

ERASMUS AND GROTIUS ON JUST WAR THEORY

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The juxtaposition of the two great names in Dutch culture, Erasmus and Grotius, may, at first glance, seem artificial. What connection is there between one of the leading figures of the Renaissance and one of the outstanding representatives of juristic rationalism in the seventeenth century? The former, despite his criticisms of the Church of Rome, did not join the Reformers; the latter was a leading light of Dutch Protestantism. Yet, regardless of the contrasts that could be made between these two, they both shared a deep concern for the belligerent tendencies of the new nation states with their absolutist rulers. Erasmus suffered anguish at the sight of warlike princes entering into battle for frivolous, or purely personal reasons; Grotius, who "s'afflige en considérant les lattes continuelles qui ravagent l'Europe",¹ that is the Thirty Years War, did not believe the causes in view justified the devastation.

If the great issues of war and peace preoccupied both of these writers, who were representatives of the international republic of letters as well as patriotic Netherlanders, the approaches they used, and the conclusions they came to, particularly in regard to just war theory, force us to place them in a dialectical opposition. I don't mean that one was an irenical thinker and the other a polemical one. Such an extreme opposition would remove whatever common ground is needed to make a comparison interesting. No; they both represent, like Leibniz, the irenical ideal in political thought. However, their political experience, their professional formation and their respective ideas on questions of human knowledge, led them in opposite directions.

It will be the task of this paper to set forth the two different lines of development in regard to just war theory. After completing the comparison, I shall attempt to draw out the larger significance of the opposition: what importance, if any, do their treatments of just war theory have for us today?

It was Grotius himself who suggested the comparison I am

about to make when he remarked in Book One of *De jure Belli ac Pacis* that his countryman, Erasmus, had adopted one of the two extreme positions on the permissibility of war. His own aim, Grotius said, was to argue so "that men may not believe that nothing is allowable or that everything is".² Erasmus, then, is classed among those who argue that "nothing is allowable". No doubt Machiavelli and the Machiavellians are envisaged as those for whom "everything is allowable". Grotius, the soul of moderation, like his mentor Aristotle, could not accept either extreme. The truth ever lies in a middle way: *in medio stat veritas*. The truth lies in just war theory, which neither extreme position accepts, albeit for different reasons.

Now at this point, I must avoid forcing the contrast so that, on one hand, there is Erasmus advocating pacifism and, on the other, Grotius the champion of just war theory. It is not that simple. Even though he appears to reject just war theory, Erasmus supplies some of the materials useful in rendering such a theory relevant to the modern world of sovereign states.

Another easy antinomy must also be avoided, and that is to see in these two writers an opposition between humanism and rationalism. It is true that Grotius respects highly the Spanish scholastics, like Suarez, renowned for their intellectual rigour. Yet he was also strongly influenced by an important component of humanism, its preservation of the memory of classical sources. What an exhaustive, and exhausting, parade of ancient instances.³ In fact, the works of Grotius are so charged with citations that he has been accused of pedantry, one of the intellectual vices of the age. In Grotius we find a rather unusual blend of humanistic learning and the mind of the jurist.

The crucial break between these two products of Christian humanism may be briefly stated. How did each of them interpret one of the oldest maxims in the study of war: *inter arma silent leges* (in time of war the law is silent)? Erasmus said amen to it; Grotius made a distinction. During wartime civil laws are silent, but not "the unwritten laws which nature prescribes or the agreement of nations has established"⁴. All subsequent differences between them are contained in this one.

Even the superficial reader of Erasmus will have come across his diatribes against war. There are at least six of his works

where his anti-war sentiments are expressed, not to mention the famous letter to Antoon van Bergen. Some of these attacks figure in works not political in design; some of the most important figure in his two major contributions to the politics of war: **Education of a Christian Prince** and **The Complaint of Peace (Querela Pacis)** 5. Now Erasmus was not by design a political theorist, a point Huizinga and others have made.⁶ As part of his duties as counsellor to the young prince, later to become Charles V, he wrote a typical example of the **mirror of princes** genre, a treatise in which the political responsibilities of the prince are elaborated from an ethical point of view. Thomas Aquinas had written such a treatise for the King of Cyprus, and Machiavelli has been considered as striking a death blow to the genre by replacing the ethical with a purely technical point of view. The important point is that Erasmus was not an advisor to the prince in the making of the law and policy, but a humanist educator, with a wide experience of the Europe of scholars, warning the ruler about the dangers of his station, exhorting him to salutary deeds rather than feats of arms, and reflecting on some of the causes of princely belligerency in the European context.

If Thomas More raised the question whether a certain form of communism is alone compatible with Christianity, Erasmus raises the question whether waging war is compatible with it. Using various literary devices to make his argument, often more rhetorical than demonstrative, Erasmus keeps returning to the heart of the matter: the incompatibility of warfare with the ideal of Christian humanism. In doing so, as a Catholic he effectively undermines the traditional just war theory defended by the Church, a teaching that Grotius the Protestant will continue.

In his commentary on the adage, **dulce bellum inexpertis**, "war is sweet to those who have not tried it", he says of man that he is "the animal alone... born for friendship, which is initiated and cemented by mutual aid."⁷ Yet the greatness of man is belied by the wretchedness of war. Men have become inured to the horrors of war.

"O blindness of the human mind! No one is astonished, no one is horrified".⁸

If "the most pacific of creatures" wages war for silly or trivial reasons, how much worse is it that the Christian,

supposedly the follower of the Prince of Peace, ignores the teaching of Christ. The reader has paraded before him as an example, that monstrosity a warrior-pope, Julius II. (The same Julius who is excluded from heaven in the satirical *Julius Exclusus*, generally attributed to Erasmus). That reason rejects war as contrary to the very essence of man, seems beyond question for Erasmus. That Christianity is pacifist seems equally beyond question for him.

But since Christ gave the command to put up the sword it is not fitting for Christians to fight, except in that noblest of all battles against the most hideous enemies of the Church -- against love of money, against anger, against ambition, against the fear of death.⁹

A striking passage in that it rests on a literal interpretation of Jesus's words to Peter as an injunction against making war. And yet Erasmus leaves an opening for some kind of justifiable warfare by Christians when he goes on to say that "a doctor [teacher] who is truly Christian never approves of war; perhaps sometimes he may think it permissible, but with reluctance and sorrow".¹⁰ All this illustrates the basic ambivalence Erasmus feels about the traditional just war teaching, which developed under Christian auspices, but was based on reasoned arguments rather than on the authority of sacred texts. When Erasmus refers to the texts, his pacifism is most paramount; when he refers to philosophical arguments, he seems ready to make some concessions. But he never really comes down to either categorically accepting or rejecting just war theory. Like the ancient skeptics, he wavers between alternatives, and almost suspends judgment as they did.

Of course, we can agree with the editor of the English translation of the *Colloquies* when he says that "Erasmus was not a complete pacifist. He granted that there might be just wars. But if there were such, they were only those fought in self-defense when one's country was invaded by an enemy bent on conquest".¹¹ Of course, if you wait until the enemy is at the gates, you may not survive even if you resist, so the Erasmian concession may not be as important as the editor thinks.

Let us now examine the relevant passages in Erasmus' writings on war to sort out the main lines of his treatment of just

war considerations. In the *Adages*, he derides the "rabbinical" distinctions which support a war as just:

"Just" indeed -- this means any war declared in any way against anybody by any prince.¹²

In other words, do not all belligerents consider their cause just? Erasmus even suggests that the arguments of Bernard of Clairvaux and Thomas Aquinas may be in conflict with the teachings of Christ "which forbid us entirely to resist evil, at any rate by the popular methods".¹³ Alluding to the Turkish menace and those who wanted war with the Turks, he will only support an expedition against the Turks "if they had attacked us".¹⁴

A more systematic approach is present in his most significant contribution to political thought, *The Education of a Christian Prince*. In the portrait of a Christian prince, addressed to the young Prince Charles, later to be the emperor, there are the usual commonplaces of the mirror-of-princes literature: the Christian prince looks after his people, attends to their needs, differs from the tyrant who creates disharmony, stirring up "factions and strife", using war so as to weaken his own people.¹⁵ Erasmus' Christian prince is a man of peace, "for he realizes that war is the source of all misfortunes to the state".¹⁶ (It is a message one finds as well in the first part of his friend Thomas More's *Utopia*. "The first and most important objective is the instruction of the prince in the matter of ruling wisely during times of peace, when he should strive his utmost to preclude any future need for the science of war".¹⁷ In short, he should cultivate the arts of peace.)

Of course, it may be difficult for the prince to study war no more, if his fellow princes pursue such studies, and in an ethical treatise, some guidance should be given on how he is to avoid war, while protecting his people and territory.

Let him, Erasmus exhorts, "measure everything by the Christian standard". Let him understand "that not all the things that he reads in the Holy Scriptures are to be straightway imitated. Let him learn that the battles and butcheries of the Hebrews, and their barbarity toward their enemies, are to be interpreted allegorically; otherwise it would be most disastrous to read them."¹⁸ "The whole philosophy of Christ teaches against it [war]."¹⁹

As to the issue at hand, the Prince is advised that he should never go to war at all unless, after trying every other means, he cannot possibly avoid it. He then proceeds to query whether "there really is any war which can be called 'just'". But he disappoints us when he says thereafter:

We will not attempt to discuss whether war is ever just; but who does not think his own cause just?²⁰

No doubt they do, but are there not some criteria by which such assertions might be evaluated and, if shown to be groundless, rejected? Why, one wonders, does he turn around the issue? Perhaps because he doesn't see his way through to an answer. Now he does examine various criteria usually found in just war theory: justifiable reasons, the intentions of the participants, and conjectures about a favourable outcome. Characteristically, it is the subjective factor of motivation or intention which holds his attention. Erasmus notes that there are pretexts or excuses for war when the real reasons and motivations are "desire for power" or "vain and superficial reasons".²¹ As to objective factors, Erasmus curiously will say that "it is not our intention to condemn those who undertake legitimate war to repel barbarous invasions or defend the common good"²², which doesn't really advance the question whether there are legitimate wars. For while I may not condemn, I don't necessarily agree. And if Erasmus on a number of occasions clearly indicates that one is justified in defending oneself, if it is necessary to do so, he never analyzes what other aspects of the "common good" might justify the use of force.

Prudential calculation was always an element of the traditional just war teaching and Erasmus utilizes this calculus, bearing on the benefits and costs of war, not through a sordid utilitarian weighing of a financial balance sheet, but the consequences in terms of lives, limbs and liberties involved in waging war. He is most eloquent in depicting the costs.

Thus, we can say that three of the most important factors in just war theory are examined by Erasmus. What we never have from him is an inquiry into the use of force as an instrument of political policy. Once war has broken out Erasmus has little more to say.

Inter arma silent leges.

The last important Erasmian statement on war, *The Complaint of Peace*, does add some interesting nuances to the position of *The Education of a Christian Prince* without fundamentally altering his stance. Though it is Peace who speaks, not Erasmus, our author suggests that the humanist idea of man may not be adequate to explain the "madness of war" (*belligerandi insaniam*).²³ What is the underlying principle to explain the internal strife in man to account for the prevalence of political, religious and intellectual warfare? How to discern the reasons behind the contradiction between doctrine and practice in Christianity?

All Christian doctrine in both the Old and New Testament calls for peace, yet Christian life is filled with warfare.²⁴

Once again Erasmus argues that anything is better than war in a statement so absolute, we wonder if he really means it.

No peace, regardless of the injustice it involves, should be passed over in favor of war.²⁵

If he literally means this, he borders on fanaticism.

Erasmus is more convincing when he discusses measures which will settle disputes without resort to arms, such as arbitration, than he is when discussing the justification of war. He bemoans the fact that the papacy could hardly act as an arbitrator under Julius II, the warrior pope, but hopes that it may do so under the pope of peace, Leo X. The division of Christendom rendered that possibility extremely doubtful. However, on the issue of arbitration, the Erasmian argument that the absence of arbitrators undermines just war theory is weak.²⁶

Let us take the case of the invasion of Belgium in 1914. If the King of the Belgians had acceded to German demands to use his country as an invasion route, he would have been an accomplice in the attack on France, as Sweden and Switzerland were to some extent accomplices of the Germans in Second World War by allowing them passage for men and material, in the name of national survival. If Belgium had not resisted, and the invasion had swept to the sea, the First Battle of the Marne would have been lost

and that would have been the end of the Belgian state. The justice of the Belgian case was manifest, even the Germans admitted it was a breach of international law. Thus, the presence or absence of arbitrators was totally irrelevant.

Other prescriptions for avoiding war offered in *The Education of a Christian Prince* and the *Complaint of Peace* were 1.) to end the system of royal alliances (*affinitates*) whereby royal marriages entailed transfers of territory, 2) to make it illegal to sell or otherwise alienate territories; and 3) to establish fixed and inviolate borders.²⁷ The attempt to replace the system of marriage alliances was perhaps a great deal more drastic than Erasmus supposed, since it would in effect replace the hereditary monarchy by an almost elective monarchy in which royal marriages would differ in no important respect from other marital unions. The reasonable proposals he offered on these issues were not always well thought out in terms of their wider implications concerning the new notion of sovereignty, the nature of monarchical rule, the status of the people in political society, and the rules to be used in establishing permanent borders. Any shortcomings, then, can be traced to the fact that Erasmus seemed unable to deal with political questions in their own terms. Or, put somewhat differently, the insertion of ethical considerations into political decision-making is more complex than Erasmus imagined. It is the great merit of Grotius' legal theory to address these complexities.

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That Grotius was always concerned with moral aspects of warfare is evident from a considerable work composed when he was twenty-one years of age, *De Jure Praedae, A Commentary on the Law of Prize or Booty*,²⁸ about the spoils of war. This precocious work was aimed at a particular issue in international law, but in the process of formulating a judgment on that issue, he sets down a number of important definitions about the meaning of law, the kinds of law, the status of *jus gentium* and the conception of a just war. (A war is just "if it consists in the execution of a right").²⁹ It is permissible to wage war under certain circumstances. There are four justifying causes or reasons: self-defense, defense of one's property, collection of debts, and wrong-doing.³⁰ The review of these fundamental conceptions is rather rapid, however, in the author's obvious eagerness to

resolve the litigation.

In the course of his argument, Grotius, employing many citations from the classics, endorses a statement that runs counter to a basic Erasmian attitude:

Yet again, it was Demosthenes who formulated that excellent maxim... "a glorious war should be preferred to an inglorious peace".³¹

Without granting a latitude to belligerency, the young Grotius appears as a follower of the Thomistic version of just war theory and, to be frank, mostly as an advocate of the Dutch cause.

Twenty years later, when *De Jure Belli ac Pacis* appeared (1625),³² there is a note of pathos in the prolegomena, completely absent in the earlier work. Whether due to his own personal travails, or, what is more likely, to the devastation of what we call the Thirty Years War, Grotius echoes Erasmus, shocked at the plight of Christendom in arms:

...I have had many and weighty reasons for undertaking to write upon this subject. Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of, I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.³³

He identified three dimensions of any just war theory. It must, first of all, examine the reasons adduced to justify a war, the origins of war. Secondly, it must concern itself with the conduct of the war itself, since neither the laws of nature nor the laws of nations are silent even when the dogs of war have been unleashed. Thirdly, it must concern itself with the termination of the war and those measures conducive to a settlement. These topics constitute the three parts of his treatise.

When we examine the mature work, what do we find? Grotius the defender of Ciceronian right reason (*recta ratio*) against the

scepticism of Carneades, asserting human sociability against the extreme individualism of modern natural law, and finally the upholder of the law and right of war, against those who oppose it.

Obviously in this overview of Grotian just war theory, I cannot give much attention to the proliferation of ancient instances -- precedents, if you will -- that is a salient feature of the Grotian approach, setting it apart from the scholastic austerity of Francisco Suarez. Instead of the Thomistic question, "whether war is always sinful" (*utrum bellare sit semper peccatum*), Grotius asks simply "whether any war can be just".³⁴ Grotius, furthermore, agrees with Suarez and disagrees with Thomas Aquinas as to the meaning of *jus gentium* (the law of Nations). What Aquinas had understood as a part of natural law, Grotius and Suarez see as a part of human law, "established by the consent of peoples through custom",³⁵ found solely in custom. The distinction is paramount in Book III of *De Jure Belli ac Pacis* when Grotius indicates contradictions between the prescriptions of the two kinds of law, or the permissions involved in them, and establishes the subordination of the law of nations to the law of nature in the important section on restraints.³⁶

The method is to resort to copious instances derived from Greek and Roman classical as well as Scriptural sources. These instances are scrutinized in order to articulate the customary law present in them. Where a consensus is not universal, that is, where there are dissenting opinions, that is indicated as well.

In keeping with the main thrust of modern natural law thinking, Grotius examines the notion of sovereignty (*summum imperium*), though his analysis, I am afraid, lacks coherence.³⁷ The perspective in which just war theory is viewed is that of sovereign units entering into alliances and leagues with each other, as well as threatening each other. It is a perspective in which there are subordinate units, presumably as in the Dutch Confederation. Unlike Hobbes and many modern proponents of the concept of sovereignty, Grotius does not maintain that sovereignty must be indivisible, perhaps once again a refusal to consider the unitary state as a model.³⁸ In the world of sovereign states, there are those who maintain that everything is permitted, as well as those who maintain that nothing is. The correct attitude is to draw the lines between what is and what is not

permissible. For by stressing what is permitted by the laws of war, Grotius wants to leave open the option that if in some cases one **may** go to war, that does not mean that one **should** do so. The possession of a right to do something does not necessarily mean that the right should be exercised.

"A just cause of war is injury done us, and nothing else."³⁹ Specifically, Grotius states, there are three justifiable causes: defense, recovery of property and the punishment of wrong. On the first point, he explains the circumstances under which the life of another may be taken in the defence of one's property, even though "no one ought to be slain directly for the sake of mere things".⁴⁰ What he means is that when an attack on my property is tantamount to an attack on my life, "I may repel the danger even with danger to the life of another."⁴¹ The upshot of the argument is that in interstate relations, an attack on a vital lifeline can be construed as an attack on the life of a nation. In this regard, he notes that closing a maritime passage -- here a question of use rather than possession -- is a cause of war (**casus belli**). We might think of the closing of the Straits of Tiran by the Egyptians in 1967 as a violation of an Israeli right. A favorite Grotian theme, discussed at length in **Mare Liberum** is that the sea "is not the property of any people".⁴²

In any particular case, the rational and voluntaristic aspects of legal theory may apply. By this I mean what natural law, defined as the dictates of right reason, **recommends**, and what the customs of nations sanction. Since **jus gentium** concerns "the mutual society of nations among themselves",⁴³ and since these relationships are sustained by promises, oaths, treaties and contracts, Grotius must investigate the grounds of the obligation to keep one's promises in interstate relations. Ultimately, it is the notion of natural law which makes these promises binding, "anterior to positive rules".⁴⁴ However, if conflicts among states and behaviour in warfare are to be brought under the rule of law, conventions as well are necessary.

The traditional view about honoring treaties is reiterated, then, as is also the teaching about the treatment of legates or ambassadors; they are to be respected. Grotius cites wars entered into on account of the ill treatment meted out to diplomats and cites Cicero who said "there is no juster cause of war".⁴⁵ A modern instance would be the seizure of the American

Embassy in Teheran.

In addition to a war which is purely defensive, Grotius notes the use of force in extracting reparations, in recovering lost territories and property, and in exacting punishment on a foreign power. The modern counterpart of punishment would be the punitive operation and it might not entail a durable state of war. Once punishment is examined as a cause, the reasons for punishing must be as well. Amendment, example and retribution are listed, exemplary punishment corresponding to the later notion of deterrence. However, the Grotian teaching gives priority to retribution in an Aristotelian way. When a war is envisaged for the purpose of punishing, a good deal of caution is advised, because

Wars which are undertaken to inflict punishment are under suspicion of being unjust, unless the crimes are very atrocious and very evident, or there is some other coincident reason.⁴⁶

If Grotius surveys the causes of war, identifies the justifiable reasons for belligerency according to the customs of peoples and "the light of right reason",⁴⁷ he feels compelled to list causes of pretexts for war which cannot be sanctioned. He rejects fear alone, advantage apart from necessity, refusal of marriage, desire for richer land, desire for freedom among a subject people, domination, universal empire and defective intentions as suitable grounds.⁴⁸ Since many of these reasons are not in dispute or are not particularly relevant to us, let us focus on the most contentious assertion here: the desire of a subject people to rule itself. For in this case, a peculiarity of Grotian natural law militates against a war for self-determination or a war of national liberation. We have to take a case in which a people has subjected itself to another people. As the individual is free to enslave himself because his freedom is his to dispose of, so a people may voluntarily give up their "civil liberty, that is, the right of a state to be governed by itself".⁴⁹ This presumes that while "no one is a slave by nature, man still has the right to enter a state of slavery. Wherefore those who from a lawful cause have come into personal or political slavery ought to be satisfied with their state, as Paul the Apostle teaches in the words: 'Hast thou been called to be a slave? Be not concerned thereat'".⁵⁰

First of all, it is unusual to discover a literal reading of Scripture in this context when Grotius has criticized such a reading elsewhere, notably in the famous passage on those who live by the sword, understood in a pacifistic sense. Secondly, the argument, though logical -- if I own my freedom, why can't I dispose of it -- stems from a very static and individualistic interpretation of human law.⁵¹ There is no progress in human relations; subordination is fixed in perpetuity, if it is **voluntary in cause**. Involuntary servitude, no doubt, may be thrown off. But no matter how strong the demand for self-determination may be, Grotius undercuts the claim if their original subordination was the result of a free (voluntary) act.

There is the possibility that the law of nature may declare that a practice is permissible, yet Christians must stand on higher ground. Having never denied the evil of war, Grotius argues that "in the midst of divergent opinion -- in doubtful cases -- we must lean toward peace".⁵² Furthermore, "it frequently happens that it is more upright and just to abandon one's right", that is, "to refrain from the exercise of one's right. The reasons for refraining from war have their origins in the love which we either owe to our enemies or rightly manifest toward them".⁵³ When he sounds this note of abjuration, he rejoins an Erasmian position: "Warfare has no place among the useful arts. Nay, rather it is so horrible that only the utmost necessity, or true affection, can render it honourable."⁵⁴

I suggested earlier that the distinction between the law of nature and the law of nations opened up the possibility of a conflict between the two. It is in Book III that we encounter those areas in which conventional norms, **jus gentium**, the law of nations, appear as incompatible with the dictates of right reason. The "Law of Nations permits what Natural Law forbids".⁵⁵ Thus, after having enumerated an extensive set of practices acceptable as customary in warfare, Grotius must now introduce restraints or rules of moderation -- **temperamentum** in Latin - to counter them.⁵⁶ It is an astonishing development, but tributary to the Grotian method of considering **jus gentium** as distinct from natural law and as based on an inventory of mainly ancient instances. We shall examine some of the more significant examples.

Where the killing of prisoners, the mistreatment of women and children, the taking of hostages, the enslavement of the conquered and the unlimited spoliation of enemy territory have support in the law of nations, they are forbidden in the law of nature. Let us take one of the most shocking aspects of war in the ancient world, the fact that prisoners, if allowed to live, were enslaved. The practice was so widespread that it is undeniably a principle of law and right. Yet Grotius argues that there is no natural right to kill prisoners, save in self-defense, nor are they to be condemned to a life of involuntary servitude, in which their new masters have the power of life and death over them and their offspring. Yet, in the law of nations, the right over the conquered was unlimited in its effects, "so that the master may do anything lawfully to the slave...".⁵⁷

The rule of moderation here consists in the categorical proposition: *captivum non servum*, captives are not slaves. He goes on to observe that "captives were reckoned as the guests of their captors, and dismissed on their promise",⁵⁸ in conformity with natural law. I have stressed the treatment of prisoners because it is an index of how much or how little the actual practices of states have varied over time.

For he does not believe that the vanquished in a just war have sacrificed all their individual and collective rights so that whatever treatment they receive is justified. They may be forced to pay reparations; they may be punished if they are guilty of serious injuries to others; but they have not, collectively, sacrificed the right of self-government, presumably once just claims have been settled.

That the vanquished should retain their power of governing (*suum imperium*) is often, not only a measure of humanity, but of prudence.⁵⁹

Again, in speaking of restraints on the law of nations, Grotius recognizes that according to the strict law of nations "a hostage can be put to death", "but that is not...in accord with moral justice, unless there is a fault on the part of the hostage meriting such punishment".⁶⁰ There is little need to stress the actuality of such admonitions when we consider the plight of civilians in the Second World War, the Korean War, the Vietnam War, Afghanistan, El Salvador, Northern Ireland and Lebanon. If

law were what custom reveals, is our situation really any different from that of the ancients?

What Grotius does not say is that a law of nations severed from the law of nature seems rather a dubious source of norms.

We have examined in a summary way the approach of *De Jure Belli ac Pacis* to explicating the causes of war, whether justifiable or not, and the norms governing the conduct of hostilities. We now come to its reflections on the termination of warfare.

Perhaps the most anti-Machiavellian aspect of Grotius' great treatise is what it has to say about "good faith" between enemies. The Florentine Secretary, it may be remembered, argued that it would be folly to keep faith with those who would not keep faith with you. Not so, the Dutch jurist tells us. It is important to keep faith, to keep one's promises, to respect certain minimal standards of civility, nay humanity, even with our enemies. Though he does not deny that war involves deception as well as force -- force and fraud -- good faith becomes a kind of absolute which does not depend on reciprocity: "faith must be kept even with the faithless";⁶¹ it is sacred. It is honourable. It is also necessary if we are not to lose sight of the purposes of war; peace should always be kept in view. Commonplace, but how often forgotten, particularly in an extended conflict, like World War II.

The obligations of natural law to keep faith, to fulfil our promises, are overlaid by the duties that Christians have towards their enemies. Without abandoning his defense of just war theory, Grotius is most like Erasmus when he summons the Christian to reflect on the costs of war. He is more opposed to him when he calculates the cost of defeat.

Surely, it is a remarkable fact that this great modern treatise *De Jure Belli ac Pacis* ends in a prayer -- Pufendorf's ends in an invocation.

May God who alone hath the power, inscribe these teachings on the hearts of those who hold sway over the Christian world. May he grant to them a mind possessing knowledge of divine and human law and having ever before it the reflection that it hath been chosen as a servant for the rule of

man, the living thing most dear to God.⁶²

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What is the larger significance of the contrast between the two positions I have sketched? If we are to go beyond purely antiquarian concerns in the history of thought, we must examine the relevance of the Erasmian and Grotian perspectives for our time. The pacifism of Erasmus may be seen as characteristically Christian, a part of what he conceived of as Christian Philosophy. It has also been seen as the fountainhead of the "liberal conscience" on war;⁶³ the recitation of the horrors of war, the contradiction between the bellicosity of renaissance princes and the warrior pope, on one hand, the the Christian message of peace, on the other, and finally, the turning away from the traditional just war theory. All these aspects of his thought on war and peace mark Erasmus as a pacifist critic of government policies and practices. Grotius, on the contrary, while sharing the distaste for war as the normal instrument of national policy and recognizing no less than Erasmus the Christian attitude toward war, does not believe that one can rest there. Rulers need guidance in the conduct of interstate relations. Unless we are to assume that force in the pursuit of national aims is never justified unless the enemy is on the doorstep, the norms of reasonable decision making must be elucidated. We must situate ourselves, not outside the realm of government as moralists, but inside that realm fulfilling the role of the legal advisor, for he operates at the level of law and right, the obligatory and the permissible.

Max Weber, the great German sociologist, drew a distinction between the ethics of conviction and the ethics of responsibility which is pertinent here. He wanted to note that there were some who followed an ethics which disdained talking about consequences. He no doubt had the ethics of Immanuel Kant in mind. This requires adherence to absolute imperatives -- in this case, opposition to war -- without any examination of the consequences of such an adherence. The ethics of responsibility, on the contrary, is centered primarily, if not exclusively, on the consequences of decision-making. It must be the ethics of the political man. He cannot ignore the consequences of his acts. He cannot take high moral positions without also considering where they will lead. He is denied the purity of the thoroughgoing

disciple of an ethics of convention.

Now we may differ -- I personally would differ -- with the apparent disjunction between Weber's two ethics. We require convictions and norms and we must take responsibility for our choices and options, **as if we were in a position of authority**, as if we were in the shoes of those who must make the crucial decisions.⁶⁴ Unless we are willing to do that, we assume a posture of moral purism which allows us to indulge our feelings of high-mindedness while keeping our hands scrupulously clean.

It is the great merit of Grotius' treatment of the law of war and peace, whatever reservations we may hold about its parts, that it combines passionate convictions about the evils of human warfare and responsible prescriptions about just and unjust wars. He has done what he set out to do: to establish a middle position between those who argue that all is permitted, and those who maintain that nothing is. It would be foolish to insist that his teaching about the law of war and peace is adequate today. But it would be equally foolish to believe that a more adequate version of just war theory could ignore his contributions.

NOTES

1. Paul Hazard, *La crise de la conscience européenne, 1680-1715* (Paris: Arthème Fayard, 1961), p.252.
2. "Confronted with such utter ruthlessness many men, who are the very furthest from being bad men, have come to the point of forbidding all use of arms to the Christian, whose rule of conduct above everything else comprises the duty of loving all men. To this opinion sometimes John Feras and my fellow-countryman Erasmus seem to incline, men who have the utmost devotion to peace in both Church and State..." Hugo Grotius, *De Jure Belli ac Pacis, Libri Tres*, Introduction by James Brown Scott, translation Francis W. Kelsey (New York: Oceana Publications, 1964), Prolegomena, Section 29, p.20. Hereafter this translation will be referred to as **Scott-Kelsey Book**, Chapter and Page. William Whewell's abridged translation, (London: Cambridge University Press, 1953, 3 volumes), has also been used and will be referred to as **Whewell**, Book, Chapter and Page.
3. Richard H. Cox is critical of this aspect of Grotius' treatise in his essay on him in Leo Strauss and Joseph Cropsey (eds.), *History of Political Philosophy* (Chicago: Rand McNally and Company, 1972), p.367.
4. **Scott-Kelsey**, Prolegomena, Section 26, p.19.

5. Desiderius Erasmus, *The Education of a Christian Prince*, translated with an introduction on Erasmus by Lester K. Born (New York: Columbia University Press, 1936), and John P. Dolan (ed.), *The Complaint of Peace in The Essential Erasmus* (New York: New American Library, 1964) pp.174-204.
6. Johann Huizinga, *Erasmus* (New York: Charles Scribner's Sons, 1924) where he is said to have had "a wholly non-political mind" (p.194). Craig R. Thompson (ed.) *The Colloquies of Erasmus* (Chicago: The University of Chicago Press, 1965), p.390, and Jean-Claude Margolin, *Erasmus* (Paris: Editions du Seuil, 1967), p.105, would seem to agree with his judgment. O. Hering expresses the Erasmian attitude well when he says that "surely Erasmus never became fully involved in politics, which were not a special field of thought and action for him and for most of the other humanists" and, in fact, he was commissioned to write *The Complaint of Peace* (Einleitung, *Opera Omnia Desiderii Erasmi Roterdami* [Amsterdam: North-Holland Publishing Company, 1977], IV-I, p.10).
7. Margaret M. Phillips, *The Adages of Erasmus; A Study with Translations* (Cambridge: The University Press, 1964), p.311.
8. *Ibid.*, p.321.
9. *Ibid.*, p.336.
10. *Ibid.*, p.338.
11. Craig R. Thompson, p.389.
12. Margaret M. Phillips, p.337.
13. *Ibid.*, p.339. "Why should I be more impressed by the writings of Bernard or the arguments of Thomas than by the teaching of Christ, which forbids us entirely to resist evil, at any rate by the popular methods?"
14. *Ibid.*, p.348.
15. *Erasmus, The Education of a Christian Prince*, p.164.
16. *Ibid.*
17. *Ibid.*, p.205.
18. *Ibid.*, p.203.
19. *Ibid.*, p.251.
20. *Ibid.*
21. *Ibid.*, p.252.
22. *Erasmus, The Complaint of Peace*, p.195.
23. *Ibid.*, p.180.
24. *Ibid.*, p.186.
25. *Ibid.*, p.192.
26. *Ibid.* Roland Bainton summarizes the argument: "The most significant contribution of Erasmus was his attack upon the basic weakness of the just-war theory, which, if it is to be

- at all relevant, must presuppose an impartial body to determine justice." *Erasmus of Christendom* (New York: Crossroad, 1982), p.124.
27. Pierre Mesnard, in *L'essor de la philosophie politique au XVII^e siècle* (Paris: Boivin et Cie., 1936), p.124-127, conveniently draws these proposals together.
 28. Hugo Grotius, *De Jure Praedae Commentarius; Commentary on the Law of Prize and Booty*, translation by Gwladys L. Williams (New York: Oceana, 1964).
 29. *Ibid.* Chapter II, p.30.
 30. *Ibid.* Chapter VII, p.70.
 31. *Ibid.* Chapter IX, p.126.
 32. I have usually used the Kelsey translation because it is generally available. The older Whewell translation was accompanied by the Latin text which allowed the reader to verify the accuracy of the translation. In some instances, then, I have used Whewell where his version is more precise.
 33. Scott-Kelsey, *Prolegomena*, Section 28, p.20.
 34. *Ibid.* I,1, p.34. Anton-Herman Chroust maintains the thesis that Hugo Grotius "constitutes but a direct continuation of a great Natural Law tradition which stretches from St. Augustine to Suarez, and which culminated in St. Thomas" ("*Hugo Grotius and the Scholastic Natural Law Tradition*", *New Scholasticism*, Volume XVII, Number 2, April 1943, p.125). Joan Tooke, *The Just War in Aquinas and Grotius* (London: S.P.C.K., 1965) stresses the differences between the two.
 35. Charles S. Edwards, *Hugo Grotius, The Miracle of Holland; A Study in Political and Legal Thought* (Chicago: Nelson Hall, 1981), p.94.
 36. Scott-Kelsey, *Rules of Moderation*. Chapters XI-XVI, p.723-782.
 37. For instance, it is difficult to square what Grotius says about sovereignty in Book I, Chapter III with his treatment of the subject in Book II, Chapter IV.
 38. On this question, see Fiorella De Michelis, *Le origine storiche e culturali del pensiero di Ugo Grozio* (Florence: La Nuova Italia Editrice, 1967), p.6-7.
 39. Whewell, II,I, p.170.
 40. *Ibid.*, II,I, p.218.
 41. *Ibid.*
 42. *Ibid.*, II,III, p.263.
 43. *Ibid.*, II,VIII, p.395.
 44. J.N. Figgis, *Political Thought from Gerson to Grotius, 1414-1625* (New York: Harper and Bros., 1960), p.9.
 45. Whewell, II,XVIII, p.218-219.
 46. Scott-Kelsey, II,XX, p.508.

47. *Ibid.*, II,XXII, p.549.
48. *Ibid.*, II,XXII, p.549-556.
49. *Ibid.*, II,XXIV, p.573.
50. *Ibid.*, II,XXII, p.551.
51. The theory is static because it does not allow for development from a situation in which political domination, such as that exercised over a people through a mandate, may be agreed to by a subject people in the hope that at some future time, they may become capable of self-government. In fact, what are the conditions justifying the political domination of one people over another? Despite Grotius' emphasis on human sociability, his use of a method which moves from private right to public law entails an individualistic starting point. Thus he asserts that "liberty to serve the interests of human society through punishment [including capital punishment] which originally, as we have said, rested with individuals, now after the organization of states and courts of law is in the hands of the highest authorities..." *Scott-Kelsey*, II,XX, p.504-505. An interesting comparison of Grotius' position and that of John Locke on this question is found in Richard Tuck, *Natural Rights Theories, Their Origin and Development* (Cambridge: Cambridge University Press, 1979), p.173.
52. *Scott-Kelsey*, II,XXIII, p.560.
53. *Ibid.*, II,XXIV, p.567.
54. *Ibid.*, II,XXV, pp.585-586.
55. *Whewell*, III,IV, p.86. A more explicit translation limits the scope of the statement: "However, just as the law of nations, through that form of permission which we have now explained, permits many things which are forbidden by the law of nature, so it forbids certain things which are permissible by the law of nature". *Scott-Kelsey*, III,IV, p.651-652.
56. The best explanation of the rules of moderation is provided when Grotius says "we desire rather to restrict the unrestrained license of war to that which is permitted by nature, or to the choice of the better among the things permitted". *Scott-Kelsey*, III,XII, p.754.
57. *Whewell*, III,VII, p.150.
58. *Ibid.*, III,XIII, p.268.
59. *Ibid.*, III,XV, p.274.
60. *Scott-Kelsey*, III,XX, p.828.

61. *Ibid.*, III, XIX, p.799.
62. *Ibid.*, III, XXV, p.862.
63. Michael Howard, **War and the Liberal Conscience** (New Brunswick, N.J.: Rutgers University Press, 1978), p.14-16.
64. I adopt Raymond Aron's position that I must ask myself what would I do "if I were in the ruler's place" (Raymond Aron, **Le spectateur engagé**, Entretiens avec Jean-Louis Missika et Dominique Wolton (Paris: Julliard, 1981), p.309).