

primarysourcedocument

Concerning the Certainty of Right in General

Concerning the Certainty of Right in General

“Concerning the Certainty of Right in General”

By Hugo Grotius

1625

[Grotius, Hugo. “Preliminary Discourse: Concerning the Certainty of Right in General.” *The Rights of War and Peace: Book 1*. 1625. Edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac. Indianapolis, Ind.: Liberty Fund, 2005. Vol. 1. Sections 17–18, 39–42. <http://oll.libertyfund.org/titles/grotius-the-rights-of-war-and-peace-2005-ed-vol-1-book-i>. Used with the permission of the Online Library of Liberty.]

XVII. Therefore the Saying, not of Carneades only, but of others,

Interest, that Spring of Just and Right.^[1] [Translation by] Creech

if we speak accurately, is not true; for the Mother of Natural Law is human Nature itself, which, though even the Necessity of our Circumstances should not require it, would of itself create in us a mutual Desire of Society: And the Mother of Civil Law is that very Obligation which arises from Consent, which deriving its Force from the Law of Nature, Nature may be called as it were, the Great Grandmother of this Law also. But to the Law of Nature Profit is annexed: For the Author of Nature was pleased, that every Man in particular should be weak of himself, and in Want of many Things necessary for living commodiously, to the End we might more eagerly affect Society: Whereas of the Civil Law Profit was the Occasion; for that entering into Society, or that Subjection which we spoke of, began first for the Sake of some Advantage. And besides, those who prescribe Laws to others, usually have, or ought to have, Regard to some Profit therein.

XVIII. But as the Laws of each State respect the Benefit of that State; so amongst all or most States there might be, and in Fact there are, some Laws agreed on by common Consent, which respect the Advantage not of one Body in particular, but of all in general. And this is what is called the Law of Nations, when used in Distinction to the Law of Nature. This Part of Law Carneades omitted, in the Division he made of all Law into Natural and Civil of each People or State; when notwithstanding, since he was to treat of the Law which is between Nations (for he added a Discourse concerning Wars and Things got by War) he ought by all means to have mentioned this Law.

. . .

XXXIX. What was most wanting in all those, viz. Illustrations from History, the most Learned Faber^[2] has undertaken to supply in some Chapters of his *Semestria*, but no farther than served his Purpose, and only by alleging some Authorities. The same has been done more largely, and that by applying a

Multitude of Examples to some general Maxims laid down, by Balthazar Ayala,[\[3\]](#) and still more largely by Albericus Gentilis,[\[4\]](#) whose Labour, as I know it may be serviceable to others, and confess it has been to me, so what may be faulty in his Style, in Method, in distinguishing of Questions, and the several Kinds of Right, I leave to the Reader's Judgment. I shall only say this, that in the Decision of Controversies, he is often wont to follow either a few Examples that are not always to be approved of, or even the Authority of modern Lawyers in their Answers, not a few of which are accommodated to the Interest of those that consult them, and not formed by the invariable Rules of Equity and Justice. The Causes, from whence a War is denominated just or unjust, Ayala has not so much as touched upon: Gentilis has indeed described after his Manner some of the general Heads; but neither has he touched upon many famous Questions, which turn upon Cases that are very common.

XL. We have been careful that nothing of this Kind be passed over in Silence, having likewise shewn the very Foundations upon which we build our Decisions, so that it might be easy to determine any Question that may happen to be omitted by us. It remains now, that I briefly declare with what Assistance, and with what Care I undertook this Work: My first Care was, to refer the Proofs of those Things that belong to the Law of Nature to some such certain Notions, as none can deny, without doing Violence to his Judgment. For the Principles of that Law, if you rightly consider, are manifest and self-evident, almost after the same Manner as those Things are that we perceive with our outward Senses, which do not deceive us, if the Organs are rightly disposed, and if other Things necessary are not wanting. Therefore Euripides in his *Phoenissae* makes Polynices, whose Cause he would have to be represented manifestly just, deliver himself thus:[\[5\]](#)

I speak not Things hard to be understood,
But such as, founded on the Rules of Good
And Just,[\[6\]](#) are known alike to Learn'd and Rude.

And he immediately adds the Judgment of the Chorus, (which consisted of Women and those too Barbarians) approving what he said.

XLI. I have likewise, towards the Proof of this Law, made Use of the Testimonies[\[7\]](#) of Philosophers, Historians, Poets, and in the last Place, Orators; not as if they were to be implicitly believed; for it is usual with them to accommodate themselves to the Prejudices of their Sect, the Nature of their Subject, and the Interest of their Cause: But that when many Men of different Times and Places unanimously affirm the same Thing for Truth, this ought to be ascribed to a general Cause; which in the Questions treated of by us, can be no other than either a just Inference drawn from the Principles of Nature, or an universal Consent. The former shews the Law of Nature, the other the Law of Nations. The Difference between which is not to be understood from the Testimonies themselves (for the Law of Nature and of Nations are Words used every where promiscuously by Writers) but from the Quality of the Subject. For that which cannot be deduced from certain Principles by just Consequences, and yet appears to be everywhere observed, must owe its rise to a free and arbitrary Will.

XLII. Therefore these two I have very carefully endeavoured always to distinguish no less from one another, than from the Civil Law: And even in the Law of Nations, I have made a Distinction between that which is truly and in every Respect lawful and that which only produces a certain external Effect after the Manner of that primitive Law; so that, for Instance, it may be lawful to resist it, or that it even ought to be everywhere defended with the public Force, for the Sake of some Advantage that attends it, or that some great Inconveniences may be avoided. Which Observation, how necessary it is in many Respects, will appear in the following Treatise. We have been no less careful in distinguishing Things belonging to Right properly and strictly so called, whence arises the Obligation of making Restitution, from those which are only said to belong to it, because that the acting otherwise is repugnant to some other Dictate of right Reason: Which Distinction we have already touched upon.

[\[1\]](#) "Atque ipsa Utilitas Justi propè mater, et Aequi." (Horace, Book 1,. Satire [or Sermon] 3, Verse 98). Upon which Place, an ancient Commentator on Horace, whether Acron or any other Grammarian, makes

the following Remark. "The Poet here opposes the Tenets of the Stoicks; for his Design is to prove that Justice is not Natural, but derived from Interest." See what St. Augustin says against this Opinion, *De Doctrina Christiana*, Book 3, chapter 14. [Grotius's footnote.]

[2] Peter du Faur of St. Jori, Counsellor in the Grand Council, afterwards Master of Requests, and at last First President of the Parliament of Toulouse. He was Scholar to Cujas. . . . [Footnote of editor Jean Barbeyrac.]

[3] He was a Native of Antwerp of Spanish Extraction. His Treatise, *De Jure & Officiis Bellicis* [*The Law and Duties of War*], was printed in that City in 1597, in 8 volumes. . . . [Footnote of editor Jean Barbeyrac.]

[4] This Author has written *De Jure Belli* [*The Law of War*]. [Footnote of editor Jean Barbeyrac.]

[5] Ταῦτ' ἀνθέκαστα, μάτερ, οὐχὶ περιπλοκάς / Λόγων ἀθροίσας εἶπον, ἀλλὰ καὶ σοφοῖς / Καὶ τοῖσι φαύλοις ἔνδιχ', ὥς ἐμοὶ δοκεῖ. (Vv. 497-99).

[6] The same Poet introduces Hermione speaking thus to Andromache. "Οὐ βαρβάρων νόμοισιν οἰκοῦμεν πόλιν" ("We do not govern our State by the Laws of Barbarians.") To which Andromache replies: "Κάκεϊ τὰ γ' αἰσχρὰ κἄνθάδ' αἰσχύνην φέρει" ("What is dishonourable or dishonest among them, bears the same Character also among us"). (*Andromache*, Vv. 242, 243). [Grotius's footnote.]

[7] Why should they not be thus employed? The Emperor Alexander Severus read every Day Cicero's Books *De Republica*, and his Treatise *Of Offices* [*De Officiis*]. [Grotius's footnote.]

Original Author Sort: Grotius, Hugo

Publication Date: 11625.00.00.##

Topic: [The Early Modern Liberal Roots of Natural Law](#)

Subtopic: [Natural Law and the Law of Nations](#)

Source URL: <http://nlncrac.org/earlymodern/law-of-nations/documents/rights-of-war-and-peace>