

Cultures of Diplomacy  
and Literary Writing  
in the Early  
Modern World

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## 3

## Lines of Amity

## The Law of Nations in the Americas

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## INTRODUCTION

One of the abiding fictions underwriting the history of international law is the idea of lines of amity. According to many traditional accounts, the European states system was able to take shape and retain a coherent form over the course of the early modern period by bracketing off the conflicts that took place between states in regions outside Europe. Territorial conflicts, acts of piracy, and other forms of extraterritorial violence that took place 'beyond the line', that is, west of the Canaries and south of the Tropic of Cancer, did not infringe on European interstate treaties or otherwise affect the amity among European states.

Although the origin of the amity lines is typically attributed to the Franco-Habsburg treaty of Cateau-Cambrésis of 1559, this document, whose predominant concern was a division of French and Spanish control over Italy, does not include any discussion of the rival states' competition in the Americas within the text of the treaty.<sup>1</sup> The textual form of the treaty effectively replicates the elision of colonial contexts from the purview of European politics. Nonetheless, Cateau-Cambrésis attained a central position as unstated policy through its citation as precedent in subsequent treaties, such as the Franco-Spanish Peace of Vervins (1598) and the Anglo-Spanish Treaty of London (1604). In diplomatic practice as well, the justification of amity lines by Cateau-Cambrésis held a status as established fact: Marie de Medici, Regent of France, defended the right to seize the vessels of rival European nations in a 1611 document by arguing that 'as is evidenced by all treaties since the time of King Francis, beyond the line and on the American coast there is no peace'.<sup>2</sup>

The intrinsically fictive character of the amity lines is even more apparent when analysed in practical terms that expose the uncertainty of their supposed location. The line separating Europe from other regions was, to begin with, double rather than single: a western division keyed to the Canary Islands or Azores in addition to

a southern boundary running along the Tropic of Cancer. The southern line, situated immediately north of the Caribbean and the entirety of Southeast Asia, conveniently subsumes the profitable sites of West and East Indies within the lawless realm of licensed piracy. The western meridian was far from self-evident and remained an unsettled point of contention among European states throughout the period. As many as fourteen rival candidates were offered as to what line marked being beyond the line in the first place.<sup>3</sup> In practice, as illustrated by examples such as Sir Francis Drake's raid on Cadiz, the state of war nominally confined to spaces beyond Europe was integral to the informal and quasi-sanctioned violence that permeated European international relations as well.

The amity lines held an imaginative currency because they served as a moving horizon that could maintain a conceptual boundary separating Europe from its messy entanglements across the globe. In fact, as Garrett Mattingly noted, there is a surprising paucity of references to lines of amity in early modern diplomatic correspondence, evidence of a lack of distinction between European and non-European spheres of interstate relations.<sup>4</sup> Contrary to the way in which the lines of amity attempted to bracket off the extra-European world from the law of nations, European and global contexts were in reality mutually constituted and in dialogue with one another throughout the period. As Antony Anghie argued, instead of the Westphalian model of sovereignty extending around the globe, 'sovereignty was improvised out of the colonial encounter, and adopted unique forms which differed from and destabilized given notions of European sovereignty'.<sup>5</sup>

Lines of amity can be viewed within another framework, one that better recognizes the impact of global relations on the European interstate system, and that is the aim of this essay. Competition among European powers over spheres of influence and commercial advantage in other regions across the globe also enabled unexpected alliances, forms of amity that traversed lines of nation, confessional identity, and race. The initial section of this essay will examine a historical incident that is perhaps better known through its reworking in dramatic form and popular culture: Drake's alliance with the nation of Cimarrons, or escaped slaves, in Panama in 1572. This incident raises questions regarding Drake's own status as a diplomatic agent and the extent to which he could arrogate authority in forging such informal alliances. More importantly, this example challenges the exclusion of the Cimarrons from international law. Rather than being categorized as escaped slaves, and thereby dispossessed of political rights, the Cimarrons' alliance with Drake marks their position as political agents. Even if not recognized as a nation within the states system, they can nonetheless take on the attributes of sovereign authority: making alliances, negotiating with foreign powers, including their former Spanish

<sup>3</sup> Bertrand Westphal, *The Plausible World: A Geocritical Approach to Space, Place and Maps* (New York, 2013), 141.

<sup>4</sup> Garrett Mattingly, 'No Peace Beyond What Line?' *Transactions of the Royal Historical Society*, 5th ser., 13 (1962), 145–62.

<sup>5</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005), 1. Also see China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Leiden, 2005), 169–83.

<sup>1</sup> Frances Gardiner Davenport, *European Treaties bearing on the History of the United States and its Dependencies to 1648* (Washington DC, 1917), 1.219–21.

<sup>2</sup> Wilhelm G. Grewe, *Epochs of International Law*, trans. Michael Byers (Berlin, 2000), 156.

overlords, and exercising agency through the strategic use of violence. The alliance of a privateer and escaped slaves thereby transforms the premises of the lines of amity, creating new connections that not only traverse colony and metropole but additionally complicate the extent to which non-state agents, stateless persons, and a range of colonial subjects wield political agency in the unstable political domain of the Americas.

Countering the implications of Drake's alliance with the Cimarrons, the second part of this essay will examine the means through which the lines of amity remained entrenched in the European political imagination throughout the early modern period. In his study of the emergence of a European legal order, Carl Schmitt argues that the 'spatial order of states' and balance of power within Europe required the separation of extra-European regions from the international order, as a result of which these spaces were relegated to a status as 'incidental and peripheral'.<sup>6</sup> With the increasingly territorial definition of states, *ius gentium* was restricted to *ius inter gentes* (law among nations) if not *inter gentes Europaeas* (among nations of Europe). In this scenario, 'whoever lacked the capacity to become a "state" was left behind'. Echoing Alberico Gentili's refusal to recognize the legal status of rebels and other non-state actors, as discussed later in the essay, Schmitt concludes that "Statehood" is not a universal concept, valid for all times and all peoples.<sup>7</sup>

The European definition of the law of nations reasserted itself by reconstituting an imagination of the lines of amity that denied the political and historical contemporaneity of regions beyond Europe. This transformation was accomplished through a narrative strategy that relegated colonial history to its own tragic register. Similar to John Watkins's illuminating discussion of the pathos and pessimistic reversals found in Gentili's work,<sup>8</sup> the unsettling complexities of European rivalries beyond the line produced a compensatory reaction that enforced a tragic ending to an alternative framework of the lines of amity, with alliances traversing Europe and the Americas, which was an important implication of Drake's relations with the Cimarrons. As a counterpart to Valerie Forman's productive linking of tragicomedie with global trade, wherein this generic model offers a comforting framework for reconstituting forms of order unsettled by global encounters, and the more hopeful connection Christopher Warren draws between tragedy and international legal personality, the examples analysed below impose an irredeemably tragic template for imagining colonial encounters.<sup>9</sup> These will inevitably end badly, unless, of course, these non-European cultures can be subsumed under the dominion of European imperial powers.

The latter sections of this essay will analyse the tragic reversals found in two texts: Francisco de Vitoria's *De Indis* (1532) and William Davenant's *The History of Sir Francis Drake* (1659). Canonized as the founder of international law in the

<sup>6</sup> Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York, 2003), 126, 184, 136.

<sup>7</sup> *Ibid.*, 129, 130, 127. <sup>8</sup> See John Watkins below, ch. 4, esp. 75–83.

<sup>9</sup> Valerie Forman, *Tragicomic Redemptions: Global Economics and the Early Modern Stage* (Philadelphia, 2008); Christopher Warren, *Literature and the Law of Nations, 1580–1680* (Oxford, 2015).

twentieth century, and seen as a prototypically modern forerunner of later versions of international thought, Vitoria is important to any discussion of the early modern law of nations.<sup>10</sup> However, these modern readings often neglect to acknowledge how his critique of Spanish dominion in the New World suddenly pivots at the end of his text in order to justify a legal order he has already proven to be illegitimate. Vitoria accomplishes this reversal through a redefinition of 'amity': no longer serving as a model of similitude and alliance, the term instead offers an insidious way of defending Spanish colonialism under the guise of diplomacy, free trade, and the defence of the innocent.

Davenant's dramatic entertainment *The History of Sir Francis Drake* rewrites the episode of Drake's alliance with the Cimarrons in order to provide a spectacular precedent for representing England's nascent imperial identity, ensured through entrance into the Spanish Caribbean. Davenant's text ultimately contains the implications of an English alliance with the Cimarrons by ending the entertainment with a threatened act of sexual violence that relegates the Cimarrons to a position outside of civil society and the law of nations. Although Cromwell's Western Design for wresting the Caribbean from Spanish control was unsuccessful, it did provide England with a foothold in Jamaica.<sup>11</sup> The Jamaican Maroons, like the Panamanian Cimarrons before them, were important diplomatic agents in their ability to negotiate with competing European forces, and their complex political status reveals the generally unrecognized position of such non-state agents and stateless persons in the global workings of early modern diplomacy.

## COLONIAL ALLIANCES: DRAKE AND THE CIMARRONS

In 1572, Sir Francis Drake set out on a mission to intercept the annual Spanish shipment travelling from the silver mines of Peru, a convoy that was transported overland at the Isthmus of Panama and shipped from the Caribbean.<sup>12</sup> The geography of this conflict supports Lauren Benton's argument that it is more accurate to see the lines of amity and enmity structuring global relations as following the paths of trade routes rather than demarcating a strict boundary separating Europe from a sphere beyond the line.<sup>13</sup> Drake's encounter with the Cimarrons was made possible by an accident of geography: one Cimarron settlement (*palenque*) was

<sup>10</sup> See James Brown Scott, *The Catholic Conception of International Law* (Oxford, 1934). For a survey of recent discussions of Vitoria, see Martti Koskenniemi, 'Vitoria and Us', *Rechtsgeschichte*, 22 (2014), 119–38.

<sup>11</sup> See David Armitage, 'The Cromwellian Protectorate and the Languages of Empire', *HJ*, 35 (1992), 531–55.

<sup>12</sup> The original narrative of Drake's voyage was published in *Sir Francis Drake Revived* (London, 1626). For recent discussions of Drake's alliance with the Cimarrons, see Cassander L. Smith, *Black Africans in the British Imagination: English Narratives of the Early Atlantic World* (Baton Rouge, 2016), 58–83 and Miranda Kaufmann, *Black Tudors* (London, 2017), 56–89.

<sup>13</sup> Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge, 2010), 106.

strategically located about thirty miles west of Nombre de Dios, a route closely approximating the location of what is now the path of the Panama Canal. Accounts of Drake's voyage often elide the contributions of the Cimarrons, emphasizing the incidental nature of the alliance in order to limit their role.<sup>14</sup>

Drake did not stumble upon a helpless community in need of his intervention, however. The Cimarrons were in the midst of a decades-long struggle against their erstwhile Spanish masters, a rebellion that overlapped with the Dutch Revolt. After initial revolts in 1525, 1530, and 1533, the Cimarron settlements were in a nearly constant state of war with Spanish colonial forces from 1549 to 1582. Despite political settlements reached in 1553 and 1556, this struggle was at its most intense phase in the 1570s when Drake arrived. Even Drake, the experienced slave trader, was impressed by the Cimarrons, a population of around 3,000 that had maintained its political independence for decades.<sup>15</sup> Whereas accounts of Drake's mission relegate the Cimarrons to an instrumental role as guides and informants, the raid might more accurately be seen as a Cimarron effort that drew on limited English support, one spearheaded by Pedro Mandinga, leader of the *palenque* of Puerto Bello near Nombre de Dios.<sup>16</sup> The overland expedition included thirty Cimarrons along with eighteen Englishmen, and it was the former group who 'did most of the real work'.<sup>17</sup> Throughout his voyage, Drake was dependent on Cimarron intelligence, including integral information regarding the path of the Spanish convoy.<sup>18</sup> Reflecting the importance of such informants, a Cimarron guide named Diego accompanied Drake on his return to England and later served as a paid crewmember on the circumnavigation voyage.<sup>19</sup>

So indebted was Drake to the Cimarrons that he owed to them his first glimpse of the Pacific, a moment portrayed in later retellings, including Davenant's, as England's entrance into a trans-Pacific world, not only anticipating Drake's circumnavigation but also promising later imperial dominance.<sup>20</sup> The perennial popularity of mythic retellings of this incident conveniently overlooks the fact that Drake's sublime view of the Pacific is achieved only as a result of the labour of his Cimarron allies.

Ultimately, the attempted raid on the Spanish convoy was a debacle. In the first instance, the Spanish, alerted to an ambush, were able to repel the attack, which

<sup>14</sup> For example, Kenneth R. Andrews, *Drake's Voyages: A Re-Assessment of their Place in Elizabethan Maritime Expansion* (London, 1967), p. 37; Harry Kelsey, *Sir Francis Drake: The Queen's Pirate* (New Haven, 1998), 61.

<sup>15</sup> Ruth Pike, 'Black Rebels: The Cimarrons of Sixteenth Century Panama', *The Americas*, 64 (2007), 243–66.

<sup>16</sup> *Documents Concerning English Voyages to the Spanish Main, 1569–80*, ed. Irene A. Wright (London, 1932), xl–xli. On Pedro Manginga, see Smith, *Black Africans*, 72–4.

<sup>17</sup> Kelsey, *Queen's Pirate*, 61.

<sup>18</sup> On Drake's use of Cimarron and other African-born guides, see Michael Guasco, *Slaves and Englishmen: Human Bondage in the Early Modern Atlantic World* (Philadelphia, 2014), 97–103.

<sup>19</sup> *Documents*, xxxiii; Guasco, *Slaves and Englishmen*, 98, 99, 103. On the life and career of Diego, a former slave, see Kaufmann, *Black Tudors*, 56–89.

<sup>20</sup> *Documents*, 300; William Davenant, *The History of Sir Francis Drake*, in *Drama of the English Republic, 1649–60* (Manchester, 2002), 4.61–75. All further references will be to this edition and included in the body of the essay.

forced Drake and his allies to lay siege to Venta Cruces, a nearby Spanish settlement. Much of what was seized in this raid could not be carried and had to be discarded or destroyed. A subsequent raid, near Nombre de Dios, was more successful, but even in this instance much of the seized treasure was left behind and recovered by the Spanish. Despite their ultimate futility, the raids represented an anomalous innovation in that Drake and his allies extended the maritime rules of plunder and seizure of prize to Spanish territories; they were, in David Shields's terms, 'an unprecedented colonial adventure, an impromptu war without state sanction'.<sup>21</sup> In fact, the Anglo-Cimarron alliance was more successful in a maritime context. Drake and his Cimarron allies joined forces with the French Huguenot privateer Guillaume Le Testu and continued to mount sporadic attacks on Spanish vessels throughout the region.<sup>22</sup> As Edmund Morgan notes, this history unfolded 'on a scale that transforms crime into politics'.<sup>23</sup>

This historical alliance also transformed the perceived religio-political identity of the Cimarrons themselves: colonial Spanish documents from this period refer to the Cimarrons as 'Lutherans' and describe instances of Cimarrons leading their European allies in the desecration of Spanish Catholic churches.<sup>24</sup> Although these accounts are shaped by confessional prejudice, they nonetheless reflect how the Cimarrons' colonial struggle became inflected by the internecine religious conflicts of early modern Europe. Contemporary documents viewed the Cimarrons' history of political struggle and negotiation not as beyond the line but rather, part of European international relations. Spanish officials in Panama, for example, did not distinguish between European privateers and local Cimarrons as political threats, referring collectively to the depredations of 'both French and cimarrones'.<sup>25</sup> Visitors to Cimarron *palenques* were surprised by their overwhelming resemblance to Spanish colonial settlements, even while still at war with Spain, a similitude extending to the (stolen) Spanish clothing worn by residents.<sup>26</sup>

In one of the earliest English texts in the genre of colonial promotional literature, Richard Hakluyt proposed Panama as the location of the first permanent English settlement in the Americas, and envisaged a colony whose population of Cimarrons would be joined by English convicts and other migrants supporting themselves through attacks on Spanish shipping.<sup>27</sup> Spanish colonial authorities feared the prospect of such long-term alliances: during Drake's voyage of 1585, Spanish officials speculated that the slaves whom Drake had seized in the Spanish Caribbean would be resettled in Roanoke, granted their freedom, and used to defend the

<sup>21</sup> David S. Shields, 'Sons of the Dragon: or, The English Hero Revived', in Ralph Bauer and Jose Antonio Mazzotti (eds), *Creole Subjects in the Colonial Americas: Empires, Texts, Identities* (Chapel Hill, 2009), 110.

<sup>22</sup> The Cimarrons and John Oxenham, one of Drake's lieutenants, collaborated after 1575. See Pike, 'Black Rebels', 259–61; Smith, *Black Africans*, 82.

<sup>23</sup> Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975), 9.

<sup>24</sup> *Ibid.*, 13. <sup>25</sup> *Documents*, xix.

<sup>26</sup> *Ibid.*, xli; *Sir Francis Drake Revived*, 56.

<sup>27</sup> Richard Hakluyt, 'Discourse of Western Planting', in *The Original Writings and Correspondence of the Two Richard Hakluyts*, ed. E. G. R. Taylor (London, 1935), 142–3.

fledgling English colony.<sup>28</sup> However, Hakluyt's vision of a pirate utopia was quickly forgotten, in part because the possibility of English alliances with the Cimarrons had already passed when Hakluyt published his text in 1584. The three major *palenques* of Panamanian Cimarrons all negotiated settlements with the Spanish from 1579 to 1582, putting an end to their decades-long conflict. In exchange for being resettled in self-governing towns, the Cimarrons agreed to suspend any further alliances with the English and return any fugitive slaves who arrived in their communities.<sup>29</sup> These treaties reflect the status of the Cimarrons as political agents to whom the terms of diplomatic negotiation and recognition were extended. For their part, the Cimarrons abided by the terms of their agreements. When Drake returned to the region in 1596, the Cimarrons remained loyal to the Spanish crown and refused to join forces with him.<sup>30</sup> As recounted in Lope de Vega's poem on Drake, 'Dragontea', which drew on archival accounts of the episode, the Cimarron settlement of Santiago del Principe was instrumental in warding off Drake's later incursion in the region.<sup>31</sup>

Despite winning a short-term battle through the relative degree of autonomy they achieved, the Cimarrons lost the larger war that was part of their struggle as a community defined by their escape from slavery. Their treaties with Spain coincided with a dramatic escalation of the transatlantic slave economy: whereas 36,300 slaves arrived in Spanish America from 1550 to 1595, the period of the Cimarron revolt against Spain, that number skyrocketed to 268,600 from 1595 to 1640.<sup>32</sup> For Spanish colonial authorities, diplomatic settlement with the Cimarrons not only put an end to a futile military campaign but also channelled Cimarron power to the defence of the colony. Moreover, without the threat of slaves escaping to the *palenques*, the slave trade could expand unchallenged in the region.

## REBELLION AND THE LAW OF NATIONS

Lines of amity provided a necessary conceptual framework for an initial formulation of international law in the early modern period. However, as Schmitt noted, the imputed universality of the law of nations began to decline as a result of challenges to Habsburg Spain's dominance in the Americas.<sup>33</sup> Supporting Schmitt's argument, one can see that the alliance of disparate groups of escaped slaves, English privateers, and French Huguenot exiles was forged through their shared opposition to Spanish imperial hegemony in the Americas. The long struggle of the Cimarrons

<sup>28</sup> *Further English Voyages to Spanish America, 1583–1594: Documents from the Archives of the Indies at Seville Illustrating English Voyages to the Caribbean, the Spanish Main, Florida, and Virginia*, trans. and ed. Irene A. Wright (London, 1951), 189; see also 204, 206.

<sup>29</sup> Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (London, 1997), 140.

<sup>30</sup> Pike, 'Black Rebels', 262–5.

<sup>31</sup> Elizabeth R. Wright, *Pilgrimage to Patronage: Lope de Vega and the Court of Phillip III, 1598–1621* (Cranbury, NJ, 2001), 48.

<sup>32</sup> Blackburn, *New World Slavery*, 140.

<sup>33</sup> Schmitt, *Nomos*, 92–9.

against their former masters was therefore part of a context that extended to the contemporary European settings of the Dutch Revolt and French Wars of Religion. As Benjamin Schmidt has shown, the Dutch were able to imagine the prospect of rebellion against Habsburg authority by seeing an analogy between Spanish colonialism in the Low Countries and America.<sup>34</sup>

This expanded context of rebellion in Old and New Worlds brought about a reassessment of the political status of non-state agents who were traditionally barred from recognition in the law of nations. The Huguenot political theorist François Hotman offered a model of resistance theory that extended political rights and diplomatic recognition to rebels as well as other non-state actors such as brigands and runaway slaves.<sup>35</sup> Hotman's position quickly prompted a response from Gentili, who argued that rebels and exiles could not sever their bonds of obligation to their home nations. Even if these groups lost the protections of citizenship, they were not granted any compensatory status under the law of nations: 'rights', he concludes, 'are not acquired by offenses'.<sup>36</sup> In his codification of the diplomatic relations undergirding the states system, Gentili did not account for the entry of new political actors, even those groups—like the Dutch States General—who might eventually gain sovereign authority through a successful rebellion. Gentili's representation of the states system as unitary, stable, and impervious to historical change depends upon the creation of stateless persons excluded from the law of nations.

The effects of political change on the imagination of international relations are more clearly visible when one juxtaposes Gentili with a text from the end of the period: Emer de Vattel's *The Law of Nations* (1758). In his discussion of rebellion, Vattel moves from an initial prohibition of subjects resorting to violence to a recognition that the outbreak of rebellion ultimately stems from the failure of authorities to redress 'causes of complaint', which prompts 'unfortunate persons . . . to do themselves justice'. A truly popular rebellion with general support cannot be contained through counter-violence but instead necessitates a negotiated settlement so as 'to give the people satisfaction'. Vattel draws on competing early modern precedents to support his argument: he favours Henry of Navarre's incorporation of his Catholic opponents within a French polity over the Duke of Alva's futile attempt to punish a large section of the Dutch populace during the Dutch Revolt.<sup>37</sup> The Spanish suppression of the Dutch Revolt ultimately serves to legitimate the cause of Dutch subjects and transform their struggle from a rebellion into a civil war. Vattel presents the scenario of civil war as one which invalidates the claims of all overriding sovereign authority and, as a result, produces the revolutionary conditions for a reconstitution of political foundations.

<sup>34</sup> Benjamin Schmidt, *Innocence Abroad: The Dutch Imagination and the New World, 1570–1670* (Cambridge, 2001), 68–122.

<sup>35</sup> François Hotman, *Quaestionum illustrium liber* (Paris, 1573), VII (46–54).

<sup>36</sup> Alberico Gentili, *De Legationibus Libri Tres*, trans. Gordon J. Laing (New York, 1964), 77–84.

<sup>37</sup> Emer de Vattel, *The Law of Nations* [1758], trans. Joseph Chitty (Philadelphia, 1883), 422–3.

Histories of international law are often structured around an abiding division of periodization keyed to a specific date: 1648, and the Peace of Westphalia.<sup>38</sup> But, as Vattel's example shows, the legacies of Westphalia stem as much from the concurrent Peace of Münster marking the ultimate success of the Dutch Revolt as the end of the Thirty Years' War.<sup>39</sup> In other words, rather than seeing a post-Westphalian age as one that enshrines the sovereign authority of equal nation-states, we can see another, overlooked legacy in terms of a framework that allows for the entrance of new political actors to the stage of international politics and legitimates the revolutionary conditions enabling the transformation of rebels into sovereigns.

This more radical tradition culminating with Vattel provides an alternative framework in which to imagine the implications of the lines of amity. Rather than positing the legal and political character of the colonies as shaped solely by the intervention of European powers, one sees that the influence also worked in the opposite direction. The models of political thought and formulations of the law of nations produced out of the colonial encounter served as an impetus in the development of the character of the European states system itself. The porous boundaries and unsettled definition of the lines of amity attest to how this fiction underwriting interstate relations ultimately calls into question any absolute demarcation of European states from their extra-European interests. The colonial encounter is always already part of Europe's definition of itself, despite long-standing efforts to isolate colonial history to unrepresented events transpiring 'beyond the line'.

### VITORIA AND COLONIAL ENMITY

Vitoria's *De Indis* has remained a central text in discussions of the role of colonial subjects in formulations of the law of nations. The canonical version of Vitoria constructed in the twentieth century focused largely on the first half of his text, which surveys and critiques the chief 'irrelevant and illegitimate titles' used to justify Spanish dominion in the New World.<sup>40</sup> In this section, Vitoria countered prevailing justifications for Spanish imperialism: the universal claims of the Spanish monarch as Emperor of the world (252); Papal dispensation (258); the right of discovery (264); the allowed conversion of Amerindians, even by force (265); the justification of conquest based on the imputed sins of the natives (272); the establishment of dominion on the consent of natives (275); and the conquest as a gift of God (276).

<sup>38</sup> Benno Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations* (London, 2003).

<sup>39</sup> The Dutch had gained de facto recognition from the Spanish and Archduke Albert following the truce of 1609. See Laura Manzano Baena, 'Negotiating Sovereignty: The Peace Treaty of Münster, 1648', *History of Political Thought*, 28 (2007), 617–41.

<sup>40</sup> Francisco De Vitoria, 'On the American Indians', in *Political Writings*, ed. Anthony Pagden and Jeremy Lawrence (Cambridge, 1991), 252. All further references are to this edition and included in the body of the essay.

As Vitoria pronounced at the end of this section, 'the barbarians undoubtedly possessed as true dominion, both public and private, as any Christians' (250). Anthony Pagden has argued that Vitoria based his argument on natural law rather than the imperial or Papal claims of positive law.<sup>41</sup> And for Vitoria, one of the central tenets underwriting natural law was the right to property. He counters the view of natural slavery, dating back to Aristotle, which was employed by some of his contemporaries such as Major and Sepulveda (239 on).<sup>42</sup> For Vitoria, the rights of the Amerindians as rational subjects under natural law are enshrined through their property rights and ability to order their affairs (244, 250).

In a stunning reversal of his arguments, the second half of Vitoria's text engages in a recuperation of the claims of Spanish imperialism through an offsetting survey of the 'just and legitimate' defences of Spanish imperialism (252). Rather than contradicting himself, Vitoria ultimately defended imperial dominion through the very terms of natural law and defence of property that were central to his critique of Spanish imperialism. Vitoria's recuperation of Spanish dominion was accomplished through a recasting of Spanish imperialism as a form of diplomacy. The keystone of international diplomacy is the law of nature's view of the inherent sociability of humans and their necessary obligations of friendship and hospitality to one another: 'amity (*amicitia*) between men is part of natural law' (279). The law of nations, Vitoria asserted, dictates unconditional rights of hospitality and refuge, and therefore sanctions Spain's presence in the Americas as an exercise of their rights to travel and trade. The representation of colonial conquest under the guise of commercial enterprises lacking in territorial aspirations is a perennial rhetorical strategy. For example, Timothy Hampton has shown how Camões depicts De Gama's voyage to India as 'basically little more than a sequence of diplomatic encounters'.<sup>43</sup> Similarly casting the Spanish as diplomats, Vitoria concludes that his argument 'is confirmed by the fact that ambassadors are inviolable in the law of nations (*ius gentium*). The Spaniards are the ambassadors of Christendom, and hence the barbarians are obliged at least to give them a fair hearing and not expel them' (283).

But Vitoria's model of diplomacy was ultimately predicated on a state of war. Juxtaposed with his emphasis on the inherent sociability underwriting the law of nations is the proviso that resistance to trade and hospitality provokes a state of enmity, which reconstitutes the position of Amerindians, 'no longer as innocent enemies, but as treacherous foes against whom all rights of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones' (283). The rules of colonial war remain beyond the line of

<sup>41</sup> Anthony Pagden, 'Dispossessing the Barbarian: The Language of Spanish Thomism and the Debate over the Property Rights of the American Indians', in Anthony Pagden (ed.), *The Languages of Political Theory in Early-Modern Europe* (Cambridge, 1987), 80. On Vitoria and natural law, also see Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, 2011), 11–15.

<sup>42</sup> *Ibid.*, 88.

<sup>43</sup> Timothy Hampton, *Fictions of Embassy: Literature and Diplomacy in Early Modern Europe* (Ithaca, 2009), 102.



civil society and the law of nations, as one sees with the prerogatives allotted to the victor. Despite the fact that Vitoria turns to Roman law (including the writings of Justinian and Gratian) in order to justify his conclusion that 'everything captured in war belongs to the victor' (283), his model does not harken back to tradition as much as it innovates models of *ius gentium* and *ius naturale* in response to the exigencies of native resistance. European law is not applied to the colonies; rather, its modern incarnation is produced as an effect of colonialism.

Whereas the freedoms of travel, trade, and religion are predicated on the implied acquiescence of Amerindians, the threat of native resistance transforms the model of war itself. The lines of amity ensure that interstate European wars remain battles between public enemies (*hostis*), antagonists whose conflict may be diplomatically resolved in order to renew interstate friendship with the end of hostilities. Colonial war beyond the line, by contrast, creates the category of the unlawful enemy (*inimicus*), subjects excluded from the rules of war and rights of the law of nations.<sup>44</sup> As Schmitt notes, 'The adversary is thus no longer called an enemy but a disturber of peace and is thereby designated to be an outlaw of humanity.'<sup>45</sup> In a tragic irony, as Amerindian cultures take on the attributes of modern European sovereignty (rights of self-defence, a monopoly over the exercise of violence within their territories), they are excluded from diplomatic recognition and rendered as a new category of dangerously stateless subjects. The resistance of colonial subjects transforms them into racialized subjects. As Étienne Balibar has argued, the historical construction of race emerges as an effect of subjects claiming rights for themselves.<sup>46</sup> Showing the interconnected histories of European and colonial conflicts, Foucault traced the construction of race as an outgrowth of discourses of 'social war' that were previously forged in reference to class conflicts within European states.<sup>47</sup>

Colonial war represents the tragic inversion of the rules of war guaranteeing the European states system. Gentili and other early modern theorists had 'made war into a mutual relation between sovereign states in which *justi et aequales hostes* [just and equal enemies] confronted each other indiscriminately'. Against non-state subjects and stateless populations, however '[w]ar is abolished, but only because enemies no longer recognize each other as equals, morally and juridically'.<sup>48</sup> The exigencies of colonial war and the resistance of native populations transform a juridical category of the just enemy (*justus hostis*) 'to a quasi-theological concept of the enemy'.<sup>49</sup> Rebellious Amerindians and escaped slaves, as well as pirates, brigands, and other stateless groups, are rendered as criminal classes excluded from the law of nations.

<sup>44</sup> Ian Baucom, 'Cicero's Ghost: The Atlantic, the Enemy, and the Laws of War', in Russ Castronovo and Susan Gillman (eds), *States of Emergency: The Object of American Studies* (Chapel Hill, 2009), 124–42.

<sup>45</sup> Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago, 1996), 79.

<sup>46</sup> Étienne Balibar, 'Class Racism', in Étienne Balibar and Immanuel Wallerstein (eds), *Race, Nation, Class: Ambiguous Identities* (London, 1991), 210.

<sup>47</sup> Michel Foucault, 'Society Must Be Defended': *Lectures at the Collège De France, 1975–76*, ed. Mauro Bertani and Alessandro Fontana (New York, 2003).

<sup>48</sup> Schmitt, *Nomos*, 124. <sup>49</sup> *Ibid.*

The colonial state of war is therefore never recognized as lawful war, not only because the adversary is classified as an unlawful enemy but also through the refusal to acknowledge European involvement *as* acts of war. Vitoria inaugurates a tradition of innocent imperialism, a rhetorical strategy that insidiously denies the motives of European states in the colonies. Spain's intent is cast as merely exercising its inherent rights of travel, trade, and negotiation under the law of nations: 'Since these travels of the Spaniards are (as we may for the moment *assume*) neither harmful nor detrimental to the barbarians, they are lawful' (278; emphasis mine). This assumed innocence is not momentary but rather foundational to Vitoria's argument. Through his representation of Spain as engaging in free trade, he is able to recast native resistance as a violation of the law of nature, a denial of Spain's freedoms of trade, travel, and refuge. Spanish violence is recast as self-defence exercised in response to native recalcitrance and refusal to engage in commercial relations (282): 'if war is necessary to obtain their rights [of unimpeded trade access], they may lawfully go to war' (282). Free trade, ensured through permanent war, is able to 'secure peace and safety' (283).

In order to sustain European economic interests in the colonies, a tragic register must be imposed on colonial relations. Lines of amity demand lines of enmity, and it is the prospect of resistance to the commercial foundations of empire that enshrines colonial war and reconstitutes Amerindian populations as irredeemable subjects excluded from the law of nations. As Vitoria concedes in the conclusion to his text, even after offering arguments to recuperate Spanish dominion, 'if all these titles were inapplicable, that is to say if the barbarians gave no just cause for war and did not wish to have the Spaniards as princes and so on, *the whole Indian expedition and trade would cease*, to the great loss of the Spaniards. And this in turn would mean a huge loss to the royal exchequer, which would be intolerable' (291). Tellingly, what registers the potential loss of Spanish America as tragic is its economic toll. It is the exchequer—not the crown or church—which, in becoming the subject of a hypothetical tragic ending, reveals itself as the true foundation of Spanish imperialism.

## DAVENANT AND COLONIAL TRAGEDY

Vitoria's analysis of the claims of Spanish dominion offered a template for English texts reflecting on the repercussions of England's belated arrival in the Caribbean and consequent rivalry with Spain. His critique of Spanish imperialism inaugurated the longstanding representational tradition of the 'black legend' emphasizing Spanish abuses in the Americas later extended by such figures as Las Casas and De Bry as well as subsequent English texts and translations.<sup>50</sup> He also provided a framework of innocent imperialism that was even more influential for later

<sup>50</sup> See, most recently, Margaret R. Greer, Walter D. Mignolo, and Maureen Quilligan (eds), *Rereading the Black Legend: The Discourses of Religious and Racial Difference in the Renaissance Empires* (Chicago, 2008).

English texts, particularly those such as Davenant's *History of Sir Francis Drake* that followed England's full entrance into American imperial conflicts with the Cromwellian Western Design. Vitoria's justification of Spanish imperialism as the defence of innocent Amerindians from their tyrannical native rulers (288) is later transposed to an English liberation of Amerindians from their Spanish conquerors.

The English imitation of Spanish precedents, even if marked by competition and ambivalence, demonstrates the mobile, transposable, and coexisting character of identities within imperial contexts. There is a similar geographic and temporal imprecision in Davenant's representation of the Cimarrons. Distinctions are collapsed among the identities of colonial subjects: the Cimarrons blur together with Amerindians and are situated in Peru, the setting of one of Davenant's previous dramatic spectacles, *The Cruelty of the Spaniards in Peru* (1658).<sup>51</sup> More significantly, American and Mediterranean contexts are juxtaposed in the reference to the Cimarrons as 'a Moorish people, brought formerly to Peru by the Spaniards as their slaves, to dig in mines; and, having lately revolted from them, did live under the government of a king of their own election' (2.3 SD; cf. 3.108 SD and 5.108). The axis linking Incans, Cimarrons, and Moors is their shared resistance to Spanish hegemony, and while these coeval rebellions forge the way for lines of amity to emerge with the English, the prospect of colonial rebellion also links these peoples as potential threats to England's tenuous imperial authority. The stage direction describing the Cimarrons' Moorish origins additionally situates colonial slave rebellions in reference to a European context of resistance theory and elective rule. In shaking off Spanish authority, the Cimarrons fashion their own mode of government. Similarly, Vitoria's defence of the power of Amerindian populations to choose their own rulers (288–9) created a framework that, in a European context, dangerously resembled Protestant resistance theory.<sup>52</sup>

In the final scene, the lines of amity are redrawn, reconstituting the Cimarrons as violating the laws of nature and consequently lying beyond the scope and protections of the *ius gentium*. The scene is appropriately described as 'suddenly changed': added to the earlier scenic backdrop depicting the 'rocky country' of the Cimarrons, symbol of their autonomy and resilience, is the spectacle of an abducted Spanish bride, taken forcibly from her wedding feast, 'tied to a tree', and represented in terms implying sexual violence (6.85–90 SD). 'The worst of licence does best laws invade', the English lieutenant Rouse reports to Drake, undermining English 'renown' and threatening to 'devour all civil peace' (6.67, 77). This threat is ultimately dispelled, although significantly through the Cimarrons' own reassertion of control over their unruly members. Pedro, Drake's Cimarron guide, takes action, reasserting the bonds of friendship between Drake and the Cimarron King (6.135) and reinstating an underlying cultural similitude through emulation of an English 'pattern' of mercy and justice (6.137): 'She is as free and as

<sup>51</sup> For a discussion of Davenant's texts, see Richard Frohock, *Heroes of Empire: The British Imperial Protagonist in America, 1596–1764* (Cranbury, NJ, 2004), 35–44.

<sup>52</sup> Pagden, 'Dispossessing the Barbarian', 83.

unblemished too / As if she had a prisoner been to you' (6.142–3).<sup>53</sup> Pedro reasserts the innocence of English imperial claims, perversely recasting Drake the experienced slave trader as the champion of liberty from bondage. Significantly, he also explains Cimarron depredations as an imitative act of revenge against the Spanish, 'Who, midst the triumphs of our nuptial feasts, / forced our brides and slaughtered all our guests' (6.154–5).

The conclusion of Davenant's text transforms the Cimarrons from objects of pity to rebellious colonial subjects. In Aristotelian terms, the primary affective mode of colonial tragedy is not pity but fear. The prospect of slave rebellion haunts the lines of amity in the process. After all, dramatic imitation, for Aristotle, is predicated not only on the assumption of cultural similitude, that 'men enjoy seeing a likeness', but also on a limitation of dramatic character 'relative to each class'.<sup>54</sup> Vitoria had similarly imposed a boundary on transcultural *amicitia*: although 'amity (*amicitia*) between men is part of natural law', human sociability is grounded on similitude. Citing scripture—'Every living creature loveth his like'—Vitoria acknowledges the extent to which the recognition of cultural difference fractures the imputed universality of the law of nations (279).

Even as Davenant's text redraws the lines of amity and reconstitutes the Cimarrons as permanent enemies, the tragic framework does not resolve the unsettled question of the status of escaped slaves and other colonial subjects in the law of nations. Instead of negotiating colonial conflict through intercultural *amicitia*, tragedy offers a more radical alternative. As David Scott argues in his analysis of a slave revolt of a later era, the Haitian Revolution, tragedy serves as a generic template for representing the unresolved legacies of colonial history.<sup>55</sup> The ever-present prospect of colonial rebellion not only speaks to the failures of the colonial project; the slave revolt also embodies an imagination of social transformation, providing a framework that is later transposed back to European politics.

## CONCLUSION: MAROONING THE LAW OF NATIONS

Although Davenant's entertainment offered a literary response to the Cromwellian Western Design and its aspirations of English dominion in the Caribbean, this project had largely failed by the time of the text's performance. The role of colonial subjects in successfully warding off English entry into the region provides a historical explanation for Davenant's transformation of the Cimarrons into rebels and

<sup>53</sup> In contrast, in *Sir Francis Drake Revisited* (69–70) Drake commands the Cimarrons not to harm any women during the raid on Venta Cruces. As Kaufmann discusses, this image of Drake's restraint of sexuality is offset with the historical record of the pregnant African captive Maria, taken on the circumnavigation voyage and abandoned on an Indonesian island (*Black Tudors*, 86).

<sup>54</sup> Aristotle, *Poetics*, trans. S. H. Butcher (New York, 1961), 55, 81.

<sup>55</sup> David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (London, 2004), 21, 135.



enemies excluded from the law of nations. The English siege of Santa Domingo, the central target for the project, was ultimately thwarted due to the resistance of the city's militia of freed Africans and mixed-race citizens.<sup>56</sup> As was the case throughout Spanish America, freed Africans formed a military class integral to the defence of colonial settlements.<sup>57</sup> Spanish colonial authorities similarly negotiated with the *palenques* of escaped slaves in order to draw on their resources for the defence of vulnerable colonial outposts, as in Panama. In his final voyage of 1596, Drake had encountered the opposition of the Cimarrons of Santiago del Principe and Portobelo, now loyal to the Spanish crown following their diplomatic negotiation with colonial authorities and settlement in autonomous towns.<sup>58</sup> The consolation prize of the Western Design was the English conquest of Jamaica. Here, too, the English met local resistance, in the form of the Jamaican Maroons, who engaged in a five-year guerrilla war until they reached a diplomatic settlement allying themselves with the English against their former Spanish allies.<sup>59</sup> Ironically, the ostensibly English force responsible for the conquest of Jamaica included 4,000 African slaves and English servants and nonconformists, all impressed into service from the plantations of Barbados.<sup>60</sup> English authorities in Jamaica continued to negotiate with the Maroons over the course of the eighteenth century, with a treaty recognizing the autonomy of Maroon communities that was drafted in 1739 and remained in effect for the next century.<sup>61</sup>

Despite the fact that non-state groups such as the Cimarrons and Maroons remained largely absent from theoretical formulations of the law of nations, in practice they did achieve a status as diplomatic agents to whom the rights of diplomatic negotiation and recognition were extended. Ultimately, this Africanist presence in the history of diplomacy, generally unacknowledged, reveals most compellingly the complex intercultural histories that are rendered invisible through a persistent imagination of European colonies as remaining beyond the line of diplomacy and the early modern states system.

<sup>56</sup> Irene A. Wright (ed.), 'Spanish Narratives of the English Attack on Santo Domingo, 1655', in *Camden Miscellany XIV* (London, 1926), 47–8. Drake had met the opposition of the local militia in his siege of the city in 1585 (Guasco, *Slaves and Englishmen*, 110).

<sup>57</sup> Ben Vinson, *Bearing Arms for his Majesty: The Free-Colored Militia in Colonial Mexico* (Stanford, 2001), 9, 16.

<sup>58</sup> Pike, 'Black Rebels', 262–5.

<sup>59</sup> Irene A. Wright, 'The Spanish Resistance to the English Occupation of Jamaica, 1655–1660', *Transactions of the Royal Historical Society*, 4th ser., 13 (1930), 117–47.

<sup>60</sup> Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston, 2000), 126.

<sup>61</sup> Barbara Klamon Kopytoff, 'Jamaican Maroon Political Organization: The Effects of the Treaties', *Social and Economic Studies*, 25 (1976), 87–105. For a broader history of Maroon communities throughout the Americas, see Richard Price (ed.), *Maroon Societies: Rebel Slaves Communities in the Americas* (Baltimore, 1979).

## 4

## Diplomatic Pathos

Sidney's Brazen Fictions and the Troubled Origins  
of International Laws

John Watkins

INTRODUCTION: LAW AND THE  
LIMITS OF PERSUASION

Erasmus's *De utraque verborum ac rerum copia* was one of the most popular books of the Renaissance.<sup>1</sup> Erasmus defined *copia* as elegant variations on a single theme to 'embrace in entirety everything pertaining to the case'.<sup>2</sup> The variations could be on single words, phrases or whole lines of argument. Like many other Renaissance books about rhetoric, *De copia* eventually grew into a book that was profoundly engaged with international politics. Several of the anecdotes and examples that illustrated Erasmus's last major revision (1534), for example, involved peacekeeping:

If someone were trying to persuade some king not to undertake a war against the most Christian king of France, he could construct his line of argument with propositions of this sort: first, to engage in war is not natural to man who was born to feel good will, but to brute beasts whom nature has supplied with weapons of a sort. The next proposition will reinforce this one: it is not natural to all beasts, but only to wild ones; and the next again supports this one: and not even wild beasts fight among themselves in the way that mortal men do: tiger does not war with tiger, nor lion with lion; but man does not show to any other animal the savagery that he shows to his fellow men.

In this example, *copia* unfolds on the level of the proposition as the imagined speaker argues that the king should not go to war against France, since such a war would be unnatural. This is only the start of this example, which continues for several pages with variations around entirely different propositions. A later example focuses on an imagined speaker trying to persuade the pope not to go to war against the Venetians, with variations on the theme that temporal warfare is 'inconsistent with the dignity of the supreme pontiff'.<sup>3</sup>

<sup>1</sup> Herbert David Rix, 'The Editions of Erasmus' *De Copia*', *StP*, 43 (1946), 595–618.

<sup>2</sup> Erasmus, *De copia verborum et rerum*, trans. Betty I. Knott in Craig R. Thompson (ed.), *Collected Works of Erasmus*, 89 vols (Toronto, 1978), 24.600–1.

<sup>3</sup> *Ibid.*, 599.