

ON THE RIGHTS OF EMBASSIES

HUGO GROTIUS

The Rights of War and Peace

Book II, Chapter XVIII
On the Rights of Embassies

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of Embassies, an obligation arising out of the law of nations — Where it obtains — Whether Embassies are always to be admitted — Dismissal or punishment of ambassadors engaging in plots not to be considered as a harsh measure, but an act of self-defence — A power to whom no ambassador has been sent, not bound to respect the rights of embassy — An enemy to whom an ambassador is sent bound to respect his rights — The law of retaliation no plea for ill treatment of an ambassador — This right of protection extends to an ambassador's suite, if he thinks proper to claim it — To his moveable property — Examples of obligation without the right of compulsion — Importance of the sacred character of ambassadors.

- I Hitherto the pursuit of our inquiries has led us to examine those rights to which we are entitled by the law of nature, occasionally touching upon those points where its authority is farther confirmed by the voluntary law of nations. And that voluntary law as it is called, gives rise to certain obligations, which now remain for our discussion, and in which the rights of ambassadors form a leading feature. Almost every page of history offers some remark on the inviolable rights of ambassadors, and the security of their persons, a security sanctioned by every clause and precept of human and revealed law. Nor is it surprising that the persons of those should be deemed inviolable, who form the principal link in that chain, by which sovereigns and independent states maintain their intercourse with each other. To offer violence to them is not only an act of *injustice*, but, as Philip in his letter to the Athenians says, is acknowledged by all to be an act of *impiety*.
- II But whatever rights the law of nations may confer upon ambassadors, it is necessary in the first place to observe, that none are entitled to them, but those, who are sent by the sovereigns of independent countries to each other. For the privileges of provincial, or municipal deputies sent to the states general of any country are regulated by the particular laws of that country and not by the law of nations.*

Thus we find, in the first book of Livy, an ambassador styling himself a public messenger of the Roman People; and, in the sixth book of the same historian, we have a declaration of the senate, confining the rights of embassies to the intercourse between foreign powers, and excluding citizens from the same privileges in their transactions with each other. Upon this topic, the authority of Cicero may be cited, who, in order to shew the impropriety of sending ambassadors to Antony, observes, that they are not dealing with a Hannibal or a foreign enemy, but with one of their own citizens.

* “*The deputies sent to the assembly of the states of a kingdom, or a commonwealth are not public ministers like ambassadors, as they are not sent to foreign powers; but they are public persons, and, in that respect, are possessed of every exemption and immunity, that are necessary to the discharge of their functions.*” — Vatt. b. iv. ch. vii. sect. 109. Of this nature are the privileges enjoyed by the representatives of the British people, and denominated the *Privileges of Parliament*.

Now Virgil has so clearly explained *who* are to be reckoned *foreigners*, that we need not have recourse to lawyers, to understand what is so well expressed by the poet, who says, “*I look upon every country as foreign, which owns not the sway of our sceptre.*” Aen. vii. 369.

A state therefore connected with another though by an unequal treaty, if it retain its independence, will have a right of sending embassies. The Princes of Germany, who were in some respects subject to the Emperor, as their head, being Sovereign Princes possessed the right of sending ambassadors to foreign states. But Kings who have been entirely subdued in just war, and stripped of their dominions, have, with all their other sovereign rights, lost that of sending ambassadors. It was for this reason, that Paulus Aemilius made prisoners of the messengers sent to him by Perseus, whom he had conquered.

In civil wars necessity sometimes gives birth to new rights in violation of former rules. When for instance, a kingdom is so equally divided between two parties, that it is a matter of doubt which of them constitutes the nation, or in a disputed succession between two claimants of the crown; the kingdom may be considered as forming two nations at the same time. Tacitus, considering each party in such cases, as entitled to the rights of the law of nations, condemns the Flavians for having, in the rage of civil dissensions, violated, in the persons of the Vitellian ambassadors, those privileges, which are respected even among *foreign* nations. Pirates and robbers, as they form no civil community, cannot rest any claim to protection and support upon the law of nations. Tiberius, as we are informed by Tacitus, when Tacfarinas sent ambassadors to him, spurned at the idea of treating with a robber, as with a lawful enemy. Yet sometimes a pledge of public faith, and the rights of embassy are allowed to men of that description, which was done by Pompey to the fugitives from the Pyrenean forest.

- III There are two points upon which the privileges granted by the law of nations to ambassadors turn. In the first place, they have a right to be admitted into any country, and secondly to be protected from all personal violence. Respecting the former of these points, there is a passage in the eleventh book

of Livy, where Hanno, a Carthaginian senator inveighs against Hannibal for not having admitted into his camp ambassadors, who came from the allies, and on their behalf; as he had thereby overturned the law of nations.

But this rule by no means compels nations to give an *unqualified* admission to all ambassadors. For that is what the law of nations can never intend: it only prohibits the refusal of admission without sufficient grounds.

There are various motives which may afford a sufficient plea for such refusal. There may be an objection to the power who offers to treat, to the person sent upon the embassy, or perhaps to the object of his mission. Thus at the suggestion of Pericles, Melesippus, the Lacedaemonian ambassador, was sent out of the territories of Athens; because he came from an enemy, who had no pacific intentions. The senate of Rome said, that they could receive no embassy from Carthage, as long as the Carthaginian army remained in Italy. The Achaeans refused to admit the ambassadors of Perseus, who were secretly *meditating* war against the Romans. Upon the same grounds Justinian rejected an embassy from Totilas, and the same was done by the Goths at Urbino to messengers from Belisarius. Polybius relates in the third book of his history, that every power drove away the ambassadors of the Cynethensians, as they were so infamous a people.

We have an instance of the second kind, where the objection is made to the *person* sent on an embassy, in the case of Theodore, who was called the atheist, and whom Lysimachus refused to receive in the character of an ambassador sent from Ptolemy, and the same thing has frequently happened to others, against whom peculiar motives of aversion have existed.

In the third place, there may be sufficient grounds for refusing to admit an ambassador, if the object of his mission be of a suspicious kind, as was the case with that of Rhabshakeh the Assyrian, whom Hezekiah had reason to suspect of coming with a design to excite his people to rebellion. Or the refusal may be justified, where it is not consistent with the dignity or circumstances of one power to enter into any treaty, or intercourse with another. For this reason the Romans sent a declaration to the Aetolians, that they should send no embassy,

but with the permission of their general, and Perseus was not allowed to send one to Rome, but to Licinius. Jugurtha's ambassadors too, as Sallust informs us, were ordered to leave Italy within the space of ten days, unless they came with offers from that prince to surrender himself, and his kingdom.

There may often be the best reasons for a sovereign's refusing to allow of a *resident* minister at his court; a practice, so general in the present day, but totally unknown to the ages of antiquity.

- IV As to the personal exemption of ambassadors from arrest, constraint, or violence of any kind, it is a subject of some difficulty to determine, owing to the varieties of opinion entertained by the most celebrated writers on the question. In the consideration of this matter, our attention is directed in the first place to the personal privileges and exemptions of ambassadors themselves, and next to those of their attendants, and their goods. With respect to their persons, some writers are of opinion, that it is *only* from *unjust violence*, and *illegal constraint*, that the law of nations protects ambassadors. For they imagine that their privileges are to be explained according to the common principles of the law of nature. Others again suppose that ambassadors are not amenable to punishment for *all* offences, but only for such as amount to a transgression of the law of *nations*, the principles of which are of such general extent, as to include the law of nature: consequently there can be no offences for which an ambassador is not punishable, except for those actions that are made such by the positive rules of *municipal* or *civil law*.

Others again consider these public representatives of states and crowned heads, as only liable to punishment for offences affecting the dignity or governments of the sovereigns to whom they are sent. While, on the other hand, there are some writers who maintain that for any state to punish an ambassador for *any crime whatever* is highly dangerous to the independence of foreign powers; but that all offenders of that description ought to be left to the laws of their respective countries, to be punished or not, according to their deserts, upon due complaint being made to the sovereigns by whom they were sent.

Some few writers, indeed, in laying down the rule to be observed in such cases, have decided that an appeal should

be made to other independent and disinterested powers, which may be considered rather as a matter of *discretion*, than of *absolute right*. But the advocates of all these various systems have come to no definite conclusion in support of their favourite opinions. For this is a right which cannot, like the law of nature, be established upon unchangeable rules, but derives all its efficacy from the will of nations. Nations if they had thought proper, certainly might have laid down *absolute* rules of security for ambassadors, or coupled them with certain exceptions. The argument is supported on one side by the urgent necessity of heinous crimes being punished, and on the other, the utmost latitude of exemption is favoured on account of the utility of embassies, the facility of sending which ought to be encouraged by every possible privilege, and security. To settle the point therefore, we must consider how far nations have agreed among themselves upon these principles; the proofs of which can only be found in the evidence of history.

Many instances may be produced in favour of both opinions. And in cases like this, the opinions of those celebrated for their judgment and knowledge will be of no small weight, but in some cases we must rest upon conjectures. On this subject the two eminent historians, Livy and Sallust, may be quoted as authorities, the former of whom, in mentioning the ambassadors of Tarquin, who had been guilty of fomenting treasonable conspiracies at Rome, says, “*that although they deserved to be treated as enemies for their guilty conduct, yet the privilege, which they derived from the law of nations, prevailed over every other consideration.*” Here we see that the rights of ambassadors could not be annulled even by the most criminal acts of hostility. But the observation made by Sallust, relates rather to those who come in the train of an embassy than to ambassadors themselves. The law of nations surely then will not deny the same privilege to a principal, which it evidently allows to those who form but a subordinate part in the public mission. The historian says, that “*Bomilcar was arraigned and tried rather upon principles of equity and natural justice, than in conformity to the law of nations, as he belonged to the train of Jugurtha; who had come to Rome under the pledge of public faith.*”

Equity and natural justice require punishment to be inflicted on *all* offenders, whereas the law of nations makes an exception in favour of ambassadors, and those who have the public faith for their protection. Wherefore to try or punish ambassadors, is contrary to the law of nations, which prohibits many things, that are permitted by the law of nature.

The law of nations, thus deviating from the law of nature, gives rise to those interpretations and conjectures, which reconcile with the principles of justice a greater extension of privileges than the law of nature strictly allows. For if ambassadors were protected against nothing more than violence and illegal constraint, their privileges would confer no extraordinary advantage. Besides, the security of ambassadors is a matter of much greater moment to the public welfare than the punishment of offences. Because reparation for the misconduct of an ambassador may be looked for from the sovereign, by whom he is sent, unless that sovereign chuses to expose himself to hostilities by approving of his crimes. An objection to such privileges is made by some, who assert, that it is better for one person to be punished than for whole nations to be involved in war. But if a sovereign has *secretly* given his sanction to the misconduct of his ambassador, his *apparent* intentions to punish that ambassador will not deprive the injured power of the right to seek redress by commencing hostilities.

On the other hand, the right of ambassadors would rest upon a very slippery foundation if they were accountable, for their actions, to any one but their own sovereigns. For as the interests of powers sending, and of those receiving ambassadors, are in general different, and some times even opposite, if a public minister were obliged to consult the inclinations of both, there would be no part of his conduct, to which they might not impute some degree of blame. Besides although some points are so clear, as to admit of no doubt, yet universal danger is sufficient to establish the equity and utility of a general law. For this reason it is natural to suppose, that nations have agreed, in the case of ambassadors, to dispense with that obedience, which every one, by general custom, owes to the laws of that foreign country, in which, at any time, he resides.

The character, which they sustain, is not that of ordinary individuals, but they represent the Majesty of the Sovereigns, by whom they are sent, whose power is limited to no local jurisdiction. As Cicero, in his eighth Philippic, speaking of a certain ambassador, says, “*he carried with him the Majesty of the Senate, and the authority of the State.*” From hence it is concluded, that an ambassador is not bound by the laws of the country, where he resides. If he commit an offence of a trivial nature, it may either be suffered to pass unnoticed, or he may be ordered to leave the country.

Polybius relates an instance of an ambassador, who was ordered to leave Rome, for having assisted some hostages in making their escape. Hence it is obvious why the Romans inflicted corporeal punishment upon an ambassador of Tarentum, because the Tarentines were at that time their own subjects, by right of conquest.

If a crime is of a notorious nature, affecting the government, an ambassador may be sent home, and his sovereign required to punish, or deliver him up, as we read of the Gauls having done to the Fabians. But, as we have before occasionally observed, all human laws are framed upon such principles, as, in cases of extreme necessity, to admit of equitable relaxations, among which the privileges of ambassadors may be reckoned. But these extreme cases of necessity may, according to the law of nations, as will be seen hereafter, in discussing the effects of just and solemn war, prevent punishment in *certain* cases, though not in *all*. For it is not the act of punishment itself, which is objected to, either in respect to time, or manner, but the exemption is created to prevent the greater public evil, which might arise from the punishment of the offender. To obviate therefore any imminent danger, if no other proper method can be devised, ambassadors may be detained and interrogated. Thus the Roman Consuls seized the ambassadors of Tarquin, previously taking care to secure their papers, to prevent the evidence, which they might afford, from being destroyed. But if an ambassador excites and heads any violent insurrection, he may be killed, not by way of punishment, but upon the natural principle of self-defence. The Gauls therefore might have put to death the Fabii, whom Livy calls violators of the law of nature.

v Mention has before been frequently made of the exemptions, by which ambassadors are protected from all personal constraint and violence, and it is understood that all powers, are bound by a tacit agreement, as it were, from the time of admitting an ambassador, to respect these exemptions. It *may* and indeed sometimes *does* happen, that one power gives notice to another that no ambassador will be received, and if one is sent, that he will be treated as an enemy. A declaration to this effect was made by the Romans to the Aetolians, and, on another occasion, the Vejentian ambassadors were ordered to leave Rome, with a menace, if they refused to comply, of being treated in the same manner as the Roman ambassadors had been treated by their king Tolumnius, who had put them to death. The Samnites too forbade the Romans to go to any council in Samnium, under pain of forfeiting their lives, or, at least, their personal safety.

The above law does not bind a power, through whose territories ambassadors pass without leave. For, if they are going to an enemy of that power, or returning from him, or are engaged in any hostile design, they may lawfully be treated as enemies; which was done by the Athenians in the case of the messengers passing between the Persians and Spartans, and by the Illyrians in that of those, who carried on the intercourse between the Essians and Romans. Xenophon maintains that in certain cases they may be made prisoners, as Alexander made those, who were sent from Thebes and Lacedaemon to Darius, and the Romans those, whom Philip sent to Hannibal, and Latius those of the Volscians. For to treat ambassadors with any degree of rigour, *except upon those sufficient grounds*, would be deemed not only a breach of the law of nations, but a personal offence against the sovereigns, to whom they are going, or by whom they are sent. Justin informs us that Philip II. King of Macedon, sent an ambassador to Hannibal with credentials, empowering him to make an alliance, and that, when this ambassador was seized and carried before the senate of Rome, they dismissed him without farther molestation, not out of respect to the king, but to prevent a doubtful enemy from becoming a decided one.

VI But if an embassy, admitted by an *enemy* is entitled to all the privileges of the law of nations, much more so is one, admitted by a power *unfriendly*, but not engaged in *actual hostilities*. Diodorus Siculus says, that a messenger with a flag of truce claims all the security of peace, even in the midst of war. The Lacedaemonians, who had murdered the heralds of the Persians, were said by that act to have confounded every distinction between right and wrong, as it is acknowledged by all nations. For legal writers lay it down as a rule, that to offer personal violence to ambassadors, whose characters are deemed sacred, is a defiance of the law of nations, and Tacitus calls the privileges we are now discussing, the rights of embassy, sanctified by the law of nations.

Cicero, in his first speech against Verres, asks, if ambassadors ought not to be safe in the midst of an enemy's country, or even in his camp? Innumerable other instances of this kind might be produced from the highest authorities both ancient and modern. And it is with reason that such privileges are revered, for in the midst of war many circumstances arise, which cannot be decided but through ambassadors, and it is the only channel through which proposals of peace can be made, and confirmed.

VII It is frequently made a subject of inquiry, whether the ambassador of a sovereign, who has exercised any act of cruelty or rigour, will be subject to the law of retaliation. History furnishes many instances, in which punishment has been inflicted in such a manner. But history is sometimes nothing more than a catalogue of actions marked with injustice, and ungovernable fury. Whereas the law of nations, by its privileges, designs to secure the dignity not only of sovereigns themselves, but also that of the ambassadors whom they employ. Consequently there is a tacit agreement understood to be made with the latter, that *he* shall be exempt, not only from any ill treatment, that may affect the principal, but from such likewise, as may affect himself. So that it was a magnanimous answer, conformable to the law of nations, which Scipio made, when the Roman ambassadors had been ill-treated by the Carthaginians, and the Carthaginian ambassadors were brought before him, upon his being asked, in what manner they

should be treated, he replied, not as the Roman ambassadors had been by the Carthaginians. Livy adds, that he said, he would do nothing unbecoming the character and laws of the Roman people. Valerius Maximus assigns the same language to the Consuls, on an occasion similar, but prior to this. In addressing Hanno, they said, “*the pledge of faith, which our state has given, releases you from any such fear.*” For even at that time, Cornelius Asina, in violation of his public character, had been arrested and thrown into prison by the Carthaginians.

- VIII The train too of an ambassador, and all the plate belonging to him are entitled to a peculiar kind of protection. which gave rise to the passage in the ancient song of the Heralds, “*O Sovereign, do you make me a royal messenger from the Roman citizens? and do you confer the same privileges on my train and every thing, which belongs to me?*” And by the Julian law, an injury affecting not only ambassadors, but even their attendants, is pronounced to be a violation of public right.

But these privileges of attendants are only granted so far as an ambassador himself may think proper: so that if any of them has committed an offence, he must be required to deliver up the offender to punishment. He must be *required* to give him up. Because no violence, in taking an offender of that description must be used. When the Achaeans had arrested some Lacedaemonians who were along with the Roman ambassadors, the Romans raised a great outcry against the act, as a violation of the law of nations. Sallust’s opinion in the case of Bomilcar has already been referred to.

But should the ambassador refuse to give up such offender, redress must be sought in the same manner, as would be done with respect to the ambassador himself. As to his authority over his household, and the asylum, which he may afford in his house to fugitives, these depend upon the agreement made with the power, to whom he is sent, and do not come within the decision of the law of nations.

- IX Neither can the moveable property of an ambassador, nor any thing, which is reckoned a personal appendage, be seized for the discharge of a debt, either by process of law, or even by royal authority. For, to give him full security, not only his person

but every thing belonging to him must be protected from all compulsion. If an ambassador then has contracted a debt, and, as is usual, has no possession in the country, where he resides: first of all, courteous application must be made to himself, and, in case of his refusal, to his sovereign. But if both these methods of redress fail, recourse must be had to those means of recovery, which are used against debtors residing out of the jurisdiction of the country.

- X Nor is there, as some think, any reason to fear, that if such extensive privileges were established, no one would be found willing to enter into any contract with an ambassador, or to furnish him with necessary articles. For the same rule will hold good in the case of ambassadors, as in that of Kings. As sovereigns, who for the best of reasons, are placed above the reach of legal compulsion, find no difficulty in obtaining credit.
- XI The importance of such exemptions may be easily inferred from the innumerable instances, in which both sacred and profane history abound, of wars undertaken on account of the ill-treatment of ambassadors. The war which David made against the Ammonites, on that account, affords us a memorable instance from holy writ; and as a profane writer, Cicero may be cited, who deemed it the most justifiable ground of the Mithridatic war.

COLOPHON

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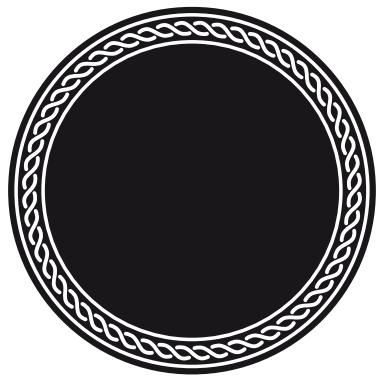
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