

From: Hugo Grotius, *Grotius on the Rights of War and Peace: An Abridged Translation*. William Whewell, tr. (Cambridge: Cambridge Univ. Press, 1853).

PRELIMINARY REMARKS.

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1 THE Civil Law, both that of Rome, and that of each nation in particular, has been treated of, with a view either to illustrate it or to present it in a compendious form, by many. But International Law, that which regards the mutual relations of several Peoples, or Rulers of Peoples, whether it proceed from nature, or be instituted by divine command, or introduced by custom and tacit compact, has been touched on by few, and has been by no one treated as a whole in an orderly manner. And yet that this be done, concerns the human race.

2 For rightly did Cicero call that an excellent science which includes the alliances, treaties, and covenants of peoples, kings, and nations, and all the rights of war and peace. And Euripides prefers this science to the knowledge of things human and divine; for he makes Helen address Theonoe thus:

'twould be a base reproach
That you, who know th' affairs of gods and men
Present and future, know not what is just.

3 And such a work is the more necessary on this account; that there are not wanting persons in our own time, and there have been also in former times persons, who have despised what has been done in this province of jurisprudence, so far as to hold that no such thing existed, except as a more name. Every one can quote the saying of Euphemius in Thucydides;—that for a king or a city which has an empire to maintain, nothing is unjust which is useful: and to the same effect is the saying, that for those who have supreme power, the equity is where the strength is: and that other, that state affairs cannot be carried on without doing some wrong. To this we must add that the controversies which arise between peoples and kings have commonly war for their arbiter. And that war is far from having anything to do with rights, is not only the opinion of the vulgar, but even learned and prudent men often let fall expressions which favour such an opinion. It is very usual to put *rights* and *arms* in opposition to each other. And accordingly Ennius says:

They have recourse to arms, and not to rights.

And Horace describes Achilles thus:

Rights he spurns
As things not made for him, claims all by arms.

And another poet introduces a warrior, who when he enters on war, says:

Now, Peace and Law, I bid you both farewell.

Antigonus laughed at a man, who, when he was besieging his enemies' cities, brought to him a Dissertation on Justice. And Marius said that the din of arms prevented his hearing the laws. Even Pompey, who was so modest that he blushed when he had to speak in public, had the face to say, *Am I who am in arms to think of the laws?* xxiv

4 In Christian writers many passages of a like sense occur: let that one of Tertullian suffice for all: *Deceit, cruelty, injustice, are the proper business of battles*. They who hold this opinion will undoubtedly meet our purpose, [of establishing the Rights of War,] with the expressions in Terence:

You that attempt to fix by certain Rules
Things so uncertain, may with like success
Contrive a way of going mad by reason.

5 But since our discussion of Rights is worthless if there are no Rights, it will serve both to recommend our work, and to protect it from objections, if we refute briefly this very grave error. And that we may not have to deal with a mob of opponents, let us appoint them an advocate to speak for them. And whom can we select for this office, fitter than Carneades, who had made such wonderful progress in his suspension of opinion, the supreme aim of his Academical Philosophy, that he could work the machinery of his eloquence for falsehood as easily as for truth. He, then, undertook to argue against justice; and especially the kind of justice of which we here treat; and in doing so, he found no argument stronger than this:—that men had, as utility prompted, established Rights, different as their manners differed; and even in the same society, often changed with the change of times: but Natural Law there is none: for all creatures, men and animals alike, are impelled by nature to seek their own gratification: and thus, either there is no such thing as justice, or if it exist, it is the height of folly, since it does harm to itself in aiming at the good of others.

6 But what the philosopher here says, and what the poet (Horace) follows:—

By naked nature ne'er was understood
What's just and right:

must by no means be admitted. For man is an animal indeed, but an animal of an excellent kind, differing much more from all other tribes of animals than they differ from one another; which appears by the evidence of many actions peculiar to the human species. And among these properties which are peculiar to man, is a desire for society; that is, a desire for a life spent in common with fellowmen; and not merely spent somehow, but spent tranquilly, and in a manner corresponding to the character of his intellect. This desire the Stoics called *οἰκείωσις*, *the domestic instinct*, or *feeling of kindred*. And therefore the assertion, that, by nature, every animal is impelled only to seek its own advantage or good, if stated so generally as to include man, cannot be conceded.

7 And indeed even in other animals, as well as in man, their desire of their own individual good is tempered by a regard, partly for their offspring, partly for others of their own species; which in them, indeed, we perceive to proceed from some extrinsic intelligent principle*; because with regard to other acts not at all more difficult than those [thus directed towards the offspring, and the like,] an equal degree of intelligence does not appear. The same is to be said of infants, in which, previous to all teaching, we see a certain disposition to do good to others, as is sagaciously remarked by Plutarch: as for example, compassion breaks out spontaneously at that age. But inasmuch as a man of full age has the knowledge which enables him to act similarly in similar cases; and along with that, a peculiar and admirable appetite for society; and has also language, an instrument of this desire, given to him alone of all animals; it is reasonable to assume that he has a faculty of knowing and acting according to general principles; and such tendencies as agree with this faculty do not belong to all animals, but are peculiar attributes of human nature.

* In his Treatise *De Veritate Rel. Christ.* Lib. I. 7, Grotius notices the acts of animals, (as ants and bees,) which appear to proceed from some extrinsic Reason; *que quidem Ratio non aliud est quam quod Deus vocatur.* W.

8 And this tendency to the conservation of society, which we have now expressed in a rude manner, and which tendency is in agreement with the nature of the human intellect, is the source of *Jus*, or Natural Law, properly so called. To this *Jus*, belong the rule of abstaining from that which belongs to other persons; and if we have in our possession anything of another's, the restitution of it, or of any gain which we have made from it; the fulfilling of promises, and the reparation of damage done by fault; and the

recognition of certain things as meriting punishment among men.

9 From this signification has flowed another larger sense of *Jus*: for, inasmuch as man is superior to other animals, not only in the social impulse of which we have spoken, but in his judgment and power of estimating advantages and disadvantages; and in these, not only present good and ill, but also future good and ill, and what may lead to each; we may understand that it is congruous to human nature to follow, in such matters also, [the estimate of future good and ill, and of the consequences of actions,] a judgment rightly framed; not to be misled by fear or by the temptation of present pleasure, nor to be carried away by blind and thoughtless impulse; and that what is plainly repugnant to such judgment, is also contrary to *Jus*, that is, to Natural Human Law.

10 And to this exercise of judgment pertains a reasonable and thoughtful assignment, to each individual and each body of men, of the things which peculiarly belong to them; by which exercise of judgment in some cases, the wiser man is preferred to the less wise; in others, our neighbour to a stranger; in others, a poor man to a rich man; according as the nature of each act and each thing requires. And this some persons have treated as a part of *Jus* properly and strictly so called; although *Jus* properly so called is really very different in its nature, and has this for its special office; to leave to another what is his, to give to him what we owe.

11 And what we have said would still have great weight, even if we were to grant, what we cannot grant without wickedness, that there is no God, or that he bestows no regard on human affairs. But inasmuch as we are assured of the contrary of this, partly by reason, partly by constant tradition, confirmed by many arguments and by miracles attested by all ages, it follows that God, as the author of our being, to whom we owe ourselves and all that we have, is to be obeyed by us without exception, especially since he has, in many ways, shown himself both supremely good and supremely powerful: wherefore he is able to bestow upon those who obey him the highest rewards, even eternal ones, as being himself eternal; and he must be supposed to be willing as well as able to do this; and the more so, if he have promised such rewards in plain language; which we Christians believe, resting our belief on the indubitable faith of testimonies.

12 And here we are brought to another origin of *Jus*, besides that natural source; namely, the free will of God, to which, as our reason irresistibly tells us, we are bound to submit ourselves. But even that Natural Law of which we have spoken, whether it be that which binds together communities, or that looser kind [which enjoins duties,] although it do proceed from the internal

principles of man, may yet be rightly ascribed to God; because it was by his will that such principles came to exist in us. And in this sense, Chrysippus and the Stoics said that the origin of *Jus* or Natural Law was not to be sought in any other quarter than in Jove himself; and it may be probably conjectured that the Latins took the word *Jus* from the name *Jove*.

13 To this we must add, that those principles God has made more manifest by the laws which he has given, so that they may be understood by those whose minds have a feebler power of drawing inferences: and he has prohibited the perverse aberrations of our affections which draw us this way and that, contrary to our own interest and the good of others; putting a bridle upon our more vehement passions, controlling and restraining them within due limits.

14 Further. The Sacred History, besides that part which consists in precepts, offers another view which in no small degree excites the social affection of which we have spoken; in that it teaches us that all men are sprung from the same parents. And thus we may rightly say, in this sense also, what Florentinus says in another sense, that there is a kindred established among us by nature: and in virtue of this relation it is wrong for man to intend mischief towards man.

Among men [all are not on the same footing towards us: as for instance,] our parents are a sort of Gods to us, to whom obedience is due; not infinite indeed, but an obedience of its own proper kind. xxvii

15 In the next place, since it is conformable to Natural Law to observe compacts, (for some mode of obliging themselves was necessary among men, and no other natural mode could be imagined,) Civil Rights were derived from this source, mutual compact. For those who had joined any community, or put themselves in subjection to any man or men, those either expressly promised, or from the nature of the case must have been understood to promise tacitly, that they would conform to that which either the majority of the community, or those to whom the power was assigned, should determine.

16 And therefore what Carneades said (as above), and what others also have said, as Horace,

Utility, Mother of just and right.

if we are to speak accurately, is not true. For the Mother of Right, that is of Natural Law, is Human Nature; for this would lead us to desire mutual society, even if it were not required for the supply of other wants; and the Mother of Civil Laws, is Obligation by mutual compact; and since mutual compact derives its

force from Natural Law, Nature may be said to be the Grandmother of Civil Laws. [The genealogy is, Human Nature: Natural Law: Civil Laws.] But Natural Law, [which impels us to society,] is *reinforced* by Utility. For the Author of Nature ordained that we should, as individuals, be weak, and in need of many things to make life comfortable, in order that we might be the more impelled to cling to society. But Utility is the *occasion* of Civil Laws; for the association or subjection by mutual compact, of which we have just spoken (15), was at the first instituted for the sake of some utility. And accordingly, they who prescribe laws for others, in doing this, aim, or ought to aim, at some Utility, to be produced to them for whom they legislate.

17 Further: as the Laws of each Community regard the Utility of that Community, so also between different Communities, all or most, Laws might be established, and it appears that Laws have been established, which enjoined the Utility, not of special communities, but of that great aggregate System of Communities. And this is what is called the Law of Nations, or International Law; when we distinguish it from Natural Law. And this part of Law is omitted by Carneades, who divides all Law into Natural Law, and the Civil Laws of special peoples; while yet, inasmuch as he was about to treat of that Law which obtains between one people and another, (for then follows an oration concerning war and acquisitions by war,) he was especially called upon to make mention of Law of this kind.

18 And it is without any good reason that Carneades maintains, as we have said (5), that justice is folly. For since, by his own confession, that Citizen is not foolish who in a Civil Community obeys the Civil Law, although, in consequence of such respect for the Law he may lose something which is useful to himself: so too that People is not foolish which does not so estimate its own utility, as, on account of *that*, to neglect the common Laws between People and People. The reason of the thing is the same in both cases. For as a citizen who violates the Civil Law for the sake of present utility, destroys that institution in which the perpetual utility of himself and his posterity is bound up; so too a people which violates the Laws of Nature and Nations, beats down the bulwark of its own tranquillity for future time. And even if no utility were to arise from the observation of Law, it would be a point, not of folly, but of wisdom, to which we feel ourselves drawn by nature. xxviii

19 And therefore neither is that other saying of Horace [1 Sat. iii.] universally true;

’Twas fear of wrong that made us make our laws;

an opinion which one of the interlocutors in Plato's *Republic* explains in this way: that Laws were introduced from the fear of receiving wrong, and that men are driven to practise justice by a certain compulsion. For that applies to those institutions and laws only which were devised for the more easy maintenance of rights: as when many, individually feeble, fearing to be oppressed by those who were stronger, combined to establish judicial authorities, and to uphold them by their common strength; that those whom they could not resist singly, they might, united, control. And we may accept in this sense, and in no other, what is also said in Plato, that Right is that which the stronger party likes: namely, that we are to understand that Rights do not attain their external end, except they have force to back them. Thus Solon did great things, as he himself boasted,

By linking Force in the same yoke with Law.

20 But still Rights, even unsupported by force, are not destitute of all effect: for Justice, the observance of Rights, brings security to the conscience; while injustice inflicts on it tortures and wounds, such as Plato describes as assaulting the bosoms of tyrants. The conscience of honest men approves justice, condemns injustice. And what is the greatest point, injustice has for its enemy, and justice has for its friend, God, who reserves his judgments for another life, yet in such a manner that he often exhibits their power in this life; of which we have many examples in history.

21 The reason why many persons, while they require justice as necessary in private citizens, commit the error of thinking it superfluous in a People or the Ruler of a People, is this: in the first place, that in their regard to rights they look at nothing but the utility which arises from rights, which in the case of private citizens is evident, since they are separately too weak to protect themselves: while great States, which seem to embrace within them all that is requisite to support life in comfort, do not appear to have need of that virtue which regards extraneous parties, and is called justice.

22 But, not to repeat what I have already said, that Rights are not established for the sake of utility alone, there is no State so strong that it may not, at some time, need the aid of others external to itself: either in the way of commerce, or in order to repel the force of many foreign nations combined against it. And hence we see that Leagues of alliance are sought oven by the most powerful Peoples and Kings; which can have no force according to the principles of those who confine rights within the boundary of the State alone. It is most true [as Cicero says,] that

everything loses its certainty at once, if we give up the belief in rights.

23 If no society whatever can be preserved without the recognition of mutual rights, which Aristotle [rather Plato, J. B.] proves by the strong instance of a society of robbers; assuredly that society which includes the whole human race, or at any rate, the greater part of nations, has need of the recognition of rights: as Cicero saw when he said that some things are so bad that they are not to be done even for the sake of saving our country (*Off.* I. 45). Aristotle speaks with strong condemnation of those, who, while they will allow no one to hold rule among themselves, except him who has the right to do so, yet in their dealings with strangers have no care of rights, or the violation of rights.

24 A little while ago we quoted Pompey for his expression on the other side; yet on the other hand, when a certain Spartan king had said, happy that republic which has for its boundaries the spear and the sword, Pompey corrected him, and said, Happy rather that which has justice for its boundary*. And to this effect he might have used the authority of another Spartan king, who gave justice the preference over military courage, on this ground; that courage is to be regulated by justice, but if all men were just, they would have no need of courage. Courage itself was defined by the Stoics, Virtue exercised in defence of Justice. Themistius, in an Oration to Valens, eloquently urges, that kings such as the rule of wisdom requires them to be, ought not to care for the single nation only which is committed to them, but for the whole human race; they should be, as he expresses it, not *philomacedonian* only, or *philoroman*, but *philanthropic*. The name of Minos became hateful to posterity in no other way than this: that he terminated his equity at the boundaries of his own government.

* Barbeyrac conjectures that this anecdote of Pompey, for which he cannot find any other authority, was produced, by Grotius mixing together In his memory two stories, both told in Plutarch's *Apophthegmata*: one, of a saying of Agesilaus, (or Archidamus,) who, when asked how far the Lacedemonian territory extended, swung his spear and said, *So far*: the other story, that when Phraates sent to Pompey and begged that the Parthians might have, for their boundary towards the Romans, the Euphrates; Pompey replied that the boundary should be Justice. Tydman (in his Preface) defends Grotius from Barbeyrac's charge of confusion in this quotation.

25 It is so far from being proper to admit, what some choose to say, that in war all rights cease, that war is never to be undertaken except to assert rights; and when undertaken, is never to be carried on except within the limits of rights and of good faith. Demosthenes well said, that war was the mode of dealing with

those who could not be kept in order by judicial proceedings. For judicial proceedings are of force against those who feel themselves to be the weaker party: but against those who make themselves or think themselves equals, war is the proceeding; yet this too, in order to be justifiable, to be carried on in a no less scrupulous manner than judicial proceedings are.

26 Be it so then, that, in the conflict of arms, laws must be silent: but let this be understood of laws civil, judicial, proper to peace; not of those laws which are perpetual and accommodated to all time. For it is excellently said by Dio Prusænsis, that between enemies, written laws, that is, Civil Laws, are not in force; but that unwritten laws are, namely, those which nature dictates, or the consent of nations institutes. We may learn this from the old Formula of the Romans; *I decide that those things may be sought by a pure and pious war*. The same old Romans, as Varro remarked, undertook war tardily, and without allowing themselves any licence, because they thought that no war except a pious one ought to be undertaken. Camillus said that wars were to be carried on no less justly than bravely. Africanus said, that the Romans began just wars, and ended them. Again, in Livy we read, *War has its laws no less than peace*. And Seneca admires Fabricius as a great man, and, what is most difficult, a man innocent even in war, and who thought that there were wrongs even towards an enemy.

27 How great the power of the conscience of justice is, the writers of histories everywhere shew, often ascribing victory to this cause mainly. Hence have arisen these proverbs; That it is the Cause which makes the soldier brave or base: that he rarely comes safe back who goes out on the bad side: that Hope is the ally of the good Cause: and others to the same effect. Nor ought any persons to be moved by the occasional success of unjust designs; for it is enough if the equity of the cause has an efficacy, and that a great one, in action; even though this efficacy, as happens in human affairs, is often prevented from taking effect, being counteracted by other causes. And further; in conciliating friendships, which nations, as well as individuals, need, on many accounts, a great effect must be assigned to an opinion that we do not hastily or unjustly undertake war, and that we carry it on religiously. For no one readily joins himself to those whom he believes to think lightly of right laws and good faith.

28 I, for the reasons which I have stated, holding it to be most certain that there is among nations a common law of Rights which is of force with regard to war, and in war, saw many and grave causes why I should write a work on that subject. For I saw prevailing throughout the Christian world a license in mak-

ing war of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason; and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint.

29 And the sight of these atrocities has led many men, and these, estimable persons, to declare arms forbidden to the Christian, whose rule of life mainly consists in love to all men: and to this party sometimes John Ferus and our countryman Erasmus seem to approximate, men much devoted to peace, both ecclesiastical and civil: but they take this course, as I conceive, with the purpose with which, when things have been twisted one way, we bend them the other, in order to make them straight. But this attempt to drive things too far, is often so far from succeeding, that it does harm; because the excess which it involves is easily detected; and then, detracts from the authority of what is said, even within the limits of truth. We are to provide a remedy for both disorders; both for thinking that nothing is allowable, and that everything is.

30 Moreover, having practised jurisprudence in public situations in my country with the best integrity I could give, I would now, as what remains to me, unworthily ejected from that country graced by so many of my labours, promote the same subject, jurisprudence, by the exertion of my private diligence. Many, in preceding times, have designed to invest the subject with the form of an Art or Science; but no one has done this. Nor can it be done, except care be taken in that point which has never yet been properly attended to;—to separate Instituted Law from Natural Law. For Natural Law, as being always the same, can be easily collected into an Art: but that which depends upon institution, since it is often changed, and is different in different places, is out of the domain of Art; as the perceptions of individual things in other cases also is.

31 If, then, those who have devoted themselves to the study of true justice would separately undertake to treat of separate parts of Natural and Permanent Jurisprudence, omitting all which derives its origin from the will of man alone:—if one would treat of Laws; another, of Tributes; another, of the Office of Judges; another, of the mode of determining the Will of parties; another, of the Evidence of facts; we might, by collecting all these parts, form a complete body of such Jurisprudence.

32 What course *we* think ought to be followed in the execution of such a task, we show by act rather than by words, in this present work; in which is contained by far the noblest part of Jurisprudence.

33 For in the First Book, (after a Preface concerning the origin of Rights and Laws,) we have examined the question whether any war be just: next, in order to distinguish between public and private war, we have to explain the nature of sovereignty; what Peoples, what Kings, have it entire; what, partial; who, with a right of alienation; who, otherwise; and afterwards we have to speak of the duty of subjects to superiors. xxxii

34 The Second Book, undertaking to expound all the causes from which war may arise, examines what things are common, what are property, what is the right of persons over persons, what obligation arises from ownership, what is the rule of royal succession, what right is obtained by pact or contract, what is the force and interpretation of treaties, of oaths private and public, what is due for damage done, what is the sacredness of ambassadors, the right of burying the dead, and the nature of punishments.

35 The Third Book has for its subject, in the first place, what is lawful in war; and when it has drawn a distinction between that which is done with impunity, or may even, in dealing with foreigners, be defended as consistent with Rights; and that which is really free from fault; it then descends to the kinds of Peace and to Conventions in War.

36 The undertaking such a work appeared to me the more worthy of the labour which it must cost, because, as I have said, no one has treated the whole of the argument; and those who have treated parts thereof, have so treated them that they have left much to the industry of others. Of the old philosophers nothing is extant of this kind, neither of the Greeks, among whom Aristotle is said to have written a book called the *Laws of War**, nor of those (the Fathers) who wrote as Christians in the early period of the Church; which is much to be regretted; and even of the books of the ancient Romans concerning the Law recognized by their *Feciales*, or *Heralds' College*, we have received nothing but the name. [See *Cic. Off.* i. 11; iii. 29.] Those who have made what they call *Summæ of Cases of Conscience*, have introduced chapters, as concerning other things, so concerning war, concerning promises, concerning oaths, concerning reprisals.

* But the true reading is *δικαιώματα πόλεων*, the *Laws of States*. J. B.

37 I have also seen special books concerning the Laws of War, written partly by theologians, as Francis Victoria†, Henry Gorichem‡, William Matthæi [Mathison?], Johannes de Carthagina§; some by Doctors of Law, as Johannes Lupus*, Francis Arias†, Joannes à Lignano‡, Martinus Laudensis§. But all these xxxiii

have said very little, considering the copiousness of the argument; and said it in such a way that they have mingled and confounded law natural, law divine, law of nations, civil law, and canon law.

† A Spanish Dominican who lived in the 16th century. The treatise here mentioned is *De Indis et Jure Belli*, and appears among his twelve theological lectures. xxxii

‡ A Dutchman so named from the place of his birth, and chancellor of Cologne. He lived about the middle of the fifteenth century, and wrote a treatise *De Bello Justo*.

§ His book was printed at Rome in 1609.

* A native of Segovia. His Treatise *De Bello et Bellatoribus* may be found in a large collection called *Tractatus Tractatum*. Tom. XVI of the Venice edition, 1584. xxxiii

† A Spaniard. His book is in the same volume of the same collection, under the title *De Bello et ejus Justitia*.

‡ A native of Bologna. His Treatise *De Bello* is in the same volume.

§ His name was Garat. His Treatise *De Bello* appears in the same volume of the Collection. It was reprinted at Louvain in 1648, with the Treatise of Ayala, spoken of afterwards.

38 What was most wanting in all these, namely, illustrations from history, the learned Faber|| has undertaken to supply in some chapters of his *Semestria*: but no further than served his own special purpose, and only giving references. The same has been done more largely, and that, by applying a multitude of examples to certain maxims laid down, by Balthazar Ayala¶ and still more largely by Albericus Gentilis**; 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 his arrangement, in his distinctions of questions, and of the different kinds of Law, I leave to the judgment of the reader. I will only say, 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 else the authority of modern lawyers in opinions given, not a few of which are accommodated to the interest of those that consult them, and not founded upon the nature of equity and justice. The causes for which 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 many prominent and frequent cases of controversy he has not even touched upon.

|| Peter du Faur of St Jori, Councillor of the Grand Council, afterwards Master of Requests, and at last First President of the Parliament of Thoulouse. He was scholar to Cujas. His work entitled *Semestrium Libri Tres* has been several times printed at Paris, Lyons, and Geneva.

¶ He was a native of Antwerp, of Spanish extraction. His Treatise *De Jure et Officiis Bellicis* was printed at that city in 1597.

** Professor at Oxford about 1600. His book is *De Jure Belli*.

39 We have been careful that nothing of this kind be passed over in silence; having also indicated the sources from which we derive our judgments, so that it may be easy to determine any question that may happen to be omitted by us. It remains now that I briefly explain with what aids, and with what care, I undertook this work.

In the first place, it was my object to refer the truth of the things which belong to Natural Law to some notions, so certain, that no one can deny them, without doing violence to his own nature. For the principles of such Natural Law, if you attend to them rightly, are of themselves patent and evident, almost in the same way as things which are perceived by the external senses; which do not deceive us, if the organs are rightly disposed, and if other things necessary are not wanting. Therefore Euripides in his *Phænissæ* makes Polynices, whose cause he would have to be represented manifestly just, express himself thus:

I speak not things hard to be understood,
But such as, founded on the rules of good
And just, are known alike to learn'd and rude.

And he immediately adds the judgment of the chorus, (which consisted of women, and these too barbarians,) approving what he said.

40 In order to give proofs on questions respecting this Natural Law, I have made use of the testimonies of philosophers, historians, poets, and finally orators. Not that I regard these as judges from whose decision there is no appeal: for they are warped by their party, their argument, their cause: but I quote them as witnesses whose conspiring testimony, proceeding from innumerable different times and places, must be referred to some universal cause; which, in the questions with which we are here concerned, can be no other than a right deduction proceeding from the principles of reason, or some common consent. The former cause of agreement points to the Law of Nature; the latter, to the Law of Nations: though the difference of these two is not to be collected from the testimonies themselves, (for writers everywhere confound the Law of Nature and the Law of Nations,) but from the quality of the matter. For what cannot be deduced from certain principles by solid reasoning, and yet is soon and observed everywhere, must have its origin from the will and consent of all.

41 I have, therefore, taken pains to distinguish Natural Law from the Law of Nations, as well as both from the Civil Law. I have even distinguished, in the Law of Nations, that which is truly and universally lawful, true Rights; and *quasi*-Rights,

which only produce some external effect similar to that of the true Rights: for instance, this effect; that they may not be resisted by force, or may even be defended by force, in order to avoid grave inconvenience. [Such *quasi*-Rights are those of a Master over his slave, where slavery is established by Law. W.] How necessary this observation is in many instances, will appear in the course of the work. No less careful have I been to separate those things which belong to *Jus*, or *Right*, properly and strictly so called, (out of which arises the obligation of restitution,) and those which are more laxly described by *right*, adjectively; because to act otherwise is at variance with some dictate of right reason; concerning which diversity of *Jus* or *Right* we have already said something above.

...

46 Passages of history are of twofold use to us; they supply both examples of our arguments, and judgments upon them. With regard to examples, in proportion as they belong to better times and better nations, they have the more authority; and therefore we have preferred those taken from the Greeks and the Romans. Nor are the judgments delivered in such histories to be despised, especially when many of them agree: for Natural Law, as we have said, is in a certain measure, to be proved by such consent; and as to the Law of Nations, there is no other way of proving it.

...

53 Of the teachers of the Roman Law, there are three kinds: the first, those whose works appear in the Pandects, the Codex of Theodosius, and that of Justinian, and the laws called Novells. The second class contains those who succeeded Irnerius; namely Accursius, Bartolus, and so many others, who have long borne supreme sway in the Courts of Law. The third class includes those who have combined the study of elegant literature with the study of the law. For the first I have great deference; for they often supply the best reasons to prove what belongs to the nature of *Jus*; and give their testimony both to Natural Law and to the Law of Nations: yet in such a way that they, no less than others, often confound these provinces: indeed they often call that *Jus Gentium*, the Law of Nations, which is only the law of certain peoples; and that, not even by consent, but what one nation has received by imitation of another, or by accident. Also what truly belongs to *Jus Gentium* they often treat promiscuously and indiscriminately with points which belong to the Roman Law; as appears in the titles concerning Captives, and Postliminium. We have endeavoured to keep those subjects distinct.

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54 The second of those classes, regardless of divine law and of ancient history, attempted to define all the controversies of kings and peoples on the grounds of the Roman Law, sometimes taking into account the Canons. But these writers, too, were prevented, by the unhappiness of their times, from understanding those laws rightly; being, in other respects, sufficiently intelligent in investigating the nature of right and equity: whence it comes to pass, that they, while they are good authorities for making new laws, are bad interpreters of laws already made. They are to be listened to with most attention, when they give their testimony to such customs as make the Law of Nations in our time.

55 The masters of the third class, who include themselves within the limits of the Roman Law, and either never, or in a very slight degree, travel into that common or Natural Law, have scarcely any use in reference to our argument....

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