

# Mare Liberum vs. Mare Clausum: Grotius, Freitas, and Selden's debate on dominion over the seas.

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## **Mare Liberum vs. Mare Clausum : Grotius, Freitas, and Selden's Debate on Dominion over the Seas**

Monica Brito Vieira

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### Abstract

Sixteen years after the publication of Grotius's *Mare Liberum* (1609), Serafim de Freitas, a Portuguese friar, published a reply to Grotius's attack upon the foundations of the Iberian overseas empire. Freitas's vindication of the Portuguese dominion over the high seas has, however, been consigned to obscurity, as the Anglophone literature concentrated on John Selden's *Mare Clausum* (1636). This neglect is unjustified. Not only is Freitas's treatise an earlier and more systematic response to Grotius, but it also anticipates many of the arguments later deployed by Selden. The purpose of this article is thus to rescue Freitas's arguments from oblivion.

## *Mare Liberum* vs. *Mare Clausum*: Grotius, Freitas, and Selden's Debate on Dominion over the Seas

Mónica Brito Vieira

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Why would you withhold water from my lips?  
The use of water is a common right.  
Nor sun nor air nor water's gentle flow  
Are private things by natural design.  
The gifts I seek are public property.

Ovid

When in 1603 the Dutch East India Company seized a Portuguese carack as a prize, this was not in itself a notable episode in the annals of colonial history. With the growing efforts of the Dutch to challenge the monopoly of the Portuguese in the use of the sea route to the East Indies, such incidents were beginning to become commonplace. What marked out this particular incident, however, was the fact that it prompted the publication, in 1609, of an anonymous treatise under the suggestive title of *Mare Liberum*.<sup>1</sup> The author behind the work was Hugo Grotius, by that time an enthusiastic supporter of the idea of an aristocratic and imperialist Dutch republic.<sup>2</sup>

I would like to thank Professor Quentin Skinner, from whose advice this article greatly profited.

<sup>1</sup> In April of that same year plenipotentiaries representing Philip III of Spain (II of Portugal) concluded a Twelve Year Truce with the United Provinces. The East India Company was thereby granted freedom to trade in the Iberian overseas possessions, the right to navigate in the adjacent seas remaining, however, dependent on commission from the Spanish king. The Portuguese magistrates, who had been prevented from taking part in the negotiations, were shocked by the concessions made by the Spaniards.

<sup>2</sup> Except for chapter 12, which was published in 1609 as *Mare Liberum* at the express request of the Zealand Chamber of the East India Company, Grotius's treatise remained in manuscript. Only in 1864 was it discovered and integrally published under the title of *De iure praedae*



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[+1 \(410\) 516-6989](tel:+14105166989)  
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