

# Chapter 1

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## Global Justice and Regional Metaphysics On the Critical History of the Law of Nature and Nations

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A good deal of the recent historiography of the early modern law of nature and nations—*jus naturae et gentium*—has been critical.<sup>1</sup> This applies in particular to the literature that ties its history to the emergence of European colonialism and imperialism. By “critical” I do not mean pejorative or condemnatory—although much of the scholarship has been this too—but critical in the philosophico-historical sense of positing norms that project a history of what *jus naturae et gentium* should have been or could have become, as opposed to a history of what it contingently happened to be. Antony Anghie thus criticizes the imperialist complicity of early modern *jus gentium* by projecting a global international justice whose “promise” it might have realized but did not.<sup>2</sup> Yet defenders of *jus gentium* in relation to colonialism rely on the same kind of critical or philosophical historiography as its critics. Their central claim is that at least some versions of *jus gentium* did indeed embody norms of global justice, which made it possible to condemn European colonialism as unjust.<sup>3</sup> The many postcolonial critics of early modern *jus gentium* and its occasional philosophical defenders thus share a fundamental philosophico-historical platform: namely, that there is a global principle of justice capable of including European and non-European peoples within the “universal history” of its

unfolding. They differ only over whether, or to what degree, *jus gentium* succeeded in realizing this principle and thus stands condemned or vindicated by this history.

In what follows I develop some arguments skeptical of this critical or philosophico-historical approach to the early modern law of nature and nations and sketch the broad lines of an alternative approach, drawing on an array of contextual-historical studies. I argue that the early modern uses of *jus naturae et gentium* were indeed particularistic or Eurocentric—in the dual sense of being regional *to* and *within* Europe—but more profoundly so than either its modern critics or defenders have grasped. That is because these uses—including those justifying the intrusion of European missionaries, traders, and states into New World countries and cultures—could not have been understood by their exponents as failing to realize a truly global normative order or “international justice” and cannot be understood by modern historians in this way either. Against its modern critics and defenders, I argue that the “regional”—geointellectual and geoethical—character of European *jus gentium* discourses cannot be comprehended in relation to a transcendent global justice or universal history that these discourses failed to realize. Instead, their regional character can be grasped only by situating them in the immanent conflicts among the rival intellectual cultures on which they were based, and the clashing religious and political programs in which these discourses were anchored. To the extent that the particularistic limits of European *jus gentium* have become intelligible, then this has occurred neither through a universal reason’s philosophical recovery of global norms, nor through a universal history’s sociological globalization of such norms over time. Rather, these limits became visible only when the universalistic claims of *jus gentium* were fractured from within by the multiplication of rival forms during the European Reformation, and relativized from without during the encounter with New World cultures.

If this is so then we cannot approach the history of *jus naturae et gentium* as if it were governed by a global principle of justice. Rather we must approach this history at the convergence of two lines of historiographic inquiry: first, into the disparate intellectual sources—the metaphysical anthropologies and cosmologies, the political philosophies and juridical cultures—from which rival *jus gentium* discourses were fashioned; and, second, into the conflicting religious, juridical, and political programs in whose interests such discourses were fashioned, and to whose historical fate they were tied. This history of *jus naturae et gentium* is thus not that of the revelation of its particularism in the course of a universal history of reason, at the center of which sits the colonialist detour from which it might yet recover. Rather it is a history tied to a protracted series of conflicts among