613 diplomatic mission, was responding directly to the Privy Council, where Julius Caesar served as a clerk.[29] Caesar would go on to write his 'Notes out of a book called Mare Liberum', which appeared in the same year as John Selden's *Mare Clausum* (1618).[30] What connected the thought of all of these jurists was an interest in Roman law.

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24 Clark and van Eysinga, (n. 1), 80.

25 Nellen (n. 7).

26 <http://WDAgo.com/s/0192a350>, 94-96, citing among all editions the Didaci Covarruvias, 1604, 2 a 8, 637 based on the orthography, but still paraphrasing with omissions and significant emendations.

27 Clark and van Eysinga, (n. 1), 79 n. G; William Welwood, *An Abridgement of All Sea-lawes: Gathered Forth of All Writings and Monuments, which are to be Found Among Any People Or Nation, Upon the Coasts of the Great Ocean and Mediterranean Sea: and Specially Ordered and Disposed for the Use and Benefit of All Benevolent Sea-farers, Within His Majesties Dominions of Great Britain, Ireland, and the Adjacent Isles Thereof*, 1636, V.

28 Richard N. Worth, *Calendar of the Plymouth Municipal Records* (Plymouth: Plymouth 1893), 215-216; Hugo Grotius, *The Free Sea*, Translated by Richard Hakluyt, with William Welwood's Critique and Grotius's Reply, David Armitage (ed.), 2004; David H. Sacks, 'Richard Hakluyt and His Publics, c. 1580-1620', in: Bronwen Wilson and Paul Yachnin (eds), *Making Publics in Early Modern Europe: People, Things, Forms of Knowledge* (London: Routledge 2010), 159-175 (166).

29 Clark and van Eysinga, (n. 1), 66 n. C.

30 Clark and van Eysinga, (n. 1), 79 n. G.

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The alternative uses of the Digest made by the English and the Dutch in the 1610s were constitutive of different intellectual concerns. Grotius, in *De Jure Praedae* and in *Mare liberum*, had relied on the eighteenth book of the Digest, on contracts and trade, in order to establish the origins of trade as a product of the suppression of common property. Freedom of trade, therefore, could not be repealed unless it featured the consent of each and every nation.[31] The English, along with the Spanish, had, by contrast, justified the acquisition of spaces in the Americas by relying on a separate chapter of the Digest, that on 'Acquisition of ownership and things'.[32] During the 1613 negotiations, however, English diplomats drew on Grotius's use of the Digest in order to argue that his arguments on the validity of the treaties made with the natives were inconsistent with his earlier work. Dun's notes, featuring countless remarks about the nature of maritime property and possession in the Digest, can therefore shed light on the crystallisation of the English approach to Dutch negotiations. Ironically however, Dun's manuscript notes do not provide evidence of the English desire to use Grotius's arguments on the universal right to traffic and trade, but rather hint at the Anglo-Scottish context of the 1613 conference.

In their 9 May 1613 memorial, the English delegation took what a review of the diplomatic documents of the negotiations reveal to be a highly unusual step: they cited a text verbatim, as an authority. The text was the conclusion of chapter VIII of *Mare liberum*, which Hakluyt translated as: 'the liberty of trading is agreeable to the primary law of nations which hath a natural and perpetual cause and therefore cannot be taken away and, if it might, yet could it not but by the consent of all nations'.[33] On behalf of the Dutch delegation Grotius replied that natural liberties could be restricted, for instance by the treaties with native rulers that the Dutch argument relied on. And the author of *Mare liberum*, Grotius continued, surely agreed with this position, since in chapter V he cited Ulpian (Dig. 8.4.13) to establish that good faith in entering contracts trumps natural liberty.[34] Although there was no record of

31 Benjamin Straumann, 'Natural Rights And Roman Law In Hugo Grotius's Theses LVI, De Iure Praedae And Defensio Capitis Quinti Maris Liberi', in: Blom (n. 4), 341-365 (359). On Roman law in Grotius's thought see Benjamin Straumann, *Roman Law in the State of Nature: The Classical Foundations of Hugo Grotius' Natural Law* (Ideas in Context). (Cambridge: Cambridge University Press, 2015).

32 Barducci (n. 4), 163. On the changes Grotius made to his contract theory in the years between 1613 and 1615 see van Ittersum (n. 7), 396-481.

33 Commercandi (inquit) libertas, quae ex iure est primario gentium et quae naturalem et perpetuam casuam [sic] habet, tolli non potest et, si posset, non tamen nisi omnium gentium consensu. Clark and van Eysinga, (n. 1), Annexe 38, 115-116. This sentence is underlined in multiple 1609 ML copies, including Bodleian 8 V 27(1) Art.Seld and BL 1374.c.18.

34 Clark and van Eysinga, (n. 1), Annexe 40, 126.

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the English delegation making the counter-point that public interest overrides private contracts, the notes that Dun added to his copy of *Mare liberum* showed that he considered this argument, which appeared multiple times in the Digest.[35]

There were striking parallels between these debates and the protracted exchange between William Welwood and Hugo Grotius. As many historians have noted, the controversy between Welwood and Grotius consisted almost entirely of pitting various sections of the Digest against each other.[36] Chapter V of *Mare liberum*, which Grotius used to refute the English delegation, was the primary target of Welwood's 1613 *Abridgement of All Sea-Lawes*. Welwood concentrated on this particular chapter to such an extent that Grotius's rejoinder, discovered in 1864, was entitled *Defensio capitis quinti Maris Liberi oppugnati a Guilielmo Welwodo*, narrowing the dispute to this particular chapter of Welwood's Abridgement on the legal foundations of the Portuguese imperial claims.

III. Daniel Dun and Mare liberum

According to one of his modern biographers, history has not been kind to Daniel Dun. Since Dun never published a treatise, historians have tended to overlook his influence as an ecclesiastical lawyer.[37] One may suggest that the lack of research on Dun has overshadowed a range of other contributions he made to seventeenth-century English political culture. The son of Robert Dun, a common lawyer of Gray's Inn, Daniel Dun was, in 1567, admitted into All Souls College before moving to London to take up a place in Doctors' Commons. He then served as a judge for the High Court of Admiralty, and was an MP, first for Taunton, and then for Oxford University. In 1609, Dun was appointed to the influential position of lieutenant principal judge and president of the High Court of Admiralty.[38]

Historians have shown that Dun was frequently commissioned to assess disputes over piracy and trade between English and foreign merchants, but

35 <http://WDAgo.com/s/0192a350>, 77-78.

36 Jeroen Vervliet, 'Introduction' in: Robert Feenstra (ed.), *Hugo Grotius, Mare Liberum* (Leiden: Brill 2009), xxiv; John D. Ford, 'William Welwod's Treatises on Maritime Law', The Journal of Legal History 34 (2013), 172-210.

37 Richard H. Helmholz, 'Daniel Dun (d. 1617)' in: Richard Helmholz (ed.), *The Profession of Ecclesiastical Lawyers: An Historical Introduction. Law and Christianity* (Cambridge: Cambridge University Press 2019), 133-138 (133). See also Brian P. Levack, *The Civil Lawyers in England, 1603-1641: a Political Study* (Oxford: Clarendon Press 1973, 226-227.

38 Helmholz (n. 37), 134 and Ralph Houlbrooke, 'Dun [Donne], Sir Daniel (1544/ 5- 1617)', *Oxford Dictionary of National Biography* (online edn, Oxford: Oxford University Press 2008).

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few have analysed his interest in constitutional matters, commercial ventures, and corporations.[39] In April 1604, for example, Dun was one of the members of a committee that featured Francis Bacon and other jurists, and which was asked to consider 'the name and appellation of Great Britain' and the matter of a union with Scotland.[40] Dun, in turn, was also asked to resolve disputes over the Plymouth Company and, like Francis Bacon, he was named a member of the Virginia Company and was one of the original investors in the Newfoundland Company.[41]

Today, Dun's copy of *Mare liberum* is stored in the archives of the Royal College of Physicians, as part of the Pierrepont Collection. The Great Fire of London of 1666 destroyed the bulk of the College's holdings, and Henry Pierrepont, the Marquess of Dorchester, Viscount Newark, and Earl of Kingston-upon-Hull, donated his collection to the College. Educated at Emmanuel College Cambridge, Pierrepont was a bibliophile and natural philosopher with a lively character and a famous temper. Actively defending the Royalist cause, he raised money and troops for the King in the early 1640 s, and served on the Council of War, later receiving the title of Marquess of Dorchester as a reward for his services to Charles. After the Royalist defeat he moved to London, where he studied law and medicine. Pierrepont was part of a circle of legal scholars interested in the works of Grotius. His friendship with Francis Goldsmith saw the latter dedicate a translation of Grotius's tragedy *Sophompaneas, or, Ioseph* (1652). The donations and contributions Pierrepont made to the Royal College of Physicians during his lifetime saw him appointed as an honorary fellow in 1658.[42] The Pierrepont Collection consists of nearly three thousand volumes derived from Pierrepont's library, on works ranging from physics and astronomy to civil law and

39 Helmholz (n. 37), 136-138; R. Houlbrooke, 'Dun [Donne], Sir Daniel (1544/ 5- 1617)' in: Reginald G. Marsden (ed.), *Documents Relating to Law and Custom of the Sea* (London: Routledge 1999), 380-394.

40 William Cobbett and Thomas C. Hansard, *The Parliamentary History of England from the Earliest Period to the Year 1803: From which Last-mentioned Epoch it is Continued Downwards in the Work Entitled 'The Parliamentary Debates'*, Vol. 1, 1806 (New York: AMS Press 1966), 1022-1024. Mentioned in Daniel Defoe, *The History of the Union Between England and Scotland, with a Collection of Original Papers Relating Thereto. With an Introduction, in which the Consequences and Probability of a Like Union Between this Country and Ireland are Considered* (London: for John Stockdale, Piccadilly 1786), 51-52.

41 Worth (n. 28), 215-216; William Stith, *The History of the First Discovery and Settlement of Virginia* (New York: Reprinted for J. Sabin, 1865), 9-14; Gillian T. Cell, *English Enterprise in Newfoundland 1577-1660* (Toronto: University of Toronto Press 1970), 57.

42 Peter R. Seddon, Pierrepont, Henry, marquess of Dorchester 1607–1680, Oxford Dictionary of National Biography (Oxford: Oxford University Press 2004); L. M. Payne and C. E. Newman, 'The History of the College Library: the Dorchester Library', Journal of the Royal College of Physicians of London 4 (1970), 234-246.

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philology. The collection includes numerous books previously owned by Dun, including legal works relevant to the Dutch-English negotiations, which have been listed in an Appendix below.

The Royal College of Physicians' copy, with unfortunately cropped borders, has 127 pages: eighty pages of Grotius's printed text with handwritten annotations, followed by forty-seven pages of manuscript notes.[43] It is bound together with Dun's copy of Sebastianus Medices' *Tractatus de venatione, piscatione et aucupio*, which Dun mines for both Roman law authorities and for Medices' own legal reasoning.[44] In the handwritten notes and marginalia the colour and brightness of the ink, the size of letters and spacing and slant of lines show some variation, often on the same page. While it is difficult to be sure, a comparison of palaeographic features suggests that all notes and marginalia are from the same hand, and the different times and material circumstances of writing account for the variations.

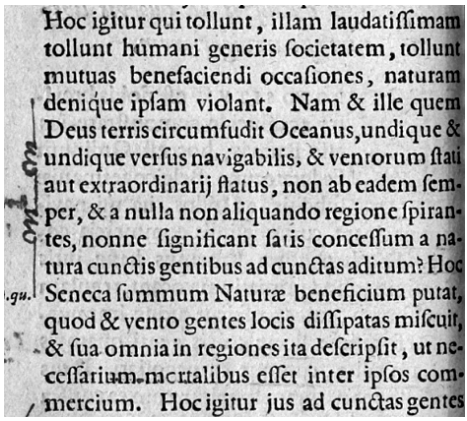
Hoc igitur qui tollunt, illam laudatiſſimam
tollunt humani generis ſocietatem, tollunt
mutuas benefaciendi occaſiones, naturam
denique ipſam violant. Nam & ille quem
Deus terris circumfudit Oceanus, undique &
undique verſus navigabilis, & ventorum ſtati
aut extraordinarij flatus, non ab eadem ſem-
per, & a nulla non aliquando regione ſpiran-
tes, nonne ſignificant ſatis conceſſum a na-
tura cunctis gentibus ad cunctas aditum? Hoc
Seneca ſummum Naturæ beneficium putat,
quod & vento gentes locis diſſipatas miſcuit,
& ſua omnia in regiones ita deſcripſit, ut ne-
ceſſarium mortalibus eſſet inter ipſos com-
mercium. Hoc igitur jus ad cunctas gentes

Figure 1. Page two: example of emphasis: For even that ocean wherewith God hath compassed the Earth is navigable on every side round about, and the settled or extraordinary blasts of wind, not always blowing from the same quarter, and sometimes from every quarter, do they not sufficiently signify that nature hath granted a passage from all nations unto all?

43 Note that *Medices*' Tractatus de venatione is bound together with Mare liberum, and they are not scanned correctly: the first 12 pages of Mare liberum <http://WDAgo.com/s/0192a350> are mistakenly attached to De venatione <http://WDAgo.com/s/50aee4c7>.

44 <http://WDAgo.com/s/50aee4c7>, 74, 86, 102.

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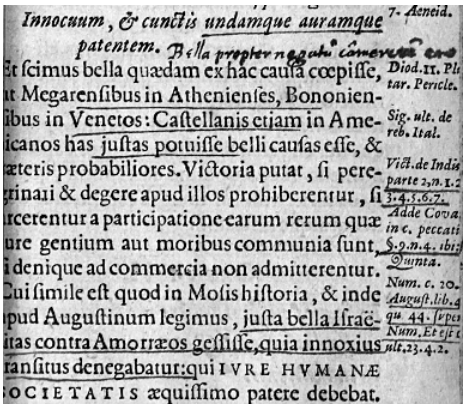
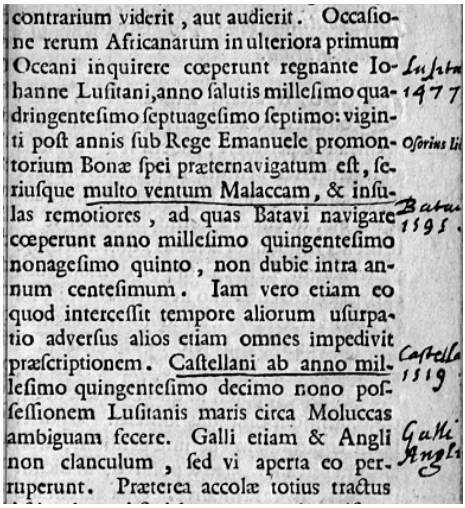


Innocuum, & cunctis undamque auramque patentem. Bella propter negatu cõmercia ero

Et ſcimus bella quædam ex hac cauſa cœpiſſe, ut Megarenſibus in Athenienſes, Bononienſibus in Venetos: Caſtellanis etiam in Americanos has juſtas potuiſſe belli cauſas eſſe, & cæteris probabiliores. Victoria putat, ſi peregrinari & degere apud illos prohiberentur, ſi arcerentur a participatione earum rerum quæ iure gentium aut moribus communia ſunt, ſi denique ad commercia non admitterentur. Cui ſimile eſt quod in Moſis hiſtoria, & inde apud Auguſtinum legimus, juſta bella Iſraëlitas contra Amorræos geſſiſſe, quia innoxius tranſitus denegabatur: qui IVRE HVMANÆ SOCIETATIS æquiſſimo patere debebat.

7. Aeneid. Diod. 11. Plutar. Pericle. Sig. ult. de reb. Ital. Vict. de Indis parte 2, n. 1. 2. 3. 4. 5. 6. 7. Adde Covar. in c. peccati §. 9. n. 4. ibi: Quinta. Num. c. 20. August. lib. 4 qu. 44. ſuper Num. Et eſt c. ult. 23. 4. 2.

Figure 2. Page three: example of summary and underlining: the reader notes that Grotius is listing cases in which denial of trade led to war.



contrarium viderit, aut audierit. Occaſione rerum Africanarum in ulteriora primum Oceani inquirere cœperunt regnante Iohanne Luſitani, anno ſalutis milleſimo quadringenteſimo ſeptuageſimo ſeptimo: viginti poſt annis ſub Rege Emanuele promontorium Bonæ ſpei præternavigatum eſt, ſeriuſque multo ventum Malaccam, & inſulas remotiores, ad quas Batavi navigare cœperunt anno milleſimo quingenteſimo nonageſimo quinto, non dubie intra annum centeſimum. Iam vero etiam eo quod interceſſit tempore aliorum uſurpatio adverſus alios etiam omnes impedivit præſcriptionem. Caſtellani ab anno milleſimo quingenteſimo decimo nono poſſeſſionem Luſitanis maris circa Moluccas ambiguam fecere. Galli etiam & Angli non clanculum, ſed vi aperta eo perruperunt. Præterea accolæ totius tractus

Luſitan 1477 Oſorius li Batav 1595. Caſtella 1519 Galli Angli

Figure 3. Page 51: summary and underlined passages.

IV. Dun's *Mare liberum* and the Digest

Following early modern annotating practices, the reader of this copy of *Mare liberum* underlined or otherwise emphasised some of Grotius's passages, and summarised points worth remembering and presumably recycling

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in the reader's own argument (see Figs 1-3). We cannot prove that Dun bought and annotated his 1609 *Mare liberum* in or before 1613; but it is an exciting possibility. Dun was the only lawyer in the delegation; *Mare liberum* was cited verbatim during the negotiations; all the sources cited in the annotations on Grotius's 80-pages text, and those cited in the following 47 pages of notes were published before the negotiations led by Dun. All these factors support the possibility that the copy may have been used during the negotiations. It may be the copy that the British delegation famously cited against Grotius.

Most of the free-standing notes added to Grotius's text are citations from the Digest. The choice of references is helpful in reconstructing the reader's use of *Mare liberum* in his own legal reasoning, and can lend support to the hypothesis that the Royal College of Physicians' (RCP) copy was used by the English delegation. The annotations shed new light on several aspects of the Dutch-English negotiations and the origins of the free trade doctrine, including the role of Roman law in disputing the status of free trade as a natural right. Scholars have recently observed that 'the Roman law of the Corpus iuris and especially the Digest increasingly assumed the place of a source of norms between the emerging imperial polities' of the seventeenth century.[45] Yet the relationship between contemporary politics and common law was considerably more problematic. This was the subject of the study conducted by Clark and van Eysinga. Together, they published two volumes on the 1613-15 Dutch-English negotiations in which they attributed failure of the negotiations to the difference between Dutch and English appreciations of the relationship between Roman and international law.

Today, however, we know that James I drew on civil law as a practical means to resolve international disputes. As he told Parliament on 21 March 1609, 'It is trew, that I doe greatly esteeme the Civill Law, the Proffession thereof serving more for generall learning and being most necessary for matters of Treaty with all forreine Nations' and to keep English common law arguments in their place'.[46] In this context, Clark and van Eysinga made their claim that James chose Dun, then judge of the Admiralty Court, because of his practical knowledge of Roman Law and, in particular, its maritime and ecclesiastical applications.[47] Dun, Perkins, who was an Oxford ecclesiastical law student, and Edmondes, an Oxford-educated clerk of the Privy Council,

45 Lauren Benton and Benjamin Strauman, 'Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice', Law and History Review 28 (2010), 4.

46 Clark and van Eysinga, (n. 1), 53-56.

47 See Richard Helmholz, 'Sir Daniel Dun (c 1545-1617)', Ecclesiastical Law Journal 16 (2014), 207-208 for detailed evidence on Dun's up-to-date mastery of *ius commune*.

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had negotiated with the Dutch over fishing and trading disputes at least since 1609, years before the 1613 conference. James chose Dr. William Bird, another civil law scholar, who seemingly took no part in the negotiations. As noted, the East India Company appointed four of their own to match the King's four choices: Sir Thomas Smythe, William Greenwell, Robert Middleton and Robert Bell.

What are the possible links between Dun's annotations and the arguments of the English delegation? The vast majority of annotations derive from the Digest, some of them expanding on the passages Grotius cited in *Mare liberum*, but most selected by Dun himself. Importantly, Dun meticulously looked up the passages Grotius cited, and matched them with Digest passages that modified or opposed the Grotian usage. Though the Digest passages that Dun cited did not directly appear in the surviving records of the 1613 negotiations, which focused on substantive current arguments rather than legal minutiae, it was obvious that the English delegation, in which Dun was the only lawyer, was thoroughly prepared in Roman law and that the influence of Roman law selections evident in the manuscript may have shaped the English argument. Among James' commissioners, Dun was most in favour of an Anglo-Dutch alliance in the East and West Indies.[48] During the last night of the conference, during a dinner where Dun and Grotius sat side by side, it was the English representative suggested that the French, Dutch, and English companies could be united in order to oppose the Iberian powers with a united front. Dun thus engaged with Grotius's arguments in favour of greater Anglo-Dutch cooperation as a means of curtailing the influence of Iberian powers in the Pacific.

One should not of course over-interpret Dun's copy of *Mare liberum* as evidence of clear argumentative intent. Alongside specific correlations between Dun's annotations and *Mare liberum* in their use of the Digest, the Digest was also used in a discursive or ornamental way in legal works and it formed a ready and familiar source of commentary between scholars. There are, however, some parallels between Dun's notes and Welwood's own. Both, along with Selden, referenced Digest XIV, 2.9. from the lex Rhodia de iactu, and the petition of Eudaimon of Nicomedia to the Emperor Antoninus; 'Lord Emperor Antoninus, having been shipwrecked in Icaria we have been robbed by farmers of the revenue inhabiting the Cyclades Islands.' Antoninus answered Eudaimon as follows: 'I am, indeed, the Lord of the World, but the Law is the Lord of the sea; and this affair must be decided by the Rhodian law adopted with reference to maritime questions, provided

48 Clark and van Eysinga, (n. 1), 75.

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no enactment of ours is opposed to it.' The Divine Augustus established the same rule.[49]

The Rhodian assertion of the untameable power of the sea, akin to *ferae bestiae*, remained a compelling trope during negotiations. It influenced the debates around a particularly contested topic during the negotiations: the hierarchy of municipal and international laws regarding free trade and fishing on the high seas. Could states limit the rights of others to trade and fish if they considered their vital interests had been violated, or did the natural rights to free trade and high-sea fishing outweigh state authority? The English delegates' account of the negotiations for the Privy Council described the unacceptable Dutch position, which according to Clark and van Eysinga, Grotius defended: 'Touching the Law of Nature and Nations, they say that as they are indefinite in themselves, so are they limited by Municipal Laws, and institutions of people and governments, whereby it is (as we see) evident in all kingdoms that it is not lawful for every man to buy every commodity of every person, in every place, and at all times.'[50]

When discussing these themes, James' representatives had to tread a fine line to avoid making the argument in favour of free trade and fishing arguments. The risk was that the argument would be used against England in the same way the delegation had drawn on Grotius's *Mare liberum* to undermine the arguments of the Dutch delegation. The English delegation noted the domestic authority to abrogate natural law under certain conditions, but advocated for a remarkably extensive natural right to free trade and fishing. The position reflected not only the *de facto* English imperial weakness vis-à-vis the Dutch at that moment, but also James' high hopes for future collaboration. The English insistence on their non-derogable natural right to free trade and high-seas fishing was accompanied by legal arguments that echoed Grotius in disqualifying the Iberians from free trade on grounds of Iberian perfidy, and constructed a track record of English-Dutch joint causes, including military campaigns and the cities granted to Elizabeth I. English insistence on free trade in the face of Dutch pretensions, in other words, came within an ideology that Grotius himself found agreeable in 1613, for a Dutch-English Protestant imperial alliance that would have 'protected' the

49 <http://WDAgo.com/s/0192a350>, 70.

50 See English delegates of 10th May 1613 in the account of the negotiations for the Privy Council, summarising an unacceptable Dutch position held by Grotius, Clark and van Eysinga, (n. 1), 68-69: 'Touching the Law of Nature and Nations, they say that as they are indefinite in themselves, so are they limited by Municipal Laws, and institutions of people and governments, whereby it is (as we see) evident in all kingdoms that it is not lawful for every man to buy every commidity of every person, in every place, and at all times.' Clark and van Eysinga, (n. 1), Annexe 39, 118-119.

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indigenous East Indian rulers and excluded the Spanish and Portuguese. Trade was free; municipal law be damned.[51] The moment did not last; as its power grew, the Crown soon came to insist it had the authority to abrogate natural rights to free trade.

V. Conclusion

Dun's analysis of *Mare liberum* sheds new light on the interimperial debates of the 1613 conference, and generates new insights on the way that legal philosophy was deployed as operative knowledge during diplomatic negotiations. On the basis of the annotations he made on his copy of *Mare liberum*, Dun may have drawn from Roman law prepared arguments for the negotiations in the pursuit of practical solutions to Anglo-Dutch maritime rivalry. Richard Helmholz was right in declaring that Dun was a skilful Roman lawyer, particularly with regard to ecclesiastical law, and that he has generally been overlooked as a result due to the subsequent decline in the influence of Roman law in English political culture. Clark and van Eysinga were correct in pointing to the links between statesman and Roman law and, in that context, Dun may appear, on the basis of further research, as the first of a number of English thinkers to demonstrate the applicability of Roman law to international affairs. After all, Dun drew on *de Lege Rhodia de Iactu*, which was further cited by William Welwood and John Selden. This move would allow these thinkers to defend an ambitious claim: the capacity of the state to deny the authority of customary laws of the sea.

51 See the 10 May 1613 passage cited above and the English reply to Dutch countermemorial, 27 April 1613: Nos liberi commercii ius ex iure gentium nobis asserimus; ac ut vobis assentiamur (quod proximo scripto traditur) naturae et gentium iura per se indefinita a legibus et institutis populorum limites suos recipere, id tamen ita locum habet dum ipsa iuris principia non destruantur. Verbi gratia, nos commercii beneficium iure gentium liberum et commune esse statuimus: quod ut cuique populo maxime reddatur fructuosum fatemur eiusdem nimiam licentiam positivis cuiusque regni legibus coerceri, ut ne cuivis promiscue liceat mercaturae operam dare, nec quidvis nec a quolibet nec quovis aut loco aut tempore pro arbitratu mercari. Id vero intelligimus non alias usu venire quam inter eos, qui eisdem legibus parent, idque ex communi adsensu, adeo ut de liberi commercii iure nihil ea in re detrahatur. Alia autem ut aliam gentem non sibi subditam, non consentientem (praesertim non inimicam) hac commercii libertate prohibeat, eo sane existimamus ipsa iuris principia, quae mercaturae usum cuivis populo libere patere volunt, prorsus convelli. Quae quidem libertas cum iure gentium nobis debeatur, nos in ea insistendum omnino decrevimus […] Clark (n. 8), Annexe 36, 103-136.

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VI. Appendix I: List of Works held by the RCP with Daniel Dun Provenance

Hugo Grotius, *Mare liberum, sive de jure quod Batavis competit ad Indicana commercia dissertatio* (Leiden, 1609).

Alberico Gentili, *De legationibus libri tres* (Hanover, 1607).

Sebastianus Medices, *Tractatus de venatione, piscatione et aucupio* (Cologne, 1598).

Singularia doctorum in utroque jure excellentium, ad praxin potissimum accommodata, analyticisque additionibus (Frankfurt, 1596).

Marcantonio Pellegrini, *De fidei commissis praesertim universalibus tractatus* (Venice, 1595).

Gabriele Paleotti, *De consultationibus sacri consistorii commentarius* (Ingolstadt, 1594).

Laelius Zecchius, *Casuum Episcopo reservatorum et censurarum ecclesiasticarum dilucida explicatio* (Venice, 1591).

Elbertus Leoninus, *Centuria consiliorum* (Antwerp, 1584).

Simon de Praetis, *De ultimarum voluntatum interpretatione tractatus … in v libros partitos* (Frankfurt, 1583).

Michael Grassus, *Tractatus de successione tam ex testamento, quam ab intestato* (Frankfurt, 1583).

Marianus Socinus, *… In … titulos Decretalium … commentarii …* (Frankfurt, 1583).

Joachim Mynsinger, *Responsorum juris sive consiliorum decades sex* (Basel, 1573).

Claudius de Battandier, *Praxis causarum criminalium* (Lyon, 1567).

Valentinus Forster, *De successionibus quae ab intestato deferuntur libri quinque* (Basel, 1566).

Gulielmus Hannetonius, *De jure feudorum libri quatuor* (Cologne, 1564).

Guillaume Durand, *Speculi pars prima et secunda [et pars tertia et quarta], una cum J.Andreae ac Baldi theorematibus* (Basel, 1563).

Lancellottus Conradus, *Praetorium, & curiale breviarium … accessit … libellus de decurionibus* (Venice, 1563).

Petrus Belluga, *Speculum principum ac justitiae* (Paris, 1530).

Henricus de Bartholomaeis, *Lectura in quinque Decretalium gregorianorum libros* (Paris, 1512).

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