ARCHIWUM HISTORII FILOZOFII I MYŚLI SPOŁECZNEJ • ARCHIVE OF THE HISTORY OF PHILOSOPHY AND SOCIAL THOUGHT
VOL. 56/2011 • ISSN 0066–6874

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Sociability versus Conflict: Grotius's Critique of the Doctrine of *Raison d'État*

ABSTRACT: This article presents Grotius's argument against *raison d'état* and his defense of the rule of law in international relations. Grotius remains an important voice in the debate about the character of international politics. He challenges the views of the adherents of the doctrine of *raison d'état* who, following Machiavelli, give rulers the license to disobey legal and ethical norms whenever the vital interests of the state are at stake, and to use any means to achieve their goals, including warfare. On the other hand, he also takes a position against pacifists who on moral or religious grounds are adverse to any war. By putting forward the idea of international rule of law, even in warfare, he provided the foundation for a universal legal order applicable to all nations.
KEYWORDS: Grotius • Machiavellism • raison d'état • militarism • pacifism • rule of law • international law

> Among the traits characteristic of human beings is their impending desire for society, that is for social life – not of any and every sort, but peaceful and organized.
>
> GROTIUS

Hugo Grotius lived during turbulent times in which politics mixed with religion[1]. The emerging sovereign and mutually independent states of Europe were incessantly fighting over territorial, dynastic and commercial matters, as well as over differences in religion. The Thirty Years War, arguably one of the most cruel and lawless wars in European history, broke out in 1618 as a result of religious quarrels. The sovereigns of Grotius's time did not consider themselves bound by international agreements and they were rather unscrupulous in interpreting and applying them. They were thus followers

[1] Hugo Grotius (1583–1645), Huigh de Groot in Dutch, often hailed as the father of international law. A jurist and diplomat, he also gained recognition as a political thinker, theologian, historian, playwright and poet.

of the doctrine of *raison d'état* and disciples of Niccolò Machiavelli, whose work *The Prince* taught them to break any treaty, when the advantages that had induced them to conclude it ceased to exist.

Machiavelli never used the phrase *ragione di stato* (reason of state) or its French equivalent, *raison d'état*. Nevertheless, the contention that, in order to maintain or protect the state, it is appropriate for a sovereign to engage in a morally reprehensible course of action is central to his political theory. Under his influence, this view of international conduct became the main theme of an entire genre of sixteenth-century Italian political writings, the most notable contribution to which was Giovanni Botero's work *Ragione di Stato*[2]. It was, however, in seventeenth-century France, in the policies of Cardinal Richelieu, and later in Germany, that Machiavellian political ideas came to prominence and contributed to a significant evolution of the doctrine of *raison d'état*. Frederick the Great (who called Machiavelli the enemy of mankind but closely followed his advice) expressed this doctrine as "princes are slaves to their resources, the interest of the state is their law, and this law is inviolable"[3]. *Raison d' état* became the main principle of European interstate relations, and served as a justification of the methods a number of statesmen felt obliged to affirm in their foreign-policy practice[4]. These methods, outlined in *The Prince*, involved conquering either by force or fraud, destroying cities, putting to death anyone who could do harm, moving the inhabitants from one place to another, establishing colonies, replacing old institutions with new ones, and extending the territory and power of the state at the expense of rivals. The question of morality, in the sense of norms restraining states in their mutual relations, either did not arise or was subordinated to the competitive struggle for power.

What ultimately counted for Machiavelli were not moral scruples or norms, but *raison d'état*: whatever is good for the state. Machiavellism has become associated with a certain kind of political behavior in which expediency is placed above morality. This kind of behavior existed long before Machiavelli, and was long before him debated by political philosophers. The

[2] Q. Skinner, *The Foundations of Modern Political Thought*, Vol. 1 (Cambridge: Cambridge University Press, 1978), 248.

[3] On the influence of Machiavelli's thought on Frederick the Great and other statesmen, and on the development of the doctrine *raison d'état* by philosophers Fichte and Hegel, and German historians such as Leopold von Ranke and Heinrich von Treitschke, see: F. Meinecke, *Machiavellism: The Doctrine of Raison d'État in Modern History*, Trans. D. Scott (New Brunswick, N.J.: Transaction Publishers, 1998).

[4] G. Russell, *Hans J. Morgenthau and the Ethics of American Statecraft* (Baton Rouge: Luisiana State UP, 1990), 9.

arguments of the Athenian envoys presented in the "Melian Dialogue" by Thucydides, of Thrasymachus in Plato's *Republic*, and of Carneades to whom Grotius refers all furnish a great challenge to the classical view of the unity of politics and ethics. However, before Machiavelli, this amoral or immoral stream of thinking had never prevailed over the prevailing political tradition of Western thought. It was only the Machiavellian justification of resorting to evil as a legitimate means of achieving certain political ends that persuaded so many thinkers and political practitioners after him. This justification was further carried on by the theorists of the doctrine of *raison d'état*. The tension between expediency and morality lost its validity in the sphere of politics. The concept of a double morality, private and public, was invented. Ethics was subjected to politics. The good of the state was interpreted as the highest moral value. National power was extended as a nation's right and duty. In the Marxist version of this doctrine, a superior type of morality was assigned to the revolutionary cause. In the name of such a "higher" morality, identified with the interest of the proletariat or of the state, grave crimes against humanity have been committed. Actions which employed violent, cruel, or otherwise customarily immoral means were regarded as legitimate to exigencies of "progressive change".

In this article I present Grotius's argument against *raison d'état* and his defense of the rule of law in international relations. His major work, *De Jure Belli ac Pacis* (*On the Law of War and Peace*), does not contain any reference to the Florentine thinker. Nevertheless, as I show, it is principally against Machiavellian ideas that Grotius directs his argument. He challenges the views of adherents of the doctrine of *raison d'état* who following Machiavelli give rulers the license to disobey legal and moral norms whenever the vital interests of the state are at stake. On the other hand, he also takes a strong position against pacifists who on moral or religious grounds are adverse to any warfare. As one who attempts to define his position between the amoral realism of the former and the moralistic idealism of the latter, he remains an important voice in the debate about the character of international politics. He puts forward the idea of the international rule of law, even in warfare, and thus provides the foundation for a universal legal order applicable to all nations.

Grotius's Argument against Raison d'État

Drawing our attention to the value of international law, Grotius writes, in the Prolegomena to *De Jure Belli ac Pacis*: "Many hold, in fact, that the standard of justice which they insist upon in the case of individuals within

the state is inapplicable to a nation or the ruler of a nation"[5]. He tells us that there are those who regard international law with contempt, "as having no reality except an empty name"[6]. Such writers consider that for a state nothing is unjust which is expedient and that the conduct of foreign policy cannot be performed without injustice. Powerful states can afford to pursue their policies without regard to law and solely in the light of their own advantage. Grotius rejects these views. In humanist fashion, instead of attacking directly his contemporary opponents, he makes his argument against Carneades (215–129 BC), a natural law critic and a classical representative of the belief that in international politics nothing is unjust which is expedient.

Carneades's position can be summarized as follows. There is no universally valid natural law, discoverable by "right reason," which determines what is right and wrong. Natural law has no basis because all creatures, human beings and animals, are impelled by nature to pursue ends advantageous for themselves[7]. Therefore, nothing is right or just by Nature, and all laws are conventional. Human beings impose them upon themselves for expediency, and such laws vary among different peoples and change at different times. Justice is derived from utility and is based only on calculation of the advantage of living together in a particular society. Such advantage is apparent in the case of citizens who, singly, are powerless to protect themselves. But strong individuals or powerful states, since they contain in themselves all things required for their own protection, do not need justice[8]. They need acknowledge no higher law but their own strength. The notion of justice is thus not applicable to relations between states, or if there is justice, "it is supreme folly, since one does violence to ones own interests if one consults the advantage of others"[9]. Carneades, to use the phrase of Reinhold Niebuhr, is in short one "in the long line of moral cynics in the field of international relations" who know no law beyond self-interest[10].

To Grotius, justice is not folly. He defends natural law as follows. Firstly, he attacks the view that every animal is impelled by nature to seek only its own good. Even animals can restrain their self-serving appetites, to

[5] *Prol.* § 22. My citations from *De Jure Belli ac Pacis* are taken from the English translation by F. W. Kelsey of the Latin edition of 1646. This translation forms part of the series "The Classics of International Law," published by the Carnegie Endowment for International Peace. Kelsey' translation was published in 1925.

[6] *Prol.* § 3.

[7] *Prol.* § 5.

[8] *Prol.* § 22.

[9] *Prol.* § 5.

[10] R. Niebuhr, *The Children of Light and the Children of Darkness: A Vindication of Democracy and a Critique of Its Traditional Defense* (New York: Charles Scriber's Sons, 1960), 8.

the advantage of other animals, most obviously their offspring[11]. Sheep-dogs, for example, go in advance of their flocks, fighting till death, if necessary, to protect the flocks and shepherds from hurt. If this is the case with animals, it is even more so with humans, who are rational creatures. Humans can benefit not only themselves, but also others by the ability to recognize others' needs. They can refrain, even with inconvenience to themselves, from doing hurt[12]. They have been endowed with the faculty of knowing good and evil, and of acting according to general principles. What is characteristic of human beings is "an overwhelming desire for society; that is, for social life not of any and every sort, but peaceful, and organized according to the measure of intelligence[13]. They neither were nor are, by nature, wild unsociable beings. On the contrary, it is the corruption of their nature which makes them so[14]. Secondly, if humans are naturally social, their natural sociability should be protected against acts which destroy peace in society, such as the violation of others' property. Laws established to provide an order in society are thus not merely conventional, but have their basis in human sociability. The law of nature, as it appears from the *Prolegomena*, is the law which conforms with the social nature of humans and the preservation of social order; the law which applies to all humans. To its sphere belong such rules as not taking that which belongs to another, the restoration of damage, the obligation to fulfill promises, the reparation of injury, and the right to inflict penalties[15]. It exists independently of any will and cannot be changed by any authority whatsoever, whether divine or human.

Human natural inclination to one another, sociability or fellowship – in short, human social nature and not mere expediency – is the foundation of natural law: "a dictate of right reason which points out that an act, according to whether it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity"[16]. Nevertheless, insofar as we have all been created weak, and lack many things needed to live properly, laws which have their ultimate source in human sociability are reinforced by expediency[17]. Grotius divides law into natural law and volitional law. Positive volitional laws, which emanate from the power of the state but have their ultimate point of reference in natural law, have always some advantage in

[11] *Prol.* § 7.
[12] *De Jure* 1,1,11. I follow a standard form of reference (book, chapter, section).
[13] *Prol.* § 6.
[14] *De Jure* 1, 1, 12.
[15] *Prol.* § 6.
[16] *De Jure* 3, 11, 16.
[17] *Prol.* § 16.

view. Insofar as they are based on citizens' choice and consent, the laws of each state have in view the benefit of the whole society. For this reason, he argues, it is wrong to ridicule justice as folly. A citizen who obeys the law is not foolish, "even though, out of regard for that law, he may be obliged to forgo certain things advantageous for himself"[18]. By violating a law of his country in order to maximize utility and obtain immediate advantage, the individual destroys the common welfare, by which the advantages of himself and his posterity are secured. The same applies to international law that has in view "the advantage, not of particular states, but of the great society of states"[19].

Grotius replaces the double standard of conduct for states, one (moral) in their internal affairs and second (amoral) in their foreign affairs, which is characteristic of politics of *raison d'état*, with a clear-cut parallelism. The conduct of nations is compared by him to the conduct of individuals. The "nation is not foolish which does not press its own advantage to the point of disregarding the laws common to all countries"[20]. He emphasizes mutual interdependence of states and argues that although law is not founded upon expediency alone, no state can disregard potential benefits of international cooperation. In a mutually interdependent world, there is no state so powerful that it may not some time need the help of others outside itself, either for purposes of trade, or even to ward off the forces of many foreign nations united against it[21]. No state is free to act unlawfully. In disobeying the law of nations because of temporary profit to itself, the state separates itself from international society and hence undermines the foundation of its own security.

Grotius challenges the view that laws are merely conventional and justice is a matter of mere expediency. He asserts the essential identity of legal and moral rules governing the conduct of states and individuals, and traces the source of these rules to the law of nature. He does not identify international law with natural law, since the latter represents a body of moral rules known to all civilized human beings, while the former is a body of rules that have been accepted as obligatory by the consent of all or many states. However, the law of nature is for him the ever-present source for supplementing the voluntary law of nations, and for judging its adequacy in the light of ethics and reason. It provides criteria against which the mere will and practice of states can be measured. At the same time, however, he

[18] *Prol.* § 18.
[19] *Prol.* § 17.
[20] *Prol.* § 18.
[21] *Prol.* § 22.

draws our attention to the utility of international law. While the proponents of the doctrine of *raison d'état* argue that state interests override customary moral rules and international norms, Grotius attempts to show that this way of looking at national interest is the equivalent of looking into the wrong end of a telescope. It establishes a false dichotomy between the interests of particular states and the interests of the whole international community. It fails to appreciate how important international norms are when it comes to the constitution of state interests. Even if no immediate advantage were to be derived from the keeping of the law, Grotius says, it would be a mark of wisdom, not of folly, to allow ourselves to be drawn towards that to which we feel our nature leads[22]. Respecting international law and promoting international order can bring long-term benefits to all nations.

Jus ad Bellum and Jus in Bello

For adherents of the doctrine of *raison d'état*, ethical and legal norms are suspended by the necessities (such as the necessity to survive or secure power) which states confront in international relations. The stern necessities of the state justify doing evil. In the affirmation of "reason of state", the claim to an unrestricted right to war is thus the most important. War becomes the right of sovereign states and the very symbol of their sovereignty. Moreover, since war is always an instrument of state policy, as Carl von Clausewitz pointed out, it is limited insofar as policy was limited; however, once a state decided to pursue a policy of conquest and was no longer prepared to be bound by any established norms, it would fight a total and unconstrained war[23]. Grotius disputes these views. For him, states are composed of individual human beings[24] – a basic reason why their behavior is not subject to impersonal forces of necessity but ultimately always depends upon human decisions. States are not disorderly crowds but associations. As such, they are, as a rule, governed by individuals who reach decisions after deliberations and are capable of forming judgments on ethical and legal issues confronting them. Moreover, since states are collections of persons, they are subordinated to natural law arising from the nature of man as a rational and as a social being[25]. Hence, their behavior is subject to moral limitations. To control and limit war is thus not inherently impossible. Grotius attempts to limit and restrain war in two

[22] *Prol.* § 18.

[23] M. Howard (ed.), *Restraints on War: Studies in the Limitation of Armed Conflict* (Oxford: Oxford University Press, 1995), 6.

[24] *De Jure* Book 2, 1, 17.

[25] *Prol.* § 26.

ways: firstly, by his just war doctrine which puts severe limitations on the reasons for which war may be fought; secondly, by putting legal restraints on its conduct[26]. The two phrases: *jus ad bellum* (justice of war) and *jus in bello* (justice in war) refer respectively to these two cases.

There are three views concerning the legitimacy of war. Firstly, there is the pacifist view that because of moral or religious reasons no act of war is legitimate. Secondly, there is the militaristic or Machiavellian view that any war that benefits the state is legitimate. Thirdly, there is the legalistic or Grotian view that there is a distinction between just and unjust causes of war, and that some wars are therefore legitimate and others are not. The pacifist and militarist views are both inimical to international order. The former rejects the violence that is necessary to uphold international order against attempts to subvert it; the latter admits violence of a sort that destroys international order[27]. For Grotius, the use of force is in no way discordant with social human nature. "The right reason and the nature of society prohibit not all force", he says, "but only that which is repugnant to society, by depriving another of his right"[28]. Convinced that there is a common law among nations, which is valid alike for war and in war, he attempts to provide an alternative against both extremes, pacifism and militarism, so that humankind may not believe either that nothing or anything is allowable[29]. He denies the state the right to resort to war except in pursuance of a just cause: "No other just cause for undertaking war can there be excepting injury received"[30]. He limits the justifiable causes of war to defense, recovery of property, and inflicting of punishment. In addition, he devotes an entire chapter of the *De Jure Belli ac Pacis* to an enumeration of various causes of unjust war[31]. He accepts as a just cause of war neither the desire for richer lands nor the desire to rule others against their own will on the pretext that it is for their good. Wars can be justly waged neither against those who refuse to accept our ideology or religion nor err in its interpretation. Furthermore, in elaborating the right of self-defense, Grotius rejects the claims of the war of prevention. He claims that the notion that "the mere possibility of being attacked confers the right to attack is abhorrent to every principle of equity. Human life exists in such

[26] *Prol.* § 25.

[27] H. Bull, *The Grotian Conception of International Society*, in: *Diplomatic Investigations: Essays in the Theory of International Politics*, Ed. H. Butterfield and M. Wight (London: Allen and Uwin, 1966), 54.

[28] *De Jure* 1, 2, 1.

[29] *Prol.* § 29.

[30] *De Jure* 2, 1, 1.

[31] *De Jure* 2, 12.

conditions that complete security is never guaranteed to us"[32]. In another part of the book, he says plainly that to "authorize hostilities as a defensive measure, they must arise from the necessity which right apprehensions create: there must be a clear evidence not only of the power, but also of the intentions of the formidable state"[33].

In Book III of *De Jure Belli ac Pacis* Grotius discusses what was considered to be just in war under the law of nations of his day: killing and wounding enemies, devastating, acquiring captured goods, enslaving prisoners of war, and obtaining supreme governing power. However, he does not approve of these practices. In chapters 11–16, which include chapters on admonition of *temperamenta belli* (restraints on war), he aims at providing rules for minimizing bloodshed. First, he seeks to restrain the right to kill. He states that no one may be killed intentionally except as a just punishment or by necessity, when there is no other way to protect life or property. Next, he specifies the categories of people who may not be killed. These include such non-combatants as children, women (unless they are fighting in place of men), old men, members of the clergy, men of letters, farmers, merchants, and artisans. He also argues that the lives of those combatants who surrender unconditionally or beg for mercy, and thus no longer pose a threat, should be spared. Grotius's argument in respect of devastating and pillaging is similar. Devastation can be undertaken to reduce the strength of the enemy. But devastation for devastation's sake is absurd and should be avoided. It is not allowed if, as a result of occupation, the land and its produce are effectively withheld from the enemy. Grotius also insists that the powers involved in conflict should refrain from destroying works of art, especially those devoted to sacred purposes. He believes that reverence for things sacred requires that sacred buildings and their furnishing be preserved. To evaluate the value of *temperamenta* he does not only refer to the law of nature. He also supports his emphasis on moderation in war by a prudential argument[34]. To refrain from indiscriminate killing, and from destroying and pillaging property, he argues, increases the likeness of one's own victory by depriving the enemy of the great weapon of despair.

De Jure Belli ac Pacis was read widely in the European intellectual circles of the seventeenth and the eighteenth centuries, and must have then exerted some influence on the process by which the severity of war in Europe was mitigated. Many rules and basic ideas of the law of war established in

[32] *De Jure* 2, 1, 17.
[33] *De Jure* 2, 22, 5.
[34] *De Jure* 3, 12, 8.

the late ninetieth and early twentieth centuries, especially by the Hague and Geneva conventions, follow Grotius's restraints on the conduct of war[35]. Nevertheless, his just war doctrine was not accepted in his day and for three centuries thereafter. Prior to the changes introduced to international law in the aftermath of the First World War, states had the right to resort to war not only to defend their legal rights, but also in order to destroy rights of other states. This idea of the unqualified prerogative of states to resort to war as an instrument of national policy was opposed by the just war tradition that denied the absolute right to war and differentiated between wars which, in law, were just and those which were not. Grotius made a significant contribution to this tradition[36]. In the Covenant of the League of Nations, established in 1919 by the Treaty of Versailles and dissolved in 1946, lawful resort to war was diminished for the League's member states. International law on the right to resort to war was further developed by the Kellogg-Briand Pact of 1928, outlawing war as an instrument of national policy, and the UN Chapter of 1945. The provisions of the UN Chapter, aiming at providing a system of collective security, extend beyond Grotius' position. However, they preserve his basic idea that states may use unilateral force only for the purpose of self-defense, and not for the pursuit of their foreign-policy objectives.

Human Rights and Intervention

Against advocates of the doctrine of *raison d'état* Grotius argues that "there is a common law among nations, valid for war and in war"[37]. His contribution to international relations theory is the idea that the binding force of law can be preserved in an anarchic international environment. Thus, he lays foundations for a universal international order dedicated to peaceful cooperation between equal and mutually independent sovereign states. Nevertheless, in addition to promoting the rule of law in inter-state relations, Grotius sets before the international community another goal of protecting people from harm and of promoting the protection of basic human rights. In the chapter "On Punishments", he says:

> The fact must also be recognized that kings, and those who possess rights equal to kings, have the right of demanding punishments not

[35] C. Van Vollenhoven, *Grotius and the Study of Law*, "The American Journal of International Law", 19.1 (1925): 3–5.

[36] See G. I. A. D. Draper, *Grotius' Place in the Development of Legal Ideas about War*, in: *Hugo Grotius and International Relations*, Ed. H. Bull, B. Kingsbury and A. Roberts (Oxford: Clarendon 1990), 202.

[37] *Prol.* § 24.

> only on account of injuries committed, against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever[38].

Central to Grotius's thought about war is the insistence that private war, violence between families, groups or cities, is forbidden. "No war can be made but by the authority of the sovereign in each state"[39]. Grotius is thus against non-state violence, and has been criticized because of his disapproval of the right of resistance to oppression. He asserts that a rebellion in the form of a war of liberation is not permitted under natural law. To recognize a right of resistance for him is contrary to the purpose for which the state is formed, that is, the maintenance of public peace[40]. Nevertheless, he adds to his position a few important qualifications. Right of popular resistance exists when rulers openly demonstrate themselves enemies of the whole people or attempt to usurp parts of sovereign power not belonging to them. Further, he permits non-violent struggle and defends such individual rights as the right to defend one's persons and property, the right to refuse to carry arms in an unjust or even morally doubtful war, and the right to purchase necessities of life, such as food, clothing or medicine, at a reasonable price[41]. He is also clearly ahead of his time when he discusses humanitarian intervention. Notwithstanding his reluctance to sanction wars of national liberation, he considers the prevention of the maltreatment by a state of its subjects a just reason for war.

Based on the notion of state sovereignty over its own territory, international law has traditionally opposed not only unilateral intervention in the domestic affairs of one country by another, but also collective action. The only exceptions are grave threats to the peace and security of other states and of egregious and potentially genocidal violations of human rights. While addressing the dilemma of whether the sovereignty of a state should be respected or the rights of the individuals within the state protected, Grotius offers a basic principle by which humanitarian intervention can be justified. He acknowledges the established rule that "every sovereign is supreme judge in his own kingdom and over his own subjects, in whose disputes no foreign power can justly interfere"[42]. However, he argues that the state that is op-

[38] *De Jure* 2, 20, 40.
[39] *De Jure* 1, 3, 5.
[40] *De Jure* 1, 4, 2–5.
[41] *De Jure* 2, 2, 19.
[42] *De Jure* 2, 25, 8.

pressive and egregiously violates basic human rights forfeits its moral claim to full sovereignty. When the rulers provoke their people to despair and resistance by unheard-of cruelties, having themselves abandoned all laws of nature, they lose the rights of independent sovereigns and can no longer claim the privilege of the law of nations. Humanitarian intervention is therefore for Grotius a kind of international equivalent of domestic law enforcement. Governments that engage in acts that allow other states to intervene in their domestic affairs for humanitarian purposes are considered by him to be criminal governments. While Grotius generally denies the oppressed the right of resistance, he permits a foreign state to intervene, through war, on their behalf. "Admitting that it would be fraught with the greatest dangers if the subjects were allowed to redress grievances by force of arms, it does not necessarily follow that other powers are prohibited from giving them assistance when laboring under grievous oppression"[43].

Grotius argument for intervention is based on the assumption of one common nature which humans have and which alone is sufficient to oblige people to assist each other. Human social and rational nature is the source of natural law, and a foundation of human rights. In the sense that pertains to an individual human being, "right (*ius*) is a moral quality, annexed to the person, justly entitling him to possess some particular privilege, or to perform particular acts"[44]. Although Grotius's list of human rights violations and barbaric acts may be different from today's, he asserts as a mater of principle that members of the international community are not obliged to respect the sovereignty of a state which engages in acts of cruelty and violates human rights. Whoever commits a crime, whether a criminal individual or a criminal nation, by the very act can be considered to fall into the level of brutes and can be regarded as inferior to anyone else[45]. Those human beings that break basic rules of humanity and renounce natural law are wild beasts rather than humans, and against them a just war can be fought. "The most savage war is against savage beasts, the next against men who are like beasts"[46]. However, Grotius does not license intervention everywhere to everyone, and qualifies his argument with prudential considerations. Since a state's own existence and preservation is the object of greater value and prior consideration than the welfare and security of other states, "no one is bound to give assistance or protection when it will be attended with evident danger"[47]. In his view,

[43] *De Jure* 2, 25, 6.
[44] *De Jure* 1, 1, 4.
[45] *De Jure* 2, 20, 3.
[46] *De Jure* 2, 20, 40.
[47] *De Jure* 2, 25, 7.

national responsibility, the obligation of the government to its own citizens, is regarded as most important, and it takes precedence before cosmopolitan responsibility for all humans. Our common nature, he suggests, tells us that if possible something should be done to stop human suffering on a mass scale wherever it occurs. But governments should always protect their own people first and avoid taking unnecessary risks with their welfare; only then can they try to help whomever else they can. "No ally is bound to assist in the prosecution of schemes which afford no possible prospect of a happy termination"[48]. Intervention is justified only if the military risk is not high and there is a reasonable chance of success.

Political realists are critical of intervention, arguing that states act only when it is in their interest to do so. They argue that disregarding the rights of sovereignty of other states to promote human rights may lead to an undermining of peace and order. Grotius does not deny self-interest in international politics. However, he believes that states can identify their interests not only with narrow national goals but also with a greater task of the preservation of international order[49]. In such case, cosmopolitan responsibility for other humans and the rogue states punishment (especially in situations where human rights violations result in grave threats to peace for neighboring states) is not contrary to national interest. Nevertheless, as a word of warning, Grotius says that "wars which are undertaken to inflict punishment are under suspicion of being unjust, unless crimes are very atrocious and evident"[50]. The danger that a humanitarian intervention can be used as the cover of ambitious designs, "by which no faults of kings but their power and authority will be assailed", cannot be completely removed. "But right does not lose its nature from being in the hands of wicked men"[51]. Grotius anticipates the idea, which underlies the system of collective security of the United Nations, that to avoid the situation that under a pretended humanitarian intervention there will be an interest of a single state to undertake a military action against another, the process of judgment whether or not to undertake such action must be multinational[52]. Collectively approved action can correct for self-interested interventions covered by a thin cloak of humanitarianism.

[48] *De Jure* 2, 25, 4.
[49] *Prol.* § 17.
[50] *De Jure* 2, 20, 43.
[51] *De Jure* 2, 25, 8.
[52] M. J. Smith, *Humanitarian Intervention: An Overview of the Ethical Issues*, in: *Ethics and International Affairs: A Reader*, 2nd ed. (Washington, D.C.: Georgetown University Press, 1999), 291.

Old and New Challenges to the Grotian Order

Under Grotius's influence, international law (known earlier as *ius gentium* – "law of nations") changed its old meaning of a set of customs which were discovered to be common to the juridical practice of many different peoples, to a body of rules regulating the relations between sovereign states[53]. He posited the idea of the international rule of law, even in warfare, and thus provided the foundation for a universal legal order applicable to all nations, an order whose purpose is to encourage cooperation between states and reduce the risk of an armed conflict arising among them. The practical expression of this order is today the United Nations Organization that has been devised to maintain the rule of law in international relations and ensure common security, and is therefore a system in which all member states undertake a common action against any country that threatens the security of another state. Yet, just as Grotian ideas were frequently discussed, quoted, admired, and some of them practically implemented, they were also fiercely attacked and described as utopian or unrealistic. Not only his idea of international legal order but also his concept of fixed moral standards derived from natural law, by which policies and political actions could be judged, have been challenged.

The initial challenge came from Thomas Hobbes, Grotius's younger contemporary. Although he does not mention Grotius by name, in his *Leviathan*, first published in 1651, Hobbes makes a formidable attack on the views underlying Grotius lifework. He argues that there is no society between states because there is no common power, authority, and law; that states have an absolute and unlimited sovereign power and, as a matter of sovereign prerogative, are entitled to wage war; that their mutual relations appear to be those of perpetual conflict; that going to war is simply striving to enforce our will as a people on another people; that peace is only a breathing time; that ethical norms do not hold at war and consequently crimes during war do not exist. Hobbes joins the camp to those who dismiss the idea of international norms founded on natural law. In different ways, Machiavellians, Hobbesians, Hegelians, and Marxists all agree.

The age of Grotius was the time of national arms build-up, not arms restriction. The era of colonial conquests by European nations had just begun. But the problem remains. At its core lie important questions. Under what conditions can states punish another state or undertake a humanitarian intervention? Can rules and norms of international society provide restraint

[53] C. F. Murphy, Jr., *The Grotian Vision of World Order*, "The American Journal of International Law", 76.3 (1982): 481.

against the potential egoism of states? Do they contribute to greater cooperation and peace among states? Are rules and norms merely an expression of a particular interpretation of national or class interests at a particular time?

The value of Grotius's work is not that it provides answers to all these questions. He is, however, an important voice in the debate about the character of international politics. He wrestled with problems which continue to concern us. It is his conviction that people do not conduct their foreign policies independently of their cultural values. The international legal order which he envisions is not compatible with societies in which the individual human being is not recognized as the primary principle, but is reduced to a member of a tribe, a nation, or a class; in which the essential elements that constitute human nature, human rationality and sociability, are not recognized; and in which natural law is either not acknowledged or not understood as a moral law. Those core values and norms of Western civilization have been under a constant threat of militaristic ideologies. Upon their sustenance, the future of the present Grotian global order, based on the international rule of law, protected by the UN, ultimately depends[54].

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[54] This article is a revision of "In Defense of International Order: Grotius's Critique of Machiavellism" which was published by *The Review of Metaphysics*, Vol. 60, Number 1 (September 2006). I am grateful to the editors and publishers of *The Review of Metaphysics* for permission to include this text.