



BIBLIOTECA UNIVERSITARIA DI GENOVA – PERCORSI TEMATICI

UNIVERSALITAS & PERVASIVITAS

il costituirsi e diffondersi della S.J. e suoi echi (1540 - 1773)

di A. Pisani

Schede autori Sotto attacco

Huig van Groot (latinizzato *Grotius*, italianizzato *Gròzio*)

“I saw in the whole Christian world a license of fighting at which even barbarous nations might blush. Wars were begun on trifling pretexts or none at all, and carried on without any reference of law, Divine or human.” - Hugo Grotius - Prolegomena

“For God has given conscience a judicial power to be the sovereign guide of human actions, by despising whose admonitions the mind is stupefied into brutal hardness.” – Hugo Grotius

One of the pioneering natural rights theorists of the late 16th and early 17th centuries, Grotius defined natural law as a perceptive judgement in which things are good or bad by their own nature. This was a break from Calvinist ideals, in that God was no longer the only source of ethical qualities. These things that are by themselves good are associated with the nature of man. The Dutch Republic had been founded on principles of religious toleration but had become a Calvinist theocracy. Grotius, a humanist and Dutch patriot, struggled with Calvinism all of his life. In this struggle, he dealt with the international laws of war and issues of peace and justice. Although most famous for his theories of natural law, Grotius was also considered to be a great theologian. While occasionally writing about Christianity and religion, his intention for law was to write of it as independent of religious opinions.

Grotius' conception of the nature of natural law is set forth in his works *De Jure Praedae* (Commentary on the Law of Prize and Booty) and *De Jure Belli ac Pacis* (On the Law of War and Peace). *On the Law of War and Peace*, which was published in 1625, is a seemingly expanded version of *On the Law of Prize and Booty*, which was written in the late months of 1604 and the early months of 1605. *On the Law of Prize and Booty* was not published until 1868 when it was discovered at a book sale by several professors from the University of Leyden. Although this manuscript was not found until the late 19th century, Chapter Twelve of the book was published separately in 1609 as *Mare Liberum* (The Freedom of the Seas). *Mare Liberum* talks about the rights of England, Spain, and Portugal to rule over the sea. If these countries could legitimately control the seas, this would prevent the Dutch from sailing, for example, into the East Indies. Grotius argued that the liberty of the sea was a key aspect in the communications amongst peoples and nations. No one country can monopolize control over the ocean because of its immensity and lack of stability and fixed limits.





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Shortly after his arguments for the liberty of the sea, Grotius became involved in disputes with the Calvinists. Grotius sided against predestination and Calvinism and took up the Arminian cause of free will. He publicly claimed that Calvinist beliefs could have political and religious dangers to Protestantism. Grotius tried to devise a formula for peace that did not go against Calvinism. His attempts failed and ultimately led to his imprisonment. Grotius was famous for his daring escape from the castle of Loevestein in March of 1621.

Grotius writes about similar topics and ideals in both the Commentary on the Law of Prize and Booty and in On the Law of War and Peace. According to Grotius, all law, should be divided into what is divine and what is human. He distinguishes between the primary laws of nature and secondary laws of nature. Primary laws of nature are laws that completely express the will of God. Secondary laws of nature, on the other hand, are rules and laws that lie within reason. Grotius discusses war as being a mode of protecting rights and punishing wrongs. It is a mode of judicial procedures. Although war was considered a “necessary evil,” it needed to be regulated. The “just war,” in the eyes of Grotius, is a war to obtain a right.

Grotius discusses three methods of for settling a dispute peacefully. The first is conference and negotiation amongst two rivals or contestants. The second method is called compromise, which is a settlement in which each side gives up some demands or makes concessions. The third is that of single combat or choosing by lot. Grotius believed that it is sometimes better to renounce rights than to try and enforce them. When it comes to bargaining and mediation he holds that for any of the three methods listed above, it is of extreme importance to select a judge with character and decency. Grotius discusses these methods of achieving peace to ultimately obtain some form of justice. He says, “For justice brings peace of conscience, while injustice causes torment and anguish... Justice is approved, and injustice condemned, by the common agreement of good men.” (Prolegomena)

Grotius intended moral laws to apply to both the individual and the state equally. Although Grotius was somewhat conservative in his views, his ideas on war, conquest, and the law of nature continued to be revered and expanded by more liberal philosophers like John Locke in his Two Treatises on Civil Government (1689). Locke agrees with Grotius in using the analytical device of a state of nature that exists before civil government and in the general claim that might does not make right as well as the claim that just wars aim to preserve rights.

A child prodigy and remarkable international law theorist, Grotius helped form a concept of international society. International society is a community that is joined together by the notion that states and rulers have rules that apply to them all. All men and all nations are subject to this international law and the international community is held together by written agreement in states of instituted customs. The applications of international relations and political implications of the international society (possibly called “world” or “global” community in more contemporary times) can presently be seen in governments like that of the United States and much of Europe. King Henry IV in 1598 remarked that Grotius (who was only 15 at the time) truly was “the miracle of Holland.”

Time Line

1583: April 10, born Easter Day in Delft, Holland. Son of Jan de Groot, a Curator at the University of Leyden. – 1591 : Started composing Latin verse (age 8) – 1594 : August 3, begins studying at the University of Leyden (age 11). – 1598 : May 5, receives his Doctorate at the University of Orleans while accompanying Johan van Oldenbarnevelt (Lawyer & Prime Minister of the United Netherlands) on a diplomatic mission to France. Grotius was greeted by King Henry IV as “the



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miracle of Holland.” – 1599 : December 13, admitted to the bar in Holland. Practiced law at The Hague. – 1601: Becomes Latin historiographer of Holland. Practices law with the Dutch East India Merchants and Johan van Oldenbarnevelt. – 1604 : Becomes legal council for Prince Mauritius van Nassau. Wrote *De Jure Praedae* (On the Law of Prize) in the last months of 1604 and the first months of 1605. – 1607: Appointed Attorney General and First Public Comptroller for the courts of Holland, Zealand, and West Friesland. – 1608: July 17, marries Maire van Reigersberch (eventually has four sons and three daughters). –1613: -March 4, promoted to Governor of Rotterdam. This carried with it a seat in the States Attorney General of Holland and the States General of the United Netherlands. 1617: Becomes a member of the Committee of Counselors under the Arminian Party.—August 3, conflict arises with the “Sharp Revolution” (*Scherpe Resolutie*; signed by van Oldenbarnevelt) between the States General (Arminians) and Holland (soon to be Calvinist). –1618 August 29, unexpected Calvinist coup d’etat. Grotius, van Oldenbarnevelt, and Rombout Hoogerbeets (Pensionary of Leyden) are arrested on behalf of the new States General. –1619 May 13, special Tribunal of 24 judges meet to try the three political prisoners: -Van Oldenbarnevelt is sentenced to death. -May 18, Grotius and Hoogerbeets are sentenced to life in prison at the castle of Loevestein. At this point there has been no declaration of charges. –June 6, Grotius begins serving his prison sentence at Loevestein. – 1620 June 6, supplemental judgement declares the charges of Grotius to be treason (*laesa majestas*). – 1621 March 22, with the help of his wife, Grotius escapes to Antwerp and later to Paris. –1625: *De Jure Belli Ac Pacis* (On the Law of War and Peace) is published in Paris. This later distinguishes him as the “Father of International Law”. 1631: After remaining in exile in Paris, Grotius returns to Holland in defiance of his status. He practices law in Amsterdam and is offered the Governor Generalship of the Dutch East Indies Company in Asia. 1632: March, a 2000 guilder price is put on the head of Grotius. –April 17, flees Holland for Hamburg, Germany. He spends three years in Germany. 1634: Appointed Ambassador of Sweden to France in Paris by Count Axel Oxenstierna. –1635: Begins his diplomatic duties in Paris. Helps negotiate a treaty for ending the Thirty Years War. 1644: December 30, Grotius is relieved from the position of Ambassador in Paris. He received a letter of recall from Queen Christina. 1645: March, takes family and leaves for Stockholm, Sweden to take on another position. –He gets shipwrecked after sailing across the Baltic Sea. –August 13, sails for Lubeck but has to land eight days later because of severe storms. –August 28, dies in Rostock, Germany from exhaustion. The final words of Grotius were: “By understanding many things, I have accomplished nothing.”

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Cfr.: <http://oregonstate.edu/instruct/phl302/philosophers/grotius.html>

“In Olanda, come in Inghilterra, la prima tentazione suscitata dal diffondersi della soluzione acostiana fu quella di utilizzare l’ipotesi di un popolamento del Nuovo Mondo a partire dalle sue estremità nord-orientali e nord-occidentali per riempirla di un contenuto etno-genetico che garantisse alle popolazioni dei Paesi Bassi un diritto di prima occupazione sulle terre americane: non solo, e non tanto, nell’intento di legittimare gli eventuali possedimenti territoriali dei coloni olandesi, ma specialmente nella prospettiva di evitare che altre nazioni potessero ostacolare la penetrazione commerciale olandese in nome di un diritto di prima occupazione... Nella stessa Olanda, tuttavia, a questa interpretazione esclusivistica del sistema acostiano se ne accompagnava un’altra assai più fedele allo spirito universalistico che aveva ispirato il gesuita spagnolo. E’ quella che si incontra nel breve commento letterario che accompagna le carte geografiche dell’atlante di Mercator nella edizione del 1638. L’unica certezza espressa è qui la falsità della tesi giudeogenetica, dimostrata con gli stessi argomenti di Acosta... Fu Ugo Grozio il personaggio che nel 1642 diede il via alla controversia pubblicando, a Parigi e ad Amsterdam, una *Dissertatio* di quindici pagine *De origine gentium americanarum*. Per confutarla, un altro olandese, Jean de Laet, faceva uscire a Parigi, l’anno successivo, più di duecento pagine di *Notae*... E’ noto che Grozio contribuì in modo determinante ad elaborare una concezione giuridica che giustificasse l’operato delle compagnie di commercio olandesi, e che su commissione della Compagnia olandese delle Indie Orientali incominciò, fin dal 1604, a gettare le basi di quei principi di diritto internazionale che sarebbero sfociati nel *De Jure belli ac pacis*. Ma quando scrisse l’opuscolo sull’origine degli americani erano passati ventun’anni dalla sua avventurosa fuga dalla fortezza di Louvestein, e ogni speranza di ritornare in patria era ormai sfumata. Da un settennio svolgeva attività di ambasciatore del re di Svezia a Parigi, ed è esatto dire, con Charlevoix, che proprio *en ambassadeur* affrontò l’argomento sulle origini degli americani... Proprio Grozio, che come avvocato della compagnia di commercio olandese aveva lottato contro ogni pretesa esclusivistica, in nome di un comune diritto al commercio universale; proprio Grozio, nella veste di ambasciatore di Svezia, viene ora ad inalberare un particolaristico *jus primae occupationis* per difendere le terre occupate dai coloni svedesi dalle ingerenze degli scomodi vicini. E’ un arretramento concettuale pienamente comprensibile. La potenza commerciale olandese non richiedeva altra garanzia giuridica che l’abbattimento di ogni particolaristica resistenza alla sua penetrazione. La debolezza del tentativo coloniale svedese, il suo carattere quasi esclusivamente agricolo, richiedeva invece, contro le



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tendenze fagocitanti anglo-olandesi, una difesa giuridica che non poteva fare a meno di assumere toni fortemente particolaristici.”

Cfr.: Giuliano Gliozzi *Adamo e il nuovo mondo* Firenze, La Nuova Italia, 1977, p. 444-454 passim.

Appoggiandosi sulla definizione di “peccato” (il peccato come la violazione più eclatante della *recta ratio*) del più insigne rappresentante del nominalismo occamistico, Gabriel Biel (1425 – 1495), Grozio effettua una vera e propria “rivoluzione copernicana” del diritto, separando cioè il diritto dalla teologia, rivoluzione “sintetizzata dalla celebre affermazione groziana che il diritto naturale esisterebbe anche se Dio non ci fosse, espressione che sarebbe divenuta il manifesto del giusnaturalismo moderno.”

Cfr.: Sergio Zoli *Dall'Europa libertina all'Europa illuminista* Firenze, Nardini, 1997, p. 176.

Vedi anche: [profilo di Huig van Groot in Treccani.it](#) e [profilo di Huig van Groot in Dizionario di Filosofia nel sito dell'Enciclopedia Treccani](#)