

HUGO GROTIUS AND HIS LAW OF NATURE

Paper by Dr. Zengo Ohira to be
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The Honourable Chairman,
Our capable Secretary-General Dr. Hans K. E. L. Keller,
and Ladies and Gentlemen :

It is my great honour and privilege to deliver a short speech at this magnificent meeting of the International Grotius Anniversary in Bordeaux, France. I came from Japan of the Far East, to participate in this important Assembly with you all. We, Grotians, were living apart under a different sky, the East and the West, until yesterday. But to-day we have gathered here in the name of one great man, Hugo Grotius. It is far away from Tokyo to Bordeaux. It took much time and expenses for me to come here. But to-day's meeting of Grotians is so much wonderful as to pay them all.

The purpose of my speech is not to praise lavishly the great name of Hugo Grotius. The greatness of Grotius should be adored in our hearts and not by our mouths. His great name would continue for ever as it is. What my speech aims at is only to try to adjust the academic valuation of Hugo Grotius' works. Nowadays, the value of Grotius' works has been severely criticized in the academic circles. From old times, his fame was violently attacked very often. Needless to say, it was the famous story that Jean Jacques Rousseau cynically criticized the Grotian method in his "Contrat Social". According to their critics, Hugo Grotius

is neither the Father of International Law, nor the Father of Law of Nature. The meaning of the Father is ambiguous and personally I don't like the word of Father. I suppose you all like the Mother more than the Father.

Permit me to quote here the higher criticism by Professor Giorgio Del Vecchio, one of the leading members in our international Praesidium. Doctor Del Vecchio is a great scholar of legal philosophy and doctrines. He published a noteworthy essay in the "Rivista di Diritto Internazionale" 1960, whose title was "Grotius and the Founder of International Law". He tried to challenge and tested the traditional opinion that Hugo Grotius established the foundations of International Law and of modern legal philosophy as a whole. Del Vecchio denied the general opinion that Grotius was the first person who succeeded in the secularization of law and set up the foundation of not only international law but also law itself depending on the doctrine of natural law.

It might be true that, as Professor Del Vecchio pointed out, Francesco Suarez succeeded first in the secularization of law and Hugo Grotius borrowed his words. And it might be true that Hugo Grotius was not consistent in his method and confused the law of nature with the roman *jus gentium*. But it is also true that the important problem before Grotius was not the independence of Jurisprudence from Theology, nor the secularization of international law. As you know, Grotius was the great theologian of the Arminian Remonstrance. And we must pay attention to the fact that the Christian doctrines of Atonement and of Transubstantiation were more real to him than the legal work on which his fame eventually rested. His real intention was concerned in the practical value, not in the theoretical one. Grotius wanted the new World Order in Europe, but not the theoretical system of International Law.

Grotius' fundamental attitude was to find international law applicable to Europe and it was well shown in his "De Jure Belli

ac Pacis". When he wrote this book, he keenly wished to restore the peace and order in Europe by practical application of law found by himself. After the downfall of the Mediaeval regime of Feudalism, there were no actual laws between the European sovereigns who suddenly rose to powers, and they bitterly suffered from the devastation and misery of the Thirty Years War. Grotius gave the international law to the newly-born sovereigns as to their guidance. It was his great advice, suggestion and persuasion to the human hearts. Grotius did not want the separation of Men from God. But he wanted to recover the peace and order in Europe on the common basis of divine and civil laws, together. He believed in not only the separate validity of the Law of Nature, but also the necessity of the World Order as a Whole. This must be the Grotian tradition in International Law. It is believed that instruction of this kind may still be derived from the ideas which Grotius bequeathed to International Law and which supply the key to the attraction and the influence of his treatise in the course of centuries. This is exactly so, although the principal work, on which his fame rests, may be faulty in his method, pretentious in its learning, and unreadable in the twentieth century.

Such is my interpretation of Hugo Grotius' Law of Nature. This idea was annunciated when I was a University student by reading "A Short History of the Doctrine of the Atonement", published by Laurence William Grensted, in 1920. The Grotian doctrine of the Atonement was explained in his "A Defence of the Catholic Faith concerning the Satisfaction of Christ, against Faustus Socinus", 1617, and was remarkable as the Governmental theory, I found. It was my own discovery thirty four years ago and was published in our student magazine, the "Hermes", in 1928, but still continues to be bearable on my subsequent enquiries. The framework of the "De Jure Belli ac Pacis" is perfectly the counterpart

of his doctrine of Atonement. It is sure that we should learn at first Grotius' doctrine of Atonement and of Transubstantiation in order to understand his Law of Nature better. The Grotian system of International Law is constructed in correspondence to Religion, but not in separation from Theology.

Now it is better to touch the Grotian Theology a little bit with his doctrine of Atonement. He insisted on the relaxation of strict justice and the moderation of punishment. His Governmental theory is a mediating position between Calvin and Socinus. He opposed Socinus' contention that there could not be satisfaction made for sin, and also remission, by showing that the one is antecedent to the other. Yet Grotius was far removed from the Reformers, for he denied the necessity of the punishment of sin, and supported a benevolent relaxation of the execution of punishment. Calvin's God is a God of strict retributive justice. The God of Grotius is a benevolent ruler. So we could have an idea of benevolent Government in his theological doctrine and this was just his fundamental attitude to the European peace and order while he was writing his legal masterpiece.

His "De Jure Belli ac Pacis" was written for and dedicated to the newly-born European sovereigns.

It was his advice and recommendation to them as to their political behaviours. He showed them a way to good government and persuaded them to keep the rules. In this instant, I wish to point up that his "De Jure Belli ac Pacis" should be translated into English as follows: "On the Rights of War and Peace". Jus should be translated into English as "right". In the Continental versions, law and right are the same, but the meaning must be separated. Grotius advised the newly-born sovereigns the limit of their rights and the correct way of government. Therefore a war was treated by him as an action of punishment. Sovereigns are permitted to resort to force as an execution of punishment against

wrong-doers, if there is a just cause to commence war. This action of punishment is allowable by the Law of Nature. But that is only the act of *justitia expletrix* or *justicia externa*. Even when justice does not demand the remission of punishment, this is required nevertheless often in conformity with goodness, with moderation and with high-mindedness. This is the virtue of *justitia attributix* or *justitia interna*. Thus the Grotian framework is built up by the dualistic elements of strict justice and its temperamentum by good faith. In other words, *justitia* and *caritas* are the two cornerstones of his structure. And *justitia* and *caritas* are connected by his idea of good government.

In conclusion, the Grotian system of International Law must be called to be the universal moral code, supported by both law and morals and by the law of nature and the Christian love. He tried to find the public law of Europe and gave the rules to the sovereigns as to the route of their decision-making. Grotius persuaded them not as a scholar, but as a law-giver.

He did his task as if he was a legislator. His weapon was the persuasion by eloquence, literatures, reasoning and religion. In the name of law and morals, he appealed to the hearts of the European princes. Thus, the moral appealing is the Grotian tradition of International Law. It may be held that at any time, it is important that the relations of states should be conceived and taught as part of ethics as well as part of law. Grotius' great merit is that he performed both tasks in one work. Grotius is still appealing a Universal moral code to every human heart.

In my point of view, this Grotian appealing is quite important. Even when he was fifteen years old, he himself was called "the miracle of Holland" at the French Court Palace. But the moral appealing must be a well-spring of faith, and it did a miracle and will continue to do so. I must point out here three miracles made by the Grotian moral appealing.

1) The first miracle by Grotius is the Castle Loevestein, where I visited three weeks ago and found the memorial stone dedicated by this association last year. In the castle Loevestein, he did write two good books. After that, he escaped and succeeded in writing his great work of "De Jure Belli ac Pacis".

2) The second miracle by Grotius is the Peace Palace. In the Hague, twice the international peace conferences were taken place. The Grotius' grave at Delft was consecrated by the delegates of civilised countries. With the result, the League of Nations and the International Court of Justice were set up.

3) The third miracle by Grotius must be in the hearts of the Grotians who have gathered here to-day. The International Grotius Foundation is not only a social association but also is an action agency for the propagation of the law of nations. The United Nations is not yet enough to be the World Peace Organization. All members of the Grotius Foundation gathered here ought to work for the maintenance of international peace and security. The third miracle surely is in our hands.

Following the example of Hugo Grotius, I should like to conclude my speech by my prayer in the form of Japanese poem "Waka" (in 31 letters).

Hitotsunano Motoni Tsudoeru Harakara-Ya,
Yonomisakaeni Tsukusasetamae.

Translation :

In the name of one great man,
All who gathered here are already comrades each other.
Let us work always for the peace and glory of the world..