

THE
LAW OF NATIONS;
OR,
PRINCIPLES OF THE LAW OF NATURE,
APPLIED TO THE
CONDUCT AND AFFAIRS
OF
NATIONS AND SOVEREIGNS.

FROM THE FRENCH
OF
MÔNSIEUR DE VATTEL.

*Præ est enim illi principi Deo qui omnem hunc mundum regit, quod quidem in terra fiat, acceptum, quæ concilia cœtusque hominum jure sociati, quæ civitates appellantur."—CICERO, SOM. SCIT.

FROM THE NEW EDITION,
BY
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WITH ADDITIONAL NOTES AND REFERENCES,
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PREFACE TO THIS EDITION.

THE text of the present translation of Vattel has been carefully compared with that of the original work, in the first edition which appeared, (*Londres*, 1758, 2 vol. in quarto,) published at *Neuchatel*; in that of *Amsterdam*, (*Van Harrevelt*, 1775, 2 vol. in quarto,) the best known till recently; and in that of *M. de Hoffmans*, (*Paris*, 1839, 2 vol. in octavo,) the last and best edition. Great care has been taken also in regard to the British decisions cited by the English editor. It was discovered, that many inaccuracies existed in the citations, particularly in the names of the cases cited, which have been corrected by references to the original reports of the decisions; and wherever it appeared that the notes of the English editor required additions to render the doctrine advanced in them clearer, or more intelligible, such additions have been made; care having been taken to distinguish the matter added by enclosing it in brackets. The editor regrets very much that the size of the volume—which would have been too much increased by such an extension—did not permit him to annex to it the “*Bibliographie choisie et systématique du Droit de la Nature et des Gens, et du Droit Public*,” of *M. de Hoffmans*, which is an excellent guide in the choice of Works upon a subject much less attended to than is demanded by its importance.

Philadelphia, Sept. 29, 1852.

ADVERTISEMENT

TO THE EDITION OF A. D. 1797.



IN undertaking this new edition of Monsieur De Vattel's treatise, it was not my intention to give what might strictly be called a new translation. To add the author's valuable notes from the posthumous edition, printed at Neufchatel in 1773,—to correct some errors I had observed in the former version,—and occasionally to amend the language where doubtful or obscure,—were the utmost limits of my original plan. As I proceeded, however, my alterations became more numerous; but whether they will be acknowledged as amendments, it must rest with the reader to determine. Even if this decision should be more favourable than I have any reason to expect, I lay no claim to praise for my humble efforts, but shall esteem myself very fortunate if I escape the severity of censure for presenting the work to the public in a state still so far short of perfection. Conscious of its defects, I declare, with great sincerity,—

. . . Veniam pro saude peto,—laudatus abunde,
Non fastiditus si tibi, lector, ero.

THE EDITOR.

London, May 1, 1797.

PREFACE

TO THE PRESENT EDITION.

THE merits and increasing utility of this admirable work have not, as yet, been sufficiently known, or justly appreciated. It has been generally supposed that it is only adapted for the study of sovereigns and statesmen, and in that view certainly the author's excellent Preface points out its pre-eminent importance. But it is of *infinitely more extended utility*. It contains a practical collection of ethics, principles, and rules of conduct to be observed and pursued, as well by *private individuals* as by *states*, and these of the utmost practical importance to the well-being, happiness, and ultimate and permanent advantage and benefit of all mankind; and, therefore, ought to be studied by *every gentleman of liberal education*, and by *youth*, in whom the best moral principles should be inculcated. The work should be familiar in the *Universities*, and in every class above the inferior ranks of society. And, as regards *lawyers*, it contains the clearest rules of construing *private contracts*, and respecting the Admiralty and Insurance Law. The positions of the author, moreover, have been so sensibly and clearly supported and explained, and so happily illustrated by historical and other interesting examples, that the perusal cannot fail to entertain as well as instruct. The present Editor, therefore, affirms, without the hazard of contradiction, that every one who has attentively read this work, will admit that he has acquired a knowledge of superior sentiments and more important information than he ever derived from any other work.

Many years have elapsed since the original work was published, long before the invaluable decisions of Sir William Scott, Sir C. Robinson, and Sir John Nichol, and other eminent Judges in the Courts of Admiralty, and Prize and other Courts; and the last edition, upon which any care was bestowed, was published in A. D. 1797; since which time, and especially during the last general war, many most important rules respecting the Law of Nations were established. The object of the present Editor has, therefore, been to collect and condense, in *numerous notes*, the *modern rules and decisions*, and to fortify the positions in the text by references to other authors of eminence, and by which he hopes that this edition will be found of more practical utility, without interfering with the text, or materially increasing its size.

The Editor had proposed to form an *Index*, so as to render the work more readily accessible; but, in that desire, he has been overruled by the publishers, who think that the exceedingly full Analytical Table of Contents following the Preface, and naming the pages where each position is to be found, are sufficient, without increasing the bulk of the work, and, consequently, the expense. The Editor hopes that the student who may examine his numerous notes will not think that he has wasted time.

J. CHITTY.

*Chambers, 6, Chancery Lane,
November, 1833.*

PREFACE.

THE Law of Nations, though so noble and important a subject, has not, hitherto, been treated of with all the care it deserves. The greater part of mankind have, therefore, only a vague, a very incomplete, and often even a false notion of it. The generality of writers, and even celebrated authors, almost exclusively confine the name of "Law of Nations" to certain maxims and treatises recognised among nations, and which the mutual consent of the parties has rendered obligatory on them. This is confining within very narrow bounds a law so extensive in its own nature, and in which the whole human race are so intimately concerned; it is, at the same time, a degradation of that law, in consequence of a misconception of its real origin.

There certainly exists a natural law of nations, since the obligations of the law of nature are no less binding on states, on men united in political society, than on individuals. But, to acquire an exact knowledge of that law, it is not sufficient to know what the law of nature prescribes to the individuals of the human race. The application of a rule to various subjects, can no otherwise be made than in a manner agreeable to the nature of each subject. Hence, it follows, that the natural law of nations is a particular science, consisting in a just and rational application of the law of nature to the affairs and conduct of nations or sovereigns. All treatises, therefore, in which the law of nations is blended and confounded with the ordinary law of nature, are incapable of conveying a distinct idea, or a substantial knowledge of the sacred law of nations.

The Romans often confounded the law of nations with the law of nature, giving the name of "the law of nations" (*Jus Gentium*) to the law of nature, as being generally acknowledged and adopted by all civilized nations.* The definitions given by the emperor Justinian, of the law of nature, the law of nations, and the civil law, are well known. "The law of nature," says he, "is that which nature teaches to all animals":† thus he defines the natural law in its most extensive sense, not that natural law which is peculiar to man, and which is derived as well from his rational as from his animal nature. "The civil law," that emperor adds, "is that which each nation has established for herself, and which peculiarly belongs to each state or civil society. And that law, which na-

* Neque vero hoc solum naturâ, id est, jure gentium, &c. Cicero de Officiis lib. iii. c. 5. † Jus naturale est, quod natura omnia animalia docuit. Instit. lib. i. tit. 2.

tural reason has established among all mankind, and which is equally observed by all people, is called the law of nations, as being law which all nations follow.* In the succeeding paragraph, the emperor seems to approach nearer to the sense we at present give to that term. "The law of nations," says he, "is common to the whole human race. The exigencies and necessities of mankind have induced all nations to lay down and adopt certain rules of right. For wars have arisen, and produced captivity and servitude, which are contrary to the law of nature; since, by the law of nature, all men were originally born free."† But from what he adds,—that almost all kinds of contracts, those of buying and selling, of hire, partnership, trust, and an infinite number of others, owe their origin to that law of nations,—it plainly appears to have been Justinian's idea, that, according to the situations and circumstances in which men were placed, right reason has dictated to them certain maxims of equity, so founded on the nature of things, that they have been universally acknowledged and adopted. Still this is nothing more than the law of nature, which is equally applicable to all mankind.

The Romans, however, acknowledged a law whose obligations are reciprocally binding on nations: and to that law they referred the right of embassies. They had also their *fecial* law, which was nothing more than the law of nations in its particular relation to public treaties, and especially to war. The *feciales* were the interpreters, the guardians, and, in a manner, the priests of the public faith.‡

The moderns are generally agreed in restricting the appellation of "the law of nations" to that system of right and justice which ought to prevail between nations or sovereign states. They differ only in the ideas they entertain of the origin whence that system arose, and of the foundations upon which it rests. The celebrated Grotius understands it to be a system established by the common consent of nations: and he thus distinguishes it from the law of nature: "When several persons, at different times, and in various places, maintain the same thing as certain, such coincidence of sentiment must be attributed to some general cause. Now, in the questions before us, that cause must necessarily be one or the other of these two—either a just consequence drawn from natural principles, or a universal consent. The former discovers to us the law of nature, and the latter the law of nations."§

That great man, as appears from many passages in his excellent work, had a glimpse of the truth: but as he had the task of extracting

* Quod quisque populus ipse sibi jus constituit, id ipsius proprium civitatis est, vocaturque jus civile, quasi jus proprium ipsius civitatis: quod vero naturalis ratio inter omnes homines constituit, id apud omnes persequae custoditur, vocaturque jus gentium, quasi quo jure omnes gentes utantur. Instit. lib. i. tit. ii. § 1.

† Jus autem gentium omni humano generi commune est; nam usu exigente et humanis necessitatibus, gentes humanæ jura quedam sibi constituerunt. Bella etenim orta sunt, et captivitates secutæ et servitutes, quæ sunt na-

turali juri contrariæ. Jure enim naturali omnes homines ab initio liberi nascebantur. Id. § 2.

‡ *Feciales*, quod fidei publicæ inter populos præerant: nam per hos fiebat ut justum conciperetur bellum (et inde desitam), et ut fœdere fides pacis constitueretur. Ex his mittebant, antequam conciperetur, qui res repeterent: et per hos etiam nunc fit fœdus. Varro de Ling. Lat. lib. iv.

§ *De Jure Belli et Pacis*, translated by Barbeyrac: Preliminary Discourse, § 41.

from the rude ore, as it were, and reducing into regular shape and form, a new and important subject, which had been much neglected before his time, it is not surprising that, having his mind burthened with an immense variety of objects, and with a numberless train of quotations, which formed a part of his plan, he could not always acquire those distinct ideas so necessary in the sciences. Persuaded that nations, or sovereign powers, are subject to the authority of the law of nature, the observance of which he so frequently recommends to them, that learned man, in fact, acknowledged a natural law of nations, which he somewhere calls the *internal* law of nations: and, perhaps, it will appear that the only difference between him and us lies in the terms. But we have already observed, that, in order to form this natural law of nations, it is not sufficient simply to apply to nations what the law of nature decides with respect to individuals. And, besides, Grotius, by his very distinction, and by exclusively appropriating the name of "the law of nations" to those maxims which have been established by the common consent of mankind, seems to intimate that sovereigns, in their transactions with each other, cannot insist on the observance of any but those last-mentioned maxims, reserving the *internal* law for the direction of their own consciences. If, setting out with the idea that political societies or nations live, with respect to each other, in a reciprocal independence, in the state of nature, and that, as political bodies, they are subject to the natural law, Grotius had, moreover, considered that the law must be applied to these new subjects in a manner suitable to their nature, that judicious author would easily have discovered that the natural law of nations is a particular science; that it produces between nations even an *external* obligation wholly independent of their will; and that the common consent of mankind is only the foundation and source of a particular kind of law, called the *Arbitrary Law of Nations*.

Hobbes, in whose work we discover the hand of a master, notwithstanding his paradoxes and detestable maxims,—Hobbes was, I believe, the first who gave a distinct, though imperfect idea, of the law of nations. He divides the *law of nature* into that of *man*, and that of *states*: and the latter is, according to him, what we usually call the law of nations. "The maxims," he adds, "of each of these laws are precisely the same: but as states, once established, assume personal properties, that which is termed the natural law, when we speak of the duties of individuals is called the law of nations when applied to whole nations or states."* This author has well observed, that the law of nations is the law of nature applied to states or nations. But we shall see, in the course of this work, that he was mistaken in the idea that the law of nature does not suffer any necessary change in that application, an idea, from which

* *Kursus (lex) naturalis* dividi potest in naturalem hominum, quæ sola obtinuit dici *Lex Nature*, et naturalem civitatum, quæ dici potest *Lex Gentium*, vulgo autem *Jus Gentium* appellatur. Præcepta utriusque eadem sunt: sed quia civitates semel institutæ induunt proprietates hominum personales, lex quam, loquentes de hominum singulorum officio, naturalem dicimus, applicata totis civitatibus, nationibus, sive gentibus, vocatur *Jus Gentium*, De Cive, c. xiv. § 4.

he concluded that the maxims of the law of nature and those of the law of nations are precisely the same.

Puffendorf declares that he unreservedly subscribes to this opinion espoused by Hobbes.* He has not, therefore, separately treated of the law of nations, but has everywhere blended it with the law of nature, properly so called.

Barbeyrac, who performed the office of translator and commentator to Grotius and Puffendorf, has approached much nearer to the true idea of the law of nations. Though the work is in everybody's hands, I shall here, for the reader's convenience, transcribe one of that learned translator's notes on Grotius's Law of War and Peace.† "I acknowledge," says he, "that there are laws common to all nations—things which all nations ought to practise towards each other: and if people choose to call these the law of nations, they may do so with great propriety. But, setting aside the consideration that the consent of mankind is not the basis of the obligation by which we are bound to observe those laws, and that it cannot even possibly take place in this instance—the principles and the rules of such a law are, in fact, the same as these of the law of nature, properly so called; the only difference consisting in the mode of their application, which may be somewhat varied, on account of the difference that sometimes happens in the manner in which nations settle their affairs with each other."

It did not escape the notice of the author we have just quoted, that the rules and decisions of the law of nature cannot be purely and simply applied to sovereign states, and that they must necessarily undergo some modifications in order to accommodate them to the nature of the new subjects to which they are applied. But it does not appear that he discovered the full extent of this idea, since he seems not to approve of the mode of treating the law of nations separately from the law of nature as relating to individuals. He only commends Budæus's method, saying, "It was right in that author to point out,‡ after each article of the law of nature, the application which may be made of it to nations in their mutual relations to each other, so far, at least, as his plan permitted or required that he should do this."§ Here Barbeyrac made one step, at least, in the right track: but it required more profound reflection, and more extensive views, in order to conceive the idea of a system of natural law of nations, which should claim the obedience of states and sovereigns, to perceive the utility of such a work, and especially to be the first to execute it.

This glory was reserved for the Baron de Wolf. That great philosopher saw that the law of nature could not, with such modifications as the nature of the subjects required, and with sufficient precision, clearness, and solidity, be applied to incorporated nations, or states, without the assistance of those general principles and leading ideas by which

* Puffendorf's Law of Nature and Nations, book ii. chap. iii. § 23.

† Book i. chap. i. § 14, note 3.

‡ In his *Elementa Philos. Pract.*

§ Note 2 on Puffendorf's Law of Nature and Nations, book ii. chap. 3, § 23. I have not been able to procure Budæus's work from which I suspect that Barbeyrac derived this idea of the Law of Nations.

