

The Dutch Empire in Intellectual History

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This article examines the ways in which ideas of greatness, reason of state, and state formation were employed in the creation of the Dutch empire. It focuses, in particular, on the role of corporations, including the *Vereenigde Oost-Indische Compagnie* or Dutch East India Company, in providing a platform for the implementation of those ideas. It then shows how the state moved to appropriate the entire domain of political thought from such corporations in the eighteenth and nineteenth centuries, while noting the revival of their political role in the twentieth century. The paper then turns to the question of the impact of this history on the present and therefore to a consideration of the methodological issues involved in that question.

Het Nederlandse 'empire' in de intellectuele geschiedenis

Dit artikel onderzoekt de manieren waarop ideeën over grootheid, *raison d'État*, en staatsvorming gebruikt werden in de vorming van een Nederlands 'empire'. Het focust in het bijzonder op de rol van handelsondernemingen, inclusief de Vereenigde Oost-Indische Compagnie, in het bieden van een platform voor de implementatie van deze ideeën. Vervolgens laat het zien hoe de staat zich het politieke denken van dit soort ondernemingen toe-eigende in de achttiende en negentiende eeuw, terwijl de politieke rol van ondernemingen een revival kende in de twintigste eeuw. Tenslotte zal de vraag naar de invloed van deze geschiedenis op het heden, en de methodologische kwesties die daarmee gepaard gaan, aan bod komen.

The opening essay of this Forum, ‘Visions of Empire in Dutch History’, highlights a number of emerging issues in the intellectual history of empire more generally. Prominent amongst these are the question of empire and state-formation, the role of law in defining relations between Europeans and non-Europeans, and the study of corporations, of which the *Vereenigde Oost-Indische Compagnie* (VOC) was an exemplar, as the instruments through which the Dutch and British empires, in particular, were extended. These approaches to the history of empire bring out a concern with the methodologies for writing the intellectual history of empire, revolving around the role of context in intellectual history, relations between canonical and non-canonical sources, and ways of bringing non-European sources to intellectual history.

State Formation and Empire

Modern Europeans established empires as part of the process of creating their own states and in order to help those states survive. They borrowed the term *imperium* from the Romans in order to describe unlimited authority over newly consolidated territories. They then extended that term to include possessions overseas.¹ The creation of states such as Spain, the Dutch Republic, and Britain was deeply connected to the creation of their overseas empires. Early modern Europeans themselves asserted that the establishment of overseas empires by the new states of Europe was essential to the survival of those states. Relations between European states were characterised by aggressive sovereigns engaged in a ceaseless struggle with each other. The pursuit of new resources through the creation of overseas trade and conquest was believed to be essential to the successful pursuit of that struggle.²

1 There are a number of approaches to understanding the term ‘empire’. One is characterized by Jane Burbank and Frederick Cooper in *Empires in World History: Power and the Politics of Difference* (Princeton 2010) who take it to be a term that can be applied to all people and all places. Another, characterized by David Armitage, *Ideological Origins of the British Empire* (Cambridge 2001), and Anthony Pagden, *Lords of all the World. Ideologies of Empire in Spain, Britain and France* (New Haven 1995), explores the history of peoples who themselves used the term to describe their political communities and explores, through that history, the genealogy of that term. I follow the second approach.

2 The most notable exception to this perspective was Thomas Hobbes, who argued against the ‘vain-glory’ of states and derided ‘the insatiable Appetite, or bulimia, of enlarging Dominion’. On Hobbes and the bulimia of empires, see: Istvan Hont, *Jealousy of Trade: International Competition and the Nation-State in historical Perspective* (Cambridge MA 2005); and Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500-2000* (Cambridge 2014) 104. For Hobbes’s familiarity with the literature on greatness and reason of state and his sympathy with some of its themes, despite his disdain for ‘pretenders to Political Prudence’, see Noel Malcolm, *Reason of State, Propaganda and the Thirty Years’ War: An unknown Translation by Thomas Hobbes* (Oxford 2007) 109-123.

Walter Raleigh famously declared that it was not trade in Seville oranges that made Phillip II the most powerful ruler of Europe. 'It is his Indian gold', Raleigh declared, 'that endangereth and disturbeth all the nations of Europe'.³ Writing several years after Raleigh, in the opening pages of *De Jure Praedae*, Hugo Grotius agreed that the survival of the Dutch state depended upon commerce with Asia which created, he declared somewhat hyperbolically, the wealth by which 'our state is chiefly if not entirely sustained'.⁴ That commerce, he concluded, was therefore 'a weapon against the inmost heart of the enemy's power'. There was no weapon, he said, which offered 'a surer hope of liberty'.

There was, however, an important difference between Raleigh and Grotius's understandings of the motivations for expansion. Despite the fact that he possessed a copy of, and probably translated, Giovanni Botero's *On the Causes of the Greatness of Cities*, Raleigh appears to have been untouched by Botero's insistence that the pursuit of greatness would be better founded upon 'Arte and industry' – as would be the case with the Dutch empire – than in the plunder of gold and silver which, Botero said, caused inflation and had no lasting effect, as had been the case with the Spanish empire. Grotius, in contrast to Raleigh, understood well Botero's point about commerce, as did the English colonizers, in the generation after Raleigh, who abandoned his obsession with silver and gold, such as Robert Johnson, deputy governor of the Bermuda Company, a director of the Levant and East India Companies, and treasurer of the Virginia and East India Companies, who was also the English translator of Botero's *Relationi Universali*.⁵

Despite Botero's challenge to the Spanish about what kind of wealth empires should pursue, he nevertheless strongly endorsed, and popularized, the notion that greatness was necessary to prevail in the struggle between states and was therefore necessary to the survival of those states.⁶ This sixteenth and seventeenth century discourse of greatness rested upon the premises of reason of state which declared that the necessity of self-preservation for a sovereign must be pursued above all

3 Walter Raleigh, *The Discoverie of the Large, Rich and Bewtiful Emphyre of Guiana*. Neil L. Whitehead (ed.) (Norman 1997) 127.

4 Hugo Grotius, *Commentary on the law of prize and booty*. Martine Julia van Ittersum (ed.) (Indianapolis 2006) 15.

5 On Johnson and Botero, see: Andrew Fitzmaurice, 'The Commercial Ideology of Colonisation in Jacobean England: Robert Johnson, Giovanni

Botero and the Pursuit of Greatness', *William and Mary Quarterly* 64:4 (2007) 791-820.

6 Giovanni Botero, *Della cause della grandezza delle città* (Rome 1588); Giovanni Botero, *Della ragion di stato* (Venice 1589).

other matters, including justice. Given that such ideas were fundamental to the understanding of empire, we might ask ourselves why we should be concerned with questions of the justice of empire and, more importantly, why early modern Europeans would have been concerned with the justice of empire.

Grotius largely provided the answer to that question. He responded to radical skepticism about proving that anything is true or just when compared with the different values of different human societies. This skepticism was itself partly inspired by the experience of European expansion and had been seen, for example, in the writings of Montaigne.⁷ Grotius responded to it by basing the idea of justice upon the self-preservation of the sovereign. He thereby brought justice to serve the idea of greatness, expansion and the survival of the state. Grotius was able to reconcile much of the work of Vitoria and the School of Salamanca with this justice of self-preservation: thus, to communicate with others – a central principle of Vitoria's *ius gentium* – was a matter of survival as much as sociability; similarly to occupy was also a matter of survival. Of course, to increase the power of the state, to become 'great', it was necessary to negotiate with existing indigenous authorities in the territories concerned and either to assimilate those peoples or produce hybrid jurisdictions. This aspect of state formation and the creation of empire has only begun to be told in the past ten years through a number of new innovative studies, including a number of the contributions to the conference which gave rise to the present forum.⁸

Company-commonwealths

What happens, however, when we bring this logic of greatness and survival to those quasi-sovereign agents of expansion: namely, the overseas trading corporations, such as the Dutch East India Company; or English East

7 On Montaigne's scepticism and late humanism as part of the context for the development of Grotius's own thought, see: Richard Tuck, *Philosophy and government 1572-1651* (Cambridge 1993).

8 Contributions to this conference engaging with the hybrid character of imperial jurisdiction included: Sanne Ravensbergen, 'The Fainted Jaks: Rule of Law Ideas and Liberal Lawyers in Colonial Java (1819-1900)'; Alicia Schrikker, 'The Fringes of Enlightenment: Dutch Colonialism in

Asia 1750-1850'; and Romain Bertrand, 'Javanese Visions of Dutch Empire. Early Twentieth Century Priyayi Contributions to the Reform (and Demise) of Dutch Colonialism'. For studies in this genre more broadly, see: Saliha Belmessous (ed.), *Native Claims* (Oxford 2012); Saliha Belmessous (ed.), *Empire by Treaty* (Oxford 2014); Romain Bertrand, *Le long remords de la conquête, Manille-Mexico-Madrid, L'affaire Diego de Ávila (1577-1580)* (Paris 2015).

India Company; those company-states, or company-commonwealths? The expansionist ideology of the state transferred, almost seamlessly, to the private corporations who did the work of the state while, at times, rivalling those states.⁹ States were themselves corporations. To incorporate was to create a single legal person from a body politic. When early modern authors came to explain what the body politic of the state was, they turned to the medieval and Roman law discourse of a fictive body which speaks and acts for people it represents.¹⁰ The shared corporate ideology of the state and the trading corporation, as political communities that acted for the good of their members, or the protection of the members' interests, was the basis upon which the broader ideology of the state, including the emerging discourse of reason of state, could be downloaded from state to corporation.

More radically, I would argue that the ideology of the state was also *uploaded* from the overseas trading corporation. The English context for this claim emerges from a closer examination of the circumstances in which the first tracts on reason of state, and indeed the first tracts in which the term 'state' was employed to describe the body-politic, were translated. Both Botero's *Universal Relations*, and Trajano Boccalini's *New Found Politic*, two of the first tracts to employ the idea of the state, as well as two texts deeply marked by the ideology of reason of state, were translated by figures – Robert Johnson and William Vaughan – who were deeply involved in overseas trading corporations rather than figures concerned directly with the sovereign state as such.¹¹ When Johnson and Vaughan spoke of the state or the commonwealth, and when they thought about the usefulness of works on the state or the commonwealth, such as Botero or Bocallini, they were just as likely to be thinking about the company-state or the commonwealth of the corporation, the body-politics in whose government they were deeply involved, the trading corporation or the corporation of London, as they were to be thinking about

9 Rapidly becoming the classic study of the 'company-state', is: Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford 2011). A host of studies are now following in the wake of that work. See, for example, the contributions to the special issue of *Itinerario* 39:3 (2015) on the subject of 'corporate constitutionalism'.

10 F.W. Maitland, *State, Trust and Corporation*. David Runciman and Magnus Ryan (eds.) (Cambridge 2003).

11 Quentin Skinner, 'A Genealogy of the Modern State', *Proceedings of the British Academy* 162

(2008), identifies Johnson's translation of Botero and Vaughan's translation of Bocallini as two of the earliest tracts to use the concept of the state to refer to a popular state, or republic, although his attention is focused on the context of the state as a sovereign country or city-state such as Venice. For the trading corporation context for Johnson and Vaughan's translations, see: Andrew Fitzmaurice, 'The Commercial Ideology of Colonization'; Andrew Fitzmaurice, 'American Corruption', in: John F McDiarmid (ed.), *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson* (Aldershot 2007) 217-231.

the sovereign state from whose government they far were more remote. Strikingly, when the term ‘state’ is used by both Botero and Bocallini it refers to popular forms of government or republics – a construction that applies more easily to early modern chartered companies than it does to monarchies. It does not take a great stretch of the imagination to perceive that the same is likely to be true of the relation between the VOC, the WIC, and early modern Dutch thinking about reason of state and the ‘staat’.¹²

Grotius expressly made possible that two-way transference of ideology between trading corporation and state. He conceived of global society as a world in which private corporations, and even individuals, stood side by side with states. His understanding of that equality was made possible by his notion that global society was a state of nature. In a state of nature, all actors had a place on the stage. All actors had an equal right, in this state, to pursue their own self-preservation. Jacob van Heemskerck, whose seizure of the Santa Caterina provoked Grotius’s defense of his actions in *De Jure Praedae*, would, therefore, have had the right to be engaged in acts of belligerence with the Portuguese without any sanction from the Prince of Johor or the Dutch Republic, merely for his own self-preservation and the same right would apply to the Dutch East India Company. It was the incorporation of the state, as well as of the trading company, that would give them the status of individual actors, or legal persons, and therefore the rights of self-preservation in a state of nature.

There is some debate on whether corporations always operated in ways that were consistent with the aims of the state, or whether, as alternative political communities, they had a tendency to establish themselves as rivals. It should be said that, no matter how much trading corporations liked to imagine themselves as discrete bodies politic and more or less independent from the state, they were nevertheless creations of the sovereign and dependent upon the sovereign will. The Virginia Company described itself in terms of the discourse of the best form of a commonwealth and English East India Company as a ‘company-state’, as did the VOC, but all would be dissolved by their sovereigns when they ceased to please.¹³ Nevertheless, corporations did important work for sovereigns, particularly in the early modern period when the resources of the state, with a constrained system of taxation, were limited.¹⁴ Sovereigns licensed corporations to extend the work of the state, particularly the expansion of the power of the

12 On the VOC as a company-state, see: Arthur Weststeijn, ‘The VOC as Company-State: Debating Seventeenth-Century Dutch Colonial Expansion’, *Itinerario* 38:1 (2014) 13-34 DOI 10.1017/S0165115314000035.

13 For the Virginia Company as a commonwealth, see: Andrew Fitzmaurice, *Humanism and America:*

An Intellectual History of English Colonization, 1500-1625 (Cambridge 2003). For the East India Company as a Company-State, see: Stern, *The Company-State*.

14 Michael J. Braddick, *State Formation in Early Modern England, c.1550-1700* (Cambridge 2000).

state, a work that in the logic of reason of state was believed to be fundamental to the preservation of the state. The corporation of the state therefore multiplied through a kind of cell division, or mitosis, whereby the parent, the sovereign, gave birth to numerous new bodies politic that would do its work. It is true, however, that in many cases these children of the sovereign would pursue objectives that were not always consistent with the desires of the parent, or they would simply pursue their objectives with indifference to the state and, in consequence, some, the English East India Company being a frequently cited example, would even establish themselves as partial rivals. It is for this reason that Thomas Hobbes included corporations in his list of things that lead to the dissolution of the commonwealth, famously describing them as worms in the bowels of the state, although, as Phil Stern points out, Hobbes elsewhere described corporations to be ‘integrally part of the very musculature of the body politic’.¹⁵

The important point to make about this debate over whether corporations complemented or rivalled the state is that it has a history: that is, it has temporal contours, and it is not always the same story at any one moment in time. In the seventeenth century, chartered companies were an indispensable tool for the expansion of certain European states (particularly the English and the Dutch, but also for the French, the Danes and the Swedes). The eighteenth century was a period in which many trading corporations reached the peak of their power, but it was also a time in which, perhaps partly for that reason, states began to define commercial corporations in ways that would limit their ability to portray themselves as bodies politic and the scope of their claims as bodies politic. In particular, states began to seek a monopoly over international space.

After the voc: Liberalism and International Society

By the eighteenth century, moral philosophers had largely abandoned the conceptual tool of the state of nature, even while they clung to the idea of natural rights. Without a basis in the state of nature, international society came to be understood as a largely artificial phenomenon, a social condition, which was governed by convention and had its membership restricted to sovereigns. As Emer de Vattel wrote in 1758, in the middle of the Seven Years War, the society of nations was restricted entirely to sovereign states and empires, and while individuals or companies may have rights it would be ‘rash and ridiculous’ to place their claims, for example to territory, on the same basis as those of states.¹⁶ It is hardly surprising, therefore, to find that

15 Thomas Hobbes, *Leviathan*. Richard Tuck (ed.) (Cambridge 1991) 230; Philip J. Stern, ‘Parasites, Persons, and Princes: Evolutionary Biology of the Corporate Constitution’, *Itinerario* 39:3 (2015) 512-525, 513 DOI 10.1017/S0165115315000959.

16 Emer de Vattel, *The Law of Nations*, Bela Kapossy and Richard Whatmore (eds.), (Indianapolis 2008) 197. See also Fitzmaurice, *Sovereignty, Property and Empire*.

in the period between the mid-eighteenth and mid-nineteenth centuries, European states sought either to restrict the quasi-sovereign pretensions of the great overseas trading companies or to disband them entirely and directly to exercise imperial rule. This is a period that sees the liquidation of the VOC and the WIC and ends with the British government stripping the English East India Company of all its powers in the aftermath of the 1857 Indian Rebellion.

An idea that persisted, however, as sovereigns moved to exert direct control over their colonies, was the notion that the creation and the continued preservation of European states was dependent upon the possession of overseas empires. Reason of state had not died despite the force of Enlightenment critiques of the corrupting nature of empire. With their domination of international society, European states maintained and expanded the colonial systems of wealth creation in the nineteenth century. The examples are numerous. Newly formed states such as Germany and Italy quickly set their sights on the creation of overseas dominions in Africa and the Pacific. The United States, shortly after its own formation, established the Monroe Doctrine which, perversely, was an anti-imperial rationale for empire, a model for subsequent American empire, arguing that the corrupt powers of the Old World should be excluded from further expansion into the New World and therefore preserving that hemisphere for the United States' own ambitions. With this doctrine the United States laid claim to the Oregon Territory while subsequently obtaining Pacific territories including Hawaii and the Philippines.¹⁷

This picture of state-driven empire remained through to the last quarter of the nineteenth century when liberal policies drove a newly deregulated or denationalized system of expansion which allowed overseas trading companies once again to establish colonies. The liberal vision of international society was one in which private associations, companies, and corporations could once again claim a place. New colonies of the 1870s and 80s that were created by chartered companies included those of the British North Borneo Company and the Royal Niger Company. In the most extreme case of this liberal imperialism, a company licensed by no European state successfully argued that it could receive cessions of sovereignty from African rulers and was then able to transform itself from a private association into a sovereign state: this was the transformation of the International Association of the Congo into Congo Free State.¹⁸

The legacy of this late nineteenth-century liberalism has been a system of international society in the twentieth and twenty-first centuries which allows a place for a broad range of actors, including organizations, such as the

17 On the United States' claims to the Oregon Territory, see: Frederick Merk, *The Oregon Question* (Cambridge MA 1967); and Fitzmaurice, *Sovereignty, Property and Empire*.

18 Andrew Fitzmaurice, 'Liberalism and Empire in Nineteenth Century International Law', *American Historical Review* 117:1 (2012) 122-140 DOI 10.1086/ahr.117.1.122

Red Cross and the United Nations, corporations such as Apple and Alphabet (the parent of Google), and even private individuals who have received international franchise through the discourse of human rights.¹⁹ It is not anachronistic to say that we now work with this historically created system. Indeed, we may ask what the implications of neo-liberalism may be for the power of corporations and individuals within that international system.

Contexts and Canons

I am obliged to turn, therefore, to a methodological point. The intellectual history of empire has been beset in recent times by methodological controversy about what we can do with past ideas about empire. On the one hand, the intellectual history of empire is being attacked for excessive contextualism and, on the other, it is critiqued for not being contextual enough.

The attack upon excessive contextualism has come from some historians of international law who have recently argued that we must be able to mine the past for an insight into the present.²⁰ They have made these arguments in opposition, in particular, to the so-called Cambridge historians of political thought who, they (notably Martti Koskenniemi) say, use a contextual approach to history to ‘cut the present off from the past’. The underlying nature of contextualism is antiquarian, Koskenniemi argues, and such antiquarianism is ‘political through and through’ because, he presumably means, that in not critiquing the contemporary neo-liberal political order it is silently endorsing it. In contrast, Koskenniemi argues that the ‘validity of our histories lies not in their correspondence with “facts” or “coherence” with what we otherwise know about a context, but how they contribute to emancipation today’.²¹

It is true that intellectual historians of the ‘Cambridge School’, pioneered by Quentin Skinner, generally oppose themselves to anachronism. They do so not because their methodology is based in any political commitment but because it is based upon the answer to a philosophical question: namely, how is meaning made, and they follow Wittgenstein’s answer to that question by insisting that we can only reliably understand the meaning of a person’s utterance, or text, through reconstructing the context of that utterance. I am not, however, aware of any ‘Cambridge School’ historians who oppose the careful use of the past to inform debates about

19 On the proliferation of human rights discourse in the twentieth century, see: Samuel Moyn, *The last Utopia* (Cambridge MA 2010).

20 Anne Orford, ‘On International Legal Method’, *London Review of International Law* 1 (2013) 170-

177 DOI 10.1093/lril/lrto05; Martti Koskenniemi, ‘Vitoria and Us: Thoughts on critical Histories of international Law’, *Rechtsgeschichte – Legal History* 22 (2014) 119-139 DOI 10.12946/rg22/119-138.

21 Koskenniemi, ‘Vitoria and Us’, 129.

the present. On the contrary, they almost always explicitly state that their histories are tools for understanding the world in which we live.²² Vigilance about imposing present concepts upon the understanding of the past does not preclude achieving an understanding of how the present is constituted by the past, nor is it anachronistic to understand how the terms of political discourse in the present draw upon the past while they are at the same time incessantly reinterpreting the past.

At the other end of the contemporary methodological spectrum, the intellectual history of empire is being critiqued for not taking context far enough. This critique comes from what might be called a social intellectual history written by historians such as Lauren Benton. Benton has shown how ideas about law and justice penetrated far deeper into the governance of colonial societies than historians of law have previously understood.²³ She is concerned with what she and Richard Ross, following Katherine Hermes, describes as ‘jurispractice’.²⁴

Benton is right that many intellectual historians have confined themselves to the study of canonical figures, despite their methodological declarations to be concerned with context. One reason for that confinement is that for some intellectual historians, such as J.G.A. Pocock, the proper subject of a history of ideas must be coherent and systematic treatments of concepts, which tend only to be found in the canonical texts. According to that approach, context is employed in order to shed light on those texts but not in order to pursue the history of ideas through the numerous other kinds of written texts produced at all levels of society, nor through the almost infinite number of non-written texts, such as material objects, or even in terms of social conventions such as dance.²⁵ This broader approach to context would also include expanding the history of ideas beyond its traditional

22 Skinner, ‘A Genealogy of the Modern State’, 325; Anthony Pagden, *Lords of all the World. Ideologies of Empire in Spain, Britain and France* (New Haven 1995) 1; Richard Tuck, *The Rights of War and Peace: Political Thought and the international Order from Grotius to Kant* (Oxford 1999) 15; Hont, *Jealousy of Trade*, 156; James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge 1993) 6; David Armitage, *Foundations of modern international Thought* (Cambridge 2013) 13; Jennifer Pitts, ‘Political Theory of Empire and Imperialism’, *Annual Review of Political Science* 13 (2010) 211–235 DOI 10.1146/annurev.polisci.051508.214538.

23 Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History* (Cambridge 2002);

Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge 2010); Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law 1800–1850* (Cambridge MA 2016).

24 Lauren Benton and Richard J. Ross, ‘Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World’, in: Benton and Ross (eds.), *Empires and Legal Pluralism, 1500–1850* (New York 2013) 1–20, 7 DOI 10.18574/nyu/9780814771167.003.0001.

25 See Inga Clendinnen, *Dancing with Strangers: Europeans and Australians on First Contact* (Cambridge 2005).

European focus.²⁶ The possibility that context might include such a broad understanding of texts was anticipated by one of the founders of modern intellectual history, R.G. Collingwood, who came to encourage the study of context as a means of establishing the meaning of a text. Collingwood was inspired by his work as an archaeologist in reconstructing the meaning of material objects from the past.²⁷ Similarly, the methodological writings of Quentin Skinner, with their Wittgensteinnian perspective upon meaning, would seem to encourage the pursuit of context without limit: neither as to the kinds of texts we attempt to understand, nor in the kinds of discourses in which we attempt to place them. That pursuit will always, as Koskenniemi observes, be limited by our point of view from the present and by the frames we impose on our questions. Nevertheless, its object is to minimise, rather than indulge, the distortions of perspective. The further context is taken, both in terms of the kinds of texts we consider and in the breadth of context, the more we will succeed in that task.

Benton's approach reflects a new generation of scholarship that is engaged in the excavation of an entire bedrock of law that has hitherto been largely ignored by historians.²⁸ Importantly, the operation of law at this level, in the writings of 'middling officials', in admiralty courts, in commissions and petitions and in the actions of merchants and even the most 'vulnerable subjects' of empire, will also challenge understandings of the law as a coherent system imposed from above. Unfortunately, however, Benton's approach contains some short-comings, although it need not in order to achieve the broader understanding of context she seeks. Firstly, while the figures Benton studies are more closely engaged with dealing with non-European peoples than is the case with most histories of empire, particularly intellectual histories, like many of us she is nevertheless focused upon the European side of the colonial encounter. It is an important question whether and how we can study the legal understandings of non-European peoples in their encounters with European empires but also with

26 See for example: Christopher Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge 2011); Romain Bertrand, *L'histoire à parts égales: Récits d'une rencontre Orient-Occident XVI^e-XVII^e siècle* (Paris 2011); Belmessous, *Native Claims*; Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1850-1950* (Cambridge 2012); Adam Clulow, *The Company and the Shogun: The Dutch Encounter with Shokugawa Japan* (New York 2013); Belmessous, *Empire by Treaty*; Umut Özsü, *Formalizing Displacement: International Law and*

Population Transfers (Oxford 2015); Bertrand, *Le long remords de la conquête*.

27 R.G. Collingwood, *An Autobiography* (Oxford 1939); R.G. Collingwood, *The Idea of History* (Oxford 1946).

28 For studies taking such an approach, see also: the essays in Belmessous, *Native Claims*; Benton and Ross, *Empires and Legal Pluralism*; and Belmessous, *Empire by Treaty*. See also Inge van Hulle, *Britain, West Africa and the Formation of Imperial International Law (1807-1885)* (PhD University of Leuven, 2106).

other non-Europeans. There are a number of studies now emerging that take this perspective.²⁹

Secondly, Benton tends to dismiss the work and ideas of the canonical figures with whom intellectual historians have been concerned. She and also, in this instance, her co-author, Lisa Ford, are not particularly interested in the ‘dry speculations of Vattel and his confreres’ because, although they were occasionally referred to in jurisprudence, they were ‘drowned out’ by the ‘cacophony’ of voices from below.³⁰ Such a perspective, with its attendant metaphors of ‘above’, ‘below’, and ‘on the ground’ (leaving I’m not sure where, those people who are not on the ground), tends to ignore decades of work, from Peter Laslett working on Locke in the 60s, through to more recent work on Hugo Grotius and John Stuart Mill, which has sought to show that the arguments of such admittedly canonical figures (although usually elevated to the canon after their own lifetimes) were deeply engaged with imperial, or other, practices and often driven by questions of jurisprudence.³¹

Finally, arising from this second problem, to be dismissive of the ‘metropolitan’ discussions of ideas is not to be attentive to the loop whereby the arguments in context of Admiralty courts and in colonies are fed back into discussions in more formal legal and political texts. Although, encouragingly, she and Ford note positively that ‘some intellectual historians have started looking for the interface of high theory and practice’, it might be better to start from the premise that ‘high’ theory is not so high.³² The texts of ‘high theory’ were shaped by discussions ‘on the ground’ at the same time that they also shaped what the actors in those contexts used as argumentative tools – often the people who wrote the textbooks were the same people who worked in courts or colonial jurisdictions. The generation of scholarship that took a ‘top-down’ approach to intellectual history, and to history more generally, was treating a very large part of culture as merely reactive. The danger of a ‘bottom-up’ approach is very much the same: namely, treating supposedly ‘high’ culture and authors of ‘canonical’ texts (usually not deemed canonical

29 See Yanna Yannakakis, ‘Beyond Jurisdictions: Native Agency in the Making of Colonial Legal Cultures: A Review Essay’, *Comparative Studies in Society and History* 57 (2015) 1070–1082 DOI 10.1017/S0010417515000444.

30 Benton and Ford, *Rage for Order*, 21.

31 John Locke, *Two Treatises of Government*. Peter Laslett (ed.) (Cambridge 1960); Peter Borschberg, ‘Hugo Grotius, East India Trade and the King of Johor’, *Journal of Southeast Asian Studies* 30:2 (1999) 225–248 DOI 10.1017/S002246340001300X; Peter Borschberg, ‘The Seizure of the Sta.

Catarina revisited: the Portuguese Empire in Asia, VOC politics and the origins of the Dutch-Johor alliance (1602–c.1616)’, *Journal of Southeast Asian Studies* 33:1 (2002) 31–62 DOI 10.1017/S0022463402000024; Jennifer Pitts, *A Turn to Empire* (Princeton 2005); Martine van Ittersum, *Profit and principle: Hugo Grotius, natural rights theories and the rise of Dutch power in the East Indies (1595–1615)* (Leiden 2006); Armitage, *Foundations of Modern International Thought*.

32 Benton and Ford, *Rage for Order*, 211.

when first produced) as reactive rather than also themselves as agents who were doing things by writing and in dialogue with the culture more generally.

Conclusion

We need, I would argue, in the intellectual history of empire, and in intellectual history more generally, not another generation of scholarship which cuts cleavages between different intellectual spheres. Such a perspective would be true to the broad understanding of context that both Benton and Skinner argue for. We need work which shows the constant dialogue between people engaged in everyday business of various kinds, middling figures such as lawyers, but also merchants and people of humble status, and the figures of supposedly high culture who attempted to think systematically about the role and place of ideas but who also prove, on closer examination, to be people whose writings were embedded in everyday objectives. This point, that texts are acts that intervene in current debates and problems, was the central methodological claim of the intellectual history pioneered by Skinner and contemporaries such as Pocock. Ideas, in all societies, are created and developed through that dialogue, not by filtering from above or below. In the papers in this forum, and in recent work on the intellectual history of the Dutch empire, it is evident that there is a movement in that methodological direction which embraces the social and cultural totality of ideas as well as their ubiquity on a global scale.³³ There is now an opportunity for an intellectual history of the Dutch empire to be written that redresses some of the methodological infelicities that are now becoming apparent from more than a generation of scholarship on the English, French and Spanish empires while at the same time taking advantage of some of the strengths of that scholarship.

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33 See, for example, the work of Weststeijn; Ittersum; and Borschberg above.