



MAX PLANCK INSTITUTE
FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW

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Unpuzzling Customary International Law (CIL): the “Invention” of Customary Law of Nations from Francisco de Vitoria to Emer de Vattel
MPIL Agora
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In this presentation, I will provide a short overview of the main arguments of my PhD thesis. Its aim is to trace an intellectual history of the concept of customary international law (CIL) within the natural law and *ius gentium* tradition, by looking at the different argumentative strategies that led to its formation. Across a timespan of two centuries, I will make the claim that a strong, foundational relationship exists between the normative content of natural law and the emergence of customary law of nations as a distinctive concept of the international legal discourse, in ways that are still recognizable today.

The work is divided into two parts. The first deals with the emergence of the concept of customary law of nations in the early modern 16th century legal tradition, by juxtaposing and contrasting two different natural law doctrines, the theological one of the School of Salamanca and the rhetorical approach towards *ius gentium* championed by Alberico Gentili. The second part takes into account the modern legal tradition from Hugo Grotius, via Samuel Pufendorf and Christian Wolff, to Emer de Vattel, by focusing on the relationship between custom and the systematization of natural law into a body of rational principles.

Through such an analysis, it is possible to detect two fundamental strategies leading to the “invention” of customary law of nations. Either the normative content of custom is invented by reference to universally applicable (preferably theological) principles, or the invention of custom coincides with an appeal to the European literary-historical past in order to extract principles compliant with the dictates of right reason. From this perspective, the “invention” of customary law of nations can be, therefore, analyzed through the lens of five major disciplines (and their respective development between the 16th and 18th century) which significantly contributed to its emergence as a concept: theology, rhetoric, *historia literaria*, philosophy and official historiography.



Francesca Iurlaro is a PhD researcher at the Law Department of the European University Institute in Florence. She holds a MA in History of Philosophy (University of Macerata) and a LLM in Comparative, European and International Laws (European University Institute). Her research interests include international legal thought, history of political thought, law and literature, food ethics, animal rights. In 2012 she was awarded the Alberico Gentili Prize for her translation of and introduction to Alberico Gentili's *Lectionis Virgilianae Variarum Liber*, a less-known commentary of Vergil's *Eclogues* written by the famous jurist in 1603.

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