

## ПЕРСОНАЛИИ УЧЕНЫХ-МЕЖДУНАРОДНИКОВ

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### WILLIAM WHEWELL TRANSLATOR OF HUGO GROTIUS

Acknowledged polymath – scientist, mathematician, philosopher, educator, theologian, poet, humanist, translator of the German and Greek classics, with additional contributions to the fields of church architecture, political economy, ethics, philosophies of education, and engineering, among others, William Whewell made contributions to the science of law which have largely gone unrecognized and, indeed, unmentioned<sup>1</sup> in most accounts of his life and accomplishments and in international legal doctrine. One of those contributions was a fresh translation of Hugo Grotius, *De jure belli ac pacis* (1625), completed in 1852 and published a year later.

#### Hugo Grotius

Hugo Grotius (1583-1645) remains after more than four and a quarter centuries from his birth perhaps the single most recognizable name in the history of international law. Sometimes (quite wrongly) labeled the «father of international law», his works on the subject became classics in the field even during his

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<sup>1</sup> The excellent biography of Whewell in the Oxford Dictionary of National Biography mentions neither Whewell's interest in and contributions to international law nor his translation of Grotius. See R. Yeo, «Whewell, William», DNB (online version). Also on Whewell see M. Fisch, William Whewell: Philosopher of Science (1991); M. Fisch and S. Schaffer (eds.), William Whewell: A Composite Portrait (1991); Mrs. J. Stair Douglas, The Life and Selections from the Correspondence of William Whewell, D. D. (1881); I. Todhunter, William Whewell: An Account of His Writings, with Selections from His Literary and Scientific Correspondence (1876).

lifetime.<sup>1</sup> In some works on the history of international law, «Grotius» is singled out as a period in its development.<sup>2</sup> A first edition of *De jure belli ac pacis* (1625) brings upwards of \$125,000 and is included among the 500 most important books ever printed.

Grotius was born at Delft into a Calvinist family. His intellectual abilities manifested themselves early on, composing Latin verses at the age of seven (said by Eyffinger to be «... the only man in world history acclaimed a child prodigy by virtue of his juvenile poetry») and entering the University of Leiden at the age of eleven. He graduated at the age of fourteen, having satisfactorily performed in the fields of law, philosophy, and mathematics. By the age of fifteen he accompanied a Dutch Embassy to Henry IV of France. The King described him as the «miracle of Holland»; the University of Orléans conferred the degree of Doctor of Laws on him. Admitted to legal practice at the age of sixteen, he continued to excel in the humanities, publishing a dramatic tragedy in 1601. At twenty years of age he was appointed Historiographer of Holland<sup>3</sup>.

His first known work on the law of nations originated in a commission from the Dutch East India Company to prepare an opinion of the legality of the seizure of a Portuguese ship, the carrack *Sta. Catarina*, by the Company flotilla during the War in February 1603 between the Netherlands and Spain. A substantial manuscript was produced, one chapter of which was published in 1609 as *Mare liberum*<sup>4</sup> (the full text was not discovered until 1864 and published in 1868)<sup>5</sup>. Grotius rose rapidly in the Dutch firmament, being appointed to influential legal posts and continuing his sundry writings on history, theology, and Dutch law. His political career in Holland ended when he was sentenced to life imprisonment for his role in a dispute among Calvinists in 1619 that Prince Maurice equated to treason<sup>6</sup>. His

<sup>1</sup> See L. E. van Holk, «Hugo Grotius, 1583-1645: A Biographical Sketch», in L. E. van Holk and C. G. Roelofson (eds.), *Grotius Reader: A Reader for Students of International Law and Legal History* (1983), pp. 23-44; J. L. de Burigny, *The Life of the Truly Eminent and Learned Hugo Grotius* (London, 1754); E. Dumbauld, *The Life and Legal Writings of Hugo Grotius* (1969); W. S. M. Knight, *The Life and Works of Hugo Grotius* (1925).

<sup>2</sup> See W. E. Butler, «Periodization and International Law», in A. Orakhelashvili (ed.), *Research Handbook on the Theory and History of International Law* (2011), pp. 379-393.

<sup>3</sup> See A. Nussbaum, *A Concise History of the Law of Nations* (rev. ed., 1954; reprint ed. Gryphon, 2008).

<sup>4</sup> We are blessed with two recent published versions, one originally made by Richard Hakluyt but never fully published in its time. See Grotius, *The Free Sea*, transl. R. Hakluyt; ed. D. Armitage (2004); and Grotius, *Mare Liberum 1609-2009*, ed. R. Feenstra (2009), a sumptuous edition. Also see on this book W. E. Butler, «Grotius and the Law of the Sea», in H. Bull, B. Kingsbury, and A. Roberts (eds.), *Hugo Grotius and International Relations* (1990), pp. 209-220.

<sup>5</sup> The most recent edition, attended by in several instances by new supporting materials, is H. Grotius, *Commentary on the Law of Prize and Booty*, ed. & intro. Martine Julia van Irtersum (2006).

<sup>6</sup> On a later assessment of the trial based on access to sealed records of the proceedings, see G. G. Brandt, *Brandts Historie van de Rechtspleging gehouden in de Jaeren 1618 en 1619. Ontrent de dry gevangene Heeren Mr. Johan van Oldenbarnevelt Mr. Rombout Hoogerbeets Mr. Hugo de Groot* (Rotterdam, 1708). On Oldenbarnevelt's defense of his conduct, see Jan van Barnevelt, *Barnevelt's Apology of Holland's Mysterie, with Marginall Castigations* (1618). Also see John L. Motley, *The*

tenure in prison and ultimate escape were known to every schoolboy throughout Europe<sup>1</sup>. During two years of confinement, he wrote two major works, one an introduction to Dutch jurisprudence and the other an exposition of the central doctrines of the Christian faith intended for seafarers. He was allowed to have books in quantities while in prison and the companionship of his wife. He trained himself to lie in the closed chest in which books were brought to him and eventually was clandestinely removed in that receptacle in March 1621 to the safety of friends, who assisted him in escaping to France in disguise. There he was received by the King of France, awarded an allowance, and during 1622-24 commenced and completed his monumental work on the law of nations<sup>2</sup>. Dedicated to Louis XIII, the book, it was hoped, might contribute to a resolution of the Thirty Years War, then fully underway<sup>3</sup>.

The work was well received at the time but disappointing in that it did not enable him to return home or to secure a position consistent with his stature and ambition. Eventually, in 1634 he was appointed by the Court of Sweden to become the Swedish Ambassador to Paris. He held the post for a decade, but not without difficulties. In manner he was not diplomatic, and his continued preoccupations with matters of theology and literature were seen by his Swedish patrons as detracting from the proper performance of his duties. In 1645 he perished in the aftermath of a shipwreck on the coasts of modern Germany.

There have been more than fifty editions of the original Latin text, including several during Grotius' lifetime with his emendations. There are translations into Chinese, Dutch, French, German, Japanese, Russian, Spanish, Swedish, and Church Slavonic<sup>4</sup>, among others. Although well regarded in France and Spain, Grotius' fame was greatest in Protestant countries. The Vatican placed his book on the Index in 1626, where it remained until 1899.

In his Editor's Preface below, Whewell writes that he was aware of at least three translations of Grotius's work in English, besides a «small and worthless abridgement» published in 1654 by C. B., whom he believed (correctly) to be Clement Barksdale (1609-1687).<sup>5</sup> The second and first full edition, in folio, appeared three

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Life and Death of John of Barneveld, Advocate of Holland; with a View of the Primary Causes and Movements of the Thirty Years' War (London, 1874). 2 vols.

<sup>1</sup> Recounted in Burigny, note 2 above and greatly embellished by «that literary larcenist», Charles Butler in what one reviewer called his «indifferent life» of Grotius. See C. Butler, *The Life of Hugo Grotius with Brief Minutes of the Civil, Ecclesiastical, and Literary History of the Netherlands* (London, 1826).

<sup>2</sup> Intellectually, Tuck suggests, *De Iure Belli ac Pacis* really grew out of Grotius's time in prison». See R. Tuck, «Introduction», in H. Grotius, *The Rights of War and Peace* (2005), p. xv.

<sup>3</sup> On that War and references to Grotius, see P. H. Wilson, *The Thirty Years War: Europe's Tragedy* (2009), pp. 134, 318, 389, 463, 553, and 675.

<sup>4</sup> See W. E. Butler, «Grotius' Influence in Russia», in Bull, et al., note 5 above, pp. 257-266.

<sup>5</sup> See Hugo Grotius, *De iure belli ac pacis libri tres. The Illustrious Hvgo Grotius Of the Law of Warre and Peace. With Annotations. III. Parts. And Memorials of the Author's Life and Death ...* (London, 1654). 39 p. A fuller edition appeared in 1654 and a second printing in 1655: [78], 660, [98] p.

decades later, translated by William Evats.<sup>1</sup> The third, also in folio, was published in 1738.<sup>2</sup> However, Whewell was unaware of the 1715 version, whose text differs to some extent from that of 1738, although both are now known to have been translated principally by John Morrice (1686-с. 1740)<sup>3</sup> and made no reference to the 1814 London edition with notes by A. C. Campbell<sup>4</sup>. In any event, Whewell did not consult any of these translations until his own version was completed and considered that his own approach to translation was so different that he would have been unlikely to borrow from them. Given the wealth of translations of Grotius over the centuries, it remains to collate and compare them to determine how much our comprehension of Grotius may depend upon the particular merits of one or the other.

### **William Whewell**

William Whewell (1794-1866) was born at Lancaster, England, the eldest of seven children of a master carpenter, John Whewell, and Elizabeth Bennison. He commenced his studies at Cambridge University in 1812 and immediately distinguished himself: achieving the Latin declamation prize in 1813 (a facility in this language serving him well nearly forty years later when he undertook the translation of Grotius), achieved a first in every subject, was awarded the Chancellor's medal for a poem in English on Boadicea, and graduated in 1816 second in his class. In October 1817 he was elected Fellow of Trinity College Cambridge, where he remained for the rest of his life. A year later he was appointed lecturer in mathematics and assistant tutor, becoming head tutor in 1823. Ordained a deacon in 1825 and a priest in 1826, he was appointed professor of mineralogy in 1828 and Knightbridge Professor of Moral Philosophy (formerly moral theology) in 1838.

He married late, in 1841, to Cordelia Marshall, the daughter of John Marshall, a successful industrialist of liberal political inclinations and associations whose eldest daughter, Mary, was married to Lord Monteaule. Cordelia and William were married on 12 October 1841, having been introduced through the good offices of the William Wordsworth family. Whewell, in a letter of dedication dated

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Harvard Law School has both printings which, but for the designation of dates, are much the same, together with the extremely short version.

<sup>1</sup> H. Grotius, *Three Books Treating of the Rights of War and Peace*. In the First is handled, Whether Any War be Just. In the Second is shewed, The Causes of War, both Just and Unjust. In the Third is declared, What in War is Lawful; that is, Unpunishable. With the Annotations Digested into the Body of Every Chapter, transl. William Evats (London, 1582). 572 p.

<sup>2</sup> H. Grotius, *The Rights of War and Peace, in Three Books: Wherein are Explained, the Law of Nature and Nations, and the Principal Points Relating to Government* (London, 1738).

<sup>3</sup> See R. Tuck, «A Note on the Text», in Grotius, note 9 above, p. xxxv.

<sup>4</sup> H. Grotius, *The Rights of War and Peace: Including the Law of Nature and of Nations*, transl. from the Original Latin of Grotius, with Notes and Illustrations from Political and Legal Writers by A. C. Campbell, A. M. (London, 1814). 3 vols. This version, with notes by Archibald Colin Campbell, was reprinted in 1901 with an introduction by David Jayne Hill and the 1901 version again in 1979.

5 April 1841, acknowledged his friendship to the poet laureate, reproducing the letter in his *The Elements of Morality, including Polity* (1845). The significance of 5 April is obscure, but may perhaps be linked with Whewell's engagement to Cordelia. Marriage completed, by all accounts, Whewell's rise in social circles. The very day of his marriage the Master of Trinity, Christopher Wordsworth, wrote to Whewell of his intention to resign; within five days the Prime Minister, Sir Robert Peel, informed Whewell that Queen Victoria had accepted his recommendation that Whewell should be appointed the next Master of Trinity. Whewell occupied the Mastership from 16 November 1841 until his accidental death in 1866 as a consequence of injuries sustained while riding (Whewell was known as a vigorous, some would have said reckless, horseman who more than once had capsized a carriage).

Whewell's reputation rests upon his scientific writings (he invented the word «scientist» in the English language). His first book, *An Elementary Treatise on Mechanics* (1819), went through six editions and was supplemented by *A Treatise on Dynamics* (1823), which likewise went through several editions. Language was a continuing interest, especially scientific terminology, as evidenced in his *Essay on Mineralogical Classification and Nomenclature* (1828). A trip to Germany inspired *Architectural Notes on German Churches, with Remarks on the Origin of Gothic Architecture* (1830), issued anonymously and identifying his authorship in revised editions of 1835 and 1842. Among his most popular works was *Astronomy and General Physics* (1833), which went through six editions during his lifetime. Inductive thinking was the subject of two major treatises: *History of the Inductive Sciences* (1837) in three volumes<sup>1</sup> and *The Philosophy of the Inductive Sciences* (1840) in two volumes. His views on education were elaborated in *On the Principles of English University Education* (1837)<sup>2</sup> and he collaborated on an English translation of Goethe, *Hermann und Dorothea* (1837). His sermons at Trinity College were collected in *Sermons, Preached in the Chapel of Trinity College* (1847). These works in book form were accompanied by dozens of articles, reports, and surveys, mostly devoted to science, but also numerous important reviews and correspondence. He went on geological expeditions, produced advanced papers on crystallography, mineralogy, astronomy, and, above all, what Whewell called «tidology», the study of tides, to which he devoted no less than fourteen papers between 1833 and 1850. Considerable research was undertaken on charting the tidal movements of the world's oceans, for which he was awarded a medal by the Royal Society in 1837.

<sup>1</sup> A Russian translation appeared in 1867, translated by M. A. Antonovich and A. N. Рурин: История индуктивных наук от древнейшего и до настоящего времени (1867-69), in three volumes at St. Petersburg based on the third English edition.

<sup>2</sup> He later published a work emphasizing the importance of geometry and classical languages as the foundation of a proper university education: *Of a Liberal Education In General; and with Particular Reference to the Leading Studies of the University of Cambridge* (1845-1852). This elaborated on his early views expressed in: *Thoughts on the Study of Mathematics as a Part of a Liberal Education* (1835), which had induced him to edit Book One of Isaac Newton, *Principia* (1846) for students.

As early as 1836, Whewell remarked to his friend John Herschel (1792-1871) that within a year or two he expected to be a philosopher and nothing else<sup>1</sup>. For most historians and critics this observation was understood to mean that Whewell would become a philosopher of science, as indeed he did. But his mind was ranging more widely, beyond science, into the realms of theology and morality. His *The Elements of Morality, including Polity*, appeared in 1845 in two volumes. But the embryo of this work, if his letter of dedication is to be accepted as evidence, was well launched by 1841. Four editions appeared in England during his lifetime (1845, 1848, 1854, and 1864; American editions appeared in 1845, 1847, 1854 and 1871-72, all published by Harper). It is this book which presages the translation of Grotius and, indeed, perhaps constitutes the reason for Grotius being translated at all. The rationale lies in Book VI of the *Elements*, devoted to «International Jus. Rights and Obligations between States».

The greater portion of the *Elements* is devoted to interpersonal relations and to relations between the State and its people. But, as Whewell observed, «... States have also relations towards each other» (p. 361)<sup>2</sup>. States are «... Nations, acting through an organized Government; and Nations, as well as Individuals, may commit acts of violence, make agreements of mutual advantage, possess property with its appendages, and the like». There must be a difference of rights and wrong in such actions, said Whewell. Morality must apply to the dealings of Nations with each other. Just as in the case of individuals, in the morality of nations duties must depend upon rights and obligations – which cannot exist unless they have been defined. Whewell recognized the Benthamite term «international law» as being the body of law which determines the forms and limits of the rights and obligations of nations. However, international «law», he said, appears to imply a «Code of such Law» established by «adequate Authority» (p. 362). Given that such a Code does not exist, there are nonetheless «... many Rules, Maxims, and Principles» which have been at various time and on various occasions delivered by various authorities and which, being accepted and sanctioned by the assent of nations in general, do compose, in some degree, a «body of International Law». This law is loose and imperfect, and so too are the rights and obligations loose and imperfect, but international law «constantly becomes more and more exact, more and more complete», and so too does international morality become «more and more firm in its basis».

Grotius is used as the foil for the juxtaposition of *jus gentium* and the Law of Nature. This, Whewell avers, is a false juxtaposition. Since no doctrine concerning rights and obligations can exist without definitions of rights and obligations, in Whewell's view, and such definitions must be given by historical fact and not mere reasoning from ideas, subjects are bound by acts of their State (and Sovereign) as it is the State which unites men by the Law of Nature. Consequently, Whewell con-

<sup>1</sup> Quoted in Yeo, note 1 above. Whewell's first appearance as a philosophical writer is considered to be his anonymous book review in the *Quarterly Review* (July 1831) of J. F. W. Herschel, *Preliminary Discourse on the Study of Natural Philosophy* (1830).

<sup>2</sup> All references are to the 1845 edition.

cludes that the Law of Nature is not a source of rights separate from and opposed to the *jus gentium*. In some respects, Whewell says, the Law of Nature stands above the Law of Nations, whereas in others international law is more just and humane than is the Law of Nature.

In subsequent chapters Whewell considers in succession the rights of war, international rights of property (e. g., territory), international rights of jurisdiction, and international rights of intercourse (especially, diplomacy). His principal sources are Grotius, Gentili (1589), Livy, Cicero, Napier<sup>1</sup>, Manning<sup>2</sup>, Arnold<sup>3</sup>, Vattel, Wheaton<sup>4</sup>, Mackintosh, Story<sup>5</sup>, James Kent, and William Blackstone. He concludes on an optimistic note. Acknowledging that States have been «much impelled» in their public transactions by their views of their own particular interest, there have nonetheless been in the history of nations many acts of justice, of magnanimity, and of humanity. The negotiations of States and the «reasonings» of jurists seem to show, in Whewell's perception, that «International Law rises gradually to a higher moral Standard» (p. 400). Abolition of the slave trade is cited as the growing influence of such principles in public acts.

If States continue firmly and consistently to apply to themselves the same rules of justice and humanity which they require their weaker neighbors to observe, «there appears to be no reason to despair of the realization of the most equitable and moral codes of International Law which Jurists have ever promulgated» (p. 401).

It is this disquisition on the place of international law in the larger world of human morality that led Whewell to read deeply in the works of Hugo Grotius and, in due course, in admiration of that jurist to undertake the present translation of his major treatise. The roots of the Grotius translation, in other words, lie in Whewell's movement from being primarily a philosopher of science to a deeper interest in the philosophy of morality and its relationship to law, including international law. His efforts immediately won the approbation of Henry Hallam (1777-1859), whose works Whewell used to advantage in composing his own. Hallam wrote not long (15 November 1846) after the appearance of the first edition of *Elements*:

I have again to thank you for a literary present – your leisure is ably employed & your chair of Moral Philosophy ... But I have additional reason to thank you for the handsome fashion in which you have mentioned my own ... attempts to place the fame of Grotius, & his great work, in the light which it appeared to deserve.<sup>6</sup>

Whewell's translation of Grotius contributed significantly to his perception of the future of the University of Cambridge. He provided money for the erection of two courts opposite the Great Gate of Trinity College, the first being completed

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<sup>1</sup> Napier, *History of the War in the Peninsula*.

<sup>2</sup> Manning, *Law of Nations*

<sup>3</sup> Arnold, *Lectures on History*

<sup>4</sup> H. Wheaton, *International Law*

<sup>5</sup> J. Story, *Conflict of Laws*

<sup>6</sup> Trinity / Add. Ms. a/205/87, Henry Hallam to William Whewell.

in 1860 in order to provide additional accommodation for students of Trinity College and the second, in 1868. His personal commitment to the eradication of war – a commitment whose example may have inspired later philanthropy, including that of Andrew Carnegie – was expressed in the endowment of the Whewell Chair of International Law and six University studentships. He had erected the first Master's Court to endow out of the rents and profits of this auxiliary building a Chair of International Law<sup>1</sup>. The existence of that Chair, one of two in the English-speaking world enjoying international renown (the other being the Chichele Chair at Oxford), survives as Whewell's tangible legacy in a field in which he is otherwise celebrated least. His estate, recorded as less than £70,000, underwent probate on 3 May 1866 but did not fully reflect generosity already in train and paid for during his later years.

Douglas believed that the value of the endowment which he gave in his will to support the study of international law cannot have been much less than £100,000. Sir William Harcourt (1827-1904) was elected under the Trust in 1869 to the Chair<sup>2</sup>. Under the regulations governing the Chair, the Professor is required to set out such rules and suggest such measures as may tend to diminish the evils of war and finally extinguish war between nations.

In the same year during which the Grotius appeared, Whewell also published, initially anonymously, *Of the Plurality of Worlds: An Essay* (1853) followed by a concise supplement entitled *A Dialogue on the Plurality of Worlds* (1854). In its seventh edition by 1859, this book contained Whewell's considered judgment that intelligent life was unlikely to exist on other planets given the unique nature of human existence and life on earth.

Whewell edited other works of relevance to philosophy and, indirectly at least, to law, among them James Mackintosh, *Dissertation of the Progress of Ethical Philosophy* (1836); Samuel Butler, *Three Sermons on Human Nature* (1848); writings of his friend Richard Jones, *Literary Remains, Consisting of Lectures and Tracts on Political Economy* (1859); and *The Mathematical Works of Isaac Barrow* (1860); and others.

### **The Whewell Translation of Grotius**

The Whewell translation of Grotius exists in two versions, each of which appeared in autumn 1853. The version in three volumes is what Whewell envisioned as the most complete. For student use he prepared a single-volume text<sup>3</sup> that elimi-

<sup>1</sup> When precisely Whewell formed the idea of creating a Chair of International Law is unknown. Douglas writes that «it is probable that it was suggested by the course of study which he pursued himself, and sketched out for others in connection with his duties as Professor of Moral Philosophy. Douglas, note 1 above, p. 515.

<sup>2</sup> Harcourt entered Trinity College and graduated with first class honors in 1851. During the American Civil War, he wrote famous letters to The Times defending the Union cause and supporting British neutrality in that conflict under the name «Historicus».

<sup>3</sup> See W. Whewell, *Grotius on the Rights of War and Peace: An Abridged Translation* (Cambridge, at the University Press, 1853; reprint ed.: Clark, New Jersey, The Lawbook Exchange, Ltd., 2009).



nated the «numerous references to quotations» given in the original while retaining the references themselves unaltered, thereby giving the reader an «indication of what is omitted or abridged». Something of Whewell's approach to the style of Grotius is conveyed in the observation that Grotius is «concise» and technical», as the nature of the work requires, but this character is preserved except so far as to make it intelligible to ordinary readers.

Whewell himself prized «fidelity» in translation, as he commented in a letter of 29 May 1847 to his sister: «I am glad you like my German translations. I pique myself much on their fidelity, which, I hold, surpasses that of any other translations. Whether by being thus close to the original they are tame and prosaic, you must judge for yourself»<sup>1</sup>.

The year 1852, when Whewell commenced and completed his translation of Grotius, is one in which the surviving letters are «... few in number, and show traces of anxiety and depression», the year 1851 «having closed in gloom»<sup>2</sup>. In the spring of 1853 Whewell visited Leiden to seek out background materials on Grotius. Among those absent whom Whewell wished to consult was a Professor de Wal. His colleague, an Egyptologist named Conradus Leemans (1809-1893), wrote to Whewell on 3 June 1853 that Professor de Wal «... had the kindness to send me a note of which the following is a translation ...»:

The editor of Grotius lib. de jure Belli ac pacis should consult the following authorities:

1) The *Dictata* of the celebrated F. W. Pestel (upon which ... Bildendyk's Pestel Leyd. 1809, pp. 58 ff);

2) The Lectures of H. C. Cras on the same subject.

Both works exist only in MS. Prof. de Wal succeeded in buying this trans. Out of the late Prof. Kemper's library<sup>3</sup>.

3) Gratama Dissertatis, quo Hugonis Grotii merita ...<sup>4</sup>

In all de Wal enumerated thirteen works which he believed that Whewell should consult, all in his personal collection, which he was happy to make available to Whewell on a future visit at his convenience.

<sup>1</sup> The reference to the «German translations» was presumably to his version of Goethe. See Douglas, note 1 above, p. 345.

<sup>2</sup> Douglas, note 1 above, p. 421.

<sup>3</sup> The reference is to Hendrik Constantijn Cras (1739-1820) and Johan Melchior Kemper (1776-1824), jurist and statesman. Kemper's library of more than 5,000 volumes was sold at auction in 1825. A portrait of Kemper by David Pierre Giottino Humbert de Superville (1770-1820) is held by the Rijksmuseum in Amsterdam. Trinity College Cambridge possesses a volume of manuscript lectures devoted to Grotius in a fine hand without attribution except on the detached spine, which makes reference to Kemper. The dates 1818 and 1827 appear on the volume, which may be dates of acquisition and/or binding or rebinding. See Trinity/Add. Ms. c/177, described as eighteenth century. Whether they are Kemper's lectures or a manuscript belonging to him at some point has not been determined.

<sup>4</sup> Trinity/Add. Ms. a/208/22, Conrad Leemans to William Whewell.

By June of 1852 Whewell had embarked upon his translation of Grotius. Part of the original manuscript of the translation survives in the archives of Trinity College Cambridge. Dates occasionally mark where he began and ended certain sections, the earliest being 29 June 1852 (Lib. II, cap. V, §XII), by which time he was well advanced. The text is written out in Whewell's hand on one side of a foolscap sheet, which presumably was submitted to the printer as names appear from time to time on the edge at intervals to designate who was setting copy. As one leafs through the manuscript and turns the folios, the blank obverse side of the preceding sheet occasionally contains queries or cross references to the facing text. Whewell's fluency in Latin is such that there are astonishingly few crossings-out or emendations. The eyes of any experienced translator would immediately comprehend his to be a virtuoso performance.

On 19 September 1852 he wrote to Richard Jones, the political economist (1790-1855): «I have finished my translation of Grotius ...»<sup>1</sup>. Looking back, he observed that the Grotius was «... a solid and tenacious piece of work ... my edition of that work is now going through the press, and I hope it will be finished by the autumn season»<sup>2</sup>. However, even that «... much harder work, ... made the summer pass pleasantly, and rendered the burning heat of 1852 tolerable»<sup>3</sup>.

Copies of the Grotius began to be circulated to friends by October 1853. Robert Monsey Rolfe, 1<sup>st</sup> Baron Cranworth (1790-1868), Lord Chancellor from 1852, wrote to Whewell on 31 October 1853:

It would hardly happen that a new Edition of an old standard work has come out more opportunely than will your Grotius present itself at this moment. It is odd enough that not a month ago I was looking over my old Dutch copy of this book with reference to what is now pressing in the East – and I shall be very glad indeed to consult it in an amended form<sup>4</sup>.

Travers Twiss (1809-1897), recently appointed to the chair of international law at Kings College London, wrote to Whewell on 3 November 1853:

Pray accept my best thanks for a copy of «Grotius De Jure Belli et Pacis» which your publisher has forwarded to me. I am very happy that such a work should have appeared from the Cambridge University Press under your auspices. I cannot but think that the study of the Law of Nations, I use the term in its popular sense, should find a place in the «curriculum» of a liberal education – more especially as that tendency of municipal institutions is to one or other extreme of absolute monarchy or absolute autocracy – and in either case, which has Principali-

<sup>1</sup> Trinity/Add. Ms. c/51/271, William Whewell to Richard Jones. Jones wrote in reply on 20 September 1852 that: «my knowledge of the consular courts relates to their judicial functions as between individuals – their contentious jurisdiction the lawyers call it. I believe ... a curious episode in the history of modern European tribunals ... [It] throws light on the progress of manners which has interested me much – I have never been able to get a sight of the book Grotius refers to & have met with no national law in my reading connected with their functions». Trinity/Add. Ms. c/52/169

<sup>2</sup> Trinity/Add. Ms. c/51/277, William Whewell to Richard Jones, 17 June 1853.

<sup>3</sup> Quoted from Douglas, note 1 above, p. 434.

<sup>4</sup> Trinity/Add. MS. a/202/80, Robert Rolfe to Whewell.

ties in our hemisphere, and Cuba in the other, certain principles of international morality run risk of being overlooked.<sup>1</sup>

George Cornewall Lewis (1806-1863), jurist and philologist, thanked Whewell for the «excellent edition of Grotius»:

I have read the preface and examined the plan of the work, and I feel satisfied that you have rendered a most useful service to all students of international law and politics by your labours. Grotius was unfairly run down by the writers of the 18<sup>th</sup> century – he was considered heavy and pedantic but a fairer estimate of his immortal work now prevails, and your edition will contribute to restore it to its proper estimation.

Wheaton's treatise is a mediocre performance. It is remarkable that no English writer has produced any work of authority on International Law. We have nothing but Lord Stowell's judgements<sup>2</sup>.

On 24 November 1853 Whewell wrote to Thomas Spring Rice, 1<sup>st</sup> Baron Monteagle of Brandon (1790-1866):

I am glad that you do not look upon us who publish on International Law as quite wasting our time. I believe, notwithstanding all the deeds of violence which we have seen committed, that a 'Project of a Perpetual Peace' is by no means a mere dream, if it be based on received International Law. In the cases which you mention, Cuba *is* protected simply by the recognition of such law on the part of the United States, and if the Western States of Europe had boldly told the Czar that he was violating such law (which they told one another but did not tell *him*) it would have checked the aggression. If the Grotius succeeds, I shall probably edit in the same way Puffendorf and Vattel, and shall hope to do some good by proving that 'such deeds are quite atrocious'. Perhaps you retain influence enough in the Edinburgh Review to get the Grotius reviewed there. Cornewall Lewis wrote me a letter which showed that he took a great interest in the subject. I am the more desirous of the work having a circulation because the advantage will go to the University, to whom I have given the copyright.<sup>3</sup>

The anonymous reviewer for *The Spectator* was less charitable<sup>4</sup>. Commenting that the «copious titlepage» of this «once famous» work almost sufficiently indicates the nature and limits of Dr. Whewell's labours upon his author to spare the necessity of further description, the reviewer observes that Whewell has written «a short preface» that will «not much tend to enlighten the student, but has expressly declined the really rich field of labour that seems to invite a modern editor of the first systematic work on international law to trace the progress of the science». The reluctance of Whewell to undertake such a review was regrettable, for such an at-

<sup>1</sup> Trinity/Add. Ms. a/213/170, Travers Twiss to William Whewell.

<sup>2</sup> Trinity/Add. Ms. a/208/36/ Sir George Cornewall Lewis to William Whewell.

<sup>3</sup> Quoted from Douglas, note 1 above, p. 431.

<sup>4</sup> «Whewell's Grotius», *The Spectator*, 26 November 1853, p. 1138.

tempt «would have given a general interest to his work, which a mere translation of a treatise more than two hundred years old, with a selection of old comments, cannot possibly possess». The «utmost» that can be said «for the present limited attempt is, that it may revive a passing interest in a writer who has been already several times translated into English, and may place copies of his greatest work in a few libraries that have hitherto been without it».

As for the quality of the «mere» translation, the reviewer found it to be a «faithful and reliable version of the original Latin».

As for international law itself, the reviewer observed the «melancholy fact» that «history presents us with one long almost unvaried page of violations of the plainest and broadest rules of right». In what he calls the «minor branch» of international law devoted to deciding the rights of individuals arising from the conflicting laws of different states, he finds advance has been made principally under the stimulus supplied by the practical wants of the Federal Republic of the United States, whereas in the «higher branch» regulating the relations and conduct of sovereign governments to each other, the positive law of the civilized world embodies in treaties represents little more than the lawless will of a series of monarchs, and the right of the stronger: «That he should seize who has the power, And he should keep who can». The essential antecedent of international law is an «International Tribunal», the nearest approach to which is in the leagues that have been formed to maintain the balance of power in Europe.

The reviewer then turns upon the Cambridge University Press itself, savages its choices of books to publish, and compares the Press unfavorably with The Clarendon Press at Oxford University. A «recompensing» sale can hardly be imagined for a book which is not edited

... so as to present its subject in a complete form with modern improvements and corrections, while the subject itself is deprived of much of its practical interest by the fact that the problem of international law has almost entirely changed; and men are inquiring not what the *jus gentium* is, but where the *imperium* resides – not what is *right*, but how and by whom it is to be *enforced*. As a branch of speculative political ethics, it may be interesting to deduce from reason and the communis sensus of mankind the rules which ought to regulate the relations of states; and it would be difficult to over-estimate the clearness, subtilty, and learning, which Grotius brought to bear upon this speculation, rendering his work a capital chapter in the history of moral philosophy.

A perusal of the list of other works already published or in preparation by the Cambridge University Press goes some way to explain, the reviewer says, why the University of Cambridge derives scanty profit from its printing and publishing establishment. A London house would inevitably become insolvent that ventured on such speculations. Although a University press is not subject to the ordinary commercial law of publishing solely to make a profit, nonetheless, a University

press ought to produce other works of profound learning and elaborate research or magnificent editions of standard authors, especially those connected with the University. What the press offers, observes the reviewer, is a list of scantily-edited and for the most part unimportant theological works; bits of fathers, and of classical writers, evidently intended for the commonest school and college use. Within the last twenty years not a work has been issued which «does honour either to the living scholarship and science of England, or renders homage to its illustrious dead». The Syndics are cautioned that The Clarendon Press is before them a «model». Unless they reconsider their course and either «forward the publication of original works of high order or put forth the great English writers who have been connected with Cambridge, they had better let their extensive premises, or give them up to the University for new lecture rooms, which are said to be wanted».

Whether the suggestion of the review that the Syndics at Cambridge were squandering money in publishing editions such as Grotius, or indeed most everything they were publishing, contributed to Whewell's concern about printing costs can only be the subject of speculation. By 3 August 1854, however, Whewell was in correspondence with members of the Syndics about printers' expenses, although «as an author, I have nothing directly to do with the expense of the printer». Whewell evidently had been assured by his London publisher, John Parker, that London printing prices were considerable cheaper than those in Cambridge. Whewell at the time was readying the «third» revised edition of his *Elements* for press. If London were less expensive, he suggested, he could only insist on the printing being done at Cambridge by taking upon himself the difference and making Cambridge printing a condition of the bargain. He expressed a willingness to do so in the case of the *Elements*, also acknowledging that other authors were unlikely to be able to follow his example. The Cambridge University Library holds a number of letters relating to the issue that disclose London estimates significantly less than those being paid in Cambridge. In the end John Parker accepted a Cambridge price «under protest»<sup>1</sup>.

The anonymous reviewer in *The Athenaeum* was, philosophically, perhaps more pro-Grotian and pro-Whewell<sup>2</sup>. He was unaware of the abridged version of the book, his review addressing only the three-volume version. Its topicality was undoubted, when «every question related to war or peace – the rights of belligerents and neutrals – the nature and obligations of treaties – the duties of subjects and princes – must daily be discussed and decided ... by every man who contributes money or enthusiasm to the support of national honour». It is hardly possible to find three or four people sitting together who are not «... in some way or other expressing or forming an opinion on several of the most important doctrines

<sup>1</sup> See University/Pr. B.4. I.128-31 (1854).

<sup>2</sup> *The Athenaeum*, no. 1380 (8 April 1854), p. 435.

which more than two hundred years ago were brought into scientific shape by Hugo Grotius».

While Whewell, as noted above, had taken issue with Grotius in his *Elements* and again in his preface to the present work on matters of natural law, the reviewer believed that Whewell had criticized Grotius «where criticism was perhaps least deserved». One of Grotius's «titles to admiration» was that he did admit the existence of a 'body of natural law, distinct from instituted law, and belonging to man by his nature'. The objection raised by Whewell, said the reviewer, seems «rather formal than substantive». Although Whewell denied the existence of a special body of laws which can distinctively be called Natural Law – forgetting that if this were the case all laws would be arbitrary and the matter of Jurisprudence would indeed be nothing but facts – he seems to admit to a certain «lofty ideal» which justifies the phrase in common use. However, Grotius would not have been satisfied by this position; he would have argued that in every special circumstance there is one course open to follow directly suggested by Nature. If men fail to follow that course, the reasons lie in their evil passions or in surrounding accidents. That the persons of heralds are sacred, for example, says the reviewer, is no arbitrary arrangement, but arising from the necessities of the case acknowledged by the savage and the civilized – a precept of Natural Law.

The reviewer believes that Whewell «sneers somewhat unnecessarily» at the Kantian idea that the person as such is free and is the bearer and possessor of a mass of rights. But bearing in mind the times in which Grotius lived and the circumstances of his day, the reviewer considers that his «work has never been rivaled ... and remains an authority on most of the questions of which it treats». The reviewer regrets the absence in the book of a Life of Grotius but considers the edition in most respects to be «excellent». The «text and notes are carefully given and the foot-translation «selective rather than abridged» is «of service». Grotius himself was not remarkable for «pure Latinity», being full of the most harassing digressions and overladen with illustrations of every kind: «The lucid manner in which Prof. Whewell has in general disengaged the argument from its ornamental accessories, is worthy of the highest praise. The edition is a beautiful specimen of typography, very creditable to the Cambridge University Press».

Longest and most generous to Whewell was the review article that appeared in April 1854, just as the others by an anonymous reviewer as was the custom of those times<sup>1</sup>. In a sense, the review article is a précis of the lamentable state of international law in England at the time, precisely what some reviewers believe Whewell should have provided when introducing his translation. Noting that «there is not a country in the civilized world in which that science [international law] is so little attended to as in England», the reviewer found no «expounder»

<sup>1</sup> «International Law. Grotius on War and Peace», *Fraser's Magazine*, XLIX, no. 292 (April 1854), pp. 479-487.

of the law of nations worthy of note other than Sir William Scott (Lord Stowell) (1745-1836): «Certain it is ... that since the peace of 1815 we have been without any authority so eminently illustrious in his particular walk». Britain being perceived (accurately) as about to take a «leading part in the cause of right and justice» by going to war in the Crimea, Dr. Whewell had «judiciously chosen» the time for publication «of the great work of Grotius».

Noting the influence of Roman law on the development of *jus gentium* and its spirit «present in the ecclesiastical code of the Roman church», the reviewer remarked upon the role of the Pope in resolving «questions of international controversy» from time to time and the succession of professors who emerged in this new field of the law of nations, among them Francis de Victoria and Francis Suarez. Of Suarez, Grotius said that he «had hardly an equal in point of acuteness among philosophers and theologians». The reviewer is puzzled that Suarez was «not much noticed by Grotius», for it was Suarez who was the clearest of all those «who had attempted to discuss the law of Nature, and the difference between it and the law of nations». Otherwise, it was Alberico Gentili (1552-1608) and Balthazar Ayala (c. 1548-1584) to whom Grotius was indebted, notably the former as the titles of his chapters run almost in parallel to the first and third books of Grotius.

The reviewer is more patient with the Grotius practice of citing at length and in profusion the «expositions and illustrations of philosophers, historians, ethical writers, orators, poets, and critics of antiquity», together with «all the light that can be derived» from civil and canon laws, inspired writers of the Old and New Testaments, comments of Hebrew divines, and the authority of the Fathers. These, the reviewer suggested, were a form of precedent. The reviewer accorded credit to Grotius for adapting and perfecting to practice the vague ideas that appeared before his time and permanently establishing public law as a science in Europe. He was, said the reviewer, «exactly suited to the times in which he lived». Europe was suited for the reception of his doctrines: «so popular was his work, that an edition was published with *variorum* notes in the manner of the ancient classics – an attention never before shown to any modern production».

Nonetheless, the reviewer approves of Whewell's approach to the volume of materials. Grotius' use of quotations, acknowledges the reviewer, «confuse the subject, obscure the reasoning, and weary the reader» to the extent of disturbing the «didactic clearness and convenient brevity of the treatise». Whewell has omitted, the reviewer believes, all the quotations except those which are necessary to carry on the argument, thereby reducing the bulk of the work by more than one half. The «translation is therefore rather a selective than an abridged translation; the didactic and argumentative parts are in general not abridged, and thus the scheme and reasoning of the author are carefully presented». The great qualification of Grotius to undertake this work, says the reviewer, was not his great learning, but by his command of solid philosophical principles, by definite and exact notions

improved by legal studies and discipline, by pure morality, and by a pervading spirit of religion. In these respect the reviewer finds that Grotius is favorably distinguished from Thomas Hobbes (1588-1679), Immanuel Kant (1724-1804), and Johann Gottlieb Fichte (1762-1814).

The student of international law will find, in the reviewer's opinion, the treatise of Grotius «one of the most indispensable». There is much in it applicable to all times, and «it must ever be a standard authority».

Anticipating the outbreak of hostilities against Russia in the Near East, the reviewer addresses at length the Grotian concept of the «just war» and the aptness of several of Grotius' observations on the reasons some wars may be just to the current international situation. The reviewer concludes with a ringing endorsement of the Whewell version of Grotius: «the functions of editor and translator ... have been performed by Dr. Whewell in an able and scholarly fashion». The work has been «... purged ... of its superfluous wealth, and winnowed the corn from the chaff of citation. All quotations not essential to the argument are omitted, and the translation is given in the raciest English, with the utmost concinnity, and at the same time with the greatest fidelity».