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# On the Law of War and Peace

## *De Jure Belli ac Pacis*

by Hugo Grotius

Book I

### CHAPTER 1: On War and Right

*Of War — Definition of War — Right, of Governors and of the governed, and of equals — Right as a Quality divided into Faculty and Fitness — Faculty denoting Power, Property, and Credit — Divided into Private and Superior — Right as a Rule, natural and voluntary — Law of Nature divided — Proofs of the Law of Nature — Division of Rights into human and divine — Human explained — Divine stated — Mosaic Law not binding upon Christians.*

I. THE disputes arising among those who are held together by no common bond of civil laws to decide their dissensions, like the ancient Patriarchs, who formed no national community, or the numerous, unconnected communities, whether under the direction of individuals, or kings, or persons invested with Sovereign power, as the leading men in an aristocracy, and the body of the people in a republican government; the disputes, arising among any of these, all bear a relation to the circumstances of war or peace. But

because war is undertaken for the sake of peace, and there is no dispute, which may not give rise to war, it will be proper to treat all such quarrels, as commonly happen, between nations, as an article in the rights of war: and then war itself will lead us to peace, as to its proper end.

II. In treating of the rights of war, the first point, that we have to consider, is, what is war, which is the subject of our inquiry, and what is the right, which we seek to establish. Cicero styled war a contention by force. But the practice has prevailed to indicate by that name, not an immediate action, but a state of affairs; so that war is the state of contending parties, considered as such. This definition, by its general extent, comprises those wars of every description, that will form the subject of the present treatise. Nor are single combats excluded from this definition. For, as they

are in reality more ancient than public wars, and undoubtedly, of the same nature, they may therefore properly be comprehended under one and the same name. This agrees very well with the true derivation of the word. For the Latin word, *Bellum*, WAR, comes from the old word, *Duellum*, a DUEL, as *Bonus* from *Duonus*, and *Bis* from *Duis*. Now *Duellum* was derived from *Duo*; and thereby implied a difference between two persons, in the same sense as we term peace, UNITY, from *Unitas*, for a contrary reason. So the

Greek word, πολέμος, commonly used to signify war, expresses in its original, an idea of multitude. The ancient Greeks likewise called it λυη, which imports a DISUNION of minds; just as by the term δυη, they meant the DISSOLUTION of the parts of the body. Nor does the use of the word, WAR, contradict this larger acceptation of it. For though some times it is only applied to the quarrels of states, yet that is no objection, as it is evident that a general name is often applied to some particular object, entitled to peculiar distinction. Justice is not included in the definition of war, because the very point to be decided is, whether any war be just, and what war may be so called. Therefore we must make a distinction between war itself, and the justice of it.

**III.** As the Rights of War is the title, by which this treatise is distinguished, the first inquiry, as it has been already observed, is, whether any war be just, and, in the next place, what constitutes the justice of that war. For, in this place, right signifies nothing more than what is just, and that, more in a negative than a positive sense; so that RIGHT is that, which is not unjust. Now any thing is unjust, which is repugnant to the nature of society, established among rational creatures. Thus for instance, to deprive another of what belongs to him, merely for one's own advantage, is

repugnant to the law of nature, as Cicero observes in the fifth Chapter of his third book of offices; and, by way of proof, he says that, if the practice were general, all society and intercourse among men must be overturned. Florentinus, the Lawyer, maintains that is impious for one man to form designs against another, as nature has established a degree of kindred amongst us. On this subject, Seneca remarks that, as all the members of the human body agree among themselves, because the preservation of each conduces to the welfare of the whole, so men should forbear from mutual injuries, as they were born for society, which cannot subsist unless all the parts of it are defended by mutual forbearance and good will. But as there is one kind of social tie founded upon an equality, for instance, among brothers, citizens, friends, allies, and another on pre-eminence, as Aristotle styles it, subsisting between parents and children, masters and servants, sovereigns and subjects, God and men. So justice takes place either amongst equals, or between the governing and the governed parties, notwithstanding their difference of rank. The former of these, if I am not mistaken, may be called the right of equality, and the latter the right of superiority.

**IV.** There is another signification of the word RIGHT, different from this, but yet arising from it, which relates directly to the person. In which sense, RIGHT is a moral quality annexed to the person, justly entitling him to possess some particular privilege, or to perform some particular act. This right is annexed to the person, although it sometimes follows the things, as the services of lands, which are called REAL RIGHTS, in opposition to those merely PERSONAL. Not because these rights are not annexed to persons, but the distinction is made, because they belong to the persons only who possess some particular things. This moral quality, when perfect is called a FACULTY; when imperfect, an APTITUDE. The former answers to the ACT, and the latter to the POWER, when we speak of natural things.

**V.** Civilians call a faculty that Right, which every man has to his own; but we shall hereafter, taking it in its strict and proper sense, call it a right. This right comprehends the power, that we have over ourselves, which is called liberty, and the power, that we have over others, as that of a father over his children, and of a master over his slaves. It likewise comprehends property, which is either complete or imperfect; of the latter kind is the use or possession of any thing without the property, or power of alienating it, or pledges detained by the creditors till

payment be made. There is a third signification which implies the power of demanding what is due, to which the obligation upon the party indebted, to discharge what is owing, corresponds.

**VI.** Right, strictly taken, is again twofold, the one PRIVATE, established for the advantage of each individual, the other, SUPERIOR, as involving the claims, which the state has upon individuals, and their property, for the public good. Thus the Regal authority is above that of a father and a master, and the Sovereign has a greater right over the property of his subjects, where the public good is concerned, than the owners themselves have. And when the exigencies of the state require a supply, every man is more obliged to contribute towards it, than to satisfy his creditors.

**VII.** Aristotle distinguishes aptitude or capacity, by the name of worth or merit, and Michael of Ephesus, gives the epithet of SUITABLE or BECOMING to the equality established by this rule of merit.

**VII. [Translator's note:** The eighth Section is omitted, the greater part of it consisting of verbal criticism upon Aristotle's notions of geometrical and arithmetical justice; a discussion no way conducive to that clearness and simplicity, so necessary to every didactic treatise.]

**IX.** There is also a third signification of the word Right, which has the same meaning as Law, taken in its most extensive sense, to denote a rule of moral action, obliging us to do what is proper. We say OBLIGING us. For the best counsels or precepts, if they lay us under no obligation to obey them, cannot come under the denomination of law or right. Now as to permission, it is no act of the law, but only the silence of the law it however prohibits any one from impeding another in doing what the law permits. But we have said, the law obliges us to do what is proper, not simply what is just; because, under this notion, right belongs to the substance not only of justice, as we have explained it, but of all other virtues. Yet from giving the name of a RIGHT to that, which is PROPER, a more general acceptation of the word justice has been derived. The best division of right, in this general meaning, is to be found in Aristotle, who, defining one kind to be natural, and the other voluntary, calls it a LAWFUL RIGHT in the strictest sense of the word law; and some times an instituted right. The same difference is found among the Hebrews, who, by way of distinction, in speaking, call that natural right, PRECEPTS, and the voluntary right, STATUTES: the former of which the Septuagint call δικαωματα, and the latter εντολας.

**X.** Natural right is the dictate of right reason, shewing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature, and consequently that such an act is either forbidden or commanded by God, the author of nature. The actions, upon which such a dictate is given, are either binding or unlawful in themselves, and therefore necessarily understood to be commanded or forbidden by God. This mark distinguishes natural right, not only from human law, but from the law, which God himself has been pleased to reveal, called, by some, the voluntary divine right, which does not command or forbid things in themselves either binding or unlawful, but makes them unlawful by its prohibition, and binding by its command. But, to understand natural right, we must observe that some things are said to belong to that right, not properly, but, as the schoolmen say, by way of accommodation. These are not repugnant to natural right, as we have already observed that those things are called JUST, in which there is no injustice. Some times also, by a wrong use of the word, those things which reason shews to be proper, or better than things of an opposite kind, although not binding, are said to belong to natural right.

We must farther remark, that natural right relates not only to those things that exist independent of the human will, but to many things, which necessarily follow the exercise of that will. Thus property, as now in use, was at first a creature of the human will. But, after it was established, one man was prohibited by the law of nature from seizing the property of another against his will. Wherefore, Paulus the Lawyer said, that theft is expressly forbidden by the law of nature. Ulpian condemns it as infamous in its own nature; to whose authority that of Euripides may be added, as may be seen in the verse of Helena:

"For God himself hates violence, and will not have us to grow rich by rapine, but by lawful gains. That abundance, which is the fruit of unrighteousness, is an abomination. The air is common to men, the earth also where every man, in the ample enjoyment of his possession, must refrain from doing violence or injury to that of another."

Now the Law of Nature is so unalterable, that it cannot be changed even by God himself.

For although the power of God is infinite, yet there are some things, to which it does not extend. Because the things so expressed would have no true meaning, but imply a contradiction. Thus two and two must make four, nor is it possible to be otherwise; nor, again, can what is really evil not be evil. And this is Aristotle's meaning, when he says, that some things are no sooner named, than we discover their evil nature. For as the substance of things in their nature and existence depends upon nothing but themselves; so there are qualities inseparably connected with their being and essence. Of this kind is the evil of certain actions, compared with the nature of a reasonable being. Therefore God himself suffers his actions to be judged by this rule, as may be seen in the xviiiith chap. of Gen. 25. Isa. v. 3. Ezek. xviii. 25. Jer. ii. 9. Mich. vi. 2. From. ii. 6., iii. 6. Yet it sometimes happens that, in those cases, which are decided by the law of nature, the undiscerning are imposed upon by an appearance of change. Whereas in reality there is no change in the unalterable law of nature, but only in the things appointed by it, and which are liable to variation. For example, if a creditor forgive me the debt, which I owe him, I am no longer bound to pay it, not because the law of nature has ceased to command the payment of a just debt, but because my debt, by a release, has ceased to be a debt. On this topic, Arrian in Epictetus argues rightly, that the borrowing of money is not the only requisite to make a debt, but there must be the additional circumstance of the loan remaining undischarged. Thus if God should command the life, or property of any one to be taken away, the act would not authorise murder or robbery, words which always include a crime. But that cannot be murder or robbery, which is done by the express command of Him, who is the sovereign Lord of our lives and of all things. There are also some things allowed by the law of nature, not absolutely, but according to a certain state of affairs. Thus, by the law of nature, before property was introduced, every one had a right to the use of whatever he found unoccupied; and, before laws were enacted, to avenge his personal injuries by force.

**XI.** The distinction found in the books of the Roman Law, assigning one unchangeable right to brutes in common with man, which in a more limited sense they call the law of nature, and appropriating another to men, which they frequently call the Law of Nations, is scarcely of any real use. For no beings, except those that can form general maxims, are capable of possessing a right, which Hesiod has placed in a clear point of view, observing "that the supreme Being has appointed laws for men; but permitted wild beasts, fishes, and birds to devour each other for food." For they have nothing like justice, the best gift, bestowed upon men.

Cicero, in his first book of offices, says, we do not talk of the justice of horses or lions. In conformity to which, Plutarch, in the life of Cato the elder, observes, that we are formed by nature to use law and justice towards men only. In addition to the above, Lactantius may be cited, who, in his fifth book, says that in all animals devoid of reason we see a natural bias of self-love. For they hurt others to benefit themselves; because they do not know the evil of doing willful hurt. But it is not so with man, who, possessing the knowledge of good and evil, refrains, even with inconvenience to himself, from doing hurt. Polybius, relating the manner in which men first entered into society, concludes, that the injuries done to parents or benefactors inevitably provoke the indignation of mankind, giving an additional reason, that as understanding and reflection form the great difference between men and other animals, it is evident they cannot transgress the bounds of that difference like other animals, without exciting universal abhorrence of their conduct. But if ever justice is attributed to brutes, it is done improperly, from some shadow and trace of reason they may possess. But it is not material to the nature of right, whether the actions appointed by the law of nature, such as the care of our offspring, are common to us with other animals or not, or, like the worship of God, are peculiar to man.

**XII.** The existence of the Law of Nature is proved by two kinds of argument, *a priori*, and *a posteriori*, the former a more abstruse, and the latter a more popular method of proof. We are said to reason *a priori*, when we show the agreement or disagreement of any thing with a reasonable and social nature; but *a posteriori*, when without absolute proof, but only upon probability, any thing is inferred to accord with the law of nature, because it is received as such among all, or at least the more civilized nations. For a general effect can only arise from a general cause. Now scarce any other cause can be assigned for so general an opinion, but the common sense, as it is called, of mankind. There is a sentence of Hesiod that has been much praised, that opinions which have prevailed amongst many nations, must have some foundation. Heraclitus, establishing common reason as the best criterion of truth, says, those things are certain which generally appear so. Among other authorities, we may quote Aristotle, who says it is a strong proof in our favour, when all



appear to agree with what we say, and Cicero maintains that the consent of all nations in any case is to be admitted for the law of nature. Seneca is of the same opinion, any thing, says he, appearing the same to all men is a proof of its truth. Quintilian says, we hold those things to be true, in which all men agree. We have called them the more civilized nations, and not without reason. For, as Porphyry well observes, some nations are so strange that no fair judgment of human nature can be formed from them, for it would be erroneous. Andronicus, the Rhodian says, that with men of a right and sound understanding, natural justice is unchangeable. Nor does it alter the case, though men of disordered and perverted minds think otherwise. For he who should deny that honey is sweet, because it appears not so to men of a distempered taste, would be wrong. Plutarch too agrees entirely with what has been said, as appears from a passage in his life of Pompey, affirming that man neither was, nor is, by nature, a wild unsociable creature. But it is the corruption of his nature which makes him so: yet by acquiring new habits, by changing his place, and way of living, he may be reclaimed to his original gentleness. Aristotle, taking a description of man from his peculiar qualities, makes him an animal of a gentle nature, and in another part of his works, he observes, that in considering the nature of man, we are to take our likeness from nature in its pure, and not in its corrupt state.

**XIII.** It has been already remarked, that there is another kind of right, which is the voluntary right, deriving its origin from the will, and is either human or divine.

**XIV.** We will begin with the human as more generally known. Now this is either a civil right, or a right more or less extensive than the civil right. The civil right is that which is derived from the civil power. The civil power is the sovereign power of the state. A state is a perfect body of free men, united together in order to enjoy common rights and advantages. The less extensive right, and not derived from the civil power itself, although subject to it, is various, comprehending the authority of parents over children, masters over servants, and the like. But the law of nations is a more extensive right, deriving its authority from the consent of all, or at least of many nations.

It was proper to add MANY, because scarce any right can be found common to all nations, except the law of nature, which itself too is generally called the law of nations. Nay, frequently in one part of the world, that is held for the law of nations, which is not so in another. Now this law of nations is proved in the same manner as the unwritten civil law, and that is by the continual experience and testimony of the Sages of the Law. For this law, as Dio Chrysostom well observes, is the discoveries made by experience and time. And in this we derive great advantage from the writings of eminent historians.

**XV.** The very meaning of the words divine voluntary right, shows that it springs from the divine will, by which it is distinguished from natural law, which, it has already been observed, is called divine also. This law admits of what Anaxarchus said, as Plutarch relates in the life of Alexander, though without sufficient accuracy, that God does not will a thing, because it is just, but that it is just, or binding, because God wills it. Now this law was given either to mankind in general, or to one particular people. We find three periods, at which it was given by God to the human race, the first of which was immediately after the creation of man, the second upon the restoration of mankind after the flood, and the third upon that more glorious restoration through Jesus Christ. These three laws undoubtedly bind all men, as soon as they come to a sufficient knowledge of them.

**XVI.** Of all nations there is but one, to which God particularly vouchsafed to give laws, and that was the people of Israel, whom Moses thus addresses in the fourth Chap. of Deuteronomy, ver. 7. "What nation is there so great who hath God so nigh unto them, as the Lord our God is in all things that we call upon him for? And what nation is there so great, who have statutes and judgments so righteous, as all this law, which I set before you this day!" And the Psalmist in the cxlvii. Psalm, "God shewed his word unto Jacob, his statutes and ordinances unto Israel. He hath not dealt so with any nation, and as for his judgments they have not known them." Nor can we doubt but that those Jews, with whom we may class Tryphon in his dispute with Justin, are mistaken, who suppose that even strangers, if they wish to be saved, must submit to the yoke of the Mosaic Law. For a law does not bind those, to whom it has not been given. But it speaks personally to those, who are immediately under it. Hear O Israel, and we read everywhere of the covenant made with them, by which they became the peculiar people of God. Maimonides acknowledges and proves the truth of this from the xxxiii. Chapter and fourth verse of Deuteronomy.

But among the Hebrews themselves there were always living some strangers, persons devout and fearing God, such was the Syrophenician woman, mentioned in the Gospel of

St. Matthew, xv. 22. Cornelius the Centurion. Acts. x. the devout Greeks, Acts xviii. 6. Sojourners, or strangers, also are mentioned. Levit. xxv. 47. These, as the Hebrew Rabbis themselves inform us, were obliged to observe the laws given to Adam and Noah, to abstain from idols and blood, and other things, that were prohibited; but not in the same manner to observe the laws peculiar to the people of Israel. Therefore though the Israelites were not allowed to eat the flesh of a beast, that had died a natural death; yet the strangers living among them were permitted. Deut. xiv. 21. Except in some particular laws, where it was expressly said, that strangers no less than the native inhabitants were obliged to observe them. Strangers also, who came from other countries, and were not subject to the Jewish laws, might worship God in the temple of Jerusalem, but standing in a place separate and distinct from the Israelites. I. Kings viii. 41. 2 Mac. iii. 35. John xii 20. Acts viii. 27. Nor did Elisha ever signify to Naaman the Syrian, nor Jonas to the Ninevites, nor Daniel to Nebuchadnezzar, nor the other Prophets to the Tyrians, the Moabites, the Egyptians, to whom they wrote, that it was necessary for them to adopt the Mosaic Law.

What has been said of the whole law of Moses applies to circumcision, which was a kind of introduction to the law. Yet with this difference that the Israelites alone were bound by the Mosaic Law, but the whole posterity of Abraham by the law of circumcision. From hence we are informed by Jewish and Greek Historians, that the Idumaeans, or Edomites were compelled by the Jews to be circumcised. Wherefore there is reason to believe that the numerous nations, who, besides the Israelites, practiced circumcision, and who are mentioned by Herodotus, Strabo, Philo, Justin, Origen, Clemens, Alexandrinus, Epiphanius, and Jerom, were descended from Ishmael, Esau, or the posterity of Keturah. But what St. Paul says, Rom. ii. 14: holds good of all other nations; that the Gentiles, not having the law, yet doing by nature the things contained in the law, become a law to themselves. Here the word nature may be taken for the primitive source of moral obligation; or, referring it to the preceding parts of the Epistle, it may signify the knowledge, which the Gentiles acquired of themselves without instruction, in opposition to the knowledge derived to the Jews from the law, which was instilled into them from their cradle, and almost from their birth. "So the Gentiles show the work, or the moral precepts of the law, written in their hearts, their consciences also bearing witness, and their thoughts the mean while accusing or else excusing one another." And again in the 26th ver.; "If the uncircumcision keep the righteousness of the law, shall not his uncircumcision be counted for circumcision?" Therefore Ananias, the Jew, as we find in the history of Josephus, very properly taught Tzates, or as Tacitus calls him, Ezates, the Adiabeanian, that even without circumcision, God might be rightly worshipped and rendered propitious. For though many strangers were circumcised, among the Jews, and by circumcision bound themselves to observe the law, as St. Paul explains it in Gal. v. 3.; they did it partly to obtain the freedom of the country; for proselytes called by the Hebrews, proselytes of righteousness, enjoyed equal privileges with the Israelites. Num. xv. : and partly to obtain a share in those promises, which were not common to mankind, but peculiar to the Jewish people, although it cannot be denied, that in later ages an erroneous opinion prevailed, that there was no salvation out of the Jewish pale. Hence we may infer, that we are bound by no part of the Levitical law, strictly and properly so called; because any obligation, beyond that arising from the law of nature, must proceed from the express will of the law-giver. Now it cannot be discovered by any proof, that God intended any other people, but the Israelites to be bound by that law. Therefore with respect to ourselves, we have no occasion to prove an abrogation of that law; for it could never be abrogated with respect to those, whom it never bound. But the Israelites were released from the ceremonial part, as soon as the law of the Gospel was proclaimed; a clear revelation of which was made to one of the Apostles, Acts x. 15. And the other parts of the Mosaic law lost their peculiar distinction, when the Jews ceased to be a people by the desolation and destruction of their city without any hopes of restoration. Indeed it was not a release from the law of Moses that we, who were strangers to the Commonwealth of Israel, obtained by the coming of Christ. But as before that time, our hopes in the goodness of God were obscure and uncertain, we gained the assurance of an express covenant, that we should be united in one Church with the seed of Israel, the children of the patriarchs, their law, that was the wall of separation between us, being broken down. Eph. ii. 14.

**XVII.** Since then the law given by Moses imposes no direct obligation upon us, as it has been already shown, let us consider whether it has any other use both in this inquiry into the rights of war, and in other questions of the same kind. In the first place, the Mosaic law shows that what it enjoins is not contrary to the law of nature. For since the law of nature is perpetual and unchangeable, nothing contradictory to it could be commanded by God, who is never unjust. Besides the law of Moses is called in the xix. Psalm an undefiled and

right law, and St. Paul, From. vii. 12, describes it to be holy, just, and good. Its precepts are here spoken of, for its permissions require a more distinct discussion. For the bare permission, signifying the removal of an impediment, or prohibition, has no relation to the present subject. A positive, legal permission is either full, granting us power to do some particular act without the least restriction, or less full, only allowing men impunity for certain actions, and a right to do them without molestation from others. From the permission of the former kind no less than from a positive precept, it follows that what the law allows, is not contrary to the law of nature. But with regard to the latter kind of permission, allowing impunity for certain acts, but not expressly authorizing them, we cannot so readily conclude those acts to be conformable to the law of nature. Because where the words of permission are ambiguous in their meaning, it is better for us to interpret according to the established law of nature, what kind of permission it is, than from our conception of its expediency to conclude it conformable to the laws of nature. Connected with this first observation there is another, expressive of the power that obtains among Christian Princes to enact laws of the same import with those given by Moses, except such as related entirely to the time of the expected Messiah, and the Gospel then unrevealed, or where Christ himself has in a general or particular manner established any thing to the contrary. For except in these three cases, no reason can be devised, why any thing established by the law of Moses should be now unlawful. In the third place it may be observed, that whatever the law of Moses enjoined relating to those virtues, which Christ required of his disciples, should be fulfilled by Christians now, in a greater degree, from their superior knowledge, and higher motives. Thus the virtues of humility, patience, and charity are required of Christians in a more perfect manner than of the Jews under the Mosaic dispensation, because the promises of heaven are more clearly laid before us in the Gospel. Hence the old law, when compared with the Gospel, is said to have been neither perfect nor faultless, and Christ is said to be the end of the law, and the law our schoolmaster to bring us to Christ. Thus the old law respecting the Sabbath, and the law respecting tithes, show that Christians are bound to devote not less than a seventh portion of their time to divine worship, nor less than a tenth of their fruits to maintain those who are employed in holy things, or to other pious uses.

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