

Hugo Grotius – The Right of War and Peace (*De iure belli ac pacis*)

K otázce, zda je někdy správné či dovolené vest válku

Having viewed the Sources of Right, let us proceed to the first and most general Question, which is, Whether any War be Just, or, Whether 'tis ever Lawful to make War?

I. But this Question, as well as those which follow, is to be first examined by the Law of Nature. Cicero learnedly proves [...] that there are two Sorts of natural Principles; some that go before, and are called by the Greeks The first Impressions of Nature; and others that come after, but ought to be the Rule of our Actions, preferably to the former. What he calls The first Impressions of Nature, is that Instinct whereby every Animal seeks its own Preservation, and loves its Condition, and whatever tends to maintain it; but on the other Hand, avoids its Destruction, and every Thing that seems to threaten it. Hence comes it, says he, that there's no Man left to his Choice, who had not rather have all the Members of his Body perfect and well-shaped, than maimed and deformed. And that 'tis the first Duty of every one to preserve himself in his natural State, to seek after those Things which are agreeable to Nature, and to avert those which are repugnant. [...]

Among the first Impressions of Nature there is nothing repugnant to War; nay, all Things rather favour it: For both the End of War (being the Preservation of Life or Limbs, and either the securing or getting Things useful to Life) is very agreeable to those first Motions of Nature; and to make use of Force, in case of Necessity, is in no wise disagreeable thereunto; since Nature has given to every Animal Strength to defend and help itself. [...] [Similarly] Right Reason, and the Nature of Society, which is to be examined in the second and chief Place, does not prohibit all Manner of Violence, but only that which is repugnant to Society, that is, which invades another's Right: For the Design of Society is, that every one should quietly enjoy his own, with the Help, and by the united Force of the whole Community. [...] It is not then against the Nature of Human Society, for every one to provide for, and take Care of himself, so it be not to the Prejudice of another's Right; and therefore the Use of Force, which does not invade the Right of another, is not unjust.

[Book I, chap. II]

Dva významy spravedlivé války

IV. By the Law of Nature then, which may also be called the Law of Nations, it is plain, that every Kind of War is not to be condemned. History, and the Laws and Customs of all People, fully inform us, that War is not disallowed of by the Voluntary Law of Nations: Nay, Hermogenianus declares, that Wars were introduced by the Law of Nations, which I think ought to be interpreted somewhat different from what it generally is, viz. that the Law of Nations has established a certain Manner of making War; so that those Wars which are conformable to it, have, by the Rules of that Law, certain peculiar Effects: Whence arises that Distinction which we shall hereafter make use of, between a solemn War, which is also called Just, (that is, regular and complete) and a War not solemn, which yet does not therefore cease to be just, that is, agreeable to Right. For tho' the Law of Nations does not authorize Wars not solemn, yet it does not condemn them, (provided the Cause be just) as shall hereafter be more fully explained. [...]

[Book I, chap. II]

IV. Public Wars are either Solemn, according to the Law of Nations, or not solemn: What I here term Solemn is generally called Lawful, or made in Form, in the same Sense as a Will is termed Lawful, in Opposition to a Codicil; or a Marriage Lawful, in Opposition of the Cohabitation of Slaves. Not because it is not allowed a Man, if he pleases, to make a Codicil, and a Slave to cohabit with a Woman; but because a Will, and a Marriage in Form, have some peculiar Effects, by the Civil Law; which it is convenient to observe; for many, misunderstanding the Word Lawful, think all Wars are condemned as unjust and unwarrantable, to which that Epithet does not agree. Two Things then are requisite to make a War solemn by the Law of Nations. First, that it be made on both Sides, by the Authority of those that have the Sovereign Power in the State: And then, that it be accompanied with some Formalities; of which we shall treat in its proper Place. These Conditions are equally necessary, so that if the one be wanting, the other is needless.

[Book I, Chap. III]

O spravedlivých příčinách války

I. Let us now proceed to the Causes of War, I mean such as are properly said to justify it; for there are some Motives of Advantage (*quae movent sub ratione utilis*), sometimes different from just Occasions (*quae movent sub ratione justi*), that determine us to take up Arms. [...] There is no other reasonable Cause of making War, but an Injury received: So says St. Augustin: “The Iniquity of one Side, that is, the Injury received, furnishes a just Occasion of War. *Iniquitas* in this Place is taken for *Injuria*. [...]

II. Now, as many Sources as there are of judicial Actions, so many Causes may there be of War. For where the Methods of Justice cease, War begins. [...]

Most Men assign three just Causes of War, Defence, the Recovery of what's our own, and Punishment: Which three you have in Camillus's Declaration against the Gauls: “Whatever may be defended, recovered, or revenged; in which Account, if the Word Recovered be not taken in a greater Latitude than usually it is, it will not include the suing for that which is our Due; which suing was not omitted by Plato, when he said, That “War is not only undertaken when one is insulted, or plundered; but also when imposed upon, or treated in any fraudulent Manner”.

III. [...] if a Man is assaulted in such a Manner, that his Life shall appear in inevitable Danger, he may not only make War upon, but very justly destroy the Aggressor; and from this Instance, which every one must allow us, it appears that such a private War may be just and lawful. It is to be observed, that this Right of Self-Defence, arises directly and immediately from the Care of our own Preservation, which Nature recommends to every one, and not from the Injustice or Crime of the Aggressor. [...]

XVII. But I can by no Means approve of what some Authors have advanced, that by the Law of Nations it is permitted to take up Arms to reduce the growing Power of a Prince or State, which if too much augmented, may possibly injure us. I grant, that in deliberating whether a War ought to be undertaken or not, that Consideration may enter, not as a justifying Reason, but as a Motive of Interest. So that where we have any other just Cause for making War, it may for this Reason too be thought prudently undertaken. And this is all that the Authors before cited do in Effect say; but to pretend to have a Right to injure another, merely from a Possibility

that he may injure me, is repugnant to all the Justice in the World: For such is the Condition of the present Life, that we can never be in perfect Security. [...]

XVII. We are also to take Notice, that it often comes to pass, that tho' there be a just Cause for War, yet some Fault may accompany the Action from the Disposition of the Agent, as when something else, not of itself unlawful, does more powerfully incite us, than the Right we have to do it, as the desire of Glory, for Instance, or some Advantage either private or public that is expected to accrue to us from the War, considered distinctly from the justifying Reason of it, or when some unlawful Passion arises in us, as the taking a Satisfaction in another's suffering, without regard to any Good. [...] Whereunto we may refer that of St. Augustin: *A Pleasure in doing Mischief, or in Revenge, a restless and implacable Spirit, a Spirit of Rebellion, the Lust of Dominion, and such like are justly culpable in all Wars.* But tho' these Things are criminal, yet when the War is grounded on a justifiable Reason, they do not render it Unjust, and therefore there is no Obligation to make Restitution for Damages sustained by such a War.

[Book II, Chap. I and XXII]

O nespravedlivých příčinách války

V. [...] Wherefore their Opinion is not to be assented to, who maintain that it is lawful to bring War upon a neighbouring Prince, who, in his own Territories shall erect a Castle, or other fortified Place, which may some Time or other be detrimental to us, tho' he is under no Obligation to the contrary by any previous Compact. For to remove such Apprehensions, we should apply ourselves to the raising such within our own Dominions, and look out for other Remedies, rather than immediately have Recourse to War. [...]

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[Book II, Chap. XXII]

O tom, zda musí být spravedlivé války vedeny

Tho' it be somewhat foreign to the Matter in Hand, which is designed only to treat and discourse of the Right of War, to explain what other Virtues, distinct from Justice, require or direct with respect to War; yet by the way we must obviate a certain Mistake, lest any one should imagine, that whenever he has a just Cause given him, he is thereupon immediately obliged to declare War, or that it is warrantable at any Time for him so to do. On the contrary, it happens that it is commonly a greater Piece of Goodness and much more commendable to abate somewhat of our Right, than rigorously to pursue it. For we observed above, in its proper Place, that we may very laudably hazard our own Lives to secure another's, or to promote as far as in us lies his eternal Salvation. And this Duty obliges us Christians most of any, who therein follow the exact Pattern of Christ, who laid down his Life for us, while we were yet Sinners and Enemies to him;

which Instance should much more excite and direct us not to be so eager in pursuing our Rights to that Degree, as to bring upon others all those Inconveniences and Mischiefs which War is attended with. [...]

[Book II, Chap. XXIV]

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