Tyumen State University

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Term paper

**“The teaching of Hugo Gratius of war and peace.”**

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# Introduction

Hugo Gratius, a scientist and a lawyer from Holland, lived from 1583 to 1645. In his famous treatise “The Three Books on the Right of War and Peace”, published in 1625, he depicted the struggle of the Dutch capital for freedom at the sea. He is considered to be the founder of the bourgeois studies of the international law and is one of the representatives of the big bourgeoisie as a scholar of law at an early stage of its development during the dissolution of feudalism in Western Europe and the first large revolt of bourgeoisie.

This book by Gratius is more or less a systematical report of the basic theories of international law, which were common for that period of evolution from feudalism to capitalism. It was for a long time one of the most important books for diplomats.

According to his beliefs, Hugo was a representative of the period of transformation from feudalist to bourgeois state. His ideas received wide spread and founded the basement of further development of the international law, because they expressed real conditions of development and political demands of the newly-forming class of bourgeoisie to the ruling feudal party. I must specially note the progressive character of some of the Gratius’s ideas in the sphere of the international law that had a strong influence to modern international relations. Hugo Gratius, being a bourgeoisie theorist on its early stages, denied the opinion that force makes all the decisions in the international relations. He thought that law and justice should be number one in international relations…

But we must not forget that the progressiveness of his ideas was inconsistent and limited by the narrow frameworks of the bourgeois law views. It is necessary to note that modern bourgeois ideologists renounce the principles promoted by the ancestors in 17 – 18 centuries when bourgeoisie was fighting against feudalism.

# Chapter I

Hugo Gratius was on of the representatives of the leading (in 17 – 18 centuries) school of common law and treaty theory of state origins. The school expressed the basic demands of bourgeoisie in its struggle with feudalism; its theoretical basement was outlook, turned out as a result of the revolution in natural history, reformation, and a bundle of ideas, left from humanism in 15 –16 centuries.

It must be noted here that although the school had a common theoretical base it was not homogeneous. It had lots of trends, which differed from one another by phases of bourgeoisie development, stages of her struggle with feudalism, quantity of different class’s representatives in a state, and differences in bourgeoisie itself, because different groups had different opinions on implementing their demands. These differences can be seen when answering the questions on practical implementation of the ideas of common law, ex. Who is the bearer of sovereignty: people or monarch, which form of government is the best for human nature, etc.

The problem of the state origins – a theoretical question – had also different answers. They all agreed that before state there was a so called “natural condition”. But what was this “natural condition” was a point of debates. For one of the theorists it was a realm of unlimited freedom, wild anarchy, leading to war of “all against all” (Hobbes); for others – a peaceful idealistic state of freedom and innocence, “Golden Age” (Rousseau); others thought it was unlimited personal freedom (Loch).

For many preachers of this theory “natural condition” was a philosophical dogma or, as Golbach said, fiction. But this fiction helped ideologists of bourgeoisie to criticize pre-capitalistic social and political regime and to prophecy the victory of bourgeoisie. “In this society… - wrote Marx – an individual is free from natural bonds, etc., that in the past made him belong to a certain limited human community.”

Theorists of natural law consider state as a result of a juridical act – Treaty of the society, of people’s free will.

The idea of natural law and treaty state origins can be found in Greek and Roman philosophy and works, and in the works of feudalism scholars in middle ages. But in 17 – 18 centuries these ideas became more developed with some peculiar features, because they lose theological context common for medieval scholars, and naïve naturalism of ancient ones, because some of them considered animals as subjects of law. But the main thing is that a theory of international law of the 17 – 18 centuries had different class’ essence. It expressed strong demands of bourgeoisie, struggling hard for on its way to power.

The views on the contents of the Treaty were also different. Hobbes calls a treaty via people an act by which all population loses all natural freedom and rights in monarch’s favour and permit him an unlimited power upon them. Loch thought that an individual who enters this society via treaty loses his rights only partly (right for self-help, self-defense when something is threatening his natural rights), in favour of the other part: private property and freedom. Golbach defined the Treaty of the society as a bundle of conditions necessary for organizing and saving society. Denny Didreau thought of the Treaty of the society a bit differently. “People, – he wrote, – quickly understood that if they continued using their freedom, their power, their independence… then the situation of every single person would be even more miserable, than that if he lived separately; they realized that every person has to sacrifice a part of his natural independence and to submit to will, that would be the will of the whole society and would be, so to say, common center and a point of unification of all their wills and powers. That is the origin of rulers.”

There is no need to say about theoretical unsoundness of this concept of the school of natural law. Even in the 18 century some bourgeois philosophers found the antihistorical essence of these views. For example, Jum says that natural condition is a fiction of the philosophers. State emerges not as a result of a treaty but historically. Some also said that people could not invent a term “state”, not knowing the practice. The first Russian law professor Semen Jefimovitch Desnitskiy abruptly criticized “natural law” and mostly Pouffendorf. “The works of Pouffendorf – he said – was unnecessary, because writing of states of humankind that had never existed, is a very unworthy deed.”

# Chapter II

It is important to show which natural conditions were the soil for such an illusion of natural state and treaty state origins, and to show the role and importance of this idea in the class struggle of that time.

Marx said that the individual who enters the society union via treaty, as seen by theorists of the school of natural law, is a result of descended feudal society forms and developed in the 16-century new productive powers. A great mistake of natural law theorists was that in their opinion individual has not developed historically, but set up by nature itself. Features common for bourgeoisie were proclaimed as common for mankind.

But treaty of the society was regarded by many adepts of natural law not as a historical fact but as a logic ground, hypothesis for explaining the difference between state and natural condition, i.e. between state and anarchy for explaining one or the other form of state, ex. monarchy (Gratius), democratic republic (Rousseau). It must be added that in those historical conditions the theory of the treaty of the society had progressive meaning for struggle with feudal theories, ex. theocratic concept of state origins and patrimonial theory, which viewed the state as property of the monarch.

A statement about the dualism of law is common for the treaty theory. It differentiates the natural[[1]](#footnote-1) and positive law, i.e. given by the legislation of a state[[2]](#footnote-2). Natural law is prior to society and state; positive law – to creating a state.

This dualism in notions of law is also depraved feature in the theory of natural law, because the metaphysical way of thinking, common for bourgeois ideologists, was not able to explain the unsteadiness and variety in the law.

For the ideologists of bourgeoisie it is common to consider law and state as an expression of the people’s will. It is of course wrong, from or point of view. But in those historical conditions of struggle against feudalism and absolute monarchy, this illusion had certainly a progressive sense, because with the help of this idea bourgeoisie was achieving abolition of the system of privileges and setting up a representative system in state system.

Hugo Gratius is one of the earliest bourgeoisie ideologists and a representative of school of natural law. His views were formed at the time when the process of formation of bourgeois state in Netherlands had not finished yet, and the British one was only starting. It must be noted that the struggle of the Dutch against Spanish king Phillip II made a great influence on Gratius. The problems of international law, examined by him were set up by the bloody 30-years war, competition between Holland, England and Spain and their fighting for the leadership at the sea.

It must be noted that in the system of Gratius’s views there is no such political sharpness as is common for Rousseau or even for Loch. He expresses the interests of such groups of bourgeoisie, which were able to make a deal with feudalism. He is a monarchist according to his beliefs and opposes the idea of people’s sovereignty. He also doesn’t want to throw away religious world outlook.

Hugo Gratius differentiates law as natural and voluntarium. Natural law according to him is a deed, which is considered morally disgraceful or morally necessary, according to whether it contradicts the nature or not; that’s why this deed is forbidden or allowed by the God himself, the creator of the nature.” Natural law is “…so stable that cannot by changed by God himself.” He also spreads the natural law to everything, which is dependable from the human’s will, and also consequences, which flow from the acts of the human’s will. Natural law sometimes depends on the time. For example, the right to private property is ser up by the human’s will and that’s why natural law prohibits the theft of it. That is, the theft is prohibited by the natural law.

The common possession was natural until private property was established. The realization of your right with the help of force was common before setting up civil laws.

The law, set up by will, according to Hugo Gratius can be human or godly law. In its turn, human law can be either internal law of a state or human’s law in a narrower and at the same time broader meaning. Internal law of the state flows from the civil power, ruling in a state. Human’s law in a narrower meaning does not flow from it. As for human’s law in a broader meaning, it is the law of peoples (jus gentium), which has a power from the will of all living peoples or most of them. Speaking of a law set up by God Gratius asserts that it flows right from the God’s will.

Of course, Hugo Gratius according to his metaphysical outlook asserts that no society is possible without a law. The law is not a result but the prior event, flowing from the human nature. From the essence of law, which is a desire to communication, flows a range of necessities: not to touch not your own belongings, keep a promise, pay for inflicted damage, etc. This antihistorical outlook on the essence of law and the appearance of some of it aspects was common for those historical conditions and was necessary for bourgeoisie as an ideological weapon in a struggle against the feudal system for bourgeois law order.

Hugo Gratius defines the law into features and separates it into the law of domination and the equality. In his book, mentioned above, he says that a “law is a thing that doesn’t contradict justice. What contradicts justice is against the nature of creatures who possess mind and communication.” “Justice can be dualistic.

1. Justice is the relation between the equal (brothers, friends, citizens and allies, etc.). This is a law of equality.
2. Justice is the relation between the dominant and submissive (father and children, master and slave, God and people, etc.). This is a law of dominance.”

From all this he excludes the law concerning individuals. It is a moral quality common for personality, according to which it is possible to possess something or to act in one way or another. This law is adjacent to personality, although it is often connected with things. Law ability is a law itself according to Hugo. This law is a power upon oneself (freedom) and upon other people (father’s or master’s powers), property (complete and incomplete), the right to demand, etc. Law ability is divided into lower (personal use) and higher (adjacent to all humankind for the good).

So Hugo Gratius appears to have a division of law into natural and voluntarium (positive), which is common systematic mistake for natural law concept. It is also common for him to have metaphysical views on the justice in relation between brothers, people. He sets in the same row the father, master, king and God, calling them all dominants. That means that Gratius does not differentiate economic, ideological and state relations. But the essence of law, given by Hugo Gratius, is objectively propagandizing the eternity of slavery. It is common for Hugo Gratius to be a supporter of the monarchy and even more than that: in his views, the medieval jurisprudence remains.

Although a state is according to definition an act of creative activity and the best form of people’s unification, based on a treaty, i.e. supposing the sovereignty of people, Gratius denies the fact that people possess sovereignty. He does not agree that people’s will is higher than the will of a monarch. Considering that people were once sovereign he is sure they passed their sovereignty freely to the people they elected. So he stands for medieval patrimonial theory, according to which the juridical nature of the nature of the state’s power is not different from private property right.

That’s why a crime of monarch should not lead to depriving of power, just as a crime of a simple person in most cases does not lead to depriving him of his property. State territory and state possessions is the property of the monarch.

Those reactionary views of Hugo Gratius show that he was a representative of such a group of bourgeoisie that did not make a deal with feudal elements, which mostly determined the results of the Dutch Revolution.

# Chapter III

Treatise “The Three books on the right of war and peace” is dedicated to, as seen from the name, problems of international public law. In it the author looks at the problem of justice, sources of international law, possibility of just war and types of just wars, of influence of the war to juridical relations, which existed before, of rules of waging war, etc.

Gratius writes that his treatise is written in the defense of justice. This view on justice is as metaphysical as view on state and law. The origins of this metaphysical view are shown in the work F. Engels “To the living problem”. Looking over the emerging of state and law, Engels writes that at a certain stage of class society development complex legislation and a class of professional lawyers emerges. Together with lawyers the study of law emerges, which “in its later development compares juridical systems of different peoples and different epochs, not as reflections of economic relations but as self-explaining systems. This comparison finds similarities. The lawyers call everything more or less similar in different systems natural law. The scale that measures what is related to natural law is operating through the most abstract expression of the law – justice. Since then the main goal of development of the law, in the lawyers opinion, is to draw human life conditions nearer to justice, or eternal justice. But this justice always expresses only ideological expression of existing economic relations from their conservative or revolutionary point of view. The justice of Greeks and Romans was slavery, the justice of bourgeoisie of 1789 demanded to overthrow feudalism, because it is unjust. So views on eternal justice vary not only in different places or times, but they also vary from person to person.”

So, the justice which Gratius speaks about is bourgeois justice. “Due to the will of the Creator of nature, a human alone is helpless and requires lots of things for a good living. That is why natural law includes benefit. It was a reason of emerging of a state law. Both the community and power emerged because of some benefit. As for international law or the law of the peoples, it appeared according to custom and agreement of peoples in favour of all the communities. The other source of it is nature and holy laws.

According to Gratius, just as a criminal of internal state legislation ruins his future well-being and the one of his descendants, the criminal of the natural law ruins the basement of his future peace. Peoples who break this rule, break the walls erected for their safety forever. There is nothing solid beyond the law.

The main problem in “The Three books on the Right of War and Peace” is the problem of the relation between the war and law, in other words, can a war be fair and that’s why legal. Gratius argues with the point that war and law can’t be compatible and that voice of law is overridden by the sound of weapon. He dedicates a significant part of his work to refutation of this, as he says, mistake. “During a war only civil laws keep silence, because they are created for peace, but not the natural ones, they are eternal.” He greatly believes in the existence of some common law in the international relations, which works both for war and peace. “It is necessary to start a war to keep justice, and to continue a started war, keeping in the limits of law.

According to Gratius, war can be waged only against those who cannot be made doing something in a legal order. Legal forms are common for those who consider themselves weaker. For those who consider themselves equal wars must be waged. “During a war one must keep to the act of peace and one must start a war only intending to finish it as fast as possible.

In the treatise, the war in a broad sense is defined as a state of struggle with the force, as solving of controversial questions with the implementation of force. This definition of war spreads to many types of wars. Depending on the sides (subjects), taking part in a war, the force can be private (self-defense by a person not possessing a state power), public (state) or combined (on one hand – public, one the other - private). In a narrower sense, war is an armed conflict between states. The right of war is justice, but in a negative meaning: thing that does not contradict to justice. “The first inducements of nature do not contradict it, even on the contrary.” That’s the way in which he tries to prove it. Saving life and limbs, saving belongings, useful for it – correspond to the first inducements of nature. In other words, care of oneself does not contradict to community life, until they break somebody else’s right. The force that doesn’t break another’s right is legal. That means that, according to Gratius:

1. The sources of wars are the passions of human body (desire to possess valuables)
2. Just war is possible, which deserves approval of natural and international law.

Gratius defines two stages of just public war:

1. Solemn just war
2. Simply just war

“For the war to have solemn character, two conditions are required: it must be waged by the will of highest rulers of the states, and certain customs must be kept… Both of those are required, because any of them is not enough without another.

Public war is not solemn; it can be free from those customs and ceremonies; it can be waged against anyone by anyone’s authority. That means that any person has a right to wage his own war. But as war may cause danger for the whole state most legislatures forbid it. War can be waged only by the highest authority.”

# Conclusion

Neither Gratius, nor any other bourgeois scholars of international relations and international law managed to find out the reasons of war and the principle difference between just and unjust war. One of my sources says that only Marxist theory managed it. According to Marxist’ point of view just war is not a predatory one but a war of liberation, which has a goal of protecting the people of external attack or of freeing colonies from the “oppression” of imperialism, etc. And unjust war is a predatory war, which has a goal to conquer and slave the other state’s people. But I must say that these views are out-of-date of course.

# Bibliography

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Company Inc 1956

2 Parry J H **The Establishment of the Europian Hegemony:** 1415-1715

### New York: Harper & Row Publishers 1966

3 Гуго Гроций **О праве войны и мира** Москва 1948

1. This term has dual meaning. This is either inborn law, not dependable from state or the one that is common for different times or for different states at the same time. [↑](#footnote-ref-1)
2. After having come to power and having created its own class structure, bourgeoisie rejected this separation of law into natural (ideal of law) and positive (the real practice). It admitted only positive law. And that’s why bourgeois scientists lose interest in natural law after that. In 19-century juridical positivism emerges and attracts wide spreading, only engaging positive law. [↑](#footnote-ref-2)