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## **[Michael Roberts, The Military Revolution, 1560-1660, p. 30-31]**

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time, the notion of contraband of war underwent a considerable extension: by the mid-century it could be made to cover even such commodities as corn, specie, cloth and horses.<sup>1</sup>

It was to meet this new situation that the legists of Europe began the attempt to formulate an international law of contraband and blockade. Before the middle of the century the Dutch had already induced at least three nations to recognize the principle "free ships make free goods";<sup>2</sup> and it was partly because of the serious military implications that there had arisen the classic controversy between the advocates of *mare liberum* and *mare clausum*. The military revolution, indeed, had important echoes in international law, and nowhere more plainly than in the pages of Grotius. Grotius began the writing of *De Jure Belli ac Pacis* under the impression produced upon him by the unrestricted warfare of the age. It seemed to him that the old restraints—moral, conventional or religious—had ceased to be effective, and man in his warmaking had sunk to the level of the beasts. The last vestige of chivalry had perished in the French civil wars; and the antagonism of Catholic and protestant had made religion the pretext for ferocity, rather than a check upon it. To these factors were now added the growing predominance of missile weapons, which were dehumanizing war into an affair of indiscriminating slaughter at a distance,<sup>3</sup> and above all the new strategy of devastation. The soldiery of the age came near to asserting a prescriptive right to massacre a recalcitrant civilian population;<sup>4</sup> and the armies of the Thirty Years' War had latterly to contend, not only with their official enemies, but with the bloodthirsty vengeance of peasant guerillas: Simplicissimus might well comment on "the

1. Bulstrode Whitelocke, *Memorials of the English Affairs*, (1732), pp. 633 ff.
2. Elias, *op. cit.*, I. 134-177. especially pp. 157, 167-8; Charles E. Hill, *The Danish Sound Dues and the Command of the Baltic*, (Chapel Hill, 1926), p. 155.
3. The best early example of this is perhaps the close-action broadside; but the new linear tactics were not far behind.
4. "Les maisons n'étoient que de bois, comme dans la plupart de l'Allemagne, et en moins de six heures tout fut réduit en cendre: exemple terrible mais nécessaire contre des bourgeois insolents qui ne sachant ce que c'est que de faire la guerre, osent insulter de braves gens et les défier d'entrer dans leurs murs, lorsqu'ils n'ont ni l'adresse ni le courage de s'y défendre": G. Gualdo-Priorato, *L'Histoire des dernières campagnes et négociations de Gustave-Adolphe en Allemagne. Avec des notes . . . par M. l'Abbé de Francheville*, (Berlin, 1772), p. 185. It is difficult to agree with Professor Nef (*War and Human Progress*, pp. 138 ff.) that Spinola's courteous treatment of the enemy at the surrender of Breda (1625), as against the horrors of Magdeburg (1631) marks the beginning of a new chivalrousness and the age of limited warfare, though Oestreich (*op. cit.*, p. 31) endorses Nef's comment. Breda capitulated; Magdeburg was stormed; and the two cases are not comparable.

enmity which there ever is between soldiers and peasants."<sup>1</sup> In this situation, Grotius sought to set limits to what was legitimate in war. The importance of his attempt has obscured the hardly less significant fact that the limits he did set were appallingly wide: wider, for instance, than in Suárez and Gentili; and far wider than in Vitoria.<sup>2</sup> Grotius taught that it is lawful to kill prisoners of war; that assassination is legitimate, if not accompanied by perfidy; that unrestricted devastation of the lands and cities of the enemy is permissible, even if they have surrendered; that the civilian has no right to special consideration; and that "the slaughter of women and children is allowed to have impunity, as comprehended in the right of war"—a position which he buttressed, according to his habit, with an apposite quotation from the 137th Psalm: "Happy shall he be that taketh and dasheth thy children against the stones".<sup>3</sup> It is true that he proceeded to urge moral considerations which must deter the good man from making use of these rights; but they remain rights none the less. Grotius, in fact, reflects the logistical devastation of the age of the Thirty Years' War;<sup>4</sup> though it was to the same classical authorities which, through Lipsius, had given Maurice the inspiration for his disciplinary reforms, that he turned for his repertory of convenient instances. The absolute, feral warfare of the epoch, with which Grotius thus felt obliged to come to terms, gave a peculiar incision to the logic of Leviathan. The continued use of mercenary armies, and the rise of an international officer-class, did indeed provide mitigations before many decades had passed: new military conventions grew up, to regulate the relations of armies to one another. But it was long before these restrictions were applied to civilians: not until the most civilized state in Europe, impelled by military logic, had twice devastated the Palatinate, did public opinion begin to turn against the type of warfare which

1. Grimmelshausen, *Simplicissimus*, p. 32.
2. Francisco Suárez, *De Triplici virtute theologica, fide, spe, et charitate* (1621) (new edn., Oxford, 1944) especially VII §§13-16; Alberico Gentili, *De Iure Belli Libri Tres* (1612) (new edn. Oxford, 1933), II. iv, viii, xxi-xxiii; James Brown Scott, *The Spanish Origin of International Law: Francisco de Vitoria and his Law of Nations*, (Oxford, 1934), especially p. 285.
3. *Hugonis Grotii de Jure belli ac pacis Libri Tres*, ed. W. Whewell, (Cambridge, 1853), III. iv. 9 §1, for this passage; and see *ibid.*, III. iv. 8-10, 15, 16; III. v. 1; III. viii. 1-4.
4. Bynkershoek is said to have remarked "dat de Groot zich steeds aan de bestaende gewoonten en gebruiken houdt, zoodat hij bij gebreke daarvan nauwelijks eenigen regel van jus gentium durft te stellen." J. Koster, 'Het jus gentium van Hugo de Groot en diens voorgangers', *Mededeelingen der Koninklijke Akademie van Wetenschappen, Afd. Letterkunde*, 58 (1924), Series B, p. 13.

