

# Primary Source Collection #2: *Grotius and Selden*

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## Introduction

Included in this source collection are two sources relating to trade and fishing rights, both from the 17<sup>th</sup> century. The first is written by Hugo Grotius, a Dutch statesman who authored a defense of the Dutch East India Company's (VOC) military engagement with the Portuguese in Asia. The second source, by John Selden, focuses on the control of maritime space around the British Isles. The selections provided illustrate 17<sup>th</sup> century debates regarding the ability of states to claim rights to control and occupy bodies of water. Discussion questions are provided for each source to help guide your reading.

## PRIMARY SOURCES

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HUGO GROTIUS ON MARE LIBERUM

JOHN SELDEN ON MARE CLAUSUM

# Primary Source 1:

## *Hugo Grotius on Mare Liberum*

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Hugo Grotius, a famous Dutch statesman and jurist, grew up in the newly declared Dutch Republic. After the Dutch States General declared abjuration, or independence from Spain, which had controlled it for several decades through right of inheritance, Spain doubled down on what was later termed the Eighty Years' War to regain control over the territories. Grotius came of age during this conflict, and his political fortunes rose and fell based on the usefulness of his ideas to the Republic. In 1604, at the height of the conflict, the Dutch East India Company (VOC) asked him to write a defense of the Company's military engagement with Portuguese vessels in Asia. Grotius ended up drafting *Mare Liberum*, a dissertation that called for freedom of navigation in the seas. Company officials, arguing that Portuguese privateers had denied the right of Dutch vessels to trade, justified the Dutch seizure of Portuguese ships. Although Grotius would later have a falling out with the government in Holland, his treatise would help inspire and guide international law to this day. Many scholars argue that his ideas guided the peace of Westphalia in 1648, which ended the Eighty Years' War. It is also important to note that Grotius couched his argument in natural law and God's will, implying the universality of his claims, which, according to him, trumped even the orders of the Pope or monarchs.



**Portrait of Hugo Grotius, c. 1631**

Source: Grotius, Hugo. *The Freedom of the Seas or the Right Which Belongs to the Dutch to Take Part in the East Indian Trade*, translated by Ralph van Deman Magoffin. London: Oxford University Press, 1916. Pp. 1-9 and 61-65.

### **Discussion Questions:**

- Hugo Grotius used the language of a seventeenth-century jurist below, so he can be kind of hard to understand. What was Hugo Grotius arguing? What things for him were "absurd" and "unnatural," and what things were "natural" and "innate"? Try to summarize his basic argument from each chapter.
- What was Hugo Grotius' vision for an international system or order? Where did state sovereignty, religious freedom, and freedom of navigation on the seas fit into this system?
- To what authority did Grotius appeal to justify his vision for an international order? Consider, for instance, "universal" or "natural" rights, God's will, human decree, and historical precedence. How did he attempt to bridge or go around different religious doctrines (think about how he described his ideas as applying to all nations)?



## Dedication: To the Rulers and to the Free and Independent Nations of Christendom

The delusion is as old as it is detestable with which many men, especially those who by their wealth and power exercise the greatest influence, persuade themselves, or as I rather believe, try to persuade themselves, that justice and injustice are distinguished the one from the other not by their own nature, but in some fashion merely by the opinion and the custom of mankind.\* Those men therefore think that both the laws and the semblance of equity were devised for the sole purpose of repressing the dissensions and rebellions of those persons born in a subordinate position, affirming meanwhile that they themselves, being placed in a high position, ought to dispense all justice in accordance with their own good pleasure, and that their pleasure ought to be bounded only by their own view of what is expedient. This opinion, absurd and unnatural as it clearly is, has gained considerable currency; but this should by no means occasion surprise†...

But, on the other hand, there have stood forth in every age independent and wise and devout men able to root out this false doctrine from the minds of the simple, and to convict its advocates of shamelessness. For they showed that God was the founder and ruler of the universe, and especially that being the Father of all mankind, He had not separated human beings, as He had the rest of living things, into different species and various divisions, but had willed them to be of one race and to be known by one name....



They showed too that He is the supreme Lord and Father of this family; and that for the household or the state which He had thus founded. He had drawn up certain laws not graven on tablets of bronze or stone but written in the minds and on the hearts of every individual, where even the unwilling and the refractory must read them. That these laws were binding on great and small alike; that kings have no more power against them than have the common people against the decrees of the magistrates, than have the magistrates against the edicts of the governors, than have the governors against the ordinances of the kings themselves; nay more, that those very laws themselves of each and every nation and city flow from that Divine source, and from that source receive their sanctity and their majesty‡...

**Title page of Grotius' 1609 edition of *Mare Liberum***

\*The subject of this sentence is "delusion." Grotius is critiquing those who believe they can decide what is just and unjust arbitrarily or without cause or reason. He is likely taking a subtle swipe at the rule of monarchs, like King Philip IV of Spain who was then attempting to subdue the Dutch Republic.

† In this paragraph, Grotius is creating a strawperson, or an argument that he will later oppose and confront.

‡ In this paragraph, Grotius offers his counterpoint, in which he outlines a higher law to which even monarchs are bound. Pay close attention here and below to what Grotius describes as the source of justice and how Grotius describes humans as sharing a common destiny.

The law by which our case must be decided is not difficult to find, seeing that it is the same among all nations; and it is easy to understand, seeing that it is innate in every individual and implanted in his mind. Moreover the law to which we appeal is one such as no king ought to deny to his subjects, and one no Christian ought to refuse to a non-Christian. For it is a law derived from nature, the common mother of us all, whose bounty falls on all, and whose sway extends over those who rule nations, and which is held most sacred by those who are most scrupulously just.<sup>§</sup>



**Sculpture of Grotius, Netherlands**

## **Chapter I: By the Laws of Nations Navigation is Free to All Persons Whatsoever**

My intention is to demonstrate briefly and clearly that the Dutch—that is to say, the subjects of the United Netherlands—have the right to sail to the East Indies, as they are now doing, and to engage in trade with the people there. I shall base my argument on the following most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit of which is self-evident and immutable, to wit: Every nation is free to travel to every other nation, and to trade with it.

God Himself says this speaking through the voice of nature; and inasmuch as it is not His will to have Nature supply every place with all the necessaries of life, He ordains that some nations excel in one art and others in another. Why is this His will, except it be that He wished human friendships to be engendered by mutual needs and resources, lest individuals deeming themselves entirely sufficient unto themselves should for that very reason be rendered unsociable? So by the decree of divine justice it was brought about that one people should supply the needs of another, in order, as Pliny the Roman writer says, that in this way, whatever has been produced anywhere should seem to have been destined for all...



**Dutch troops landing near Melaka, 1606**

Those therefore who deny this law, destroy this most praiseworthy bond of human fellowship, remove the opportunities for doing mutual service, in a word do violence to Nature herself. For do not the ocean, navigable in every direction with which God has encompassed all the earth, and the regular and the occasional winds which blow now from one quarter and now from another, offer sufficient proof that Nature has given to all peoples a right of access to all other peoples? Seneca thinks this is Nature's greatest service, that by the wind she united the widely scattered peoples, and yet did so distribute all her products over the earth that commercial intercourse was a necessity to mankind.<sup>||</sup> Therefore this right belongs equally to all nations...

<sup>§</sup> Think about how Grotius continues to outline a type of universalism here. He describes his treatise as something innate in all, derived from nature.

<sup>||</sup> Seneca was a famous Roman philosopher. Notice how Grotius reaches back to Roman precedent to reenforce his argument.





**Illustration of a ship with Grotius  
and Mare liberum on the sails**

It follows therefore that the Portuguese, even if they had been sovereigns in those parts to which the Dutch make voyages, would nevertheless be doing them an injury if they should forbid them access to those places and from trading there.

Is it not then an incalculably greater injury for nations which desire reciprocal commercial relations to be debarred therefrom by the acts of those who are sovereigns neither of the nations interested, nor of the element over which their connecting high road runs? Is not that the very cause which for the most part prompts us to execrate robbers and pirates, namely, that they beset and infest our trade routes? \*\*...

### **Chapter VIII: By the Law of Nations Trade is Free to All Persons Whatsoever**

If however the Portuguese claim that they have an exclusive right to trade with the East Indies, their claim will be refuted by practically all the same arguments which already have been brought forward. Nevertheless I shall repeat them briefly, and apply them to this particular claim.

By the law of nations the principle was introduced that the opportunity to engage in trade, of which no one can be deprived, should be free to all men.<sup>††</sup> This principle, inasmuch as its application was straightway necessary after the distinctions of private ownerships were made, can therefore be seen to have had a very remote origin. Aristotle, in a very clever phrase, in his work entitled the Politics, has said that the art of exchange is a completion of the independence which Nature requires...

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\*\* Yes, Grotius is implying that Portuguese are robbers and pirates here. One must admit though that the line between taxation or protection fees and piracy is unclear in the best of times.

†† This is where Grotius outlines his main argument on the freedom of navigation of the oceans, or *mare liberum*.

**Dutch ships off the coast of  
Melaka, c. 1676**





## Primary Source 2: *John Selden on Mare Clausum*

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John Selden, a contemporary of Hugo Grotius, was a well-regarded English jurist and politician who published several important books and served in Parliament. He published *Mare Clausum, or the Closure of the Sea*, in direct response to, but not with the explicit purpose of refuting, Grotius' *Mare Liberum*. In many ways, his text builds on Grotius' dissertation while reviving arguments offered by Afonso de Albuquerque and other Portuguese mariners a century before. Selden and the King of England stressed the right to control fishing and trading rights and to prevent entry of enemy vessels to the seas within and surrounding the British Isles. Unlike Grotius, Selden argued that countries could in fact maintain ownership of some maritime spaces. He also countered that humans created the idea of ownership and property, not nature or God as Grotius argued. In the brief passage below, Selden cited historical examples when people claimed jurisdiction over seas to refute Grotius' argument. Maritime law in the present, as defined by the United Nations Convention on the Law of the Sea (UNCLOS), incorporates ideas from Grotius and Selden with its recognition of "internal waters," where a country has full sovereignty; an exclusive economic zone, where a country has partial sovereignty; and international waters, which are open to all.



**Portrait of John Selden**

Source: Selden, John. *Mare Clausum: The Right and Dominion of the Sea*, translated by J.H. Gent. London: Andrew Kembe and Edward Thomas, 1663. Pp. 24-27.

### **Discussion Questions:**

- How did Selden refute Grotius' argument on the ability of states to control and occupy bodies of water? Are you convinced?
- To what authorities did Selden appeal to justify his vision of English control of nearby seas and fishing grounds? How did Selden attempt to incorporate history and religion in his argument?
- What does it mean to have dominion over a sea or body of water? What different methods of control might one use to claim and control a body of water? What about the resources below the surface?



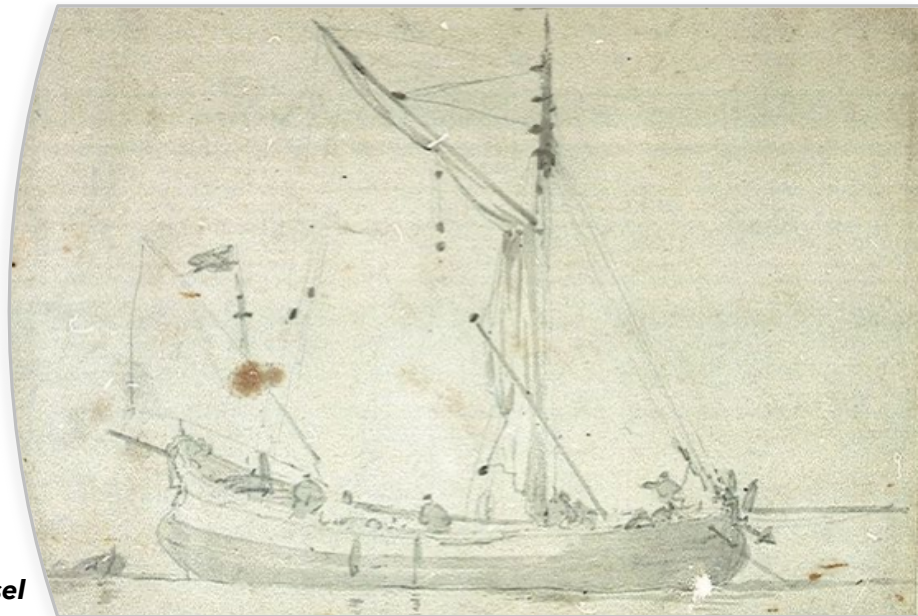
**Portrait of John Selden, 1726**

## **Chapter V: The effects of private Dominion. And what regard hath been had of the SEA, in the more ancient Distributions and Divisions of things.**

By the introducing of private Dominion, in the aforesaid manner, it came to pass, that the same Territory or Field, whose use before was free for all men alike in Tillage, Building, Pasturage cutting of wood, gathering of Fruits, egress and regress, was either by distribution or occupation so peculiarly appropriated unto the possessor, that he might lawfully hinder such a Community of use and enjoyment, nor might any other man use it lawfully without his permission\*... And all these things are derived from the alteration of that Universal or Natural Law of Nations which is Permissive: For thence came in private Dominion or Possession, to wit from the Positive Law. But in the meanwhile it is established by the Universal Obligatory Law, which provides for the due observation of Compacts and Covenants.

These things being thus premised, we shall next see what respect hath been had unto the Sea, either in the very first or any more ancient Distribution or Division of things. For if it appears that the Sea also hath been assigned over with Lands, it must certainly be confessed, that from the same original there springs a private Dominion of the Sea, as well as the Land, and so that it is equally capable of the same, with this. And truly, in the distribution of Land which was renewed after the flood (so far as we are able to collect by Tradition from the Ancients) we find no express mention made of any Sea, as a part assigned: But yet sometimes the Sea is added as a Bound to a part assigned. As where the part first assigned unto the Sons of Cham, is extended from the Borders of Egypt through Africa as far as Hercules's Pillars, or unto the Western and African Sea.†

And the Portion of the Canaanites (situate within the Territory of the Sons of Cham) is twice so described in the *Samaritan Pentateuch*, that it is expressly said to reach from the River of Egypt or Nilus, to the great River, that is, the River Euphrates, and unto the utmost Sea, or the remotest, which is the great or Western Sea. Which last words are used in the laying out of that Portion which the Sacred Scripture mentions in Deuteronomy....



**Illustration of 17<sup>th</sup>  
century fishing vessel**

\* Selden starts his defense of controlling the seas by describing how people and countries came to control land. In this paragraph, Selden describes how land shifted from a shared to private resource.

† Selden is drawing from the Old Testament and Torah here and below. The flood refers to the Genesis flood narrative. Do not worry about specific locations mentioned here. Just keep in mind that Selden is using old religious texts to argue that people "owned" seas in the past.





**17<sup>th</sup> century etching of sailing vessels and rowing boats**

We see also, that certain Seas are included within the compass of Assignments as the Aegean, Mediterranean, Adriatic, and British Seas: whether by Donation, or not, we cannot say. But in that ancient apportioning of the Holy Land (whereof God himself was Autor) the Sea seems rather to have been accounted a boundary, then any part of the Territory allotted. Concerning the South-Quarter, the words are these: "The Bounds of it shall be the outmost Coast of the salt Sea Eastward." And a little after: "The Border shall fetch a Compass from Azmon unto the River of Egypt, and the goings out of it shall be at the Sea." Also concerning the West-Quarter, "its Border shall begin at Sea, & *ipso fine claudetur*,<sup>‡</sup> and by it it shall be bounded...." Then it follow's, according to the true sense of the Hebrew, "And this shall be your North-border: From the great Sea you shall point out for you Mount Hor." And a little farther, speaking of the East-Quarter: "Its Border shall descend, and shall reach unto the side of the Sea of Chinnereth Eastward; And the Border shall go down again to Jordan, and the goings out of it shall be at the salt Sea: This shall be your Land with the Coasts thereof round about." Which is repeated almost word for word, in the distribution that was made by Joshua: And in another place of holy Scripture, the bounds of the Dominion is said to be from Sea to Sea.

But, suppose at last it were granted, that the Seas came not into those more ancient distributions of Territories, then it remains next to be considered, whether they might not lawfully be acquired afterwards by Title of occupation, as things vacant and derelict; that is, either by the Natural or Divine universal Law which is Permissive, or by the Law of diverse Nations, Common or Civil, which, in judging matters of this nature, is the best Interpreter of the natural Law which is Permissive....



<sup>‡</sup>The very end.

**Map of the British Isles, 1681**



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