It is not the least of the ironies of the history of western jurisprudence that one of the seminal texts of International Public Law, Grotius’ *De Indis*, should be a legal defence of Privateering. Yet, it is one of the most revealing of ironies as well, pointing to the juridical legitimation of state-sponsored organized violence as the normative—and normalizing—keystone of international relations.\(^1\) A primary example of what Critical Legal Studies (CLS) scholar David Kennedy has identified as ‘Primitive Legal Scholarship,’ *De Indis/Concerning the Indies/Concerning the Indians* acts as the juro-textual correlative to an early, or ‘primitive’, form of global governance. This ‘Modern World-System’—a heterogenous interstate system giving political expression to an integrated global capitalist economy\(^2\)—provided the necessary historical context for the composition of what appears at first glance appears to be an expedient legal brief for the Dutch East Indies Company/VOC. The Text’s discursive continuity with Primitive Legal Scholarship is evidenced by two signature characteristics: the attribution of an international normative/holistic order to international politics, as derived from Natural Law, and the replication of the political logic of both the Modern World-System and the Capitalist World-Economy—a global social system based upon ‘extensive commodity

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1 Ellen Meiksins Wood, ‘Infinite War’, *Historical Materialism*, 10/1 (2002), 7–27 at 16: The notion of some kind of international society bound together by certain common rules is regarded as one of Grotius’ major contributions to international law and a peaceful world order. But his argument had far less to do with what individuals or states owe one another than the right they have to punish each other in pursuit of self-interest, not only in defending themselves against attack but ‘proactively,’ as it were, in purely commercial rivalries.

I will demonstrate that Wood’s analysis is essentially correct. For an extended treatment on the Grotian development of *ius bellum* as the normative foundation of interstate relations see below, Chapters Six and Seven.


chains of production that cross multiple political boundaries)—as the juridical foundation of 17th century international public order. *De Indis* systematically formulates the ‘metanguage’ of early International Law as both textualism and as a material historicism. Simply put, the Text ‘translates’ the operational requirements of the World-System (praxis) into the terms of Naturalist jurisprudence (theory). A central tenet of this book is that an extended critical exegesis of *De Indis* will uncover hitherto unrecognised similitudes between early modern and contemporary International Law.

### I The Genealogy of the Grotian Heritage

This paradoxical effect, produced by the co-mingling of superficially antithetical tropes of transparent international legal order and anarchic statist violence, is magnified when one recalls that both legal language (or ‘discourse’) and praxis have, historically, repudiated the very conditions upon which *De Indis* is expressly predicated: organized violence and state-sponsored criminality as the basis of legitimate international transaction. It appears as though International Law, in order for it to speak as itself, as required by legal education, re-presents itself in a camouflaged or disguised form, suffering from the externalised neurotic systems of repression, conflict, and selective amnesia: ‘legal interpretation takes place in a field of pain and death’, that is, state violence. Derrida has made this point explicitly, postulating violence as the visceral foundation of legal order.

There is no law without enforceability, and no applicability or enforceability of the law without force, whether this force be direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive and hermeneutic, coercive or regulative... Since the

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4 Ibid. 87–8.
7 In his Post-Colonial critique of International Law, Anghie also utilises the imaginary of Psychoanalysis, re-conceptualising contemporary international jurisprudence in terms of amnesia. ‘The colonial history of international law is concealed even when it is reproduced... Indeed, international law remains oblivious to its imperial structures even when continuing to reproduce them, which is why the traditional history of international law regards imperialism as a thing of the past.’ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 268 and 312; see also 313–14.