

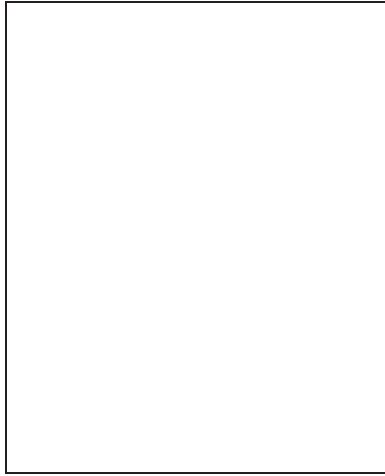
THE RIGHTS OF WAR AND PEACE

BOOK I

NATURAL LAW AND  
ENLIGHTENMENT CLASSICS

Knud Haakonssen

*General Editor*



Hugo Grotius



NATURAL LAW AND  
ENLIGHTENMENT CLASSICS

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*The Rights of  
War and Peace*

BOOK I

Hugo Grotius

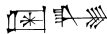
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Edited and with an Introduction by  
Richard Tuck

From the edition by Jean Barbeyrac

*Major Legal and Political Works of Hugo Grotius*

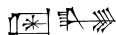
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Printed in the United States of America

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Frontispiece: Portrait of Hugo de Groot by Michiel van Mierevelt, 1608; oil on panel; collection of Historical Museum Rotterdam, on loan from the Van der Mandele Stichting. Reproduced by permission.

*Library of Congress Cataloging-in-Publication Data*

Grotius, Hugo, 1583–1645.

[De jure belli ac pacis libri tres. English]

The rights of war and peace/Hugo Grotius;

edited and with an introduction by Richard Tuck.

p. cm.—(Natural law and enlightenment classics)

“Major legal and political works of Hugo Grotius”—T.p., v. 1.

Includes bibliographical references.

ISBN 0-86597-432-2 (set: hard) ISBN 0-86597-436-5 (set: soft)

ISBN 0-86597-433-0 (v. 1: hc) ISBN 0-86597-437-3 (v. 1: sc)

1. International law. 2. Natural law. 3. War (International law).

I. Tuck, Richard, 1949–. II. Title. III. Series.

KZ2093.A3J88I3 2005

341.6—dc22

2004044217

LIBERTY FUND, INC.

8335 Allison Pointe Trail, Suite 300  
Indianapolis, Indiana 46250-1684

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## INTRODUCTION

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In the famous dedication of his *Discourse on the Origin of Inequality* to the Republic of Geneva, Jean-Jacques Rousseau drew a vivid picture of his father sitting at his watchmaker's bench. "I see him still, living by the work of his hands, and feeding his soul on the sublimest truths. I see the works of Tacitus, Plutarch, and Grotius, lying before him in the midst of the tools of his trade. At his side stands his dear son, receiving, alas with too little profit, the tender instruction of the best of fathers. . . ." Rousseau's reminiscence is testimony to the authority which Grotius's *De Iure Belli ac Pacis* had come to possess in the century since it was first published in 1625; in the eyes of both father and son, the book had the same standing as the great works of classical antiquity. Rousseau was to devote much of his life to a complicated and subtle repudiation of Grotius, but he never lost his sense of the book's importance, describing Grotius in *Emile* as "the master of all the savants" in political theory (though he added that, nevertheless, he "is but a child, and, what is worse, a dishonest child," and that "true political theory is yet to appear, and it is to be presumed that it never will").<sup>1</sup> The same sense of Grotius's importance, without any of Rousseau's reservations, had led the Elector Palatine in 1661 to endow a chair in the University of Heidelberg for the express purpose of providing a commentary on the *De Iure Belli ac Pacis*, a fact which is noted in the *Life* prefaced to this edition; as the *Life* also notes, the book was issued as a full edition with notes by

1. For the dedication, see *The Social Contract and Discourses*, trans. G. D. H. Cole, revised ed. J. H. Brumfitt and John C. Hall (Everyman 1973), 34; for *Emile*, see Rousseau, *Political Writings*, ed. C. E. Vaughan (Oxford: Oxford University Press, 1915), 2:147.

various commentators,<sup>2</sup> “by which means *our Author*, within 50 Years after his Death, obtained an Honour, which was not bestowed upon the *Ancients* till after *many Ages*.” The idea that the book represented something new and important for the modern age was repeatedly voiced in the “histories of morality,” which began to appear in the late seventeenth century; Grotius was described as “breaking the ice” after the long winter of ancient and medieval ethics.<sup>3</sup> By the end of the seventeenth century there had been twenty-six editions of the Latin text, and it had been translated into Dutch (1626, reissued three times in the century), English (1654, reissued twice), and French (1687, reissued once). Its popularity scarcely slackened in the eighteenth century: there were twenty Latin editions, six French, five German, two Dutch, two English, and one Italian (and one Russian, circulated in manuscript).<sup>4</sup>

However, for many eighteenth-century readers the definitive version of the book had appeared in Latin in 1720, when Jean Barbeyrac issued a new edition, followed by a French translation in 1724 with elaborate notes.<sup>5</sup> Barbeyrac was a leading figure in the French Protestant diaspora, the network of scholars whose families had been driven out of France following the revocation of the Edict of Nantes by Louis XIV in 1685. He worked tirelessly to put his own version of modern natural law before the European public, and his editions of Grotius built on the success of a similarly elaborate edition which he had produced of Samuel Pufendorf’s *De Iure Naturae et Gentium* in 1706. The notes to these editions

2. This was the edition that appeared in 1691 from a press at Frankfurt-on-Oder, with commentary by Gronovius, Boecler, Henniges, Osiander, and Ziegler, names that will become familiar from Barbeyrac’s notes in this edition.

3. See Barbeyrac’s remark in his *An Historical and Critical Account of the Science of Morality*, prefaced to his edition of Pufendorf, *The Law of Nature and Nations* (London, 1749), 67.

4. This information is from J. ter Meulen and P. J. J. Diermanse, *Bibliographie des écrits imprimés de Grotius* (The Hague, 1950). For an exemplary modern edition of the Latin text, see B. J. A. De Kanter-van Hettinga Tromp’s 1939 edition, reprinted with extensive additional material by R. Feenstra and C. E. Persenaire (Aalen: Scientia Verlag, 1993).

5. Both the Barbeyrac Latin and French editions were from Amsterdam; the French version was dedicated to George I of England.

keyed their texts into all the relevant discussions of natural law from antiquity down to the 1720s, and the two works together quickly became the equivalent of an encyclopedia of moral and political thought for Enlightenment Europe. The French version of *De Iure Belli ac Pacis* was reprinted steadily through the middle years of the century, and it found an audience beyond the French-speaking polite world in an English translation of 1738, which is reprinted in this edition, and which seems to have been produced in a large print run.<sup>6</sup> Copies of it are very common, and are found in most academic and private libraries of the period—for example, General Washington, like most well-educated English gentlemen, possessed a copy, which is now in the Houghton Library at Harvard. An Italian translation appeared in 1777.

As this publishing history in itself illustrates, it would be hard to imagine any work more central to the intellectual world of the Enlightenment. But from the late eighteenth century onward, the stream of new editions dried up, and the book came to be treated not as the formative work of modern moral and political theory but as an important contribution to a different genre, “international law” (a term coined by Jeremy Bentham in 1780). Many intellectual developments of the period contributed to this shift, including the criticisms of Grotius found (alongside his admiration) in Rousseau, and the contempt expressed by Kant for the “sorry comforters” such as Grotius and Pufendorf, whose works “are still dutifully quoted in *justification* of military aggression, although their philosophically or diplomatically formulated codes do not and cannot have the slightest *legal* force, since states as such are not subject to a common external constraint.”<sup>7</sup> William Whewell, professor of international law at Cambridge and translator of Grotius, tried in the mid-nineteenth century to restore Grotius as a major moral thinker, but with limited success; by the time of the post–First World War settlement, Grotius was regarded almost exclusively as the founder of modern civilized interstate relations, and as a suitable tutelary presence for the new

6. For full details, see “A Note on the Text” at the end of the introduction.

7. Immanuel Kant, *Political Writings*, ed. Hans Reiss, trans. H. B. Nisbet, 2d ed. (New York: Cambridge University Press, 1991), 103.

Peace Palace at The Hague. As we shall see, in some ways that was to radically misunderstand Grotius's views on war; he was in fact much more of an apologist for aggression and violence than many of his more genuinely pacific contemporaries. It was also and more seriously to ignore the genuinely innovative qualities of his moral theory, qualities that entitle him to an essential place in the history of political theory.

Hugo Grotius was born on 10 April 1583, to one of the wealthy ruling families in the Dutch city of Delft. The De Groot ("Grotius" is the Latinized version of his Dutch name—in common with intellectuals all over Europe, Grotius spoke and wrote to his fellow writers in Latin, and gave himself an appropriately Latin name) were regents of the city; that is, they were members of the self-selecting oligarchy which governed Delft, like many other Dutch cities. The generation before Grotius's birth, his relatives had fought in the great struggle that established the freedom of the northern provinces of the Netherlands from the rule of the Spanish Crown, and many of Grotius's writings display the intense patriotism engendered by that struggle. In Grotius's case, his patriotism was as much focused on what he called his "nation," the province of Holland and Zeeland, as it was on the wider United Provinces, which had collectively asserted their independence, and which form the modern kingdom of the Netherlands. All his life, Grotius remained wedded to the oligarchic republicanism of cities such as Delft, and somewhat wary of bigger states.

His family had not merely fought in the war of independence; they were also participants in one of the great sources of Dutch wealth and power, the overseas trading and military activity of the Dutch East India Company. Formed out of a union of various smaller companies in 1602, the East India Company was the first of the enormous corporations that were to dominate the European overseas expansion in the seventeenth and eighteenth centuries; in its first year of operation its gross income already exceeded the ordinary revenue of the English government, and (like the English East India Company a hundred years later) it sent out military forces as well as trading vessels in order to overawe its rivals and offer help to dissident groups all over the Far East. The De Groot were

shareholders in the company and sat on the board of one of its “chambers” in Delft. The fact that one of the principal actors in international politics at the beginning of the seventeenth century was not a state but a private corporation was to be of enormous significance in the formation of Grotius’s political thought.

The young Grotius was educated as a humanist, in the tradition going back to the Italian Renaissance in which the study of classical texts provided an entire education, and in which the ability to write and speak persuasively, using all the ancient arts of rhetoric, was prized above all things. Although Grotius frequently cited philosophical texts written in a more “scholastic” style (that is, the style of the “schoolmen” of the Middle Ages, in which moral or legal issues were discussed in a kind of Aristotelian terminology, with little regard for literary elegance), his own writing was always essentially humanist in character. The *De Iure Belli ac Pacis* is full of literary and historical material from antiquity, and Grotius would have been delighted that a Genevan watchmaker should think that his book was a natural companion to the works of Tacitus and Plutarch. Grotius was a prodigy within this education system and quickly made his reputation as a Latin poet and historian. For these rhetorical skills he was picked (as well-trained humanists always hoped to be) as an adviser and secretary by a leading politician, Jan van Oldenbarnevelt, who was in effect prime minister of the Dutch Republic. Grotius quickly became caught up in the political struggles of the new republic, an involvement that was ultimately to prove personally disastrous for him.

Technically, the United Provinces was a kingdom with a vacant throne: the King of Spain had been driven out but had not been replaced. In his absence, and pending the appointment of a new monarch (which was seriously considered for the first fifty years of the republic’s existence), government was divided between the old royal governors of the seven provinces, the Statholders, and the old representative assemblies for the provinces, the Estates. The assemblies sent delegates to an Estates General of the Union at The Hague, while most of the provinces had come to appoint the same man as their Statholder, the Prince of Orange. The Union thus possessed both a monarchical and a republican element in its constitution, though the constitutional basis for the powers of the

different elements was far from clear; in practice, the Statholder possessed military authority as the commander in chief of the republic's armies, while the Estates possessed the power of taxation and finance. Each element also had a different range of supporters: broadly speaking, the Calvinist Church and its ministry looked to the princes of the House of Orange to secure its power over the population, while other more heterodox religious groups looked to the oligarchical urban rulers for their protection.

During the first two decades of the seventeenth century, the religious antagonisms within the republic reached the point where civil war was threatened. Many people (including to some extent Grotius himself) felt that there had been little point in throwing off the tyranny of Spain if it was to be replaced by the tyranny of an organized and intolerant Calvinist Church. Oldenbarnevelt and Grotius worked tirelessly on behalf of the Estates to try to protect the more liberal theologians (in particular, the ministers who agreed with Jacobus Arminius's denial of the Calvinist doctrine of grace) from the attacks of the Calvinists; Grotius also circulated privately a theological work of his own in which he argued for a minimalist and irenic version of Christianity.<sup>8</sup> But in the end, both Oldenbarnevelt and Grotius seem to have concluded that the only way to secure religious toleration in the republic was in effect to mount a military coup against the Statholder and thereby to remove the principal weapon in the hands of the Calvinists. There is a close parallel with events thirty years later in England, when the representatives of heterodox religious groups in the House of Commons also came to the conclusion that only a coup against their prince would destroy the power of the church that he supported. In England, the Commons won, though only after a long and bloody civil war; in the United Provinces, Oldenbarnevelt and Grotius lost. Prince Maurice arrested them both and had them arraigned for treason; Grotius gave evidence against his old friend

8. His *Meletius sive De iis quae inter Christianos convenit epistola*, written in 1611; edited by G. H. M. Posthumus Meyjes (Leiden: Brill, 1988). See also his writings from 1614 onward on ecclesiastical power, discussed by H. J. van Dam in his edition of Grotius's *De Imperio Summarum Potestatum circa Sacra* (Leiden: Brill, 2001).

and was sentenced to life imprisonment, while Oldenbarnevelt was publicly beheaded in May 1619.

Grotius was taken in the winter of 1618 to his prison, Louvestein Castle, in the south of the United Provinces. He lived there until March 1621, when he escaped in famous and romantic circumstances: his wife arrived with a basket of books; Grotius (who was quite a small man) hid in the empty basket and was carried out of the castle. He succeeded in crossing the border to the Spanish Netherlands undetected, and took refuge in France, where he lived for most of the rest of his life. He returned to the United Provinces under a false identity in October 1631, hoping that Maurice's successor as Statholder, Frederick William (who had always been personally sympathetic to Grotius), could arrange for him to be rehabilitated; but in the end Frederick William could not deliver an annulment of the original conviction, and Grotius slipped out of the country again in April 1632. As we shall see, these six months in his native land had an important effect on the received text of *De Iure Belli ac Pacis*, since Grotius issued a second edition of the work during this period in which some of his more disturbing claims were modified in order to win over his Dutch opponents. For the next three years he moved around Germany, until at the beginning of 1635 the government of Sweden appointed him as their ambassador to France, a post that allowed him to play a major role in the complex diplomacy surrounding the last years of the Thirty Years' War. There was always a certain amount of unease in Sweden about using him in this important position, however, and in 1645 Grotius visited Sweden to defend himself against criticism; he passed briefly through the United Provinces on his way, without molestation. He failed to persuade the Swedes to renew his appointment, and left the country; his ship was caught in a storm in the Baltic and wrecked on the coast near Rostock. Grotius collapsed on shore after being rescued, and died in Rostock on 28 August 1645. His body was returned to Delft and given an honored burial by the same Dutch authorities who had kept him in exile for twenty-four years.

Though it was not published until four years after his escape, *De Iure Belli ac Pacis* really grew out of Grotius's time in prison. Political pris-

oners in the sixteenth and seventeenth centuries enjoyed full access to their books and papers, and unlimited time to write: Sir Walter Raleigh, for example, wrote his massive *History of the World* while awaiting execution in the Tower of London. His two years in Louvestein allowed Grotius to revisit old projects; as he wrote to his old friend G. J. Vossius in July 1619, "I have resumed the study of jurisprudence [*iuris studium*] which had been interrupted by all my affairs, and the rest of my time is devoted to moral philosophy [*moralis sapientiae*]."<sup>9</sup> He told Vossius that to help his work in moral philosophy he was giving a Latin dress to the ethical passages in the Greek poets and dramatists collected by the Byzantine anthologist Stobaeus,<sup>10</sup> and the effect of this approach to the subject is visible on every page of the *De Iure Belli ac Pacis*. Rousseau was to remark sardonically that Grotius's use of quotations concealed the fundamental similarity between Grotius and Hobbes: "The truth is that their principles are exactly the same: they only differ in their expression. They also differ in their method. Hobbes relies on sophisms, and Grotius on the poets; all the rest is the same."<sup>11</sup> Grotius also turned his attention to rewriting and expanding his earlier work on theology, and it was this which he brought to fruition first after his escape;<sup>12</sup> but once settled in France he concentrated on his juridical and moral project and wrote *De Iure Belli ac Pacis* between the autumn of 1622 and the spring of 1624, partly while staying as a guest at the country house of one of the presi-

9. Grotius, *Briefwisseling*, ed. P. C. Molhuysen, vol. 2 (The Hague, 1936), 15 (no. 590).

10. In 1623 he published these translations, with an introduction that broaches some of the themes later developed in *De Iure Belli ac Pacis*, in a volume entitled *Dicta Poetarum quae apud Io. Stobaeum exstant*. The book was published in Paris by Nicolas Buon, the same printer who was to produce *De Iure Belli ac Pacis*; Grotius had been staying at Buon's house since he arrived in Paris.

11. Rousseau, *Political Writings*, 2:147.

12. In 1622 he published *Bewys van den waren godsdienst*, the Dutch forerunner of his later *De veritate religionis Christianae*, which he had composed in prison; five years later he produced the Latin version. In 1622 he also published his *Disquisitio an Pelagiana sint ea dogmata quae nunc sub eo nomine traducuntur*, picking up on the themes in debate between the Arminians and their opponents; and his *Apologeticus eorum qui Hollandiae ex legibus praefuerunt*, defending his conduct in the attempted coup of 1618.



dents of the Parlement of Paris, Henri de Mesmes, at Balagny near Senlis.<sup>13</sup> Printing took place slowly and inefficiently from January to March 1625;<sup>14</sup> copies were rushed to the Frankfurt Book Fair in March in order to catch the eye of the European public,<sup>15</sup> and in May Grotius was at last able to give a presentation copy to the book's dedicatee, King Louis XIII of France.<sup>16</sup>

Among the papers to which he must have turned while in prison was a long manuscript which he had written in 1606, before the practical requirements of Dutch politics came to occupy all his time and attention. It was a defense of the military and commercial activity of the Dutch East India Company in the Far East, and in it the central themes of *De Iure Belli ac Pacis* were already adumbrated. He had begun to circulate the manuscript among his friends, no doubt with a view to publishing it, but in the end only Chapter XII of the manuscript had appeared in print, as the famous *Mare Liberum* (1609); clearly, Grotius decided that his enforced leisure at Louvestein was an ideal opportunity to rewrite this early draft and finally put it in a publishable form.<sup>17</sup> The manuscript lay unknown among Grotius's papers until 1864, when it was discovered and published; its first editor gave it the title *De Iure Praedae, The Law of Prizes*, but Grotius himself referred to it more loosely as his *De Indis*, and its real scope was expressed by the subtitle of *Mare Liberum*, "a dissertation on the law which covers the Hollanders' trade with the Indies."<sup>18</sup> Dutch expansion in the Far East was a peculiarly fertile context for Grotius's political theory to develop, since (as I said earlier) it was essentially driven by a private corporation, interacting with local rulers

13. See among other references *Briefwisseling*, 2:254, 260, 283, 296, 327, 358.

14. See, for example, *Briefwisseling*, 2:409, 417, 422, 426.

15. The copies at Frankfurt lacked the indexes (*Briefwisseling*, 2:433, no. 958).

16. *Ibid.*, 449.

17. Even as the *De Iure Belli ac Pacis* was being printed, Grotius was thinking about a new edition in which the work would appear alongside *Mare Liberum* and his essay on the Dutch constitution, *De Antiquitate Batavicae Reipublicae* of 1610 (*Briefwisseling*, 2:426). He clearly did not suppose then that *De Iure Belli ac Pacis* had superseded the earlier work. *De Iure Belli ac Pacis* and *Mare Liberum* did appear together in an Amsterdam edition of 1632, though this may not have been authorized.

18. *De jure quod Batavis competit ad Indicana commercia dissertatio*.

such as the sultan of Johore and offering them military protection and beneficial trading arrangements. The Indian Ocean and the China Sea were an arena in which actors had to deal with one another without the overarching frameworks of common laws, customs, or religions; it was a proving ground for modern politics in general, as the states of Western Europe themselves came to terms with religious and cultural diversity. The principles that were to govern dealings of this kind had to be appropriately stripped down: there was no point in asserting to a king in Sumatra that Aristotelian moral philosophy was universally true, and not much more point in telling the admiral of the Dutch East India Company's fleet that he had to wait for some judicial pronouncement by an appropriate sovereign before making war on a threatening naval force. The minimalist character of the principles that emerged from this setting caught the imagination of modern Europe, for they seemed to offer the prospect of an understanding of political and moral life to which all men—the poor and dispossessed and religiously heterodox of Europe as well as the exotic peoples of the Far East or the New World—could give their assent.

Grotius boldly stated his central argument as follows:

God created man *ἀντεξούσιον*, “free and *sui iuris*,” so that the actions of each individual and the use of his possessions were made subject not to another's will but to his own. Moreover, this view is sanctioned by the common consent of all nations. For what is that well-known concept, “natural liberty,” other than the power of the individual to act in accordance with his own will? And liberty in regard to actions is equivalent to ownership in regard to property. Hence the saying: “every man is the governor and arbiter of affairs relative to his own property.”<sup>19</sup>

Grotius remained committed to this view in *De Iure Belli ac Pacis*, remarking in one of its most striking passages that “there are several Ways of living, some better than others, and every one may chuse what he

19. *De Iure Praedae Commentarius*, trans. Gwladys L. Williams and Walter H. Zeydel (Carnegie Endowment for International Peace, Oxford University Press, 1950), 1:18.

pleases of all those Sorts.”<sup>20</sup> He thus presupposed the naturally autonomous agents familiar to us from later seventeenth- and eighteenth-century political theory, who constructed their political arrangements through voluntary agreements. Though he did not have precisely the concept of the “state of nature,” which was so central to Hobbes and his successors, and which they always contrasted with “civil Society” (the product of agreement among naturally free men), he did use the terms in somewhat similar ways;<sup>21</sup> and of course the domain of foreign trade and war was in itself the best example of such a state, and was always used as such by later writers.

The principles governing these autonomous natural individuals were also stated very plainly in *De Iure Praedae*. The Prolegomena to the work began with two fundamental laws of nature:

first, that It shall be permissible to defend [one’s own] life and to shun that which threatens to prove injurious; secondly, that It shall be permissible to acquire for oneself, and to retain, those things which are useful for life. The latter precept, indeed, we shall interpret with Cicero as an admission that each individual may, without violating the precepts of nature, prefer to see acquired for himself rather than for another, that which is important for the conduct of life. Moreover, no member of any sect of philosophers, when embarking upon a discussion of the ends [of good and evil], has ever failed to lay down these two laws first of all as indisputable axioms. For on this point the Stoics, the Epicureans,

20. I.III.8. As its context illustrates, of course, this stress on fundamental moral liberty is compatible with a voluntary renunciation of *civil* liberty—I.III.8 is the famous defense of absolutism. The term *ἀντεξούσιον* also occurs three times in *De Iure Belli ac Pacis*, with the same meaning as in *De Iure Praedae*. See, for example, his description of a child who has grown up and left home as “altogether *ἀντεξούσιος*, at his own Disposal” (II.V.6), and also II.XX.48.2 n. 6 and II.XXI.12.

21. See in particular II.VII.27.1, which contrasts “the State of Nature” with civil “Jurisdiction.” II.VI.5, which in the English translation also refers to “a meer State of Nature” in opposition to civil society, in the original Latin refers to *ius naturae*. Other references to the state of nature, in the Latin as well as the English texts, occur at II.V.9.2 and II.V.15.2, though they contrast nature with grace, in a more traditional fashion. Grotius uses the term *civil society*: see, for example, I.IV.2.

and the Peripatetics are in complete agreement, and apparently even the Academics [i.e., the Skeptics] have entertained no doubt.<sup>22</sup>

The last part of this passage emphasizes Grotius's concern that whatever one's ethical commitments, his minimalist principles should be acceptable; in *De Iure Belli ac Pacis* he made the same point by selecting Carneades, the leader of the Skeptical Academy, as the person whom he needed to defeat in argument. Grotius termed these "laws" of nature, but since they were permissive in form they might be better termed "rights"; and this is what he duly did in *De Iure Belli ac Pacis*, where the "Right of recurring to Force, in defence of one's own Life" (I.II.3) and the right "of innocent Profit; where I only seek my own Advantage, without damaging any Body else" (II.II.II) are the basic rights which recur throughout the book.

The right to defend oneself, Grotius always believed, extends beyond merely responding to an immediate attack. It also includes what we would normally think of as *punishment*, that is, the exercise of violence against a third party by whom we are not directly threatened. He was aware that this was an extremely disturbing idea, as traditionally this right was the special prerogative of civil sovereigns.

Is not the power to punish essentially a power that pertains to the state [*respublica*]? Not at all! On the contrary, just as every right of the magistrate comes to him from the state, so has the same right come to the state from private individuals; and similarly, the power of the state is the result of collective agreement. . . . Therefore, since no one is able to transfer a thing that he never possessed, it is evident that the right of chastisement was held by private persons before it was held by the state. The following argument, too, has great force in this connexion: the state inflicts punishment for wrongs against itself, not only upon its own subjects but also upon foreigners; yet it derives no power over the latter from civil law, which is binding upon citizens only because they have given their consent; and therefore, the law of nature, or law

22. *De Iure Praedae Commentarius*, trans. Williams and Zeydel, 2:10–11.