

# Hugo Grotius and Aristotle's Lost Δικαιώματα πόλεμων: History's First Monograph on Just War

by *Everett L. Wheeler*

## I

The Frankfurt book fair of 1625, an annual four-week convention of publishers hawking their wares the two weeks before and after Easter (in 1625 on 30 March), featured the appearance of a truly epoch-making work, the *De jure belli ac pacis*, destined to immortalize its author as “the father of international law”<sup>1</sup>. That author, Hugo Grotius (1583-1645), a Dutch prodigy, had already passed through the University of Leiden (1594-97) under the eye of the venerable Joseph Scaliger (1540-1609), who predicted greatness for the son of Jan de Groot, the university’s curator<sup>2</sup>. His critical edition of Martianus Capella’s *Satyricon* appeared in 1599 at age sixteen, the year after he had both participated in an diplomatic embassy to Henry IV of France, who hailed the teenager as “the miracle of Holland”, and received a doctorate in law from the university at Orléans. Philologist, historian, publicist, lawyer, theologian, Grotius eventually produced over 1,300 literary items, but his Dutch political career brought him prison in 1618 and, after his escape in

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1. A license to print the work, dedicated to Louis XIII of France, was issued on 17 March 1625. For a detailed account of the work’s composition in Paris 1621-24, see Reeves 1925. The title is Grotius’ adaptation of Cic. *Balb. 15: scientiam in foederibus, pactionibus, condicionibus populorum, regum, exterarum nationum, in universo denique belli iure atque pacis*; cf. *De jure belli ac pacis* (hereafter JBP), *Proleg.* 2. The JBP will be cited after the English translation of Kelsey 1925 and the Latin edition of 1646 (Amsterdam; repr. *Classics of International Law* 3, 1913), the last with Grotius’ own corrections and additions. Fragments of Aristotle will be cited after both Rose 1886 and Gigon 1987. I wish to offer my utmost thanks to Professor Jenny Strauss Clay (University of Virginia) for her unparalleled kindness and most generous assistance with one aspect of this paper. My colleague and teacher, Professor Francis Newton, graciously read an initial draft and, as so often, saved me from errors and suggested improvements. Any flaws remaining fall upon my own head. Linda Purnell and Glenda LaCoste of Interlibrary Loan at Duke University’s Perkins Library merit commendation for their exceptional speed and professionalism, as does Seth McCurdy of the Perkins Library staff for his expedient aid. Not least, I am greatly honored that Professor Mario Pani and Dr. Elisabetta Todisco have invited me to contribute to the inaugural issue of this journal.

2. *Filius erit aliquando Pensonarius alicujus urbis: est prudens Politicus, optimus Graecus, Jurisconsultus, modestus, praestantissimus in epigrammatibus*: Desmaizcaux 1740, p. 359, quoted by Grafton 1993, p. 390 with n. 94.

1619, exile in Paris<sup>3</sup>. Comparison with Erasmus' breadth of learning would not be inept. Now debated is whether Grotius merits the title, "father of international law", although (despite precursors) his legal works have had lasting effect<sup>4</sup>.

The relationship of Grotius' views in the *JBP*, extensively supported by citation of ancient sources, to Classical antiquity and the tradition of Roman law has already provoked various interpretations, including debate on whether his legal positions were "Romanist"<sup>5</sup>. A more modest consideration concerns *JBP*, *Proleg.* 36, where, in justifying the law of war and peace as the topic of the *JBP*'s third book, Grotius notes:

*Veterum Philosophorum nihil exstat hujus generis, neque Graecorum, quos inter Aristoteles librum fecerat, cui nomen δικαίωματα πόλεμων, neque eorum qui Christianismo recenti nomen dederunt, quod valide optandum fuerat: etiam Romanorum veterum libri de jure feciali, nihil ad nos sui, praeter nomen transmiserunt. Hi qui summas fecerunt casuum, quos vocant conscientiae, ut de aliis rebus, ita & de bello, de promissis, de juramento, de repressaliis capita fecerunt*<sup>6</sup>.

Of the ancient philosophers nothing survives of this sort, neither of the Greeks, among whom Aristotle had produced a book, which had the title *δικαίωματα πόλεμων*, nor of those who gave fame to the young Christianity – what ought to have been especially desirable: even the books of the ancient Romans on fœtal law have transmitted to us nothing of their substance except a title. The more recent writers, who have produced compilations of cases, which they call "cases of conscience", have produced, as on other topics, so too chapters on war, promises, oath, and reprisals.

Historians of international law, more concerned with analysis of Grotius' outline of his *modus operandi* for the treatise, have generally overlooked this passage, which potentially has profound significance for the supposed lack of Greek theoretical treatises on war in the context of interstate relations. Grotius certainly thought that Aristotle had written a treatise on international law and some have uncritically accepted his view<sup>7</sup>.

The *JBP*, however, remained a work in progress throughout Grotius' life and beyond. A Frankfurt edition (1626) reprinted the Parisian original; corrected

3. On Grotius life and career to 1619 see De Michelis 1967; cf. Knight 1925, pp. 21-30; and for essays giving an appreciation of Grotius in his historical context: *The World of Hugo Grotius* (1984). The voluminous literature on Grotius may be accessed via the bibliography in Bull *et al.* 1990, pp. 311-22, the journal "Grotiana", and the notes to works cited in this paper.

4. On the debate see Hély 1875, pp. 195-203; various essays in Bull *et al.* 1990: Kingsbury, Roberts, pp. 2-4 with n. 5; Bull, p. 65; Haggenmacher, p. 133; Draper, p. 207; Bederman 1995-96, p. 3 with n. 1; for precursors and Grotius' place in the development of international law, see Nys 1882 and 1894; Basdevant, 1904; Nussbaum 1954; Yasuaki 1993.

5. See, *e.g.*, Ziskind 1973; von Albrecht 1983; Gizewski 1993; Bederman 1995-96; Straumann 2007; and Brouwer 2008; on the Romanist tradition see also Ilari 1981.

6. Kelsey 1925, p. 22; the *Prolegomenon*'s pages in the 1646 edition are unnumbered. Grotius' son Pieter de Groot added section numbers in the 1667 edition (Amsterdam): Haggenmacher 1990, p. 153, n. 76.

7. Mackintosh 1800, p. 12, repeating the content of *JBP*, *Proleg.* 36 without reference to Grotius; Hély 1875, p. 202; cf. Moraux 1951, p. 342.

second and third editions appeared at Amsterdam in 1631 and 1632, and Grotius issued new editions with expanded annotation at Amsterdam in 1642 and 1646. For example, the reference to Thucydides' Melian Dialogue (*Proleg.* 3 n. 1) first occurs in the 1642 edition. By the time of the 1646 edition Grotius had added c. 1,000 additions and corrections to the 1625 original<sup>8</sup>. Indeed no definitive scholarly edition of the text yet exists: P. C. Molhuysen's 1919 edition, based on the 1646 version, failed to collate variants in the original text of 1625 and that of 1631<sup>9</sup>. Scholarly investigation of Grotius' notes has also raised questions about the accuracy of citations, unacknowledged borrowings from others, and his working method<sup>10</sup>. The problem emerged already in 1720, when Jean Barbeyrac (1674-1744) published at Amsterdam his annotated edition, later followed by a French translation (Amsterdam 1726), which became the standard French version through the nineteenth century. Barbeyrac noted a supposed error at *Proleg.* 36: Aristotle wrote not a Δικαιώματα πόλεμων but a Δικαιώματα πόλεων. Coleman Phillipson later chastised Sir James Mackintosh for repeating Grotius' "error" and the issue subsequently died among both historians of international law and Aristotelian scholars<sup>11</sup>. Mackintosh interpreted the title as "a treatise on the laws of war", whereas Kelsey's translation, the standard English version, reads "Rights of War".

Grotius' citation of a lost Aristotelian Δικαιώματα πόλεμων merits a new investigation, although incontestable results may prove elusive. Even if the correct reading is πόλεων and not πόλεμων – and the tradition on this title is disputed – the treatise would still represent a discussion of at least some aspects of Greek interstate relations and counter a long-standing belief in various circles that Greeks did not theorize about this topic. A Peripatetic concern for interstate relations and war can be argued. Further, as a work absent in the Aristotelian corpus known in Grotius' time, what was the source for his citation?<sup>12</sup> Grotius, the first writer on international law to cite it, did not borrow it from a scholastic or humanist tradition on *ius gentium*. Indeed the citation may also throw some light on Grotius' method – learned and scholarly (no doubt) but also occasionally pedantic, if not devious.

Speculation on why the Greeks failed to produce in the mode of Clausewitz's *Vom Kriege* (1832) a general theoretical treatise on international relations and/or war as a phenomenon – however intriguing the question may be – is from a scholarly perspective fruitless and logically dubious: a negative (why something

8. A list of editions and translations through the nineteenth century at Kelsey 1925, pp. 877-886; Reeves 1925, p. 21; Straumann 2007, p. 104, n. 5; Bederman 1995/96, p. 3, n. 2; cf. *supra* n. 6 on the 1667 addition of section numbers to the *Proleg.*

9. Feenstra 1984, pp. 65-81, esp. 67.

10. Basdavant 1904, p. 221; Feenstra 1984, pp. 68-70; Haggenmacher 1990, pp. 147-152.

11. Barbeyrac noted other incorrect citations in the *JBP* (listed at Basdavant 1904, p. 221, n. 1), although Barbeyrac's own translation of the *JBP* was inaccurate: Haggenmacher 1990, p. 149; Phillipson, 1911, I, p. 66; Mackintosh 1800, p. 12. The Δικαιώματα πόλεμων/πόλεων escaped notice in Ilari 1980 and Giovaninni 2007.

12. Cf. Grafton 1988, pp. 767-91, esp. 777-78.

did not happen) is impossible to prove. Some legally trained scholars, privileging modern definitions, assert that Antiquity lacked international law<sup>13</sup>. If so, then investigating the lack of a comprehensive theoretical treatise becomes even more ludicrous: why did the Greeks not write about a non-existent practice? Deniers of ancient international law, however, unpersuasively often stress enforcement as a criterion, since even enforcement of modern international law against the interests of “superpowers” can be problematic. Rather, for present purposes, a sense of community and shared norms and procedures, even if unwritten, seem more relevant to the ancient world than an emphasis on enforcement<sup>14</sup>. As in any chronological period of international law, observance of rules and norms in Antiquity did not always occur, but such violations do not prove the non-existence of standards or expectations of behavior.

Thucydides’ analysis of war and the interstate system of the fifth century B.C. – the obvious elephant in the room – can (by some) be dismissed as an historian’s collection of “lessons”, not the theoretical handbook sought<sup>15</sup>. One explanation for the absence of a theoretical treatise cites the frequency of war in the ancient world: war belonged to the organization of the cosmos and thus defied analysis as a regulative aspect of human society<sup>16</sup>. A more recent view, problematic in its details and avoiding all practical aspects of interstate relations (*e.g.*, alliances, treaties, wars), seeks to establish an alternative view of Greek interstate relations to the “realist” Thucydides’ emphasis on power politics. By attempting to minimize any distinction between individuals and the state as actors in international relations, between private and public morality, and between domestic and international law, it is argued (often unconvincingly) that the Greeks did not theorize about interstate relations because sharp distinctions between domestic and foreign politics did not exist<sup>17</sup>. Yet preferable to such speculations about why something did not

13. On the problem of international law in Antiquity see, *e.g.*, Paradisi 1956; Ténékidès 1957; Gizewski 1993; Bederman 2001, pp. 1-87; and bibliography at Wheeler 2002, pp. 287-288; Lang *et al.* 2010 (*non vidi*). Note also Sartre’s rebuttal (2007, pp. 619-625) of Eckstein’s denial (2006) of ancient international law.

14. See Sheets’ arguments (1994) that the unwritten “common laws of the Greeks” could serve as a source of law equal to that of treaties. On rights to territorial acquisitions, see Chaniotis 2004; cf. Rhodes 2008; and on interpretation of treaties, Wheeler 2008; details of practices with ample bibliography in Giovannini 2007; Phillipson’s two volumes (1911) are still useful.

15. Ilari 1980, p. 123; but cf. the much-debated Thuc. 1, 22, 4. Lowe (2007) concedes Thucydides’ analysis, but his is not the view of interstate relations that she would prefer; see *infra*. Adcock, Mosley (1975, p. 183) also implicitly reject Thucydides and conjecture that even if such a theoretical Greek treatise existed, it would reveal little, as Greek law codes tended not to be clear or comprehensive. Yet they concede that Demetrius of Phalerum possibly wrote a lost treatise on interstate relations, which they fail to identify with a known title. Demetrius will be addressed *infra*.

16. Garland 1975, pp. 17-18, essentially following Momigliano 1966. Even Aristotle (in extant works) failed to probe the real causes of war: Ilari 1980, pp. 232-233; cf. Arist. *Pol.* 1, 3, 8 (1256b23-27) on war (like hunting) as *κτητική*, discussed by Ostwald 1996.

17. Lowe 2007, conclusions summarized at pp. 256-257; cf. the favorable review of Lewis 2008 with the more reserved or critical views of Baltrusch 2007 and Burckhardt 2009. Note

happen is a view that treatises on aspects of international law existed, but have not survived<sup>18</sup>. Varro's lost *Antiquitates rerum humanarum et divinarum* included a book *De bello et pace* (Gell. 1, 25, 1-11), which included discussion of *indutiae* (truces), a topic of *ius belli*. A Roman *De bello et pace* suggests the existence of a Greek precedent, unless the banal contrast of Roman legalism vs. Greek theory be invoked, or Varro's creation of a new type of treatise is conjectured. Rather than a Greek version of Clausewitz, perhaps more modest discussions should be sought.

## 2

Theoretical assessments of war and interstate relations cannot be divorced from the development of military literature. Both genres owed their origins to the changing practices and norms of war in the fifth century B.C., including the professionalization of forces and commanders, the notion of war as a τέχνη, and not least the sophists' creation of the technical handbook<sup>19</sup>. If Plato can be trusted, the sophist Protagoras already in the fifth century B.C. recognized war (πολεμική τέχνη) as a subset of politics (πολιτική τέχνη), which also included αἰδώς (shame/respect) and δίκη (right/justice) as means to control war's violence. Aristotle followed this concept, which both betrays the Greek roots of Clausewitz's "war as a continuation of policy by other means" and establishes a permanent link in Western thought between the concepts of war and justice<sup>20</sup>. As a full discussion of Greek ideas of war and justice far exceed the limits of this paper, suffice it to say that Greeks of the fourth century B.C. were thinking about war and proper interstate behavior. Some scholars in the age of the League of Nations found echoes of international law in Xenophon and Isocrates<sup>21</sup>. Plato's own panhellenic-inspired revisions to traditional Greek laws of war should also be noted,

also, e.g., the sharp distinctions between domestic and foreign affairs in the traits required of a general: *Cod. Vat. gr.* 2306, fr. B v. 50-59 = Fortenbaugh *et al.* 1992, II, App. 7, p. 604: πρὸς δὲ στρατηγίαν καὶ τῶν ἔξω καὶ ἐν τῇ πόλει κυρίαν πρὸς τῇ ἀρετῇ καὶ χορηγίαν ἔχειν ἰκανήν, ἐπὶ δὲ τρίτον, ὡς εἴρηται, τὴν ἐμπειρίαν.

18. See Bederman 2001, p. 9, following Leech 1877, pp. 22-23: essentially Grotius' view at *JBP, Proleg.* 36.

19. The origins of military theory and literature cannot be addressed in detail here. See Wheeler 1981, 1983, pp. 1-9 with references to older literature, and 2010, p. 19 with n. 50; Bettali 1986; more recent studies, Tejeda 2004 and Whitehead 2008, add little new. Loreto (1995) is marred by numerous unjustified conjectures, especially regarding the catalogue of military writers at Ael. *Tact.* 1, 2; for example, the *Taktikon*, attributed to Democritus of Abdera (Diogene Laerzio 9, 48 = VS<sup>6</sup> 68 B 28bc), really belongs to Damocritus (late 2<sup>nd</sup> c. B.C.), associated with the Ps-Democritic school of Bolus of Mende: see Wheeler 1997, pp. 212-218.

20. Pl., *Prt.* 322B-C; Arist., *Eth.Nic.* 1, 2, 4-8 (1094a26-b11); Cole 1990, p. 123; Guthrie 1971, pp. 265-266; on the tradition of the war/politics nexus see a sampling of sources (including Aristotle) at Wheeler 1993, p. 221 with n. 156; Ilari's views of Thucydides and Clausewitz (1980, pp. 123-129), which invite debate, cannot be addressed here.

21. Gemoll 1921; Mühl 1921; cf. Lendon 2006.

besides the so-called “Amphictyonic oath”, limiting methods of war among its members<sup>22</sup>.

Aristotle's own military interests followed this trend. Besides the *Politics*, in which *inter alia* he discussed just war, the connection between military organization and society, and defense of the *polis*<sup>23</sup>, the *Rhetoric* advised orators on treatment of strategic considerations (revenues, war and peace, defense)<sup>24</sup>, and the *Nicomachean Ethics* analyzed different types of courage in battle. Military topics also probably occurred in his *Homeric Problems*<sup>25</sup>. Aristotle's emphasis on gathering empirical data for comparative analysis, as in his well-known collection of constitutions, also extended to interstate affairs and strategic matters.

A new reading at *Rhet.* 1, 4, 13 (1360a33-38) illustrates the point:

ὥστε δῆλον ὅτι πρὸς μὲν τὴν νομοθεσίαν αἱ τῆς γῆς περίοδοι χρήσιμοι (ἐντεῦθεν γὰρ λαβεῖν ἔστι τοὺς τῶν ἐθνῶν νόμους), πρὸς δὲ τὰς πολεμικὰς συμβουλὰς αἱ τῶν περὶ τὰς πράξεις γραφόντων ἱστορίαν· ἅπαντα δὲ ταῦτα πολιτικῆς ἀλλ' οὐ ῥητορικῆς ἔργον ἐστίν.

A legislator should consult not only the works of geographers to discern other nations' customs, but also the works of historians when devising war plans, although this topic really belongs to politics and not rhetoric. The reading πολεμικὰς rather than πολιτικὰς derives from the earliest witness to the text (*Parisinus ar.* 2346 [*anciens fonds Arabe* 882A]), an Arabic translation of 930 made from two Syriac copies of the *Rhetoric*; in the thirteenth century Hermannus Alemannus translated the Arabic text into Latin (*Parisinus lat.* 16673) with a rendering of *in hostibus* for πολεμικὰς<sup>26</sup>. Aristotle's advocacy of consulting geographers and historians for extra-polis matters of state demonstrates how arbitrary the decision of some modern scholars is in excluding Thucydides' analysis of interstate relations. It also suggests that Aristotle's lost *Δικαιώματα* could indeed be concerned with war and interstate relations. Aristotle and the Peripatetics had a much livelier interest in history and contemporary politics than some modern scholars believe<sup>27</sup>. Experience and practice mattered in politics. Aristotle even criticized for ignorance of realities Isocrates, who had asserted the superiority of rhetoric and its teachers to those who studied past laws<sup>28</sup>. A brief look

22. Pl., *Resp.* 5, 469B-71B, discussed by Ilari 1980, pp. 143-150; Amphictyonic oath: Aesch. 2, 115; on the date, cf. the rival views of Sánchez 1997 and Lebevre 1999.

23. Citations collected at Wheeler 1988a, p. 179 n. 79; on Aristotle and just war see Ilari 1980, pp. 220-237; cf. Ferguson 1913, pp. 113-114, comparing Aristotle and Machiavelli on the different attitudes toward imperialism that city-state systems can have.

24. Arist., *Rhet.* 1, 4, 7-13 (1359b19-1360a38); cf. Anaximen. *Rhet.* ([Arist.] *Rhet ad Al.*) 1424b27-1425b18, where the same themes are elaborated; Ilari 1980, p. 301.

25. Arist., *Eth. Nic.* 3, 6-9 (1115a6-1117b22); Wheeler 1988a, pp. 165-166, 180 with n. 82.

26. See Kassel 1976, pp. xviii, 23, and 1971, pp. 88-92 with bibliography on Hermannus at p. 89, n. 1. In neither work does Kassel quote more fully the Latin translation of Hermannus, whose translation is also not included in Schneider 1978.

27. See Podlecki 1985, pp. 231-232; cf. Wheeler 1988a, pp. 165-166 for Aristotle's use of Thucydides.

28. Arist., *Eth. Nic.* 10, 9, 18-20 (1180b35-1181a21); cf. Isoc. 15, 79-83; Szegedy-Maszak 1981, pp. 10, 120, n. 31.



at the Peripatetic concern for issues of war and international law can further substantiate the case for the character of Aristotle's *Δικαιώματα*.

Theophrastus (c. 371-c. 287 B.C.), Aristotle's student, collaborator, and successor as head of the Lyceum in Athens, both continued Aristotle's work and struck out in new directions. According to the Epicurean Philodemus, a student (generally assumed to be Theophrastus) helped Aristotle collect *nomoi*, *politeiai*, and *dikaionomata*<sup>29</sup>. His prolific literary production included a *Nomoi* in 24 books, later abridged to 10, in which he supplemented Aristotle's collection of both Greek and barbarian constitutions with his own study of laws. Although this work can be posited as a study of comparative law, no evidence among the fragments, except possible vague references to the unity of humankind, explicitly points to international law or interstate relations<sup>30</sup>.

More promising are Theophrastus' *Πολιτικά πρὸς τοὺς καιροὺς* or *Πρὸς τοὺς καιροὺς* in 4 books, to which Plutarch devoted a two-book essay, and a *Περὶ καιρῶν* in 2 books<sup>31</sup>. The relationship of the two works, if the *Περὶ καιρῶν* is not an abridgement of the longer work, is unclear<sup>32</sup>. The word *kairos* (propitious moment, occasion, opportunity) attained some prominence in the fifth century B.C. in medical texts and not least in sophistic training of orators, taught to fashion a speech *κατὰ καιρόν*<sup>33</sup>. Philodemus probably conflated Aristotle and Theophrastus in adding *kairoi* to the *nomoi*, *politeiai*, and *dikaionomata* that the two jointly assembled, as Aristotle's works show little concern for the concept and Cicero seems to indicate Theophrastus' emphasis (as if new) on the temporal context of political change<sup>34</sup>. But *kairos* as "the right moment" or "opportunity"

29. Philodem., *Rhet.* 6 = Theophr. fr. 594 Fortenbaugh *et al.* 1992 = *P. Herc.* 832 col. LIII lines 21-28 = Düring 1957, p. 301 = Gigon 1987, p. 396 (Arist. fr. 312).

30. Theophr. fr. 589, 17-18 (= D.L. 5, 44), 590 (= Cic., *Fin.* 5, 11); comparative law: Walbank 1957-79, I, p. 264, citing Arist., *Eth. Nic.* 8, 1, 3 (1155a16-22) and Cic., *Fin.* 5, 65 (*coniunctio inter homines hominum, totius complexu gentis humanae*); a different view at Regenbogen 1940, cols. 1519-20. The so-called "Dikaionomata papyrus" (*P. Halensis* 1, 3<sup>rd</sup> c. B.C.), much discussed, is a collection of comparative law, which (as recently argued, Hirata 2010) provides a bridge between some aspects of Athenian, Alexandrian, and Roman law, but aspects of international law are not included.

31. Fr. 589, 4a-b (= D.L. 5, 45), 589, 5 (= D.L. 5, 50); Plut., *Lamp. Cat.* 53, in Sandbach 1967, p. 2; Regenbogen 1940, col. 1518.

32. Podlecki (1985, pp. 232 with n. 12, 233, 243) thinks the two works identical, although Diogenes Laertius' list, which may derive from the third-century B.C. Alexandrian scholar Hermippus of Smyrna (Moraux 1951, p. 246), sharply distinguishes them in their location (*supra* n. 31). Such an arrangement speaks for distinct works, especially as the abridgement of the *Nomoi* immediately follows the longer original in Diogenes' catalogue. Saunders' discussion of Greek casuistry (1998) does not treat Theophrastus' work on *kairos*.

33. Guthrie 1971, p. 272; Corvisier 1985, pp. 647-648. Translation of Theophrastus' use of *kairos* in his titles as "crisis" (Fortenbaugh *et al.* 1992, I, pp. 30-31, 40-41) is misleading and does not capture the essence of the word's range of meanings.

34. Philodem. *Rhet.* 6 (cf. *supra* n. 29); Moraux 1951, p. 117, n. 17, citing (erroneously, see *infra*) only Arist., *Pol.* 5, 5, 11 (1306b10) and *Eth. Nic.* 2, 2, 4 (1104a9): ethics require action *πρὸς καιρόν* and cannot be an exact science; Cic. *Fin.* 5, 11 (= Theophr. fr. 590): *hoc amplius Theophrastus, quae essent in re publica rerum inclinationes et momenta temporum quibus esset moderandum*

had obvious military implications, which did not escape Thucydides or Aristotle. The word became frequent in military narratives and formed a key element in perpetrating stratagems<sup>35</sup>. If the varied contents of the fragments from Theophrastus' two works on *kairos* defy easy classification – and Regnbogen may be correct in postulating the works as *exempla* collections – it is clear that, besides civil war or *stasis*, foreign war, military situations, and some practices of *ius belli* were included, such as peace, financing campaigns, the right of the victor, bribery of an enemy, a woman as a cause of war, and sending secret messages in wartime<sup>36</sup>.

Theophrastus' concern for *kairos* and his role in collecting *dikaïomata* intrigues, but better cases for Peripatetic concern for war and international law come with Heracleides of Pontus and Demetrius of Phalerum. Heracleides (c. 388-c. 314? B.C.), more a colleague of Aristotle than his disciple, is generally grouped with other philosophical contemporaries in the so-called "School of Aristotle". His multiple works, some on politics and law, included a *Συνθήκαι*, which could be rendered as either *Treaties* or *Contracts*<sup>37</sup>. In the absence of known fragments interpretation of the title remains moot. Since Aristotle, however, discussed treaties on at least two occasions, the *Συνθήκαι* could be (in one view) a collection of treaties, a companion to Aristotle's *Δικαιώματα*<sup>38</sup>.

According to Cicero (*Leg.* 3, 14), Theophrastus' student, Demetrius of Phalerum (c. 350-after 283/2 B.C.) brought philosophical learning out of the shade into the dust of reality and the battleline. Demetrius' combination of philosophy and political activity, first as *epimeletes* of Athens (317-307 B.C.) under Cassander and later as a "scholar in residence" at the court of Ptolemy I, certainly attracted attention, even if his supposed military experience now seems unconfirmed<sup>39</sup>. The

*utcumque res postulare*; Podlecki 1985, pp. 234-235, 239, who favors the works on *kairoi* as Theophrastus' continuation of Aristotle's work. On *kairos* in Aristotle see also Aubenque 1963, pp. 95-105. As Moraux correctly argues (1951), it is unwise to contrive, based on Philodem, *Rhet.* 6, an Aristotelian *Πρὸς τοὺς καιροὺς* from the problematic title, *Συμμίκτων ζητημάτων* οβ, ὃς φησιν Εὐκαιρος ὁ ἀκουστής αὐτοῦ, found only in Aristotle's bibliography attached to the so-called *vita Menagiana* (*vita Hesychii*), Gigon 1987, p. 28, no. 168.

35. Thuc. 1, 142, 1; Arist., *Eth. Nic.* 1, 6, 4 (1096a32-33), *Eth. Eud.* 1, 8, 8 (1217b32-41); Plb. 9, 12, 1-3; Wheeler 1988(b), p. 48; see also Corvisier 1985, pp. 648-657, who sees Plb. 9, 12-20 as an *apologia* for *kairois*.

36. Regnbogen 1940, cols. 1517-18; civil war: Cic., *Fin.* 5, 11 (= Theophr. fr. 590); cf. Cic., *Rep.* 1, 45; *ad Att.* 2, 9, 2 (= 295 S-B); Theophr. fr. 615 (= Plut., *Per.* 23, 2), 617 (= Plut., *Nic.* 10, 1), 620 (= Plut., *Dem.* 17, 4), 621, 622 (= Plut., *Sert.* 13, 5-6), 623 (= Plut., *Lys.* 13, 1-2), 625-626. Podlecki's attribution (1985, p. 238) of the fragment on choosing magistrates (*Cod. Vat. gr.* 2306; cf. *supra* n. 17) to the *Πολιτικά* *πρὸς τοὺς καιροὺς* is unconvincing.

37. D.L. 5, 87 = Wehrli 1969 fr. 22, 151 = Schütrumpf *et al.* 2008, fr. 1 (p. 27), 17, no. 10, where the translation *Contracts* is preferred; Podlecki (1985, p. 231) translates *Treaties*; Wehrli's *Vertäge* (1969, p. 110) is ambiguous.

38. Arist., *Pol.* 3, 5, 10-12 (1280a31-b23), *Rhet.* 1, 15, 1, 20-25 (1375a23-24, 1376a33-b30); Wehrli 1969, p. 110.

39. IG II<sup>2</sup> 2971 (Eleusis), attesting a Demetrius as a cavalry commander and three-times *strategos*, has now been re-dated to 270 B.C. or later and must relate to Demetrius' grandson: see



downsizing of Demetrius' personal military and political experience in no way diminishes his political and military interests, although one earlier scholar has somewhat exaggerated that, too.

Diogenes Laertius' catalogue (5, 80-81) of Demetrius' works shows a continuation of various Peripatetic themes and a potential concern for international law and/or military affairs: *Περὶ πολιτικῆς* 2 books, *Περὶ νόμων* 1 book, *Στρατηγικῶν* 2 books, *Πρεσβευτικός* 1 book, *Περὶ πίστεως* 1 book, *Περὶ εἰρήνης* 1 book, another one-book *Περὶ νόμων*, *Περὶ καιροῦ* 1 book, and *Δίκαια* 1 book. Even a one-book *Περὶ πόλεμου* has been postulated, which, if substantiated, might satisfy the longing for a general theoretical treatise on war and international relations. But this case cannot be pressed<sup>40</sup>.

Again, as few or no fragments of these works survive, the titles permit various interpretations. To the *Περὶ εἰρήνης* may plausibly be assigned Demetrius' belief in a peace-loving Lycurgus, the Spartan lawgiver – an elaboration of Aristotle's assertion (from the *Politeia*?) that Lycurgus had been a founder of the Olympic truce<sup>41</sup>. Von Scala posited the *Περὶ εἰρήνης*, his *Περὶ πόλεμου*, and the *Πρεσβευτικός* as components of the *Δίκαια*, which he believed an historical introduction to the development of international law in theory and practice, essentially a work complementary to Aristotle's *Δικαιώματα*<sup>42</sup>. If the *Πρεσβευτικός* was a work on diplomacy, as some believe, then the *Περὶ πίστεως*, which immediately follows the *Πρεσβευτικός* in Diogenes' list, could have concerned *bona fides*, perhaps in both its public and private aspects. But it also precedes a *Περὶ χάριτος*; hence a view that it concerned ethics. The game of interpretation based on placement of titles in Diogenes' list can be played in various ways without (in the absence of fragments) any hope of definitive resolution. Indeed von Scala's scheme would expand the one-book *Δίκαια*, twelve lines below the *Περὶ εἰρήνης* and his supposed *Περὶ πόλεμου*, into at least three books. Alternatively, the *Δίκαια* could be a general discussion of justice<sup>43</sup>.

Tracy 2000, who also doubts Demetrius' role in establishing the famous Library at Alexandria. On Demetrius' rule at Athens, O'Sullivan (2009) offers a detailed study; note also Sollenberger (2000) on Diogenes Laertius' biography of Demetrius.

40. The consensus reading of the manuscripts at D.L. 5.81 is *Περὶ δοκοῦ* α', which Fortenbaugh, Schütrumpf (2000, pp. 30, 33, n. 3), following the Loeb translation of Hicks (1925, p. 535), interpret as *On a Beam <in the Sky>*, although some emend the text to *δόκου* = *δοκίσεως*, i.e., *On Opinion*: Wehrli 1968, p. 84 *ad fr.* 187; Jacoby, *FGrH* 228 T 1 with comm. As Demetrius' bibliography, unlike that of Aristotle and other Peripatetics, reveals no interest in astronomy or cosmology, the Fortenbaugh/Schütrumpf solution is unsatisfying. Von Scala (1890, pp. 157-158) emended the text to *Περὶ πόλεμου*, a logical assumption, as this title begins a mini-series of political works: *Περὶ εἰρήνης* and the second *Περὶ νόμων* immediately follow. Jacoby, Wehrli, and Fortenbaugh, Schütrumpf were unaware of von Scala's view.

41. Plut. *Lyc.* 23, 1 = Demetr., fr. 89 Wehrli = fr. 113 Fortenbaugh, Schütrumpf = *FGrH* 228 fr. 21; Aristotle: Plut., *Lyc.* 1, 1-2 = fr. 533 Rose = fr. 541 Gigon; Martini, 1901, col. 2832; Wehrli 1968(a), pp. 62-63; on the rival traditions of a military and a pacifistic Lycurgus, see Ilari 1980, pp. 85-86 with n. 116; Wheeler 1983, pp. 16-17 with nn. 81-82.

42. Von Scala 1890, pp. 156-157; cf. 320-321.

43. For Wehrli (1968a, pp. 60-61, 71, 82-84) the *Δίκαια* was a work on justice, the *Περὶ*

Certain, however, is Demetrius' continuation of Aristotle's concern for just war – the first Peripatetic explicitly attested to do so. Many assume that Polybius' citation of Demetrius on this point comes from his *Στρατηγικά*, but not necessarily so<sup>44</sup>. Another Polybian citation is more plausibly derived from that work<sup>45</sup>. Yet a larger issue lurks. Polybius' views of the laws of war in his own time (e.g., 5, 11, 3-12, 4) represent a further development of Plato's laws of war in the *Republic*. Polybius seems to offer a well-thought out position. Are his views original? Von Scala argued that Polybius drew on Demetrius' *Δίκαια* – in von Scala's own reconstructed version of it. Although von Scala's view has subsequently not found favor, his idea (but not his arguments) of Demetrius' discussion of laws of war merits consideration<sup>46</sup>. After all, Polybius cited Demetrius four times and never disparagingly – unusual for Polybius. He apparently did use Demetrius' *Στρατηγικά* and *Περὶ τύχης*<sup>47</sup>. A new case for Demetrius as a source for Polybius' views of the laws of war could be argued, but that topic merits separate treatment elsewhere.

The Peripatetics from Theophrastus to Demetrius of Phalerum seem to have continued an Aristotelian interest in some aspects of international law and war, even if the paucity of fragments for many intriguing titles precludes definitive demonstration. Later Peripatetics kept the tradition alive. Clearchus of Soli, the probable author of a *Tactica*, combined Aristotelian psychology and a military theme in his *Περὶ τοῦ πανικού*. Later, Hannibal at Ephesus had to suffer through a long lecture of the Peripatetic Phormio on how to be a general<sup>48</sup>. If the tradition of the later Peripatetic interest in international law and war is clear, details of the founder's own *Δικαιώματα* must now be addressed despite the scarce evidence available.

πίστεως concerned ethics, and the *Πρεσβευτικός* treated the rhetoric of ambassadors: cf. fr. 187 Wehrli (= [Demetrius] *De elocutione* 289) = fr. 12 Fortenbaugh, Schütrumpf. O'Sullivan (2009, pp. 234-235) likewise posits the rhetorical nature of the *Πρεσβευτικός*, citing a fragment of Philodem., *Rhet.* 4 (*P. Herc.* 1007, col. 4111-15 = Demetr. fr. 130 Fortenbaugh, Schütrumpf). Philodemus' fragment is suggestive, but not decisive. Ilari (1980, p. 85, n. 112, 309) shares von Scala's view of the *Πρεσβευτικός* as a work on international law. Cf. Adcock, Mosley 1975, p. 183.

44. Plb. 36,2, 3 = Wehrli fr. 124 = fr. 91 Fortenbaugh, Schütrumpf = *FGrH* 229 fr. 29; from the *Στρατηγικά*: Wehrli 1968, pp. 70-71; Pédech 1964, p. 198 with n. 495; Walbank 1957-79, III, p. 655; Fortenbaugh, Schütrumpf 2000, pp. 170-173; from the *Δίκαια*: von Scala 1890, pp. 156-158; Martini 1901, col. 2832; Jacoby's vacillation (comm. *ad FGrH* 228 fr. 29) between the *Περὶ πολιτικῆς* and the *Δίκαια* is justified. Pédech's assertion, citing only Onas. 4 (but note also L. Cincius on the *ius fetiale*: *De re militari* Bk 3, ap. Gell. 16, 4, 1), that just war was customarily discussed in the genre of military theory (as opposed to historiography) is erroneous: one source does not prove a customary practice. Cf. Petrocelli's commentary (2008, p. 162, n. 77) *ad* Onas. 4, 1.

45. Plb. 10, 24, 7 = fr. 123 Wehrli = fr. 90 Fortenbaugh, Schütrumpf = *FGrH* 229 fr. 27.

46. Von Scala 1890, pp. 156-158; *contra*, e.g., Walbank 1957-79, I, pp. 264, 549, and 1972, p. 91.

47. Plb. 12, 13, 8-12 = fr. 132 Wehrli = fr. 89 Fortenbaugh, Schütrumpf = *FGrH* 229 fr. 28; Plb. 29, 21, 1-6 (from Demetrius' *Περὶ τύχης*?) = fr. 81 Wehrli = fr. 82a Fortenbaugh, Schütrumpf = *FGrH* 229 fr. 39; cf. Diod. 31, 10; *supra* nn. 44-45.

48. Clearchus: Wheeler 1988a, pp. 176-180; Phormio: Cic., *De or.* 2, 75-76.

Investigation of Aristotle's Δικαιώματα involves two basic problems: the title's complement, whether πόλεμον or πόλεων, and the content and context of the work. For the title, three types of sources attest the treatise: lists of Aristotle's works appended to various biographies of the Stagirite, grammarians, and occasional citations or allusions without any guarantee of direct use. Further, all fragments concern two events: presumably, Philip II's transfer of Oropos from Theban control to Athens after Chaeronea (338 B.C.) and, more securely, Alexander of Epirus' Italian campaigns.

If speculation concerning the originator of the bibliographies attached to various biographies of Aristotle be (for the moment) by-passed, the initial occurrence of the title comes in the second-century Harpocration's *Lexicon of the Ten Orators*, where Aristotle ἐν τοῖς Δικαιώμασι is quoted on the location of Drymos ("Oak Grove") on the Attic-Boeotian border<sup>49</sup>. The sixth-century Stephan of Byzantium twice cites Aristotle (once as a quotation) – but without reference to a specific work – on Graia as an earlier name for Oropos. All editors of Aristotle's fragments assign these citations to the Δικαιώματα without argument, but apparently believing in a supposed connection with Harpocration's quotation of Aristotle concerning the Attic-Boeotian border<sup>50</sup>.

Diogenes Laertius' catalogue of Aristotle's works in the early third century gives new information: the Δικαιώματα was in one book<sup>51</sup>. πόλεων is first added to Δικαιώματα in the *Vita Menagiana* of Aristotle, also known as the *vita Hesychii*, a brief biography (perhaps – but with no certainty – an epitome from the fifth-century *Onomatologon* of Hesychius) with a catalogue of Aristotles' works not identical to the Diogenes' list<sup>52</sup>. Besides variant titles, five treatises absent in Diogenes' list occur. Although the *Vita Menagiana* is attested in a ninth-century manuscript of the *Categories* (*Ambrosianus* gr. 490), its *editio princeps* came in Gilles Ménage's edition of Diogenes Laertius (London 1663), based on the *Parisinus suppl.* gr. 557 (16<sup>th</sup> c. or later) containing numerous errors<sup>53</sup>. The *Vita Menagiana* may preserve more accurately *some* titles – but not all. One example of a garbled title has already been noted<sup>54</sup>. Thus, can there be any certainty that the addition πόλεων is correct? Indeed the *Urquelle* of these two lists is disputed: was it Ariston of Ceos, Lycon's successor as head of the Peripatetics after c. 225 B.C. and a collector of Peripatetic bibliography and documents (D.L. 5, 64), or

49. Harpocr. s.v. Δρυμός: Ἀριστοτέλης δ' ἐν τοῖς Δικαιώμασι φησιν οὕτως “ἐπειτα Δρυμόν ἐν Ἀττικῶν καὶ ἑτερον Βοιωτίων” = fr. 405 Gigon = fr. 612 Rose.

50. Steph. Byz. s.vv. Ὠρωπός (Ἀριστοτέλης γοῦν τὴν Ὠρωπὸν Γραϊάν φησι λέγεσθαι “ἢ δὲ Γραῖα τόπος τῆς Ὠρωπίας πρὸς τῇ θαλάσῃ κατ' Ἑρέτριαν τῆς Εὐβοίας κειμένη”), Τάναγρα = fr. 613 Rose = fr. 406, 1-2 Gigon.

51. D.L. 5, 26 = Rose, p. 8, no. 129 = Gigon, p. 24, no. 130: Δικαιώματα α̅.

52. Rose, p. 15, no. 120 = Gigon, p. 27, no. 120: Δικαιώματα πόλεων α̅.

53. Discussions of the *Vita Menagiana* and its discrepancies from Diogenes' catalogue in Moraux 1951, pp. 195-209; Düring 1957, pp. 89-93.

54. Moraux 1951, pp. 200, 201; see *supra* n. 34.

the Alexandrian Hermippus, whose biography of Aristotle became the standard source in Antiquity for the Stagirite's life?<sup>55</sup> Unfortunately, this question sinks into the quagmire of *philosophische Quellenforschung*.

The next extant catalogue of Aristotelian works belongs to the Arabic *Vita Aristotelis* of Ibn Abī Uṣ aibī'a (d. 1270), a shorter list with some expanded titles (not attested in Diogenes or the *Vita Menagiana*). Some titles are cited (allegedly) from works in Apellicon's library, taken to Rome (or *Cumae*) by Sulla in the mid-80s B.C., letters discovered by Artemon, probably Artemon of Cassandrea (1<sup>st</sup> c. B.C.?), editor of a collection of Aristotle's letters in eight books, and other works from Andronicus of Rhodes, the compiler of an index of Aristotle's books in Apellicon's library and successor of Tyrannion of Amisus as the library's overseer in the 40s B.C.<sup>56</sup> Indeed the list of the Arabic *Vita* purports to derive from a fifth-century Neoplatonist Ptolemy, whose biography of Aristotle is thought not only the source of two Syriac *Vitae*, from which the Arabic *Vita* derives, but also the *Urquelle* of the medieval biographies of Aristotle: the Greek *vita Marciana*, preserved in the twelfth-century *Marcianus gr.* 257 (*editio princeps* 1861) and an anonymous thirteenth-century Latin *Vita*, rearranging some material in the *Vita Marciana* and known from numerous manuscripts (*editio princeps* Venice 1482)<sup>57</sup>. The absence of the Δικαιώματα from the Arabic *Vita*'s bibliographical catalogue allows some doubt of its authority, although scattered references to Andronicus, Artemon, and Ptolemy in scholia and commentaries on Aristotelian works preclude dismissing evidence from the Arabic *Vita* entirely. Indeed the *Vita Marciana* and the *Vita Latina* contain allusions (not a title *per se*) to the Δικαιώματα (see *infra*), which do not occur in the Arabic *vita*. From one perspective, no support for the *Vita Menagiana*'s Δικαιώματα πόλεων can be found in the tradition of lists of Aristotle's works.

An alternative tradition features the supplement πόλεμων and concerns the Italian campaigns of Alexander of Epirus, Alexander the Great's uncle. Ammonius, *Περὶ ὁμοίων καὶ διαφόρων λέξεων* (*De adfinium vocabulorum differentia*) 334 s.v. νῆες πλοίων διαφέρουσιν reads:

Ἀριστοτέλης δ' ἱστορεῖ ἐν Δικαιώματα τῶν πόλεμων οὕτως: "Ἀλέξανδρος ὁ Μολοττός ὑπὸ ταυτὸν χρόνον, Ταραντίνων αὐτὸν μεταπεμψαμένων ἐπὶ τὸν πρὸς

55. For Ariston see Moraux, 1951, pp. 195-247, followed by Lesky 1966, p. 553; cf. Wehrli 1968b, pp. 27-67 for Ariston's fragments with commentary; for Hermippus and the more traditional view, Düring 1957, pp. 79, 467.

56. Gigon 1987, p. 44, no. 99 (Apellicon's library), 100 (Artemon) = Rose, p. 22, no. 87, 103 (Andronicus) = Rose p. 22, no. 90. On Sulla, Apellicon's library, and Andronicus see Plut. *Sulla* 26 with additional references and discussion in Düring 1957, pp. 412-425, 467, who thinks Andronicus revised an earlier Alexandrian catalogue by Hermippus; see also Rawson 1985, pp. 40-41, 289-291; Artemon: Moreau 1951, p. 143 with nn. 53-54. Rose (pp. 9-18) believes the list in the *Vita Menagiana* reproduces Andronicus' index.

57. See Düring 1957, pp. 469-475, and 142-144 for a list of manuscripts of the *Vita Latina*; text of the *Vita Marciana*: Rose, pp. 426-441; Düring, pp. 96-106; Gigon (ed. com.) 1962 and 1987, pp. 28-31; text of the *Vita Latina*: Rose, pp. 442-450; Düring, pp. 151-158; Gigon 1987, pp. 31-38.

τοὺς βαρβάρους πόλεμον, ἐξέπλευσε ναυσὶ μὲν πεντεκαίδεκα, πλοίοις δὲ συχνοῖς ἱππαγωγοῖς καὶ στρατιωτικοῖς”<sup>58</sup>.

The tradition of Ammonius, predating 1100 and resting on textual witnesses as early as the fifteenth century, attests πόλεμων as the correct reading. Only editorial prejudice produces emendation of Ammonius’ text<sup>59</sup>. Occasion for the quotation, assembled with lemmata beginning with *nu*, has nothing to do with international relations or war, but rather Aristotle’s reference to warships (ναυσὶ) and horse- and troop-transports (πλοίοις ἱππαγωγοῖς καὶ στρατιωτικοῖς). A fragment on different types of ships from the prolific Alexandrian scholar Didymus’ *Rhetorical Notes* (Book 11) precedes the passage from the Δικαιώματα, the only secure quotation from the work, except for Harpocration on Drymos<sup>60</sup>. This fragment of Ammonius leads from the quagmire of *philosophische Quellenforschung* into the murky waters of lost Greek grammarians.

The date and author of this peculiar work long perplexed. The latest source cited in the work, the obscure Greek grammarian Heracleides of Miletus (*fl.* 100), author of a Περί δυσκλίτων ῥημάτων, points to a second-century date. Attachment (for unknown reasons) of the name Ammonius to the work postdates 1400 (*Aldine editio princeps* 1497)<sup>61</sup>. Identification of the author with the *grammaticus* Ammonius (*fl.* 400), who fled Alexandria and became the teacher of the ecclesiastical historian Socrates Scholasticus in Constantinople, can no longer be maintained. Rather, various citations of Ammonius’ material in the Homeric commentaries of Eustathius (d. c. 1194) point to the productive Antonine grammarian, antiquarian, and historian Philo of Byblus, whose patron, Herennius Severus, was suffect consul with the historian, philosopher, and Cappadocian governor Flavius Arrianus in 129. Later grammatical texts cite him (with dubious accuracy) as Herennius Philo (Ἡρέννιος Φίλων)<sup>62</sup>. Indeed Eustathius occasionally

58. Nickau 1966, p. 87, who prints πόλε{μ}ων, assuming that πόλεων is correct; Gigon 1987, p. 542 fr. 407, 1, citing Nickau’s text, reads πόλε[μ]ων; Rose, p. 387 fr. 614 with πόλεων: erroneously following Eustathius (see *infra*) and also citing Didymus, *Rhetorical Notes*, Book 10. For some late manuscripts of Ammonius not included in Nickau’s 1966 Teubner edition, see Bühler 1972. These are not relevant to the concerns of this paper.

59. Nickau 1966, pp. xxvii, lxxv; cf. Nickau 1959 (*non vidi*). πόλεμων is also the reading of the unedited *Symeonis Synagoge*, a collection of glosses (12<sup>th</sup> c.?) and an early witness to Ammonius’ tradition.

60. A brief introduction to Didymus at Pfeiffer 1968, pp. 174-179.

61. Nickau 1966, pp. lxvii, lxxvii; on Heracleides see Cohn 1884. *Contra*, Palmieri 1988, pp. 55-69, who contests the views of both Nickau and Cohn.

62. See Nickau 1966, pp. lxvi-lxvii; Kaster 1997, p. 241 (Ammonius no. 10); *PLRE*, 1971, I, p. 55 (Ammonius 3); Lesky 1966, p. 889, who thinks Ammonius used Philo as a source; a similar view in Makris 1996; Fornaro (1998) offers only updated bibliography; useful discussions of Philo: Gudeman 1912; *FGrH* 790; and Birley 1997, p. 227, esp. on the chronological problem of *testimonia* on Philo’s life; Palmieri (1988, pp. 25-48) offers a new collection of *testimonia* of Philo and argues (pp. 55-69) at length (*contra* Nickau) that Ammonius was a real person and not a fictitious late attribution. Certainty on this matter, as Palmieri concedes, is elusive, but Nickau’s views seem more compelling. Palmieri cannot securely attach the text of “Ammonius” to an historical personage.

cites Ἐρέννιος Φίλων ἐν τῷ περὶ διαφορῶν σημαινομένων, possibly the otherwise unknown original title<sup>63</sup>. A fourteenth-century Ἐρενίου Φίλωνος περὶ διαφορῶν σημαισίας (*Parisinus suppl. gr.* 1238) features 174 “Erennian” glosses and all but two correspond to material in Ammonius<sup>64</sup>.

Eustathius offers three variants of Ammonius (Philo) 334, one of which is problematic. At *Od.* 12, 380 he has “Erennius Philon” cite Didymus without naming a title and gives the essence of the quotation from the Δικαιώματα without citation of the title. Similarly, at *Od.* 1, 183 Aristotle’s material is repeated and Didymus is named, as if Eustathius were using him directly. Yet at *Il.* 7, 341 the material cited by Ammonius (Philo) from Didymus’ *Rhetorical Notes* is attributed to Didymus ἐν Ἱστορικῷ and the essence of Ammonius’ quotation of Aristotle is repeated but with the title as Δικαιώματα τῶν πόλεων<sup>65</sup>.

Does Eustathius’ πόλεων discount the case for πόλεμων? Not necessarily. Although the manuscript tradition of Eustathius is sufficiently clear that he wrote πόλεων, whether he did so correctly is another matter. For so prolific a writer as Eustathius, a *lapsus calami*, subsequently undetected and uncorrected, is quite conceivable. Even πολιτικὰς and πολεμικὰς were often confused in manuscripts and at issue is mere omission of a *mu*<sup>66</sup>. Eustathius’ inconsistency, if not negligence, in citing the same material from “Erennius” on three occasions does not inspire confidence in his accuracy. As already noted, no source datable before the ninth century attests the title as Δικαιώματα τῶν πόλεων: the supplement πόλεων occurs only in the mysterious *vita Menagiana* and without the article τῶν. In comparison to Eustathius, Philo at Ammonius 334 gives a precise citation from Didymus’ *Rhetorical Notes*, Book 11<sup>67</sup>. As the manuscript tradition for Ammonius strongly supports the reading πόλεμων, the case for Eustathius’ error gains probability. Philo/Ammonius also must be the source of the addition of the article τῶν, attested only in that tradition. Eustathius occasionally sought to improve on Philo’s material – sometimes wrongly – and the πόλεων at issue may be another example<sup>68</sup>. It is most likely that Eustathius omitted a *mu* in hasty composition, or that he inserted his own assumption about Aristotle’s title, just as he confused Didymus’ title in the same passage. Perhaps a more interesting (and unanswerable) question is whether Philo found the quotation of Aristotle in Didymus or had

63. Sic Gudeman 1912, col. 652, citing Eust. *ad Il.* 11, 430 (= *FGrH* 790 fr. 57); 13, 310, 337; *ad Od.* 11, 538, 12, 387, 19, 431; *ad Dionys. Per.* 752; and Σ *Ap. Rhod.* 3, 118; Fornaro (1998, col. 411) thinks that the title of Philo’s treatise was the same as that of the later work attributed to Ammonius.

64. Nickau 1966, pp. XL-XLI, LVI-LVII; see Palmieri 1988, pp. 121-231 for an edition of this text.

65. *Ad Od.* 12, 380 = fr. 407, 4 Gigon, *ad Od.* 1, 183 = 407, 3 Gigon = fr. 614 Rose, *ad Il.* 7, 341 = fr. 407, 2 Gigon. Eust. *ad Il.* 7, 341 is reproduced *verbatim* in the fourteenth-century Ἐρενίου Φίλωνος περὶ διαφορῶν σημαισίας (122, 801-808, Palmieri, 1988, pp. 196-197) with the same citation of Didymus ἐν Ἱστορικῷ and use of τῶν πόλεων in Aristotle’s title.

66. Kassel 1971, p. 125; cf. *supra* text at n. 26 on πολεμικὰς as the correct reading at Arist. *Rhet.* 1, 4, 13 rather than the πολιτικὰς accepted for centuries.

67. The version of the fourteenth-century Erenius Philon (*supra* n. 65), copied from Eustathius, does not constitute an independent witness to the original text of Philo/Ammonius.

68. See van der Valk’s *app. crit.* (1979, p. 398) at Eust. *ad Il.* 13, 310, 906, 59-63.



direct access to the Δικαιώματα. If the Δικαιώματα inspired Varro's *De bello et pace*, it might also have been available to Didymus, Varro's contemporary. Varro knew Aristotle's Νόμιμα βαρβαρικά, so why not the Δικαιώματα?<sup>69</sup> The text may also have survived into the second century, unless Harpocration and Philo derived their respective quotations from *exempla* collections or Didymus (?).

Three further attestations of the Δικαιώματα must also be considered. The *Vita Marciana* records: καὶ τὰ γεγραμμένα ἀντ'αὐτῷ [scil. Aristotle] δικαίωματα τῶν Ἑλληνίδων πόλεων· ἐξ ὧν Φίλιππος τὰς φιλονεικίας τῶν Ἑλλήνων διέλυσεν<sup>70</sup>, which appears in the *Vita Latina* as: *et scriptas ab eo iustificationes Greearum civitatum cum quibus Philippus lites Graecorum determinabat*<sup>71</sup>. Similarly, Philodemus c. 75 B.C. wrote at *Rhet.* 6, criticizing Aristotle's retreat from true philosophy to more practical matters: διὰ ταῦτ' ἐφωρᾶτο τοὺς τε νόμους[ς] συνάγων ἅμα τῷ μαθητεῖ καὶ τὰς τοσαύτας πολιτείας καὶ τὰ περὶ τῶν [τό]πων [δι]καίωματα<sup>72</sup>.

These three passages have been frequently cited as proof for a reading of the title as πόλεων rather than πόλεμων, but falsely<sup>73</sup>. Philodemus' polemic offers a description of activities, not a title. Likewise the passage of the *Vita Marciana* relates only supposed contents of the work and the translator of the *Vita Latina* in writing *iustificationes Greearum civitatum* did not recognize the phrase as a title.

Grotius' supposed error at *JPB, Proleg.* 36 in citing a lost Δικαιώματα πόλεμων of Aristotle has (so far) not been shown to be a mistake. But what can be said of the work's contents and context? In terms of the work's contents does πόλεμων rather than πόλεων really make a difference? Could Aristotle's Δικαιώματα really be the long-sought Greek theoretical treatise on international relations – the inspiration of later Peripatetic interest in this field and perhaps a precursor of Varro's *De bello et pace*?

#### 4

Any evaluation of the Δικαιώματα's contents must be based on what δικαίωμα means. Aristotle defined δικαίωμα as a specific correct or just act, the opposite of a wrong or unjust act (ἀδίκημα) or the correction of an unjust act. The word also denoted “judgment”, “penalty”, “justification” (in the sense of a “plea of right”),

69. *Ling.* 7, 70 = Arist. fr. 469 Gigon.

70. Gigon 1962, pp. 1-2 lines 28-32 = Gigon 1987, p. 29 lines 28-31 = Rose, p. 427 lines 9-11 = Düring 1957, p. 97, who adds section numbers not found in other editions: *Vita Marc.* 4; the text quoted is that of Gigon 1962.

71. *Vita Latina* 40: Gigon 1987, p. 33 = Düring 1957, p. 156 = Rose, p. 449.

72. The text is that of Gigon 1987, p. 396 (Arist. fr. 312), retaining the apparatus of the papyrological edition, ignored by Düring 1957, p. 301; a full list of parallel citations at *supra* n. 29. Capitalizing [δι]καίωματα, as at Theophr. fr. 594 Fortenbaugh *et al.*, is unjustified and misleading.

73. Pohlenz 1928, p. 55; Moraux 1951, p. 123; Düring 1957, p. 306; Gigon 1962, p. 39, n. 10; Podlecki 1985, p. 232.

and later the word came to mean “pleading”, “document”, or “decree”<sup>74</sup>. Hence *Δικαιώματα πόλεμων* could mean *Just Acts of Wars*, but hardly “laws of war”. Alternatively, as *Δικαιώματα πόλεων*, the title becomes *Just Acts of Cities* or *Claims of Cities*. From one perspective, if such claims resulted from war(s), then the difference between *πόλεων* and *πόλεμων* for the treatise’s purpose becomes otiose and the concern for interstate relations would remain valid. Nevertheless, the notion that the work involved only “claims” has received preference not only from the assumption that the title with *πόλεων* is correct, but also from the passages in the *Vita Marciana*, the *Vita Latina*, and Philodemus’ *Rhetorica* connecting the treatise directly with Philip II’s settlement of disputes between Greek cities after the defeat of Thebes and Athens at Chaeronea (338 B.C.). Although this view suggests a *terminus post quem* for the work, other aspects of this perspective merit re-examination.

Philodemus and the two medieval biographies imply that *dikaionomata* like constitutions and laws are simply collectable items, although Philo/Ammonius and the Aristotelian bibliographies indicate a treatise in one book, a more formal piece of writing. Indeed some see the *Δικαιώματα* as a textbook of jurisprudence for Greek interstate relations; others assert it contained a set of principles for settling inter-polis disputes involving claims for compensation<sup>75</sup>. A chicken-or-egg problem also emerges: did Aristotle have the work already in progress at the time of Chaeronea or did Philip commission the work?<sup>76</sup> Greek interstate disputes about cities or territory could involve contesting current possession with claims about original ownership and thus the real right of possession. Historical research produced appeals to mythical precedents and heroes as founders. Antipater of Magnesia, student of Isocrates, historian, and bearer of Speusippus’ famous letter to Philip II c. 343 B.C., had engaged in such research at Athens on the rights to Olynthus, Messene, and Amphipolis. Arbitration of Greek border disputes even into Hellenistic and Roman times often manipulated historical research to support rival claims<sup>77</sup>. For Philodemus and the two medieval biographies such

74. Arist. *Eth. Nic.* 5, 7, 7 (1135a8-13): cf. *Rhet.* 1, 3, 9 (1359a25), 13 (1373b1-24); *Cael.* 279b7-9; Moraux 1951, p. 123; Gigon 1962, p. 39, n. 10, recycled in 1987, p. 541, where he posits Aristotle coining a new *staatsrechtlicher terminus technicus*; *LSJ*<sup>9</sup> s.v. *δικαίωμα*; cf. the “*Dikaionomata papyrus*” (*supra* n. 30), a collection of laws.

75. Moraux 1951, p. 123; Podlecki 1985, pp. 232, 245, n. 11, following Szegedy-Maszak 1981, pp. 79-80 with n. 182, who, however, like Philodemus does not recognize the *δικαιώματα* as a treatise.

76. Düring (1957, p. 111; cf. Pohlenz 1928, p. 55) would have the work in progress during Aristotle’s last years in Macedonia and before his return to Athens in 335; Philip commissioned the work: Szegedy-Maszak 1981, p. 148, n. 182; Gigon 1987, p. 541.

77. Antipater, *FGH* 69; the Greek concepts of possession and rightful ownership of territory are studied by Chaniotis 2004, pp. 187-201 with additional references and bibliography; cf. Chaniotis 1988, pp. 385-386 on Antipater as an example of a new breed of “Wander’-Historiker” (as opposed to “Burger’-Historiker”). His claim (2004, p. 201), however, that Philip commissioned Antipater to find historical evidence for Macedonian claims to Amphipolis is not supported by material in Speusippus’ letter, containing the only fragments of Antipater’s work. See also Pohlenz 1928, p. 55.

historical research was the essence of the *Δικαιώματα* and Philip made use of it<sup>78</sup>. If so, the implication is that the *Δικαιώματα* inspired Philip's settlement of Greek affairs after Chaeronea – perhaps too much to expect of a lost treatise in one book. Besides, the authentic title seems to be *Δικαιώματα πόλεμων*, not *πόλεων*.

A parallel for Aristotle's supposed active research in Philip's interests comes from the new list of victors in the Pythian Games, a work from the period 342-334 (?) jointly done with his nephew Callisthenes and available both in book form and from an inscription erected at Delphi<sup>79</sup>. Yet historical and cultural research of this sort hardly seems on the same plane as the policy concerns, which some would like to see in the *Δικαιώματα*. Philip's employment of Aristotle as Alexander's tutor 343-340 B.C. produced (despite numerous legends to the contrary) no discernible influence on Alexander's policies and inclinations, except perhaps instilling a love of Homer. As no indisputable fragments survive from the one-book *Ἀλέξανδρος ἢ ὑπὲρ ἀποίκων*, only rival conjectures are possible<sup>80</sup>. The *Δικαιώματα*'s probable date and a consideration of *all* the fragments do not support a connection with Philip.

Assessment and evaluation of the *Δικαιώματα* have hitherto stressed only the fragments concerning the Attic-Boeotian border and have ignored the evidence of Philo/Ammonius. Philodemus' assertion about collection of *dikaionmata*, part of an Epicurean polemic against Aristotle, merits no credence, as it demonstrates only an assumption that Aristotle engaged in the same type of "archeology" as an Antipater of Magnesia and other antiquarians in support of disputed territorial claims. Philodemus did not recognize the *Δικαιώματα* as an independent treatise and showed no familiarity with its contents. Thus any connection of Philip II with the treatise is solely based on the accuracy of the medieval biographies, which indicate that the work predated Philip's use of it and further display a favorable view of Philip's settlement of Greek affairs. Obviously a pro-Macedonian source underlies this view, but it need not be Aristotle, who did not – so far as known – actively engage in propaganda.

78. Düring (1957, p. 107) conjectures that the connection between the *Δικαιώματα* and Philip's arrangements of Greek affairs after Chaeronea in the *Vita Marciana* and the *Vita Latina* derives from Andronicus of Rhodes in the 40s B.C. (cf. *supra* text with n. 56), but he does not specify why this is so. In contrast, Moraux (1951, p. 123, n. 3) rejects the connection as a late invention.

79. D.L. 5, 26; Gigon frs. 410-414; An inscription at Delphi honoring Aristotle and Callisthenes for their work, *SIG*<sup>3</sup> 275, cannot be precisely dated, but must antedate Callisthenes' execution in 327 B.C. For discussions see Moraux 1951, pp. 125-126; Düring 1957, pp. 339-340; Gigon 1962, p. 29, n. 10, and 1987, p. 544; Chaniotis 1988, pp. 195-196, 214, 293-296.

80. D.L. 5, 22; Gigon (1987, pp. 301-302) posits the work as a dialogue between Aristotle and Alexander from the late 340s B.C. Moraux (1951, pp. 344-346), assuming that Plut. *Mor.* 329B is a fragment, dates it after Alexander's death in 323 B.C., when Aristotle sought to reassert his views of Greek-barbarian polarity, found in the *Politics* and contrary to Alexander's attempts to merge Greeks and Persians; accordingly, the work attempted to mollify the anti-Macedonian feelings at Athens, which eventually caused Aristotle's departure: Ael. *VH* 14, 1. Athenians always viewed Aristotle as an "outsider".

His very concern with political philosophy was enough to discredit him in Philodemus' eyes. Imagine the later vitriol, if he had ever participated in active policy-making or promotion of specific political positions. Indeed the work most probably postdates Philip's assassination in 336 B.C. (see *infra*).

The Δικαιώματα's fragments about the Attic-Boeotian border are also problematic. Although the fragment from Harpocration and the two from Stephan of Byzantium display antiquarian research about this much disputed border and the area of Oropos, those of Stephan of Byzantium, not cited as from the Δικαιώματα, could belong to some other Aristotelian work. Only Harpocration's fragment is securely tied to the treatise. It concerns the obscure site of Drymos, an Athenian border fort in 343 B.C. in the vicinity of the fort of Panactum on the north-central border and not near Oropos on the coast<sup>81</sup>. Indeed only assumption ties Harpocration's fragment to Philip II and the transfer of Oropos to Athens.

Precisely when Oropos returned to Athenian control is also disputed. Pausanias (1, 34, 1) explicitly attributes the transfer to Philip, but the transfer also involved the shrine of Amphiaraus. Epigraphical evidence suggests that the festival associated with the shrine was not incorporated into the Athenian religious calendar before 335 B.C., a year after Philip's assassination and the same year as Alexander's destruction of Thebes<sup>82</sup>. If the transfer really belongs to Alexander in 335 B.C. – and Pausanias can be considered a late source for fourth-century B.C. events – then any connection between the Δικαιώματα and Philip must be jettisoned. Further, the transfer of Oropos and the Amphiareium, a lucrative oracle<sup>83</sup> – whether by Philip or Alexander – aimed at punishment of Thebes and reflected Macedonian policy. It scarcely belonged to some grandiose scheme for the settlement of Greek affairs devised by Aristotle in the Δικαιώματα.

## 5

The quotation of Philo/Ammonius must now be given its due. Once unleashed from notions of its connection with Philip II and the transfer of Oropos to Athens in 338 B.C., the Δικαιώματα πόλεμων can now be understood on its own terms as a *Just Acts of Wars*<sup>84</sup>. Key is finding a theme to unify Aristotle's discussion of the Attic-Boeotian border (Harpocration) and the Italian expedition of Alexander of

81. See Hesychius s.v. Δρυμός, citing Dem. 19, 326; on the probable location, not discussed by Munn 1993, pp. 6–11, see Milchhöfer 1905, cols. 1745–46. Strabo (10, 1, 4) knew a Drymos in Euboea, but not on the Boeotian-Attic border.

82. Sources on the transfer of Oropos are most fully listed in Ellis 1976, p. 295, n. 84; Worthington (2008, p. 156) offers nothing new; for Philip as the instigator of the transfer, see Habicht 1997, p. 11; *contra*, stressing the complex epigraphical evidence, Knoepfler 1993.

83. See Petropoulou 1981.

84. Gigon (1987, p. 542) conceded that Philo/Ammonius' quotation concerning Alexander of Epirus could not be combined with the supposed connection to Philip II's settlement of Greece affairs found in the medieval biographies and chose to ignore Philo/Ammonius' fragment. But he remained a prisoner of both the fixation that the treatise emphasized cities and the assumption that the title was Δικαιώματα πόλεων.

Epirus (Philo/Ammonius). Whether the date of Oropos' transfer to Athens was 338 B.C. or 335 B.C. is irrelevant.

A *terminus post quem* for the Δικαιώματα's composition is Alexander of Epirus' expedition to Italy. A date of publication cannot be determined<sup>85</sup>. Aristotle dates Alexander's departure for Italy to about the same time as Alexander the Great's crossing into Asia – spring 334 B.C. Contemporary evidence must be preferred to later views<sup>86</sup>. Alexander died at the Battle of Pandosia (winter 331/0)<sup>87</sup>. Thus the Δικαιώματα cannot antedate 334-330 B.C. Aristotle's citation of the Epirote's Italian campaign, which at first glance may seem peculiar, soon becomes less so in light of the Stagirite's two works on Archytas of Tarentum (c. 427-347 B.C.), the Pythagorean philosopher, mathematician, and seven times *strategos* of his city<sup>88</sup>. Aristotle had some interest in the affairs of Magna Graecia.

The Tarentines, according to Aristotle, summoned Alexander for a war against the barbarians, specified in other sources as Messapians and Lucanians<sup>89</sup>. The Tarentines' request fits a pattern of Western Greeks' seeking generals from Sparta in times of distress, a practice begun with the dispatch of Gylippus to Syracuse in 414 B.C. and most recently seen in King Archidamus III, dead fighting in Italy in 338 B.C. Tarentum was, after all, a Spartan colony. But a Spartan leader was unavailable in the period 338-335 B.C., so the plea went to Alexander<sup>90</sup>. Alexander's own motives in accepting the offer are obscure. Later traditions posit rivalry with his nephew Alexander the Great: the one would conquer the East and the other the West; the ferocious barbarians of Italy were a potential threat even to kings in mainland Greece. As Alexander's relations with the Tarentines eventually soured,

85. Cf. Gigon 1987, p. 542: all of Aristotle's writings except the major treatises were first published after his death (322 B.C.).

86. Ammonius 334 (= Arist. fr. 407, 1 Gigon = fr. 614 Rose); Arr. *Anab.* 1, 11, 3; Diod. 17, 17, 1; Berve 1926, no. 38 Ἀλέξανδρος, pp. 19-20; cf. Gell. 17, 21, 33: the Epirote's expedition is later than Alexander's to Asia, but the interval of time between them is unclear. Urso (1998, pp. 27-28) argues for 333 B.C., based on the chronicle of *P. Oxy.* 12 (= *FGrH* 255, 6), dating the Epirote's expedition to 333, the year of the Battle of Issus, and a reference to Alexander of Epirus in Italy in that year at Arr. *Anab.* 3, 6, 7, but Arrian does not indicate when Alexander arrived; Lomas (1993, p. 42) without argument prefers 333 B.C. Livy's date of 341 B.C. (8, 3, 6), apparently accepted by Gigon (1987, p. 542), is obviously wrong, part of his chronological failings for the era of the Samnite wars, and seems to confuse the date of Alexander's accession to the Epirote throne, 342/1 B.C. (Diod. 16, 72, 1; Just. 8, 6, 4-7), with the date of his Italian campaign, although Alexander's accession may actually be before 350 B.C. See Errington 1975 and on Livy, Oakley 1998, p. 406.

87. Aeschin. 3, 242; erroneously dated to 327 at Liv. 8, 24, 1: Oakley 1998, pp. 406, 664-665.

88. D.L. 5, 25; Gigon p. 407 with fr. 152 (Περὶ τῆς Ἀρχυτείου φιλοσοφίας), 153-154 (Τὰ ἐκ τῶν Τιμαίου καὶ τῶν Ἀρχυτείων); on Archytas see Huffman 2005. Cf. Arist. *Pol.* 5, 2, 7 (1303a3-7) and 6, 3, 5 (1320b9-14) on the constitution of Tarentum.

89. Just. 12, 2, 1; 18, 1, 2; 23, 1, 13-14; Liv. 8, 24, 2; Strabo 6, 3, 4.

90. On the pattern, a factor contributing to the legend of Spartan drillmasters, see Wheeler 1983, pp. 13-14, and on foreign generals at Tarentum see the detailed study of Urso 1998. Oakley (1998, p. 666) implies that the Tarentines' request went to Alexander in 338 B.C. immediately after Archidamus III's death; Urso (1998, p. 24) puts it in 335 B.C.

the Epirote may have had plans for an Italian or even a western empire beyond Italy, but whether that was his aim from the beginning or a later development is unclear<sup>91</sup>.

In any case, Alexander came to Italy not just to aid Tarentum, which acted as *hegemon* of an Italiote League (modern term) of Greek cities in Magna Graecia, dating from perhaps c.500 B.C. The sanctuary of Hera Lacina at Heraclea, where the League's festival occurred, also housed its treasury and meeting place<sup>92</sup>. Some sources explicitly state Alexander's purpose as defense of *all* the Greek cities<sup>93</sup>. Invitations to foreign generals probably represented a decision of the League. The legal status of such "generals by invitation" is obscure. For some they appear as mercenary adventurers, but others believe they served as the *prostates* of the Italiote League<sup>94</sup>. The two views need not be contradictory. Hence a striking parallel: an Epirote army in Italy with its king as the head of a league of Greek cities to defend them against barbarians; simultaneously, Alexander, the Macedonian king but also in theory the *prostates* of a league of mainland Greek cities, marched into Asia against barbarians.

Herein lies the true character of the *Δικαιώματα πόλεμων*, a one-volume treatise on just war. Defending Greeks against barbarians was a just cause of war, as was conquering barbarians in Asia, who had caused injury to Greeks. The justness of war against barbarians, worthy to be slaves by nature, and wars of self-defense were also mentioned in the *Politics*<sup>95</sup>. Aristotle must have treated the campaign of Alexander of Epirus in some detail, as the quotation from Philo/Ammonius demonstrates: specific numbers of warships and transport vessels are given – not a detail normally relevant to a passing reference or allusion. Just acts of wars also included restoring territory to its rightful owner. Oropos rightly was returned to Athenian control in 338 or 335, since it was originally Attic. Thebes had unjustly seized it in 402 B.C. and again in 366 B.C.<sup>96</sup>. The fragment in Harpocration and perhaps the two references in Stephan of Byzantium illustrate Aristotle's research on the Attic-Boeotian border. Rather than a "policy brief" for Philip (or Alexander), Aristotle in a theoretical treatise offered a justification *ex post facto*. Further comment about the work's contents would only be speculative, although the interests of Theophrastus, Heracleides of Pontus, and Demetrius of Phalerum suggest that more aspects of war and interstate relations were discussed.

91. Just. 12, 2, 1-2; 18, 1, 2; 23, 1, 3-16, esp. 13-14; plans for empire: Oakley 1998, p. 667; Urso 1998, pp. 25-31.

92. Strabo 6, 3, 4; Lomas 1993, pp. 32-33 with bibliography; Urso 1998, pp. 26-27.

93. Just. 23, 1, 15; *FGrH* 255, 6; Urso 1998, p. 24.

94. Cf. Lomas 1993, p. 41 and Urso 1998, p. 24 with n. 6, 26-27.

95. Arist., *Pol.* 1, 2, 14-18 (1254b27-1255a32), 23 (1255b38-40); 7, 2, 9-10 (1324b37-1325a13), 14, 14 (1333b39-1334a3).

96. Diod. 14, 17, 1-3; 15, 76, 1.



The full text of the *Δικαιώματα πόλεμων* perhaps survived into the first century B.C. (Varro, Didymus) or even to the second century (Harpocration, Philo). Subsequently only fragments and a title preserved its memory. The question remains of how to explain Grotius' awareness of the work. Printed editions of Harpocration and Diogenes Laertius were available before 1625, but neither gives the title *Δικαιώματα* a supplement. As noted, the *vita Latina* of Aristotle, available in numerous manuscripts and a printed edition (1482), only alludes to the work without citing a title, and the *vita Menagiana*, which listed the work as *Δικαιώματα πόλεων*, was yet unknown and published only in 1861. Thus only Eustathius and Ammonius remain possibilities. Grotius frequently cited Eustathius' Homeric commentaries in the *JBP*, but if he ever saw the erroneous citation of *Δικαιώματα πόλεων* at *Il.* 7, 341, he ignored it<sup>97</sup>. Exposure to Ammonius must be sought, but a note on why Grotius would be interested in citing such an obscure work is also relevant.

Like other humanists of his time, Grotius refrained from fully acknowledging his intellectual debts to others, especially contemporaries or near contemporaries. At *JBP*, Proleg. 38, Grotius noted by name only two recent writers on international law: Balthazar Ayala (1548-84), a judicial administrator in the Spanish Netherlands of that other Philip II (the Hapsburg) and author of a *De jure et officiis bellicis et disciplina militari* (Douai 1582), dedicated to Alexander Farnese, then governor of the Spanish Netherlands; and Alberto Gentili (1552-1608), an Oxford law professor and author of various juristic works on war, not least the *De iure belli* (London 1588)<sup>98</sup>. Grotius had read Gentili in prison (1618-19) and in 1623 he consulted the works of Ayala and Gentili, while writing the *JBP* in Paris. In fact Grotius, copying numerous erroneous citations from Gentili, modeled the *JBP*'s Prolegomena in part on the initial chapter of Gentili's *De jure belli*<sup>99</sup>. His debts to various sixteenth-century Spanish writers of the so-called "Second Scholastic" and other Late Medieval or Early Modern jurists are obfuscated through his bountiful citation of Classical sources and the relative rarity of references to later authors<sup>100</sup>.

97. A list of Grotius' citations of Eustathius in the 1646 edition at Kelsey 1925, p. 905.

98. Both texts are available in the original Latin editions and English translations in the *Classics of International Law* series: Ayala 1912; Gentili 1933; another work of Gentili, *De armis Romanis et iniustitia bellica Romanorum* (1599), has just appeared in a new critical edition with English translation; a companion volume of essays assesses Gentili's significance: Kingsbury/Straumann 2010(a-b). Ayala's text demonstrates that in the sixteenth century a distinction between *ius belli* as laws of war in an international sense had not yet been distinguished from rules of internal army discipline ("articles of war"). A single work could discuss both.

99. Gentili 1933, p. 3 (Book 1, ch. 1); Basdevant 1904, pp. 141, 143, 221, n. 1; Haggenmacher 1990, pp. 133-176 (a comparative study of Gentili and Grotius), esp. 149-151 on Grotius' erroneous citations from Gentili.

100. See Feenstra 1984, pp. 65-81; Haggenmacher 1990, pp. 147-148; statistics on Grotius' citation of sources in Gizewski 1993, pp. 340-341; Bederman 1995/96, pp. 4-5.

Further, despite Grotius' prolific correspondence with the humanists of his day, any possible influence of other great intellectuals on his work is not evident in his letters. Justus Lipsius (1547-1606), the Neostoic and friend of Grotius' father, whose work on Polybius had influenced the Dutch army reforms of Maurice of Nassau, left his chair at University of Leiden in 1591 and did not instruct Grotius, although the two occasionally corresponded. Scaliger, the successor to Lipsius' chair in 1593, became Grotius' teacher. Lipsius' *De militia Romana* sat on the shelf in Grotius' library, even if the temperament of the Tacitean Lipsius differed considerably from the Scaliger-trained and Ciceronian Grotius<sup>101</sup>. Similarly, another friend of Grotius' father, Simon Stevin (1548/49-1620), the leading mathematician and military engineer of his day in the Netherlands, hardly inspired an alleged Euclidean structure in Grotius' work. Stevin only appears once in Grotius' correspondence, a note on his political efforts in Grotius' behalf after his arrest (29 August 1618)<sup>102</sup>. Reference to the *Δικαιώματα πόλεμων* in the *JBP* (so far as known) came not through Grotius' correspondence.

If Grotius, perhaps the "best read" European of his time, veiled (like other writers of his day) intellectual debts but not his connections with the prominently learned, as a publicist he was not above writing propaganda. In his *De antiquitate Reipublicae Batavae* (Leiden 1610), published the year after the treaty with Spain establishing Dutch independence, Grotius flattered the nascent republic: the Dutch were actually descendants of the ancient Batavi, prominent in Tacitus and other ancient sources. A Batavian-Dutch connection was Grotius' invention<sup>103</sup>. Grotius also took pride in learned displays of citations from obscure or lost works. At *JBP*, *Proleg.* 30 he echoed the title of Cicero's lost *De iure civili in artem redigendo* on the failure (hitherto) to reduce law to an *ars* (τέχνη). Part of his purpose in the *JBP* was to derive international law from evidence of historical practices rather than appeals to *ius naturale*: he claimed success, where others had failed<sup>104</sup>. Citation of Aristotle's lost *Δικαιώματα πόλεμων* fit Grotius' pedantic tendencies and permitted him to trump all previous writers (even the learned Gentili) in knowing a lost work of the great Aristotle unknown to contemporary juristic authors and even the medieval Schoolmen and commentators on Roman law<sup>105</sup>.

101. See Eyffinger 1998; Brouwer 2008, p. 10; Grafton 1993, pp. 372-373; Molhuysen 1943, p. 51, no. 49 (Lipsius). He also owned a copy of Peter Scriverius' 1607 edition of Vegetius *De re militari*: Molhuysen, p. 52, no. 53. Eighty citations of Cicero appear in the 1625 edition of the *JBP* – more than any other author: Bederman 1995/96, p. 5.

102. Roelofsens 1990, p. 99 with n. 17; Haggemacher 1990, p. 162, n. 104.

103. Roelofsens 1990, p. 101; De Michelis 1967, p. 103; "best read": Bederman 1995/96, p. 6.

104. "Artis formam ei [scil. legi] imponere multi antehac destinarunt: perfecit nemo"; cf. Cic. *ap.* Gell. 1, 22, 7: *M. autem Cicero, in libro qui inscriptus est De iure civili in artem redigendo*; cf. *De or.* 1, 186-88; Straumann 2007, pp. 90-91. Kelsey's translation (1925, p. 21) misunderstands Grotius' point about making law an *ars*. Grotius had a copy of Gellius in his library: Molhuysen 1943, p. 58, no. 188.

105. Grotius' alleged hostility to Aristotle (e.g. *JBP*, *Proleg.* 42-44) has been exaggerated: Haggemacher, 1990, p. 147 with n. 52; Basdavant 1904, p. 219.

As Ammonius is an unusual source for a reference to a work on just war, so Grotius' access to it may have been quite incidental. At Leiden Grotius studied Greek with Bonaventura Vulcanius (de Smet) (1538-1614), who besides editing Greek texts was fond of playing cards and dice – perhaps scandalous at a Calvinist-inspired university<sup>106</sup>. In 1600 Vulcanius published at Leiden a major edition of Greek grammarians, combining several different works, his *Thesaurus utriusque linguae*. Scaliger had helped with the project and (although not attested) perhaps Grotius himself, who completed his studies at Leiden in 1597, did so. The work included Ammonius<sup>107</sup>. Vulcanius sent Grotius a copy of the new work, a gift for which Grotius thanked his former professor in a gracious letter of 1600<sup>108</sup>. An inventory of Grotius' library in 1620, confiscated in 1618 when he was imprisoned, shows Vulcanius' *Thesaurus* among his collection. Most important for present purposes, Vulcanius printed the title of Aristotle's work at Ammonius 334 as Δικαιώματα πόλεμων<sup>109</sup>.

Yet Grotius wrote the *JBP* in Paris in the early 1620s as a political exile no longer in possession of his personal library. Grotius was known to have had a prodigious memory, in which some scholars believe that he trusted too much: hence the source of erroneous citations in the *JBP*. However that may be, Grotius did not err in reproducing Aristotle's title from Vulcanius' edition of Ammonius; his πόλεμων was and is the correct reading. Nor (if he knew it) did he accept Eustathius' Δικαιώματα πόλεων. Besides, Grotius did not lack access to books in Paris, where he had available (at a ten-minute walk from his residence) the famous collection of Jacques-Auguste de Thou (1553-1617), a friend of Scaliger and a notable historian, bibliophile, and statesman, who had amassed one of the greatest personal libraries of the age<sup>110</sup>.

Further details escape commentary. Grotius remained rather close-mouthed about the *JBP* during its composition and no references to Aristotle, Ammonius, or the Δικαιώματα πόλεμων appear in his correspondence of 1618-25<sup>111</sup>. As argued here, the so-called “father of international law” correctly surmised that the Stagirite's work was a lost treatise on war and international law. Indeed Aristotle

106. De Michelis 1967, pp. 66-67; Grafton 1993, pp. 373, 376.

107. The full title: *Thesaurus utriusque linguae, hoc est Philoxeni, aliorumque veterum authorum glossaria latino-graeca & graeco-latina. Isidori Glossae latinae. Veteres grammatici latini & graeci qui de proprietate & differentis vocabulorum utriusque linguae scripserunt*, Nickau 1966, p. LXXVII.

108. Molhuysen 1928, p. 12 (Ep. 14): *Glossarii me tui sursum versum rapit admiratio, pro quo maximas tibi debeo gratias, vel publico nomine, quod edideris, vel privato, quod eo me munere donaveris. Purus putus Thesaurus est septimo Vulcani subiectus examini, ut aurum solet. Quot in eo sordes purgaveris, non citius ego dixerim, quam tu reipsa praestitisti. Plura non dico: Alieni operis ego admirator, non censor esse soleo.*

109. Molhuysen 1943, p. 51, no. 27. On 8 February 2011 Professor Jenny Strauss Clay confirmed the reading πόλεμων from a copy of the 1600 edition of Vulcanius' *Thesaurus* in the University of Virginia Library. My heartfelt thanks to Professor Clay for her extreme kindness and generosity with her time.

110. Haggénmacher 1990, pp. 148-149; Basdavant 1904, pp. 141-142; Reeves 1925, p. 19.

111. Molhuysen 1936.

would deserve credit for writing the first monograph on just war, however modest in a one-volume format it may have been.

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### Abstract

Hugo Grotius' citation of Aristotle's lost Δικαιώματα πόλεμων (*Just Acts of Wars*) in the *Prolegomena* to his *De jure belli ac pacis* (1625) correctly gave the title with πόλεμων rather than πόλεων. This work is shown to have been a discussion of just war written c. 330 B.C. and not a work on settling boundary disputes between Greek cities commissioned by Philip II of Macedon after Chaeronea (338 B.C.). The pedantic Grotius, fond of citing obscure works, knew the title through the edition of Greek grammarians (1600) prepared by his professor of Greek at Leiden, Bonaventura Vulcanius.