HVGONIS GROTII
MARE LIBERVM
SIVE
DE IVRE QUOD BATAVIS
COMPETIT
AD INDICANA COMMERCIA,
DISSERTATIO

1608
TO THE RULERS AND TO THE FREE
AND INDEPENDENT NATIONS
OF CHRISTENDOM

The delusion is as old as it is detestable with which many
men, especially those who by their wealth and power exercise
the greatest influence, persuade themselves, or as I rather
believe, try to persuade themselves, that justice and injustice
are distinguished the one from the other not by their own
nature, but in some fashion merely by the opinion and the
custom of mankind. Those men therefore think that both
the laws and the semblance of equity were devised for the
sole purpose of repressing the dissensions and rebellions of
those persons born in a subordinate position, affirming mean-
while that they themselves, being placed in a high position,
ought to dispense all justice in accordance with their own
good pleasure, and that their pleasure ought to be bounded
only by their own view of what is expedient. This opinion,
absurd and unnatural as it clearly is, has gained considerable
currency; but this should by no means occasion surprise,
inasmuch as there has to be taken into consideration not only
the common frailty of the human race by which we pursue
not only vices and their purveyors, but also the arts of flatter-
erers, to whom power is always exposed.

But, on the other hand, there have stood forth in every
age independent and wise and devout men able to root out
this false doctrine from the minds of the simple, and to
convict its advocates of shamelessness. For they showed
that God was the founder and ruler of the universe, and
especially that being the Father of all mankind, He had not
separated human beings, as He had the rest of living things,
into different species and various divisions, but had willed
them to be of one race and to be known by one name; that
furthermore He had given them the same origin, the same structural organism, the ability to look each other in the face, language too, and other means of communication, in order that they all might recognize their natural social bond and kinship. They showed too that He is the supreme Lord and Father of this family; and that for the household or the state which He had thus founded, He had drawn up certain laws not graven on tablets of bronze or stone but written in the minds and on the hearts of every individual, where even the unwilling and the refractory must read them. That these laws were binding on great and small alike; that kings have no more power against them than have the common people against the decrees of the magistrates, than have the magistrates against the edicts of the governors, than have the governors against the ordinances of the kings themselves; nay more, that those very laws themselves of each and every nation and city flow from that Divine source, and from that source receive their sanctity and their majesty.

Now, as there are some things which every man enjoys in common with all other men, and as there are other things which are distinctly his and belong to no one else, just so has nature willed that some of the things which she has created for the use of mankind remain common to all, and that others through the industry and labor of each man become his own. Laws moreover were given to cover both cases so that all men might use common property without prejudice to any one else, and in respect to other things so that each man being content with what he himself owns might refrain from laying his hands on the property of others.

Now since no man can be ignorant of these facts unless he ceases to be a man, and since races blind to all truth except what they receive from the light of nature, have recognized their force, what, O Christian Kings and Nations, ought you to think, and what ought you to do?
If any one thinks it hard that those things are demanded of him which the profession of a religion so sacred requires, the very least obligation of which is to refrain from injustice, certainly every one can know what his own duty is from the very demands he makes of others. There is not one of you who does not openly proclaim that every man is entitled to manage and dispose of his own property; there is not one of you who does not insist that all citizens have equal and indiscriminate right to use rivers and public places; not one of you who does not defend with all his might the freedom of travel and of trade.

If it be thought that the small society which we call a state cannot exist without the application of these principles (and certainly it cannot), why will not those same principles be necessary to uphold the social structure of the whole human race and to maintain the harmony thereof? If any one rebels against these principles of law and order you are justly indignant, and you even decree punishments in proportion to the magnitude of the offense, for no other reason than that a government cannot be tranquil where trespasses of that sort are allowed. If king act unjustly and violently against king, and nation against nation, such action involves a disturbance of the peace of that universal state, and constitutes a trespass against the supreme Ruler, does it not? There is however this difference: just as the lesser magistrates judge the common people, and as you judge the magistrates, so the King of the universe has laid upon you the command to take cognizance of the trespasses of all other men, and to punish them; but He has reserved for Himself the punishment of your own trespasses. But although He reserves to himself the final punishment, slow and unseen but none the less inevitable, yet He appoints to intervene in human affairs two judges whom the luckiest of sinners does not escape, namely, Conscience, or the innate estimation of oneself, and Public Opinion, or the estimation of others.
FREEDOM OF THE SEAS

These two tribunals are open to those who are debarred from all others; to these the powerless appeal; in them are defeated those who are wont to win by might, those who put no bounds to their presumption, those who consider cheap anything bought at the price of human blood, those who defend injustice by injustice, men whose wickedness is so manifest that they must needs be condemned by the unanimous judgment of the good, and cannot be cleared before the bar of their own souls.

To this double tribunal we bring a new case. It is in very truth no petty case such as private citizens are wont to bring against their neighbors about dripping eaves or party walls; nor is it a case such as nations frequently bring against one another about boundary lines or the possession of a river or an island. No! It is a case which concerns practically the entire expanse of the high seas, the right of navigation, the freedom of trade!! Between us and the Spaniards the following points are in dispute: Can the vast, the boundless sea be the appanage of one kingdom alone, and it not the greatest? Can any one nation have the right to prevent other nations which so desire, from selling to one another, from bartering with one another, actually from communicating with one another? Can any nation give away what it never owned, or discover what already belonged to some one else? Does a manifest injustice of long standing create a specific right?

In this controversy we appeal to those jurists among the Spanish themselves who are especially skilled both in divine and human law; we actually invoke the very laws of Spain itself. If that is of no avail, and those whom reason clearly convicts of wrong are induced by greed to maintain that stand, we invoke your majesty, ye Princes, your good faith, ye Peoples, whoever and wherever ye may be.

It is not an involved, it is not an intricate question that I am raising. It is not a question of ambiguous points of
theology which seem to be wrapped in the deepest obscurity, which have been debated already so long and with such heat, that wise men are almost convinced that truth is never so rarely found as when assent thereto is forced. It is not a question of the status of our government and of independence not won by arms but restored. On this point those can reach a right decision who have an accurate knowledge of the ancestral laws and hereditary customs of the people of the Netherlands, and who have recognized that their state is not a kingdom illegally founded but is a government based upon law. In this matter, however, just judges no longer compelled to subordinate their convictions have been persuaded; the public authority of many nations has entirely satisfied those who were seeking a precedent; and the admissions of our adversaries have left even the foolish and malevolent no room for doubt.

But what I here submit has nothing in common with these matters. It calls for no troublesome investigation. It does not depend upon an interpretation of Holy Writ in which many people find many things they cannot understand, nor upon the decrees of any one nation of which the rest of the world very properly knows nothing.

The law by which our case must be decided is not difficult to find, seeing that it is the same among all nations; and it is easy to understand, seeing that it is innate in every individual and implanted in his mind. Moreover the law to which we appeal is one such as no king ought to deny to his subjects, and one no Christian ought to refuse to a non-Christian. For it is a law derived from nature, the common mother of us all, whose bounty falls on all, and whose sway extends over those who rule nations, and which is held most sacred by those who are most scrupulously just.

Take cognizance of this cause, ye Princes, take cognizance of it, ye Nations! If we are making an unjust demand, you know what your authority and the authority of
those of you who are our nearer neighbors has always been so far as we are concerned. Caution us, we will obey. Verily, if we have done any wrong in this our cause, we will not deprecate your wrath, nor even the hatred of the human race. But if we are right, we leave to your sense of righteousness and of fairness what you ought to think about this matter and what course of action you ought to pursue.

In ancient times among the more civilized peoples it was held to be the greatest of all crimes to make war upon those who were willing to submit to arbitration the settlement of their difficulties; but against those who declined so fair an offer all others turned, and with their combined resources overwhelmed them, not as enemies of any one nation, but as enemies of them all alike. So for this very object we see that treaties are made and arbiters appointed. Kings themselves and powerful nations used to think that nothing was so chivalrous or so noble as to coerce the insolent and to help the weak and innocent.

If today the custom held of considering that everything pertaining to mankind pertained also to one's self, we should surely live in a much more peaceable world. For the presumptuousness of many would abate, and those who now neglect justice on the pretext of expediency would unlearn the lesson of injustice at their own expense.

We have felt that perhaps we were not entertaining a foolish hope for our cause. At all events we are confident that you will all recognize after duly weighing the facts in the case that the delays to peace can no more be laid to our charge than can the causes of war; and as hitherto you have been indulgent, even favorably disposed to us, we feel sure that you will not only remain in this mind, but be even more friendly to us in the future. Nothing more to be desired than this can come to men who think that the first condition of happiness is good deeds; the second, good repute.
CHAPTER I

By the Law of Nations navigation is free to all persons whatsoever

My intention is to demonstrate briefly and clearly that the Dutch—that is to say, the subjects of the United Netherlands—have the right to sail to the East Indies, as they are now doing, and to engage in trade with the people there. I shall base my argument on the following most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit of which is self-evident and immutable, to wit: Every nation is free to travel to every other nation, and to trade with it.

God Himself says this speaking through the voice of nature; and inasmuch as it is not His will to have Nature supply every place with all the necessaries of life, He ordains that some nations excel in one art and others in another. Why is this His will, except it be that He wished human friendships to be engendered by mutual needs and resources, lest individuals deeming themselves entirely sufficient unto themselves should for that very reason be rendered unsociable? So by the decree of divine justice it was brought about that one people should supply the needs of another, in order, as Pliny the Roman writer says,1 that in this way, whatever has been produced anywhere should seem to have been destined for all. Vergil also sings in this wise:

"Not every plant on every soil will grow,"2 and in another place:

"Let others better mould the running mass
Of metals," etc.3

1 Panegyric 39, 2.
2 Georgics II, 109 [Dryden's translation, II, 154].
3 Aeneid VI, 847-853 [Dryden's translation, VI, 1168-1169].
Those therefore who deny this law, destroy this most praiseworthy bond of human fellowship, remove the opportunities for doing mutual service, in a word do violence to Nature herself. For do not the ocean, navigable in every direction with which God has encompassed all the earth, and the regular and the occasional winds which blow now from one quarter and now from another, offer sufficient proof that Nature has given to all peoples a right of access to all other peoples? Seneca ¹ thinks this is Nature's greatest service, that by the wind she united the widely scattered peoples, and yet did so distribute all her products over the earth that commercial intercourse was a necessity to mankind. Therefore this right belongs equally to all nations. Indeed the most famous jurists ² extend its application so far as to deny that any state or any ruler can debar foreigners from having access to their subjects and trading with them. Hence is derived that law of hospitality which is of the highest sanctity; hence the complaint of the poet Vergil:

"What men, what monsters, what inhuman race,
What laws, what barbarous customs of the place,
Shut up a desert shore to drowning men,
And drive us to the cruel seas again." ³

And:

"To beg what you without your want may spare—
The common water, and the common air." ⁴

We know that certain wars have arisen over this very matter; such for example as the war of the Megarians against the

¹ Natural Questions III, IV.
² Institutes II, 1; Digest I, 8, 4; cf. Gentilis, De jure bell I, 19; cf. Code IV, 68, 4 [Grotius refers particularly to his famous predecessor Albericus Gentilis (1552-1608), an Italian who came to England and was appointed to the chair of Regius Professor of Civil Law at Oxford. He published his De Jure Belli in 1588].
³ Aeneid I, 539-540 [Dryden's translation, I, 760-763].
⁴ Aeneid VII, 220-230 [Dryden's translation, VII, 313-314].
Athenians,¹ and that of the Bolognese against the Venetians.² Again, Victoria³ holds that the Spaniards could have shown just reasons for making war upon the Aztecs and the Indians in America, more plausible reasons certainly than were alleged, if they really were prevented from traveling or sojourning among those peoples, and were denied the right to share in those things which by the Law of Nations or by Custom are common to all, and finally if they were debarred from trade.

We read of a similar case in the history of Moses,⁴ which we find mentioned also in the writings of Augustine,⁵ where the Israelites justly smote with the edge of the sword the Amorites because they had denied the Israelites an innocent passage through their territory, a right which according to the Law of Human Society ought in all justice to have been allowed. In defense of this principle Hercules attacked the king of Orchomenus in Boeotia; and the Greeks under their leader Agamemnon waged war against the king of Mysia⁶ on the ground that, as Baldus⁷ has said, high roads were free

¹ Diodorus Siculus XI; Plutarch, Pericles XXIX, 4. [The Athenian decree prohibiting the Megarians from trading with Athens or any part of the Athenian Empire was one of the leading causes of the Peloponnesian War.]
² Carlo Sigonio [(1523-1584), an Italian humanist, in his work] On the Kingdom of Italy.
³ Victoria, De Indis II, n. 1-7; Covarruvias, in c. Peccatum, § 9, n. 4, ibd Quinta (Franciscus de Victoria (1480-1546), the famous Spanish Scholastic, a Dominican, and Professor of Theology at Salamanca from 1521 until his death. His thirteen Relectiones (De Indis is no. V) were published (‘vitiosa et corrupta’) in 1557 after his death; the 1686 Cologne edition is held to be the best.
⁴ Diego Covarruvias (1512-1577), styled the Bartolo of Spain. He should probably be credited with formulating the reform decrees of the Council of Trent. The 5 vol. Antwerp 1762 edition of his works is the best.]
⁵ Numbers XXI, 21-26. [Estius (7-1613) was a Dutch commentator on the Epistles of St. Paul and on the works of St. Augustine.
⁶ [Grotius refers to the Trachiniae of Sophocles, but probably from memory, for there is no such reference in that play.]
⁷ Baldus de Ubaldis, Consilia III, 293 [Baldus (1397-1406) was a pupil of the great Bartolus].
by nature. Again, as we read in Tacitus, the Germans accused the Romans of 'preventing all intercourse between them and of closing up to them the rivers and roads, and almost the very air of heaven'. When in days gone by the Christians made crusades against the Saracens, no other pretext was so welcome or so plausible as that they were denied by the infidels free access to the Holy Land.

It follows therefore that the Portuguese, even if they had been sovereigns in those parts to which the Dutch make voyages, would nevertheless be doing them an injury if they should forbid them access to those places and from trading there.

Is it not then an incalculably greater injury for nations which desire reciprocal commercial relations to be debarred therefrom by the acts of those who are sovereigns neither of the nations interested, nor of the element over which their connecting high road runs? Is not that the very cause which for the most part prompts us to execrate robbers and pirates, namely, that they beset and infest our trade routes?

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1 Histories IV, 64 [In connection with the revolt of Civilis].
2 Andrea Alciati, Commentaria VII, 190; Covarruvias in c. Peccatum, p. 9 § 9; Bartolus on Code I, 11 [Alciati (1492-1550) was made Comes Palatinus by the Emperor Charles V, and offered a Cardinal's hat by Pope Paul III, which he refused, but he did become a Protonotarius Apostolicus].