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A SINKING EMPIRE

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In the summer of 2021, I returned to Amsterdam after a two-year research stay abroad. On my first walk through the city, I noticed how many of the famous canals and bridges were under construction. Some bridges were completely closed off and the streets along the canals were blocked by containers and heavy building equipment. The docks looked wavier than usual and large sheets of metal were erected in the water at about a two- or three-meter distance from the docks. The space between the dock and the metal was filled with sand. As in any expanding urban city, there is always construction. However, I had never seen anything like it. And why did it look like some of the streets were slanting and crumbling into the canal? Even the canal houses seemed wonkier than ever. Continuing on my walk, I found a sign explaining that the bridges and streets had been poorly maintained and were collapsing – sinking under the weight of water from below in a city built almost entirely on what they call “reclaimed land” as if it was supposed to be there all along – a wetland ecosystem turned into property.

I remember thinking to myself, “this is the end of the long ‘Golden Age.’ A beautiful yet morbid end of empire.” My mind’s eye pictured the signature houses along the Amsterdam canals – built with the money and resources from the colonies and slave plantations – crumbling into the water. Although centuries had gone into containing, capturing, and juridicalizing the water, the water’s materiality remembered where it was and spilled out. Coming back to

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reality I sighed and thought “those metal sheets, another quick-fix solution to postpone what might be the city’s inevitable demise” as I scrutinized the rust chipping off the metal.

The metal sheets were placed to support the old brick structures and the marshy sand underneath them. The metal looked like an unmoving wave, leaving space between the familiar murky brown-green water and the dock. In those in-between zones, there was hardly any water, just sand. Sand blanketed by a small layer of liquid from the incessant summer

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a sinking empire

rains and already getting sucked-up by layers of pulverized shells. As if the sand formed a dyke between land and water. The whole scene reminded me of seventeenth-century land “reclamation,” or perhaps more pertinent “land-taking” projects occurring all across this Rhine River Delta. The Dutch were building land where there was none and claimed it as a nation – claiming possession over what was once wet. Dredging, dumping, draining. The water becoming more and more invisible, yet never truly gone. The riverbank, the shoreline coming and going, coming and going, coming.

In the sand, small shoots of native greenery were sprouting, interrupting the otherwise familiar shades of brown. A municipal sign instructed me “Please keep off. Newly sown flower beds.” I felt cheated. The whole city was collapsing under the weight of its manmade land and the municipality tried to tell me this is some sort of community gardening project.

This summer scene captures a familiar trope running through the history of this liquid nation: the Dutch are always living under the threat of floods, while at the same time they have learned how to live below sea level – mastering hydraulic engineering and navigating the seven seas. All the while, promoting a Calvinist model of accumulation sold as a heroic tale of divine trade and navigation. A “Dutch East India Company mentality” our former Prime Minister J.P. Balkenende would like to “return to.”¹ A model grounded in a system of conquest, slavery, and dispossession abroad and exploitation at home disguised as trade. A viable alternative to the Iberian mission. For centuries, the Dutch had been transforming their entire ecosystem by changing river deltas, tracts of sea, and bays into brackish water and erecting entire cities and agricultural land upon a historically marshy and riverine landscape. Today, the largest maritime business cluster *Maritime By Holland* claims that this same maritime sector functions as a “vibrant ecosystem” (Maritime by Holland).² Hydraulic engineering, land-

taking, extraction, and navigation have now become an ecosystem of their own – overriding the natural elements of land and water, but never fully. The supposed naturalness of this “vibrant ecosystem” rooted in a narrative of Dutch exceptionalism, which can be traced back to the beginnings of Dutch overseas expansion.

an amphibious nation?

The Netherlands is one of the most manmade countries on the planet. W.J. Wolff notes in his studies of Dutch wetlands from the Roman era to the present, “in the Middle Ages the Dutch population had mastered two technological innovations: drainage and embankment, which in the short term were beneficial to agriculture, but which after some centuries proved disastrous to the landscape” (6). As the Dutch increasingly became facilitators of large-scale European riverine inland trade, the factories up-river have left a definitive mark on the water quality. Together with today’s large-scale agriculture and the bio-industry this gives the Netherlands Europe’s poorest water quality today (European Environmental Agency, “Waterbase – Water Quality ICM”).³ Land-taking projects have continued to rise (European Environmental Agency, “Land Take in Europe”).⁴ And yet, the water continues to be in excess of these ambitions.

Sometime after my first encounter with the sinking bridges, I attended a talk on US marshlands by Amelia Groom. She noted that in Amsterdam “[i]t takes ongoing management to push the swamp away. Land reclamation fights the swamp reclamation. The swamp remembers where it was” (Groom). The swamp then shores up against and spills out of illusions of containment.

In the Netherlands, impending or imagined floods are always on the horizon. If you remove the dykes, dams, and dunes, Rosello notes, “[t]he Netherlands are an archipelago” (207). This permanent instability informs locally constructed meanings and imaginaries that seem to hover over stable definitions of

the nation state. “My fragile land,” Rosello writes, “is worried what the planet will do to it. And perhaps, it should consider what it is doing to the water” (209). In similar vein, Māori scholar Alice Te Punga Sommerville asks for a reversal of familiar scripts that understand the ocean as a threat to the land and asks us to consider that the land and particularly imperial and capitalist nations residing thereon pose a danger to the ocean (“The Great Pacific Garbage Patch” 345).⁵ Rosello notes that if the Dutch have a “contemporary poetics and politics of water, it is surely more of the order of constant negotiation and intimate cohabitation than a clear inside-out model” (214). Such “intimacy” is not of the romantic kind, but rather part of a carefully constructed and maintained liberal humanist illusion of Man in control of nature.⁶ But what shores up against such a construction? And how does water’s materiality spill out of its legal, ontological, material, and epistemological confinements?

Amsterdam, Rosello writes, is “amphibious.” The city exists in an intimate relationship between water and land (214).⁷ It is worth exploring this amphibiousness from multiple angles. On the one hand, amphibious simply means suited for living on land and in water. However, this understanding of amphibiousness neglects the larger geopolitical and historical context that condition this (self-)perception of the Dutch state. Rather than living on land and in water, Dutch maritime and hydro technologies are premised on an antagonistic relation to water aimed at drainage, containment, dumping, and control.⁸ On the other hand, the word amphibious describes a particular form of assault. An amphibious assault characterizes military forces landing from the sea. The Dutch were infamous for such amphibious assaults as they once were the largest commercial-cum-military fleet in the world. Although the ocean formed a threat, it also facilitated imperial expansion. It is Renisa Mawani who calls for a turn to “the aqueous and amphibian legalities through which settler colonial power continues to expand and flourish” (“Law, Settler

Colonialism” 126; my emphasis). In other words, the amphibious character of Dutch relations to water is no innocent one and warrants historicizing and denaturalizing. What is perhaps particular about Dutch (settler) colonialism and state formation is that it has become attached – metaphorically and materially – to the control and containment of elemental phenomena. And this local narrative has deeply impacted global maritime legalities and oceanic imaginaries. As Vishwas Satgar reminds us, imperial expansion is accompanied by “imperial ecocide” – “the destruction of conditions that sustain life such as ecosystems, the commons, as well as the destruction of actual human and non-human life forms, to ensure capitalist expansion” (55). And I would like to argue that this includes relations to and imaginations of our ecosystem.

The trope of the Dutch (nation) as amphibious is mobilized to support an antagonistic relation to the water that has informed Dutch self-perception and its global business models. Embanking, draining, containing, and dumping are profitable. Rather than having both lungs and gills then, do we the Dutch not understand ourselves as the perfect mediator between land and water? Manager, rather than frog? And what narratives and histories does such a self-perception rely on and erase?

conquest of maritime imagination

In this meditation on water, I explore what I am thinking of as the Dutch *conquest of maritime imagination*, which includes epistemological, legal, cultural, economic, and political visions of the ocean, deeds performed at sea, how they are imagined and their impact. Such a maritime imagination includes the ocean as a “legal archive,” which Mawani describes as not only made up of rules and laws, but often also of a collection of hegemonic narrations of the past that are not always already connected to legalities (“Law’s Archive”). In re-activating the word “conquest,” I am deeply influenced by Tiffany Lethabo King’s use of the term to draw attention to the ongoing violence of conquest in

everyday life. Conquest here includes not only the land, but also forms a conceptual terrain to think together the ongoing genocide of Indigenous people, the ongoing assaults on Black lives, and the ways in which ideologies of conquest seep into humanist theories (King, “New World Grammars”; *The Black Shoals*). To me, this includes the violent control and occupation of what the relation to the planet might look like, which is consolidated in law, politics, philosophy, culture, and economics, in which the survival of Black and Indigenous peoples and the planet was but an “after-thought” of this white conquistador vision (Maynard and Simpson 23).

Thinking about conquest and oceans, it is imperative to turn to the work of early modern legal scholar Hugo Grotius – founding father of international law and Dutch state and empire ideologue. What kind of maritime imagination did Grotius’s work inaugurate? What conditioned his conquest of maritime imagination? And, at the same time, how does the water continue to spill out of and shore up against his reductive fictions? Thinking about spilling out and shoring up, I am particularly inspired by King’s use of the term “shoal.” For King, the shoal is a liminal space, “a location of suture between two hermeneutical frames that have been conventionally understood as sealed off from each other” – land and sea – “that cannot be reduced to the ocean, the shore, or an island.” The shoal “has the potential to be something else that cannot be known in advance” (King, *The Black Shoals* 7–8).⁹ In other words, the place where water and land meet at the shoreline undermines the epistemological, political, legal, material, and metaphorical separation of the two and demands I ask how the elements appear and speak back within the legal archive.

Grotius’s deliberation on the status of the seas has been much discussed ever since he first published *Mare Liberum* in 1609. In this anonymously published manifesto and his manuscript *Commentary on the Law of Prize and Booty*, or what he referred to as *De rebus*

Indicis, or *On the Affairs of the Indies*, Grotius harnessed the element of water to present a peculiarly Dutch model of aquatic conquest that continues to impact international maritime legal regimes and imaginaries.¹⁰ In particular, it is his construction of the ocean as common property of mankind that continues to structure contemporary negotiations over the status of the sea.

Mare Liberum constitutes the most famous early modern European text deliberating the status of the seas. The text was commissioned a few years prior to publication by the Directors of the Chamber of Zeeland to respond to a dispute between the Dutch and the Portuguese over the capture of the Portuguese carrack *Sta. Catarina* by Dutch captain Jakob van Heemskerck and his crew off the coast of present-day Singapore (Ittersum, “Hugo Grotius in Context”; *Profit and Principle*; “The Long Goodbye”; Borschberg; Mawani, *Across Oceans of Law*). This (in)famous text deliberated the status of the sea – based on a combination of Natural, Divine, Roman, and civil law – in order to dismiss Portuguese claims of dominion and possession in Southeast Asia and the Indian Ocean. From the nineteenth century onward, Grotius was hailed as a founding father of an international law of the seas, free trade, and navigation alongside Francisco Vitoria and Alberto Gentili (Mawani, *Across Oceans of Law* 43). Over the past two decades however, legal historians and political theorists have started to question this innocent celebration of Grotius and have shown how *Mare Liberum* was as much a dispute over the status of the seas as it was a dispute over the *Sta. Catarina* case (Ittersum, “Hugo Grotius in Context”; *Profit and Principle*; “The Long Goodbye”; Borschberg; Mawani, *Across Oceans of Law*).¹¹ They have also shown that although Grotius was unique in his insistence that one could trade with non-Christians whom he consistently called “infidels,” he did not “oppose colonization but merely presented another version, one that foregrounded land and sea” (Mawani, *Across Oceans of Law* 47). Grotius, Anthony Anghie argues, set up the very conditions of possibility for the

colonization of lands and of law. Furthermore, he argues that the foundation of the United Dutch East India Company was just as important for the inauguration of the modern-colonial era as was the conquest of the Americas in 1492 (Anghie, “Toward a Postcolonial International Law”; “TWAII and the Decolonisation of International Law”).

Contrary to Chapter XII of *De Indis*, the unpublished (at the time) chapter out of which his manifesto evolved, Grotius had carefully erased any mention of the *Sta. Catarina* case or his comments on Dutchness in *Mare Liberum* (Armitage; Ittersum, *Profit and Principle*). As David Armitage notes, “[a]lthough *Mare Liberum*’s influence and importance were – and remain – independent of that larger commentary, they cannot be fully understood outside of the argument of which they formed a part” (6). Although the manuscript was first published in the nineteenth century, Martine Julia van Ittersum argues that the text must be considered a preliminary study for his most famous work *The Rights of War and Peace* (“Hugo Grotius in Context”; *Profit and Principle*). In other words, what a careful reading of *De Indis* as originating study notes is that his text was not simply informed by the *Sta. Catarina* case, but also by Dutch exceptionalism as much as Dutch colonial interest, while paving the more generalized conditions for a universal theory of property acquisition and defense that rested on a system of Indigenous dispossession and slavery (Stelder).¹²

A central element of Grotius’s *Mare Liberum* concerned a deliberation on whether the sea can be considered property of a person or a state. This question was important as Grotius hinged his understanding of the human and of society upon a rigid understanding of individual freedom as the right to private property acquisition, extraction, and defense. For Grotius, private ownership was at the basis of a modern community. The emergence of a regime of private property had a teleological and developmentalist quality to it as it only emerged among supposedly developed nations

(Stelder).¹³ The centrality of ownership that accompanied colonial ideology, as Robyn Maynard notes, constituted “a disregard for all living things *except for their value as property to be accumulated*” (Maynard and Simpson 23–34). Ownership erases other relations to the planet not resting on capitalist accumulation.

In order to unsettle Grotius’s free sea doctrine, I am building on Renisa Mawani’s (*Across Oceans of Law*) emphasis on Grotius’s transformation of an elemental distinction into a juridical distinction and Samera Esmeir’s understanding of *mare liberum* as an act of capture. I move away from the assumption that Grotius’s principle rested on a distinction between what can and cannot be owned. In particular, I focus on Grotius’s characterization of the ocean as *perpetual res nullius*, which constructs the ocean as a thing that cannot have one singular owner, unless the singular owner is mankind. For Grotius, the ocean remained very much within the orbit of property – an elemental division between land and sea that determined acts of possession, use, and (non)sovereignty. He captured the ocean in the service of white European male “humanity,” which deeply impacted imperial relations to the ocean for centuries to come and undergirded an anthropocentric notion of the commons that perceives the globe as a thing or “resource” in the service of humankind. How might conquest be a productive lens to re-read the Grotian project?¹⁴

In this essay, I center the work of Grotius to consider the political stakes of ontological assessments of the ocean within the context of Dutch imperialism. It is not the paradox between Grotius’s depiction of the ocean as common possession or the strategic exceptions to his own framework that interest me here. Neither is it the important observation that Grotius understood the ocean as common and contributed to colonial and capitalist ideologies, nor that the Dutch hold a particular relation to the water. Rather, it is the interplay between water’s materiality – described by Grotius and always on the Dutch horizon – and colonial-capitalist attempts to subject it to

a logic of property that structures this essay. I seek to problematize the very logic of property that conditions Grotius's legal prescription of the ocean as common and will show how it does not escape this logic. Grotius's legal fiction of the ocean as *perpetual res nullius* does not form an exception to territorial, individual, or state conceptions of property, but rather preconditions it – renders the globe capturable. In doing so, I seek to re-frame Grotius's work in order to problematize and historicize the Dutch built environment, but also open the door to reconsider contemporary questions of colonial-capitalist resource extraction, transportation and trade, and racist renditions of navigation. Furthermore, historicizing the Dutch built environment through a meditation on Grotius's maritime imagination I think through how the water shores up against and spills out of Grotius's legal fictions in the hope to shed light on the limitations of contemporary legal and political debates on oceans that center its status as “common heritage of mankind.” My question is not “how do we more evenly divide and regulate resources offered to humanity by the ocean?” – be they for horizontal or vertical extraction – but rather what relations to the water do “we” need to envision and have been envisioned by people and communities outside of Eurocentrism that do not depend on racial capitalist notions of the human and the biosphere that subject water and oceans to the logic of (common) property?¹⁵ Water's materiality inevitably belies the epistemological, legal, and colonial-capitalist grids that have thingified oceans. In this essay, I provincialize Grotius's text in order to unsettle its global reach and universalizing tendencies.

turning water into property, or land-taking

In a discussion of a controversial Dutch (anti-)immigration test video, Rosello hones in on the trope of the Netherlands as a powerful seafaring nation living with the constant threat of the rising sea. Rosello writes, “the unexplored quality of the relationship between colonization

and seafaring expertise leads to an ambiguous non-condemnation and relegation of the past as a whole, as if no distinction could be made” (214).¹⁶ With the end of formal colonization, it seems as if the heyday of Dutch seafaring is but a distant yet glorious memory that disconnects colonial violence from the Dutch business ethos. Rosello writes, “a centuries-old history of how the Dutch have successfully mastered the liquid element is consigned to history books, while geography is entrusted with the preferred ideological narrative of vulnerability and dikes” (214). Such a narrative positions the Dutch as masters of the elements who have somehow managed to turn their vulnerability into a strength. In this trope, water serves as a mediator between history and geography, while keeping the two seemingly distinct.

In the seventeenth century, land-taking projects accelerated when the nascent and growing Dutch Republic commenced its imperialist expansion. The Dutch used the capital that they had garnered from their overseas ventures and inter-European trade for land-taking and embankment projects (Wolff 7). A growing population also demanded more energy sources and therefore small-scale peat extraction gained industrial size in the seventeenth century and continued well into the twentieth century when oil and coal began to provide cheaper alternatives (7–8). Dutch imperial interest abroad supported the growing population at home and enabled the transformation of the waterscape in the service of early modern mashup of industrial and merchant capitalism.

A walk through the city offers reminders of this history everywhere. In the Amsterdam City Hall, across from my home, an underground barometer tracks the ebb and flow of the canals. Boat tours will inform the visitor that Amsterdam's rich history of trade and the battle against the sea have made the city what it is today. Arriving at Schiphol Airport, the sign “Welcome Below Sea Level!” will greet new arrivals. Such narratives establish a relation to the water that is at once belligerently mercantile and innocent. Deploying the term

“innocent” I am referring to a specific iteration Gloria Wekker has called “white innocence,” which forms a central paradox in white Dutch self-perception (5). This is a self-perception of the Netherlands as a small country, liberal, humanitarian, and free from race or gender as a means to deny the existence of structural racism-sexism. The possibility that four hundred years of colonialism have deeply affected contemporary social relations is hereby disavowed (17–19).

Flying into national airspace from the south, you first witness the grand dame of Dutch water management, the Delta Works – an intricate system of mega dams and dykes controlling the ebb and flow of the North Sea – the first of its kind. Its patented technology a ready export product to other coastal nations facing rising sea levels. Flying further north, your plane will land amid neatly aligned parcels of green, bordered by a grid-like structure of canals on all sides, which the Dutch call the *polder*, the epitome of land-taking projects.

In her book *Capitalism and Cartography in the Dutch Golden Age*, Elizabeth Sutton addresses the relation between Dutch land-taking projects (both from Indigenous peoples and from the sea), mapmaking, and the political and legal ideology of Hugo Grotius. She describes how seventeenth-century Dutch mapmaking reveals an intimate connection between water and land grounded in claims of possession and control. From the seventeenth century onward, rich Dutch East India Company (VOC) merchants invested in land reclamation projects in the province of Holland displacing local fishers. Land was made and settled with farmers for agricultural production to support the emergence of a new urban class of Amsterdam merchants (Sutton 15, 22).

The Beemster Land Reclamation Project started in 1608 and became the first large-scale corporate and privatized land reclamation investment scheme in the province of Holland (Sutton 3). It coincided with Hugo Grotius’s initial writings on property and its relation to the state, the individual, and the overseas (Sutton 36). This system of capital accumulation, Sutton notes, was supported by

geographic developments and mapmaking, which Grotius furthered through “rational juristic thought” (Sutton 6). In particular, it was Grotius’s legal system that provided the grounds for claiming sovereignty, dictating ownership, legitimating taxes, and defending military maneuvers. Land-taking helped further stratify regimes of ownership and control. In this Calvinist setting, the ethos of capitalism reigned supreme (Sutton 8). The rationalization of water and sea power in the service of capital and imperial expansion was not far at hand. The Dutch Calvinist work ethos provided a “providential blessing” to these endeavors that rendered ownership, profit, and accumulation acceptable, and it also provided a context in which the idea that humans naturally compete for resources first became naturalized (8–9).

Sutton describes how a similar model of land-taking and water management was imported into Dutch colonial settlements to create grid cities, such as in “New Netherlands” (Mannahatta) and “Mauritsstad” (Recife) (31). Also in Suriname, extensive tracts of forests were razed to the ground and turned into *polders* with the use of enslaved African and Indigenous labor to build Suriname’s infamous sugar plantations. These grid-like structures were not only implemented to dictate white ownership and conquest, but also to prevent fugitivity and revolt of the enslaved. At the same time, the constant ebbing and flowing of Suriname’s wetlands into the dense rainforest were mobilized by Maroon communities to stay hidden from slave catchers (de Kom; Robinson 138–40).

In Manhattan, the Dutch used water and flood control within the grid-like structure in the service of military control and divisibility. Influential seventeenth-century figures, such as master surveyor Simon Stevin, believed that surveys of hydraulics and navigation were fundamental to Dutch state formation (Sutton 34–36). These land and water claims were, as Sutton argues, supported by maps that “visually engaged Grotius’s theory of possession” (19). On such maps ownership was depicted by showing how land was controlled by hydraulic technologies used for commerce and government (19). For Sutton, building on water

allowed the Dutch to reclaim land as *res nullius* and develop it (86). These structures were not simply made to protect from floods, but instigated new forms of capitalist and colonial management that enabled the rise of the Dutch empire in the long seventeenth century. These land-taking projects, although profitable, proved detrimental to the environment, while at the same time supported a larger political ideology of both local and imperial expansion. Land-takings foreclosed other relations to the environment that might have rested on cohabitation. Embankment and enclosure have always been practiced, but in the early seventeenth century the Dutch introduced a profitable model of land reclamation on a colonial-capitalist scale that rested on an antagonistic and appropriative relation to the water that it continues to export across the globe today. This relationship further rested upon a particular juridicalization of water and of Dutchness that sutured the nation-building project to the ocean.

“those true sons of the sea”

For Grotius, van Ittersum notes, the Dutch were “merchants not conquerors.” His ideology of empire was therefore maritime (Ittersum, “The Long Goodbye” 387). This did not mean that Grotius was not interested in colonial settlement; he simply rescripted it (Mawani, *Across Oceans of Law* 47; van Ittersum, “Hugo Grotius in Context” 535). Free trade and navigation on the high seas, and especially Indigenous resistance to the natural right to free trade and navigation became ways for the Dutch to justify Indigenous dispossession (Stelder). Conquest, then, was still at the heart of merchant capitalism.

Grotius turned the Dutch relation to the water into a juridical text. In order to do so, he relied as much on an ontological description of the elements as he did on an ontological description of Dutchness – and both seem intimately related. In the concluding chapter of *De Indis*, Grotius eagerly asked his readers “What may be hoped for the Dutch, those true sons of the sea?” (*Commentary on the Law of Prize*

and Booty 481). With this question, he concluded his five-hundred-page discourse on just war doctrine, natural rights theory, prize law, and Dutch teleology. In his future-oriented vision, Grotius proselytized the transformation of the barely sovereign United Provinces into a powerful Dutch maritime empire and prophesized a time of splendor for those “true sons of the sea.”¹⁷ In this scenario the ocean is feminized as an object in the service of the masculine sons of the sea. Writing at the advent of what historians call the Dutch Golden Age, Grotius’s dreams would come true not much later with the violent acquisition of Dutch power around the globe.

In Chapter XV, the young jurist described the ontological precedents that made the Dutch more suitable to oceanic commerce than any other nation. He described the size and speed of Dutch vessels as more apt to “meet every martial and maritime emergency” (Grotius, *Commentary on the Law of Prize and Booty* 479). On the contrary, he described Portuguese vessels as an extension, or prosthesis of Portugueseness. Their ships were, in his words, “slow-moving hulks [...] inadequate for strife against the winds [...] fitted to be conquered rather than to conquer” (479). He then continued to describe why the Dutch are more apt to navigate the world ocean. He wrote:

Dutch people – reared amid their own waters beneath a frosty, wind-swept sky, under the light of Northern stars, and in an amazing number of cases accustomed even from childhood to spending more time upon the ocean, than on land – are just as familiar with the sea as they are with the soil. (479–80)

Grotius wrote that the Dutch could endure the cold “extremely well,” could go without food for long periods of time, and were “thoroughly accustomed to the hardships attended upon extended journeys such as [voyages to the Indies]” (480). The Dutch were more apt than any nation to take to the seas. Grotius contrasted a cold, masculine, restrained, Calvinist pragmatism with the Portuguese, who – he writes – were, “enervated by warmth,”

“wasted with debauchery,” “effeminate,” and “accustomed to luxury” (480). In other words, Grotius constructed a context in which the Dutch relation to the elements provided an ontological, elemental, and material justification for Dutch conquest and piracy. For Grotius, the Dutch were the superior maritime race; it was God’s purpose to “select the Dutch in preference to all others [...] and reveal the glory of our race to the farthest regions of the world” (496).

Although the ocean could not be owned by a state or individual, it was navigable by especially European, and – for Grotius – Dutch ships. It was God’s ocean, and not the Iberian Christianizing mission or the papal bull, that granted the Dutch access to the resources of the world. Mawani further argues that the ship itself constituted a juridical form, which “produced the foundational and legal distinction between land and sea” (*Across Oceans of Law* 49).¹⁸ For Grotius the lightness and velocity of Dutch ships are exemplary of a new mode of maritime capital’s circulation and justification. The ship becomes a prosthetic of Dutchness to be projected and mapped onto the globe. To prevent the Dutch from navigating their ships across oceans would be in violation not just of natural law, but of nature herself (Grotius, *Commentary on the Law of Prize and Booty* 303).

Grotius’s thinking about the ocean belongs as much to the realm of imagination as it does to the realm of materiality and it draws attention to the ways in which the mutable myth of the freedom of the seas is implicitly bound to ideas of Dutchness and Dutch interest. According to Alison Rieser, the Dutch “crafted legends and patriotic explanations for the superiority of the Dutch brand and its economic model,” which turned *mare liberum* not only into law, but also into a convenient truth, legend, and social technology to protect Dutch hegemony (211, 216). These legends did not simply craft explanations; they provided the ontological and epistemological backbone of Grotius’s legal framework. They now provide the opportunity for unpacking Dutch exceptionalism and its subsequent claims to

the sea as myth, history, economy, law, and destiny, denaturalizing the universalization of the world ocean as a free sea. Erasing the *St. Catarina* case from his *Mare Liberum* allowed his work to become instrumentalized by other imperial states. However, this did not mean that the text is not rooted in Grotian ideas about Dutch exceptionalism that “rationalyzed accumulation and colonial ownership” (Sutton 14).

ocean as perpetual *res nullius*

In Chapter XII of *De Indis*, Grotius deliberated on the status of the sea. For him, the sea, like the air, is the “common possession of all men and the private possession of none” (*Commentary on the Law of Prize and Booty* 321–22; my emphasis). After this initial statement on the juridical status of the sea, he begins to nuance his argument. The reason for the ocean to be the common possession of all men is that it “is so vast no *one* could possibly take possession of it” (322; my emphasis). Furthermore, it is made to serve the rights of navigation and of fishing (322).

For Grotius, both the ocean and the shore are common *property* to all under natural law and the law of nations. It is at this point in *De Indis* that Grotius makes an important observation or statement about the status of the sea. He writes,

[n]evertheless, even though the said things [the sea and the shore] are correctly called *res nullius* in so far as private ownership is concerned, they are very different from those which are also *res nullius* but which have not been assigned for common use: e.g. wild beasts, fish, and birds.¹⁹ (Grotius, *Commentary on the Law of Prize and Booty* 322)

He further specifies that items belonging to the latter class can be rendered private ownership through the act of possession, whereas

items within the former class [of *res nullius*] have been rendered *forever exempt* from such [private] ownership by the unanimous

agreement of mankind, in view of the fact that the right to use them, pertaining as it does to all men, can no more be taken from humanity as a whole by one individual than my property can be taken from me by you. (322–23; my emphasis)

In other words, the ocean indeed falls within the class of *res nullius*, even as it remains *exempt in perpetuity* from private ownership – *perpetual res nullius*.

He specifies that if any of the things just mentioned do become “susceptible to occupancy in accordance with nature’s plan,” they *can* become private property of the person(s) occupying it as long as it does not impede common use (Grotius, *Commentary on the Law of Prize and Booty* 323). In this section, Grotius opens the door to ongoing Dutch coastal land-taking projects at home and abroad, while at the same time he provides the legal parameters for just invasion and occupation of [parts] of an overseas shore. He even went as far as to argue that acts of occupation can be both acts of a private individual and of a nation, even as the sea and the shore frequently resist such occupancy (324–25). Moreover, Grotius argued that possession of the shore can only occur when the site remains occupied. However, the sea might reclaim that part of the shore.²⁰

In this section, I am particularly interested in Mawani’s reading of Grotius’s manifesto as she contemplates his deliberation on the elemental distinctions between land and sea. Mawani writes,

Mare Liberum might also be read as an aesthetic meditation on the high seas, one that was informed by an element-turned-legal distinction between land and sea. For Grotius, it was the physico-material properties of oceans, their expansiveness, and ceaseless change – that rendered them to be juridically different from *terra firma*. (*Across Oceans of Law* 43)

It was this elemental distinction “that determined the legal questions of occupation and possession” (43). The sea’s very livingness as churning, ebbing, and flowing made it

uncapturable. Land could be bordered and cultivated, so Grotius argued, and thereby possessed by an individual or a state. In a similar way, inland waters were subject to occupation and possession. For Mawani, Grotius’s text offered a different worldview in which imperial sovereignty was repositioned via the ocean as central (43). Grotius decidedly understood the ocean in liquid terms and “liquids cannot be possessed except by means of that whereby they are limited” (46).²¹

Grotius’s thinking about the ocean as facilitator of traffic and trade was sutured to political, epistemological, and legal ideas about Dutch exceptionalism that attempted to turn the globe into a colonial-capitalist ecosystem replete with its own Calvinist rationalization. This reductive understanding of the ocean has created what Esmeir describes as “an oceanic image [where] nature has ordained commerce between peoples and put oceans to facilitate this traffic and trade” (84).

For Grotius, the ocean was unknown yet knowable at the time of writing his text. He was convinced that marine science could make it known and enable capitalist expansion across the globe, providing the conditions for one of the first encounters between natural law and natural science. Esmeir writes, Grotius’s vision “facilitated the production of an enlarged surface of the world as an object to be *captured* through European navigation and trade” (82; my emphasis).²² Where most Grotian scholars have argued that Grotius described the sea as free from ownership, what is striking is that Esmeir uses a language of capture to describe the world-making event of the text. For Grotius, capture was necessary to establish ownership. In a world where the ocean is imagined as capturable – yet can never be legally owned by an individual or a state – other visions for the world and the sea are lost (Esmeir 83).²³ Esmeir calls this the “coloniality of the Free Sea,” which she describes, “lies not only in its solicitation by the VOC to expand Dutch trade to the East Indies but in its productive power, which persists today in the field of international law” (85). Such a “vision” does not simply produce

the ocean as supposedly free and common to all; it provides, “the constitutive center for staging an enlarged world [...] a unified world and, more significantly, spatial-political possibilities for capturing it and intervening in it” (85). The force of the text therefore does not only include the imposition of an elemental-juridical framework that demarcates the land from the sea, it equally constructed an imposition of a particular maritime imagination where navigating the ocean became a way to enforce said legal and epistemological order, which attempted to capture the ocean as an element in the service of global racial capitalism. What made this world capturable, I argue, was Grotius’s construction of the ocean as *perpetual res nullius*. It is this thingification of the ocean that both enabled the consolidation of European maritime colonial expansion for centuries to come and the transformation of coastal regions at home and in the colonies into arable land to facilitate plantation and urban expansion. Grotius’s colonial-capitalist worldview does not only undergird private possession, but also produces an anthropocentric notion of the commons through the logic of ownership that forecloses other, non-exploitative relations to the sea.

The distinction between the land and the sea then does not rest upon a distinction between what can and cannot be owned, but rather on a temporal distinction between different stratifications within a larger regime of ownership. In this move, Grotius reduced the turbulent, vast, unknowing sea into the status of a thing – property, yet common. Although Grotius hinged his conception of the human on becoming propertied and defending private property, the ocean itself becomes the private property of all mankind to be defended by the Dutch, thereby excluding those considered non-human, including racialized, gendered, and more-than-human life forms. In this at once juridical, ontological, and epistemological gesture Grotius reduces the ocean’s life-giving force to the status of a thing in the service of merchant men and the corporate state. This relation between land and sea conditioned the emergence of global racial capitalism as different

stratifications within a regime of property acquisition and defense. It conditioned a system in which the climate, to speak with Christina Sharpe, is “anti-Black” as much as it is anti-Indigenous (106). Grotius’s rendition of the winds and the weather facilitated and justified the trans-Atlantic, Pacific Ocean, and Indian Ocean slave trade and Indigenous dispossession based on a logic of accumulation in the service of free trade and navigation. Supporting acts of bodily, sovereign, and elemental dispossession and possession, Grotius’s narrative is thus not simply legally “effective”; it creates the discursive conditions upon which the elements can be imagined and harnessed in the service of anti-Black, anti-Indigenous, and environmental violence – genocide and ecocide.

Mawani argues that the freedom of navigation in Grotius only included European men. In extension, the ocean is then not free from possession, but the common possession of white European men. At the same time, even Grotius’s own writings continue to underscore the ephemerality of these collective and private acts of occupation and possession as the ocean “cannot easily be built upon nor enclosed” (*Commentary on the Law of Prize and Booty* 325).²⁴ It might not be a foreign enemy, but rather the ocean itself that remembers where it was – reclaims what has been deemed ownership of Man by European men.

The sea itself becomes an active actor in Grotius’s writings, who much like man, “diverted [things] from other uses and made its own, such as the sands of the sea, of which the portion merging onto the land is called the shore” (*Commentary on the Law of Prize and Booty* 322). Because the shore, as it were, was claimed as part of the property of the ocean, the shore as a whole could not be subject to private possession. He even went as far as to argue that where the sea seems “to resist possession like a wild beast who can no longer be considered property of its captor after retaining its natural liberty,” the shore “returns to the sea, under the principle of *postliminium*” (324). Here he seems to imply that the ocean, under *postliminium*, has a right to “recover what

has been lost or stolen” (178). In Book II, Chapter II of *The Rights of War and Peace*, Grotius further asserts that certain “Banks of Sand” cannot be owned not simply because the sand returns to the ocean, but because they are “incapable of Culture, and serve only to supply Men with Sand, but can never be exhausted” (430).²⁵ Although Grotius perhaps meant that the shore could not be cultivated, it might be productive to read uncultivated and uncultured together through the larger prism of conquest as they both facilitated colonial expansion and plantation slavery. This section is one of the most direct ways in which Grotius assigns the sand to its inexhaustible use for land-taking projects. The shore then, as R.P. Anand notes, “derives its character from the sea, and it is not considered part of the land” (84).

The shore was the first point of contact after a long conquistador voyage. For Grotius the shore constituted neither land, nor water, its ground too unstable to fall under the category of landed sovereignty. According to R.P. Anand, the understanding of the shore as a space where foreigners could erect trading posts within which they followed their own legal customs, much like upon ships, constituted an appropriation of Indian Ocean understandings of the free sea, which quickly led Europeans to conquer foreign territories (82–89). At the same time, Grotius’s descriptions of the shore are reminiscent of a Dutch shoreline. Here, the beaches are wide, sandy, low – a significant visual difference between ebb and flow where the sea continues to swallow up large tracts of sandy beach only to reveal it again when the tide recedes. At that time, the seawater would shore up all the way to Amsterdam. Even today, the city’s waters are brackish. The place where ocean and sand engulf each other, to think with King, “has the potential to be something else that cannot be known in advance” (*The Black Shoals* 7–8). Contours and boundaries that cannot be fixed challenge the territorial sovereignty of the nation state. It is such possibility that escapes and, at the same time, undergirds the Grotian imaginary and Eurocentric relations to the water.

Grotius’s conception of the shore as taken and given by, or perhaps belonging to the ocean, reveals that his understanding of the elemental-cum-juridical distinction between land and sea is not as clear cut as he claims it is. On the one hand, this allows him to claim the shore as common as a means to enable Dutch ships to penetrate distant shores. On the other hand, this leaves me space to consider the ocean from a different vantage point. It is particularly his understanding of the shore as a hybrid, or perhaps amphibious (legal) zone between land and sea that reveals the conceptual ambivalence of Grotius’s argument. In this hybrid space, the brackish waters flowing through the Amsterdam canals reveal an interplay between saline and fresh water that creates its own ecosystem that is neither strictly oceanic, nor strictly riverine – a transitional zone where two different bodies of water meet. Grotius’s argument opens the door to amphibious assaults and to the ongoing Dutch creation of land onto the sea, but also shows that the sea continues to take back – flood and immersion on the horizon. Such an image of the shore as a liminal space shows that the elemental and juridical distinction between land and sea, or between different bodies of water cannot be as easily drawn.

I find Grotius’s idea of the ocean taking back, reclaiming itself, helpful as it spills out of and shores up against his own attempts to capture the surface of the world for navigation and trade, and the ocean as a resource for humans. Water reclamation demands a different relation to the water, one not premised on conquest. Clearly, this did not prevent the Dutch from expanding their empire. However, looking at the metal sheets along the Amsterdam canals it seems there are limitations to capturing and juridicalizing the water. The blue planet speaks back to regimes of property and capture – it speaks through rising sea levels and ocean acidification. What interests me here is not simply that Grotius developed strategic exceptions to his idea of the ocean as common property by suggesting that it could, at times, become the private possession of an individual or state, albeit temporarily, but

that he described the ocean as an active agent, even with the right to *postliminium*. The ocean can take back what was taken – rendering unstable any claims that can be made, any boundary that might be drawn. Nowhere do we perhaps see this more clearly than in dammed and controlled coastal environments where the water continues to reclaim itself, such as the city of Amsterdam. When sand no longer holds the weight of brick and metal, water refuses a long history of racial capitalist violence. When water trickles through, the city sinks. Even the sand itself is part of an intricate play between water, movement, shell, rock, and crustaceans. The city is built on the pulverized remains of bazillions of ancient exoskeletons. The ocean’s materiality is always already in excess of Grotian legal claims.

The ocean resists its thingification in the service of global capitalism. It devours ships; it reclaims land for itself; it coughs up sand when it wants to; it regurgitates our pollution and spits it out as acid rain. It is the ocean’s “more-than-wet-ontology” that trickles into Grotius’s legal imaginary (Peters and Steinberg), even as he seems to erect a juridical fortress and impose a perspective of the ocean that turns it into an element in the service of European navigation and maritime supremacy.

negotiations for the planet

Grotius’s conquest of maritime imagination continues to pervade our international legal imaginaries. The horizontal and vertical stratification of the ocean into different juridical zones in the United Nations Law of the Seas Convention based on the Common Heritage of Mankind principle is but one symptom of the reduction of the ocean to *perpetual res nullius*.²⁶ The “common heritage of mankind principle” resulted from the efforts of newly found and decolonized nation states, and was, as Henry Jones remarks, “revolutionary.” As a result of Third World Movements, it positioned the ocean as “a resource belonging to all, and to be exploited for the benefit of all” (Jones 316). Unfortunately, it also proved itself, much in the spirit of Grotius’s free sea

doctrine, susceptible to cooption by the free market principles of First World States (Jones 314). For Esmeir, this failure, even though its potential was great, was because the ocean remained captured within the logic of the nation state (83). I would like to add that in the face of climate catastrophe, the failure of the common heritage and free sea principles lies in the fact that they subject the ocean to a logic of property, a resource to be exploited by (hu)mankind. It is particularly Indigenous thinkers, writers, and organizers who demand a different relation to the biosphere and resist elemental separation and compartmentalization – the “deathwork of ‘unmaking water’” (Perera 59) – but whose demands fall flat within a worldview that is premised on accumulation and perceives the world as (common) property (Aikau et al.; Perera; Te Punga Sommerville, *Once Were Pacific*; Hau’ofa; Christian and Wong).²⁷

Thinking with the work of Indigenous studies scholar Mishuana Goeman (Tonawanda Band of Seneca), King argues, “through European colonialism, European conceived scales – units of accumulation – have been imposed on the biosphere, turning the environment into separate spaces such as ‘reservations, nation states, continents [and] hemispheres,’ in addition to land and water” (*The Black Shoals* 94; Aikau et al. 94). Such “scalar fragmentation” continues to affect contemporary relations to the ocean and erases other modalities of relating to water. It is particularly early modern European humanism that has actively sought to undo the ocean’s “more-than-wet ontology” through the imposition of scalar and legal fragmentation. What water studies calls water’s “more-than-wet ontology” has been part and parcel of Indigenous and Black histories, thought, and scholarship for centuries, which destabilizes some of the claims made within the field that seeks to script itself as “new.”²⁸

For Grotius, there seems to be no contradiction between the elemental livingness of the ocean and its ongoing thingification in the service of conquest-as-free-trade. Such conquest includes a conquest of the imagination,

which includes the ontological, epistemological, elemental, and legal myths that have been scripted to support racial capitalism's conquistador ideology. What becomes clear is that capitalism can only acknowledge livingness in its very thingification. This is perhaps capitalism's greatest failure and achievement as its vision for the biosphere continues to dominate negotiations over, or should I say *for*, the planet while the planet is pushing back against such a reductionist vision. In other words, capitalism can only continue to exist through its naturalization, while global climate catastrophe reminds us that the elements continue to exceed it. What Surabhi Ranganathan describes as international law's "extractive imaginary" starts with Grotius and does not just relate to things taken from the ocean, be they fish or other marine "resources," but also to the movement and circulation of ships and their owners upon it and what remains in excess of such reductive fictions.

conclusion

The more the world is forced to come to terms with climate catastrophe, the more I am reminded that water cannot be controlled or owned. The ocean demands that I come to terms with spill, draught, acidification, and flood, and the unevenly felt effects of climate catastrophe outside the neoliberal onslaught of sustainability for capitalist growth. The properties of the ocean are in excess of its status as common heritage, or should I say, common property of mankind.²⁹

A few months after my first walk through the city, the aquatic community gardens now aligning the water's edge show that another relation to water is possible. At the same time, they are exemplary of a new turn in the logic of capitalism – sustainability, a discourse that has been coopted by the state and industry and "now refers primarily to the *economic* sustainability of capital accumulation itself" (Coulthard 77). New seeds are sown, but to what extent is this a rupture with the not-so-distant past? The little sprigs and bushes sprouting up from the expanded

sandboxes are but a temporary solution masked as a contemporary turn in Dutch water management policy geared towards neoliberal sustainability and so-called "resilience" (i.e., AquaConnect). This illusion of sustainability is more about sustaining a Dutch way of life than about degrowth or decolonization – a politics and poetics of water that does not operate in the service, or under the protectorate of Dutch mankind. I would like to keep asking with Rosello and Te Punga Sommerville what we are doing to water. If I want to move away from a colonial understanding of the planet, it is imperative to move away from a Grotian maritime imagination that positions the ocean as common property to be exploited in the service of capital accumulation – a relation to the commons that ultimately remains anthropocentric in nature.

The sinking city built on uprooted underwater old growth – traded handsomely across European states – serves as a reminder of a logic David Harvey has called the "spatial fix" aimed at control rather than cohabitation – the reification of a capitalist relation to nature. A spatial fix describes "capitalism's insatiable drive to resolve its inner crisis tendencies by geographical expansion and geographical restructuring" (24). At the same time, the water itself spills out. Today, whenever those old-growth underwater structures come in touch with oxygen they start to tilt making the canals look like rows of dancing houses. The water spills out – a reminder that we must cohabitate with it as it refuses to bend and submit to its canalization, dredging, and management.

The limitations of a Grotian maritime imaginary that continues to capture dominant international legal, cultural, economic, and political deliberations begs the question how "we" can rethink elemental relations, refuse the logic of property, and abolish a Grotian maritime imagination. Where do I think from? How do I write about water and act upon water so as not to perpetuate its status as a commodity? What might this mean for contemporary deliberations on the status of the sea that seem to suggest that an "Area" of the ocean can be

protected, while another “Area” is being prepared for the largely unknown project of deep-sea mining by the world’s richest and most powerful corporations and corporate states supported by the International Seabed Authority as “steward”?³⁰ I place the “we” between quotation marks here, because the uneven responsibility for and effects of the long environmental crisis of the “racial capitalocene” (Vergès) “we” find ourselves in must be contemplated as “we” try to form and understand alternative, future, and existing relations to the biosphere that do not rest on thingification.

In this essay, I tried to find a way to write about how water speaks back to its legal, epistemological, material, ontological, and political confinement by thinking through the idea of water reclaiming itself in the face of its juridical and political thingification in the service of global racial capitalism. In doing so, I juxtaposed Grotius’s legal thinking about the ocean, Amsterdam’s sinking city scape, and land-taking projects to better understand how the ocean both spills out and shores up against the modern-colonial legal-elemental fictions that subject it to a carceral logic of property.

In May 2022, I was asked to join a panel on “brackish methodologies” that centered on the Dutch waterscape. On the panel, I was joined by benthic ecologist Arie Vonk. What struck me was how much of our thinking about water was alike. Where I talked how Dutch maritime imaginaries turned colonial capitalism into its own ecosystem, he studied the benthic ecosystem in the Netherlands and talked about the environmental damages that occur as a result of damming, reclaiming, and confining water. He described how, contrary to Dutch strategies of separating and compartmentalizing the environment, marking hard separations between land and sea, organisms in brackish estuaries embrace their conditions, moving in and along the ecosystem. Land-taking and marine engineering create a static ecosystem where benthic ecosystems depend on the movement of salt and fresh water, and sand. His work as a researcher to protect and understand this ecosystem collides with the maritime capitalist ventures of the Dutch. We

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joked about this manmade land. He said, “It is so typically Dutch! We don’t like a tree in some place, we put it somewhere else. We need land? We take it from the water!” According to his expertise, it would perhaps not be such a bad idea to imagine embracing the natural dynamics of the ecosystem to live *with* it in different ways.



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notes

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1 In 2006, former Dutch Prime Minister Jan Peter Balkenende expressed the desire during a political debate to return to a “VOC mentaliteit,” or “Dutch East India Company mentality” (Groenendijk).

2 Maritime by Holland is the website of the Dutch Maritime Cluster commissioned by the Dutch Ministry of Infrastructure and Water, which connects the different onshore and offshore maritime sectors in the Netherlands. In the NL Portal website commissioned by the Dutch Ministry of Infrastructure and Water Management, we learn that “more than 12,000 maritime companies create €18.5 billion in added value, with employment amounting to some 167,000 jobs. The indirect added value represents an additional €4.3 billion and 90,000 jobs” (NL flag).

3 This includes both effects on the water table, which has to remain low for Dutch mass farmers

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to work the land but has adverse effects on the ecosystem (including humans) increasingly leading to droughts, and the water quality through dumping toxic waste from factories and farms (that operate much like factories these days).

4 In this essay I will use the term “land-taking projects” to refer to what is conventionally called land reclamation. I do this to destabilize the clear-cut distinction between land and sea and the relation between conquest, capital accumulation, and land reclamation.

5 In particular, Te Punga Sommerville is talking about the long history of the Pacific Ocean garbage patch.

6 For more on the intimacies of liberal humanism, see Lowe.

7 Rosello builds on Ciriaco’s comparative study of land reclamation in early modern Venice and Holland. In this book, Ciriaco briefly mentions the amphibian state as metaphor. It remains disconnected from the larger context of nascent European imperialisms.

8 In the early 2020s, we see a self-acclaimed “paradigm shift” from an explicitly antagonistic relation to the water to one that centers the concept of “resilience” with the commencement of the Aqua-Connect Project. However, this project still operates exclusively from an anthropocentric purview that privileges the capitalist economy – industry and agriculture (AquaConnect).

9 For King, the shoal is a particularly useful conceptual terrain to destabilize the suture between blackness and liquidity and between indigeneity and land, and to suggest an alternative way to understand the relation between Black and Native Studies.

10 Grotius referred to his manuscript as *De rebus Indicis*. It is only much later that the text became known as *De Iure Praedae* or *Commentary on the Law of Prize and Booty*. Following Eric Wilson, I will use the title *De Indis* to draw attention to the coloniality of the text (Wilson, “On Heterogeneity and the Naming”; *Savage Republic*).

11 It must be noted that he receives a far less critical reception in the Dutch context itself, where he continues to be portrayed as somewhat of a folk hero.

12 His work formed the theoretical ground for the works of Adam Smith, Johan and Pieter de la

Courts, Edmund Burke, Thomas Hobbes, and John Locke (Sutton 38). And, as van Ittersum cautions, “Dutch ways of understanding empire were crucially important to neighboring imperial powers” (“A Miracle Mirrored?” 98).

13 Grotius “radically re-defined property” as a private affair (Sutton 69). This partitioning between what is mine and what is yours depended on an intimate Dutch relationship to the land and the water (55). The grid-like structure of the *polder*, for instance, informed Grotius’s writings in *Jurisprudence of Holland* and helped explain his understanding of private property (67). In *The Rights of War and Peace*, Grotius notes that in the Americas Indigenous people have not yet achieved this level of development as they still seem to live in a state in which all things are held in common (421). His understanding of property is therefore racialized.

14 Turning to conquest, I am inspired by King’s call to turn to the idea of conquest as ongoing and central to the project of liberal humanism (*The Black Shoals*).

15 This is a very tentative “we,” Indigenous, Black, and decolonial scholarship has continued to call for and nurture relations to the biosphere that refuse Eurocentric imaginaries and do not rest on a logic of accumulation (i.e., Satgar; Simpson; Coulthard; Maynard and Simpson; Walcott; Vergès; Christian and Wong).

16 Rosello is particularly addressing how the Netherlands is narrated in a video used as part of the controversial entrance/integration test for newly arriving migrants. Rather than hone in on the use of sexuality in the test (as done by Judith Butler and others), Rosello picks up on the sea and the water as a central element of narrating national history and belonging.

17 At the time of writing, the United Provinces had not yet been recognized as a sovereign state among European powers as it was still at war with its Iberian sovereign (van Ittersum, *Profit and Principle*; Porras).

18 Furthermore, she writes, ships were “colonial laboratories” (Mawani, “Law, Settler Colonialism” 123). In particular, she argues, they were “places of confinement and conviviality where legal idioms, practices, and forms of violence were not only enforced, but also deliberated, disputed, and often extended to *terra firma*” (Mawani,

Across Oceans of Law 49). This is also why Grotius could position the *Sta. Catarina* case as a legal precedent for larger deliberations over the status of the sea.

19 For Grotius, items which can be considered *res nullius* also include non-Christian prisoners of war and uncultivated lands, which opened the door to the transoceanic slave trade and Indigenous dispossession.

20 Interestingly, Grotius does not give the enslaved the same right as wild beasts or oceans, as the enslaved must not resist or escape (Stelder).

21 Mawani cites here from Grotius's response to William Welwod ("Defence of Chapter V").

22 She also laments how this was not overcome in the 1982 United Nations Law of the Seas Convention, even as those negotiations were heavily impacted by the Bandung alliance and newly decolonized states at the negotiation table.

23 For instance, Steinberg writes that Grotius asserted that "the sea is definitely not *res nullius*," but that there is a duty, especially for more powerful nations, to preserve access to resources and navigation to all, even as the resources taken from the ocean do not have to be equally divided (Steinberg 93). Steinberg even insists Grotius developed an "activist regulatory form of stewardship" in which a few major users operate as the main stewards (93–94). Steinberg places Grotius's notion of the ocean within the realm of states, emphasizing *use* rather than *possession*, but what he bypasses is that Grotius does indeed describe the ocean as *res nullius*, albeit unpossessable by an individual/state. Grotius's ocean does not only remain within the realm of states as Steinberg contends; it also remains within a logic of property acquisition and defense.

24 In Book II, Chapter II in *The Rights of War and Peace*, he does further specify instances where parts of the ocean and sea lanes might be captured.

25 It must be noted that in the colonial context the supposed absence of "culture" within non-European peoples often provided the grounds for racist civilizationalist arguments used to justify conquest.

26 For a comprehensive overview of the concept, see Baslar.

stelder

27 Perera extends the work of Deborah Bird Rose in relation to Indigenous struggles over the river Murray in South Australia to the ocean. "To unmake water is to 'impair [...] water's living presence and at the same time work [...] at killing the human capacity to understand water in its living complexity' (Rose, 2007: 12)" (Perera 59).

28 See, for instance: Glissant; Hau'ofa; Te Punga Sommerville, *Once Were Pacific*; Chang; Stephens and Martínez-San Miguel; LaDuke; Simpson; Mulalap et al.; Christian and Wong; Perera; King, *The Black Shoals*; Sharpe. Conventionally, within water studies I would use Peters and Steinberg's "more-than-wet-ontology" to speak about the ocean's materiality. However, understanding the ocean's relation to the rest of the biosphere has been part and parcel of particularly critical Indigenous studies scholarship and knowledges for centuries. Although the spiritual and theoretical dimensions of such relations are particular to specific Indigenous cosmologies, I draw inspiration from these writings as they refuse the violence and epistemologies of racial capitalism and imperial ecocide.

29 This is a reference to the "common heritage of mankind" principle described in the 1982 United Nations Law of the Sea Convention and its 1994 Amendment.

30 On the one hand, recent UN negotiations over the status of the sea have called for more Marine Protected Areas (MPAs), while on the other hand, the International Seabed Authority has now granted permits to mine other parts of the deep sea, which UNLCOS 1994 amendment refers to as "The Area." For more on the ISA and deep-sea mining, see Silva; Zalik.

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