

# NATIONHOOD AND CONSTITUTIONALISM IN THE DUTCH REPUBLIC: AN EXAMINATION OF GROTIUS' *ANTIQUITY OF THE BATAVIAN REPUBLIC*

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**Abstract:** The emphasis in contemporary democratic theory and in the history of political thought on the ‘natural rights’ theory of popular sovereignty of Locke, precursors of which are found in the work of Hugo Grotius and others, obscures an important relationship between constitutional self-government and nationalism. Through an examination of the early political writings of Grotius, especially his *Antiquity of the Batavian Republic*, this essay shows how a national consciousness forged out of memories of native traditions of self-government, and stories of heroic ancestors who successfully defended those traditions against usurpers and tyrants, gives concrete substance to otherwise inchoate theories of constitutional self-government.

**Keywords:** Hugo Grotius, the Dutch Republic, the Dutch Revolt, nationalism, nationhood, national identity, constitutionalism, the ancient constitution, mixed constitution, self-government, popular sovereignty, liberty.

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## Introduction

Nationalism has fallen into disrepute since the end of the Second World War. Motivated by the horrors perpetrated by the Nazi regime, Jürgen Habermas, while acknowledging the ‘umbilical links’ of modern democracy to national consciousness, has promoted the formation of post-national identities and traditions for the grounding of constitutional self-government.<sup>3</sup> John Rawls, too, turned to Kantian universals in his formulation of a liberal democratic conception of justice. Such attempts to purge constitutional self-government of its putatively ‘contingent’ relationship with nationalism have, perhaps, been made to appear more plausible by the manner in which prominent scholars of the history of political thought present the development of modern political thought, as a process that leads teleologically to John Locke’s universalist, natural rights based theory of constitutional government. The purpose of this article is to examine the ways in which nationalism has been supportive of

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<sup>2</sup> I am much obliged to Richard Avramenko and anonymous referees for their comments on earlier drafts of this article.

<sup>3</sup> See Habermas, ‘The European Nation State: Its Achievements and Its Limitations: On the Past and Future of Sovereignty and Citizenship’, *Ratio Juris*, 9 (1996), pp. 125–37. See also these useful commentaries on Habermasian constitutional patriotism: Clarissa Hayward, ‘Democracy’s Identity Problem: Is ‘Constitutional Patriotism’ the Answer?’, *Constellations*, 14 (2007), pp.182–96; Jan-Werner Muller, *Constitutional Patriotism* (Princeton, 2007).

self-government and the preservation of liberty. I show that Hugo Grotius' *The Antiquity of the Batavian Republic* provides a powerful illustration of the importance of national feelings, national memory and nationalist rhetoric in making arguments for popular sovereignty tenable, and in engendering popular attachment to particular constitutional forms and the rights they are supposed to protect.

This, it should be noted, is but one example of a pattern that one encounters in the pro-constitutionalist writing of several European or European-based nations, including England, France and even the United States.<sup>4</sup> I choose the Netherlands and Grotius' tract about the Batavians because they are the most neglected in the literature. This article proceeds in three parts. First, I explore what is lacking in universalist accounts of constitutional self-government. Second, I describe the genesis of the Batavian narrative, and the historical context in which Grotius wrote his defence of the government of the Dutch Republic. Third, I show how Grotius' account of the ties among the Dutch people and the history of their institutions supplies the deficiencies of theories of popular sovereignty and constitutionalism based on the natural rights of individuals.

## I

### Nationhood and Self-Government

As several scholars have shown, there is a logical and historical relationship between constitutionalism and popular sovereignty on the one hand, and nationalism on the other. As liberal nationalists have argued, constitutional self-government may depend on many conditions that only nationhood can provide, to wit: a sense of the extent of the political community, a source of unity, solidarity and continuity transcending common territory and shared procedures, and a clear image of the pre-political community to which governments are accountable, and to which power reverts when governments betray their trust.<sup>5</sup> I illustrate this complex relationship through an examination of the most detailed and ultimately the most popular seventeenth-century

<sup>4</sup> For an early nationalist French argument for popular sovereignty and constitutionalism, see Francois Hotman, *Francogallia*, ed. and trans. R. Geisey and H. Salmon (Cambridge, 1972). For a Scottish example, see H.R. Trevor-Roper, *George Buchanan and the Ancient Scottish Constitution* (London, 1966). English examples abound: see, most recently, E. Alexander-Davey, 'Constitutional Self-Government and Nationalism: Hobbes, Locke and George Lawson', *History of Political Thought*, 35 (2014), pp. 458–84. The founding of the United States owed much to the colonists' memories of England's national past. See T. Colbourn, *The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution* (Indianapolis, 1998).

<sup>5</sup> See M. Canovan, *Nationhood and Political Theory* (Cheltenham, 1996); Y. Tamir, *Liberal Nationalism* (Princeton, 1993); B. Yack, 'Popular Sovereignty and Nationalism', *Political Theory*, 29 (2001), pp. 517–36; B. Yack, 'The Myth of the Civic Nation', *Critical Review*, 10 (1996), pp. 193–211.

defence of Dutch constitutionalism, Grotius' *Antiquity of the Batavian Republic*, with references, where necessary, to other works composed by Grotius in same period, namely the *Commentary on the Law of Prize and Booty (De Jure Praedae)*, *Commentarius in Theses XI* and *The Annals, and History of the Low-Country Wars (De Rebus Belgicis)*. In the accounts of Quentin Skinner, Richard Tuck, E.H. Kossman and Martin van Gelderen, the first text in particular, if mentioned at all, is given short shrift. However, this is entirely understandable given that these authors are concerned primarily with charting the advance of natural law theories of the state.<sup>6</sup> E.H. Kossmann, for instance, dismisses Grotius' Batavian tract because it does not point in the direction of the individualistic natural law theory of popular sovereignty, which is for him, as for his English colleagues, the *telos*, the great achievement of modernity, whose origins need to be explained.<sup>7</sup> More recent scholarship on Grotius also focuses on the Dutch philosopher's contribution to the development of theories of natural law, natural rights and the implications of these theories for civil and international relations, and for colonialism.<sup>8</sup> Some attention has been drawn to those works of Grotius, including the *Antiquity*, that do not fit the portrait of him as 'the patron saint' of international justice and peace, or of theories of natural law, but instead place him in 'the republican tradition of Tacitism and . . . Monarchomach political ideas'.<sup>9</sup>

I focus on this particular text for two reasons. In the first place, whatever the normative merits or demerits of the Lockean theory of the state and its

<sup>6</sup> Quentin Skinner, *Foundations of Modern Political Thought, Volume 2* (Cambridge, 1978); Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1982). Tuck mentions Grotius' use of the Batavian myth as a 'symbol of aristocratic republicanism' in *Philosophy and Government 1572–1651* (Cambridge, 1993), pp. 164–6, but even there it is a brief stop along the way to the 'great natural law theories of the mid-century'.

<sup>7</sup> E.H. Kossmann, *Political Thought in the Dutch Republic: Three Studies* (Amsterdam, 2000), p. 32.

<sup>8</sup> Cf. M. van Gelderen, 'Freedom Fighters: The Act of Abjuration, Hugo Grotius and the Dutch Debates on Liberty', in *The Act of Abjuration: Inspired and Inspirational*, ed. P. Brood and R. Kubben (Tilburg, 2011), pp. 155–68; K. Haakonsen, 'Hugo Grotius and the History of Political Thought', *Political Theory*, 10 (1985), pp. 239–65; J. Salter, 'Hugo Grotius: Property and Consent', *Political Theory*, 29 (2001), pp. 537–55; Maria Luisa Pesante, 'Slaves, Servants and Wage Earners: Free and Unfree Labour from Grotius to Blackstone', *History of European Ideas*, 35 (2009), pp. 289–320; Martine Julia van Ittersum, 'The Wise Man is Never Merely a Private Citizen: The Roman Stoa in Hugo Grotius' *De Jure Praedae* (1604–1608)', *History of European Ideas*, 36 (2010), pp. 1–18; Martine Julia van Ittersum, 'The Long Goodbye: Hugo Grotius' Justification of Dutch Expansion Overseas, 1615–1645', *History of European Ideas*, 36 (2010), pp. 386–411; Martin van Gelderen, '“Iustitiam non include”: Carl Schmitt, Hugo Grotius and the *Ius Publicum Europaeum*', *History of European Ideas*, 37 (2011), pp. 154–9.

<sup>9</sup> Jan Waszink, 'Lipsius and Grotius: Tacitism', *History of European Ideas*, 39 (2013), pp. 151–68.

Dutch analogues, it is important to understand, as an empirical, historical question, what sorts of arguments and appeals helped to bring about the first victory of constitutional self-government in early-modern Europe.<sup>10</sup> The constitutionalist pamphlet literature of the Dutch Revolt (c.1568–85) is dominated by arguments based on customary or common law, together with appeals to the memory of ‘courageous’ and ‘free’ ancestors who, owing to their national solidarity and their virtue, were able to exercise a legislative power locally through their provincial States, and nationally through the States General, and jealously guarded their rights and liberties from all would-be usurpers. In all of this, natural law theories of the state receive far less emphasis.<sup>11</sup> Secondly, it is important to acknowledge that the establishment of a constitutionally limited government poses questions that a natural rights theory is hard-pressed to answer, namely what is the concrete community that claims to have a right to govern itself in accordance with a particular constitutional discipline, and what is the form of its constitution? One has to know who the people are, what the community of sentiment is within which men owe special duties to one another, within which there is indeed a common good to be sought. There must also be some common basis for agreement on the constitutional form and the basic laws. Abstract reasoning can lead in a thousand different directions. But national experience and national prejudices can provide a common ground. A tract such as Grotius’ *Antiquity* gives bold, clear and emotionally evocative answers to these questions, based on assertions about the national history and national character, in this case, of the Dutch people.

My claim is that Grotius’ national-historical tract on the origins of the Dutch people and their constitution provided something fundamentally more important for the development of modern constitutional self-government than anything in his more celebrated mature works.<sup>12</sup> No other work of Grotius was published in a pocket-book format or reprinted as many times in the

<sup>10</sup> For instance, Kossman calls Locke’s Dutch contemporary Willem vander Muelen ‘the Dutch Locke’ and analyses his work at length. However, even at this time, a century after the Netherlands won independence and established itself as a republic, arguments from custom and national myth were as pervasive as ever: for instance, Adrian Houtuyn’s *Republicae Batavae liber primus*, published in the same decade as vander Muelen’s works, which Kossmann mentions but does not discuss.

<sup>11</sup> This, at least, is the impression created by the most thorough study of the pamphlet literature of the Dutch Revolt to date: Martin van Gelderen, *The Political Thought of the Dutch Revolt 1555–1590* (Cambridge, 1992). Moreover, by van Gelderen’s account, arguments based on national custom far outweigh religious arguments for constitutionalism. On the whole Protestants themselves approved resistance against the Spanish authorities not on theological, but on constitutional grounds. See *ibid.*, p. 94.

<sup>12</sup> As Richard Tuck rightly observes, the relevant chapters of Grotius’ most celebrated work, *De iure belli ac pacis*, are logically consistent with his earlier republican writings, but by themselves they are of little use to one who wishes to understand republican liberty in general or Dutch constitutionalism in particular. In Book I, which contains

vernacular.<sup>13</sup> Significantly, this text does not endow individuals with ‘natural’ or ‘human’ rights. In a sense, Grotius’ *Antiquity* rhetorically reconstitutes a mere ‘multitude’ as a ‘nation’. It is written from the point of view of one ‘reminding’ his own people of something ‘forgotten’, that they are the descendants of ancestors who possessed a coherent political community, who loved liberty and tolerated kings only to the extent that the latter procured the common good and protected their liberty as a people. The ancestors, Grotius argues, had from the beginning a settled way of sharing the sovereign power of the nation among its various estates, and guaranteed their fellow subjects certain rights, which were understood to inhere in them not as human beings, but as members of a particular national community of common place, blood and custom.

None of these claims about the national past would meet the standards of modern historiography. But even if such stories can be shown by modern historians to be mostly fictional, that does not mean that writers can invent effective political narratives *ex nihilo*, or even that such writers are aware that they are engaged in an act of mythopoesis. As Rogers Smith notes ‘forms of political peoplehood . . . are largely generated, motivated, and also meaningfully limited by the particular range of stories of possible political identity that they have inherited and long valued’.<sup>14</sup> In other words, political actors are constrained, to a significant degree, to work with narratives that are already familiar, both to themselves and to their intended audience. Grotius, as I show, did not manufacture Dutch national memory out of whole cloth; he appealed to stories that had already long been in wide circulation, and adapted them to inspire popular attachment to a particular constitutional order.

What this examination suggests, more broadly, is that just as popular sovereignty may require recourse to the nation as a historic community, so may constitutionalism depend on reference to ancestral institutions. Both are in a relationship with the nation as an ‘inheritance’ shared by members of the

chapters treating sovereignty and the right of resistance, Grotius explicitly mentions the Netherlands only once, in a footnote. Claiming to answer the question ‘to whom the Sovereign Power in every Nation belongs’ in Chapter III, he offers arguments that establish absolute monarchy to be not only a legitimate form of government as such, but one that is preferable to its alternatives in most circumstances. See Tuck, *Philosophy and Government*, pp. 193–4, and Grotius, *The Rights of War and Peace*, ed. Richard Tuck (Indianapolis, 2005), especially Book I, Chapters III and IV.

<sup>13</sup> On the pocket-book editions of the text, see Tuck, *Philosophy and Government*, p. 164. Composed in Latin, the text was immediately translated into Dutch on publication in 1610. The Dutch translation was reprinted in 1636, 1639, 1641 and twice in 1651. A second translation was published in 1681 and reprinted in a work called *Antiquitates Germanicae* in 1714, 1728, 1756 and 1757. See Jan Waszink, ‘Introduction’, in Hugo Grotius, *The Antiquity of the Batavian Republic*, ed. and trans. Jan Waszink (Assen, 2000), pp. 31–2.

<sup>14</sup> Rogers Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge, 2003), p. 48.

political community, a 'heritage compounded of ethnic, political, cultural and other elements'.<sup>15</sup> In any event, as van Gelderen has recently shown, this continues to be the case in the Netherlands, where the two largest political parties explicitly appeal to the legacy of the Dutch Revolt and the Dutch Republic, and to the memory of Dutch philosophers, such as Grotius, who took up their pens in defence of Dutch freedom and independence.<sup>16</sup> This is not to accuse Habermas or Rawls of proposing alternatives that are impossible, but only to question their rejection of a resource that history has shown to be very useful for the promotion of liberty and constitutionalism, and also, with this broader historical view in mind, to raise doubts about the 'intrinsic' relationship that Habermas sees between a people's attachment to national traditions and the calamities witnessed in the twentieth century.<sup>17</sup>

Some may object that the term 'nationalism' is not suitable for a discussion of the realities of sixteenth- and seventeenth-century Dutch politics in general, or the political theory of Hugo Grotius in particular. Yet there are good reasons to believe that they are. Although the term 'nationalism' was coined in the nineteenth century, many scholars argue that the phenomenon itself is much older, that the general thesis advanced by Eric Hobsbawm, Ernst Gellner and Benedict Anderson is in fact a 'modernist fallacy'.<sup>18</sup> As Adrian Hastings writes 'Hobsbawm wrote a history of nineteenth- and twentieth-century nationalism, but not a history of nationalism, and denial of the first half of the story has inevitably skewed the whole'.<sup>19</sup> The same might well be said of the work of Gellner and Anderson. Nationalism scholars such as Hastings, Steven Grosby and Anthony D. Smith prove the modernist thesis wrong by documenting ancient, medieval and early-modern nations and nationalisms. Hastings argues that national consciousness in medieval Europe arose from the example of the Hebrew nation in the Bible and generally from a Christian understanding of the world as a world of nations. This national consciousness

<sup>15</sup> Canovan, *Nationhood and Political Theory*, p. 72.

<sup>16</sup> van Gelderen, 'Freedom Fighters', pp. 155–6.

<sup>17</sup> Jürgen Habermas, 'Historical Consciousness and Post-Traditional Identity: The Federal Republic's Orientation to the West', J. Habermas, *The New Conservatism: Cultural Criticism and the Historians' Debate*, ed. and trans. Shierry Weber Nicholsen (Cambridge MA, 1989), p. 251.

<sup>18</sup> The chief works of the 'modernists' are E. Hobsbawm, *Nations and Nationalism since 1780* (Cambridge, 2012); E. Gellner, *Nations and Nationalism* (Ithaca, 1983); B. Anderson, *Imagined Communities* (London, 2006). The 'modernist fallacy' is refuted in several studies by Anthony D. Smith, especially: *The Ethnic Origins of Nations* (Oxford, 1988); *Nations and Nationalism in a Global Era* (Cambridge, 1995); *The Cultural Foundations of Nations* (Oxford, 2008). Also by A. Hastings in *The Construction of Nationhood* (Cambridge, 2006); and S. Grosby, 'Nationalism and Social Theory: The Distinction between Community and Society', in *Routledge International Handbook of Contemporary Social and Political Theory*, ed. G. Delanty and S.P. Turner (New York, 2001), pp. 280–9.

<sup>19</sup> Hastings, *The Construction of Nationhood*, p. 11.

reached not only local elites, but also the general population, as the ideas were regularly expressed in church, which all classes attended. Some of these scholars, such as Hastings and Greenfeld, identify England as the first country to exhibit modern nationalism.<sup>20</sup> Philip Gorski, however, argues that this honour belongs to the Netherlands.<sup>21</sup> Others attempt to draw historical and normative distinctions between patriotism, or ‘civic nationalism’, and ethnic nationalism, but reality is generally messier than such typologies would suggest.<sup>22</sup> Anthony D. Smith’s definition of nationalism as ‘an ideological movement for attaining and maintaining autonomy, unity, and identity on behalf of a population’ is, as I will demonstrate, certainly consistent with the aspirations expressed in Grotius’ tract, though it does not fully encompass them.<sup>23</sup> Grotius appeals for national unity and loyalty to a particular sovereign and independent Dutch order against those who would impose foreign constitutional models.

It should also be noted that the nationalism described by some modernists differs substantively in certain ways from the early-modern nationalism of which I speak here. For instance, Istvan Hont asserts that there are two views of modern nationalism. The first, the more conventional one espoused by Gellner and Hobsbawm, is that nationalism begins with the schemes of national homogenization pursued by the *Assemblée Nationale* during the French Revolution. The second, he says, is that nationalism begins with the age of absolutism, the period of state-building by centralizing monarchical regimes.<sup>24</sup> In both conceptions of nationalism, the state, whether a monarch or a representative assembly, is understood to be engaged in making a nation out of a population that is not yet sufficiently ‘national’, not yet sufficiently homogeneous. One of the more extreme forms of this nationalizing state is seen, for instance, in Emmanuel Sieyès’ proposal to liquidate, re-divide and

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<sup>20</sup> *Ibid.*, p. 32; Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge MA, 1992).

<sup>21</sup> Philip Gorski, ‘The Mosaic Moment: An Early Modernist Critique of Modernist Theories of Nationalism’, *American Journal of Sociology*, 100 (2000), pp. 1428–68, p. 1433.

<sup>22</sup> For attempts to disaggregate ‘patriotism’ and ‘nationalism’, see Maurizio Viroli, *For Love of Country: An Essay on Patriotism and Nationalism* (Oxford, 1995); J.H. Schaar, ‘The Case for Patriotism’, in J.H. Schaar, *Legitimacy in the Modern State* (New Brunswick NJ, 1981). The flaws in this approach are discussed in Canovan, *Nationhood and Political Theory*; Smith, *The Ethnic Origins of Nations*; Rogers Smith, *Stories of Peoplehood: The Politics and Morals of Political Membership* (Cambridge, 1999); Bernard Yack, ‘Popular Sovereignty and Nationalism’, *Political Theory*, 29 (2001), pp. 517–36.

<sup>23</sup> Smith, *Cultural Foundations of Nations*, p. 15.

<sup>24</sup> Istvan Hont, ‘The Permanent Crisis of a Divided Mankind: “Contemporary Crisis of the Nation State” in Historical Perspective’, *Political Studies*, 42 issue supplement (1994), pp. 166–231, p. 217.

homogenize the old provinces of France.<sup>25</sup> The early-modern nationalism I examine here is, for the most part, opposed to the idea of a centralizing and homogenizing state. The expositors of this nationalism affirm the primacy of the nation, as an already existing entity based on shared kinship and custom, over the state. What is more, the early modern nation is understood as a community of communities: the towns, cities, estates and provinces, with their particular customs, privileges, immunities and rights of self-government, together with their commonalities and their participation in national institutions, are what constitute the nation. As such, they may not be dissolved, nor their rights significantly curtailed by a national government, whether it is a monarchy, a representative assembly or a composite of the two forms. In the Netherlands, municipal and provincial identities were stronger than, for instance, in neighbouring England, to the point that the provinces were considered to be sovereign in all matters, except where powers had been delegated to the national government, in the main for the purposes of national defence. Given the strength of provincial identities and assertions of provincial sovereignty in the Netherlands, the terms 'nation-state' or 'nationalizing state', as the modernists understand them, should not, perhaps, be applied to the Dutch Republic as a whole, but this is not an argument against the existence of an overarching sense of Dutch nationhood, of belonging to a common fatherland, as one of the factors that made the United Provinces a viable political entity.<sup>26</sup> On the contrary, the robustness of provincial self-government itself and the institutional forms by which it was exercised were among the constituent elements of the national identity of the Dutch. This was one of the things that distinguished the inhabitants of the Netherlands from other nations.

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<sup>25</sup> *Ibid.*, p. 200.

<sup>26</sup> Ernst Gellner associates nationalism with 'the centralised national state'. See Gellner, *Nations and Nationalism*, pp. 4–6. The term 'nationalizing state' signifies a state engaged in the project of creating a nation-state where one does not yet exist, by making the state the agent of a particular nationality and assimilating minorities to the culture of the majority. See Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge, 2007), p. 63. As Alastair Duke shows, national identity in the Netherlands on the eve of the Revolt, and afterwards, is extremely complicated, even 'elusive'. Yet he concludes that by the time William of Orange and his propagandists began calling 'for the deliverance of the "lieve Vaderlant" [dear Fatherland] from foreign tyrants, they were addressing a constituency that had, for one reason or another, already begun to think, albeit with difficulty, of the Low Countries as their "communis patria", one that could stand alongside their provincial "patriae"'. See Alastair Duke, 'The Elusive Netherlands: The Question of National Identity in the Early Modern Low Countries on the Eve of the Revolt', *The Low Countries Historical Review* (BMGN), 119 (2004), pp. 10–38, p. 37. Philip Gorski also argues at length that the Netherlands of the Revolt and later periods did indeed have a national consciousness consistent with what modern scholars call nationalism. See Gorski, 'The Mosaic Moment'.



If one wishes to speak of political reality in any century, even our own, 'self-government' is, admittedly, a problematic term. In a representative form of government, the people, by definition, do not rule. Thus, some democratic theorists have said that it is more accurate to call the states of Western Europe and North America 'polyarchies' since political power is in fact shared by a small portion of the population controlling different parts of government, and the degree of accountability of government to each citizen is never truly equal.<sup>27</sup> Polyarchy is in fact an apt term for the system of government of the United Provinces (as the Dutch Republic was often called), in which the sovereignty of the people was exercised in each province by representatives of the nobility and the regents of the towns, and at the federal level by delegates from the seven provinces who met at the States General. This is not to say that the Netherlands' seventeenth-century polyarchy and modern polyarchies are the same. As Kossmann explains, according to the sixteenth- and seventeenth-century conception of popular sovereignty 'sovereignty belongs not to the individuals who together make up society but to society as a whole, to a structured set of interrelationships with a historical identity'.<sup>28</sup> Popular sovereignty is understood not as the will of an aggregate of individuals discovered by means of voting, but rather a will mediated through a complex set of inherited customs, privileges, liberties, relationships and procedures. In practice this meant that the representatives in the governments of the provinces and in the national government of the Dutch Republic were not chosen by popular elections. Except in the province of West Friesland where a portion of the population elected deputies, the direct constituents of the deputies to the States General were the landed nobility and the urban patriciate of all the towns and cities of the United Provinces.<sup>29</sup> Though this is certainly different from modern polyarchies, one might well say that in practical terms it is a difference in degree, not in kind.<sup>30</sup> In any event, the real choice in this period was between polyarchy and monarchy, and this choice had significant consequences. The inequality of power notwithstanding, the freedom of speech and of the press, together with the religious and economic liberties afforded by the polyarchical and decentralized Dutch regime, made the United Provinces the

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<sup>27</sup> See, for instance, Robert Dahl, *A Preface to Democratic Theory: Expanded Edition* (Chicago, 2006).

<sup>28</sup> Kossmann, *Political Thought in the Dutch Republic*, p. 137.

<sup>29</sup> *Ibid.*, p. 17.

<sup>30</sup> As a variety of social scientists have argued, the advent of universal suffrage and the decline of old aristocracies notwithstanding, wealthy and powerful classes continue to have a vastly disproportionate influence on politics in modern polyarchies. For instance, see C.W. Mills, *The Power Elite* (New York, 2000); J. McCormick, *Machiavelian Democracy* (Cambridge, 2011); J. Green, *Liberalism and the Problem of Plutocracy* (February 2013), unpublished paper presented at the UW-Madison Political Theory Workshop.

envy of Europe.<sup>31</sup> What is more, as I shall demonstrate below, the national myth popularized by Grotius of the Dutch as descendants of the freedom-loving Batavians was amenable to eighteenth-century demands for a more democratic form of representation.

## II

### The Batavian Myth and the Dutch Revolt

Before turning to Grotius' invocation of stories of Dutch nationhood, a few words on the historical context and the genesis of those stories are necessary. Throughout the Dutch Revolt, defenders of Dutch liberty and independence cited the chronicles of the various provinces to bolster their case. Each province had its own distinctive stories which, as councillor of state Elbertus Leoninus said in a speech to a meeting of the States General at Antwerp in 1579, 'are so well-known and still so fresh in our memory that there is no need to relate them at length'.<sup>32</sup>

But amid appeals to provincial memories there were also evocations of national sentiment, a national identity encompassing all the provinces of the Low Countries. In pamphlets and letters there were references to *het gemeenschappelijke vaderland*, the common fatherland, or *de Nederlantsche natie*, the Netherlandish nation. William of Orange, in his *Apology* (1581) described the inhabitants of the Low Countries as a people with a common racial and customary heritage distinct from that of the inhabitants of Spain and other subject provinces of the Spanish Empire. The Dutch were the descendants of freedom-loving Germans, whose ancient customs of self-government did not recognize the authority of an absolute monarch, but only a Duke or Count 'whose power is limited according to our privileges, which he swears to observe, at his gladsome entrance'.<sup>33</sup> His son and eventual heir as Stadholder, Maurice of Nassau, spoke in a similar vein in a speech in 1595. The Dutch provinces belonged together, he said, for 'Between the United Provinces, and the other parts of the Netherlands, there are many things common, as ancient Alliances, right of consanguinity, and the Customs of the places',

<sup>31</sup> For instance, see Jonathan Israel, *The Dutch Republic: Its Rise, Greatness and Fall 1477–1806* (Oxford, 1998), pp. 1–5; and Geoffrey Parker, *The Dutch Revolt* (Ithaca, 1977), pp. 267–70.

<sup>32</sup> E.H. Kossman and A.F. Mellink, *Discourse of Elbertus Leoninus, councilor of State, to the States General at Antwerp: 11 April 1579*, in *Texts Concerning The Revolt of the Netherlands*, ed. E.H. Kossman and A.F. Mellink (Cambridge, 1975), p. 179.

<sup>33</sup> *The Apologie of Prince William of Orange Against the Proclamation of the King of Spaine*, ed. H. Wansink (Leiden, 1969), pp. 48, 55. 'Gladsome entrance' is the Elizabethan translator's rendering of *Joyeuse Entrée*, which is an allusion to the confirmation of Joanna as Duchess of Brabant in 1356, and to the charter of liberties she granted to the province on that occasion.

but with the Spaniards, that ‘tyrannizing people’, no union, no alliance, not even a treaty, was possible.<sup>34</sup>

The Batavian myth has its origins in the early sixteenth century. The Batavians, an ancient Germanic tribe whose habitations, customs and exploits are described in the works of Tacitus, piqued the interest of humanist scholars in the northern Netherlands. In the first several decades of the sixteenth century there were earnest disputes about the location of ancient Batavia, of interest because this would determine which of the present inhabitants of the northern provinces could rightfully claim descent from that illustrious tribe. Hollanders such as Erasmus and Cornelius Aurelius insisted that only Hollanders were descended from the Batavians.<sup>35</sup> Other northern Netherlanders disagreed. For instance, Gerardus Geldenhouwer, a native of Gelderland, argued variously, that ancient Batavia included all of Germany, that the Batavians had retained their culture and liberty only in the environs of Nijmegen, the most important city in his native province, that several cities in Holland and Utrecht were ‘all probably Batavian’ as well.<sup>36</sup>

The desire of many scholars in the northern Netherlands to trace the ancestry of their countrymen to the Batavians is easy to understand. In the ancient sources, especially the works of Tacitus, the Batavians were praised for their virtuous way of life, their love of liberty and their ferocity and courage in battle. All of these qualities are described in one of the most accessible accounts of the Batavians of the early sixteenth century, the *Divisiekroniek* of Cornelius Aurelius, first published in the vernacular in 1517 and reprinted multiple times throughout the century. Two aspects of Batavian history were especially pertinent to the Dutch struggle for independence later in the century. The Batavians, it was claimed, had never been tribute-paying subjects of the Roman Empire. Their love of liberty, and their valour, had ensured their independence from their Roman allies. What is more, as various accounts had it, when, in the year AD 69, the Romans attempted to subjugate them, the Batavians, under the leadership of the great Caecilius Bato, also known as Claudius Civilis, had revolted against the Romans, and thereby restored their independence.

In the North, and especially in Holland, the Batavians became a very potent symbol of Dutch liberty in the struggle against Spain. In 1565, a year before the first uprising against the Spaniards, the States of Holland appointed a historian to record the province’s ancient rights and privileges, especially the right of summoning the provincial States on their own initiative. Hadrianus Junius found support for these rights in his research into the history of the

<sup>34</sup> As reported by Grotius, *De rebus Belgicis, or, The Annals and History of the Low-Country-warrs* (London, 1665), p. 370.

<sup>35</sup> See Karin Tilmans, *Historiography and Humanism in Holland in the Age of Erasmus: Aurelius and the Divisiekroniek of 1517* (Nieuwkoop, 1992), pp. 211–35.

<sup>36</sup> *Ibid.*, pp. 259–62.

Batavians. In 1575, Janus Dousa first drew the connection between the Batavian revolt against Rome and the Dutch revolt against Spain.<sup>37</sup> The city of Leiden, which had been besieged by the Spaniards in the previous year, but successfully defended, was rechristened *Lugdunum Batavorum* to establish the connection between the heroic defence of the city in modern times and the struggle for liberty of the ancient Batavians. That the Batavians had become a broadly popular symbol of Dutch courage and liberty, at least in the North, is evidenced by the appearance in the 1580s of illustrations depicting father-liberators of the fatherland, William of Orange and later his heir Count Maurice of Nassau, side-by-side with the ancient military captain of the Batavians, Claudius Civilis, who had led the revolt against the Roman legate to restore Batavian liberty.<sup>38</sup> Just as Civilis had liberated the ancient ancestors of the Dutch, the Batavians, from Roman oppression in the first century AD and restored their right to self-rule, so would William of Orange (and Count Maurice) restore the ancient rights and privileges of the Dutch and their freedom from domination by the Spaniards.

### III

#### Batavians and Belgians:

#### Grotius and the Dutch Community of Communities

Dutch national identity in the early modern period is a notoriously complicated subject. Grotius' own understanding of the political entity that had arisen from the Revolt against Spanish rule is by no means exceptional in this regard, which has sometimes led to misunderstanding. It has been claimed, for instance, that the nationalism or patriotism of Grotius did not exceed the boundaries of his native Holland, in part on the grounds that he reserved for Hollanders alone the honour of Batavian ancestry.<sup>39</sup> The title of the Dutch translation of his work, *Tractaet Vande Oudtheyt vande Batavische, nu Hollantsche Republieque* (*Treatise of the Antiquity of the Batavian, now Hollandish Republic*), seems to support this view. However, such claims are very misleading. In fact, in *The Antiquity of the Batavian Republic*, and in other works on politics written in the same period, Grotius identifies with two communities, the Batavians and the Belgians (*Batavi* and *Belgi*), the latter name encompassing all the people of the Netherlands. One would of course expect Grotius, himself a native of the most powerful of the United Provinces, who had, moreover, been appointed the official historiographer of Holland by

<sup>37</sup> Waszink, 'Introduction', in Grotius, *Batavian Republic*, p. 9.

<sup>38</sup> I. Schöffer, 'The Batavian Myth during the Sixteenth and Seventeenth Centuries', in *Britain and the Netherlands Volume 5: Some Political Mythologies*, ed. J.S. Bromley and E.H. Kossmann (The Hague, 1975), p. 89.

<sup>39</sup> Gorski, 'The Mosaic Moment', p. 1444; I.L. Leeb, *The Ideological Origins of the Batavian Revolution: History and Politics in the Dutch Republic 1747–1800* (The Hague, 1973), p. 26.

the States of Holland and West Friesland, to devote far more attention to the glories of Holland than to those of the rest of the union. David Miller makes the obvious point that a strong attachment to a region need not negate a regard for the larger polity.<sup>40</sup> But in this case one can say more than that. Even when Grotius speaks only of Holland and the Batavians, he is not addressing Hollanders alone. Holland for him is, as it were, the most Dutch of the Dutch provinces; the other members of the union would do well to follow its example, which, if they examine themselves, they will find to be consistent with their own history and customs. In his various political writings from the early period, although he focuses on Holland, he never fails to point out the shared Germanic ancestry, the common customs and national characteristics of all Netherlanders.

In the *Commentary on the Law of Prize and Booty*, thought to have been composed before the *Antiquity* though never published in Grotius' lifetime, the word Batavian is essentially a synonym for Hollander. There are countless references to Batavian honour, Batavian glory, the Batavian inclination and talent for commerce, Batavian frugality, the understanding, inherited from the Batavian ancestors, that the purpose of wealth is the enrichment of the community, Batavian fortitude and Batavian liberty. But, as Grotius is pleased to point out, all 'Belgians', all the people of the Low Countries, possess these and other admirable characteristics. Even foreign scholarship pertaining to the Low Countries attests 'that the people of these countries are extremely zealous in the cultivation not of piracy, but of commerce, being moreover free from every rapacious inclination, superior to all others in sexual temperance and in their whole way of life, and characterised by the most profound reverence for the laws, for the magistrates, and above all for religion'.<sup>41</sup>

In the struggle with Spain, he asserts, the Batavians/Hollanders displayed the most zeal in defence of their ancestral liberties, especially their right to self-rule through their provincial representative organ, the States of Holland, which can be traced back 'to the earliest days of the political entity of Holland'. But, he continues, the authority of the provincial States is also confirmed by 'our hereditary laws established originally at Brabant and subsequently introduced to the rest of the Low Countries. For these hereditary precepts expressly provide that the Assembly shall have full power to refuse all fealty and respect to a prince who violates the law of the land'.<sup>42</sup> What is true of the ancient constitution of Holland is thus true of all the other Dutch provinces; there is a common law of the land in which Holland participates, attested sometimes by charters or statutes first adopted in other provinces, and then in Holland. Such laws are 'ours' as much as those unique to Holland. These laws, moreover,

<sup>40</sup> David Miller, *On Nationality* (Oxford, 1995), p. 25.

<sup>41</sup> Grotius, *Commentary on the Law of Prize and Booty*, ed. M.J. van Ittersum (Indianapolis, 2006), p. 369.

<sup>42</sup> *Ibid.*, p. 395.

express a love of liberty, and a capacity to defend the same against tyrants, common to all the Dutch.

Grotius defines Belgium, or the Low Countries, as a federation of peoples, which he sometimes, interestingly, compares to Spain. Just as Spain is composed of different peoples, Castilians, Leonese, Aragonese and others, so is the community of the Low Countries composed of Hollanders, Zeelanders, Frisians and others. 'Thus,' he says, 'the Kingdom of Aragon forms a state that is distinct from the Kingdom of Castile, notwithstanding the fact that both kingdoms are subject to one prince. So too, the domain of Holland in itself constitutes a whole state', which is to say that Holland, like the other provinces of the union, is sovereign. The provincial estates of each province exercise the sovereign power of the people whom they represent.<sup>43</sup> But all also owe allegiance to the States General, the national or federal representative body of the union. This second allegiance, Grotius emphasizes, is based not only on covenant, or tacit consent, but also on custom. The sovereignty of the States General in the exercise of its delegated powers is 'supported by common law'.<sup>44</sup> The allegiance of the provinces to one another is not based merely on a treaty, but on long-standing relationships and a shared Belgian or 'Lowlander' constitutional heritage.

In his other writings, Grotius also underlines the common heritage of all Netherlanders. In the *Antiquity*, as I will show in more detail below, Grotius emphasizes the similarity of the ancient tribes whose descendants now form the Dutch Republic. Here again, the Batavians are the main heroes of the story. But there are repeated references to neighbouring tribes, especially the Frisians and the Mattiaci (thought to be the ancestors of the Zeelanders), whose constitutional forms, and whose status as sovereign, independent states, mirror the condition of the ancient Batavians. Interestingly, in the *Antiquity* and then in *The Annals*, Grotius becomes progressively more generous to the other provinces, at least on the Batavian question: 'Batavian' is no longer a synonym for 'Hollander'. Breaking with earlier patriots of Holland such as Cornelius Aurelius, Grotius now extends to other provinces the honour of Batavian ancestry. In the *Antiquity*, Grotius is somewhat vague: the Batavians, he says, first established their state on an island 'which is formed by the sea and the Rhine', that is, a territory between the ocean, on one side, and the two branches of the Rhine, the Nether Rhine and the IJssel River, on the other, which would include at least Utrecht and part of Guelders as well as

<sup>43</sup> Grotius emphasizes this again in the *Antiquity*, and in his later tract *Verantwoording van de Wettelijke Regiering van Hollandt ende West-Vrieslant, 1618* (*Justification of the Lawful Government of Holland and West-Friesland*) in defence of the ancient (i.e. decentralized) political order of the Dutch against the centralizing aspirations of the Stadholder and the National Synod. The first chapter of the latter work asserts the 'Souverainiteyt der respectieve Nederlandsche Provincien' (the sovereignty of the respective Dutch provinces).

<sup>44</sup> Grotius, *On the Law of Prize and Booty*, pp. 392, 410.

Holland.<sup>45</sup> He also notes that after the fall of the Roman empire, and before the name Hollanders was generally known, the Batavians of the lower part of the island called themselves Frisians, a name which pleased them ‘either because in our language it alludes to freedom [Dutch: *vrijhied*], or because the land of the Frisians . . . provided a refuge for other Batavians as well’.<sup>46</sup> In *The Annals*, he declares that Zeeland, together with Holland, is within the territory that was, ‘in elder times, the most famous Isle of the *Batavi*, in the middle between *Germany* and the *Gaules*’, and then adds that the ‘beginning . . . of this Country of old, called *Batavia*, retains in part its old Name, and is called *Geldres*, whose Lordship growing into wideness, is bounded by the River *Maze* and *Issel*’.<sup>47</sup> In this description, then, the territory of the ancient Batavians has expanded somewhat southward so that the ancient nation distinguished by its valour, fidelity and zeal for liberty, includes at least the present provinces of Holland, Zeeland, Utrecht and Guelders.

This shift on the part of Grotius to a willingness to share Batavian glory with the other provinces is consistent with a larger trend in the Netherlands in which the Batavian legacy was first a bone of contention among various provinces, then identified with a few core provinces of the Republic, especially Holland, Zeeland and Utrecht, and, eventually, with all members of the union.<sup>48</sup> The appeal by Hollanders such as Grotius to the Batavian legacy was contested by some, but on the whole, in the midst of very serious economic, political and religious conflicts among the Dutch, Batavia, from a very early date, was a unifying symbol for the whole Republic.<sup>49</sup>

#### IV

#### Batavian Independence and the Batavian Constitution

In this account of Grotius’ contribution to early modern Dutch nationalism and constitutionalism it is fitting to focus on the *Antiquity of the Batavian Republic*. Of his various works from the period cited here, the *Antiquity* is the only one that was published in Dutch — indeed *De Jure Praedae* and the

<sup>45</sup> Grotius, *Batavian Republic*, p. 57.

<sup>46</sup> *Ibid.*, p. 79.

<sup>47</sup> Grotius, *The Annals*, pp. 66–7.

<sup>48</sup> K. Tilmans, ‘The Batavians: Mythical Forefathers of Dutch Republicanism’, 2004, <http://karintilmans.nl/pdf/batavians.pdf>. Accessed 10 July 2014.

<sup>49</sup> The Utrecht scholar Arnoldus Buchelius (1565–1641), for example, objected to a new edition of *De Antiquitate* undertaken in 1630 by Petrus Scriverius because in his view the intention of the work was to bolster the reputation and power of Holland at the expense of his own province. See Sandra Langereis, *Geschiedenis als ambacht: oudheidkunde in de Gouden Eeuw: Arnoldus Buchelius en Petrus Scriverius* (Hilversum, 2001). If, however, one accepts the judgment of Jonathan Israel, such contestation would be the exception rather than the rule. The capital of the Dutch dominions in the East Indies was christened Batavia in 1619, he says, because of the ‘unifying connotations’ this name had ‘for the entire Republic’. See Israel, *The Dutch Republic*, p. 323.

*Theses XI* were not published at all until centuries later. What is more, by the standards of its time, this work, as Philip Gorski puts it, was a bestseller. It also, evidently, fulfilled a pressing need. The treatise was written to justify a revolt that had already taken place, and a constitutional order that had already, more or less, taken shape. However, even after the signing of the truce with Spain in 1609, the position of the Dutch Republic as an independent polity was by no means secure, and the constitutional order that had arisen was by no means without powerful critics at home.<sup>50</sup> The Dutch Republic did not receive official recognition as an independent state by the European Great Powers until the signing of the Treaty of Westphalia of 1648.

As Kossmann's survey of Dutch political thought demonstrates, absolute monarchy was favoured by many political theorists at Dutch universities in the early seventeenth century.<sup>51</sup> The most magisterial work of political theory in Dutch in the late sixteenth and early seventeenth century, the *Politica* of Justus Lipsius, made powerful arguments for absolute monarchy while Dutch statesmen continued to struggle with their confederated republican form of government. Published in 1589, the *Politica* was, in the judgment of Martin van Gelderen, 'above all the most distinguished plea for princely rule and a powerful repudiation of some of the main arguments employed by Dutch authors to support the Revolt'. In the first place, whereas other Dutch political writers of the era had held the honour of ancestors and the liberty of the fatherland to be values upon which no compromise was to be contemplated, Lipsius emphasized that heaven was the only true fatherland of man, that earthly fatherlands were subject to natural laws of growth and decline, the fortunes and misfortunes of Providence, which no man may resist. Dutch constitutional thought gave clear justifications for resistance to tyranny. Lipsius declaimed against all supposed rights of resistance and counselled citizens to 'endure the things present, in hope of amendment'. Finally, Lipsius made no mention at all of provincial or national assemblies in the governance of kingdoms. His vision of the government was rule by a prince and his advisers, without any role for an assembly of the estates.<sup>52</sup> The new status of the Dutch provinces as an independent state, and the peculiarity of their constitutional order, were evidently in need of defenders.

It is significant, then, what sorts of argumentation Grotius employs in this tract. In *De Jure Praedae* and the *Theses XI*, it is true, there are what we could now call Lockean arguments. In both texts some references are made to 'sovereign' ('αυτεξουσιαν, free and *sui iuris*') individuals in a state nature, who have a natural right to defend themselves and their property, and who form

<sup>50</sup> As Tuck shows (Tuck, *Philosophy and Government*, pp. 162–4), Grotius himself was at times critical of the decentralized constitutional order of the Netherlands.

<sup>51</sup> Kossmann, *Political Thought in the Dutch Republic*, pp. 37 ff.

<sup>52</sup> van Gelderen, *The Political Thought of the Dutch Revolt*, p. 187.



states that said natural liberties may be rendered more secure.<sup>53</sup> The constitutions of Holland and the Netherlands as a whole are sometimes justified by appeals to ‘natural reason’, an agreement of contracting parties based on an express pledge of allegiance, or tacit consent.<sup>54</sup> The general duty of the citizen to his community is, at times, justified purely on the grounds of the natural rights and self-interest of individuals. Duty to one’s country, Grotius says at one point, ‘should take precedence on the ground that it includes the good of individuals as well. In other words, the cargo cannot be saved, unless the ship is preserved’.<sup>55</sup> One notes that even here Grotius’ analogy is a distinctly Dutch one: the Hollanders and other Lowlanders, he keeps telling us, are seafaring peoples, adept at commerce. In any event, it is clear from the composition of *De Jure Praedae* and *Theses XI* that he did not regard argumentation based on the natural rights and interests of individuals and abstract social contract theory to be sufficient to inspire zeal for Dutch liberty, or allegiance to the Dutch constitutional order. As I noted above, there are endless appeals in the former work to Dutch virtue, and ‘the authority of the laws handed down by our forefathers’.<sup>56</sup> Likewise, in the historical chapters of the latter, the sovereignty of the States of Holland, at least in regard to taxation, is claimed to be from time immemorial.<sup>57</sup> It bears emphasis that in the *Antiquity* sovereign individuals in a state of nature are nowhere to be found. The only law of nature mentioned is that whereby ‘a people of free origins’ is entitled to take possession of unoccupied land.<sup>58</sup> Freedom is a thing that belongs to tribes and nations, and to citizens as members of those communities. Citizens are encouraged to defend the independence and the constitution of their country not because their individual lives depend on it, but because the memory of ancestors and national honour demand it.

Grotius uses the narrative about the ancient Batavians, and other kindred Germanic tribes, to convince his countrymen that their seemingly novel status and constitution are in fact the same status and the same constitution that their nation has always possessed — that is the essence of his rhetorical strategy. But within that general approach there are several other important moves which are typical of nationalist narratives. First, a claim is made about the common ethnic origin of the people. Stories on the origin of a people invite conclusions about their fundamental nature, the characteristics of the nation that do not fluctuate with circumstances because they are, as it were, ‘in their blood’. Second, there are appeals to the authority of heroes, the best men of

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<sup>53</sup> See Grotius, *On the Law of Prize and Booty*, pp. 33–5, 49–50; Grotius, *Commentarius in Theses XI*, ed. Peter Borschberg (Berne, 1994), pp. 237, 245.

<sup>54</sup> Grotius, *Theses XI*, p. 223; Grotius, *On the Law of Prize and Booty*, p. 409.

<sup>55</sup> Grotius, *On the Law of Prize and Booty*, p. 38.

<sup>56</sup> *Ibid.*, p. 409.

<sup>57</sup> Grotius, *Theses XI*, p. 275.

<sup>58</sup> Grotius, *Batavian Republic*, p. 57.

the nation who personify the authentic national character. Third, the struggles of previous generations are used to appeal to feelings of honour and shame in the present generation. If the ancestors were willing to sacrifice their private interests to protect their national way of life, then any less zeal in the present generation would be treason. Fourth, the values that are denigrated, in this case, absolute monarchy, are associated with foreigners, those who are alien to the national family.

Throughout his treatise he emphasizes two things, first, the Batavians' free, independent and courageous spirit and, second, the constitution that was an expression of that national spirit and best suited to the preservation of Batavian liberty, a government by the most eminent members of the two estates, nobility and people, 'combined with a principate subjected to laws'.<sup>59</sup> Grotius argues that such a constitution is ideal, for it occupies an intermediate position between a principality and government by the people so as to 'avert the negative aspects of both, and combine their good qualities'. Ruling the nation in concert, the prince and the estates are able to avoid the sorts of mistakes that an absolute prince, or an unchecked popular assembly, would be bound to make. Moreover, such a constitution 'provides a sufficient degree of equality when it creates the possibility for anyone from each estate to reach, on the basis of his abilities, the highest positions and share in power'.<sup>60</sup> The Batavian constitution thus embodies two principles essential to the preservation of liberty, the principle of checks and balances, and the principle of equality, which for Grotius means that any member of the nation who distinguishes himself and gains the confidence of his fellow citizens may rise to the highest positions and share in power. The latter principle, as I have noted above, was not generally realized in the government of the United Provinces. But by ascribing this principle to the ancient Batavian constitution, Grotius establishes it as the immemorial tradition of the nation, which later generations could and indeed would appeal to, against the domination of the second estate of each of the Dutch provinces by closed oligarchies.<sup>61</sup>

The question of continuity, of immemoriality, is central to Grotius' argument. Friedrich Hayek once wrote — in an entirely different context — that 'the most effective way of making a people accept the validity of the values they are to serve is to persuade them that they are really the same as those which they, or at least the best among them, have always held, but which were not properly understood or recognised before'.<sup>62</sup> This is the essence of Grotius' approach to persuading his countrymen to support the newly independent Dutch Republic and its constitution. In doing so, they are not embarking on

<sup>59</sup> *Ibid.*, p. 55.

<sup>60</sup> *Ibid.*

<sup>61</sup> Kossman is thus not entirely justified in asserting that Grotius' tract served merely to preserve the existing order. Kossman, *Political Thought in the Dutch Republic*, p. 32.

<sup>62</sup> F. Hayek, *Road to Serfdom* (Chicago, 2007), p. 171.

something new, not applying a general law or exercising a general right of humanity, not attempting to put into practice a doctrine arrived at through sound reasoning from certain infallible first principles. They are merely following what all of their ancestors, or at least the best of them, always knew to be the right course. Grotius makes this assertion in the form of an extended metaphor:

If someone contemplates this matter carefully, he will easily find that the form of government which we now have, has not recently begun with us, but that the one which previously existed has become more visible. In the same way in which a house can continue to exist, even if you change one or more parts, but ceases to exist if you break up the foundations, a constitution does not immediately become a different one if the names and functions of its magistrates change, as long as the main force of the government and the supreme power, and the mind, so to speak, that moves and binds the whole, remain one and the same.<sup>63</sup>

The metaphor is apt, though certainly not original. As Steven Grosby has shown, the household or the family is, for obvious reasons, the most common metaphor for the nation.<sup>64</sup> In Grotius' account, the constitution is the ancestral house, the structure that protects the national family. Like the family, the nation has physical and mental essences, blood and memory, which are transmitted from generation to generation. The constitution, like a house, has a foundation, a structure, which remains essentially the same, although, in the course of time, certain parts must be repaired, replaced or altered. But outward changes notwithstanding, it is possible for the essence to remain the same. Grotius portrays the constitution as an indissoluble part of the national family, which it has transmitted from one generation to the next together with its blood and its other memories.

By Grotius' account, the foundations of the constitution are as old as the foundation of the nation itself. The Batavians, a tribe that broke off from the Chatti, he says, established their first settled community on an island devoid of other inhabitants, and made it their own: 'Now this is the most lawful beginning of a free state: that the people of free origins founded on free soil.' At their first settlement, then, the Batavians were a free people, independent of all others. At this time and after, according to ancient sources, the Batavians had the same sort of government as the ancient Gauls before the Roman period: 'the power of their princes was such that the multitude had no less power over them, than they over the multitude'. This was the essence of 'liberty' as they understood it: the people were not ruled by an absolute monarch, but by representative assemblies containing their best citizens. This is confirmed by a speech of Claudius Civilis who said that whereas 'Oriental peoples'

<sup>63</sup> Grotius, *Batavian Republic*, p. 51.

<sup>64</sup> Steven Grosby, *Nationalism, A Very Short Introduction* (New York, 2005), pp. 43–56.

(Syria, Asia and the East) 'belong under a monarchy, the Batavians were naturally unsuited to this form of government'.<sup>65</sup> From the earliest origins, then, the Dutch were a free people. The words of their great ancient hero of national liberation confirm it. Unlike slavish Oriental peoples who submit to absolute monarchs, the Batavian ancestors of the Dutch were disposed to freedom by their nature.

Grotius cites several passages from Tacitus' work on the ancient Germans to fill out the picture of the ancient Batavian government as a mixed constitution in which kings or commanders ruled together with assemblies of the people. The Batavians were a Germanic tribe, and therefore one could say of them what Tacitus had said of the Germans on the whole, 'that the Kings of the Germans "had no unlimited or arbitrary power"; and [Tacitus] even adds that in an assembly, they were listened to "for their convincing power, rather than for their competence to give orders"'.<sup>66</sup> Kings, in fact, were rare. More often, there were only commanders appointed by the assembly to prosecute specific wars, an election that was marked by a specific ritual, the raising up of the commander on a shield on the shoulders of the electors. Claudius Civilis himself was one such commander. At this point, Grotius also emphasizes that the elective nature of kingship was not only a Batavian custom, but also one upheld and preserved through the ages by those neighbouring peoples who now, together, form the Dutch Republic, for instance the Frisians: 'when [circa 1345] negotiations were attempted just before the start of the battle between the Frisians and the last William of the house of Hainault, the Frisians offered this condition among others to the Count, that four of the most noble Frisians would balance him on a shield on their shoulders, exclaiming: This is the power of Friesland'.<sup>67</sup>

The essential point, from Grotius' point of view, was that among the Batavians and their neighbours, the commander-in-chief, whether a king or a temporary commander, had limited authority:

Since both were limited, they were necessarily defined within limits. These limits were imposed by law and the power of others. The law imposes restrictions, as Tacitus calls it, and when the power of others is added, the situation is created in which one rules at the request of others, not in his own right. The laws were not written down, but, like the Spartan laws, were effective through their position in memory and long-standing use.<sup>68</sup>

The Batavians, Frisians and others, then, ruled themselves in accordance with the laws of a mixed constitution. They did not generally require kings, except in an emergency, and at assemblies, kings did not give orders. They must attempt to persuade the people that their proposed course of action was best,

<sup>65</sup> Grotius, *Batavian Republic*, pp. 57, 59.

<sup>66</sup> *Ibid.*, p. 59.

<sup>67</sup> *Ibid.*, pp. 59, 63.

<sup>68</sup> *Ibid.*, p. 59.

and leave the decision to the people. The kings were also limited by the established laws of the community, maintained through the generations in memory and custom. In Grotius' account, then, the ancestors are shown to have taken an active role in the government: kings ruled at their request, and in accordance with their laws.

In its form, the present government of Holland, as well as those of many of the other provinces, resembled the ancient government of the Batavians, with the provincial States, the sovereign assembly composed of the most eminent members of the nobility and deputies from the towns, the smaller standing committee appointed by the States to carry out their decisions, and the Stadholder, who commanded the army and navy and exercised other executive powers in the state. According to Tacitus, the Germanic peoples 'had a system of two councils: a small council, in which everyday matters and the more frequently occurring ones were dealt with, and which consisted of the princes only; and a large council, which held the supreme power, and consisted of both estates'. It is clear, continues Grotius, that 'with this council . . . which consisted of both estates, the highest power resided'. The Batavians also had precisely this form of government:

The history of Civilis shows that the Batavians did indeed have the very form of government we are now discussing: in order to have the war against the wrongdoings of the Romans declared in proper form, Civilis 'convoked the nobility of the tribe and the most prominent from the people', which words provide us with clear evidence of the existence of both estates.

Thus, the government of the Batavians was composed of a prince, who was either a permanent king or a commander in wartime, and two estates, 'the nobles, who were also called peers or princes, and those chosen from the common people'.<sup>69</sup> An objective modern historian might well say that in the course of the Revolt, the governments of Holland and the other Dutch provinces were 'fundamentally altered'.<sup>70</sup> But on Grotius' account, the constitutional changes that occurred, with Holland serving in many cases as a model for the other provinces, were not innovations, but a restoration of the ancient governments of the Dutch, whose most shining example was that of the Batavians.

The relations of the Batavians to the Romans provide more evidence of the ancient constitutional order of the Batavians. In the telling of Grotius, and of other writers whose works were published before and during the Dutch Revolt, the revolt of the Batavians against Roman tyranny supplies a signal example of Dutch courage, love of freedom, and status of the Dutch people as an independent sovereign nation. The Batavians, Grotius insists, never were conquered by the Roman Empire, and therefore never had been its subjects:

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<sup>69</sup> *Ibid.*, pp. 59, 109–11, 65.

<sup>70</sup> Israel, *Dutch Republic*, p. 280.

'It is reasonable . . . to believe that the Batavians respected Roman power, but did not submit to them. This is indicated by the word *association*, which Tacitus uses in the passage just mentioned, and more precisely an honourable association, since he says: "they retain the honourable badge of an ancient alliance".'

Tacitus, he says, had remarked that although such associations between unequal parties usually degenerated into a predatory relationship in which the superior power enjoyed all the benefits, this had not been the case with the Batavians, who had achieved, 'through their inborn virtue and loyalty, the retention of their associated position — that is, their equality and rights — not only in theory, but also in fact'. In further confirmation of the independence of the Batavian nation, he writes:

Civilis, in his oration to the people, says that no Roman governor has ever come to the Batavians. Instead, they govern their own state with their own laws in their own magistrates; so they were never counted among the provinces. On the contrary, Tacitus often mentions 'the Batavian nation', 'the congregation of the Batavians', 'the community of the Batavians', with which words he refers to nothing else than what we today call an independent state.

The Batavians were a cohesive, independent nation, not only conscious of their rights and freedoms, but able, through their inborn virtue, to retain them in spite of the pressure from their large ally to the South. Such also, he notes, according to the ancient sources, was the condition of the Mattiaci, 'neighbours of the Batavians' whose ancestors were also the Chatti.<sup>71</sup> The Mattiaci also, then, ancestors of many of the other inhabitants of the Low Countries, were of such fortitude that they maintained their independence in spite of the Roman Empire.

When the Romans attempted to treat the Batavians as a subject people, rather than as an ally, this was occasion for revolt:

At that moment, however, when the Romans changed from using auxiliary troops to raising troops by recruitment, and not only greedily carried out this recruitment, but also added to it the disgrace of atrocities, which it was impossible for free-born men to bear, the Batavians did what brave men must do, that is, they took up arms, in order to defend their freedom and their purity.

Grotius emphasizes the tenacity with which the Batavians resisted Roman aggression in defence of their native freedom:

From the history of these wars, it appears how eager the Batavians were to defend their freedom, in defence of which they have not shrunk from challenging the Roman power and the fifteen legions surrounding them. Thus, 'the name of Rome was driven from the island of the Batavians': and the

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<sup>71</sup> Grotius, *Batavian Republic*, pp. 69, 71.

Batavians themselves 'enjoyed great fame all from Germany and Gaul as the founders of freedom'.

Not only did the Batavians regain their independence in the event, and establish a reputation for themselves as courageous lovers of freedom, which remained unbroken through the ages in spite of the attempts of other nations to conquer them. They in fact absorbed some other kindred Germanic tribes into their community, and formed close associations with others, including the Mattiaci and the Frisians. Though records for some five hundred years of history were absent, one could assume that the Batavians and other kindred tribes who, together, eventually came to call themselves Hollanders, preserved their independence. In any event, the first Counts of Holland were free from any foreign obligation. Some Counts of Holland may have invoked the protection of the 'German Emperors', but this could never affect 'the independent position of the state or its later princes'. 'Holland,' he declares, 'has never been subject to the laws and decisions of the Emperors and the Empire'.<sup>72</sup>

The Batavians/Hollanders did more than preserve their national sovereignty. According to Grotius, they, as well as their neighbours, the Frisians, Mattiaci and others, also maintained their old laws and freedoms in succeeding generations. They kept more or less the same political traditions, just as they had preserved other old customs. This is evident from a review of medieval treaties and statutes which, he says, are to be accounted as a written expression of the immemorial customs of their ancient progenitors. Grotius lists the essential features of the constitution of Holland:

The most important laws regarding the government were the following: a female prince shall not marry without the consent of the States of Holland; the offices of counselor, steward and sheriff shall not be given to foreigners; the States shall have the right to congregate as often as they want and wherever they want, and shall not need the permission of the prince to do this; only the States shall decide whether new taxes will be levied, whether someone will be exempted from paying them; the prince shall not be permitted to start a war to defend the interests of the country or to prosecute wrongdoings without the permission of the States; the princes shall use the Dutch language in their official papers; the prince shall coin money, and change the coinage according to what the States decide circumstances require; it shall not be possible for the prince to renounce any part of his principedom; it shall not be permitted to convoke a congregation of the States outside the country; if the prince needs a grant or contribution, he shall ask these from the States in person, and not by means of an agent. He shall not demand taxes if these are not voluntarily given; justice shall only be administered by ordinary judges; the ancient laws and customs shall not be vio-

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<sup>72</sup> *Ibid.*, pp. 73–5, 75, 87.

lated; if the prince decrees anything that is in contradiction with those, no one shall be held to obey the decree.<sup>73</sup>

According to immemorial tradition, then, the sovereignty of the nation lies with the States. The prince is not to declare war or raise taxes without the consent of the States. He cannot interfere with the ordinary administration of justice by the courts. He cannot violate the ancient laws and customs of the land, and if he should decree anything in contravention of those laws, the States and the people are at liberty to disregard it. All of these constitutional stipulations are drawn from the immemorial experience of the nation. What is more, the constitution demands certain privileges for its native sons. Counsellors, stewards and sheriffs cannot be foreigners. The official papers of the government must be written in the Dutch language. All of these constitutional stipulations, he argues, were in existence long before they were written down in the instrument signed by Maria of Burgundy in 1477, known as the Great Privilege, which was granted to Flanders, Brabant and Hainaut, as well as to Holland.

The original constitution of Holland, and of the other provinces, is thus a contract between prince and people, which remains valid in spite of the fact that Counts of Holland in later times usually ascended to the throne by hereditary right. The hereditary rights of royal princes did not undo the rights of the States and the people:

Although succession in Holland followed the lines of paternal dissent, no one was accepted as prince before he had taken an oath before the States to observe the laws and customs of the country, in order to indicate that the basis of governmental power was not paternal inheritance but the consent of the people, that is, of the States. When this was done, loyalty and obedience were promised in return to the prince who had promised to govern on the basis of the laws.

The contractual nature of this constitution is not a mere theory; it has been confirmed by many precedents, which Grotius proceeds to cite at length, filling several pages with descriptions of past instances in which the medieval Counts of Holland were confirmed, and sometimes deposed, by the authority of the States.<sup>74</sup> Throughout the ages then, the Dutch showed that they were both willing and able to assert their rights, and depose princes who violated them.

The union of Holland with the other provinces of the Northern Netherlands is a confederation wherein each province remains sovereign, but by Grotius' account it is based on ties much deeper than any treaty. As descendants of the Batavians and associated ancient German tribes such as the Mattiaci and the Frisians, the other member states of the Union of Utrecht — Gelderland, Zeeland, Utrecht, Friesland, Overijssel and Groningen — had, as he points

<sup>73</sup> *Ibid.*, p. 89.

<sup>74</sup> *Ibid.*, pp. 91, 91–5.



out repeatedly, similar traditions of self-government and essentially the same relations with the Stadholder, who was often the same man in several or all of the provinces. On Grotius' account then, the union of these provinces, all populated by kindred tribes, with similar national characters, goes back to ancient times. They all have long had the same 'custom of sending representatives in order to consult with each other about the common interest. The assembly consisting of these representatives is rarely dissolved, and is called the States General'.<sup>75</sup>

This whole constitutional order continued undisturbed for many centuries, as long as the people respected the prince and the prince 'continued to respect the laws and the meetings of the people'. Order was disturbed, however, when foreign princes with interests and bases of power outside the Netherlands, ascended to the office of lord of the Dutch provinces. Corruption of Dutch constitutionalism and Dutch virtue was introduced by contact with foreigners. As Grotius puts it 'the ancient princes, whose every prospect lay within their own country, and who had no foreign power to call in, showed themselves obedient to the laws, admirers of justice, and respectful of the States because they understood that their own position was founded on the States' financial assistance'. Here Grotius emphasizes the financial dependence of the prince on the States General as a check on executive tyranny. But, by his account, foreign manners also played a role in the corruption of the Dutch government. The Burgundians, being descendants of kings, and as such unaccustomed to the limits that Netherlanders place on their princes, 'made the first step towards absolute rule'. After them, Charles V committed serious abuses, 'but he restrained himself out of love for these regions, since he was born and brought up here . . . and knew . . . the character of the people', especially the jealousy with which they guarded their freedom. But his son Philip was raised as a Spaniard, and thus, in the service of that nation's interests and operating on the assumptions of a foreign culture, attempted to impose on the Netherlanders something that they could not brook, an absolutist form of government administered by foreigners. This constituted a violation of the sovereignty of the Netherlanders and all their ancient rights.<sup>76</sup>

It was, therefore, on account of his violation of his agreement to govern according to the traditions of the Netherlanders that King Philip II of Spain was justly deposed as Count of Holland in 1581, and the other provinces of the Netherlands. Grotius lists the well-known grievances against the King of Spain: first, he had changed the administration of the provinces and begun issuing decrees from Spain without consulting the States; then he had attempted to impose an Inquisition on the provinces, and when the nobles requested that the question of ecclesiastical administration be settled by the States General, he forbade the holding of such a meeting; finally, he had sent the Duke of Alva

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<sup>75</sup> *Ibid.*, p. 111.

<sup>76</sup> *Ibid.*, pp. 95–7, 99.

as governor of the Netherlands to establish 'absolute rule' and abrogate 'all rights and customs of the people'. In response to these violations and acts of aggression, the Dutch did what their ancestors had done: 'Following the example of their ancestors, who took up arms against the Romans who tried to secure domination, they declared war on Alva.' When it became manifest that none of their petitions and admonitions would move the King, the States General 'declared Philip deposed from the principate in accordance with the law itself, because of his violation of the laws regarding the extent of his power'.<sup>77</sup>

The essential point here is clear: Grotius' defence of liberty and constitutionalism is delivered by means of a typical nationalist narrative. He advocates the preservation of a particular constitutional form by telling a story about wise and courageous ancestors who fended off powerful foreign aggressors to protect their way of life and pass it on to the next generation. Just as their ancient ancestors, the Batavians, repelled the onslaught of the world's greatest empire, Rome, so did the Hollanders and other Netherlanders wrench their independence and freedom back from the grandest empire of their time, that of the Spaniards. In conclusion, then, Grotius declares the preservation of this independence and constitutional freedom the sacred duty of all Dutchmen:

Therefore, we owe much to our ancestors, who have accepted a form of government, which was excellent in itself, and ideal for our character and ambitions, from the original founders, preserved it in peace time, recovered it by war, and passed it on to us. It is now our duty, if we do not want to be ungrateful or imprudent, firmly to defend this form of government, which is urged by reason, approved by experience, and recommended by antiquity.<sup>78</sup>

With his Batavian narrative, Grotius defended Dutch liberty as no strictly Lockean philosopher could, appealing not only to 'reason', but also to concrete experience, and to the non-rational component of human consciousness, the tribal or national instinct, the desire for continuity and community, the memory of ancestors, the admiration of heroes.

### Conclusion

Apart from objections to nationalism itself, there is another objection to the form of political theory I have been describing here: that it is inherently conservative and undemocratic.<sup>79</sup> But, as I suggested at the outset, Grotius' Batavian narrative was entirely amenable to a more democratic interpretation.

<sup>77</sup> *Ibid.*, pp. 99–101, 103, 105.

<sup>78</sup> *Ibid.*, p. 115.

<sup>79</sup> This, as I noted before, is Kossman's reason for dismissing Grotius' Batavian tract. James Tully makes the same sort of argument against the 'political holism' of the English thinker George Lawson. Focus on the past and tradition, he says, supports oligarchy, whereas Lockean 'political individualism' points ineluctably to equality and universal suffrage. James H. Tully, 'Current Thinking on Sixteenth and Seventeenth Century Political Theory', *Historical Journal*, 24 (1981), pp. 475–84, pp. 480–3; James Tully,

Grotius had said that one of the main principles of the Batavian constitution was equality, which meant that anyone who distinguished himself and gained the confidence of his peers could rise to the highest offices in the land and have a share in power. In the eighteenth century, the Dutch Patriot Party sought, among other things, broader popular participation in the government of the Netherlands, which was justified by appeals to the ancient constitution and the legacy of the Batavians.<sup>80</sup> Derk van der Capellen framed his appeal as follows:

O, compatriots, take up arms, all of you, and take care of the affairs of the whole country, that is, your *own* affairs. The country belongs to all of you and not to the prince with his highly placed clients who regard and treat you, all of us, the whole Dutch people, the descendants of the free Batavians, as if they were their heritable property, their oxen and sheep which they may shear or slaughter at will. The people living in a country, the inhabitants, the townsmen and peasants, the poor and rich, the great and small, all of them together are the real owners, the lords and masters of the country and they can say how they want things to be arranged, how and by whom they wish to be governed.<sup>81</sup>

According to van der Capellen, all Dutch people were the descendants of the illustrious free Batavians and, as such, all members of the nation inherited that ancient virtue and liberty and thus were capable of and entitled to participate in governing the nation.

Grotius' *Antiquity of the Batavian Republic* provides a powerful illustration of the relationship between popular sovereignty, constitutionalism and nationalism. Popular sovereignty logically requires a pre-political community, the substance of which usually has been particularistic memories of the nation. Natural rights discourse cannot define who the people are, or prescribe a workable constitutional form. It also lacks the emotive appeal of a story about wise and courageous ancestors who were able to preserve their liberty through the ages, in spite of the depredations of hostile foreigners. The long enduring popularity of the Batavian and other national myths, suggests that twenty-first century liberal nationalists may be right to question whether constitutional self-government can be established or maintained without a common national cultural legacy both for solidarity among its citizens and attachment to a particular constitutional discipline. The attempt to purify the nation of these particularistic attachments may risk weakening the bonds of citizenship and the constitutional order. Those of the Rawlsian and 'Locke', in *The Cambridge History of Political Thought 1450–1700*, ed. J.H. Burns with the assistance of M. Goldie (Cambridge, 1991), p. 622.

<sup>80</sup> Though it is true that some opponents of broader political participation cited Grotius himself as a defender of patrician rule. See M.J. van Ittersum, 'Confronting Grotius' Legacy in an Age of Revolution: The Cornets de Groot Family in Rotterdam, 1748–98', *English Historical Review*, 127 (2012), pp. 1367–1403, p. 1392.

<sup>81</sup> Quoted in Kossmann, *Political Thought in the Dutch Republic*, p. 187.

Habermasian schools would like political discourse in liberal democracies to be framed solely in terms of principles and reasons that can be justified from the standpoint of all human beings. But this may be an unrealistic expectation. It seems a near certainty in any event that, the prescriptions of liberal political philosophers notwithstanding, in competitive democratic politics, politicians and political writers of all ideological stripes will go on using the evocative power of nationalism whenever it suits them. Those who defend constitutional government would thus be unwise to discount the power and the usefulness of nationalism.

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