RETHINKING HUGO GROTIOUS’S STANCE ON THE
JUST WAR THEORY AS A FOUNDATIONAL PILLAR
OF THE MODERN SCIENCE IN APPLIED SECURITY,
JUSTICE AND INTERNATIONAL AFFAIRS

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The topic of war and its nature firmly remains among top disputable topics within the international relations domain. One of the enduring questions yet to be answered is whether wars are a principally bad thing. While armed conflict, in the broadest sense, is generally associated with massive destructions and civilian casualty, there still appears to be much discussion on whether, under certain circumstances, wars can be justified. That is where various approaches emerge: while traditional just war theorists assert that just to resort to war is permissible exclusively in self-defence to counteract actual military threats, some scholars still disagree by claiming that there can never be fairly justifiable reasoning to initiate the war. Conversely, other opponents of just war tradition with a rather nationalist stance claim that in the conditions of modern times, in which political self-interests of separate nations play a central role, just war is outdated and unfeasible. Nevertheless, despite all the criticism, just war has made and continues to have a profound influence on global politics and transnational security. In fact, the so-called ‘father of international law’ - Hugo Grotius who largely contributed to the development of world order, has shared basic principles of this doctrine. However, the vision of Grotius did not fully comply with the traditional theory of just war, which can be traced in such aspects as which purposes it may pursue, how it should be fought and who may wage it. By analysing these and some other points, this paper seeks identify the key divergence in judgements of Hugo Grotius and other thinkers of just war tradition, which in turn may help to delve deeper into the enduring question of war and its justifiability.

Before proceeding to discuss whether a war may be justified and under which conditions, for a better understanding of the concept, it is first worth touching upon the definition of war. In the broad sense, war means rivalry of two or more contending political sides, characterized by substantial time frames and enormity of the conflict. Though, in the usage of political disciplines, scientists tend to identify war more specifically: mainly, as a state of declared and waged armed confrontation in compliance with publicly accepted formats. From that angle, wars are regarded as institutions acknowledged “in custom or in law” [1]. From this, it can already be traced that the contemporary society’s vision of war initially presumes that a war may occur at any point and as such the practical laws for its conduct are required. Yet, to generate such regulations effectively, as well as to set “predictive models of war”, the nature of war occurrence needs to be examined [2].

In that regard, the study of just war offers tangible benefits, covering not only potential
justifications for war, but also uses of force that are allowable to be enforced in the wartime.

When talking about just war, one of the common definitions of this concept has been formulated by Eberle [3, p. 90] who stated that just war is “organized violence between bonded groups that are related in some respect that makes the violence between those groups just”. Two fundamental issues just war theory seeks to solve is under which circumstances it is legitimate to go into war and what it actually means to fight a war in a justly manner. According to traditional just war theory, first introduced by Aristotle under the context of Hellenic World, a declaration of war can only “be just” as a last resort, given that all other existing non-military alternatives have failed to work. Holding that view, Eberle [3, p. 2] maintained that any just war “must enjoy support of sufficient reasons; only certain kinds of reasons can provide required support”. As such, just war distinguishes several so-called ‘jus and bellum’ requirements, including the lack of any other viable options to resolve political struggle, reasonable chances of success and anticipated lead of post-war benefits on losses. Another crucial feature of just war theory is also that, to a considerable extent, it has been tied to religion. Christian tradition flows all through the works of St. Augustine who insisted that Christians’ “war-fighting duty should be as just as possible” and St. Aquinas who stressed that “in the nation’s interest” does not fall under just reasons and that only a properly instituted authority, namely a state, representing “peace for the sake of man’s true end - God”, is empowered to fight a war [4; 5].

Having lived through the times of heated political tensions all across Europe, Grotius took a deep interest in the nature of forced conflicts and the ways they can be regulated. Although initially his position has been largely influenced by just war tradition, the scholar sought to develop a more expansive and in-depth approach to understanding the reasons for war. Distinctively, his arguments were predominantly forwarded towards retaliatory actions rather than to the possibility of the former adoption of some preventative peaceful measures to resolve a conflict. Grotius believed that safeguarding national sovereignty along with the movement for people’s liberation, “when judicial settlement fails”, provide a reasonable justification for the conduct of war [6: II.1.2.1]. Mainly, the thinker recognized the following contexts for just war: in case of an actual and grave peril, as the realisation of rights to property restitution or as an imminent penalty. To put it differently, Grotius identified these cases as an ultimate means of self-defence sufficiently equitable to engage in war. However, in so doing, the scholar tried to stay rather cautious: while touching upon the requirements and conditions for just war, he avoided encouraging war as a whole. In that regard, Grotius attached considerable importance to the aspect of reasonable chances of success. He stressed that it is better not to initiate the war, not only when the exposure to defeat is greater than the likelihood of victory, but also when equality of arms between own forces and rivals are even. This idea can be fairly described as unprecedented for Grotius’s times and that is because other jurists and philosophers of just war did not grasp it as soon as Grotius did. The Roman theorist Marcus Tullius Cicero asserted that for war to be just it requires to have just reason, be publicly declared and fought decently. Similarly, in his Republic Plato perceived well-founded and justly use of military asserts as an essential component of the city’s approach to warfare. Although both of these early precursors to just war theory recognized that war is not just an act of violence, but a complex phenomenon that entails considerable risks “for any given society”, neither Cicero, nor Plato extended this thought as far as Grotius managed to. According to Plato, “in no instance, it is just to injure anybody”, basically meaning that the thinker does not allow for the possibility of such conditions, under which suffering of
anyone, could be justified. Such affirmations by Plato make his early concept of just war quite vague.

In contrast, Grotius was “fully convinced… that there is a common law among nations, which is valid alike for war and in war”, which he aimed to investigate and formulate in his general theory of war – *Jurisprudentia*. The philosopher believed that such a document would help to mitigate the atrocities of wars, as well as to decrease their growing prevalence as an extreme measure of rivalry in the long run. The wars, he witnessed, have provided the initial impetus behind Grotius’s studies. Distinctively, wars of Grotius’s lifetime contradicted St. Augustine’s classical theory who considered the virtue of war from a Christian perspective. While Augustine assumed that basic ground for war is religion, meaning that all Christian folks are entitled to join their forces to mutually resist gentiles, Grotius already recognized that there existed no correct approach to wars. Instead, he believed that some loss-minimizing measures need to be taken. This vision formed the basis for Grotius’s *De jure belli ac pacis* (*DIB*), in which he formulated requirements for a war “to be just” by inquiring into the legislative framework of war and peace. Having himself witnessed unfavourable effects of continuous strife and conflicts, including those of the Thirty Years’ War, Grotius conceded that along with the right to resort to war, Christian folks nonetheless should confine the magnitude of warfare [6: III.1.2-4]. To that end, the scholar specified the basic norms for the justly use of force by accentuating that “in wars things which are necessary to attain the end in view are permissible” [6: III.1.2]. Accepting the position that war is not always avoidable, Grotius moved the focus from the development of measures for war prevention to those rather aimed at the curtailment of pernicious consequences and the duration of war at large. According to Grotius, “on whatever terms peace is made, it must be absolutely kept, from the sacredness of the faith pledged in the engagement, and every thing must be cautiously avoided, not only savouring of treachery, but that may tend to awaken and inflame animosity.” This, indeed, evidences Grotius’s fundamentalism in enhancing pillars for the implementation of peace processes within the context of ongoing wars.

Distinctive about Grotius is also that he started classifying law into natural (*jus naturale*) and positive (*jus voluntarium*), which, for its part, as well was broken into human (*jus humanum*) and divine (*jus divining*). In that system the primary emphasis the legal scholar placed on human law that, in his understanding, already covered not only *jus civile* - civil rights, but also international law - *jus gentium*. Grotius’s efforts to structure the legal system as a coherent body not simply for one individual sector or a single state prompt modern science to consider him as the founder of contemporary international law. Indeed, the name of Grotius is widely associated with his self-defined great aim – justice among nations which he tried to step closer to by working in a variety of fields throughout his life [7]. Grotius believed that “the extensive divergence” exists not only among, but also within nations, and thus to be confronted, it requires the efforts of independent arbitrators [8]. Given that, it is fair to assert that Grotius has extended the notion of who may engage in the processes of war and peace. Unlike St. Aquinas, whose argument has been heavily based upon the premise that only “a properly instituted authority such as the state can wage war”, Grotius did not qualify “the centralized authority” as an ultimate “first” [9]. On the contrary, since that was the natural law that lied at the core of Grotius’s standpoint, his principles for war and peace are not limited exclusively to conflicts between centralized bodies. Instead, the scholar sought to scrutinise the application of arms in any given confrontation, including those that lack “a duly proper execution” or “a common superior to appeal to” [10; 11]. This evidences that Grotius did not only recognise the necessity to regulate the conduct of war in the international context but also recognised that tensions might occur within the state.
Unlike original just war theorists St. Aquinas and St. Augustine, a very special place - at the centre of his legal framework Grotius has given to the natural law. “Now the Law of Nature is so unalterable, that it cannot be changed even by God himself. For although the power of God is infinite, yet there are some things, to which it does not extend”, - he declared [6: I.1]. From the scholar’s standpoint, the compliance with laws of ‘real nature’ serves as an ultimate source for public law, which helps to enforce common legal standards for all humans [12; 13]. Correspondingly, in an international setting, Grotius insisted that law (jus gentium) is subject to broad and general harmonization between the nations. According to [14], with his treatise De Jure Belli ac Pacis - The Rights of War and Peace, Grotius appeared “to have been the first” who sought to reclassify the realm into somewhat like a holistic framework of natural jurisprudence. Although Grotius’s reasonings in many respects have been originally anchored in Roman law and Stoic’s ideas, the final output of thinker’s judgements - Grotius’s natural law doctrine can be reasonably described as an underlying societal value. What makes Grotius so outstanding from the philosophy of his predecessors, including the concept of higher law described by Cicero, is that he tried to refrain from referring to religion. When advocating natural law, Grotius did not appeal to Bible, instead, he argued that legacy, as it is, has arisen from “the nature of things” and was then uncovered by “human reason”, which, according to Grotius, amounts to a substantive source of juridical validity. If to accept that reasoning, it becomes clear why Grotius was so firmly concerned that natural law represents the most effective means of preventing the exacerbation and increase in wars across Europe. In contrast to thinkers of just war paradigm, Grotius did not place religion at the centre of his natural law formation. He pointed out that so as to attain peace, law should “be just” and constant for all folks irrespective of their religious affiliation. It is thus believed that Grotius was a pioneer in replicating the idea of natural law and natural rights all over Europe, including its northern parts which used to be ruled mostly by the Protestant states [15]. Meanwhile, Grotius did not fully omit the topic of Christianity. By adopting a number of religion-directed elements through his treatise, the scholar made it clear that secular law alone is not enough to tackle war recurrence in peace processes.

To conclude, Grotius’s contribution to the study of war and peace, indeed, has been large and elaborate. On closer examination of the concepts described by Grotius, it becomes apparent that his suggestions of causes of war, as well as of conditions for peace differ from what the pure just war doctrine envisages. Seeking to incorporate the aspects of morality and legacy, Grotius’s reasonings behind the conduct of war ultimately stand out among the ideas of other philosophers and legal scholars. In contrast to early thinkers of just war, including Aristotle, Plato and Cicero, the scholar made it clear that war can actually be ‘just’ when, and only when, it is undertaken and fought rightly. Having moved focus from religious motives to ‘just causes’ such as self-defence, punishment and reparation of injury, unlike St. Augustine and St. Aquinas, in the centre of his paradigm, Grotius placed not religion, but the natural law, which, according to Grotius, exemplifies the core source of right. By outlining the key rules for war, the scholar devoted significant attention to the lack of restraints in terms of war-waging and its conduct. Finally, by applying norms for war and peace not only to centralized authorities such as states, Grotius has largely extended the concept of who may initiate and fight a just war, which can be reasonably identified as a major contribution both to the modern philosophy, law, international relations- and security sciences.

References:
ОСОБЛІВОСТІ НАЦІОНАЛЬНОГО БРЕНДИНГУ СПОЛУЧЕНЕГО КОРОЛІВСТВА ВЕЛИКОЇ БРИТАНІЇ ТА ПІВНІЧНОЇ ІРЛАНДІЇ (НА ПРИКЛАДІ PR-КАМПАНІЇ «GREAT»)

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